Domestic Violence & Immigration: Applying the Immigration Provisions of the Violence Against Women Act

A Training Manual for Attorneys & Advocates

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Authors and Contributors: American Bar Association, Commission on Domestic Violence and Ayuda

Janice Kaguyutan, Esq.
Heather Maher, Esq.
Mary Ann Dutton, Ph.D.
Roberta Valente, Esq.
Suzanne Jackson, Esq.
Leslye Orloff, Esq.
Deborah Goelman, Esq.
Giselle Aguilar Hass, Ph.D.
David Rivera, Esq.

Editors:

Bette Garlow, Esq.
Heather Maher, Esq.
Leslye Orloff, Esq.
Janice Kaguyutan, Esq.
Sue Shriner, Office on Victims of Crime

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Preface
DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT

A word of caution is warranted at the outset of this manual. The caution is this: **when working with immigrant victims of domestic violence DO NO HARM.** Immigration law is extremely complex. Any misstep by an attorney or advocate working with an immigrant victim could result in the removal of the immigrant victim from the United States. Each immigration case is different and the details of the stories are crucial. Therefore, it is extremely important you consult with an expert – an immigration attorney experienced with immigrant victims of domestic violence – on each and every case if you work with immigrant domestic violence victims and you do not have extensive experience working with the immigration system.

The National Network on Behalf of Battered Immigrant Women was established to provide expert technical assistance to attorneys and advocates who work with immigrant victims of domestic violence. You can contact the leaders of this network for help with individual immigration cases, information about how family and welfare law impacts immigrant victims, ideas on how to improve community outreach, among other things. Contact information for the leaders of the National Network on Behalf of Battered Immigrant Women, and their respective areas of expertise is listed below.

National Network on Behalf of Battered Immigrant Women

For technical assistance on VAWA self-petition cases, family law, welfare, or access to services:

Leslye Orloff or Janice Kaguyutan
Immigrant Women Program, NOW LDEF
1522 K Street, NW, Washington, DC 20005
202/326-0040; iwp@nowldef.org; jkaguyutan@nowldef.org

For technical assistance on access to immigration status and complex VAWA immigration cases:

Gail Pendleton, National Immigration Project, National Lawyers Guild
14 Beacon Street, Suite 602, Boston, MA 02108
617/227-9727 x2; nipgail@nlg.org

For technical assistance on community outreach and advocacy programs:

Leni Marin
Family Violence Prevention Fund
383 Rhode Island Avenue, Suite 304, San Francisco, CA 94103-5133
415/252-8900; leni@fvpf.org

Overview of this Manual

This manual will provide you with the information you will need to (1) understand the issues that face immigrant victims of domestic violence; (2) help immigrant victims to prepare for VAWA immigration cases; (3) develop training sessions in your local community on the issues presented in this manual. The material presented in this manual is appropriate for both attorneys and advocates who work with immigrant victims of domestic violence.

Each chapter contains the following sections: (1) outline of the **key learning concepts** taught in the chapter; (2) a portion of the **story of Lily**, an immigrant victim of domestic violence, that corresponds to the learning concepts in that chapter; (3) the main **lesson**; (4) **common questions and answers**; and (5) a **chapter review**. Throughout each chapter, important tips and warnings are highlighted to alert you to especially hazardous areas where it would be most important to contact an expert for technical assistance.

The appendices contain: sample INS forms referenced in the text; the Power & Control Wheel; a review of research data and information about the dynamics of domestic violence in immigrant families on issues that are relevant to fact finders; a resource list; a form with which to join the National Network on Behalf of Battered Immigrant Women; and trainer materials, including training tips, sample training agendas, sample hypos, and a pop quiz.

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Chapter One
OVERVIEW OF DOMESTIC VIOLENCE & ITS EFFECT ON BATTERED IMMIGRANTS[1]

September 8, 2000

***KEY LEARNING CONCEPTS FOR CHAPTER ONE*:**

- Statistics on domestic violence
- Why lawyers should learn about domestic violence?
- Who are the victims and perpetrators?
- What is domestic violence?
- Barriers immigrants face when seeking help

LILI'S STORY

Lili has lived with her husband, who is a lawful permanent resident, in the United States for five years, and he has abused her throughout their marriage. Her husband isolates Lili from her family, and gets angry if she expresses her opinion or tries to protect the children. He has hit her in front of the children, grabbed her, pulled her hair, and thrown her around the house. One day he pushed her off of the front porch and refused to let her go to the doctor, despite a broken ankle. He also punished her by not making repairs to the house -- which is very cold because the hot water heater has been broken for three years.

INTRODUCTION

Experts estimate that 2 to 4 million American women are battered every year,[2] and that between 3.3 and 10 million children witness violence in their homes.[3] Battering affects families across America in all socioeconomic, racial, and ethnic groups.[4] As information about the extent and impact of domestic violence emerges, it has been identified as a criminal justice issue, a public health crisis, and a costly drain on economic productivity.[5]

Why Should Attorneys and Advocates Learn About Domestic Violence?

Domestic violence has a tremendous impact on the legal profession. Whether or not lawyers realize it, domestic violence permeates the practice of law in almost every field.[6] Corporate, bankruptcy, tort, criminal defense, immigration and family lawyers regularly represent victims or perpetrators of domestic violence.[7] Criminal, domestic relations, and immigration judges preside over a range of cases involving domestic violence as an underlying or a hotly contested issue. Failure to fully understand domestic violence legal issues threatens the competency of individual lawyers and judges, as well as the legal profession as a whole.

Legal professionals who are uninformed about domestic violence issues may endanger the safety of victims or unknowingly contribute to a society that has historically condoned the abuse of intimate partners. In Maryland, for example, a victim was killed by her intimate partner after a judge refused to grant her a civil protection order.[8] Recently, another judge expunged a batterer's criminal record for wife abuse in order to allow him to join a country club; the judge reversed his ruling only in response to public outcry.[9] Still another judge modified a custody order and awarded custody of the child to the child's father, despite the fact that the father had abused the child's mother, and had been convicted of murdering his first wife.[10]

Lawyers, too, are not representing victims of domestic violence according to the standards dictated by the profession.[11] Immigration lawyers may not understand why a husband refuses to provide documents needed for his wife's immigration case, or may urge an abusive husband to become more involved in his wife's immigration case, heightening the danger to the abused client. Identifying a history of domestic violence between the partners, however, may clarify that the perpetrator's desire to dominate or harm the victim is the key issue. Many family and criminal lawyers fail to address a client's safety needs when there is a history of domestic violence, or refuse to introduce evidence of domestic violence in court, despite the negative legal consequences to the client. Family and criminal lawyers should also be aware that their legal strategies can affect a client's immigration case. (See Chapters 4-6) This hesitation to address domestic violence or immigration issues when they arise stems in part from a lack of understanding about what domestic violence is, and who perpetrates domestic violence. Only when all lawyers -- especially family, criminal, and immigration lawyers -- understand the dynamics of domestic violence will they be able to advocate for safe legal solutions for their clients.

Who are the Victims and Perpetrators of Domestic Violence?

Maintaining stereotypes about victims and batterers can affect a lawyer's legal strategies, a judge's court rulings, or a jury's verdict. Lawyers and advocates should know that domestic violence crosses ethnic, racial, age, national origin, religious and socioeconomic lines, and that same-sex battering occurs at approximately the same rate as opposite sex battering.[12] Studies have also shown that the only common traits between victims are that they are being abused by their intimate partners or spouses and that the majority of heterosexual victims are female.[13] Victims may be doctors, business professionals, scientists, or judges, among others. Perpetrators may be police officers, sports heroes, CEOs, or college professors. Unlike victims, perpetrators do have at least one common trait -- the majority of perpetrators are men who witnessed domestic violence in their families of origin.[14]

Lawyers and advocates should be aware that they cannot identify victims or perpetrators by looking for a certain profile. Abusers may be charming and articulate in court or seething with rage; similarly, victims are just as likely to seem angry or aggressive as frightened or passive.[15] Lawyers must **screen for patterns of behavior**, rather than assuming that a client is the type of person that is a victim or a batterer. (See the Screening Guidelines section in Chapter

2, Working with Battered Immigrants) When lawyers or advocates identify domestic violence issues, they must then respond appropriately.

What Is Domestic Violence?

Domestic violence is a pattern of behavior that one intimate partner or spouse exerts over another as a means of control. Domestic violence may include physical violence, coercion, threats, intimidation, isolation, and emotional, sexual or economic abuse.[16] Domestic violence is not defined solely by specific physical acts, but by a combination of psychological, social and familial factors.[17] Dr. Mary Ann Dutton, a leading clinical psychologist, defines domestic violence as a pattern of interaction in which one intimate partner is forced to change his or her behavior in response to the threats or abuse of the other partner.[18] (See the *Power & Control Wheel* in the Appendix.)

Physical and Sexual Violence

Physical violence is one means of exercising power and control over an intimate partner. Perpetrators typically commit one or more of the following criminal acts in domestic violence situations:

- throwing objects at someone
- pushing or shoving
- physical restraint by forcefully holding or tying up the victim
- slapping
- pulling hair
- punching
- kicking
- burning
- choking
- strangling or smothering
- slamming the victim's head against a hard object
- beating up the victim
- running into the victim with an automobile

- putting a dangerous substance, such as gasoline or bleach on the victim's skin or in the victim's eyes

- use of a weapon on the victim

- sexually assaulting the victim

Sexual assault is frequently perpetrated in domestic violence cases. This may include forcing a victim to engage in a range of unwanted sexual behavior, either through physical force or threats. Sexual abuse can include behavior that may not be criminal in all states, but that causes devastating psychological and physical effects, such as forcing the victim to view pornographic videos.

Psychological Abuse

Perpetrators of sexual or physical abuse almost always psychologically abuse victims.[19] Psychological abuse can include:[20]

- coercion and threats (e.g. threats to kill the victim or others, or to have the victim deported);

- intimidation (e.g. destroying objects, using weapons or gestures to threaten);

- isolation (e.g. limiting victim's contact with others, removing telephone);

- minimization, denial, and blaming (e.g. saying that victim provoked him);

- use of children (e.g. threatening to harm, abduct, or gain custody of the children, using the children to monitor the victim or to deliver disturbing messages, using protracted custody disputes to punish victims[21]);

- economic abuse (e.g. taking control of family finances, withholding child support);

- use of "male privilege" (e.g. making unilateral decisions about the family);

- inducing altered states of consciousness (e.g. forced alcohol or drug use);

- infliction of emotional abuse and degradation (e.g. insults, belittling);

- stalking (e.g. repeated phone calls, letters, or following victim around);

- rulemaking (e.g. developing a set of frequently changing rules for the victim or children's behavior).

Perpetrator tactics are designed to exert control over the victim's movements, emotions, thoughts, relationships with the outside world, and potentially, every aspect of the victim's life. In some cases, perpetrators of domestic violence routinely beat their spouses until they require medical attention. In other cases, perpetrators are able to exert control over their partners simply by looking at them a certain way or reminding them of prior physically violent episodes.

Batterers of immigrant victim use all of the same tactics used against non-immigrants. However, there are other tactics that batterers often use specifically to gain power and control over immigrants.

TACTICS ABUSERS USE TO MAINTAIN POWER AND CONTROL OVER BATTERED IMMIGRANT WOMEN

Emotional Abuse

- Lying about her immigration status
- Writing or telling her family lies about her
- Calling her racist names
- Belittling and embarrassing her in front of family and friends, causing her to "lose face"
- Preventing her from visiting dying relatives
- Abuser lying about his ability to change the immigration status of his lawful permanent resident abuse victim

Economic Abuse

- Forcing her to work "illegally" when she does not have a work permit
- Threatening to report her to INS if she works "under the table"
- Not letting her get job training or schooling
- Taking the money her family back home needs
- Forcing her to sign papers in English that she does not understand -- court papers, IRS forms, immigration papers
- Harassing her at the only job she can work at legally in the United States, so that she loses the job and is force to work "illegally"

Sexual Abuse

- Calling her a prostitute or a "mail order bride"
- Accusing her of trying to attract other men when she puts on makeup to go to work
- Accusing her of sleeping with other men
- Alleging that she has a history of prostitution on legal papers
- Telling her that "as a matter of law" in the United States that she must continue to have sex with him whenever he wants until they are divorced. (In most states, a divorce cannot take place until they have been separated and have not had sexual relations for six

months)

Coercion and Threats

- Threatening to report her to INS and get her deported
- Threatening that he will not file immigration papers to legalize her immigration status
- Threatening to withdraw the petition he filed to legalize her immigration status
- Telling her that he will harm someone in her family
- Telling her that he will have someone harm her family members in her home country
- Threatening to harm or harass her employer or co-workers

Using the Children to Control Her

- Threatening to remover her children from the United States
- Threatening to report her children to the INS
- Taking the money she was to send to support her children in her home country
- Telling her he will have her deported and he will keep the children in her home country
- Convincing her that if she seeks help from the courts or the police, the United States legal system will give him custody of the children. (In many countries, men are given legal control over the children, and he may convince her that the same will occur here)

Using Citizenship or Residency Privileges

- Failing to file papers to legalize her immigration status
- Withdrawing or threatening to withdraw immigration papers filed for her residency
- Controlling her ability to work
- Using her undocumented immigration status to keep her from report abuse or leaving with the children
- Telling her that the police will arrest her for being undocumented if she calls the police for help because of the abuse

Intimidation

- Hiding or destroying important papers (i.e., her passport, her children's passports, ID cards, health care cards, etc.)
- Destroying the only property that she brought with her from her home country
- Destroying photographs of her family members
- Threatening people who serve as a source of support for her
- Threatening to do or say something that will shame her family or cause them to lose face
- Threatening to divulge family secrets

Isolation

- Isolating her from friends or family members
- Isolating her from persons who speak her language
- Not allowing her to learn English
- Being the only person through whom she can communicate in English
- Not allowing her to continue to meet with social workers and other support persons
- Cutting off her subscriptions to or destroying newspapers and magazines in her language
- Not allowing her to meet with people who speak her language or who are from her community, culture, or country

Minimizing, Denying, Blaming

- Convincing her that his violence actions are not criminal unless they occur in public
- Telling her that he is allowed to physically punish her because he is the "man"
- Blaming her for the breakup of the family, if she leaves him because of the violence
- Telling her that she is responsible for his violence because she did not do as he wished

Attorneys and advocates should always consult with immigration law experts prior to contacting the INS to adequately prepare the case to prevent mistakes that could inadvertently lead to deportation of the immigrant client. The INS is available to provide information and assistance with self-petitioning without providing identifying information about the self-petitioner or the batterer. If the INS is contacted for information or assistance, we recommend that attorneys or advocates do so on behalf of their clients. Domestic violence and immigration experts should work together on cases involving battered immigrants to ensure the greatest safety for clients. ***If you need guidance from a VAWA immigration expert or would like to know of immigration experts in your area, contact one of the following: for complex immigration questions, Gail Pendleton, National Immigration Project of the National Lawyer's Guild, 617-227-9727 or nipgail@nlg.org; for basic VAWA immigration questions, Janice Kaguyutan, NOW Legal Defense and Education Fund Immigrant Women Program, 202/326-0040.***

BARRIERS IMMIGRANTS FACE WHEN SEEKING HELP

Lili's story from the beginning of the chapter illustrates the untenable position of many battered immigrants who encounter significant difficulties to protect themselves or escape a battering partner. The barriers a battered immigrant encounters are many and very diverse. These include:

- fear of retaliation from the abuser against self, family, or friends

- economic factors (e.g. loss of income, housing, feared damage to personal property, decreased standard of living)

- fear of losing children through unsuccessful custody disputes or kidnapping

- fear that danger to children will increase once the abused parent is no longer available to protect them (e.g., during visitation)

- anticipated demands of single parenthood

- poor physical and/or psychological health

- hope that the abuser will change

- loss of an intimate relationship that provides for some important needs (e.g., father to children, economic support, companionship, social acceptance, sexual needs)

- interest in protecting partners from legal risks (i.e., violation of probation from previous convictions), loss of employment, or social stigma.

- loss of residency status

- cultural, religious and social norms that make women responsible for sustaining marriages

- attempts by others to influence the battered woman to stay in the relationship

Battered immigrant women are particularly vulnerable in their attempts to successfully escape an abusive relationship. Often, they suffer from significant limitations that contribute to a low socio-economic status including lower income levels and limited employment skills, related to having foreign or limited formal education and their lack of mastery of the English language. Lack of social support related to being new arrivals is also a problem because they have been uprooted from their country and are often socially alienated. In addition, battered immigrant women often experience discrimination and decreased social opportunities due to their minority status, in addition to the acculturation difficulties and social disruption resulting from their immigrant status.[22]

Social and psychological studies have shown that stressors related to immigration status and environmental pressures have been linked to domestic violence for immigrant women.[23] Battered immigrants facing these difficulties may be realistically hesitant to abandon their partners or spouses due to economic and social dependence. Domestic violence is not only extremely stressful for victims but it also makes it more difficult for battered immigrants to deal with other environmental stressors.[24]

The following section will examine these barriers in greater depth.

Language Barriers

One of most immediate hurdles facing battered immigrants is a language barrier that prevents them from obtaining legal or social services assistance. For instance, an immigrant victim of domestic violence who does not speak English may not be able to communicate with law enforcement officers responding to an emergency call. Since the victim cannot communicate, the batterer may talk to the police or a child may act as a translator for the victim. The abuser may tell the police that the victim initiated the violence or that nothing happened at all. The child may not feel comfortable telling the officer what really happened because of fear of the abuser. These two situations can cause a number of problems. The officer may inappropriately arrest the victim, fail to arrest the perpetrator, or fail to provide the victim with information about her legal rights. If the perpetrator is arrested or if the police make a report, the police officer may put an inaccurate statement in the report, creating credibility problems for the victim when the police report is introduced at trial.[25]

Battered immigrants may also have trouble accessing other community resources because of a language barrier. Most courts, domestic violence shelters, crisis hotlines, and social service agencies have limited access to interpreters. An inability to communicate may prevent a battered immigrant from seeking necessary legal, shelter, or emergency services.

To help address these problems, battered immigrant advocacy programs should identify a wide cross-section of social service agencies that provide language-appropriate services. Advocates can build good working relationships with agencies that provide language-appropriate services by developing agreements whereby the agencies will provide interpreters for domestic violence cases that advocates are working on in exchange for battered immigrant advocates providing assistance to battered women working with the social service agencies. Advocates may also be able to find volunteer translators from local universities and church groups.[26] Social service staff and volunteer translators should receive domestic violence training before providing interpretor service to battered immigrants. The National Domestic Violence Hotline can also assist advocates, attorneys, and police with translations for battered immigrants. ***The National Domestic Violence Hotline provides information in up to 140 languages. (800) 799-SAFE (7233); TTY: (800) 787-3224***

Perception of Law Enforcement and the Legal System

Very often, fears of the legal system -- whether justified or not -- cause battered immigrants to avoid seeking help. Battered immigrants may distrust the U.S. legal system for a number of reasons. They may have had negative experiences with repressive or non-responsive law enforcement and judicial systems in their countries of origin. They may have been threatened by their batterers that the police will report them to INS or remove their children.[27] A recent survey found that nearly 83% of battered immigrants did not contact the police for help despite lengthy histories of domestic violence.[28]

The vast differences between the U.S. and other legal systems also prevent many battered immigrants from utilizing the system. Many immigrants are afraid to use the system because

they do not understand how it works.[29] Other countries have very different legal procedures or standards for credibility.[30] For example, oral testimony or the testimony of women may not be persuasive in the courts of other countries. Battered immigrant women may have great difficulty understanding that their testimony has any value in U.S. courts.[31] In addition, in some legal systems, money or governmental ties, rather than due process, determines legal outcomes.[32] Battered immigrants who have learned not to expect justice from such legal systems find it difficult to believe that our system functions any differently.

In addition to previous experience or personal knowledge, misinformation from abusers causes many battered immigrants to distrust the U.S. legal system. Abusers may tell victims that they will never be believed in court or that they will be deported if they call the police or go to court. Lawyers and advocates for battered immigrants should explain the U.S. legal system with their clients and answer any questions clients may have.[33] Battered immigrants may feel more comfortable utilizing the system if they understand that oral testimony of both men and women can be credible evidence and if they know what legal relief is available to them.

Fear of Deportation

One of most powerful threats an abuser can use against a battered immigrant is the threat of deportation.[34] Abusers frequently threaten battered immigrants with deportation if they complain about the abuse, threaten to leave, or threaten to call the police or others for help. As a result, many immigrant victims keep silent about the abuse, refrain from calling the police, going to the hospital, or seeking legal assistance. Regardless of their actual immigration status, many battered immigrants believe that they will be deported if they seek help. Lawful permanent residents who attained their green card through marriage may be particularly vulnerable to the threat of deportation because they may believe that since the abuser helped them get their green card, the abuser can also have it taken away. Even though this is untrue, an abuser's threat can be a powerful deterrent. If the victim is undocumented, the risk of deportation is greater. An abuser can provide the INS with damaging information that can lead to deportation simply to punish the victim.[35] INS will act on such information regardless of the abuser's reason for supplying it.

Fear of deportation has dire consequences for battered immigrants. Not only does it prevent them from seeking help,[36] but it can also lead to a lack of evidence about the violence despite the long history of abuse -- if the victim does not seek help, there will be no medical records, police reports, or protection orders. A lack of documentation of the abuse could affect a victim's ability to obtain immigration relief, because in order to obtain relief the abuse must be proven. (See Chapter 4, Self-Petitioning Eligibility)

Battered immigrants fear deportation for very legitimate reasons. Deportation will not only prevent them from living in the U.S., but it can also lead to dangerous or troublesome situations in their home country. When deported, battered immigrants may be ostracized or abused by the abuser's family or community members.[37] Their home country may not have laws to protect them from the batterer's ongoing violence. To counter these fears and the abuser's

threats, advocates and attorneys can discuss the risks of deportation with battered immigrants and help them understand that in the U.S. domestic violence is a crime that and legal, medical and social service professionals are willing to help them escape the violence.

Not only do battered immigrants fear their own deportation, but also their abuser's deportation. Many battered immigrants rely on their abusers for financial security and the ability to stay in the U.S. Reporting the abuse may result in the abuser's deportation, which could jeapordize the financial or immigration status of the victim and/or the children.

Cultural & Religious Issues

Cultural factors may also inhibit battered immigrants from seeking help. Cultural pressure can come in the form of social mores, community attitudes, cultural traditions, or discrimination.

Social mores may hinder a battered immigrant's ability to leave an abusive relationship. Some cultures have strict guidelines regarding the role of women which may lead a battered immigrant to conclude that she does not have the right to disobey her husband or that she cannot leave because she is her husband's property. Some battered immigrants may be reluctant to leave an abusive relationship because of a cultural or religious belief in the sanctity of marriage. Some religious principles may require wives to obtain their husbands' permission for divorce, giving perpetrators an additional means of control.[38] Religious leaders may instruct battered immigrants that they have a duty to make their marriages work. Consequently, many battered immigrants choose to stay in abusive relationships and may not feel comfortable seeking assistance for fear that service providers will not understand the choice. Advocates and attorneys should make sure to convey to their immigrant clients that they understand the special concerns of immigrants. Advocates and attorneys may also need to be creative in their legal solutions for battered immigrants (and even non-immigrant victims) to protect the victim who wants to curb the violence but not necessarily separate from the abuser. For example, a victim can receive a civil protection order that requires the abuser to refrain from abuse, but does not require the abuser to stay away from the victim or leave the home. As with every client, advocates and attorneys should help victims who plan to stay with abusers to develop safety plans. (See Chapter 2, Working with Battered Immigrants)

Community pressure, which is strongly linked to social mores, may also obstruct a battered immigrant from seeking help. As in American culture, a battered immigrant may fear that she will be disbelieved or ignored because of the abuser's powerful standing within the community. Battered immigrants may be ostracized by members of their community if they seek help from outsiders because of a strong belief in keeping violence private or maintaining an allegiance to the community. Most often, all of an immigrant's family and friends are a part of their community[39] -- thus, it can be extremely difficult for an immigrant to risk losing their community support by seeking help outside of the community.

Cultural traditions -- such as eating or sleeping arrangements -- may also discourage a battered immigrant from seeking assistance.[40] Many cultural traditions are quite different than

American customs and it is very difficult to find services that satisfy the needs of all communities. Battered immigrants hesitate to seek help from a shelter, for instance, because of a fear or belief that that they will be unable to follow certain dietary custom that is very important to them.[41] Battered immigrants who choose to go to a shelter may feel alienated and alone without access to culturally familiar surroundings. Their discomfort may cause them to avoid seeking help in the future.

Advocates and attorneys working with battered immigrants can work with domestic violence service providers and shelters to help battered immigrants receive the services they need, such as: allowing battered immigrants to prepare their own food separate from the meals that are prepared for all shelter residents; and □ providing translators to accompany battered immigrants to individual or group counseling sessions offered by the shelter.

Actual or perceived discrimination may also prevent battered immigrants from obtaining services they need. For example, sometimes African or Latin American men are characterized as violent,[42] and women of color as more prone to victimization. Some victims may choose to avoid seeking help because of these negative stereotypes. In addition, some victims may avoid the police and the courts because of a belief that they are part of a system that has historically discriminated against people of color.[43]

Joint strategies can be developed in which those familiar with cultural and immigration issues can work together with domestic violence experts to develop solutions for problems facing battered immigrants. Advocates and attorneys can become involved with the domestic violence coalitions and coordinating councils to help them train justice system personnel, battered women's advocates and attorneys on the dynamics of domestic violence experienced by immigrants. See the appendix for a list of state coalitions and national organizations. Advocates can work with coalitions to develop strategies for instituting culturally-appropriate policies and procedures.

International Parental Kidnaping

Many abusers use their children as a tool of control by threatening to gain custody or abduct the children. When abusers have ties to other countries, however, the potential for international abduction becomes very real.[44] When children are abducted and taken to another country it becomes extremely difficult to get them back to the U.S. Many battered immigrants decide to remain with their abusers in order to prevent international abduction. Advocates and attorneys working with battered immigrants whose abusers are threatening to kidnap their children should take these threats seriously and take legal steps to deter or head off the abuser's kidnaping attempts.[45] (See Chapter 11, Custody, Civil Protection Orders & VAWA)

COMMON QUESTIONS & ANSWERS

Why don't victims just leave?

Victims of domestic violence almost always attempt to leave violent relationships. Some victims make repeated attempts to leave. A range of serious obstacles force some victims to return to their abusers, and prevent others from leaving in the first place.[46]

Perpetrators of domestic violence with immigrant spouses or partners frequently threaten to have their partners or spouses deported if they leave or seek help. Until recently, immigration laws gave U.S. citizen or lawful permanent resident spouses a role in their spouse's immigration status even if they were domestic violence perpetrators, permitting them to exercise control over victims. (See Chapter 4, Self-Petitioning Eligibility) While this is no longer true, battered immigrants who believe that their spouses control their immigration status may be afraid to leave for fear of being deported.

Many victims, including battered immigrants, fear that they will be harassed, stalked or killed if they leave their batterers. These fears are justified, as nearly 30% of female homicide victims are killed by their current or former boyfriends or husbands.[47] A victim's fears in a particular case may be based on the batterer's verbal or physical threats (e.g., "I'll kill you if you leave me"), the batterer's prior behavior (e.g., the violence increased the last time the victim left) or information about the batterer's history (e.g., the batterer was imprisoned for assaulting or killing his former wife). Victims who have sought and been denied assistance from outside sources, such as the police or courts, are more likely to fear retaliation from their batterers, believing that the judicial or law enforcement systems cannot protect them.

Victims of domestic violence may be unable to leave their abusers because they cannot financially support themselves and/or their children. Since perpetrators often withhold economic resources from victims, victims may not have the means to pay for basic needs on their own -- such as housing, food, clothing, or medical care. Batterers may forbid victims to work, or force them to turn over their paychecks if they are employed. A lack of savings or limited access to the family's income traps many victims in abusive relationships.

Additionally, many victims stay in abusive relationships out of concern for their children. Batterers frequently threaten to harm, abduct, or gain custody of the children if victims leave, which can be terrifying to victims whose batterers have ties with foreign countries. Batterers often carry out their threats to abduct the children. While some victims may be concerned about losing their children, or their ability to care for their children's basic needs if they leave their abusers, others may feel that it is important for the children to live with both parents. Thus, children often bind victims of domestic violence to their abusers.

Victims may feel pressure to remain with their abusers due to cultural or religious mandates that require women to remain with their husbands despite "marital problems." Victims who consider leaving may be advised by family members, community members, or clergy to try to work out the marriage. A lack of support from family or community members, combined with

inconsistent responses from the legal system, may discourage victims from leaving abusive relationships.

Don't some victims of domestic violence like to be beaten?

Victims of domestic violence have historically been characterized as masochistic women who enjoy being beaten. Evidence does not support this anachronistic psychological theory. Rather, victims of domestic violence desperately want the abuse to end, and engage in various survival strategies, including seeking help from family members or friends, to protect themselves and their children.[48] Silence may also be a survival strategy in some cases. Moreover, enduring a beating to prevent the batterer from attacking the children may be a coping strategy used by a victim, but does not mean that the victim enjoys it.

Isn't it true that victims provoke the violence?

Although perpetrators of domestic violence frequently claim that victims provoke violence, using violence is the batterers' choice. The majority of batterers do not use violence in their relationships with other people, such as their co-workers or bosses; rather, they deliberately choose to use violence against their intimate partners or spouses. As a result, victims cannot control, predict, or prevent the violence. Many victims report that their abusers establish elaborate rules of behavior, change the rules, and then punish the victim or children. For instance, victims may struggle to keep the house, the children, or meals according to the batterer's instructions, only to find that the rules have changed. Research, including reports by batterers, confirms that victims cannot prevent or stop the violence.[49]

Does substance abuse or mental illness cause perpetrators to abuse their partners or spouses?

Most perpetrators who abuse their spouses or intimate partners do not have clinically defined psychological disorders. In addition, there is no evidence that most persons who are mentally ill abuse their spouses or partners. Abusers who are mentally ill may need different types of intervention.

Alcohol or substance abuse does not cause domestic violence, though it is often used as an excuse by perpetrators. Substance abuse may, however, increase the frequency or severity of violent episodes in some cases.[50] Because substance abuse does not cause domestic violence, requiring batterers to attend only substance abuse treatment programs will not effectively end the violence. Substance abuse treatment programs may be useful for some batterers in conjunction with other programs, such as batterer intervention programs.

Victims of domestic violence must have psychological disorders, right?

This characterization of battered women as mentally ill stems from the assumption that victims of domestic violence must be sick or they would not "take" the abuse. More recent theories demonstrate that battered women resist abuse in a variety of ways.[51] Most victims of

domestic violence are not mentally ill, although individuals with mental disabilities are certainly not immune from being abused by their spouses or intimate partners. Some victims of domestic violence suffer psychological effects, such as post-traumatic stress disorder or depression, as a result of being abused.[52]

Don't battered immigrants stay in abusive relationships because they are accustomed to women being treated poorly in their cultures?

It is critical when presenting information about battered immigrants to avoid cultural stereotyping. In most countries around the world, as in the United States, there are a variety of subcultures and traditions about the roles of women -- some positive, others, oppressive. Domestic violence occurs in all cultures. There is no evidence that women in other cultures are victims of domestic violence more often than women in the United States.[53] Like all victims, battered immigrant women face safety, economic, cultural and psychological pressures when deciding whether to leave their abusers. Immigration laws, language barriers, and a lack of financial resources often create additional obstacles for battered immigrants. However, battered immigrants do not remain in abusive relationships because they enjoy the abuse, or because they come from "backwards" cultures in which all women are constantly degraded.

Isn't it true that immigrant women have low self-esteem, and that causes victims to get involved in abusive relationships?

Traditional theories presumed that individuals with adequate self-esteem would not "allow" themselves to be abused by intimate partners or spouses. Studies have demonstrated that victims of domestic violence fail to share common characteristics other than being female.[54] There is little support for the theory that low self-esteem causes victims to become involved in abusive relationships, however, some victims may experience a decrease in self-esteem as a result of being abused, since perpetrators frequently degrade, humiliate, and criticize victims.

CHAPTER REVIEW

- **POWER AND CONTROL TACTICS USED BY BATTERERS OF IMMIGRANT WOMEN INCLUDE:**
  - threats related to the immigration status of the victim;
  - sexual abuse;
  - economic control exerted over immigrant victims, including forcing her to work "illegally" or threatening to report her to INS if she works "under the table";
  - isolating the victim and controlling her activities (e.g. access to money, friends, family, and medical care);
  - use of coercive and intimidating tactics, including threatening to take her children away.

κ BARRIERS THAT IMMIGRANT WOMEN FACE IN ACCESSING MAINSTREAM DOMESTIC VIOLENCE SERVICES INCLUDE:

- T language barriers between victims and service providers, police officers, and courthouse staff;
- T lack of interpreters and lack of translated documents;
- T fears and misconceptions concerning the police and the U.S. legal system;
- T fear of deportation;
- T cultural issues, such as pressure to keep family matters private and concerns about being able to practice cultural traditions in a shelter setting;
- T religious concerns, including fear of ostracism by their religious community;
- T fear that the abuser will kidnap their children.

ENDNOTES

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8.*See* Civil Protection Order Transcript, Petitioner Helen Jenkins, District Court of Maryland, Prince George's County, (no. DV5-01-2569-93).

9.*Judge Rescinds Ruling That Cleared Man of Beating Wife; Impartiality Questioned,* CHI. DAILY L. BULL., Feb. 11, 1997 at 7.

10.Ward v. Ward, 21 Fla. L. Weekly D1961 (Fla. Dist. Ct. App., 1996); Amicus Curiae Brief In Support of Appellant at 9, *Ward* (No. 95-04184).

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12.David M. Zlotnik, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders,* 56 OHIO ST. L. J. 1153, 1162-63, 1215 (1995); Kathleen Finley Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?* 18 THOMAS JEFFERSON L. REV. 23, 24 (1996).

13.LAWRENCE A. GREENFELD ET. AL., U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES 1, 3 (March 1998) (finding that 85% of the victims of intimate violence were women).

14.Gerald T. Hotaling & David B. Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge,* 1 VIOLENCE AND VICTIMS 101, 111 (1986); Noel A. Cazenave and Murray A. Strauss, *Race, Class, Network -- Embeddedness, and Family Violence: A Search for Potent Support Systems, in* PHYSICAL VIOLENCE IN AMERICAN FAMILIES 322, 322-23 (Murray A. Strauss and Richard J. Gelles, eds., 1995).

15.*See, e.g.,* David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge,* BOSTON BAR J., July-Aug. 1989 at 23.

16.*See* Power and Control Wheel produced by the Domestic Abuse Intervention Project, Duluth, MN.

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19.Psychological abuse is distinguishable from "negative" interactions found in nonviolent relationships; psychological abuse exists when there is a credible threat of violence predicated on the occurrence or knowledge of actual prior violence. Anne Ganley, *Integrating Feminist and Social Learning Analyses of Aggression: Creating Multiple Models for Intervention with Men who Battered*, in TREATING MEN WHO BATTER: THEORY, PRACTICE, AND PROGRAMS 196, 196 (P.L. Caesar & L. Kevin Hamberger, eds., 1989).

20.*See* Power and Control Wheel, developed by the Domestic Abuse Intervention Project, Duluth, MN.

21.*See*, Kim v. Kim, 208 Cal. App. 3d 364 (1989).

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33. Orloff et al., *supra* note 25 at 316.

34.Orloff & Dave, *supra* note 28 at 10.

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36. DAVIDSON, *supra* note 3 at 19.

37. LESLYE E. ORLOFF & MINTY SIU CHUNG, AYUDA, Inc. Washington D.C., OVERCOMING CULTURAL BARRIERS (1993).

38. *See, e.g.*, Beverly Horsburgh, *Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community*, 18 HARV. WOMEN'S L. J. 171, 193 (1995).

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40. Orloff, *supra* note 25; Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminists and Multiculturalist Reformers on a Collision Course in Criminal Courts?*, 70 N.Y.U.L. REV. 36 (1995); Alice J. Gallin, *The Cultural Defense: Undermining the Policies Against Domestic Violence*, 35 B.C.L. REV. 723 (1994); Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific- Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991).

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44.Orloff et. al., *supra* note 25.

45. Klein & Orloff, *supra* note 29 at 1027.

46.*See* Dutton, *supra* note 18 at 26.

47.GREENFELD ET. AL., *supra* note 13 at 63.

48.Dutton, *supra* note 18, at 26.

49. Neil Jacobsen et al., *Affect, Verbal Content, and Psychophysiology in the Arguments of Couple with a Violent Husband,* 62 J. OF CONSULTING & CLINICAL PSYCHOL. 982, 986 (1994).

50.Irene Anne Jillson & Bettina Scott, *Violence, Women and Alcohol: Reducing the Risks, Redressing the Consequences,* Dep't of Health & Human Services, Draft Report, Jan. 1996.

51.*See id.*

52.Mary Ann Dutton, *Post-Traumatic Stress Disorder Among Battered Women: Analysis of Legal Implications,* 12 BEHAV. SCI. & L. 215, 219 (1994).

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Chapter Two
WORKING WITH BATTERED IMMIGRANTS

September 8, 2000

***KEY LEARNING CONCEPTS FOR CHAPTER TWO*:**

- Screening for domestic violence
- Interviewing victims of domestic violence
- Safety planning
  - ✓ contact with the client
  - ✓ lethality assessments
  - ✓ safety in court
  - ✓ emergency measures
  - ✓ legal steps
  - ✓ psychosocial steps
  - ✓ safety at home
  - ✓ safety for the children
  - ✓ safety at work
  - ✓ general safety tips
  - ✓ economic assistance
  - ✓ confidentiality
- Agency procedures to assist battered immigrants

LILI'S STORY

Lili comes into your office to ask about child custody. She is just looking for information – she makes it clear that she does not want to file for custody. She just wants to know what her rights are. She does not mention violence in her family, but you sense there is something "off" about her. She seems skittish and frightened to be in your office. When you ask about her husband she becomes defensive and immediately asks whether her children could be taken away. You are confused because while Lili came to your office she seems reluctant to talk with you.

This chapter will outline important skills that will help you when someone like Lili enters your office and displays some of the behaviors illustrated above: recognizing warning signs, screening, interviewing & safety planning. The chapter will also review some important steps that service providers can take to ensure that their services are culturally appropriate.

WARNING SIGNS

In addition to asking screening questions of all clients, lawyers should be aware of common warning signs that may indicate that a client is a victim of domestic abuse. They should look for the following signals:

- Does the client show evidence of severe, recurring or life-threatening abuse, for example, repeated bruises or broken bones?

- Does the client have to ask permission of her spouse to make decisions? Does the client's spouse or partner constantly make the client follow rules about what she and the children can or cannot do?

- Does the client's partner or spouse continuously degrade or belittle the client, or accuse the client of being stupid, unattractive, a bad parent, unfaithful, or any other similar fault?

- Is the case being litigated in an unusually aggressive manner by the client's partner or spouse?

- Does the client have difficulty making or keeping appointments because of his or her partner or spouse?

- Does the client's partner or spouse insist on accompanying your client to every appointment? Does the client's partner or spouse try to speak for the client, in order to control the information the client shares?

- Does the client's partner or spouse harass the client constantly, through phone calls or stalking?

- Has the client's partner or spouse prevented the client from keeping a job or completing a job training program?

SCREENING

Whenever an attorney meets with a new client, she should screen for domestic violence. The following questions can be used in initial interviews.

- Everyone argues or fights with their partner or spouse now and then. When you argue or fight at home, what happens? Do you ever change your behavior because you are afraid of the consequences of a fight?

- Do you feel that your partner or spouse treats you well? Is there anything that goes on at home that makes you feel afraid?

- Has your partner or spouse ever hurt or threatened you or your children? Has your partner or spouse ever put his or her hands on you against your will? Has your partner or spouse ever forced you to do something you did not want to do? Does your partner or spouse criticize you or your children frequently?

- Has your partner or spouse ever tried to keep you from taking medication you needed or from seeking medical help? Does your partner refuse to let you sleep at night?

- Has your partner or spouse ever hurt your pets or destroyed your possessions? Does your partner or spouse throw or break objects in the home or damage the home itself during arguments?

- Does your partner or spouse act jealously, for example, always calling you at work or home to check up on you? Is it hard for you to maintain relationships with your friends, relatives, neighbors, or co-workers because your partner or spouse disapproves of them? Does your partner or spouse accuse you unjustly of flirting with others or having affairs? Has your partner or spouse ever tried to keep you from leaving the house?

- Does your spouse or partner make it hard for you to find or keep a job or go to school?

- Does your partner or spouse withhold money from you when you need it? Do you know what your family's assets are? Do you know where important documents like bank books, check books, financial statements, birth certificates, and passports for you and members of your family are kept? If you wanted to see or use any of them, would your partner or spouse make it difficult for you to do so?

- Has your spouse or partner ever forced you to have sex or made you do things during sex that made you feel uncomfortable? Does your partner demand sex when you are sick, tired, or sleeping?

- Has your spouse or partner ever used or threatened to use a weapon against you?

INTERVIEWING

When working with battered immigrants, advocates and legal professionals should ask open-ended questions, allowing clients to define their needs and fears.[1] Be careful not to use specific terms that your client may not be able to understand, such as assault or rape. Asking

open-ended questions, such as "What happened?" or "What did he do to you?" will allow your client to explain the violence in her own words. Provide your client with adequate time to explain what happened, to define what she needs and fears, and what her barriers are.

Lawyers and advocates should be aware of their own prejudices regarding immigrants and victims and avoid acting on them. They should be aware that the client knows best when it is safest to leave an abuser, what legal options will put them at risk, and what their needs are at any particular time. Lawyers and advocates should also be aware of community resources, such as, the client's own resources (family and friends), educational and support groups, religious organizations, and migrant/immigrant women's groups that are available to their clients, and they should not hesitate to identify them and discuss them with clients.

Contact with the Client

An important discussion to have with all clients during an initial interview is safe communications between attorney/advocate and client. The following steps will help attorneys and advocates ensure that their actions do not further endanger their clients:

- If the client needs an interpreter, make sure the interpreter is a neutral third party. Interpreters such as family members or members of small religious or ethnic communities may fail to interpret correctly or may provide the abuser with information about the victim. Additionally, clients may edit their stories to protect their children or out of embarrassment if the interpreter is the client's child or someone the client knows.

- In a community with a significant language minority population, it is a good idea to contact community agencies that serve that population to obtain their help with recruiting interpreters to work with your agency. Take these steps before a client needing an interpreter seeks assistance from your office.

- Ask for your client when you call and speak only to your client about the case. Do not leave messages with other family members or on an answering machine or voice-mail until your client has told you it is safe to do so. If questioned by family members, do not indicate that you are a domestic violence or immigration lawyer or advocate.

- Always ask your client first if it is safe to talk and whether you should call the police. The abuser may be present, even if the abuser no longer lives in the same home. Develop a system of coded messages to signal danger or the abuser's presence.

- Block identification of your number when calling your client to prevent an abuser from using Caller ID to discover that your client is seeking legal assistance. The local phone company can tell you how to do this.

- Send mail to your client only when your client has advised you that it is safe. If a new client fails to attend appointments or return your calls, write your client a simple letter requesting a response without disclosing your identity as a legal advocate or lawyer (do not use letterhead).

- If your client fails to respond to your calls, make extensive (but confidential) efforts to confirm that your client is safe. If your client has decided to drop the case, try to verify that your client has not been threatened or coerced.

- If necessary, remind your client to have an explanation for legal appointments and to limit the children's knowledge to prevent the abuser from finding out about legal actions or an upcoming separation ahead of time.

- Allow clients to use your phone if necessary or initiate calls at your client's request.

- Inform your client of legal developments in advance, particularly when a batterer is about to be served or when a hearing is approaching, so that your client may take extra safety precautions.

- Develop and provide clients with an updated referral list, including the following:
  National Domestic Violence Hotline [800-799-SAFE, TDD: 800-787-3224]
  Local domestic violence or rape crisis hotline
  Local domestic violence and homeless shelters
  Counseling programs for victims
  Victim advocacy programs
  Specialized domestic violence units (police department, court, prosecutor's office)
  Legal services providers
  Emergency financial assistance programs
  Batterers' intervention programs
  Children's counseling programs
  Immigrant rights' organizations
  Social service organizations that serve the immigrant community

- Keep your client's whereabouts confidential. Do not disclose your client's addresses, telephone numbers, or information about the children without your client's permission.

- Identify the major language minority population in the community and hire bilingual and bicultural staff who can serve a variety of populations.

- Identify interpreters for each of the major language minority populations in the community. Establish relationships with interpreters so they will be available when needed.

- Identify local community agencies that serve diverse populations and develop relationships with advocates who can assist battered immigrant women.

- Work with your local domestic violence program to organize domestic violence trainings for your staff and for the advocates from community agencies that will be working with you.

- Plan in advance how you will assist non-English speaking battered immigrants.

- Develop written materials on domestic violence for your waiting room in the languages of the immigrant communities that you serve.

SAFETY PLANNING

Through careful interviewing and screening you have determined that Lili's husband has been abusing her, both physically and emotionally. Lili is afraid that if she leaves with the children, her husband will try to kill her. He has already killed two of the family's dogs, and he has physically abused Lili and the children. Lili lives in a trailer over 10 miles from the nearest town, and several miles from neighbors. Her only real friend in the United States is her mother-in-law, who lives about 1 mile away.

One of the most important things you can do for Lili is discuss safety planning with her. Safety planning is a step-by-step process through which you and Lili will brain-storm about ways to be safe and plan for emergency situations. Safety planning is important because it will not only provides Lili with concrete ideas that can keep her safe, but it can also be an empowering exercise for Lili who may feel as if she has lost control of her life.

The danger of violence, including the risk of death, often escalates when victims attempt to leave their abusers.[2] Seeking legal assistance is one step towards independence which threatens an abuser's sense of control and may endanger a victim and/or children. Clients who develop a safety plan when taking legal or financial steps to separate from their batterers will be better able to protect themselves. Safety planning is also crucial for those victims who continue to live with their abusers.

This section outlines the important steps that will lead to the development of comprehensive safety plans which are tailored to the individual client's needs and concerns. Clients should be reassured that they can take both legal and non-legal steps to protect themselves and their children without jeopardizing their immigration status.

Assess Lethality

Service providers should help clients conduct a lethality assessment prior to developing a safety plan. Such an assessment can help indicate whether the victim or children are likely to be at continued risk of serious physical harm. Note, however, that lethality assessments cannot

always predict future violence, and that a client's intuition is usually the best gauge of the level of danger.

The following factors can help determine the level of danger:[3]

- ✓ Has the perpetrator threatened homicide or suicide?
- ✓ Does the perpetrator have access to weapons?
- ✓ Does the perpetrator have a substance abuse problem?
- ✓ Has the perpetrator stalked the victim?
- ✓ Was the level of violence in the relationship severe?
- ✓ Has the level of violence in the relationship recently increased in frequency or severity?
- ✓ Have the parties recently separated?
- ✓ Does the perpetrator have a criminal record?
- ✓ Has the perpetrator expressed extreme jealousy or possessiveness over the victim (e.g. "If I can't have you, nobody can")?
- ✓ Has the perpetrator killed or harmed other people or family pets?

- Advise your client to stay at a shelter, or with safe friends or relatives, if your client fears that the batterer will assault or kill her, and a protection order removing the batterer from the home will not help. When your client has children, make certain that you have examined existing court orders and statutes to determine how flight to another state or country may affect a custody case. Your client should not leave the children behind.

- Non-English speaking clients may need assistance when seeking refuge at a shelter, particularly if the shelter does not have multilingual or multicultural staff. Accompany your client to the shelter to help translate the intake interview and the shelter rules. Assist the shelter to locate an impartial translator who can help throughout your client's stay. Discuss the shelter rules with shelter workers and identify any that may pose problems for your client.

- Negotiate arrangements with the shelter that will make your client feel more comfortable, such as eating and sleeping arrangements with which your client is familiar.

- If the system cannot protect your client from an extremely dangerous abuser, under certain circumstances, it may be necessary for victims to disappear completely. Consider this procedure as a last resort, and be sure to consider the potential consequences for future immigration or custody cases.

Emergency Measures

- If you feel like your abuser is going to attack you, try to leave the house and get to a safe place.

- If you are being attacked, try to get to a low-risk place in the home. Avoid small spaces such as bathrooms or closets where you could be trapped. Stay away from the kitchen because utensils may be used as weapons. Try to get to a room with a door, window, or telephone so you can escape or call for help.

- **Call the police at 911** (or the local emergency number) immediately if possible. Ask for the dispatcher's name and write it down if you can. When the police respond, obtain the officer's name and badge number. You may need this information later if you go to court.

- Try to get someone else to call the police if you can't, such as the children or neighbors. Make a lot of noise or use pre-arranged signals so they know you need help. If you do not speak English, have a neighbor call a pre-arranged person to interpret.

- Seek medical treatment and report what happened. Talk to a doctor or nurse without your abuser in the room.[4] Have someone take a picture of your injuries in case you need proof later, and keep a copy if you can safely.

- Talk to your local domestic violence program or shelter to find out what you can do. The National Domestic Violence Hotline [800-799-SAFE, TDD: 800-787-3224] has interpreters and can help you find out about local programs.

Safety at Home

- If you have separated from your abuser, make the home as safe as possible by changing the locks, adding dead bolts, or obtaining an apartment that is not on the first floor. Install a security system if possible, including window bars and door wedges.

- Whether or not you live with your abuser, make your home safer. Remove sharp objects and weapons from sight. Set up rope ladders for escape from upper stories, and install smoke detectors and fire extinguishers. Install lighting outside your home.

- Keep a telephone in a room that locks from the inside. If possible, purchase a cellular phone and keep it in a pocket or in an accessible hiding place.

- Plan and practice an escape route out of the home, including a safety plan for the children. Make advance arrangements to stay somewhere your abuser will not suspect.

- Keep a bag packed and hidden in a <u>safe</u> place (at home, or locked in a car trunk with only one key, or with a safe relative, friend, neighbor, or co-worker) in case of flight. Copy documents listed below. Include the following items:

  For survival:
  - ✓ money for phone calls, transportation, and expenses

- ✓ small saleable objects
- ✓ clothing for you and the children, including diapers
- ✓ all court documents
- ✓ school and vaccination records for the children
- ✓ necessary medicines, medical records, and insurance papers
- ✓ credit cards, checkbooks, bank books, ATM cards
- ✓ telephone/address books, including victim services providers
- ✓ car/house/office keys and ownership documents
- ✓ children's favorite toys and your sentimental items

For your immigration case:

- ✓ work permits, green cards, visa applications, and other immigration papers, if you have them
- ✓ birth, marriage, adoption, and divorce records for yourself and your spouse
- ✓ I-94's (record of entry into the United States) and passports
- ✓ identification (social security, driver's license, welfare identification, family photos)
- ✓ photographs of wedding, wedding invitations, or love letters from spouse
- ✓ papers that show you lived with your husband in the United States (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to both of you at your home)
- ✓ other evidence of good faith marriage and joint residency, such as joint credit cards/bills; legal documents, insurance policies, or magazine subscriptions with your name and your spouse's name; joint income tax returns or bank accounts; ticket stubs, receipts, or pictures from joint vacations
- ✓ divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- ✓ copies of your spouse's birth certificate, social security card, green card, or certificate of naturalization, or passport
- ✓ copies of documents filed with INS

To prove the abuse:

- ✓ copies of police reports
- ✓ copies of medical records
- ✓ copies of current and former protection orders
- ✓ photographs of injuries
- ✓ torn clothing or destroyed property
- ✓ your diary
- ✓ names and contact information of people who knew about the abuse or helped you previously

- Show neighbors a picture of the abuser and/or the abuser's vehicle so they can screen visitors and call the police if necessary. Abusers often gain access to apartment buildings by pretending to be someone else or by following tenants indoors.

- Develop signals for neighbors and friends to call the police, such as banging on the floor or wall. If possible, arrange to have a relative or friend call every day at a designated time.

- Obtain a private or unlisted telephone number and instruct the telephone company not to release information about your account. Be selective about revealing a new address. Ask someone else to record the message if you have an answering machine.

- Use the block code when making telephone calls. Use an answering machine or call trace when receiving calls to collect evidence of harassment or protection order violations.

- To keep calls confidential when living with an abuser, use coins or borrow a friend's credit card. Access to a joint phone bill will allow your abuser to find out who you called.

Safety for the Children

- Tell your children to go somewhere safe if the abuser is being violent. Teach them to avoid small spaces and to go to a room with a door or window so they can escape. Practice an escape route with the children.

- Teach your children to call 911 and ask for help (or the local police emergency number) if the abuser is being violent. Discuss which neighbor or friend they should ask for help in an emergency.

- Plan ahead so that you have a safe place to stay <u>with</u> the children if you have to flee -- some shelters do not permit victims with children to stay there.

- If your children are in daycare or school, give the directors a copy of any relevant court orders, including custody and protection orders. Make sure school personnel know who is allowed to pick up the children, and what the abuser looks like so they can call the police if he shows up in violation of court orders.

- Teach your children how to get help if the abuser bothers them or tries to abduct them at school. If you are concerned about international abduction, teach the children how to make an international collect call to you.

- Consider filing for custody and asking the court to issue a specific visitation arrangement that protects you and the children. If there is a risk of abduction, consider obtaining a protection order with safeguards.

- Teach the children not to let the abuser in your home.

Psychosocial Steps

- Find a counselor who specializes in domestic violence at a local shelter, a hot line, or a local community agency. Arrange to have periodic contact with the counselor either in person or by telephone. Use this time to sort out your emotions and fears.

- If it does not represent an added danger**,** consider joining a support group for battered women in your community.

- If your children are in day care or school visit the Principal, disclose the violence they are exposed to and request that they meet with the counselor for the assessment and treatment of the stress they are experiencing.

- Make a point to learn as much as you can about domestic violence and how it affects women and children by reading brochures, library books, watching television programs and educational videos-- as long as it is safe for you to do so.

Safety at Work

- If your abuser does not know where you work, ask your employer to keep your employment status confidential. That may mean removing your name from the staff directory or instructing receptionists not to disclose this information.

- Inform your employer that you do not want to be contacted by your abuser. Ask your employer to take security measures and to allow you to take leave time to deal with the abuse, either for court dates or for other needed services.

- Give a picture of your abuser and your abuser's vehicle to security guards or co-workers. If the abuser shows up, security or other personnel can order the abuser to leave or call the police.

- Keep a copy of your protection order at work. Notify a supervisor or the Human Resources Department of the existence of the order and give them a copy.

- If necessary, ask your supervisor to relocate you to a safer location -- in another state, region of the state, or part of the building, depending on the company's size.

- If you work on your own, try to alter your routine so that your abuser will not know where or when to find you. If possible, keep a cellular phone or pager on hand so you can get immediate help.

- Screen calls with voice-mail or a machine, or ask a co-worker to screen calls or listen in on the line. Get your number changed if possible, and keep it confidential. If your abuser calls, save the message.

- Travel with another person, or ask a security guard to escort you to your vehicle or public transportation stop.

- If you are an immigrant whose legal permission to work is only for a particular employer, consider obtaining a protection order that keeps the abuser away from you and your employer, so that you can continue to work for that employer. If you are an immigrant who does not have legal permission to work, you may qualify for legal immigrant status and work authorization without your abuser's cooperation, if your abuser or your children's abuser is a United States citizen or lawful permanent resident. When you obtain any employment, it is very important not to use false documents or make false statements that you are an United States citizen.

Economic Assistance

- Open your own bank account so that you have access to some money if you leave your abuser.

- Obtain work authorization if you are eligible.[5]

- Consider asking for child support, restitution, or payment of certain medical or rent expenses in your civil protection order.

- Consider filing for long-term economic relief.

- Consider applying for public benefits if you need them and are eligible.

- Seek help from crime victim compensation programs.

Safety in Court

- Arrive in court before your client so that your client is not alone with the abuser. If this is impossible, advise your client to wait near a security guard or a bailiff. Be aware that abusers often physically assault, repeatedly harass, or emotionally coerce victims in court.

- Sit at a physical distance from the abuser when you talk to your client or wait for the case to be called. Always position yourself between the abuser and your client. Abusers control and threaten their former victims simply by using body language.

- Do not permit the abuser to speak to your client. Even if you are present, you may be unaware that the abuser is threatening your client. Discuss any settlement negotiations with the abuser (or the abuser's lawyer if represented by counsel) and then report back to your client.

- Take the same precautions with the abuser's family members. In domestic violence cases, it is not uncommon for the abuser's family members to physically assault or verbally abuse the victim in court. Safeguard children if the abuser or family members insist on holding them.

- Make certain that your client is safe when exiting the courthouse.

- In some courts, bailiffs or guards may be willing to escort victims to their cars or to public transportation.

Legal Steps

- Consider filing criminal charges if the batterer commits a crime or violates a protection order. Filing criminal charges and following through is one of the most effective ways to deter future violence. Be aware of how this could affect the perpetrator's immigration status.

- Consider filing for a civil protection order. Protection orders can be tailored specifically to deter an abuser from abducting children or interfering with an immigration case. Protection orders may be particularly effective against immigrant abusers, who may fear involvement in the legal system or the immigration consequences of criminal behavior. You can obtain a protection order even if you are not separated from your abuser.

- Keep a copy of your protection order with you, and make extra copies to hide in safe places. Call the police immediately if your abuser violates the order. Attach a copy of the interstate protection order provisions of the Violence Against Women Act[6] and proof of service to each protection order to minimize enforceability problems in other states. Show the orders to police officers to improve their response to you.

- Consider filing for immigration relief under the VAWA. The VAWA does not require battered immigrants to be separated from their abusers to be eligible to self-petition or to apply for cancellation of removal.

- Consider filing for long-term domestic relations or economic relief. For example, a lawyer can help you seek financial support, use and possession of the home, or custody of the children. **Be aware that you will not be eligible to file a self-petition for immigration relief under VAWA after you have obtained a divorce.** You can begin the divorce process, but be aware of the timing -- you must file your self-petition before your divorce becomes final.

General Safety Tips

- Give a copy of your protection order to the local police departments in the communities in which you spend time.

- Always keep a copy of your protection order and referral list with you (if safe).

- Consider trading cars with a friend or relative. Abusers often locate victims by identifying their vehicles.

- Alter your routines -- change transportation routes or timing (e.g., where you shop, when you pick up and drop off children from daycare) so that your abuser cannot locate you.

- Keep a diary about interactions with the abuser. Also, keep all letters, e-mail messages, or telephone messages that the abuser sends you. This information can help you prepare for court.

- Consider enrolling in a reliable self-defense course, and regularly practice these skills.

Confidentiality

- Contact government offices and private agencies to request that information about you -- including name, residency, and telephone number -- be kept confidential for your safety. Tell your friends and acquaintances the same thing. Contact:
  - ✓ Department of Motor Vehicles
  - ✓ Court
  - ✓ Post Office
  - ✓ Voter Registration
  - ✓ Child Support Enforcement
  - ✓ School Records Office
  - ✓ Public Assistance Office
  - ✓ Real Estate Records Office
  - ✓ Health Care Providers
  - ✓ Insurance Companies
  - ✓ Banks
  - ✓ Credit Card Companies
  - ✓ Rental Agencies
  - ✓ Utility Companies

- If you have contact with INS, inform them that your information must be kept confidential. INS officials who disclose information about victims of domestic violence can be penalized under federal law.

- If you live in an undisclosed location, have your mail sent to a post office box so that your abuser cannot locate you.

CHAPTER TWO REVIEW

Whenever meeting with a new client, screen for domestic violence. If you detect your client is being battered by a spouse or partner, help your client make a safety plan.

κ LOOK FOR THE FOLLOWING WARNING SIGNS OF DOMESTIC VIOLENCE:

T client shows evidence of severe, recurring or life-threatening abuse, including repeated bruises or broken bones;

T client's spouse or partner continuously degrades or belittles the client;

T client has difficulty making or keeping appointments because of the spouse or partner;

T client's spouse or partner makes it hard for the client to find or keep a job;

T client's spouse or partner insists on accompanying the client to every appointment and may even speak for the client in order to control the information the client shares;

T client's spouse or partner harasses the client constantly through phone calls and stalking.

κ VALUABLE INTERVIEWING TIPS AND TECHNIQUES INCLUDE:

T ask open-ended questions to allow clients to define their needs and fears;

T be aware of and speak to your client about available community resources;

T take steps to ensure any actions you take will not endanger your client, including speaking only to your client about the case, keeping your client's whereabouts confidential, and informing your client of legal developments in advance, particularly when a batterer is about to be served or when a hearing is approaching, so that your client can take extra safety precautions.

κ SAFETY PLANNING INCLUDES:

T assessing lethality and planning accordingly, including making the necessary arrangements for any children that may be involved;

T making sure your client contacts government offices and private agencies to request that personal information, including name, address and telephone number, be kept

confidential;

- strategic courthouse tactics including arriving in court before or with your client so that your client is not alone with the abuser, not permitting the abuser to talk to your client, and making certain your client is safe when exiting the courthouse.

ENDNOTES

1. Leslye Orloff, Training Overhead, Legal Advocacy Project (1997) (available from NOW Legal Defense and Education Fund Immigrant Women Program, 202/326-0040). The following questions could be asked: What do you want to do? What are you afraid of? What are your safety needs while living with your abuser? How can you be safe if you separate from your abuser? How will your abuser try to control you or get you to come back to him? *See also* LESLYE E. ORLOFF & MINTU SIU CHUNG OVERCOMING CULTURAL BARRIERS 13 (1996).

2.Nearly thirty percent of all female homicide victims were known to have been killed by their current or former husbands or boyfriends, and the rate of intimate partner violence against women separated from their husbands was twenty-five times higher than that against married women. RONET BACHMAN & LINDA E. SALTZMAN, U.S. DEP'T OF JUSTICE, NAT'L CRIME VICTIMIZATION SURVEY, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 1, 4 (1995).

3.Adapted from Barbara J. Hart, *Assessing Whether Batterers Will Kill,* (Pennsylvania Coalition Against Domestic Violence 1990).

4.You can tell your doctor or nurse who hurt you, but ask them not to disclose this information without your permission. It can be kept in your medical records and used in court.

5.In order to work legally in the U.S., immigrants must obtain work authorization. Refer your clients to immigration attorneys for help in obtaining work authorization.

6.18 U.S.C. §§ 2265-2266 (1994).

Chapter Three
BATTERED IMMIGRANTS & THE VIOLENCE AGAINST WOMEN ACT (VAWA)

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER THREE:

- Legal remedies for battered immigrants
- Basic legal definitions
  - ✓ immigration law terms
  - ✓ family law, domestic violence and welfare law terms
- Pre-VAWA immigration procedures & the problems they caused for battered immigrants
- Overview of the VAWA immigration provisions
  - ✓ self-petitioning
  - ✓ cancellation of removal

LILI'S STORY

Lili met her husband and gave birth to her first child in China. Then she came to the United States and married her husband here. He is a lawful permanent resident. During the following five years, the couple had two more children, who are U.S. citizens. Lili's husband promised to file immigration papers for her and their oldest child, but never did.

Lili's husband began to abuse her when she came to the United States. Lili was afraid to get help because of her undocumented immigration status. Her husband told her that the police would not help her because of her immigration status. He threatened to call INS and have her deported if she seeks help.

Lili may be eligible for many different immigration remedies, and it is important for attorneys and advocates to have a basic understanding of immigration law concepts in order to know how to help Lili. Therefore, this chapter will outline legal remedies available to battered immigrants, identify some basic legal definitions, and provide a general background to the immigration provisions of the VAWA. The following five chapters will provide a more in-depth discussion of VAWA immigration relief.

LEGAL REMEDIES FOR BATTERED IMMIGRANTS

Under the Violence Against Women Act (VAWA), battered immigrants may be able to obtain lawful status in the U.S. without the cooperation of the batterer through self-petitioning or

cancellation of removal. It is important to understand that there may be other forms of immigration remedies available to battered immigrants, such as gender-based asylum. That is why it is crucial that you speak with an immigration and domestic violence expert whenever you are working with a battered immigrant. This manual will focus on the remedies available through VAWA. Again, always contact an immigration expert to determine if your client is eligible for other forms of immigration relief.

Basic Legal Definitions

In order to understand the VAWA immigration process, it is important to have a basic understanding of certain legal terms. This section provides contains a glossary of family law, immigration law, and domestic violence terms.

Immigration Law Terms[1]

Adjustment of Status - When individuals file to become lawful permanent residents and obtain their green cards, without leaving the United States. This is the final step in obtaining a green card and usually requires a previously approved family or employment-based visa petition, or an approved self-petition.

Asylum - This status is given to individuals who fear returning to their country because they have been or may be persecuted on account of their race, religion, nationality, political opinion, or membership in a particular social group, and who apply for refugee protection as they cross the border, while they are physically present in the United States, or at a United States embassy abroad.

Battery or Extreme Cruelty - A form of abuse inflicted upon another person which includes, but is not limited to, causing or threatening to cause mental, psychological or emotional harm, and any actions or inaction that are part of an overall pattern of abuse, power, or control. These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. VAWA relief is available for persons who have been battered or subjected to extreme cruelty.

Cancellation of Removal - This is a form of immigration relief in which immigration courts (in deportation proceedings, now called removal proceedings) may exercise discretion by waiving the grounds for removal and granting lawful permanent residency. It replaces suspension of deportation proceedings for most (but not all) cases. Certain abused spouses, children, and parents of abused children are eligible for cancellation of removal under the VAWA, when the abuser is a United States citizen or a lawful permanent resident.

Conditional Resident - A person who immigrates or adjusts his or her status through a spouse within the first two years of marriage becomes a conditional resident for two years. Conditional residents formerly could only obtain removal of the "conditions" on their lawful permanent resident status if they and their United States citizen or lawful permanent resident spouses file a

joint petition. However, a battered spouse waiver was created so that conditional residents may request a waiver of the requirement to file a joint petition. To qualify for the waiver the conditional resident must establish: a claim of extreme hardship; that the marriage was entered into in good faith; the applicant has been battered or subjected to extreme cruelty.

Deportation (see Removal)

Extreme Hardship - Hardship above and beyond what a person forced to leave the United States would normally suffer. Extreme hardship must be shown to exist in order to qualify to receive: (1) a grant of suspension of deportation from an immigration judge; (2) a grant of cancellation of removal from an immigration judge; and (3) a self-petition.

Family-Based Petition - A petition that a U.S. citizen or a lawful permanent resident files to start the process that would enable his family to become lawful permanent residents.

Good Moral Character [GMC] - For many immigration remedies, it is necessary to show that a person has good moral character, and has not performed certain acts, such as committing certain crimes. Good moral character must be proved to obtain either form of VAWA relief.

Green Card - Permanent Resident Card. This is a popular term for the card that shows a person is a lawful permanent resident. The card is currently pink, not green.

Immediate Relative - For the purposes of a self-petition under VAWA, this term means the children and spouse of a U.S. citizen.

Lawful Permanent Resident (LPR) - A lawful permanent resident is an individual, other than a United States citizen, who has the right under United States immigration law to live and work permanently in the United States. Everyone who has a green card is a lawful permanent resident or a conditional resident. Lawful permanent residents are also called permanent resident aliens.

Regional INS District Office - The Regional INS District Offices process general immigration petitions and applications. Compare to the **Vermont Service Center,** which processes all of the VAWA self-petitions.

Removal (formerly called Deportation) - The process through which INS orders immigrants to leave the U.S. and return to their countries of origin.

Second Preference - The visa category for family-based petitions of spouses and children of lawful permanent residents.

Section 245(i) - Section 245(i) of the Immigration and Nationality Act was enacted in 1994 to expand the pool of immigrants eligible to adjust status in the United States. It imposed a $1,000 penalty on those who had entered the U.S. without inspection. It expired on January 14, 1998, and is no longer available to the majority of immigrants who file visa petitions or VAWA self-

petitions on or after January 15, 1998.

Self-Petition - The process under the VAWA by which certain abused spouses, children, or parents of abused children can file their own petitions to obtain lawful permanent residency, without being sponsored by the abusive spouse, parent, or step-parent who is a U.S. citizen or lawful permanent resident.

Suspension of Deportation - Suspension of deportation was the precursor to cancellation of removal. It remains a form of immigration relief available to certain categories of immigrants. Immigration courts may exercise discretion by waiving the grounds for deportation, resulting in a grant of lawful permanent residency. It remains available to most battered immigrant spouses, children, or parents of abused children, who were abused by their U.S. citizen or lawful permanent resident spouses or parents, who filed for it by 4/1/96 or who have been granted continued access to suspension of deportation relief based on their country of origin (certain Salvadorans, Guatemalans, and Eastern Europeans).

Vermont Service Center - The Vermont Service Center processes all VAWA self-petitions, regardless of geographic area.

Visa - This is the official document issued by the U.S. Department of State at an Embassy or Consulate abroad which grants an individual's legal permission to enter the U.S. for a particular purpose. There are two types of visas, immigrant and non-immigrant. An individual who is in the U.S. temporarily, for study or tourism, for example, will be issued a non-immigrant visa. An individual who is coming to the U.S. on a permanent basis, is issued an immigrant visa.

The Violence Against Women Act [VAWA] - The federal Violence Against Women Act was enacted in 1994 to address violence against women. The legislation creates wide-reaching criminal and civil reforms, including several provisions addressing immigration relief for battered immigrants.

United States Citizen [USC] - A United States citizen is a person born in the U.S. or in certain U.S. territories, such as Guam and Puerto Rico. Certain persons born abroad are also U.S. citizens at birth by acquisition through a U.S. citizen parent or parents. Lawful permanent residents may apply through naturalization to become U.S. citizens.

Family Law, Domestic Violence and Welfare Law Terms[2]

Annulment of Marriage - A divorce terminates a legal marriage, whereas an annulment establishes that a valid marital status never existed. Grounds and procedures for annulment of marriage are governed by state statute.

Custody - The care, control, and maintenance of a child which may be awarded by a court to the child's parent or guardian in a divorce, legal separation, custody or civil protection order proceeding. It includes legal custody, which refers to decision-making authority over the child,

and physical custody, which refers to the child's residence. Joint custody is the term used when the court grants both parents rights to exercise responsibility over the child. Many states have legislation prohibiting or discouraging an award of custody or joint custody to a parent who has perpetrated acts of domestic violence against the other parent.

Divorce[3] - The legal termination of the marital union between husband and wife granted by a judgment of divorce or dissolution at the end of a divorce or dissolution proceeding. Specific requirements vary by state.

Legal Separation - This is granted by court order and does not dissolve the marital union of the husband and wife. It establishes the legal rights of the parties during the separation period, and provides a venue to permanently establish legal rights for persons who for religious or other reasons do not wish to divorce. In some states, a fixed period of separation is required before a divorce action can be filed. As with divorce, laws vary by state.

Maintenance - The term used to describe the obligation to provide spousal support (alimony). It may cover more than a monthly allowance, providing for health insurance, pension benefits, etc.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [PRWORA] - The welfare reform legislation which limited access to federal public benefits. This law limited access to food stamps for lawful permanent residents and gave states the option to deny them access to other benefits.

Protection Order - An order issued by a court in a domestic violence or abuse case to protect a victim from physical harm by their spouse or intimate partner. Civil protection orders are available in all states and some states also issue protection orders in criminal domestic violence cases. In most states, an *ex parte* order may be granted immediately in cases in which a victim is in immediate and present danger. Such emergency orders are temporary in duration, pending a full hearing at which a full protection order is issued. These are court orders that direct an abuser to refrain from a particular activity. The respondent may be ordered to refrain from harassing, assaulting, stalking, or contacting the protected person. The respondent may also be ordered to stay away from particular locations, such as residences, the children's school, and the petitioner's workplace. Orders may also resolve issues of custody, child support, and use and possession of property. Generally these orders are temporary, although some states now award orders of indefinite duration. Violation of a protection order is a crime in most jurisdictions.

Support (Child Support) - An award entered by a court which obligates a parent to provide a monthly contribution to help support his or her child. Applicants for citizenship who fail to comply with any child support order may fail the good moral character requirement.

Visitation - When legal custody is awarded to one parent, the other parent is usually granted visitation rights with the children. Visitation orders in domestic violence cases can be supervised visitation or should set forth specific times and terms for exchanging the children that eliminate the need for ongoing contact and negotiations between the parties.

Pre-VAWA: General Immigration Procedures & the Problems they Cause for Battered Immigrants

Certain relatives of United States citizens or lawful permanent residents may obtain lawful permanent residency based on their relationship to the United States citizen or lawful permanent resident. In order to receive this immigration benefit/status, the U.S. citizen or lawful permanent resident must file a visa petition with the Immigration and Naturalization Service (INS) for the relative, usually a spouse or child. It is the U.S. citizen or lawful permanent resident who controls whether or when the petition is filed for the family member. Once a petition has been filed, the United States citizen or lawful permanent resident can withdraw it at any time for any or no reason prior to the time that family member receives lawful permanent residency status. Alternatively, by refusing to positively support the petition by providing essential documents such as proof of the batterer's U.S. citizenship or lawful permanent resident status or an affidavit of support, the batterer prevents the undocumented spouse or child from regularizing their status.

Most U.S. citizens or lawful permanent residents file for the family member as soon as possible. However, some U.S. citizens or lawful permanent residents use their control over the visa petitioning process to abuse their family members. Prior to the enactment of the Violence Against Women Act, an abusive U.S. citizen or lawful permanent resident was able to control the undocumented spouse by threatening to report the spouse to the INS to be deported or by refusing to file visa petitions for the spouse or children. These tactics allowed abusers to dominate their families by controlling an undocumented spouse's or child's immigration status. Many abusers threatened to have their spouses removed if they attempted to leave the relationship. As a result, most battered immigrants were afraid to report the abuse to the police or to seek protection orders. Prior to the enactment of the VAWA, many battered immigrants continued living with their abusers, risking injury or death in order to protect their ability to remain in the United States. Those who left their abusers were in constant fear of removal. This untenable choice undermined law enforcement and judicial efforts to enforce domestic violence laws and protect victims. It is common for battered immigrants to be unaware that there are laws in the U.S. to protect them and that they are eligible for services in the U.S. Everyone -- attorneys, advocates, law enforcement -- has a role to play to ensure that battered immigrants are empowered through knowledge of their rights and access to assistance.

Overview of Immigration Provisions of the Violence Against Women Act

In response to the problems caused by the then current immigration law, battered women's advocates, immigration attorneys, and domestic violence attorneys joined forces to change the law. In an unprecedented collaborative effort, these groups drafted the VAWA and worked tirelessly with key Congressional sponsors to get the law passed. Due to their effort, legislators began to realize that immigration law exacerbated the abuse of immigrant women and children by providing abusers with the power to control their victims' immigration status. Congress found that many immigrant women were trapped in violent homes.[4]

> A battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges or calling the police because of the threat or fear of deportation.[5]

Congress addressed the plight of battered immigrants by enacting several provisions in the VAWA.[6] These provisions permit battered immigrants to file for immigration relief without their abusers' assistance, and enable them to become lawful permanent residents.

The collaborative effort did not end with the passage of VAWA, however. Since VAWA, positive changes have been made in other areas of the law as well. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[7] (IIRAIRA), the hard work of advocates and attorneys also resulted in welfare access for battered immigrants, no deeming in cases of battered immigrants, confidentiality protections, an exception to the three and ten year bars to re-entry, and access to shelter and other emergency and short-term services necessary to protect life and safety for all persons without regard to immigration status. These are technical concepts that will be addressed later in the training. It is important to realize, however, that it is the collaborative work of advocates and attorneys that has led to the enactment of laws that help battered immigrants. The collaboration is not over. There is currently pending legislation in Congress that would affect battered immigrants, some of which is contained in what is being referred to as VAWA of 1999.[8]

Self-Petitions and Cancellation of Removal

The VAWA provides two forms of relief for certain battered immigrants: they may **self-petition** for permanent resident status[9] or apply for **cancellation of removal** (formerly called "suspension of deportation"). If the battered immigrant succeeds in the application for cancellation of removal, the immigrant is granted lawful permanent resident status.[10] These forms of relief are available to battered spouses, battered children, and the parents of battered children.[11] Chapter four will provide a detailed discussion of the self-petitioning process and chapter eight will further discuss the cancellation of removal process.

A battered immigrant may only seek suspension of deportation/cancellation of removal when she is placed in deportation/removal proceedings.[12] Once deportation/removal proceedings begin, battered immigrants may file for suspension of deportation or cancellation of removal directly from the immigration judge. Once the abused spouse or child is granted lawful permanent residency, the spouse or child has legal permission to live and work in the U.S. and may later be eligible for U.S. citizenship through a process known as naturalization.

BATTERED SPOUSE WAIVERS

In 1986, Congress passed the Immigration Marriage Fraud Amendments that created a conditional permanent residency status to deter fraudulent or "sham" marriages. When an

immigrant spouse marries a citizen or permanent resident, the immigrant spouse is eligible to apply for lawful permanent residence based on that marriage. If the marriage is less than two years old, conditional residence is granted for a period of two years. At the end of the two-year period, both spouses must file jointly to remove the condition. Essentially, the spouses must stay married for at least two years before the immigrant spouse is granted permanent residence. If staying in the marriage for two years is not possible because of domestic violence, the immigrant spouse need not rely on her citizen or permanent resident spouse to file jointly to remove the condition on her residence. There are three waivers available to the immigrant victim spouse: (1) good faith marriage and divorce, (2) good faith marriage and extreme hardship, and (3) good faith marriage and subjected to battery or extreme cruelty.

COMMON QUESTIONS & ANSWERS

How can I find a family lawyer with experience working with victims of domestic violence?

Contact your local domestic violence shelter or your state domestic violence coalition for referrals. If they cannot recommend an experienced domestic violence lawyer, find a family law practitioner who agrees to work collaboratively with a battered women's advocate from a local shelter to address safety concerns.

How can I find an immigration expert to help a battered immigrant in my rural community?

It is very important to contact an immigration expert for advice prior to filing any immigration papers. Victim advocates from rural communities may be able to work with immigration attorneys from larger urban areas to help gather evidence for a victim's immigration case. To locate an immigration attorney in your state who can assist on a VAWA case, contact the National Network on Behalf of Battered Immigrants. Contact information can be found in the Preface of this manual. Advocates and attorneys working on self-petitions should be aware that in addition to the immigration experts identified in this chapter, the INS officials at the Vermont Service Center (the INS center dedicated to self-petitions) are available for assistance.

I am an immigration attorney who has been contacted by a local shelter to help a battered immigrant woman file a VAWA case. Since I have not filed a VAWA case previously, what resources are available?

This training manual should familiarize attorneys with the basic steps for filing a self-petition or filing for cancellation of removal. However, if you are handling a case and need assistance, it is crucial that you contact the National Network on Behalf of Battered Immigrant Women. See the contact information in the Preface.

CHAPTER REVIEW

- **WAYS BATTERED IMMIGRANTS MAY BE ABLE TO OBTAIN LAWFUL STATUS IN THE UNITED STATES WITHOUT THE COOPERATION OF THE**

BATTERER INCLUDE:

- T Battered Spouse Waivers;
- T Self-Petitions under VAWA;
- T Cancellation of Removal under VAWA.

κ **PROBLEMS WITH PRE-VAWA PROCEDURES INCLUDED:**

- T the sponsoring U.S. citizen or resident would withdraw the petition at any time for any and no reason prior to the family member receiving lawful permanent residency status;
- T the sponsoring U.S. citizen or resident would refuse to positively support the petition by providing essential documents such as proof of batterer's U.S. citizenship or resident status or an affidavit of support, thereby preventing the undocumented spouse or child from obtaining lawful status.

κ **FORMS OF RELIEF PROVIDED BY VAWA FOR CERTAIN BATTERED IMMIGRANTS:**

- T self-petitioning for permanent resident status;
- T applying for cancellation of removal (formerly "suspension of deportation").

ENDNOTES

1.The following is an abbreviated list of relevant immigration terms reprinted with the permission of the Immigrant Legal Resource Center.

2.The following family law definitions are adapted from BLACK'S LAW DICTIONARY, (6th ed., 1990).

3.Divorce may be termed dissolution, depending on your state statute.

4.HR Rep No 395, 103d Cong, 1st Sess 26-27 (1993). Congress referred to a survey that found that in Washington, D.C., 77% of Latina immigrant women married to U.S. citizens or lawful permanent residents were abused, and that in 69% of these cases, the abuser never filed a visa petition on behalf of the victim.

5. *See id.*

6. 8 USC §§ 1154(a)(1-2), 1186a(c)(4), 1254 (1999).

7. 8 USC § 1229 (1999).

8.H.R. 357, 106th Cong. (1999); S. 51, 106th Cong. (1999); S. 245, 106th Cong. (1999).

9.8 U.S.C. § 1154(a)(1)(A)(iii)(I) (1999). In this report, Congress explicitly stated that "[t]he purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse."

10.8 USC § 1254(a)(3) (1999), INA §244(a)(3) provides suspension of deportation for battered spouses, abused children, and immigrant parents whose children are abused when the perpetrator of the abuse is a United States citizen or lawful permanent resident spouse or parent (for cases filed up to April 1, 1997). Cases filed on or after April 1, 1997 will be addressed as VAWA cancellation of removal cases under IIRAIRA. INA §240A(b)(2), 8 U.S.C. 1229(b)(2) (1999). *See* H.R. Rep No 395, 103d Cong, 1st Sess 38-39 (1993). This manual will discuss cancellation of removal primarily; it will also address suspension of deportation when the differences between the two are being highlighted.

11.Although these VAWA provisions are equally applicable to abused children, this discussion will focus on abused spouses.

12.Under certain circumstances, the battered immigrant may request that INS place her in removal proceedings. (see Chapter 8, Cancellation of Removal).

Chapter Four
SELF-PETITIONING ELIGIBILITY

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER FOUR:

- Self-Petitioning
- Persons Eligible to File Self-Petitions
- Filing a Self-Petition
- Filing a Self-Petition After a Family-Based Petition has Been Filed
- Denials of Self-Petitions
- Approvals of Self-Petitions
- Death of the Abuser or Divorce

LILI'S STORY

Lili's husband has told her many times that she can't get legal immigration status without his help. When she thinks about calling the police because of the violence, he tells her that he will make sure she is deported, without her children, if she makes the call. Lili wants to know if there is anything she can do to obtain immigration status for her oldest child and herself without her husband's cooperation.

Lili needs a way to become a permanent resident without having to rely on her abusive husband. Lili will be successful in self-petitioning[1] (that is, filing immigration papers on her own behalf) if she meets certain requirements. First, Lili must prove that she is an eligible immigrant. Second, she must prove that she was subjected to extreme cruelty by her husband. Third, she must prove that she is a person of good moral character. Finally, Lili must prove that it would cause extreme hardship for her to return to her country of origin. If she qualifies, Lili will be able to call the police if necessary without the fear of deportation. Self-petitioning may give her the leverage she needs to escape her abusive husband. This chapter will outline the VAWA eligibility requirements and the self-petitioning process. The following chapter will provide a detailed explanation of the three other requirements: extreme cruelty, good moral character, and extreme hardship.

SELF-PETITIONING

In order to become a lawful permanent resident (getting a green card) through the VAWA self-petitioning process, Lili will have to follow a two-step procedure. First, Lili will have to file

the VAWA self-petition and wait for it to be approved by the INS. After Lili's self-petition is approved by the INS, she can proceed to the second step, which is applying for lawful permanent residency status at a local INS district office or through consular processing at a U.S. consulate abroad. The procedure for applying for lawful permanent residency will be explained in detail in chapter seven.

Immigrants who are married to U.S. Citizens will have a shorter waiting time when applying for lawful permanent residency than immigrants who are married to lawful permanent residents. Battered immigrants married to or the children of **U.S. citizens** are classified as immediate relatives, and as such can apply for lawful permanent residency as soon as the self-petition is approved. This is not the case for battered immigrants who are the spouses and children of **lawful permanent residents** because these immigrants fall under a visa preference system, which means that they may not be able to apply for lawful permanent residency when their self-petitions are approved. The visa preference system means that there is a limit to the number of people who can receive immigrant visas[2] each year. As a result, immigrants who are the spouses and children of lawful permanent residents must wait until an immigrant visa is available before they can apply to become permanent residents. This wait can take up to six years, depending what country the immigrant is from. Some countries use their allotted available visa numbers more quickly than other countries because of the large number of people emigrating from that country to the U.S., thereby creating a queue. The visa preference system is not only applicable to self-petitioners, but is also applicable to all family-based emigration.

Persons Eligible to File Self Petitions

Under the VAWA immigration provisions, the following three categories of persons are eligible to self-petition if they meet certain INS requirements:

- A battered spouse married to a U.S. citizen or lawful permanent resident spouse may apply for themselves. Children may derive benefits without a separate application, as long as they qualify as children (under 21 years of age and unmarried) and have not filed their own self-petition and reside in the U.S.[3]

- A parent may also self-petition on behalf of themselves and their children when only the child has been battered or subjected to extreme mental cruelty by the abusive U.S. citizen or lawful permanent resident spouse. Non-abused immigrants may apply for themselves if they are the parents of children who are abused by the immigrant's U.S. citizen or lawful permanent resident spouse. Their children including those abused, may derive benefits without a separate application, as long as they qualify as children (under 21 years of age and unmarried) and have not filed their own self-petitions and reside in the U.S.[4]

- Immigrant children (under 21 years of age and unmarried) who are abused by their U.S. citizen or lawful permanent resident parent may apply for themselves. There are no derivative benefits for the child of a self-petitioning child. If the self-petition is approved, eligibility continues after age 21 as long as the immigrant remains unmarried.[5]

An immigrant who falls into one of these groups must also meet the following requirements:

- The self-petitioner must be the legal spouse or child of a U.S. citizen or lawful permanent resident.
- The abuser must be a U.S. citizen or lawful permanent resident.
- The self-petitioner must be eligible for immigrant classification.[6]
- The self-petitioner must be currently residing in the United States.
- The self-petitioner must have resided with the U.S. citizen or lawful permanent resident in the United States.
- The self-petitioner must have been battered or subjected to extreme cruelty during the marriage, or is the parent of a child who was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the marriage in the U.S.
- The self-petitioner must be a person of good moral character.
- Removal must result in extreme hardship to the applicant or the self-petitioner's children.
- A self-petitioning child must qualify as the child of the abuser, for immigration purposes. A derivative beneficiary child must qualify as the child of a self-petitioning spouse but does not need to be the child of the abuser.
- If the self-petitioner is a spouse, she must have married in good faith.

If the self-petitioner is an unmarried child under the age of 21, the child may file a self-petition without the cooperation of the abuser if the child meets the following requirements:[7]

- The child's parent must be a United States citizen or lawful permanent resident.[8]
- The child must be eligible for immigrant classification.[9]
- The child must reside in the United States and must have resided with the United States citizen or lawful permanent resident parent.
- The child must have been battered by, or has been the subject of extreme cruelty by the United States citizen or lawful permanent resident parent while residing with that parent.
- The child must be a person of good moral character.[10]

- The child must be a person whose deportation would result in extreme hardship to him or herself.

Filing the Self-Petition

Self-petitioners must complete and file INS Form I-360 (see sample in Appendix) and include all available documentation, as well as the filing fee which is currently $110.00. Self-petitions should be sent by certified return receipt mail (or any other method providing proof of receipt), and filed with the INS Vermont Service Center for processing.[11] The self-petitioner should receive an acknowledgment or Notice of Receipt from the INS Service Center within a few weeks. ***Always advise self-petitioners to keep copies of <u>everything</u> they submit to the INS, including the application and all accompanying documents, in addition to the proof of mailing.***

After the Notice of Receipt is issued, the INS will adjudicate the petition. Normally, this is done within 30 days. If the INS requests more information from the petitioner, the petitioner has 60 days to submit the additional evidence. If additional evidence is not provided by the applicant, the INS will consider the petition abandoned and deny it accordingly. Applicants may request that the INS extend their response time. However, if INS does not approve the extension <u>before the deadline</u>, the application will be denied. The first extension of time in which to submit evidence is for an additional 60 days. Under unusual circumstances, additional time may be granted. Requests for additional time are done by filing an I-797 (see sample in Appendix) should include the reasons for the request and should be accompanied by a copy of the INS notice requesting additional information and by as much evidence as is available at that time. This is especially important if the request is for an extension beyond 120 days.

Filing a Self-Petition After a Family-Based Petition has been Filed

The victim can still file a self-petition (I-360) even if the victim's spouse has previously filed a family-based visa petition (I-130) on the victim's behalf. Spouses and children of lawful permanent residents must wait 3-4 years to obtain their green cards after the approval of a family-based petition. However, battered immigrants filing self-petitions will not have to go to end of the line if an earlier family-based petition was filed on their behalf. The earlier priority date may be transferred to the self-petition, but the applicant must ask INS to do this. Although INS will check its own databases, it is helpful to provide any known information about a previously filed I-360, including copies of the original notice if available.

There are advantages and disadvantages to relying on family-based petitions and filing self-petitions. Attorneys and advocates should be familiar with these advantages and disadvantages and should discuss them with clients.

Standard of Proof

- VAWA self-petitions have a higher standard of proof than family-based petitions. An applicant for a family-based petition needs only establish that the marriage is a good faith marriage. A VAWA self-petitioner must demonstrate that: she was battered or subjected to extreme cruelty; she entered the marriage in good faith; she is a person of good moral character; deportation would cause extreme hardship.

- Victims with pending family-based petitions may wish to proceed on that basis because the burden of proof is lower than for a self-petition. However, the amount of control that an abuser has over the family-based petition process may be a serious deterrent against sticking with the family-based petition.

Abuser's Control

- A family-based petition remains in the abuser's control; he can withdraw the petition or refuse to support the petition at any time or may refuse to attend an adjustment interview with INS.

- An abuser has no control over the VAWA self-petitioning process.

- Therefore, a battered immigrant may be forced to file a self-petition to preserve her eligibility for lawful permanent residency.

- An abuser may refuse to provide an enforceable affidavit of support, a requirement of a family-based petition.

VAWA Protections

VAWA self-petitioners have the benefit of the following protections:

- VAWA prohibits the INS from releasing information to the abuser or anyone but specifically authorized persons once a self-petition has been filed.

- VAWA prohibits the INS from denying a self-petition by relying solely on information provided by the abuser. Information provided by the abuser would have to be independently corroborated by a third party to be used to deny a self-petition.

- VAWA prevents the abuser from using the INS to trace the location of the self-petitioner.

- VAWA self-petitioners are exempt from many of the new barriers that fail family-based applicants when they seek their green cards.

These issues must be considered carefully. The self-petitioning process has its benefits, but is also a more demanding process. If a battered immigrant would have a difficult time satisfying all of the requirements of self-petitioning she may choose to rely on the family-based petition. On the other hand, if she cannot overcome some of the bars to gaining lawful permanent residency that apply to family-based petitions, she may wish to pursue a self-petition. However, if she is confident that she can prove that she was battered or subjected to extreme cruelty, that she married in good faith, that she is a person of good character, and that deportation would cause extreme hardship, the added benefits and protection provided by the self-petitioning process may be worth the extra effort.

Working with Battered Immigrants Whose Non-Citizen Abusers are Being Criminally Prosecuted

If a non-citizen is convicted of a crime, the battered immigrant will be faced with a difficult situation. If you have a client whose non-citizen abuser has been charged with a crime, **refer to an immigration expert immediately.** Battered immigrants must be allowed to choose whether she can safely cooperate in an abuser's prosecution. Conviction of a crime could result in the abuser's removal from the U.S. An abuser's removal from the U.S. can effect a battered immigrant's ability to stay in the U.S. For some battered immigrants, the abuser's deportation may enhance her safety, but for others the abuser's deportation can lead to danger. She may be removed from the U.S. and have to return to the same country her abuser is in. She may be subjected to the abuser's retaliation if he returns to the U.S., or she may be faced with retaliation from his family. The abuser's deportation may lead to a loss of crucial child support. All of these factors must be taken into account when a battered immigrant is deciding whether to cooperate with a criminal prosecution. Advocates, along with immigration experts can work through these issues with clients.

Denials of Self-Petitions

Generally, when a self-petition is filed and where there is a deficiency in evidence, the INS will request additional evidence. If no response is received, the INS will deny the petition as abandoned. If any response is received, the INS will either approve the petition or, if still deficient, deny it based on the evidence in the record. The INS may send a second request for additional evidence or a Notice of Intent to Deny. A Notice of Intent to Deny is sent by INS when a petition lacks sufficient evidence or when there is derogatory evidence in the record that indicates that the petition may not be approved, i.e., the petitioner states that he or she is divorced at the time of filing. A Notice of Intent to Deny explains the INS's interpretation of the evidence and provides the petitioner with an opportunity to overcome such. A Notice of Intent to Deny may be the first notice to the petitioner or it may follow the submission of additional evidence.

A final decision denying an application for benefits is called a Denial Notice, and can be appealed. An immigrant who receives a Denial Notice has three choices on appeal. An immigrant can file a **motion to reconsider** if the legal analysis of the decision is incorrect. An immigrant can file a **motion to reopen** if she wants to submit additional evidence. Finally, an

immigrant can make a **direct appeal** to the Administrative Appeals Unit of the INS. If your client receives a Notice of Intent to Deny, a Denial Notice, or any other adverse decision, contact Gail Pendleton of the National Lawyer's Guild National Immigration Project at 617/227-9727 prior to filing any appeals or motions to reopen.

Approvals of Self-Petitions

REMINDER! If your client is in deportation or removal proceedings, or has <u>ever</u> been the subject of such proceedings, consult with an experienced immigration attorney before taking any action on the case!

When a self-petition is approved, the self-petitioner may be eligible for an immigrant visa or eligible to adjust status to that of a permanent resident. A petitioner who is a spouse or child of a **United States citizen** is immediately eligible for an immigrant visa and can proceed to the adjustment stage if they are eligible. These self-petitioners may file an INS form I-485 (Application for Adjustment of Status) (see sample in Appendix) along with a copy of the I-360 approval notice at their local INS District Office.[12] Currently, the filing fee for those who qualify to adjust status in the United States is $220.00 for self-petitioners who are 14 years or older, and an additional $25 fee for fingerprinting. Adjustment of status allows self-petitioners to obtain their lawful permanent residency without being required to leave the United States to obtain their immigrant visas.

In contrast, most self-petitioners who are married to or who are the children of **lawful permanent residents** are not immediately eligible for an immigrant visa. These petitioners may not file the application for adjustment of status or undergo consular processing until their "priority date" becomes current and an immigrant visa becomes available. Priority dates are assigned when an application has been accepted for processing; they are part of the visa preference system, which places immigrants in a waiting line depending on their country of origin, their visa preference category, and the date they filed their petition. (See Chapter 7, Obtaining Lawful Permanent Residency Under VAWA).

Death of the Abuser or Divorce

The self-petition will be denied if the marriage ended in death, divorce or annulment <u>before</u> the self-petition is filed. Family law attorneys should therefore delay divorce proceedings, avoiding the issuance of divorce decrees, until after the battered immigrant files a self-petition;[13] otherwise the immigrant's only option for relief under the VAWA will be cancellation of removal.

If a divorce or annulment is obtained <u>before</u> the battered immigrant files a petition, she loses her right to file a self-petition unless she can file a motion to re-open the divorce under state law. <u>After</u> the self-petition has been filed, legal termination of the marriage through death, divorce, or annulment will not affect the case. Always consult with an immigration expert before advising your client to file for divorce or annulment -- even after the self-petition is filed. If a

divorce occurs after the self-petition is filed, advise your client to avoid re-marriage. A self-petitioner's subsequent re-marriage before the self-petition is approved will result in the denial of a pending self-petition[14] and revocation if the re-marriage occurs before the battered immigrant gains lawful permanent resident status.

COMMON QUESTIONS & ANSWERS

Can a battered immigrant file a self-petition even though the abuse would not be sufficient for the issuance of a civil protection order?

Yes. Immigration law defines battering or extreme cruelty more broadly than most state domestic violence statutes, which do not include extreme cruelty as a basis for issuing a protection order. Generally, state protection order statutes require that an abuser commit a criminal act; physically harm a victim; threaten a victim with serious imminent bodily harm; or stalk a victim in order for a court to issue a protection order. In contrast, battered immigrants may file self-petitions under the VAWA if they have been subjected to extreme cruelty by their abusers. (See Chapter 5, Self-Petitioning Requirements and Chapter 6, Proving a Case, for a more thorough discussion of extreme cruelty.)

Self-petitioners should try to obtain protection orders before filing for immigration relief. Protection orders may deter future violence and may enhance a victim's ability to prove her self-petitioning case before INS. Immigrant women who file self-petitions should not obtain consent protection orders that state on the face of the order that no finding of abuse has been made. If an abuser requests such a statement, it is better to have a hearing and have the judge issue the order based on findings of abuse. The Immigrant Women Program of the NOW Legal Defense and Education Fund (contact information is in the Preface) provides technical assistance to attorneys and advocates helping battered immigrants in protection order proceedings. (See Chapter 11, Custody, Civil Protection Orders & VAWA)

Can a battered immigrant qualify for a self-petition if the police were called to the home but did not arrest the abuser?

Yes. While police responses to domestic violence calls have improved, there are still cases where the police fail to arrest abusers. Many jurisdictions have instituted mandatory or pro-arrest policies in domestic violence cases, as required by the VAWA, but language barriers may preclude officers from identifying the abuser and making an arrest. Many abusers are better able to communicate with the police in English than their abused spouses.

A self-petition may be filed under the VAWA regardless of whether an abuser has been arrested. Lawyers and advocates preparing self-petitions should obtain copies of police reports and 911 transcripts if officers were called to the home. Officers may be willing to sign affidavits about the incident if sufficient information is not contained in a police report.

If a self-petition was filed, and the INS sent a notice of action granting 60 days to submit additional evidence, how can more time be requested if necessary?

An additional 60 days may be authorized by INS. The request for additional time must be in writing and attached to the copy of the notice to submit additional evidence. It is suggested by the INS that if any of the requested evidence is available that it be submitted with the request for additional time. If the additional evidence is not received by the deadline, INS will consider the petition abandoned and deny it accordingly unless INS grants the extension of time before the deadline.

If the immigrant victim has a pending family-based I-130 visa petition filed by her abusive United States citizen or lawful permanent resident spouse or parent, can the victim also file the I-360 self-petition?

Yes. The victim can still file a self-petition (I-360) even if the victim's spouse has previously filed a family-based visa petition (I-130) on the victim's behalf. Spouses and children of lawful permanent residents must wait 3-4 years to obtain their green cards after the approval of a family-based petition. However, battered immigrants filing self-petitions will not have to go to end of the line if an earlier family-based petition was filed on their behalf. The earlier priority date may be transferred to the self-petition, but the applicant must ask INS to do this. Although INS will check its own databases, it is helpful to provide any known information about a previously filed I-360, including copies of the original notice if available.

There are advantages and disadvantages to relying on family-based petitions and filing self-petitions. (See the advantages and disadvantages referred to earlier in the chapter.) Attorneys and advocates should be familiar with these advantages and disadvantages and should discuss them with clients.

Chapters five and six describe these requirements in detail and provide many suggestions about how to prove the demanding self-petitioning requirements. The information contained in those chapters will help immigration attorneys and advocates to assist battered immigrants in balancing the advantages and disadvantages.

CHAPTER REVIEW

κ VAWA SELF-PETITIONING REQUIREMENTS:

T self-petitioner must show battery or extreme cruelty;

T self-petitioner must have entered the marriage in good faith;

T self-petitioner must be a person of good moral character;

T self-petitioner must show deportation would cause extreme hardship.

κ **PERSONS ELIGIBLE TO FILE SELF-PETITIONS:**

T battered spouses married to a U.S. citizen or resident who file for themselves (unmarried children under 21 years of age who have not filed their own self-petition and who reside in the United States may derive benefits without a separate application);

T parents who self-petition on behalf of themselves and their children when only the child has been battered or subjected to extreme mental cruelty by the abusive U.S. citizen or resident spouse;

T immigrant children (under 21 years of age and unmarried) who are abused by their U.S. citizen or resident parent.

κ **AN IMMIGRANT WHO RECEIVES A DENIAL NOTICE HAS THREE CHOICES ON APPEAL:**

T file a **motion to reconsider** if the legal analysis of the decision is incorrect;

T file a **motion to reopen** if the immigrant wants to submit additional evidence;

T make a **direct appeal** to the Administrative Appeals Unit of the INS.

ENDNOTES

1.8 U.S.C. §§ 1154(a)(1)(A)(iii), (iv); 1154(a)(1)(B)(ii), (iii) (1999).

2.The term "immigrant visa" refers to a visa that is issued by a U.S. consulate that enables the holder of the visa to come to the U.S. as a lawful permanent resident.

3. 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(ii) (1999).

4. 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (1999). The abused child may be undocumented, an immigrant or a citizen, and need not be a child of the abusive spouse.

5. 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (1999).

6.The applicant must be eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the INA based on marriage to or parent/child relationship with the United States citizen or lawful permanent resident spouse. 8 U.S.C. э 1153 (1999). Immigrant classification basically means that the applicant must be either an immediate relative (spouse, child, or parent of a U.S. citizen) or be the spouse or child of a permanent resident. If the abusive spouse or parent is a lawful permanent resident and loses or gives up that status before INS has approved the self-petition, the self-petition will be denied.

7. 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (1999).

8.The term "child" means an unmarried person under 21 years of age who is: (a) a child born in wedlock; (b) a child born out of wedlock; (c) a stepchild, whether or not born out of wedlock, provided that the child had not reached the

age of eighteen years at the time the marriage creating the status of stepchild occurred; (d) a legitimated child; (e) a child adopted while under 16 years of age. *See* INA э 101(b)(1), 8 U.S.C. э 1101 (b)(1) (1999).

9.The child must be eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the INA, 8 U.S.C. §§ 1151(a)(2)(A), 1153(a)(2)(A) (1999), based on the relationship of the child to the abusive parent. This means that the child must be the child of a United States citizen or lawful permanent resident. The parent must be a lawful permanent resident through the date the self-petition is approved.

10. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit evidence of good moral character. Children 14 and over must prove that they are of good moral character. 8 C.F.R. э 204.2(e)(2)(v) (1998).

11. Addressed as follows: Immigration and Naturalization Service, Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

12. All persons who filed self-petitions on or before January 14, 1998 can adjust their status in the United States without having to leave the country by paying a $1,000 penalty. Beginning January 15, 1998, however, many self-petitioners who entered the United States without inspection and who submit their I-360s after that date will not be able to pay the $1,000 penalty fee and adjust their status in the United States. After that date, self-petitioners may have to travel abroad to obtain their lawful permanent residency through consular processing. See Chapter 7, Obtaining Lawful Permanent Residency Through VAWA.

13. A self-petitioner who has an INS receipt notice for the self-petition has properly filed the application. This means the INS has processed the check for the filing fee, or granted a fee waiver if one has been requested. *See* Gail Pendleton, *Immigration Relief for Women and Children Suffering Abuse*, (National Lawyer's Guild National Immigration Project, 14 Beacon Street, Suite 602, Boston, MA 02108, 617/227-9727).

14.8 C.F.R. э 204.2(c)(1)(ii) (1998).

Chapter Five
SELF-PETITIONING REQUIREMENTS

September 8, 2000

KEY LEARNING CONCPETS IN CHAPTER FIVE:

- Extreme Cruelty
  - ✓ social isolation
  - ✓ possessiveness and harassment
  - ✓ threats
  - ✓ economic abuse
  - ✓ degradation of the victim
  - ✓ sexual abuse
- Extreme Hardship
  - ✓ VAWA extreme hardship factors
  - ✓ traditional extreme hardship factors
- Good Moral Character
  - ✓ what is good moral character?
  - ✓ proving good moral character
  - ✓ statutory bars to good moral character

LILI'S STORY

Once, when Lili asked her husband to stop beating the children he threw her off the porch, causing her to twist her ankle. He refused to take Lili to the doctor. Another time, Lili's husband struck her on the head with a frying pan while she was sleeping because she hadn't made his breakfast. Her husband told her never to speak unless he gave permission. Lili was scared of her husband because they lived in an isolated area and she didn't know her neighbors. Recently, Lili's husband killed her favorite dog with a hatchet, told her that the dog deserved it and hinted to Lili that he would do the same to her. Lili believes that her husband will try to kill her if she leaves with the children.

Lili's husband refused to help her with her immigration status. She is afraid if she leaves her husband she might be sent back to China. Her husband's family lives there and he has told her that his family might attack and punish her for leaving him.

Lili has fled to another state because of her husband's abuse and she is getting help and support from a local domestic violence shelter and counseling program. As evidence for her VAWA self-petition, she has been told to obtain a police clearance letter from the community in

which she formerly lived with her husband. However, she does not want to go back because she is afraid of her husband and has no friends with whom she can stay. The police in her former town were unwilling to protect her when she lived there.

In order to be successful in her self-petitioning, Lili must prove that she was:

- subjected to **extreme cruelty** by her husband;
- that returning to her country would constitute **extreme hardship**; and
- that she is a person of **good moral character**.

Lawyers and advocates must become familiar with these critical concepts prior to filing a VAWA self-petition. This chapter will examine extreme cruelty, extreme hardship, and good moral character in detail. The next chapter will outline the types of evidence needed to prove each of the nine required elements for self-petitioning, but these three factors are not intuitive and are the most difficult to prove, thus we will focus on them in this chapter.

EXTREME CRUELTY

Lili has clearly been subjected to extreme cruelty. The physical abuse she has endured at the hands of her husband easily fit into the category of extreme cruelty. What if she had not revealed any physical violence, however? In that case, would she still have been subjected to extreme cruelty? This section will help you to understand the answer to that question. The fact is that the non-physically abusive actions of Lili's husband, such as refusing to take Lili to a doctor when she was injured, demanding that Lili not speak without permission, and killing her favorite dog, would all be considered acts of extreme cruelty under VAWA.

As VAWA was being developed, legislators recognized that battering encompasses much more than physical and sexual abuse.[1] Thus, the immigration provisions of VAWA contain a much broader definition of battering than is found in most statutory definitions of domestic violence by including "extreme cruelty."[2] In the VAWA regulations, the INS defines battering and extreme cruelty as abuse that includes, but is not limited to, causing or threatening to cause physical or mental 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.[3] The elements of this definition that are not physical or sexual abuse constitute extreme cruelty -- cruelty includes causing or threatening to cause mental injuries, psychological abuse, or actions that in and of themselves may not appear violent but are part of an overall pattern of psychological violence.

Family court decisions interpreting extreme cruelty can provide a roadmap for immigration cases. Courts have found extreme cruelty even in the absence of physical violence against the victim.[4] In *Veach v. Veach*, for example, the court examined "whether the acts of cruelty are of such nature and character as to destroy the peace of mind and happiness of the injured party."[5] Similarly, in *Wolf v. Wolf*, the court scrutinized whether the perpetrator intended

to distress and humiliate the victim.[6] Courts review a range of evidence in determining whether or not there is extreme cruelty,[7] such as immigration status, language ability, self-esteem, level of dependency on the abuser, and how the abuser exerts power and control over the victim.

Types of Abuse

Abusers use different methods to establish and maintain power and control over their victims. Some victims may be able to prove extreme cruelty by providing evidence of only one form of abuse and its impact. Others may need to show a pattern of incidents that cumulatively, if not individually, constitute extreme cruelty. Courts and researchers have found that the following factors constitute extreme cruelty: social isolation, possessiveness and harassment, threats, economic abuse, degradation, and sexual abuse. This section will outline these types of abuse to help lawyers and advocates determine if their clients have been subjected to extreme cruelty.

Social Isolation

Abusers often isolate victims, preventing them from seeking help, developing support systems, or escaping. An abuser may isolate a victim by limiting the victim's ability to use the phone,[8] making her dependent on him for transportation, prohibiting her from going to work or school, controlling contact with the victim's family or friends,[9] or preventing her from attending any other social activity. Some victims are actually physically imprisoned by their abusers.[10]

Battered immigrants may be vulnerable to even greater social isolation. Many have no supportive community, family, or friends.[11] Abusers may prevent them from learning English, or from having contact with people who speak English. This linguistic barrier limits access to health care, social services, domestic violence programs, immigrant rights agencies, law enforcement, and the courts.[12]

Possessiveness and Harassment

Abusers are often jealous and possessive of victims.[13] False accusations of infidelity have been recognized as extreme cruelty in the context of divorce cases[14] and should be relevant in immigration cases filed under the VAWA. Such behaviors may include: opening the victim's mail;[15] calling the victim frequently at home and at work;[16] driving or loitering around the victim's home, work,[17] or shelter;[18] constantly writing letters to the victim;[19] contacting the victim's friends, family or employer;[20] interrogating the children or other family members; stalking;[21] car chasing;[22] or filing frivolous legal actions against the victim.[23] Harassment not only destroys a victim's peace of mind and security, but also permits the abuser to demonstrate his control in public, and humiliates the victim by portraying her as weak and subordinated. Since privacy is prized in some cultures, public humiliation may be a culturally based form of extreme cruelty.

Threats

Abusers use different types of threats -- both actual and implied -- to maintain control over victims. For example, abusers may stand close to victims, clench their fists, send warning looks, or display weapons to intimidate victims.[24] Abusers also threaten to harm the victim's children, family members or friends, or to destroy the victim's pets or objects of value.[25] Abusers of immigrants frequently threaten to report them to the government, especially to the immigration authorities.[26] Abusers often carry out their threats.[27]

When there is a history of violence, threats are powerful tools of control[28] which destroy a victim's psychological well-being.[29] Abusers use threats to create fear, stress, and humiliation so that victims remain trapped in abusive relationships. Threats often form the basis for proving extreme cruelty.

Economic Abuse

Many abusers control victims by withholding economic resources. They may prevent victims from participating in the labor market[30] or sabotage victims at their workplaces.[31] Abusers frequently stalk or harass victims at work, and send threatening e-mail or voice-mail messages. They may also deprive victims of sleep at night so victims perform poorly on the job.

Abusers may exercise financial control at home by taking a victim's salary,[32] forcing a victim to plead for money, refusing to give a victim access to checking accounts, or making a victim sign financial documents without reading them.[33] In addition, abusers also destroy family property, especially when they suspect that the victim plans to leave.[34]

Abusers of immigrant victims also subordinate victims economically by forcing them to work illegally and then threatening to report them, refusing to allow them to get job training or schooling, taking money intended to support family members living abroad, or harassing victims at work so they will lose their jobs.[35] Many abusers also prevent victims from obtaining legal immigration status so that victims cannot work legally. This reinforces their economic dependency and makes victims less able to leave or seek assistance.

Degradation of the Victim

Abusers degrade victims in the following ways, among others: calling them names,[36] criticizing them,[37] forcing them to eat,[38] limiting their activities to housework,[39] convincing them that they cannot survive independently,[40] lying about or concealing personal information,[41] blaming them for problems they cannot control,[42] forcing them to engage in illegal activities like drug abuse[43] and prostitution,[44] putting them down in front of family and friends,[45] and treating them like servants.[46] All of these behaviors allow abusers to maintain control by destroying the victim's self esteem.

Sexual Abuse

Many abusers subordinate victims through sexual abuse. Numerous studies confirm that between 33% and 64% of battered women are raped and/or sexually assaulted by their abusers.[47] Sexual abuse is another means of control, which abusers use to humiliate, hurt, and dominate their victims.[48] Sexual abuse has devastating psychological and physical consequences.[49] Despite the large proportion of battered women who are sexually abused by their partners, petitioners seldom raise the issue of sexual abuse in their protection order cases. Similarly, while sexual abuse may be present in many extreme cruelty cases, victims may be reluctant to report the abuse.[50]

EXTREME HARDSHIP

In addition to proving extreme cruelty, battered immigrants must also prove that removal from the United States would result in extreme hardship to them and/or their children.[51] If the applicant is an abused child, the child must prove extreme hardship to him or herself.[52] Applicants seeking VAWA suspension or cancellation of removal must also prove extreme hardship. However, they can show extreme hardship to the applicant or to the applicant's *parent* or child.[53] (See Chapter 8, Cancellation of Removal). As you will see after reading this section, some of the factors that are relevant to Lili's extreme hardship case are the fact that her children have been raised in the U.S., that she has sought help from a domestic violence program, and she is from a country that does not have laws that protect women.

In self-petitioning cases under VAWA, the circumstances surrounding the domestic abuse and the consequences of the abuse may cause or contribute to the extreme hardship. In assessing the extreme hardship requirement, the INS must consider all credible evidence of extreme hardship, including evidence of hardship arising from circumstances surrounding the abuse. It is important to understand that VAWA extreme hardship factors differ from traditional extreme hardship factors. Evidence of both types of extreme hardship factors may be presented but lawyers and advocates should make sure to emphasize a nexus between traditional factors and the abuse. This is discussed in more detail later in this chapter. Extreme hardship claims are evaluated on a case-by-case basis after a review of the evidence. Therefore, self-petitioners should be encouraged to document all applicable factors.[54]

Advocates and attorneys should carefully document the circumstances of each client's case to prove that the client has been battered and/or subjected to extreme cruelty and that deportation would cause extreme hardship. Because the INS has indicated that it will give more weight to official documents than to personal affidavits,[55] applicants should obtain official documentation of the violence wherever possible to corroborate the victim's affidavit. Advocates and attorneys should also gather evidence such as photographs of injuries or property damage resulting from the abuse, affidavits from witnesses and police officers, and the victim's personal diary.

VAWA Extreme Hardship Factors

The INS has outlined a range of factors which courts should consider when making an extreme hardship determination in VAWA self-petitioning cases.[56] These factors are:

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty

- 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)

- 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

- The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse, for leaving the abusive situation, for getting a divorce, for reporting the abuser to authorities because of the violence, or for actions taken to stop the abuse

- 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

- The likelihood that 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[57]

Traditional Extreme Hardship Factors

Traditional extreme hardship factors are generally used in non-domestic violence suspension of deportation cases. Courts define extreme hardship differently in non-domestic violence suspension of deportation cases. Advocates and attorneys should consult immigration lawyers to determine which factors have constituted extreme hardship in their jurisdictions. The Board of Immigration Appeals has stated that extreme hardship does not have a fixed and inflexible meaning, but, rather, is dependent upon the facts and circumstances of each case.

Put priority on VAWA factors where possible. However, a case may be made for extreme hardship based on "traditional factors" alone, even if none of the "VAWA factors" apply. Use as many factors as possible but the absence of "VAWA factors" is not a deterrent to approval. The "VAWA factors" are factors, unique to this petition, that may be used to supplement "traditional factors." Traditional suspension of deportation factors include:[58]

- Age of the person, both at entry into the U.S. and at the time of application for suspension of

deportation

- Age and number of the person's children and their ability to speak the native language and adjust to life in another country
- Serious illness of the person or his or her child which necessitate medical attention not adequately available in the foreign country
- The person's inability to obtain adequate employment in the foreign country
- The applicant's and child's length of residence in the United States
- Existence of other family members who will be legally residing in the U.S.
- Irreparable harm that may arise as a result of disruption of educational opportunities
- Adverse psychological impact of deportation[59]
- The impact of separation on both the victim and the child if the victim is removed
- The extent to which deportation would interfere with court-ordered custody, visitation, and child support awards
- The extent to which the battered woman is an asset to her U.S. community

Victims and their and children may suffer psychological barriers to telling their story as a direct result of the abuse. Psychological reports are not mandatory but may be helpful. When representing an abused child who is filing a self-petition, attorneys must focus only on the hardship which the child will personally suffer. While this means that you can not rely on evidence of the mother's anticipated hardship there are ways to be creative and tie the mother's hardship to the child. For instance, the child may suffer additional pain for having made his mother suffer as a result of his deportation or for having to choose to leave the U.S. if the child were ordered deported. It may be possible to show that the long-term psychological results of this creates extreme hardships for the child.

Proving extreme hardship is difficult, and insufficient proof of extreme hardship will result in the VAWA self-petition or cancellation of removal case being denied. **For this reason it is highly recommended that an immigration expert assist in the preparation of the extreme hardship portion of the VAWA case**.[60] Immigration experts can be aided by the input of battered immigrant advocates who can help to gather evidence on extreme hardship.

GOOD MORAL CHARACTER

To be eligible to self-petition under VAWA, Lili (or a child self-petitioner who is fourteen years of age or older) must demonstrate that she or he is a person of good moral character[61] at the time of the filing of the initial self-petition.

What is Good Moral Character?

There is no statutory definition of good moral character. However, the Immigration and Naturalization Act (INA) lists conduct which presumptively bars a showing of good moral character.[62] (These types of conduct are outlined in a later section of this chapter.) For example, murder, bribery, and fraud are intentional crimes that are a statutory bar to good moral character. It may not be as easy to determine whether other crimes, such as involuntary manslaughter or petty theft, show a lack of good moral character. To establish good moral character, VAWA self-petitioners must show that they do not fall under the statutory definition of bad moral character. In addition to the statutory provisions, good moral character is evaluated on a case-by-case basis, taking into account the standards of the average citizen in the community.

Proving Good Moral Character

Self-petitioners must establish good moral character for the three-year period immediately preceding the date of filing the self-petition.[63] However, conduct prior to the requisite three-year period may also be examined to determine good moral character at the discretion of INS. Applicants should consider providing evidence of bad conduct prior to the preceding three years before the INS requests it. It is possible that evidence of bad conduct will be discovered either by the Vermont Service Center at the time of filing, or by an INS local office or consulate at the time of adjustment or visa issuance.

The Vermont Service Center -- which has more experience dealing with domestic violence cases than INS District Offices -- will weigh each incident included in a self-petition vis-a-vis good moral character. This is not the last time good moral character will be examined, however. A record check is also conducted at the time of adjustment or the visa issuance by a local INS office or a consular office. If an incident is first discovered at the time of adjustment or visa issuance, the INS local office or consular office may either issue an Intent to Revoke or may return the petition to the Vermont Service Center for revocation consideration. In any case, the process will be delayed. Therefore, if there is something that will show up as a result of a record check, self-petitioners should submit as much information as possible regarding each incident at the time of filing the petition. Applicants should make this decision carefully because by including such information, the applicant may be providing INS with information it would not have sought at a later date. Attorneys and advocates assisting self-petitioners should consult one of the experts listed in this manual for advice on whether to include evidence of past bad conduct.

Statutory Bars to Good Moral Character

As discussed earlier, the INS cannot find a self-petitioner or a cancellation of removal applicant to have good moral character if the applicant falls within the statutory grounds listed in the INA. Generally, the INS can not waive these preclusions.[64]

WARNING: When a potential VAWA applicant has been involved in any of these types of behavior or any criminal case as a defendant, s/he must find an immigration expert who can help with the VAWA case immediately! Failure to do so could result in the victim's deportation. Contact Gail Pendleton with the National Immigration Project of the National Lawyer's Guild at 617/227-9727x2 or nipgail@nlg.org.

The INA defines a person as presumptively lacking in good moral character if the applicant engaged in the following acts during the requisite period:[65]

- Is or was a habitual drunkard
- Is or was engaged in prostitution within ten years of the date of application for a visa, admission, or adjustment of status
- Is or was involved in smuggling a person into the United States
- Is or was a practicing polygamist
- Has been convicted of or admits committing acts that constitute a crime relating to a controlled substance, or a crime involving moral turpitude,[66] except for petty and juvenile offenses
- Was convicted of two or more offenses for which the aggregate sentence actually imposed was five years or more
- Was an illicit trafficker in any controlled substance or assisted others in such illicit trafficking (upon belief or knowledge of an INS or consular officer) except for simple possession of 30 grams or less of marijuana[67]
- Earns his or her income principally from illegal gambling or has been convicted of two or more gambling offenses
- Has given false testimony for the purpose of obtaining immigration benefits
- Has been confined to a penal institution for an aggregate period of 180 days or more
- Has been convicted of an aggravated felony

In addition to these factors, welfare fraud and use of fraudulent social security cards are also issues which are frequently explored by the INS in assessing good moral character (in addition to evaluating whether they independently constitute a ground of inadmissibility).

Any connection between the abuse and acts which could preclude a finding of good moral character should be submitted. A self-petitioner was found to be a person of good moral character when it was established that her conviction on numerous counts of petty theft resulted from stealing food for her children because her spouse would not give her enough food or money.

Any evidence which may be considered to offset prior derogatory incidents should be submitted. This includes evidence of involvement in community, religious and school activities.

Determining what conduct constitutes good moral character or the lack thereof is not an exact science. Attorneys and advocates should use common sense, look to local laws, analogous case law, or community standards as a good starting point in gathering evidence that affirmatively demonstrates the self-petitioner's good moral character. Advocates and attorneys should advise clients to avoid activities that could lead to criminal convictions and should advise clients to contest criminal charges and obtain acquittals, dismissals, or expungements of convictions whenever possible.

In practice, an applicant's claim to good moral character is accepted at face value in the absence of any evidence from the government to the contrary. However, immigration attorneys should prepare the client to address issues bearing on good moral character that INS will have knowledge of based on a criminal background check. Information should not be withheld that is likely to be asked of the applicant during his or adjustment interview by an INS officer or during removal proceedings by the INS trial attorney or by the immigration judge.

The issue of child support in relation to good moral character is of particular concern and practitioners should carefully evaluate the facts to determine whether a willful failure or refusal to support children took place. Once a willful failure or refusal has been established the practitioner should seek to establish the existence of extenuating circumstances, to offset the rebuttable presumption of lack of good moral character. To avoid this becoming an issue, battered immigrant VAWA applicants who do not have custody of their children should pay child support. Those who have custody of their children should seek a court order granting them legal custody and child support to demonstrate the efforts they have made to obtain child support on their children's behalf. Seeking a child support order will be beneficial to the battered immigrant women's VAWA case even if collecting the court-ordered child support is difficult. It will help prove good moral character because by taking proactive measures to secure child support the battered immigrant will make it difficult for INS to claim that she has willfully failed or refused to support her children.[68] Taking reasonable measures to obtain child support could also strengthen a battered immigrant's extreme hardship case, enhance her ability to obtain deferred action status, and help her establish the need to be granted work authorization. (See Chapter Eleven, Civil Protection Orders, Custody & VAWA)

This chapter provides an overview of the three factors critical to a successful self-petition -- extreme cruelty, extreme hardship, and good moral character. The following chapter will look at each of these concepts in more depth and outline the types of evidence a self-petitioner must present in order to prove extreme cruelty, extreme hardship, and good moral character.

COMMON QUESTIONS & ANSWERS

Can a person who has never been a victims of physical violence have a successful self-petition?

Maybe. As is always the true, a case-by-case assessment would have to be made. If the individual has been subjected to other types of abuse, such as isolation, degradation, economic abuse, harassment, or threats, she can be successful in self-petitioning if she can prove her case. Chapter Six outlines the types of evidence necessary to prove these factors.

We do not have a lot of time to complete our self-petition application, so I think we will just focus on the traditional extreme hardship factors. This should be acceptable, right?

No. To be successful in a VAWA self-petitioning case, you must take the extra step to prove the VAWA extreme hardship factors. Failure to do so can result in a denied self-petition.

How does one find out what the laws, social practices, and customs are in other countries in order to help prove extreme hardship?

Chapter Six will go into this in detail. There are publications and organizations that can help you gather this type of information.

My client was convicted of simple assault against her abuser after she plead guilty, even though she was acting in self-defense. Will this be a bar to a finding of good moral character?

First, if you must immediately contact an immigration and domestic violence expert for technical assistance with this case. Contact information can be found in the Preface to this manual. While this is an extremely difficult situation, it may be possible, with good case preparation and evidence, to prove good moral character in this situation. However, contact an expert for assistance.

CHAPTER REVIEW

The three self-petitioning requirements examined in Chapter Five are extreme cruelty, extreme hardship, and good moral character. Extreme cruelty is abuse that falls outside the definition of "battery" which commonly refers to abuse of a physical and/or sexual nature. Extreme hardship can mean many different things; however, VAWA has outlined a range of factors to be considered. Priority should be given to the VAWA factors when possible, but a

case may be made for extreme hardship based on "traditional factors" alone. Finally, while there is no statutory definition for good moral character, the Immigration and Nationality Act (INA) does define what it means to lack good moral character.

- **TYPES OF ABUSE THAT CONSTITUTE EXTREME CRUELTY INCLUDE:**
  - social isolation;
  - possessiveness, harassment, and threats;
  - economic abuse;
  - degradation.
- **VAWA EXTREME HARDSHIP FACTORS INCLUDE:**
  - nature and extent of physical and psychological consequence of the abuse;
  - self-petitioner's and/or self-petitioner's child's need for certain services that would not be available in a foreign country (e.g., medical, social, or mental health services);
  - laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse and/or for having taken action to stop the abuse;
  - abuser's ability to travel to the foreign country or the likelihood that 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.
- **STATUTORY BARS TO GOOD MORAL CHARACTER INCLUDE:**
  - habitual drunkenness;
  - prostitution;
  - polygamy;
  - drug-related crimes;
  - crimes considered aggravated felonies.

ENDNOTES

1. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

2.8 C.F.R. ə 204.2(c)(1)(vi) & (e)(1)(vi) (1998).

3. *See id.*

4.*See, e.g.,* Carpenter v. Carpenter 193 P.2d 196 (Kan. 1948); Keenan v. Keenan, 105 N.W.2d 54 (Mich. 1960); Ormachea v. Ormachea, 217 P.2d 355 (Nev. 1950).

5.Veach v. Veach, 392 P.2d 425 (Idaho 1964). See also, Conner v. Conner, 1981 WL 6290 (Ohio App. 1984); Dickson v. Dickson, 1982 WL 5380 (Ohio App. 1982); Pfalzgraf v. Pfalzgraf, 1981 WL 6119 (Ohio App. 1981).

6.Wolf v. Wolf 333 A.2d 138, 140 (R.I. 1975).

7.Shaack v. Shaack, 414 N.W. 2d 818, 820 (S.D. 1987).

8.See, e.g., Harshbarger v. Harshbarger, 1993 WL 6119 (Ohio App. 1993), (husband's prevention of wife from talking on the phone for more than 20 minutes a factor in the court's finding that he had committed extreme cruelty).

9.*See* CHARLES EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AND LEGAL JUSTIFICATION 9-10 (1987). Nearly half of the women Hoeffler studied were forbidden by their batterers to have personal friends or to have such friends in the home. A husband's refusal to allow his wife to invite her relatives to visit constitutes extreme cruelty. *See, e.g.*, Gazzillo v. Gazzillo, 379 A.2d 288 (N. J. 1977); Harshbarger v. Harshbarger 1993 WL 6119 (Ohio. App. 1993).

10.In a study of 420 battered women, 30% reported being physically imprisoned including being locked in closets, locked in their homes, and tied to furniture, *see* EWING *supra* note 9. *See also* In re Marriage of Blistein, 569 N.E.2d 1357, 1358-59 (Ill. App. 1991). In Gazzillo v. Gazzillo, 379 A.2d 288 (N. J. 1977), (preventing wife from leaving house at night contributes to extreme cruelty).

11.Leslye Orloff, Deeana Jang, & Catherine Klein, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L. Q. 313, 314 (1995).

12.*See id.* at 317.

13.In a survey of 234 women with history of physical abuse, 73% experienced excessive jealousy and possessiveness. Follimgstad, Rutledge, Berg, Hause, and Polek, *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. OF FAM. VIOLENCE, 101, 113 (1990).

14.Courts dealing with divorce cases have recognized false accusation of infidelity as extreme cruelty, see Mark v. Mark 29 N.W.2d 683 (Mich. 1947).

15.Knuth v. Knuth, 1992 WL 145387 (Minn. App. 1992).

16.Johnson v. Cegielski, 393 N.W.2d 547 (Wis. App. 1986). Seventy-four percent of battered women who work report that they are harassed on the job by their abusers. *See* Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L. Q. 273, 277 (1995).

17.Boniek v. Boniek, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).

18.Knuth *supra* note 15.

19.State v. Sarlund, 407 N.W.2d 544, 546 (Wis. 1987).

20. *See id.*

21.States have recognized stalking as a ground to issue a civil protection order, N.M. STAT. ANN. ə 40-13-2-C-9 (Michie Supp. 1993); N.J. STAT. ANN. ə 2c:25-19 (West Supp. 1993); OKLA. STAT. ANN. TIT. 22, ə 60.1 (West 1992); R.I. GEN. LAWS ə 11-59-2 & -3 (Supp.. 1993).

22.Christenson v. Christenson, 472 N.W.2d 279, 280 (Iowa 1991).

23.Johnson v. Cergieski, 393 N.W.2d 547 (Wis. Ct. App. 1986).

24.Mary Ann Dutton, *Understanding Woman's Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206 n70 (1993).

25.Barbara Hart, *Children of Domestic Violence: Risks and Remedies*, 8(1) PROTECTIVE SERVICES Q. (1993); E. STARK & A. FLITCRAFT, WOMEN AND CHILDREN AT RISK: A FEMINIST PERSPECTIVE ON CHILD ABUSE; State v. Zeien, 505 N.W.2d 498 (Iowa 1993); Kreitz v. Kreitz, 750 S.W.2d 681 (Mo.Ct. App. 1988).

26.LETI VOLPP, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).

27. Zorza, *supra* note 16 at 275.

28.Anne Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases, in* DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION 19, 23 (Family Violence Prevention Fund 1992).

29.Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 26 (1994).

30. Zorza, *supra* note 16 at 275.

31.Abusers cause over half of battered women to be late for work at least sixty days a year, and over half to miss at least thirty-six full days of work annually. NEW YORK VICTIM SERVICE AGENCY REPORT ON THE COSTS OF DOMESTIC VIOLENCE (1987). Twenty percent of all employed battered women lose their jobs because of their abusers' harassment in the workplace. Susan Schechter & Lisa T. Gray, *A Framework for Understanding and Empowering Battered Women, in Abuse and Victimization Across the Life Span* 242 (Martha Straus, ed., 1988).

32.Power & Control Wheel, developed by the Domestic Abuse Intervention Project, Duluth, Minnesota

33.One study found that 34% of the 435 battered women in the survey had no access to checking accounts, 51% had no access to charge accounts and 27% had no access to cash. Even those who are employed outside their homes are often denied access to their financial resources. *See* EWING *supra* note 9.

34.Zorza, *supra* note 16 at 277. Many states have recognized that a civil protection order can include provisions not to transfer or destroy real or personal property. *See* Klein & Orloff, *supra* note 1 at 939.

35.Power and Control Tactics Used Against Immigrant Women, Ayuda Inc., 1995.

36.Courts dealing with divorce cases acknowledged that insulting language can be part of extreme cruelty, *see* Pfalzgraf *supra* note 5; *see also* Gazzillo *supra* note 9.

37.In Gazzillo v. Gazzillo, 379 A.2d 288 (N.J. 1977), the court took into consideration the husband's critical attitude in determining extreme cruelty. The husband's critical attitude and belittling comments were among the reasons the wife was granted a divorce.

38.Leslye Orloff, Leni Marin, & Deborah Weismann, *Evidentiary Concerns in Battered Immigrant Women Proceedings, in* ASSISTING BATTERED IMMIGRANT WOMEN AND CHILDREN FILING IMMIGRATION CLAIMS UNDER THE VIOLENCE AGAINST WOMEN ACT 150 (Ayuda, Inc. 3d Edition 1996).

39.Anne Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases*, in FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION 29 (1992).

40.*See* Orloff et. al. *supra* note 38.

41.Anne Ganley, *Understanding Domestic Violence*, in IMPROVING THE HEALTH CARE RESPONSE TO DOMESTIC VIOLENCE 21 (Family Violence Prevention Fund 1995).

42. *See* Ganley, *supra* note 28 at 42.

43.Although battered women evidence no more drug use than non-battered women prior to the onset of abuse, their risk becomes nine times greater than expected once an abusive episode has been presented to the hospital, *see* Evan Stark & Anne Flitcraft, *Violence Among Intimates: An Epidemiological Review, in* HANDBOOK OF FAMILY VIOLENCE 21, 22 (Von Haselt et. al. eds., 1988).

44.The VAWA regulations specifically recognize that abuser might force their victim to prostitution when they included such coercion in the definition of abuse. *See* 8 C.F.R. ə 204.2(c)(1)(vi) & (e)(1)(vi) (1998).

45. *See* Orloff et. al., *supra* note 38 at 150.

46. *See id.*

47.ANGELA BROWNE, WHEN BATTERED WOMEN KILL 95-96 (1987); DIANA E.H. RUSSELL, RAPE IN MARRIAGE (1990); Irene H. Frieze & Angela Browne, *Violence in Marriage*, *in* FAMILY VIOLENCE: CRIME AND JUSTICE, A REVIEW OF RESEARCH 163 (Lloyd Ohlin & Michael Tonry eds., 1989).

48.Forty to sixty percent of battered women are forced into sex by their abuser. Howard Holtz & Kathleen Furniss, *The Health Care Providers Role in Domestic Violence*, 8 TRENDS IN HEALTH CARE, LAW & ETHICS 47 (1993); *see* Frieze & Browne, *supra* note 47; JACQUELYN CAMPBELL, NURSING ASSESSMENT FOR RISK OF HOMICIDE WITH BATTERED WOMEN (1986). This kind of abuse is the least likely to be reported because of the victim's shame, fear she will not be believed, or belief that it is her abuser is entitled to forced sex. William Scott, Address for Report on the Council on Scientific Affairs (1991).

49. *See* Dutton, *supra* note 29 at 25.

50. *See id.*

51.8 U.S.C. ə 1154 (1999).

52. *See id.*

53. 8 U.S.C. э 1229B(b)(2)(E)(1999)

54.8 C.F.R. э 204.2(c)(viii)(1997).

55.8 C.F.R. э 204.2 (1999).

56. *See id.*

57. *See id*; *see also* Memorandum from Alexander Aleinikoff, Executive Assoc. Comm'r, Office of Programs to INS examiners 8-9 (Apr. 16, 1996).

58.*See* Matter of Chumitazi, 16 I&N Dec. 629 (B.I.A. 1978), Matter of Kim, 15 I&N Dec. 88 (B.I.A. 1974), Matter of Sangster, 11 I&N Dec. 309 (B.I.A. 1965), Matter of Anderson, 16 I&N Dec. 596 (B.I.A.1978).

59. *See* 8 C.F.R. *supra* note 55; *see also* Memorandum *supra* note 57.

60.Any self-petitioner whose application is denied because she failed to show extreme hardship should contact the National Immigration Project about appealing her case. The National Immigration Project has amicus briefs on the meaning of extreme hardship under VAWA.

61.8 C.F.R. э 204.2 (c)(1)(i)(F) (1997).

62.8 U.S.C. э 1101 (1999).

63. 8 C.F.R. э 204.2 (c)(2)(v) (1997).

64.*Miller v. I.N.S.*, 762 F.2d 21,24, (3d Cir. 1985), as cited in Charles Gordon et al, *Immigration Law And Procedure* 74, 89 (1997).

65. 8 U.S.C. э 1101(f) (1999).

66.*Miller v. INS*, 762 F.2d 21, 23 (3d Cir. 1985) (welfare fraud conviction).

67.Note that drug offenses are never treated as petty offenses for immigration law purposes. In addition, any sale, however small in quantity or value, is considered trafficking under the immigration act. Expungements do not erase drug convictions for immigration purposes.

68. 8 C.F.R. э 204.2 (1997).

Chapter Six
PROVING A CASE

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER SIX:

- Evidence required to prove VAWA factors, including:

  - ✓ good faith marriage
  - ✓ battery & extreme cruelty
  - ✓ extreme hardship
  - ✓ good moral character

- Checklists of specific pieces of evidence to be used to prove factors are included

LILI'S STORY

Lili's husband has discovered the town she fled to, and he has confronted her in front of the shelter where she is staying. He refused to leave on one occasion, and the staff had to call the police to get him to leave. Lili has decided to file for a civil protection order. She also went to a doctor to get her ankle checked out. Her children are doing well in school and have made new friends.

Lili plans to go to her old home one morning this week, when she knows her husband will be at work, to gather some items. A shelter advocate has arranged for a police escort (the advocate helped to convince an understanding officer of the need for an escort) just in case Lili's husband shows up at the home while they are there. Lili wants to pick up more clothes, toys for the children, important documents, and personal items. Lili has also told the children that in order to make the shelter more like home, Lili also took some family photos and scrapbooks she had made with the children. Lili wonders if there is anything specific she should get from her home while she is there.

EVIDENCE COLLECTION

Chapter five provided an overview of battery and extreme cruelty, extreme hardship, and good moral character. This chapter will give you the information you need to advise Lili about what other types of items she should pick up from her home. As you will see, there are many things in her home that will be crucial to proving the elements of a self-petition. This chapter will outline the specific types of evidence that a self-petitioner must present in order to prove extreme cruelty, extreme hardship, and good moral character.

Evidence may be presented in a personal affidavit attesting to the facts surrounding the case. The self-petitioner should address each element of proof in the affidavit and submit any additional evidence that can be secured. To meet the prima facie test the applicant must at a

minimum submit a statement of facts that, if supported, would result in the applicant's self-petition being granted. Once the prima facie test is met the self-petitioner will receive a Notice of Prima Facie Case from the INS, which makes the self-petitioner eligible to receive certain public benefits.

VAWA regulations recommend that self-petitioners submit certain documents with the self-petition. The INS is required, however, to consider any credible evidence relevant to the petition.[1] Experts recommend that self-petitioners include a cover letter with the self-petition that lists the nine elements of proof required, and explains which specific documents prove each element. The evidentiary checklists in this chapter provide guidelines, rather than exhaustive descriptions of the types of evidence that may be offered to support VAWA self-petitions.

The INS makes decisions in self-petition cases based on the written evidence submitted. Affidavits should be written in the self-petitioner's own words, to the extent possible. Excessive editing by lawyers or advocates may undermine the self-petitioner's credibility.[2]

As required on an I-360 self-petition, petitioners should submit **copies** of their birth certificates or passports, and those of their children. Petitioners should never submit originals of any documents. If the self-petitioner does not have copies of documents because they were filed with a family-based petition, she can request that the INS search its records for the documents. However, it is sometimes very difficult to obtain prior petitions. For this reason, self-petitioners should submit as much information as possible about the prior petition, including where and when it was filed, receipt numbers, etc.

PRACTICE ALERT: INS adjudicators use a checklist when reviewing the elements of a self-petition. To assist the INS, self-petitioners should provide information in the same order. The nine factors you must prove are:

1. Applicant is a legal spouse (or child) of a U.S. citizen or lawful permanent resident.
2. Marriage was entered into in good faith.
3. Applicant's spouse (or parent) is a U.S. citizen or lawful permanent resident.
4. Applicant is eligible for immigrant classification under the INA, based on a marriage to (or being the child of) a U.S. citizen or lawful permanent resident.
5. Applicant is currently residing in the U.S.
6. Applicant has resided with the U.S. citizen or lawful permanent resident spouse (or parent) in the U.S.
7. Applicant was battered or subjected to extreme cruelty during the marriage.
8. Applicant is a person of good moral character.
9. Removal from the U.S. would result in extreme hardship to the applicant or the applicant's child(ren).

The remainder of this chapter contains checklists that outline the types of evidence that can be used to prove the nine required elements for self-petitioning:

1. The Applicant is the Legal Spouse of a U.S. Citizen Or Lawful Permanent Resident

Evidence checklist:

- ❑ Information in the petitioner's affidavit stating the fact of the marriage, when and where it took place, and who performed the ceremony
- ❑ The marriage certificate or another form of proof of the marriage
- ❑ Evidence of the termination of any prior marriages of either the husband or the wife (such as divorce decrees)
- ❑ If these documents are unavailable, the applicant may submit affidavits by persons who attended the wedding or who have knowledge of the marriage.
- ❑ Evidence that the parties resided together (see number 5)
- ❑ Wedding pictures
- ❑ Pictures of the couple together on vacation, with friends or family
- ❑ Birth certificates of children in common
- ❑ Letters or cards to the applicant by the spouse
- ❑ Letters or cards sent to the applicant's family members by the spouse
- ❑ Names, addresses, and phone numbers of persons who knew the abuser and the applicant as a married couple
- ❑ Photo identification cards with the applicant's married name
- ❑ Letter from applicant's employer stating that the applicant listed the abuser as a contact in case of emergency
- ❑ Insurance policies listing the spouse as a beneficiary
- ❑ Joint leases, income tax returns, or bank accounts
- ❑ Police, medical or other court documents with information about the relationship.
- ❑ The petitioner must also submit evidence of the termination of previous marriages, if either spouse has been previously married. Such evidence could include a divorce decree, an annulment decree, or appropriate signatures and attestations on second marriage licenses or

death certificates. If these are not available, affidavits explaining why these documents are unavailable may be submitted. Step-children, whose petitions are tied to the marriage between their parent and their parent's United States citizen or lawful permanent resident spouse must also present such evidence as part of their self-petitions.

2. The Marriage was Entered into in Good Faith

- ❑ Affidavits of the applicant, and friends and family of the applicant
- ❑ Wedding pictures
- ❑ Pictures of the couple together on vacation, with friends or family
- ❑ Letters or cards to the applicant by the spouse
- ❑ Letters or cards sent to the applicant's family members by the spouse
- ❑ Names, addresses, and phone numbers of persons who knew the abuser and the applicant as a married couple
- ❑ Letter from applicant's employer stating that the applicant listed the abuser as a contact in case of emergency
- ❑ Insurance policies listing the spouse as a beneficiary
- ❑ Joint leases, income tax returns, or bank accounts
- ❑ Police, medical or other court documents with information about the relationship.

3. The Applicant's Spouse is a U.S. Citizen Or Lawful Permanent Resident

Evidence checklist:

- ❑ Statement in petitioner's affidavit describing spouse's immigration status
- ❑ Spouse's birth certificate showing birth in the U.S. or its territories
- ❑ Baptismal certificate may provide alternate evidence that spouse is a U.S. citizen
- ❑ Spouse's U.S. passport or copy of passport
- ❑ Statement issued by a U.S. consular officer certifying that spouse is a U.S. citizen and the bearer of a U.S. passport

- Spouse's Certificate of Naturalization or Certificate of Citizenship

- A Department of State Form FS-240, Report of Birth Abroad of a Citizen of the U.S., relating to the spouse (for U.S. citizens who are born abroad, such as children of U.S. Ambassadors)

- The spouse's alien registration receipt card ("green card") or a copy, or other proof given by the service as evidence of the spouse's lawful permanent residence

- A request that INS verify the status of an abuser who is a naturalized citizen, a lawful permanent resident, or who previously filed papers with the INS on behalf of the abuse victim.

4. The Applicant is Eligible for Immigrant Classification under the INA, Based on her Marriage to a U.S. Citizen or Lawful Permanent Resident

Evidence checklist:

- Statement in petitioner's affidavit describing the spousal or parent/child relationship to a U.S. citizen or lawful permanent resident

- Statement in petitioner's affidavit stating the marriage was entered into in good faith

- Reference material submitted for factors one and two for types of documents to prove marriage to a U.S. citizen or lawful permanent resident

5. The Applicant is Currently Residing in the United States

Evidence may include:

- Statement in petitioner's affidavit regarding the facts surrounding her residence in the United States

- Current employment or education records

- Current rent receipts

- Current utility bills

- Cards or letters addressed to applicant at current address

- Property deed or lease for residence with applicant's name

- Affidavits by neighbors, landlords, and friends attesting to applicant's residence in the United States.

6. The Applicant has Resided with the U.S. Citizen or Lawful Permanent Resident Spouse in the United States

Evidence checklist:

- ❑ Statement in petitioner's affidavit describing the self-petitioner's residency with the abuser
- ❑ Employment, education, or children's school records that list the names of both the applicant and the abuser
- ❑ Letters or cards addressed to both the applicant and the abuser, or letters or cards addressed to each using the same address
- ❑ Lease agreements or rent receipts with both names
- ❑ Utility bills
- ❑ Medical records
- ❑ Joint tax returns
- ❑ Insurance policies naming the spouse as beneficiary
- ❑ Credit card bills
- ❑ Joint bank accounts
- ❑ Property deeds in both names
- ❑ Magazine subscriptions in both names or sent to shared address
- ❑ Names, addresses, and phone numbers of neighbors, landlords, or others who knew the couple lived together or affidavits by these persons
- ❑ Birth certificates of children born in the United States
- ❑ Baptismal records of the children born in the United States that list the parents as both living at the same address
- ❑ Letter from an apartment manager or neighbor
- ❑ Police reports showing both the self-petitioner and the abuser living at the same address

- Other legal documents in both names

7. The Applicant was Battered or Subjected to Extreme Cruelty during the Marriage

Evidence checklist:

- Affidavit of the battered woman telling her story. The affidavit should establish the woman's credibility, explain why she is entitled to relief, and elicit the reader's sympathy; all other evidence should be used to corroborate her story. Her affidavit should also address not only battering or extreme cruelty, but each element she must prove as part of her self-petition. The affidavit should be written in the victim's own words, not the lawyers. This will greatly assist INS in judging her credibility.

- Civil protection orders or domestic violence restraining orders.

- Police reports

- Photographs of any injuries of damaged property

- Corroborating witness affidavits from persons who witnessed the violence, the physical effects of the violence or who can corroborate the victims' emotional state and the effect of the violence on her.

- Medical records

- Criminal court records if a batterer was arrested or convicted

- Domestic violence shelter records

- Counseling/ mental health records

- Damaged property reports

8. The Applicant is a Person of Good Moral Character

Evidence checklist (evidence must include one of these items):

- Local police clearance or state-issued background checks from each locality or state in the United States, or each foreign country, in which the self-petitioner has resided for six months or more during the three years immediately preceding the date the self-petition was filed

OR

- If police clearances are not available or too dangerous to obtain, she may include an

explanation of why they are unavailable and submit other evidence with her affidavit.

If the applicant is unable to provide the preceding evidence, the following can be used:

- Information contained the victim's affidavit attesting to her own good moral character and lack of any criminal convictions. In describing good moral character, the self-petitioner should include information about her involvement in her children's schooling, her community, or her church.

- Affidavits from responsible persons who can knowledgeably attest to her good moral character should also be submitted. (e.g. the children's teachers, ministers, community members and leaders)

9. Removal Would Result in Extreme Hardship to the Applicant or the Applicant's Child

Extreme Hardship Factors Arising From The Abuse

Evidence checklist:

- Nature and extent of physical and psychological consequences of the battering or extreme cruelty:

  - ✓ affidavit detailing the history of the violence, power, and control used by the perpetrator in the relationship and how this abuse affected the self-petitioner and her children

  - ✓ affidavits from experts, such as psychologists, social workers, battered women's advocates, or shelter personnel, about the impact of domestic violence on the victim

  - ✓ affidavits from the victim's friends and co-workers describing how the abuse affects the victim

  - ✓ affidavits from teachers or counselors about the impact of the violence on the child

- 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)

  - ✓ records of civil protection orders, custody, child support, and safe visitation orders[3]

  - ✓ police records

- ✓ victim impact statements for sentencing[4]

- ✓ documentation demonstrating the victim's attempts to seek help from the justice system

- ✓ affidavits from individuals who can document the victim's fear about seeking assistance from the courts (and/or the barriers the victim faced)

- ❑ 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; note that a self-petitioner must prove that parallel services are lacking in the home country; without this documentation, you have not proven extreme hardship.

  - ✓ records of counseling programs the victim or her children have attended and affidavits from the counselors

  - ✓ copies of medical records documenting the abuse

  - ✓ affidavits from the victim's doctors, nurses or other health care providers including her gynecologist and the children's pediatrician

  - ✓ records of services from programs run by domestic violence shelters or advocacy groups that the victim has attended or will attend

  - ✓ affidavits from battered women's advocates and shelter workers who have worked with the victim and or her children

  - ✓ affidavits and other documentation that services parallel to those she is receiving in the U.S. are lacking in her home country

- ❑ The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse, for leaving the abusive situation, for getting a divorce, for reporting the abuser to authorities because of the violence, or for actions taken to stop the abuse

  - ✓ provide documentation of the laws or lack thereof in their home countries that protect victims of domestic violence

  - ✓ detailed account of the victim's knowledge of laws, customs, and practices in their home countries that harm victims of domestic violence, divorced women or single mothers

- ✓ information on country conditions, the legal system, customs and practices in the battered immigrant's home country that would harm or make life or healing difficult for her or her children if she was forced to return. In describing this, focus on the particular region to where the abuse victim would return

- 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

  - ✓ document the abuser's travel history, contacts in the home country, and access to funds needed for travel

  - ✓ document whether the abuser escalated the violence or stalking behavior upon separation

  - ✓ in the victim's affidavit, document the abuser's level of contact with friends and family in the country to which the victim would be deported

  - ✓ information on whether there are laws in the victim's country that can protect her and if they are laws that work; mention also whether the laws are effective in the particular region of the country she will have to return to

- The likelihood that the abuser's family, friends, or others acting on behalf of him in the foreign country would physically or psychologically harm the self-petitioner and /or the self-petitioner's child[5]

  - ✓ affidavits from the victim and others about the contacts and level of influence wielded by the abuser's friends and family members in the country to which the victim would be deported

  - ✓ affidavits from the victim's family members and friends who have been threatened by the abuser or the abuser's agents

  - ✓ document the abuser's stalking behavior and manipulation of third parties to harass the victim

- If the abuser is the parent of the self-petitioner's U.S. children, evidence of such should be submitted. An abuser with parental rights could obtain a court order prohibiting the removal of a citizen child from the United States, another form of abuse and an element of extreme hardship to the self-petitioner.

Traditional Factors Of Extreme Hardship

Evidence checklist:[6]

- Age of the person, both at entry into the U.S. and at the time of application for suspension of deportation

  - ✓ For age to be a significant factor, the battered immigrant would have entered the United States at an early age or have an entire support system (socially and culturally) tied to U.S. roots. Additionally, an older immigrant might argue that it will be difficult to assimilate to a new culture (that of the home country). A battered immigrant who has resided in the United States for a long time might argue that she has adapted to U.S. culture, and that to reacclimate to another culture would present an extreme hardship, because of the domestic violence and because forced reacculturation would slow down and interfere with healing from the abuse.

- Age and number of the person's children and their ability to speak the native language and adjust to life in another country

  - ✓ affidavits from the child's teachers, clergy, and child care providers on the following:
    1) the child's ability to speak, read, or write in English or a native language
    2) the child's current adjustment to life in the United States
    3) the child's likely response to moving to a country in which the language and customs are foreign

  - ✓ an affidavit from an expert on how the child's exposure to domestic violence has harmed the child. The expert should assess the child's needs for counseling services to address harms due to abuse, and the additional harm that would arise from removing the child to a foreign country and/or separating the child from the battered immigrant parent

  - ✓ if the child is born to an interracial couple, provide information about how this factor might affect the child's adjustment to the country to which the victim might be deported

- Serious illness of the person or his or her child which necessitate medical attention not adequately available in the foreign country

  - ✓ document any serious illness of the victim or children and, if appropriate, describe how the abuse exacerbated the illness

  - ✓ describe whether similar services are available to the victim in the victim's home country, or why alternative services there are likely to be less effective, emphasize the need for coordinated services to address the illness and the abuse

- Person's inability to obtain adequate employment in the foreign country

  - ✓ address this issue if the victim would be unable to obtain employment as a result of the domestic violence, such as the victim's status as a divorcee or the abuser's status in the foreign country

- Applicant and child's length of residence in the United States

  - ✓ raise this issue when the victim was married to a United States citizen or lawful permanent resident spouse for a significant period of time and the abuser refused to obtain legal residency for the victim

- Existence of other family members who will be legally residing in the U.S.

  - ✓ list the members of the victim's family who reside in the United States

  - ✓ affidavits from family members in U.S. -- articulate in their affidavits and the victim's affidavit the role these relatives have played as emotional support, how they helped the victim escape, survive and heal from the abuse

- Irreparable harm that may arise as a result of disruption of educational opportunities

  - ✓ document potential harm from lost educational opportunities for children by obtaining affidavits from teachers; where the victim has been able to become involved in job training programs or other educational opportunities make available to her through domestic violence programs. These lost opportunities could be highlighted as will.

- Adverse psychological impact of deportation;[7]

  - ✓ affidavit from an expert regarding the adverse psychological impact deportation would cause this abused woman; emphasize the nexus between the adverse impact of deportation as a compounding factor following the abuse

- The impact of separation on both the victim and the child if the victim is removed

  - ✓ Include data on the danger to the child of living with an abuser if the victim is deported. Many abusers commit violence against their children as well as their spouses. Even if the children are not physically abused, living with an abuser is likely to traumatize the children and affect their emotional development

  - ✓ Obtain a custody order awarding child custody to the battered immigrant woman

- The extent to which deportation would interfere with court-ordered custody, visitation, and child support awards

  - ✓ Victims who are deported will lose the protection of existing court orders, including civil protection orders, custody, or child support orders. These orders can be vital to ensuring victim safety and allowing battered immigrants to live free from violence

- The extent to which the battered woman is an asset to her community in the United States

  - ✓ information regarding the victim's involvement in a local religious community, the child□s school, or other community service programs

  - ✓ Letters from friends, neighbors, employers, and fellow church members attesting to the applicant's strong qualities and contributions to her community.

  - ✓ Documentation establishing any special medical needs of the self-petitioner or her children.

  - ✓ Documentation of Awards or Certificates issued as special recognition by her or her children's school, church, or community organization.

  - ✓ Letters showing her or her child's involvement is social, civic, or sports activity.

- Any acknowledgment, especially of a child's personal involvement and contribution, is important and tends to establish the unique ways in which a child has established his own bonds to a community. The child's particular bonding to a community or society may go a long way in explaining why he should not be expected to join his mother in her home country, were she to be removed because removal of the child form his community would cause extreme hardship associated with self-esteem and developmental issues tied to the loss of everything they have worked hard to create for themselves. Additionally discuss the hardship that would be suffered by the child if the mother is removed and the child is required to stay behind in the care of the abusive father, in foster care, or in a placement that cannot fully protect the child from the abuser. This type of extreme hardship evidence should be provided because it will help the INS adjudicator or immigration judge determine that the self-petitioner is a worthy candidate for the favorable exercise of his/her discretion.

Self-Petitioning Child of a U.S. Citizen or Lawful Permanent Resident

A self-petitioning child must be under 21 years of age and unmarried. The child applicant should submit as much documentary evidence in support of each required element of proof as possible.[8] Evidence regarding the child's special bond with his or her non-abusive parent is critical to show that the child petitioner would suffer extreme hardship and psychological trauma if that parent/child bond is severed because he or she must return to his or her home country.

Even if a self-petitioning child's mother filed her own self-petition, the child's application should duplicate any helpful information from the parent's case and vice versa. In addition to the evidence suggested for all self-petitioners, a child petitioner should present the following documents if available:

- The child's birth certificate or other document demonstrating that the child is under 21 years old, and listing the parents' names

- The parents' marriage certificate, or other evidence of the marriage such as affidavits, pictures, or other documents

- Depending on the child's relationship to the abuser the petitioner must present:

  - ✓ Evidence of the parents' termination of previous marriages, such as a divorce decree, an annulment decree, a death certificate, or affidavits

  - ✓ Legitimation such as a legal acknowledgment, or other affidavit

  - ✓ An adoption decree or affidavit of adoption, and evidence of the child's residence with the abuser

  - ✓ Evidence of the parent-child relationship, such as pictures of the parent and child together, letters between them, or affidavits by persons who knew the family

  - ✓ For stepchildren, the petition submitted by a stepchild should include: the stepchild's birth certificate, the marriage certificate of the child's parent and stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any.

Chapter Review

Evidence may be presented in a personal affidavit attesting to the facts surrounding the case. The prima facie test is met when the applicant submits, at a minimum, a statement of facts that, if supported, would result in the petition being granted. The INS is required to consider any credible evidence relevant to the petition.

κ **REQUIRED ELEMENTS AND METHODS OF PROOF INCLUDE:**

T applicant is the legal spouse of a U.S. citizen or resident and the marriage was entered into in good faith

T applicant's spouse is a U.S. citizen or resident

T applicant is eligible for immigrant classification under the INA, based on her marriage to a U.S. citizen or resident

T applicant is currently residing in the United States

T applicant has resided with the U.S. citizen or resident spouse in the United States

T applicant was battered or subjected to extreme cruelty during the marriage

- T applicant is a person of good moral character

- T removal would result in extreme hardship to the applicant or the applicant's child

κ **SPECIAL TIP FOR ADVOCATES AND ATTORNEYS REPRESENTING SELF-PETITIONING CHILDREN:**

- T submit evidence regarding the child's special bond with his or her non-abusive parent to show the child petitioner would suffer extreme hardship and psychological trauma if that parent-child bond is severed because s/he must return to his or her country of origin.

COMMON QUESTIONS & ANSWERS

Should a self-petition include information about the entire history or abuse?

Yes. Include information documenting the entire history of abuse. Incidents of abuse which occurred prior to marriage may help establish a pattern of abuse and increase a battered immigrant's credibility.

Such abuse may also establish the perpetrator's control over the victim. Without information about these earlier incidents, the INS may not comprehend the dynamics of abuse, power, and control in the relationship.

How can a battered immigrant prove the citizenship or lawful permanent residency of a spouse without copies of the spouse's birth certificate, passport, or green card?

If the spouse is a United States naturalized citizen or lawful permanent resident, or if the spouse filed and withdrew an I-130, the INS can search its own files for evidence of the spouse's immigration status after the self-petition has been filed.[9] If the spouse is a United States citizen, citizenship can also be proven by producing copies of documents the spouse signed stating where he was born, such as birth certificates of children, marriage certificates, or certain court documents. Baptismal certificates or affidavits from persons who have known the spouse since birth may also be used.

ENDNOTES

1. 8 U.S.C. э 1154(a)(1)(H) (1999).

2. The self-petition adjudicators come from the INS Vermont Service Center, and are not to be confused with the examiners from the local INS offices. Self-petition adjudicators are responsible for deciding every self-petition filed. They have begun to notice patterns of boiler-plate language and formatted scripts that they report as depersonalizing the victims' experiences. Use of such boiler-plate language will undermine the credibility of the petition and may

lead to a denial.

3.A protection order that awards custody, safe visitation, and child support, can help the victim prove extreme hardship, because deportation will deprive the victim of the protection provided by the court order.

4.Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim's life and the victim's opinion about the sentence.

5. 8 C.F.R. ə 204.2 (1998); Memorandum from Alexander Alienikoff, Executive Assoc. Comm'r, Office of Programs 8-9 (Apr. 16, 1996).

6. See, Chapter Eight, Cancellation of Removal for a more detailed discussion.

7. *See supra* note 5.

8. Only step-children need address the good faith marriage requirement.

9. 8 C.F.R. ə 204.1(g)(3) (1998).

Chapter Seven
OBTAINING LAWFUL PERMANENT RESIDENCY UNDER VAWA

September 8, 2000

KEY LEARNING CONCPETS FOR CHAPTER SEVEN:

- Eligibility for Adjustment of Status
- Grounds for Inadmissibility
  - ✓ Health
  - ✓ Criminal record
  - ✓ Public charge
  - ✓ Misrepresentation
  - ✓ Illegal entry

LILI'S STORY

Lili filed her self-petition and was just notified that her self-petition was approved by the INS. She now wants to obtain lawful permanent residency so that she may permanently live, work and raise her family in the United States. Lili does not know whether she can adjust her status in the United States or whether she must travel abroad and go through consular processing. Lili does not want to leave the United States because she is afraid that her husband will follow her to China. She is also afraid of leaving her children in the U.S., but she cannot afford to take them with her to China.

Now that Lili's self-petition has been approved, her journey through the INS process is not over. She must now file papers to become a lawful permanent resident. There are two ways to apply for lawful permanent residency once the VAWA self-petition is approved by the INS: **Adjustment of Status** and **Consular Processing**.

Adjustment of status is a process used by immigrants who are presently in the United States and who qualify to obtain their green cards while in the United States. Applicants who do not qualify for adjustment are required to apply for their immigrant visas abroad at a United States consulate, through consular processing.

ADJUSTMENT OF STATUS

Eligibility for Adjustment of Status

Not all approved self-petitioners are eligible to file an adjustment of status application as soon as their self-petitions are approved. Eligibility depends on:

- whether an immigrant visa is immediately available (a person who is married to or the child of a U.S. citizen has an immigrant visa immediately avaliable)

- whether the immigrant was inspected and admitted, or paroled into the U.S.

- whether they stayed in the U.S. when their visas expired or worked without INS permission

- whether they had some kind of application filed before January 1, 1998

Self-petitioners who are married to (or the children of) lawful permanent residents are subject to the visa quota system. The visa quota system limits the amount of visas available to relatives of lawful permanent residents and U.S. citizens. Immigrants subject to the visa quota system must wait for a visa to become available before they can become lawful permanent residents. This process can take up to six years and is dependant upon the immigrant's country of origin, visa preference category, and priority date (the date INS received their petition). **Self-petitioners who are married to (or the children of) U.S. citizens are considered "immediate relatives" and are not subject to the visa quota system.** They are immediately eligible for immigrant visas and may file an adjustment application if otherwise eligible as soon as their self-petitions are approved.

Self-petitioners may encounter an even more devastating problem than having to wait a few years in the U.S. for a visa to become available. Immigrants who did not initially qualify to adjust their status in the U.S., because they entered the United States without inspection (without INS permission) or who entered lawfully but violated the terms of their visa were previously authorized to stay in the U.S. to adjust their status by paying a penalty fee of $1,000.[1] This provision expired on January 14, 1998. Many immigrants who file their self-petitions **after January 14, 1998** and who do not qualify for adjustment of status must leave the U.S. and return to their countries of origin in order to obtain their green cards through consular processing. Battered immigrants who are not immediately eligible for adjustment and who filed self-petitions **before January 14, 1998** are permitted to remain in the U.S. during the period they are waiting for a visa to become available. In most cases, a self-petitioner with an approved petition will not be forced to leave the United States but, under current statutes, time spent in the United States, in an other than legal status, may lead to additional problems for those who may be required to leave the country to obtain their lawful permanent residency.

Congressional legislation is currently pending that will enable all self-petitioners to remain in the U.S. to adjust their status -- without regard to the date they filed their self-petitions. This is important legislation because it will prevent battered immigrants who are required to leave the U.S. from facing numerous hardships. When battered immigrants are forced to leave the U.S. they may have to leave their children behind and be separated from them for an indeterminate amount of time. Often, these women are the sole caretakers of their children and have been granted custody of their children by a court concerned about the effect the domestic violence has had on the children. Battered immigrants who have to leave the U.S. for several

months or more to obtain permanent residency may be fearful about their own safety and their children's safety. (See Chapter 1, Overview of Domestic Violence and Its Impact on Battered Immigrants) This fear may cause many battered immigrants to remain in abusive relationships. In addition, when forced to leave the U.S., battered immigrants are deprived of the protection provided by U.S. legislation, protection orders, custody decrees, and law enforcement.

It is important to remember that self-petitioners who are married to (or the children of) U.S. citizens are considered "immediate relatives" under the Immigration and Naturalization Act and are not required to leave the U.S. if they otherwise qualify for adjustment of status.

Procedure for Applying for Adjustment of Status

Once a self-petitioner qualifies for adjustment she must file the application for adjustment to lawful permanent resident status (INS Form I-485; see sample in Appendix) along with a $220 filing fee at the local INS District Office that has jurisdiction over the applicant's place of residence. After the application is filed, the INS will schedule a personal interview for the applicant before an INS examiner.

The purpose of the interview is for the INS examiner to determine if the applicant is admissible. A subsequent section of this chapter will discuss grounds for inadmissibility. To determine admissibility, the examiner will review the application for adjustment of status and discuss with the applicant any issues raised by the required medical exam, FBI fingerprint review, or grounds of inadmissibility that may apply, such as fraud or misrepresentation. The interview provides the applicant with an opportunity to update the application, correct any minor errors it may contain, and answer any questions about her inadmissibility.

If the application for adjustment of status is approved, the INS will mail a green card to the applicant. If the application is denied, the applicant may be placed in removal proceedings before an immigration judge. The applicant may be eligible to apply for adjustment of status again before an immigration judge. It is important to contact an immigration attorney before the adjustment interview to identify potential problems. It may not be a good idea to wait to consult an expert until your client is in proceedings.

CONSULAR PROCESSING

Immigrants who do not qualify for adjustment of status in the U.S. must apply for their immigrant visas abroad at a U.S. consulate. This procedure is known as consular processing. Consular processing is the only method of obtaining a green card available to immigrants who are outside of the U.S. and is the final stage in obtaining lawful permanent resident status. As with the adjustment of status process, immigrants going through consular processing are required to attend a visa interview, which is conducted by a consular officer.

Battered immigrants should be fully prepared for their visa interviews by having all the necessary documents prepared in advance in order to prevent the need for a second interview. If

a second interview is required, the resulting delay could increase the danger to the battered immigrant and her children. They are not allowed to re-enter the U.S. between interviews and therefore are likely to spend at least six months abroad waiting to process. Battered immigrants often face violence from their abusers or their abuser's family members when they are forced to travel to a foreign country without laws protecting them from abuse. (See Chapter 1, Overview of Domestic Violence and Its Impact on Battered Immigrants) Once the consular official grants the immigrant visa the immigrant has six months from the date of the visa issuance to present the visa to an INS inspector to gain formal admission into the U.S.

If the immigrant visa is denied by the consular official, the applicant has few recourses. An applicant who does not provide complete documentation may face long delays in further processing or may be denied a visa. Unlike the administrative or judicial review available in the United States, consular officers have broader discretion and their decisions are only subject to limited review for errors on questions of law.

INADMISSIBILITY

Immigrants, including those who are victims of domestic violence, may be inadmissible and ineligible to obtain lawful permanent resident status based on the following grounds:[2]

- Health-related grounds[3]
- Criminal and related grounds[4] (See Chapter 6, Proving a Case)
- Security and related grounds, including communist party membership[5]
- Public charge grounds[6]
- Persons who have failed to obtain labor certifications[7]
- Illegal entrants and immigration violators[8]
- Documentary grounds[9]
- Ineligible for citizenship[10]
- Aliens previously removed[11]
- Miscellaneous grounds.[12]

Who Determines Inadmissibility?

During visa interviews, INS examiners (or consular officers at U.S. Embassies) determine whether an applicant is inadmissible. INS inspectors and border patrol agents evaluate

inadmissibility at airports, border crossings, or other port of entries; they can override a consular officer's prior determination that an immigrant was admissible. This poses additional dangers for battered immigrant VAWA self-petitioners who must obtain their immigrant visas abroad.

When is Inadmissibility Determined?

Although a battered immigrant's "inadmissibility" is not examined until the adjustment or visa interview, this issue should be addressed at an early stage. Battered immigrants may have committed disqualifying criminal acts, entered the country with fake documents, or misrepresented facts in order to obtain a visa. Immigration attorneys working with battered immigrants should resolve any questions of inadmissibility as early as possible prior to filing the self-petition and the adjustment of status application.[13] Battered immigrants may be able to obtain waivers for many of the grounds of inadmissibility. Contact an immigration expert if there is any chance that your client may be found inadmissible.

Effect of Recent Legislation

The Illegal Immigration and Reform and Immigrant Responsibility Act of 1996[14] (IIRAIRA) established new grounds of inadmissibility that dramatically affect immigrants intending to obtain lawful status in the U.S.

- **Immigrants who remain in the U.S. without INS permission for certain period of time and then voluntarily depart the U.S.** are inadmissible. Depending on the length of the immigrant's unlawful presence in the U.S., she may be barred from re-entering the U.S. or gaining lawful permanent residency for three or ten years. Two classes of battered immigrants with approved self-petitions are exempt from this ground of inadmissibility: (1) battered immigrants who entered the U.S. before April 1, 1997 and (2) battered immigrants who entered the U.S. after April 1, 1997. Battered immigrants who enter after April 1, 1997 must demonstrate that there was a substantial connection between the battery and extreme cruelty and their unlawful presence in the U.S. to qualify for the exemption. There exists no such requirement for those battered immigrants with approved self-petitions who entered before April 1, 1997.

- **Immigrants who have been in the U.S. unlawfully for more than one year who then voluntarily depart, or immigrants who have been ordered deported, and attempt to or successfully reenter the U.S. unlawfully** (without INS permission) are inadmissible. Immigrants who fall under this category may apply for a discretionary waiver of this ground only after they have lived abroad for ten years following their last departure from the U.S. Unlike the previous ground of inadmissibility, battered immigrants are not exempt from this provision. **It is important to counsel your client not to leave the U.S. because this is what triggers the bars.**

Grounds for Inadmissibility

Immigrants may be inadmissible on many grounds, as was mentioned earlier in this chapter. This section will highlight the grounds most likely to affect battered immigrants when they seek lawful permanent resident status: public charge grounds, misrepresentation grounds, and health-related grounds.

Public Charge Grounds - Immigrants, including battered immigrants, are ineligible to be admitted into the United States if they are likely to become public charges.[15] Generally, individuals receiving public assistance run the risk of being considered public charges depending on the kind of assistance they received. Determining whether an immigrant is likely to become a public charge is a prospective decision. The issue is not whether an immigrant has relied on public benefits in the past, but whether the immigrant is likely to become a public charge in the future.[16]

An immigrant who is applying for adjustment based on an approved family-based visa petition must file an affidavit of support from the immigrant's sponsor. Sponsors must agree to provide sufficient support to maintain the immigrant at an annual income level of not less than 125 percent of the federal poverty guidelines. Sponsors are contractually obligated to provide for the support of the immigrant until they become naturalized United States citizens or have earned 40 quarters of employment under the social security act.

These requirements may be impossible to meet for battered immigrants whose sponsors are their abusers. Abusers may refuse to file affidavits of support, or may use the requirement as another tool of control. Battered immigrants who qualify may wish to file for adjustment based on an approved VAWA self-petition instead.

Self-petitioners are exempt from the requirement of providing an affidavit of support. They must, however, demonstrate that they are not likely to become public charges. They should show that they are employed and are not receiving public benefits during the adjustment interview.

IIRAIRA created access to public benefits for VAWA applicants. Battered immigrants should use this economic safety net if needed, but for as short a duration as possible. Advocates and attorneys working with battered immigrants should help them obtain work authorization after their self-petitions have been approved. Temporary reliance on public benefits should not result in a determination that a battered immigrant is likely to become a public charge, particularly when the battered immigrant has obtained work authorization and employment by the date of the adjustment interview.

Misrepresentation Grounds - False representations have an impact on battered immigrants when they are being interviewed for adjustment of status, consular processing, or admission at a port of entry.[17] Misrepresentations can bar otherwise qualified battered

immigrants from becoming lawful permanent residents and can lead to removal from the United States.

Battered immigrants are inadmissible if they have sought to procure a visa, admission to the United States, or another benefit under the immigration laws, by fraud or willful misrepresentation unless they can secure a waiver.[18] Battered immigrants are also inadmissible if they falsely represent themselves as United States citizens.[19] No waiver of this form of misrepresentation is available.

Battered immigrants should be aware that adjustment and immigrant visa applications contain questions that will be asked or reviewed by the INS examiner (or consular officer) at the interview, such as how they entered the U.S. and where they work. Absent problems in the immigrant's records, the officer is unlikely to linger on the misrepresentation question. It is important that advocates and immigration attorneys discuss with battered immigrants the existence of prior misrepresentations or facts or circumstances that may lead to misrepresentations being made at the time of an adjustment or visa interview.

Lili's Story – False Claims of Citizenship Made to Obtain Employment

Lili has no money to support herself and her children, so she decides to find a job. She finds work at a local restaurant in their kitchen. The employer asks her if she is authorized to work. Lili says yes and the employer gives her an I-9 form to sign. Lili is unaware of the immigration consequences.

IIRAIRA created a new inadmissibility ground barring immigrants from adjustment of status if they falsely claim United States citizenship. False claims most commonly occur when an immigrant seeking employment signs an I-9 form and checks the box indicating that they are U.S. citizens when they are not. Immigrants who falsely signed such forms prior to September 30, 1996 are not subject to inadmissibility. Immigrants who falsely signed such forms after September 30, 1996 are inadmissible.

Battered immigrants who work without employment authorization should be warned not to sign any forms or make any statements falsely claiming citizenship. They should also be cautioned not to buy, purchase, or use false documents to obtain employment. Such actions could result in VAWA self-petitioners being barred from lawful permanent residency. Misrepresentations can also affect an immigrant's eligibility for naturalization in the future.

What Constitutes a Misrepresentation

Immigration attorneys can best advise clients as to whether a particular act will be interpreted as "fraud." The concept of "fraud" in the immigration context requires an analysis of:

(1) was there a misrepresentation;
(2) if so, was it a willful misrepresentation; and

(3) was it a misrepresentation of a material fact?

It is important to understand the context of when, where, and to whom such a statement was made and whether it was made under oath or not. Therefore, battered immigrants should fully disclose to their attorneys their history of past contact with INS or border patrol agents. Clients should also provide their immigration attorneys information about any false information they may have provided to obtain employment including, use of false documents and signing forms in which they stated (by checking the applicable box) that they were eligible to work. The immigration attorney must evaluate this information to determine whether the actions taken constitute fraud under immigration laws and advise the client how to proceed.

In some cases an attorney may be obligated to advise the client to withdraw the application for adjustment or visa to avoid a finding of inadmissibility. First, however, attorneys can explore the possibility of obtaining a waiver for this ground of inadmissibility.

Waiver for Misrepresentation

A waiver for misrepresentation of material facts may be available for some battered immigrants.[20] They must be married to -- or the son or daughter of -- a United States citizen or lawful permanent resident. INS or the State Department must determine that the refusal to admit the immigrant would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the immigrant.

In VAWA self-petitioning cases, a battered immigrant would have to show that denial of the waiver would cause extreme hardship to the abuser or to the self-petitioner's U.S. citizen or lawful permanent resident parent. This is likely to be a difficult standard to meet.

Since such waivers are not likely to be available for all battered immigrants, battered immigrants should be advised by advocates and attorneys to avoid making any misrepresentations. Where misrepresentations have been made the best strategy will be to demonstrate that the statement was not a misrepresentation or that the misrepresentation does not meet the definition of fraud under INA section 212(a)(6)(C). Battered immigrants should be immediately referred to immigration attorneys if it appears that they may have made misrepresentations that could result in inadmissibility. Waivers are not available to anyone who is found to have made a false claim to United States citizenship.

Health-Related Grounds - Immigrants who have communicable diseases of public health significance are ineligible to be admitted to the United States.[21] Immigrants are also inadmissible if they have failed to prove that they received vaccinations for certain diseases.[22]

Immigrants with physical or mental disorders,[23] or substance abuse problems, may also be inadmissible.[24] Such persons should be referred to immigration attorneys immediately, before any papers are filed with INS.

COMMON QUESTIONS & ANSWERS

I have been a lawful permanent resident for 10 years and I am about to travel abroad for the first time in years, should I be worried about being able to get back in?

No. Ordinarily, lawful permanent residents are permitted re-entry provided that they have not been out of the country for 12 consecutive months and have not abandoned their U.S. residence. However, as an immigrant, a lawful permanent resident who has been outside the U.S. for more than 180 days or who fits other categories listed in INA section 101(a)(13)(c) must still show that he or she is admissible at the time of each re-entry. Usually, showing your "green card" will be all that you need to do. If you have no criminal record re-entry should pose no problem. However, if there is any issue regarding your absence or right to re-enter you may be allowed to enter, or may request entry, under parole status for purposes of a secondary inspection to allow INS to further investigate the matter, conduct a second interview, and then determine the issue of admissibility. Generally, entry under parole status is temporary and does not constitute an official "admission" or otherwise convey lawful immigration status.

I obtained my lawful permanent residency through VAWA but now I want to bring my children here. Do I have to file a petition for them?

Yes. You do not need to file a "relative petition" but you can commence a process called "following to join" by filing an I-824 petition with the INS office which adjusted your status. They will cable the U.S. consulate where your children are residing to verify that you received your lawful permanent residency through adjustment. You would then need to contact the consulate, informing them that they will be receiving verification of your adjustment from the INS and that your children will be applying for visas as "following to join." The consulate will inform you as to what procedures must be followed for your children to obtain their visas.

I am a battered immigrant woman but my abuser is not a U.S. citizen or lawful permanent resident. I was previously ordered deported by an Immigration Judge but never left the U.S., can I adjust my status to that of a lawful permanent resident?

Maybe. If you come from Nicaragua or Cuba and have been in the U.S. continuously since December 1, 1995, then under the special adjustment provisions of the Nicaraguan and Central American Relief Act (NACARA) you do not need to file a family-based petition or otherwise show that you have a sponsor. Under the NACARA amendments you can file an application for adjustment directly with the INS and may still qualify even if you were previously ordered deported and never left. Your attorney may have to file a motion to stay the earlier Order of Deportation with the immigration court, but INS will adjudicate your application.

I have filed an adjustment application for myself and one for my child. My child, however, will turn 21 years old before her appointment for an adjustment interview. Will my child still be able to adjust her status to lawful permanent residence even though she turned 21 years old?

No. It is important for attorneys to keep careful track of the ages of battered immigrants' children. If a child turns 21 before the adjustment interview the child cannot be processed for adjustment of status. In this event the parent will have to legalize her status and thereafter file a family-based petition for her unmarried son or daughter over the age of 21. This will create even longer waiting period for the child because that child will have to again wait in line to obtain a visa. Children who find themselves facing this situation should, if otherwise qualified, file their own self-petitions. This is the best choice when the child is eligible.

Attorneys working on VAWA cases in which the self-petitioner has older children should consult with an immigration expert listed in the appendix of this manual to discuss strategies for handling the VAWA case that might be most beneficial for the children.

CHAPTER SUMMARY

Once the INS has approved the VAWA self-petition, the self-petitioner can apply for lawful permanent residency either through adjustment of status or consular processing. A self-petitioner who applies for adjustment must file the application (Form I-485) and eventually interview with an INS examiner. The interview determines if the applicant is admissible. Immigrants not qualifying for adjustment must apply for their visa at a U.S. consulate abroad, again attending a visa interview with a consular officer.

κ **ELIGIBILITY FOR ADJUSTMENT OF STATUS DEPENDS ON:**

- T whether an immigrant visa is immediately available (a person who is married to or the child of a U.S. citizen has an immigrant visa immediately available);
- T whether the immigrant was inspected and admitted, or paroled into the United States;
- T whether the immigrant stayed in the United States when his/her visa expired or worked without INS permission;
- T whether the immigrant had some kind of application filed before January 1, 1998 (prior to this date, immigrants who did not initially qualify to adjust their status in the United States because they entered without permission or who entered lawfully but violated the terms of their visa were authorized to stay in the United States and adjust their status by paying a $1000 penalty fee).

κ **INELIGIBILITY FOR LAWFUL PERMANENT RESIDENCY IS BASED ON:**

- T health-related grounds;
- T criminal grounds;

- T security reasons, including membership in the communist party;
- T public charge grounds;
- T failure to obtain labor certification or false claims of citizenship made to obtain employment;
- T illegal entry and immigration violations;
- T documentary grounds;
- T ineligibility for citizenship;
- T previous removal.

ENDNOTES

1.INA Sec. э 245(i).

2. See, INA э 212(a) "Classes of Aliens Ineligible for Visas or Admission" for a complete listing of the grounds of inadmissability. (Note: inadmissibility means the same thing a excludability)

3. INA э 212(a)(1).

4. INA э 212(a)(2).

5. INA э 212(a)(3) also contains exclusion for Nazis, Terrorists, and those who have participated in Genocide.

6.INA э 212(a)(4).

7.INA э 212(a)(5). Labor certifications comprises three categories of employment based visas as follows: a) Priority Workers, b) Skilled Workers, and c) Unskilled workers. Generally, any immigrant who seeks to enter the U.S. for the purpose of performing skilled or unskilled labor is inadmissible unless the Secretary of Labor has determined that there is a shortage of labor and whether it adversely affects U.S. workers.

8.INA э 212(a)(6).

9. INA э 212(a)(7). This section deals with the requirement that immigrants be in possession of a valid passport, visa, and other documents when they enter the United States and seek admission after their visa interview at the U.S. consulate.

10. INA э 212(a)(8). Certain draft evaders are permanently ineligible for citizenship are inadmissible.

11. INA э 212(a)(9).

12. INA э 212(a)(10). Applies to practicing polygamists, any immigrant who has illegally voted in the United States, and former citizens who have renounced U.S. citizenship to avoid taxation.

13. If that is not possible, as in those instances where the self-petition must be filed before the abuser obtains a

divorce from the self-petitioner then the immigration attorney should use the interval, while waiting for the self-petition to be approved, to properly assess any issues of admissibility.

14.Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

15.INA э 212 (a) (4) (A).

16.INA э 212(a)(4)(A).

17.INA э 212(a)(6)(C) covers two separate but related grounds of inadmissibility for immigrants making, or who have in the past, made false claims. These grounds should not be confused with the criminal grounds for removal under INA э 237(a)(3) or the civil penalties for document fraud under INA э 274C which should be reviewed separately.

18.INA э 212(a)(6)(C)(i).

19.INA э 212(a)(6)(C)(ii).

20.INA э 212(i). A false claim to United States citizenship makes an immigrant excludable, and there is no waiver available for this ground.

21.These diseases include: chancroid, granuloma inguinale, gonorrhea, syphilis, human immunodeficiency virus (HIV) infection, leprosy (infectious), lymphogranuloma venereum, and tuberculosis (active). 42 C.F.R. Part 34, et. seq.

22.These include mumps, measles, rubella, polio, tetanus, diphtheria toxoid, pertussis, influenza type B, and hepatitis B. INA э 212(a)(1)(ii).

23.INA э 212(a)(1)(iii).

24.INA э 212(a)(1)(iv).

Chapter Eight CANCELLATION OF REMOVAL

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER EIGHT:

- Eligibility for Cancellation of Removal
- Difference Between Cancellation of Removal and Self-Petitioning
- Continuous Physical Presence in U.S.

LILI'S STORY

Lili took a job at a local fast food restaurant to support her and her children. One day, the INS conducted a work site raid, and Lili was arrested, but not detained. Months later, Lili was served with a Notice to Appear at an Immigration Court Hearing. It charged her with being removable from the United States on the grounds that she entered without inspection, and engaged in unauthorized employment. The charging document set a court date for Lili to appear before an immigration judge in the next thirty days. Lili was working without legal authorization from INS, but needed to work to feed her children. Lili wants to know what she can do to avoid deportation. Can she apply for cancellation of removal relief under VAWA?

By working without authorization, Lili has violated immigration law, even though she may not have meant to break any laws. People like Lili who violate immigration law, and especially those who violate criminal statutes, may face removal proceedings in immigration court. Lili has been placed in removal proceedings (formerly called deportation proceedings). Removal proceedings are generally initiated when the INS investigates or detains an immigrant. It can also occur through routine contact with the INS, for example, if an immigrant files an application for immigration benefits. When the INS denies a petition or an application for benefits, the applicant may be placed in removal proceedings in immigration court. Battered immigrants may face removal proceedings if they are arrested at work or reported anonymously to INS, which is just what happened to Lili. Luckily, Lili has not been detained, but nevertheless, she must face a hearing in front of an INS judge.

Immigrants are entitled to due process and may not be summarily removed from the United States unless they have old deportation orders or are stopped at the border or port of entry and lack appropriate documents.[1] The INS must formally charge immigrants with violations of immigration law through an Order to Show Cause or a Notice to Appear at removal proceedings. In these civil proceedings, the INS is the petitioner and the immigrant is the respondent. While there is no right to appointed counsel in these proceedings because they are considered civil in nature, lawyers can help those unable to afford legal representation by taking these cases on a pro bono basis.

Cancellation of removal is a discretionary form of relief available to an immigrant who has been placed in proceedings. If cancellation is granted, the applicant receives lawful permanent resident status. To qualify for cancellation, an applicant must show that he or she is statutorily eligible for cancellation and merits the favorable exercise of discretion by the immigration judge. Some battered immigrants may qualify for cancellation even if they do not qualify for self-petitioning or other relief.

Some immigrants may qualify for cancellation even though they are not eligible to file a self-petition or other form of relief directly with the INS. A battered immigrant should consult with an immigration attorney to ensure that all avenues have been adequately explored. The attorney assisting a battered immigrant with a cancellation case should consult VAWA immigration experts for technical assistance in preparing VAWA cancellation of removal cases. See contact information in the Preface of this manual.

LEGISLATIVE HISTORY OF CANCELLATION OF REMOVAL

Suspension of deportation has existed as a remedy against the harsh effects of deportation since 1940. Since then, suspension of deportation (now called **cancellation of removal**) has been the last hope of many immigrants for attaining lawful permanent resident status.

The impact of deportation has always been most severe on those who have established deep roots in the United States. Suspension of deportation law recognized that immigrants deserved a chance to demonstrate that deportation would cause hardship to them and/or family members. Suspension of deportation was only available to immigrants who were charged and found to be deportable.

VAWA SUSPENSION PROVISIONS

In 1994, a suspension provision for battered immigrants was enacted as part of VAWA.[2] VAWA aimed to grant access to suspension of deportation to battered immigrants who were entitled to obtain lawful permanent residence status through family-based petitions, but were being denied access by their U.S. Citizen or Lawful Permanent Resident abusers. VAWA significantly expanded pre-existing suspension of deportation law by creating a separate category of suspension for battered immigrants, abused immigrant children, and immigrant parents of certain abused children. Eligibility for VAWA's suspension[3] provisions required the following:

- The applicant had been battered or subjected to extreme cruelty in the United States by a spouse or parent who was a United States Citizen or Lawful Permanent Resident; or

- The applicant's child had been battered or subjected to extreme cruelty in the United States by the child's United States Citizen or Lawful Permanent Resident parent (even if the abusive parent was not married to the applicant)

- The applicant had been physically present in the United States for three years prior to the date

of the application[4]

- The applicant had been a person of good moral character during this three-year period
- The applicant was deportable by law
- The applicant's deportation would result in extreme hardship to the applicant, the applicant's child, or the applicant's parent

NEW CANCELLATION OF REMOVAL PROVISIONS

With the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[5] (IIRAIRA), Congress made fundamental changes to immigration law. For example, suspension of deportation was renamed cancellation of removal. Also, these provisions were renumbered Section 240A, and the provisions for battered spouses and children became subsection 240A(b)(2). These recent amendments retained access to cancellation of removal for battered immigrants.[6]

IIRAIRA combined two former procedures used to remove immigrants from the United States -- deportation and exclusion -- together creating a new process called removal. IIRAIRA also made it more difficult for certain battered immigrants to convince an immigration judge to grant suspension of deportation.[7] Under IIRAIRA, those who have been convicted of a crime meeting the immigration law definition of an aggravated felony charge, which IIRAIRA expanded, are statutorily barred from cancellation.[8] The immigration law definition of "conviction" and "aggravated felony" are much broader than most state law definitions. **Battered immigrants who have been involved with the criminal justice system should be referred to an immigration attorney with expertise in criminal alien law immediately. Failure to do so could result in losing all access to VAWA and ultimately to removal of the battered immigrant from the United States.**

Eligibility for VAWA Cancellation of Removal

After a battered immigrant is placed in removal proceedings, an application for VAWA cancellation of removal can be filed. Immigrants should not attempt to appear at removal proceedings without attorneys.[9] Although immigration judges are required to advise immigrants of their right to counsel, courts may proceed if immigrants are willing go forward. Immigrants may decide to go forward because they believe they cannot afford to hire attorneys and may not know they may be able to obtain counsel for free or reduced cost. Immigrants will most likely be unable to effectively raise VAWA claims without legal representation. Immigrants should ask the immigration judge for a continuance to obtain counsel, as these requests are routinely granted.

Who Can File for VAWA Cancellation of Removal?

The following persons may file applications for cancellation of removal:[10]

- abused spouses or former spouses of U.S. citizens or lawful permanent residents[11]
- abused children or former stepchildren of USC or LPR parents
- parents of children who are abused by the children's other parent, who is a USC or LPR[12] (whether or not the immigrant parent is married to the child's USC/LPR parent)

No one should attempt to file for cancellation of removal without the assistance of an immigration attorney or authorized representative.[13]

Elements of Proof for Cancellation of Removal Cases

Battered immigrants and parents of abused children listed above are eligible to apply for cancellation of removal if they meet the following criteria:

- They have accrued three years of continuous residence or physical presence in the United States before being placed in proceedings or are issued a notice to appear
- They have been subjected to battering or extreme cruelty while in the U.S. by their U.S. citizen or lawful permanent resident spouse, or parent[14]
- They are persons of good moral character
- If they are adults, they or their children would suffer extreme hardship if removed (deported); if they are children, they or their parent would suffer extreme hardship if removed
- They are currently removable (undocumented or out of status)

Continuous Physical Presence Requirement

VAWA cancellation of removal cases require that battered immigrants be physically present in the United States for three years. Brief absences from the United States will not prevent battered immigrants from meeting the three-year continuous physical presence requirement of VAWA. IIRAIRA specifically defined disqualifying absence as a single absence of more than 90 days, or any absences totaling 180 days during the requisite three year period.[15]

IIRAIRA also changed the way time is counted. Under IIRAIRA, time that is accrued after an immigrant is served with a notice to appear cannot count towards this three-year

requirement. However, VAWA 2000 exempted battered immigrants from this provision of the IIRAIRA.

Battery or Extreme Cruelty[16]

Applicants, through their briefs submitted to the court, should explain domestic violence dynamics to immigration judges. The appendix to this manual provides practitioners with a tool to do just that. This simple document, which explains the dynamics of domestic violence, can be included as "evidence" along with other forms of evidence presented or can be used as argument of counsel. Using this tool will assure that the record contains a simple overview of domestic violence which can be cross-referenced in actual case presentations in order to explain some of the dynamics which might otherwise seem counterintuitive to the judge -- like why the abused person is better off in the U.S. and not safer in the home country.

In addition, VAWA self-petitioning regulations can serve as a guide in proving extreme cruelty, even though they are not binding in cancellation cases. In VAWA cancellation cases, immigration judges typically will defer to the INS self-petitioning regulations for guidance on the issues of battery or extreme cruelty and other factual issues.

Good Moral Character[17]

Cancellation applicants are not subject to the same good moral character proof requirements as VAWA self-petitioners. In practice this means that they may not have to provide police clearance letters. However, statutory bars to entering a finding of good moral character apply, and immigration judges may go beyond the general three year period when reviewing questionable conduct.

Extreme Hardship[18]

In cancellation cases, battered immigrants must demonstrate that their removal would cause extreme hardship to themselves or their children. Because cancellation of removal proceedings are evidentiary hearings, immigration judges must weigh the extreme hardship factors claimed by the immigrant against the arguments INS makes seeking the battered immigrant's removal. Cancellation applicants should therefore present as much evidence as possible, on both the VAWA extreme hardship factors and traditional factors.

How a battered immigrant will be treated in her home country if she is forced to return is important evidence of extreme hardship. The fact that laws and services that protect battered immigrants do not exist or are not enforced in the home country should be presented in any removal case involving a battered immigrant whether in a VWA case, a gender-based asylum case, or a suspension of deportation case under the Nicaraguan & Central American Relief Act. It is important to present all available country condition information even if the evidence when taken alone may not be sufficient to sustain a gender-based asylum case.

The "extreme hardship" standard that must be met by the battered immigrant is not as high as that required by other cancellation applicants. Other applicants must meet the standard of "exceptional and extremely unusual hardship." Both of these standards, however, are subjective in nature.

COMMON QUESTIONS & ANSWERS

My client has been detained and I would like to help her file for cancellation of removal. I'm concerned, however, because she went back to her country three times over the past three years that she has lived in the U.S. Will this violate the continuing presence requirement?

It depends on how long your client was outside of the U.S. during that three-year period. A single absence of 90 days, or any absences totaling no more than 180 days during the requisite three-year period will not disqualify your client. However, if she was ever out of the U.S for more than 90 days at one time, or more than 180 in total during the three-year period, she will be disqualified from cancellation of removal.

It sounds like the cancellation of removal process is the same as the self-petitioning requirement. I don't understand why there are two separate processes.

Focusing on the name of the process will help you to understand the difference. The cancellation of removal process will not be used unless the immigrant is placed in cancellation proceedings. Cancellation is not an option if the person is not in removal proceedings. Self-petitioning is used by immigrants who are not in removal proceedings, and is not an option once removal proceedings have been initiated.

CHAPTER REVIEW

Cancellation of removal, formerly "suspension of deportation," is a discretionary form of relief available to an immigrant who has been placed in removal proceedings. If cancellation is granted, the applicant receives lawful permanent resident status.

- **THE FOLLOWING PERSONS MAY FILE FOR VAWA CANCELLATION OF REMOVAL:**

  - abused spouses or former spouses of U.S. citizens or residents;
  - abused children or former stepchildren of U.S. citizens or residents;
  - parents of children who are abused by the children's other parent who is a U.S. citizen or resident (whether or not the immigrant parent is married to the child's U.S. citizen or resident parent).

- **CRITERIA THAT MUST BE MET TO BE ELIGIBLE TO APPLY FOR**

CANCELLATION OF REMOVAL:

- T three years of continuous residence or physical presence in the United States before being placed in removal proceedings or issued a notice to appear;
- T battery or extreme cruelty while in the United States by a U.S. citizen or resident spouse or parent;
- T good moral character;
- T adults must show they or their children would suffer extreme hardship if removed (deported) and children must show they or their parent would suffer extreme hardship;
- T currently removable (undocumented or out of status).

ENDNOTES

1.IIRAIRA established summary removal for certain inadmissible immigrants. There are three categories of immigrants subject to summary removal: 1) those seeking entry at port of entries without valid travel documents or with false documents; and, 2) those who entered without inspection and cannot show that they have resided in the United States for two years at the point in time when they are being questioned (the Attorney General has chosen not to enforce this part of the law); and 3) persons with outstanding orders of deportation who show up at INS for an interview. See, INA ə 235 & 241(a)(5) for a complete review of the summary removal procedure and exceptions.

2.See, ə 40703(a), Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-22, 108 Stat. 1796, Sept. 13, 1994.

3.INA ə 244(a)(3)(as in effect before the enactment date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

4.Lowering the physical presence requirement from seven to three years, and allowing battered immigrants to qualify even if they are not currently married to their abusers, significantly reduced the power and control USC or LPR abusers held over victims' immigration status.

5.Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

6.One difference between VAWA suspension under prior law and the current VAWA cancellation procedures is that while VAWA suspension applicants could prove extreme hardship to themselves, their children, or their parents, VAWA cancellation applicants may only prove extreme hardship to themselves or their children. Only child applicants in VAWA cancellation cases may prove extreme hardship to their parents.

7.Section 240A(b)(2)(D), as expanded by IIRAIRA, now provides that the battered cancellation applicant will be ineligible for cancellation if they are inadmissible under INA 212(a)(2) Criminal and Related Grounds, and 212(a)(3) Security and Related Grounds; or otherwise deportable under INA 237(a)(1)(G) Marriage Fraud, 237(a)(2) Criminal Offenses, 237(a)(3) Failure to Register or Falsification of Documents, and 237(a)(4) Security and Related Grounds.

8.INA ə 240A(b)(2)(D)

9.To locate an immigration attorney or representative in your area, call the National Immigration Project of the National Lawyer's Guild at (617) 227-9727 or NOW Legal Defense and Education Fund Immigrant Women Program (202) 326-0040. Both organizations can provide attorneys with sample VAWA application materials.

10.INA ə 240A(b)(2).

11.While self-petitioners can include their children in the self-petition, the children of an abused spouse, who has been placed in proceedings, must apply and qualify for cancellation separately as there are no provisions for them to be included in their mother's application as derivative beneficiaries.

12.Here, as in self-petitioning cases, an abusive U.S. citizen or lawful permanent resident spouse may be the step-parent of an abused child in order for the non-abused immigrant spouse to apply under VAWA cancellation. One key difference between VAWA cancellation and self-petitioning eligibility is that under cancellation the mother of a child abused by the child's step-father need not be the abusive father's spouse. To base a claim on abuse to a step-child, however, the abuser must continue to be the step-parent of the child.

13.To locate an immigration attorney or representative in your area, call the National Immigration Project of the National Lawyer's Guild at (617) 227-9727 or NOW Legal Defense and Education Fund Immigrant Women Program (202) 326-0040. Both organizations can provide attorneys with sample VAWA application materials.

14.This requires proof of the citizenship or lawful permanent resident status of their spouse, or former spouse, evidence of a valid marriage, and evidence of battering or extreme cruelty.

15.INA ə 240A(d)(2)

16.For further discussion about proving battering or extreme cruelty see Chapters 5 & 6 in this manual.

17.For further discussion of good moral character see Chapters 5 & 6 in this manual.

18.Attorneys should also review BIA decisions on extreme hardship including: Matter of Pilch, Int. Dec. # 3298 (BIA, Dec.3, 1996); Matter of L-O-G, Int..Dec.# 3281 (BIA, June 14, 1996); Matter of O-J-O, Int. Dec.# 3280 (BIA, June 14, 1996). For more complete discussion of extreme hardship factors see Chapters 5 & 6 in this manual.

Chapter Nine
WORK AUTHORIZATION

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER NINE:

- Work Authorization
- Eligibility for Work Authorization
- Eligibility for Non-VAWA Applicants

LILI'S STORY

Throughout her marriage, Lili took care of the children and relied on her husband for financial support. After leaving her husband, Lili was forced to work without authorization. She was caught and now has had to borrow money from her mother and other relatives to put food in her children's mouths. She wants to be able to work to support herself and her family, and to repay the loans. Lili wonders what else she can do to support her family.

Like Lili, many battered immigrants are economically dependent on their abusers for survival. Some battered immigrants remain with their abusers because they feel incapable of supporting themselves and their children if they leave. Other battered immigrants flee their abusers, but are forced to return due to insurmountable economic barriers. Lili is in a desperate situation now, ever since she was caught by INS for working without authorization. Not only is she now facing removal proceedings, but she is having trouble thinking of ways to feed her children.

EMPLOYMENT ISSUES FOR BATTERED IMMIGRANTS

Abusers may also prevent battered immigrants from becoming economically self-sufficient. Economic coercion is often one mechanism abusers use to control victims. Batterers frequently control all of the family's finances. They may forbid victims to go to school, to learn English, or to develop job skills, cutting off a victim's ability to survive independently. Domestic violence perpetrators also directly interfere with victims who are employed. Abusers frequently harass or stalk victims at work, or force them to repeatedly return to court in order to jeopardize their jobs. They also batter victims, leaving injuries or bruises, to prevent victims from working.

Battered immigrants are even more vulnerable financially because immigration laws may restrict their ability to work. Many battered immigrants face obstacles in obtaining legal permission to work, and have no alternative financial resources. They may be unable to work legally because they are ineligible for work authorization, or they may face long delays in

obtaining work authorization. Thus, they remain trapped in abusive relationships.

OBTAINING WORK AUTHORIZATION

Persons applying for work in the United States must complete a form (I-9) and provide certain documentation to their prospective employers. United States citizens must provide a birth certificate or passport and a social security card. Lawful permanent residents must show their lawful permanent residency cards. United States citizens and lawful permanent residents are then entitled to unrestricted employment.

Most other immigrants, however, must obtain employment authorization from INS in order to work legally. There are three types of employment categories:[1]

- Employment without restriction as to location or type of employment
- Employment restricted by location or to a specific employer
- Employment based on an employment authorization document

Immigrants who require an employment authorization document[2] must apply directly to INS to obtain one. The employment authorization document entitles immigrants to apply for a social security number. Without the employment authorization document and a social security number, such immigrants cannot work legally.

To qualify for an employment authorization document, an immigrant must have legal immigration status, or must have a petition or an application for legal immigration status pending with the INS that can serve as a basis for issuance of work authorization. Not all petitions or applications qualify an immigrant for the immediate issuance of an employment authorization document. Battered immigrants who file VAWA self-petitions may qualify for the issuance of an employment authorization document.

Battered Immigrants

Attorneys and advocates working with battered immigrants may be most likely to encounter clients with the following types of employment status.

IMMIGRANTS AUTHORIZED TO WORK

Immigrants who have been granted lawful permanent residency, including temporary or conditional residency[3]

Immigrants paroled into the U.S. as refugees or granted withholding of deportation, asylum, or refugee status[4]

An immigrant brought to the United States as a fiance for 90 days[5] in order to marry a U.S. citizen
Immigrants who have been granted temporary protected status[6]
Immigrants who come to work on a temporary employment-based visa and are restricted to a specific employer[7]

Immigrants who are required to apply for an employment authorization document:

- Immigrants who have filed applications for adjustment of status, including VAWA self-petitioners[8]
- Immigrants who have filed applications for asylum[9] (including gender-based claims) or withholding of deportation
- Immigrants who have filed applications for suspension of deportation or cancellation of removal[10]
- Immigrants who have applied for temporary protected status[11]
- Immigrants who have obtained deferred action status,[12] including self-petitioners whose self-petitions have been approved by the Vermont Service Center[13]

Work Authorization for VAWA Self-Petitioners

A battered immigrant can obtain employment authorization documents more easily now if she has been granted an approved VAWA self-petition by the Vermont Service Center. The VAWA regulations were designed to permit self-petitioners to work after their self-petitions had been approved.[14] Consolidation of self-petitions at the Vermont Service Center in May, 1997 streamlined the process and vastly improved battered immigrants' ability to obtain work authorization.

In June, 1997, the Vermont Service Center implemented a "deferred action status" policy for battered immigrants.[15] This allows self-petitioners to file their applications for work authorizations directly with the Vermont Service Center, after their self-petitions have been approved.[16] INS has not required that previously filed self-petitions be transferred to Vermont, however, and many of those cases remain unresolved with the files still located at the local or regional offices. If you are working with a battered immigrant in this situation, contact an immigration expert for assistance. Contact information can be found in the Preface to this

manual.

Battered immigrants who filed self-petitions after June 1, 1997 with the Vermont Service Center must receive a notice of approval containing a grant of deferred action status before they can apply for work authorization. Then they apply for work authorization by filing Form I-765. This form, and the filing fee, are sent directly to the Vermont Service Center.[17] A copy of the self-petition approval notice should be included with the application.

Other battered immigrants can seek deferred action status from their local INS district office,[18] or wait until a visa becomes current, and then apply for adjustment of status, prior to obtaining work authorization.[19] These include the following:

- VAWA self-petitioners married to lawful permanent residents
- Battered immigrants who filed a family-based I-130 petition with their local district office prior to May 7, 1997
- Battered immigrants who filed I-130 or I-360 petitions at the Vermont Service Center prior to June 1, 1997

Such immigrants should periodically check if their visa priority dates have become current.[20]

Battered Immigrants with Family-Based Petitions

Certain battered immigrants with approved family-based petitions[21] may qualify to obtain work authorization. They must be married to, or the children of, United States citizens. Such immigrants qualify for work authorization when they file to adjust their status to lawful permanent residency.

Some INS districts allow for one-step processing of family-based petitions for spouses of U.S. citizens. In these districts, battered immigrants should be able to file applications for work authorization at the same time.

In other districts, battered immigrants who are married to, or are the children of, United States citizens, have to wait until their petitions are approved. They then qualify for adjustment, and can apply for work authorization at the same time. Both applications should be filed with the appropriate local INS district office. Applications should include the approval notice, the filing fee, the adjustment of status application, and the employment authorization application.

Battered immigrants who are married to lawful permanent residents, and relying on a family-based visa petition, cannot easily obtain work authorization. They can file for work authorization only when they file an adjustment of status application. This process can take several years. Such immigrants should consider filing a self-petition (if eligible) because they could obtain work authorization much sooner. Their ability to work might be the lifeline needed to live separately from their abusers.

Asylum Applicants

Asylum applicants must wait 150 days before applying for work authorization. It may be especially difficult for battered immigrants to survive during this waiting period. Battered immigrants who qualify for VAWA should proceed under VAWA to avoid this delay. Battered immigrant asylum applicants who do not qualify for VAWA should consult with immigration attorneys and apply for work authorization as soon as possible. Immigration attorneys can work with advocates in local domestic violence programs to assist asylum applicants in obtaining community resources while they await work authorization.

Suspension of Deportation or Cancellation Applicants

Battered immigrants who have filed their cancellation or suspension applications properly are eligible to receive work authorization.[22] They should file their application for employment authorization with the INS District Office, along with proof that the cancellation application has been filed. Cancellation applicants are eligible to be granted work authorization for one year increments during the period that their cancellation applications are pending.[23]

Applicants who are in proceedings before an immigration court and have applied for suspension/cancellation of removal will need to submit proof that the application was properly filed with the clerk of the immigration court. A receipt for the filing fee will normally be sufficient, however it may be best to include a copy of the cancellation application itself and bearing the clerk's date stamp. This should be filed with the I-765 employment authorization application and the $110 filing fee.

Work Authorization for Conditional Residents

Conditional residents automatically receive employment authorization along with their conditional residency status. The employment authorization and the conditional resident status expire after two years. Conditional residents who qualify to file for a battered spouse waiver before their two year status has ended may be able to renew or extend their work authorization.

For a sample Work Authorization application and special instructions for completing certain questions, see the Appendix.

COMMON QUESTIONS & ANSWERS

Can my client file for work authorization at the same time she files her self-petition?

No. The work authorization form can not be filed until the individual receives an approved self-petition.

Will my client automatically receive a work authorization form once she receives an approved

self-petition?

No. Once the self-petition is approved, you must obtain and complete the work authorization application. It will not be sent to you automatically.

CHAPTER REVIEW

Not only are many battered immigrants economically dependent on their abusers for survival, but their financial vulnerability is further exacerbated by immigration laws that may restrict their ability to work. Most immigrants applying to work in the United States must obtain employment authorization from INS in order to work legally.

κ **THREE EMPLOYMENT CATEGORIES:**

T employment without restriction as to location or type of employment;

T employment restricted by location or to a specific employer;

T employment based on an employment authorization document.

κ **IMMIGRANTS AUTHORIZED TO WORK INCLUDE:**

T immigrants who have been granted lawful permanent residency, including temporary or conditional residency;

T immigrants paroled into the United States as refugees or granted withholding of deportation, asylum, or refugee status;

T an immigrant brought to the United States as a fiancé(e) for 90 days in order to marry a U.S. citizen;

T immigrants who have been granted temporary protected status;

T immigrants who come to work on a temporary employment-based visa and are restricted to a specific employer.

κ **IMMIGRANTS REQUIRED TO APPLY FOR AN EMPLOYMENT AUTHORIZATION DOCUMENT INCLUDE:**

T immigrants who have filed applications for adjustment of status, including VAWA self-petitioners;

T immigrants who have filed applications for asylum (including gender-based claims) or withholding of deportation;

- T immigrants who have filed applications for suspension of deportation or cancellation of removal;

- T immigrants who have applied for temporary protected status;

- T immigrants who have obtained deferred action status, including self-petitioners whose self-petitions have been approved by the Vermont Service Center.

ENDNOTES

1. *See* 8 C.F.R. э 274A.12(a) (1999).

2.The Employment Authorization Document contains the immigrant's picture, name, address, and date of birth. It also contains a reference to the subsection of the regulations under which the immigrant was qualified to receive it. Most important, it contains the date of expiration, which employers are required to record and track. An immigrant cannot legally work beyond the expiration date and must renew or extend work authorization documents periodically.

3. 8 C.F.R. э 274A.12(a)(1) and (2) (1999).

4. 8 C.F.R. э 274A.12(a)(3), (4), (5) and (10) (1999) valid for the period of time they remain in that status. Asylees remain in refugee status for one year before they can apply to adjust and so the work authorization is valid until they apply to adjust and until their adjustment application is granted or denied. They may however be subject to the annual renewal requirement; See glossary terms for definitions.

5. 8 C.F.R. э 274A.12(a)(6) (1999).

6. 8 C.F.R. э 274A.12(a)(12)(1999) valid for the period of time in that status.

7. 8 C.F.R. э 274A.12(b)(1)-(20) (1999).

8. 8 C.F.R. э 274A.12(c)(9) (1999) valid while their application for adjustment of status is pending.

9. 8 C.F.R. э 274A.12(c)(8) (1999), subject to a 150-day waiting period from the time the application for asylum or withholding has been filed before the immigrant can file for an EAD. The EAD is granted in increments of time determined by INS.

10. 8 C.F.R. э 274A.12(c)(10) (1999) granted in increments not exceeding one year while their application is pending.

11. 8 C.F.R. э 274a.12(c)(19) (1999).

12.Deferred action status is an administrative mechanism by which INS can agree not to remove (deport) an immigrant and to defer any other type of official action. Usually it is granted for humanitarian reasons. In the case of battered immigrants being granted deferred action status is the only way to qualify for work authorization while they are waiting their turn for a visa to become available. Immigrants who are in removal proceedings are precluded from applying for deferred action status but may be eligible for work authorization under another category.

13. 8 C.F.R. э 274A.12(c)(14) (1999), provided the immigrant establishes an economic need for employment. Work authorizations based on deferred action are granted initially for a 15-month period, and are renewable in increments of 1 year. **CAVEAT:** Deferred action status is limited, and cannot be authorized two years beyond the visa availability date. This is the date the immigrant first becomes eligible to apply for adjustment of status or file for a visa through consular processing.

14. *See* 8 C.F.R. э 274A.12 (1999)

15. However, the deferred action policy does not apply to immigrants who are currently in proceedings.

16.Battered self-petitioners who filed VAWA cases before May 7, 1997, with their local district office, or at the Vermont Service Center prior to June 1, 1997, are in most instances still unable to obtain deferred action status, and work authorization.

17. A waiver of fees is available, but should be avoided unless absolutely necessary because it may have a negative consequence for a self-petitioner's ability to attain lawful permanent residency, because of public charge considerations. See, Public Benefits Chapter in this Manual.

18. While this problem was addressed by the VAWA regulations the general consensus in the field is that success varies depending on the particular INS office.

19. Practitioners should keep their eyes open in the event that INS is persuaded to change its policies in this regard and starts to grant these battered immigrants deferred action status for the purpose of qualifying them for an employment authorization document.

20.They can have their immigration attorney check the monthly visa bulletin and periodically give them updates. The State Department maintains a voice recording of the monthly visa bulletin that should be used by advocates and attorneys who do not regularly receive the bulletin by mail. The number is 202-663-1541. You should know your clients preference category, priority date, and country of origin prior to listening to the long recording.

21.Filed for them by their spouse or parent.

22.8 C.F.R. § 274A.12(c)(10) (1999).

23. *See id.*

Chapter Ten
ALTERNATE ECONOMIC RELIEF

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER TEN:

- Types of Court-Ordered Economic Relief
- Victim Compensation and Assistance
- Public Benefits

LILI'S STORY

Once Lili received work authorization, she found a part-time receptionist job at a local car dealership. She enjoyed the job because it allowed her to get out of the house and interact with people. After work on her second day, Lili's husband became angry with her and followed her home after work. Somehow he had discovered where she was working. An altercation ensued and Lili's husband punched her in the face. The next morning, Lili had a black eye so she did not go to work. Lili was humiliated and did not want her boss and co-workers to see her that way.

Over the next couple of weeks, Lili's husband made it extremely difficult for her to continue working. He would show up unexpectedly and argue with Lili or linger outside of the dealership waiting for her shift to end. One day, Lili's boss told her to make sure her husband stays away from the dealership because he was a disruption and bad for business. However, Lili's husband would not stay away and Lili consequently lost her job. Now Lili is without work and she is afraid that her husband will cause problems anywhere she works. Lili comes to you to find out if she has any options to ensure that she will have some income to support her family.

Like Lili, many immigrant victims of domestic violence rely on their abusers for economic survival. Frequently, abusers control and manipulate the family finances. In one study, more than half of the victims remained with their abusers because they did not feel that they could support themselves and the children if they left.[1]

Victims may be financially insecure for several reasons. Abusers may prevent victims from working outside the home, or they may control the income earned. Frequently, abusers interfere with victims at their workplaces, resulting in termination.[2] A study conducted by the University of Massachusetts found that abused women were fifteen times more likely than non-abused women to have partners who disapproved of their participation in school or work related activities.[3]

Other studies demonstrate that abusers directly sabotage their victims at work.[4] Abusers may call the employer to belittle the victim's competency, or may come to the victim's workplace to stalk or threaten the victim. These actions often result in victims losing their jobs -- either because their work performance is affected, or because employers feel that the abuser is threatening workplace safety or decreasing workplace productivity.[5]

Battered immigrants may be even more financially vulnerable than other victims of domestic violence because immigration and welfare laws restrict their economic resources. They may be unable to work legally because they are ineligible for work authorization, or they may face long delays in obtaining work authorization. Some battered immigrants may have work authorization from INS that requires them to work for a specific employer. If the battered immigrant leaves that job because of the abuser's harassment and obtains another job, the immigrant may be violating the terms of the visa and may be subject to deportation.

While VAWA eligible battered immigrants have access to certain public benefits, such assistance is limited. These obstacles in obtaining permission to work or alternate financial resources hamper battered immigrants' ability to leave abusive relationships.

Court-ordered economic relief may be critical to enabling battered immigrants to separate from their abusers. Court orders -- whether for child support or other forms of financial support -- permit victims to care for their children and survive economically without their abusers. Such orders may also assist battered immigrants to demonstrate in their immigration cases that they are capable of supporting themselves and their children. This may be essential for proving in an immigration case that a battered immigrant is not likely to become a public charge.

Battered immigrants may also be eligible for economic relief from Victim Compensation and Assistance Programs. This chapter will address both court-ordered economic relief and victim compensation.

COURT ORDERED ECONOMIC RELIEF

Battered immigrants may be eligible for the same forms of court-ordered economic relief that are available to all domestic violence victims in a variety of legal proceedings. These include civil protection order, domestic relations, dissolution, small claims or criminal proceedings. While child support or family maintenance orders may be the most common forms of relief, other economic orders are also available. Battered immigrants may request that courts order their abusers to pay restitution (e.g. for medical expenses, property damage, lost wages); health insurance payments for the family; rent or mortgage payments; attorney's fees, or debt payments as necessary. Immigrant victims of domestic violence can also request that the court issue property dissolution orders that will enable them to care for the children and survive independently.

Obstacles to Seeking Court Ordered Economic Relief

Despite the advantages that court ordered economic relief may provide for many battered immigrants, barriers deter battered immigrants from seeking such relief. Abusers frequently threaten to physically harm victims or their children, or to abduct the children, if victims file for child support. When abusers have ties to other countries, the threat of international abduction is very real and, if carried out, may deprive battered immigrants of contact with their children. Attorneys and advocates can take steps to prevent international kidnapping, but should be aware that some battered immigrants may choose to forgo child support because they fear that abusers will abduct their children.

Battered immigrants may also be afraid to seek child support for fear that they will jeopardize their immigration status. Abusers frequently threaten to report their battered immigrant spouses to INS for being in the country illegally or for working without authorization if they file for child support. They may actually do so to punish victims for seeking legal relief or to avoid paying child support. Similarly, when child support orders are already in effect, battered immigrant clients may be terrified to collect arrearages for fear that their batterers will react by contacting INS. Immigration attorneys can help reduce the impact of these threats by seeking immigration related relief for clients, such as relief under VAWA. Advocates and attorneys can also assess the likelihood that abusers will act on such threats; for example, when abusers themselves are undocumented, they may be less likely to risk contacting INS to report victims.

Often battered immigrants are extremely isolated in the United States due to language, cultural, and economic barriers, and rely heavily on their spouses, their spouse's family or friends who provide their only community based system of support. Battered immigrants may also hesitate to seek child support because they will face disapproval from their community if they take legal action against their abusers. When facing pressure from the community not to take legal action, victims may choose to sacrifice child support payments rather than lose the support of their communities.

Safety Issues

In some cases, seeking child support may endanger the lives of victims and children. Their abusers may have threatened to kill them if they file for child support, or the family may already be in hiding because of homicide attempts. Initiating a child support case might reveal the family's new location or be used by the perpetrator as an excuse for further violence. Attorneys and advocates should conduct safety planning with battered immigrant clients and notify them in advance about legal developments in the case, such as serving the abuser or garnishing his wages. A client's judgment should be trusted -- in certain cases, if the family's safety cannot be guaranteed, the safest solution may be to forgo child support.

Confidentiality in Child Support Cases

Attorneys and advocates should be aware of confidentiality provisions that can be used to protect battered immigrants in child support cases. Emerging legislation has made it easier to locate parents who are avoiding paying child support. While this can be useful for battered immigrants seeking child support from their abusers, advocates and attorneys must ensure that such mechanisms are not used improperly by abusers to track down victims who have fled for their safety. Federal and state child support laws incorporate confidentiality provisions for victims of domestic violence.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and The Federal Parent Locator Service (FPLS)

The PRWORA requires states to have privacy safeguards as a part of their federally funded child support programs.[6] The PRWORA also expands the scope of the FPLS, a national database, to include data on newly hired employees and data on all child support orders.

FPLS access, however, is limited to *authorized persons.* In the child support context, *authorized persons* include agents or attorneys of states enforcing support orders; courts or court agents establishing child support; or the resident parent, legal guardian, attorney, or agent of a child.[7]

Despite the recent expansion of the FPLS, a strict nondisclosure provision provides safeguards in domestic violence and child abuse cases. The FPLS may not disclose information to any person if:

X there is reasonable evidence of domestic violence or child abuse; and
X disclosure of such information could harm the custodial parent or child.

A recent amendment permits the FPLS to disclose such information to a court or a court agent. However, the court then must determine whether further disclosure could be harmful to the parent or child. The court *may not disclose* the information if it could be harmful.[8]

State Privacy Safeguards

The PRWORA also requires states to implement privacy safeguards for the state databases which track child support orders. Similar to the federal requirement, states must enact rules to maintain the confidentiality of information when disclosure could endanger a party. Such safeguards prevent domestic violence perpetrators from using state databases to track down their former victims. State plans must:

X establish safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support;

X prohibit the release of location information about the petitioner to the party against whom a protective order has been entered; and

X forbid the release of location information about one party to another if the State has reason to believe that the disclosure may result in physical or emotional harm to the party or child.[9]

Social Security Act -- Good Cause for Failure to Cooperate

Public assistance applicants must cooperate with the state to establish paternity and obtain support payments from the non-custodial parent, unless there is *good cause* for refusing to cooperate.[10] If good cause is not found, the state must impose sanctions on the applicant, which may include the denial of assistance. Domestic violence victims, however, may risk further harm if they cooperate with a state's attempts to seek child support from their abusers.

Federal law does not define *good cause.* Rather, the states individually determine its meaning. Under previous federal regulations the risk of physical or emotional harm to the child or parent was considered a good cause exception.[11] States may incorporate similar standards into their current statutes to alleviate the impact on domestic violence cases.

Uniform Interstate Family Support Act (UIFSA)

UIFSA governs enforcement of valid child support orders issued by other jurisdictions. The law contains a confidentiality provision that requires courts to protect identifying information about a child or party.[12] To invoke this provision, a court must find that the health, safety, or liberty of a party or child would be unreasonably put at risk by disclosure of the information. This confidentiality provision prevents address or other identifying information from being disclosed in pleadings or other documents filed under UIFSA.[13]

Obstacles in the Legal System

Attorneys and advocates should be aware that when battered immigrants choose to seek child support, misperceptions about immigration law can complicate child support cases. Judges or court commissioners presiding over child support cases should not inquire about a petitioner's immigration status. Since the purpose of child support is to provide for the basic needs of children, the immigration status of children or their parents is irrelevant. Attorneys and advocates should be prepared to explain to a court why this practice endangers battered immigrants and their children. It also frustrates the intent of immigration laws protecting battered immigrants, undermining their ability to obtain protection and effective remedies from the courts.

Aspects of immigration law inadvertently create conflicts for battered immigrants petitioning for child support. For example, an immigrant victim of domestic violence may need child support from the batterer to meet her children's basic needs. She may hesitate to file criminal charges against the batterer for his abuse, since immigration laws make any non-citizen

deportable if he is convicted of a domestic violence crime. If the batterer is deported, he will no longer be able to provide child support. The intersection of child support and immigration laws may thus force battered immigrants to choose between their physical safety and their need for economic survival.

Confirming the Abuser's Income

Confirming an abuser's income when the abuser is an immigrant may be very difficult. Challenges often arise when immigrant or migrant workers do not have jobs in which their wages can be withheld for child support. Obstacles stem both from the limited employment opportunities available to immigrants, and from deliberate attempts by abusers to frustrate child support enforcement.

It may very difficult to obtain accurate documentation of an abuser's income. Traditional methods of verifying income, such as issuing a subpoena to an abuser's employer, may be less effective when abusers are from immigrant communities. Immigrant abusers are more likely to have jobs in which their income is unreported or under reported, such as taxicab driving. If they are paid in cash, there may be no written documentation to verify their income. Immigrant abusers are also more likely to work for friends or family members who may help them evade child support obligations. Many abusers change jobs often or are self-employed small business owners, making collection of child support difficult. Other abusers work in occupations such as service jobs and their pay is supplemented by tips, so pay stubs do not reflect their true income.

When abusers are undocumented, confirming their income may be even more arduous. If they are paid in cash, or if they have used false papers to gain employment, it may be impossible to obtain accurate information from their employers. Additionally, if an employer finds that an attorney's continuous subpoenas are troublesome, the employer may terminate the undocumented abuser's employment, which will further complicate the abuse victim's ability to obtain child support.

Similarly, it may be infeasible to obtain accurate bank records from some abusers who are immigrants. Abusers may keep their funds in a briefcase rather than a bank account, or they may send their earnings home immediately to their families in other countries. An immigrant victim of domestic violence may be unaware of the abuser's income. Even if she is aware of his income, she may be unable to prove to a court that he is earning far more than what can be documented. Attorneys may be able to present proof that an abuser is sending money home to demonstrate that he has not declared a substantial portion of his income. It may be possible to trace such transactions by tracking money orders, wire services, or couriers.

Despite these hurdles, attorneys for battered immigrants can successfully obtain child support from undocumented abusers. Such legal steps should be taken carefully, in conjunction with planning for a client's safety. Filing for child support may also assist battered immigrants in their immigration cases. Child support orders issued against the abuser, even if currently unpaid, demonstrate that the battered immigrant is unlikely to be a public charge in the future.

Enforcement Issues

Immigration issues can make enforcement of child support orders more difficult in some cases. If an abuser flees to another country after a child support order has been issued against him, the order will be difficult to enforce. Similarly, if an abuser changes jobs frequently, or is self-employed, traditional enforcement mechanisms, such as wage garnishment, may be less effective.

In other cases, immigration law may have the unusual impact of easing child support enforcement. An individual who is attempting to adjust his or her status to that of a lawful permanent resident must have made all child support payments due. Attorneys for battered immigrants report that some abusers have contacted them to find out the balance owed for child support in order to pay it, so that the failure to pay child support will not result in a denial of the abuser's own application for lawful permanent residency.

VICTIM COMPENSATION AND ASSISTANCE PROGRAMS

Despite their need for economic resources, battered immigrants may be restricted in their ability to access many of the financial safety nets available to non-immigrant victims of domestic violence. Battered immigrants are generally granted less access than citizens to public benefits, legal representation, and employment. Eligibility varies depending on the immigration status of the individual and his or her spouse, and whether or not the immigrant has been battered or subjected to extreme cruelty. These limitations prevent many battered immigrants from being economically self sufficient, and force them to remain in abusive relationships to survive or care for their children's needs. Crime victim compensation and assistance programs may provide one source of relief and services for battered immigrants.

The Victims of Crime Act [VOCA] established two major formula grant programs for the states -- for victim compensation and victim assistance. The Crime Victims Fund, derived from fines, penalty assessments, and bond forfeitures from convicted federal offenders, is the source of the federal funds provided to the states. State programs serve victims of domestic violence, sexual assault, and child abuse, thus battered immigrants may be eligible for services and compensation to help end the violence in their lives.

Victim Compensation

Victim compensation programs vary by state, but all programs reimburse victims for crime-related expenses, including: medical costs; mental health counseling; funeral and burial costs; and lost wages. Federal funds provide about 20-25% of the state compensation program budgets.[14] State funds provide the remainder of the budget, and state laws govern the precise types of compensation available.

In some states, compensation is available for other domestic violence related needs, such as counseling for children who witness domestic violence or lost support (paid to a victim if reporting the crime leaves the victim without financial support from the offender). Domestic violence victims can also benefit from state compensation statutes that cover the following expenses:

- moving expenses for victims
- legal expenses
- wages lost while attending legal proceedings related to the case
- hotel rooms
- housing/utility deposits
- emergency expenses.

These types of financial compensation may provide victims with the temporary assistance they need to leave their abusers. Emergency financial aid payments may be particularly useful for immigrant victims of domestic violence whose economic resources are limited.

In some states, domestic violence victims may have difficulty complying with the state's conditions for receiving victim compensation. VOCA requires victim compensation programs to "promote victim cooperation with the reasonable requests of law enforcement authorities."[15] Individual states, however, have victim compensation requirements at odds with the circumstances of many victims of domestic violence. For instance, many states require victims to report the crime to law enforcement within 72 hours, cooperate with the police and prosecution, and submit a timely application, in order to receive victim compensation benefits.

Battered immigrants may be particularly unable to comply with rigid victim compensation rules. For instance, a battered immigrant may be unaware of a 72 hour reporting requirement or unable to communicate effectively in English. Alternately, the victim may be reluctant to call the police because her abuser has said the police will deport her or because of prior experiences with repressive police forces in her home country. Similarly, battered immigrants may be afraid to work with the police or prosecutors because of misperceptions of the United States legal system, or because of language and cultural barriers. Additionally, they are unlikely to know that they are eligible for victim compensation benefits until an informed victim advocate or immigrant rights advocate who speaks their language informs them of these laws.

Many states are revising their victim compensation policies to be more responsive to the dynamics of domestic violence.[16] These changes are likely to benefit battered immigrants as well. Several states have changed their 72 hour reporting requirements, instead requiring a report

to be made within a reasonable period of time. This should enable victims of domestic violence to get to a safe place and protect themselves prior to pursuing criminal charges. In New York, victims of domestic violence may be compensated even if they do not initiate criminal cases against their abusers, but rather seek orders of protection in Family Court.[17] This policy recognizes that victims of domestic violence may have justifiable reasons for failing to prosecute. These reasons may include fear for their safety, based on their abusers' threats and/or prior violence.

California's guidelines permit a report to be made by a battered women's shelter, a friend, a relative, a neighbor, or a clergy person, in addition to the victim.[18] This provision can help battered immigrants who do not speak English, or who are unaware of victim compensation benefits, receive assistance from others in filing claims. The state also interprets "lack of cooperation" narrowly, recommending that victims receive benefits unless they actively interfere with police or prosecution efforts to hold perpetrators accountable. This standard gives greater protection to victims of domestic violence whose fears of retaliation may prevent them from testifying against their abusers in criminal cases.

Immigration Status

Most victim compensation statutes do not address immigration status. Rather, victims are eligible for benefits when they have been injured in the state, and meet the conditions set forth in the state's guidelines. VOCA funds are only available to states whose victim compensation programs "make awards to victims who are non-residents of the State on the basis of the same criteria used to make awards to victims who are residents of such State."[19] Since state victim compensation statutes cover victims injured in the particular state regardless of their residency in that state, immigration status should also be irrelevant to receipt of victim compensation benefits.

Victim Assistance

VOCA funds awarded to states support more than 2,800 community-based organizations serving approximately 2 million crime victims each year.[20] Battered immigrants may require services provided by these domestic violence shelters, rape crisis centers, and victim services programs in police departments, prosecutors' offices, hospitals, and social services agencies. Victim assistance programs provide desperately needed relief, such as crisis intervention; counseling; emergency shelter; criminal justice advocacy; and emergency transportation.

Crime victim assistance programs must certify that they provide assistance to victims of sexual assault, spousal abuse, or child abuse. Additionally, they must certify that they fund programs which serve previously underserved populations of victims of violent crime.[21] Since battered immigrants are often underserved in their communities due to cultural or language barriers, this VOCA provision should foster the development by providers of improved programs for battered immigrants with the use of VOCA funds.

Immigrant Eligibility for Victim Compensation and Victim Assistance

In most states, immigration status is not a bar to receiving victim compensation benefits or victim assistance benefits.[22] Victim compensation administrators do not require applicants to identify their status,[23] and have no duty to inquire about immigration status. The VOCA's nondiscrimination provision states:

> No person shall on the ground of race, color, religion, **national origin**, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter. (emphasis added)

This provision underscores the legislative intent of VOCA to provide compensation and services to all victims, regardless of their national origin.

VOCA (and most state victim compensation statutes) does not discriminate against battered immigrants based on residency. Other federal legislation, such as the Personal Responsibility and Work Opportunity Reconciliation Act [PRWORA] and the Illegal Immigration Reform and Immigrant Responsibility Act [IIRIRA] have recently limited the eligibility of many immigrants for public assistance and immigration related relief. Neither PRWORA nor IIRIRA, however, make any mention of VOCA benefits.

The limits of receipt of public benefits under these new federal laws have not yet been resolved. The Department of Health and Human Services has, however, defined federal means-tested public benefits to apply only to benefits provided by federal means-tested mandatory spending programs, such as TANF and Medicaid. Victim compensation and victim assistance funds under VOCA are not federal **means-tested** benefits. Rather, victim compensation benefits are provided to compensate individuals who have been injured by the criminal acts of others, regardless of the victim's income level. Therefore, immigrant eligibility for VOCA related benefits should not be affected by the outcome of the definition for federal means tested "public benefits" as defined by PRWORA or IIRIRA.

Additionally, all immigrants remain eligible for the following services, regardless of immigration status: programs, services, or assistance specified by the Attorney General . . . which (i) deliver in-kind services at the community level, including public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety. Any victim compensation benefits which would be provided to battered immigrants would satisfy these conditions.

PUBLIC BENEFITS FOR BATTERED IMMIGRANTS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

[PRWORA][24] and the Illegal Immigration Reform and Immigration Responsibility Act [IIRAIRA][25] substantially altered immigrants' ability to receive public benefits. The new legislation eliminated their eligibility for SSI and Federal Food Stamps and gave the states discretion to determine whether they qualify for federal, state and local programs. It also increased the connection between public benefits receipt and immigration status of the applicants.

Although the new legislation contains provisions that deny public benefits to many immigrants, some immigrants, including some battered immigrants, are provided access to certain critical public benefits. PRWORA grants access to some federal benefits to "qualified aliens."[26] Additionally, the guidance to the states issued by the Attorney General and the definition of "Federal means tested public benefits" provided by the Department of Health and Human Services for its programs, narrowly construes the PRWORA so as to ensure that some part of the welfare safety net continues to be available to some immigrants, including some battered immigrants.

It is important for advocates and attorneys working with battered immigrant women to understand that while PRWORA and IIRAIRA significantly reduced access to federal public benefits for most immigrants, these laws actually expanded access to public benefits for some battered immigrants who had been previously ineligible for assistance. The new legislation provides some access to the welfare safety net to immigrants battered by their U.S. citizen or lawful permanent resident spouses or parents even if they are undocumented, provided they have a VAWA immigration case or a family based visa petition filed with INS. Additionally, IIRAIRA exempted many battered immigrants from sponsor deeming rules that had previously made many battered immigrants economically ineligible for benefits because of the assumption that battered immigrants had full access to the income and assets of their abusers.

This law is extremely complex. For detailed information about battered immigrants' eligibility for public benefits, contact the Immigrant Women Program of the NOW Legal Defense and Education Fund at 202/326-0040.

COMMON QUESTIONS & ANSWERS

How can a civil protection order help to get my client economic relief?

Civil protection orders offer a wide range of relief. In addition to getting protection from the abuse, a petitioner can ask the court to award temporary child support, maintenance, restitution, mortgage or rental assistance, etc.

What can I do to help my battered immigrant client access the VOCA system?

Battered immigrants may have some challenges in their way when trying to access the VOCA system. Lack of knowledge of reporting requirements and fear of the legal system may cause battered immigrants to fail to report. Attorneys and advocates can assist battered

immigrant clients by (1) informing every client of the VOCA resource and educating them about the requirements; and (2) talking with them and helping them to weigh the pros and cons of reporting the abuse.

I thought that new immigration policies blocked every immigrant from receiving public benefits. Isn't that true?

It is true that recent legislation has greatly affected an immigrant's ability to obtain public benefits. However, certain groups of immigrants are eligible to receive certain public benefits. Contact the Immigrant Women Program (202/326-0040) for information on how to determine eligibility.

CHAPTER REVIEW

VAWA eligible battered immigrants do have access to certain public benefits, but such assistance is limited. Therefore, court-ordered economic relief may be critical to enable battered immigrants to separate from their abusers. Safety issues are the primary obstacle to seeking court-ordered economic relief. For example, abusers often threaten to physically harm victims or their children or to abduct the children if victims file for child support. Battered immigrants may also be eligible for economic relief from Victim Compensation and Assistance Programs, which vary by state. These programs provide victims with the temporary assistance they need to leave their abusers.

- **TYPES OF COURT-ORDERED ECONOMIC RELIEF INCLUDE:**
  - child support and family maintenance orders;
  - restitution (e.g. for medical expenses, property damages, and lost wages);
  - health insurance payments for the family;
  - rent or mortgage payments;
  - attorney's fees;
  - property dissolution orders that will enable the battered immigrant to care for the children and survive independently.
- **VICTIM COMPENSATION PROGRAMS REIMBURSE VICTIMS FOR CRIME-RELATED EXPENSES INCLUDING:**
  - medical costs;
  - mental health counseling;

- T funeral and burial costs;
- T lost wages.

κ **VICTIM ASSISTANCE PROGRAMS PROVIDE DESPERATELY NEEDED RELIEF SUCH AS:**

- T crisis intervention;
- T counseling;
- T emergency shelter;
- T criminal justice advocacy;
- T emergency transportation.

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6. 42 U.S.C. э 654(26) (1998).

7. 42 U.S.C. э 653(c) (1998).

8. 42 U.S.C. э 654(26)(e) (1998).

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10. 42 U.S.C. ə 602(a)(26)(B) (1998).

11. 45 C.F.R. ə 232.42 (1999).

12. UIFSA ə 312 (1997).

13. *See id.*

14.NATIONAL ASSOCIATION OF CRIME VICTIM COMPENSATION BOARDS, PROGRAM DIRECTORY 2 (1997).

15. 42 U.S.C. ə 10602(d)(2) (1998).

16.*See Rules, Benefits Adapted for Domestic Violence, in* CRIME VICTIM COMPENSATION QUARTERLY 3 (1997).

17. NY FAM. CT. ACT 446(g) (1999)

18. *See Rules, supra* note 3, at 4.

19.42 U.S.C. ə 10602(b)(4) (1998).

20.REPORT TO CONGRESS, OFFICE FOR VICTIMS OF CRIME 3 (OCT 1997).

21.42 U.S.C. ə 10603(a)(2)(B) (1998).

22.Telephone Conversation with Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards. (Nov. 20, 1997).

23.Telephone Conversation with Laurie Schipper, Iowa Coalition Against Domestic Violence. (Dec. 8, 1997).

24. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. No. 104-93, 110 Stat. 2105 (August 22, 1996), hereinafter PRWORA.

25. Illegal Immigration Reform and Immigration Responsibility Act, 8 U.S.C. ə 1641 (1996), hereinafter IIRAIRA.

26. While the term used in the law is "qualified aliens," we will use the term "qualified immigrants." Throughout this article except when quoting language contained in statutes we strongly encourage advocates and attorneys working with battered immigrants to use the term immigrants rather than aliens and "undocumented immigrants" rather than "illegal aliens."

Chapter Eleven
CUSTODY, CIVIL PROTECTION ORDERS & VAWA

September 8, 2000

KEY LEARNING CONCEPTS FOR CHAPTER ELEVEN:

- Immigrants – both documented and undocumented can go to civil court for:
  - ✓ child custody
  - ✓ civil protection orders
  - ✓ other domestic relations matters
- Civil protection orders – the "catch-all" provision – can help self-petitioners to obtain necessary documents in the batterer's control

LILI'S STORY

Lili comes to you to tell her about the difficulty she has been having with her husband. She wants to be able to hold down a job, but her husband is interfering so much that she is afraid to try to find a new one for fear that he will just make her lose it like he did the last one. Lili is getting more and more afraid of her husband. She is also afraid of losing custody of her children. Lili asks you what she can do to get some peace away from her husband. Even though it goes against the grain of what she has learned from her family, what she really wants right now is a divorce so that she will finally feel free of him.

This chapter will provide an overview of some options that may be available to Lili: child custody, divorce, and civil protection orders. Family law attorneys and advocates working with battered immigrants must have an understanding of how domestic relations and civil protection order cases can have both negative and positive effects on VAWA self-petition cases. This chapter will outline the issues family law attorneys, immigration attorneys, and advocates must think about when working with battered immigrants. A failure to address the issues discussed in this chapter could lead to deportation of the battered immigrant client or the loss of child custody to the batterer.

DOMESTIC RELATIONS

Family law attorneys, victim advocates, and immigration representatives must be aware of the intersection between domestic relations law and immigration law in order to effectively represent battered immigrants. Battered immigrants may be involved in custody, divorce, child support, or international abduction cases, or they may need representation to initiate such cases. Until issues involving their children are settled, many battered immigrants will be afraid to take other steps to end the violence, for fear of losing their children.

Child Custody

The Impact of Domestic Violence on Children

Domestic violence is relevant to custody and divorce determinations because of the profound impact it has on children. Experts estimate that between 3.3 and 10 million children witness domestic violence every year.[1] Although many parents believe that children are not aware of violence in the home, experts have found that 80% - 90% of children in homes with domestic violence witness the abuse.[2] Children who observe the abuse of a parent can be severely traumatized even if they are not physically harmed.

Children are at great risk of physical harm, however, when one parent commits domestic violence against the other parent. In 40% - 60% of homes in which a parent is battered, the children are also physically abused.[3] Even when domestic violence perpetrators do not attempt to harm the children, children may be injured if they intervene on behalf of the abused parent.

Children also suffer emotional and cognitive impairments when exposed to violence in the home. Among other symptoms, traumatized children may experience nightmares, insomnia, bed wetting, anxiety, and depression.[4] Children from violent homes often perform poorly in school due to developmental delays or interpersonal problems.[5]

Children from abusive homes tend to exhibit short-term and long-term behavioral problems as well. Many boys from violent homes, and some girls, act out in school and display aggression towards other children.[6] Children who learn from their primary role models that domestic violence is acceptable lack appropriate models for adult behavior. Studies show that the majority of abusive men witnessed their fathers abusing their mothers when they were children.[7]

In many states, growing recognition that witnessing or experiencing domestic violence profoundly affects children has caused legislatures to amend custody laws. Custody statutes that protect victims of domestic violence can help battered immigrants seeking custody of their children.

Domestic Violence and Custody Litigation

Domestic violence perpetrators use a variety of techniques including physical violence, threats, intimidation, sexual abuse, economic abuse, and isolation to maintain control over their partners.[8] (See Chapter 1, Overview of Domestic Violence & Its Impact on Battered Immigrants) Abusers who batter immigrant spouses or partners frequently threaten to obtain legal custody of the children, telling victims that they will lose custody battles because of their immigration status. With quality legal representation, however, many battered immigrants have obtained custody by demonstrating that it was in the children's best interest for the court to focus on the abuser's violence, rather than the victim's immigration status.[9]

Other abusers threaten to remove the children to another country, if victims leave the relationship. Upon separation, perpetrators often carry out their threats to abduct the children, or engage in protracted custody or visitation litigation, as a means to control their former partners.[10] Explicit court orders can prevent abusers from using the legal system as a battleground for control.

Additionally, abusers tend to escalate the violence when victims attempt to leave the relationship, increasing the likelihood that victims will be assaulted or killed at that time.[11] Since separation often prompts legal proceedings, victims can be at severe risk while court cases are pending.[12] Family law attorneys should include safety provisions within custody and divorce orders to protect the safety of battered immigrants and their children.

Custody Issues for Battered Immigrants

As discussed in Chapter 1, battered immigrants may have misperceptions about the U.S. legal system which may cause them to be hesitant about seeking a custody order. Attorneys should explain U.S. custody laws to battered immigrants, and reassure them that custody determinations are based on the children's best interest, not the immigration status of either party.[13]

Battered immigrants may hesitate to seek custody for other reasons as well. They may fear that their abusers will contact INS and interfere with their immigration cases if they file for custody of the children. The constant threat of deportation -- and the potential loss of their children -- forces many battered immigrants to remain with their abusers so they do not lose access to their children. Even if they pursue custody through court cases, battered immigrants may agree to their abusers' demands with regard to custody arrangements against the advice of their attorneys. For example, a client may refuse to allow an attorney to raise a certain issue or subpoena certain witnesses -- or a client may agree to a joint custody arrangement -- because of her abuser's threats. To alleviate client fears of deportation, battered immigrants should work with immigration attorneys while pursuing family law remedies.

Attorneys and advocates should be aware that even battered immigrants who are not eligible for immigration relief are often awarded custody of their children. Family law attorneys should work with their clients and with immigration attorneys to weigh the risks and benefits of initiating a custody action. They may need to assess the likelihood that a particular abuser will contact INS, and the likelihood that the local INS office will act on such information if contacted.

Family law attorneys should understand that some battered immigrants may have goals that are incompatible with traditional methods of custody litigation. For instance, clients may need the support of their immigrant communities, and may face disapproval if they fight too hard in a custody case and "bring shame upon their husbands." Other battered immigrants may simply want the violence to end, but may want their children to have close relationships with their

fathers. These goals may influence a client's needs as the case progresses. Professional responsibility requires family law attorneys to pursue court orders that serve their clients' goals.

Practice Issues

All family law attorneys should be prepared to screen for domestic violence. Domestic violence is relevant to case preparation, presentation, and the relief sought. When clients are immigrants, domestic violence will affect not only the family law case itself, but also the potential immigration relief. Battered immigrants who qualify to self-petition under VAWA lose their eligibility for this relief if their divorces are finalized before their self-petitions are filed. Thus, family law practitioners cannot represent clients competently without screening for domestic violence. (See Chapter 2, Working with Battered Immigrants)

If domestic violence has been identified as an issue in the case, it is critical for family law attorneys to present evidence to the court documenting the history of abuse. Courts need to know about the domestic violence in order to apply the relevant statutory provisions and determine what is in the child's best interest. Documenting the abuse and obtaining legal custody of the children will improve the client's ability to prevail in the immigration case.

Legislative Trends in Custody Statutes

Legislators have begun to respond to studies regarding the impact of domestic violence on children. As a result, most custody statutes now consider domestic violence relevant to parental fitness.[14] The degree of relevance varies by state.

Congress unanimously passed a resolution that credible evidence of spouse abuse should create a statutory presumption that it is detrimental to children to be placed in the custody of the abusive spouse.[15] At least eight states have incorporated this presumption into their statutes,[16] and it is likely that other states will follow.

In states that have not yet enacted this presumption against granting custody to abusers, courts usually are required to consider domestic violence as a factor in custody determinations.[17] Some custody statutes require courts to take specific action upon a finding of abuse. For instance, in the District of Columbia, courts may only award visitation to a parent who has committed domestic violence if the court finds that the child and custodial parent can be adequately protected from harm.[18] These statutes were enacted to protect children, and they apply uniformly to persons residing in the state. Therefore, battered immigrants and their children should receive the same treatment under these laws as other victims of domestic violence.

Do Not Consent to Joint Custody or Mediation

Domestic violence is a factor in other aspects of child custody proceedings as well. Statutory trends suggest that *joint custody* is inappropriate for families with a history of domestic

violence.[19] Joint custody permits an abuser to maintain frequent contact with the victim and children, exposing the battered immigrant spouse to continued physical violence and emotional control.

For similar reasons, experts agree that *mediation* is generally inappropriate in custody cases involving domestic violence.[20] Mediation can subject victims to physical harm by providing abusers with an opportunity to further intimidate victims. When battered immigrants do not speak English well or do not fully understand the U.S. legal system, they face an added disadvantage in mediation sessions. When there is a history of domestic violence, negotiated settlements may be based on the abuser's coercion, rather than mutual assent. These problems are exacerbated in cases involving battered immigrants. Victims should be the ones to choose whether mediation is the safest options for them.

Prevent Abusers From Manipulating Custody Proceedings

Family law attorneys should understand that abusers frequently attempt to maintain control over their spouses or partners through extensive child custody litigation. Abusers may harass victims by repeatedly filing motions to modify temporary custody arrangements; by requesting continuances to force victims to return to court, jeopardizing their employment; by hiring private investigators to trail victims at home or at work; and by filing false criminal charges or complaints with Child Protective Services. When appropriate safeguards are not included in judicial orders, abusers frequently use visitation with the children as an opportunity to harass, assault, or monitor victims.

In custody cases involving battered immigrants, an abuser may attempt to introduce evidence about the victim's immigration status. This tactic is intended to frighten the battered immigrant spouse, reinforcing the abuser's threat that he will contact INS and have her deported if she thwarts his demands. The abuser may also attempt to persuade the court that immigration status is a key issue in the custody case, arguing that the battered immigrant should not receive custody because she could be deported. Family law attorneys should object to the introduction of evidence about the battered spouse's immigration status -- whether abusers raise the issue in discovery or at trial as an alleged factor in a "best interest of the child" analysis. If an abuser wants to demonstrate that the battered immigrant is likely to flee the jurisdiction with the child, the abuser should use the same evidence that would be relevant in any other custody case when threats of flight are present: airplane tickets, family ties in the home country, etc. Immigration status is irrelevant in and of itself to that determination.

Address Judicial Concerns

When representing battered immigrants in custody cases, family law attorneys may need to explain the basic principles of immigration law to family court judges. If an abuser claims, for example, that an undocumented spouse should not receive custody because she could be deported, her lawyer must explain that deportation is a lengthy process, requiring at least six months for hearings. The family law attorney should emphasize that the battered immigrant is

not currently in deportation proceedings, and that the client is in the process of filing for immigration relief.

Attorneys should inform judges when abusers are using immigration status -- or custody proceedings -- as a tool to control battered immigrant spouses, continuing the power and control pattern of domestic violence. Informed family law attorneys can demonstrate to judges that a battered immigrant's lack of residency is irrelevant to the custody determination, and that the abuser's attempt to raise the issue is another bid for control.

On rare occasions, however, a court may be hostile towards a party who is not a U.S. citizen or lawful permanent resident. Advocates report that one court recently refused to hear a child support case, granted custody to a domestic violence perpetrator, and threatened to inform INS that a battered immigrant was undocumented.[21] Another court threatened to turn in a battered immigrant who sought a protection order.[22] In these situations, family law practitioners should explain to courts that state government officials, including judges, are not required to report the immigration status of victims who seek help from the courts.[23] In fact, recent changes in immigration law were intended to protect battered immigrants by removing control over a spouse's immigration status from an abuser.[24]

Thus, if family law judges refuse to grant custody or child support to battered immigrants, or threaten to contact INS, they will not be serving the purpose of immigration laws, but will instead be frustrating their purpose of protecting battered immigrants. They will also be undermining the intent of domestic violence and domestic relations statutes designed to offer protection to victims of domestic violence and their children. Additionally, reporting abuse victims to INS will effectively create a class of abusers who can remain beyond the reach of state and federal laws designed to prevent domestic violence and hold offenders accountable for the violence.

Attorneys representing battered immigrants may also find that their client's living arrangements appear unusual to a judge from a different cultural background. A client may live with extended family members, or share a bedroom with another family; this may be a typical arrangement within the immigrant community, but may raise concerns for the court. The family law attorney should explain to the court that such an arrangement poses no threat to the children, and is commonly accepted within the client's community.

Seek Safe Custody and Visitation Orders

Family law attorneys can use custody and visitation orders to minimize a battered client's future exposure to violence. If a civil protection order is not in effect, as part of a custody or divorce order, a court may include an injunction preventing the abuser from having contact with the battered immigrant. All custody or visitation orders should be specifically tailored to protect the battered client, and should satisfy the following goals:

- **Protect the safety of the children.** Supervised visitation with the children may be ordered for the parent who has abused the other parent. Alternatively, the court may need to suspend visitation until the abuser completes a batterer intervention program, and a substance abuse treatment program, parenting program, or psychological treatment, depending on the case.

- **Ensure that the custody order does not allow the abuser to contact the battered immigrant parent.** Custody and visitation arrangements may require the involvement of a neutral third party, who agrees to supervise the visitation or the exchange of the children. This party should also be willing to communicate emergency information to the parents. For battered immigrants who have been isolated from their friends and family members, it may be difficult to identify a neutral third party to fulfil these functions. Attorneys should ensure that the person in this role will comply with the court order; members of the abuser's family, or members of the immigrant community who are loyal to the abuser, will be unable to serve as a buffer protecting the battered immigrant and children.

- **Explicitly describe the rights and responsibilities of both parties.** All custodial access (including physical custody, decision-making authority, and visitation) should be explicitly described in the court order. This will minimize future violence and ease enforcement of the court order if the abuser violates it.

- **Include instructions for emergencies and changing circumstances.** The court order should specify conditions under which the order may be altered, and include emergency procedures. This will prevent abusers from claiming that they had to contact the battered immigrant parent "in an emergency," and will account for the changing needs of the children.

Comply with Interstate Jurisdictional Laws

Custody orders must comply with the federal Parental Kidnapping Prevention Act [PKPA] and the state version of the Uniform Child Custody and Jurisdiction Act [UCCJA]. These laws govern jurisdiction over child custody cases and enforcement of custody orders issued in other jurisdictions. Since battered immigrant clients, like other victims of domestic violence, may need to cross state lines for their own safety, compliance with jurisdictional laws will ensure that they can receive legal protection in the event of interstate flight.

Custody and Support Proceedings can Lay the Groundwork for Immigration Cases

Family law attorneys representing battered immigrants should be aware that obtaining custody of the children may enhance an immigrant's ability to obtain immigration relief. Findings of domestic violence can be particularly useful for future immigration cases. Family law attorneys should present evidence of the history of abuse because of its relevance to the best interest of the child. Additionally, any findings of abuse in the custody case will be helpful to the client's immigration case. As discussed in Chapters 3-5, to obtain an approved self petition, an applicant must demonstrate that she has been battered or subjected to extreme cruelty.

Family law attorneys should also be aware that custody findings may affect a client's immigration case in other ways, for example, by helping to prove the requirement of "extreme hardship." Evidence from the custody case demonstrating that the abuser has threatened to harm the children might help establish that removing the battered parent or children from the protection of United States' law would cause "extreme hardship." Similarly, deportation might cause extreme hardship by separating the battered parent from the child, contrary to what the custody court found to be in the child's best interest.

Family law attorneys should be aware that custody or child protective services findings may also affect a battered immigrant's ability to meet the "good moral character" requirement for an immigration case. If there has been a finding that the battered immigrant failed to protect the child, or a finding that there was violence in the home -- without documentation that the abuser committed the abuse -- the battered immigrant may have difficulty in the immigration case. Therefore, family law attorneys should work closely with immigration lawyers to ensure that legal developments in family law cases help, rather than hinder, battered immigrants in their immigration cases. Child support proceedings can also help a battered immigrant prove good moral character. Filing for child support -- even if collecting support will be difficult -- will make it difficult for INS to claim that the battered immigrant willfully failed to support her children.

Family lawyers can also assist battered immigrants in preparing their immigration cases by using discovery in the domestic relations case to gather critical information. Family lawyers may subpoena documents verifying the abuser's immigration status, such as passports or birth certificates. They can also obtain copies of the abuser's previous divorce decrees.

International Parental Kidnapping

Whenever domestic violence occurs between parents, or separation or divorce is threatened, the risk of parental kidnapping increases significantly.[25] When one or both of a child's parents was born in another country, or has significant contacts abroad, the risk of **international** parental kidnapping should also be assessed at the earliest opportunity. Parents often underestimate the danger of parental kidnapping, and overestimate the legal system's ability to recover abducted children. This chapter discusses the relationship between domestic violence and parental kidnapping, the legal definition of and remedies for a kidnapping - both within the U.S. and internationally - as well as informal remedies, parental kidnapping prevention, and resources for parents.

Although the number of international parental kidnappings may be increasing worldwide,[26] no reliable data capture the full extent of either domestic or international parental kidnapping,[27] nor explain the precise relationship between parental kidnapping and domestic violence. Several patterns emerge, however: abduction to gain control over or to punish the other partner, abduction while a parent is seriously depressed after divorce, or flight with children to escape violence.[28]

When concealment of a child from the other parent is part of a long-term strategy to control or punish the other parent, a history of domestic violence should be investigated. This type of kidnapping is often used after other strategies of asserting power and control have failed; this should be discussed thoroughly to uncover possible sources of corroboration and to try to understand the abducting parent's motivations. These abductions are inherently harmful to the child, even where there is no prior child abuse: the child is usually separated from the primary caretaker, and both feels and is at greater risk of being physically abused themselves.[29] Children are being used as a weapon against the other parent, either to force their return or purely for revenge; bad treatment could be seen as increasing pressure on the left-behind parent to comply, or increasing their punishment. The most convenient target for the abusive parent's anger is now the child, and the abusive parent may be under greater stress: these situations are genuine emergencies.

Domestic violence can also result in concealment of children when abused parents take their children and escape. A parent hiding with the children because of serious danger does not have the criminal intent necessary for the crime of kidnapping.[30] Even when the last incidence of actual violence happened some time before the parent fled with the children and the danger would seem not "imminent" as required by many parental kidnapping laws, parents may justifiably need to hide themselves and children because of credible threats and reasonable predictions about what would happen if they left the violent parent. Continuing to conceal a child from the other parent even after one has reached safety, however, may be considered a criminal act in some states.[31]

Risk factors for parental kidnapping in immigrant communities include: the other parent's possible depression; threats to kidnap children or to take them away;[32] social isolation (few friends); lack of social adaptation to life in the U.S., family members primarily living in the home country, or intending to return; arguments about returning to the home country; accusations that one parent has become "Americanized;" abuse of alcohol; severe violence; child abuse of any kind; having the means to take the children out of their home state (this is a low threshold: bus or train fare, or access to a car); having the means to take the children to the home country; unstable employment or living situation, ability to find employment in the home country; divorce, separation, or child support proceedings; among others. Trainers can conduct a class discussion exercise by listing some risk factors and asking class members to suggest more.

Obtaining access to a concealed child can become a difficult and costly struggle when the child has been taken across state, or even local, boundaries. When a parent takes a child out of the U.S., however, there may be no legal remedy at all. Attorneys and advocates should educate parents about prevention, particularly when parents come from countries not yet signatories to international treaties on child abduction. Even in those countries where U.S.-granted custody rights are actually enforceable, swift, safe return of children is not guaranteed, and may be quite time-consuming and expensive to achieve. If an abduction occurs, it is important to remember that a child's sense of time is quite different from an adult's. A child may become accustomed to a new environment more or less quickly depending upon age, development, and language skills; may come to believe the abducting parent's stories justifying the separation; and may become

unwilling to rejoin the other parent. A mature child's objection to being returned may defeat an otherwise strong legal claim that the child's return is required. Preparing for a successful return of a child requires understanding and planning, often necessitating consultation with experts, and both crisis and long-term counseling for left-behind parents and recovered children. Kidnapping can be traumatic; the return of an abducted child should be as thoughtfully executed as possible.[33]

SAMPLE CHECKLIST FOR CUSTODY / DIVORCE ORDER

- Who has physical custody? At what times?
- Who has authority for decision-making? Over what issues?
- What happens on holidays?
- What happens if there is an emergency?
- How will the children be transferred for visitation exchanges?
- Will visitation be supervised?
- By whom?
- What, if any, contact does the perpetrator of domestic violence have with the battered immigrant?
- What findings have been made about the abuse?
- Is child support included in the order?
- What other types of economic relief are included?
- How is property distributed?
- Does the order comply with the VAWA, UCCJA, and PKPA?
- Does the order include provisions to prevent international abduction of the children?
- When will the divorce order become final?
- Has discovery been conducted to obtain documents and information needed for a VAWA immigration case?

SAMPLE VISITATION PROVISION

Defendant shall have visitation with the minor child every other weekend from Friday at 6 p.m. until Sunday at 6 p.m., beginning on Friday, May 2, 1997. The plaintiff shall arrange to have the children dropped off and picked up at the 3rd District Police Station, located at 123 Main Street, at these times. The defendant shall pick up the children at the 3rd District Police Station at 6 p.m. on alternate Fridays and drop off the children there on Sundays at 6 p.m., 48 hours later. If the defendant is more than one-half hour late for pick-up, without prior notification of Joe Smith,* the defendant shall forfeit the visitation for that weekend. If the defendant is unable to exercise visitation on a particular weekend, the defendant shall contact Joe Smith, and the center shall notify the plaintiff. The defendant shall forfeit the visitation for that weekend. If the plaintiff must communicate with the defendant about visitation, the plaintiff shall notify Joe Smith, and Joe Smith shall notify the defendant. If a scheduled visit does not occur because of an emergency, such as the child's illness, the visitation shall resume the following weekend.

*Joe Smith is a neutral third party chosen as the intermediary.

DIVORCE

WARNING: ***Do not obtain a final divorce order or annulment for any battered immigrant client before filing a VAWA self-petition. A battered immigrant who has not filed her self-petition prior to receiving a divorce decree will be unable to self-petition.***

Generally, family law attorneys representing victims of domestic violence may wish to pursue divorce actions without delay, since abusers tend to viciously litigate family law cases to maintain control over victims. **When representing battered immigrants, however, family law attorneys should not rush to obtain a final divorce order or annulment, because a final divorce or annulment will prevent clients from self-petitioning for immigration relief under the VAWA.** A battered immigrant who has not filed her self-petition prior to receiving a divorce decree or annulment will be unable to self-petition. Attorneys should advise their clients to share any papers they receive since clients may not be aware that they have been served with divorce papers. If a client has already been served with divorce papers, the family law attorney can help find an immigration lawyer, who may be able to file a brief self-petition immediately, and supplement it later. Additionally, a family law attorney can use the discovery process to slow the divorce case down -- to protect the client's ability to file for immigration relief.

Battered immigrants may hold varied beliefs about the propriety of seeking a divorce. Some clients may feel that divorce is contrary to their religious or social beliefs, or that they will be ostracized by their immigrant community if they initiate divorce proceedings. Where possible, they may wish to obtain a legal separation instead of a divorce. Other clients may seek custody of the children because of their abusers' threats to abduct the children, but wish to remain married.

Legal separation orders do not preclude battered immigrants from self-petitioning. If property or custody matters are continuing arenas for ongoing violence, legal separation orders may be useful.

Family law attorneys can also present evidence in the divorce case that will be helpful for the client's immigration case, such as evidence that leads to a finding that abuse has occurred. Like discovery in a custody case, discovery in a divorce case can be used to gather information relevant to the client's immigration case. It is also critical to conduct ongoing safety planning in divorce cases, and to incorporate safeguards into any *pendente lite* and final orders regarding custody or visitation.

SAFETY NOTE: ***The danger of violence escalates during separation or divorce. When a victim decides to separate from an abuser or file for divorce, the batterer's control over the victim has been threatened, which can lead to more frequent or more severe violence. Battered immigrants may be harassed by their abusers, members of the abuser's family, or members of the immigrant community who disapprove of their legal action. Attorneys and advocates must plan for their clients' continuing safety during this time. (See Chapter 2, Working with Battered Immigrants)***

Financial Advice

Divorce attorneys should take early steps to protect battered immigrant clients financially, since many clients will face economic barriers due to a lack of work authorization, low-paying jobs, or an inability to obtain certain public benefits. Abusers may remove funds from joint bank accounts or liquidate other joint assets; cancel joint credit cards; seize the family automobile; and refuse to pay household, mortgage or utility bills. Abusers typically refuse to provide cash to the victim and children for food and basic necessities, and cut off assistance to the victim's family living in another country. Family law practitioners must therefore act promptly to provide for their client's economic survival. Many of these economic issues can be addressed by obtaining a civil protection order in which the abuser is ordered to pay rent and child support, and the assets are frozen.

If possible, attorneys should advise battered immigrants to obtain copies of important documents such as bank statements, credit card records, tax returns, marriage documents, salary statements, pension statements, and house and car titles, before the abuser is aware that the victim is leaving. Attorneys should also assist clients to obtain control over property, so long as client safety is assured. The party that has early possession usually retains property at the end of the process. A battered immigrant should transfer joint funds to a bank account in her own name, using a bank in which the abuser has no accounts.

CIVIL PROTECTION ORDERS

(This section is adapted from Catherine F. Klein & Leslye E. Orloff, Civil Protection Orders, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE (GOELMAN ET AL. EDS., 1996) and

Leslye E. Orloff & Vonetta Brown, Use of Creative Protection Orders to Better Help Battered Immigrant and Migrant Women (Ayuda, 1997))

A recent study by the National Center for State Courts found that in the vast majority of cases, civil protection orders deter repeated physical and psychological abuse and help victims regain a sense of well-being.[34] Custody issues are important components of protection orders. Often, after battered immigrants separate from their abusers, relationships with the children become the conduits through which abusers maintain control over their former partners. At least one study also showed that approximately 50% of abusers also physically abuse their children, indicating that the risk of physical danger to the children is high.[35] Without legal custody, a battered immigrant may have to negotiate child-related concerns with the abuser, or be viewed as an uncooperative, unfriendly parent.

In addition to custody, protection orders should also address visitation. Respondents retain visitation rights in 60% of protection order cases, and only 11% of cases require supervised visitation.[36] For children who have been abused or exposed to family violence, continued contact with the abuser may produce confusion and fear.[37] Further, visitation provides an opportunity for continued abuse and control, unless there are clear provisions to minimize this risk. Protection orders that are tailored to the individual needs of battered women provide the greatest opportunity for effective intervention.

The psychological impact of physical, psychological and sexual abuse can interfere with a battered immigrant's ability to present well in custody and visitation matters before the court and to defend her and her children's rights and safety. The victim may appear angry and hostile, socially withdrawn and passive, highly anxious and cognitively disorganized, terrorized, or numb and detached. Each of these presentations may be "normal" reactions to trauma, but not all battered immigrants will appear the same. A battered immigrant's demeanor and oral testimony in court may be strongly affected if the victim is encountering the batterer for the first time after being separated. In contrast, a victim with strong support from family friends may appear assertive, strong, and competent. Attorneys and advocates, as well as courts, should be aware that many factors impact a battered immigrant's psychological response to violence.

Civil protection orders are available by statute in all fifty states, the District of Columbia, Puerto Rico, and all U.S. Territories. Civil protection orders that are properly drafted and consistently enforced can provide effective protection for victims of domestic violence. In most jurisdictions, protection orders offer broad relief and can offer crucial protection against continued violence for victims who are not ready to separate from their abusers. Protection orders issued after findings of abuse provide critical evidence for battered immigrants who self-petition or file for cancellation of removal under the Violence Against Women Act; they document the violence and often strengthen extreme hardship arguments. (See Chapter 5, Self-Petitioning Requirements)

Two types of protection orders are available to victims of abuse. Most states authorize emergency, or temporary orders of protection, issued after an *ex parte* hearing if the victim can

show that there is immediate danger of future violence. Such orders are short-lived (typically 14-30 days) and are intended to protect victims of domestic violence until a full hearing can be scheduled. Courts also issue protection orders after a full hearing, by consent, or by default. Full protection orders are of a longer duration, typically for one to three years. The National Council of Juvenile and Family Court Judges recommends that protection orders last indefinitely, and a growing number of states have implemented this recommendation.

Civil protection orders may be among the most important tools the judicial system can offer to protect domestic violence victims from ongoing abuse,[38] particularly when crafted to address areas of ongoing conflict. A study by the National Institute of Justice found that victims obtain more effective civil protection orders when they are represented by counsel.[39] Boiler-plate civil protection orders often do not address the special needs of battered immigrants. Advocates or attorneys assisting battered immigrants must explore their clients' fears and concerns, and understand the ways in which abusers are exerting power and control over victims. Only then will they be able to draft individual orders that respond to the client's needs and the cultural context of abuse.[40]

Obtaining a Protection Order

Protection order laws do not specify time limits within which a victim of domestic violence must file for a protection order. Some courts, however, may not grant an order if the most recent threat or incident of abuse occurred several months prior to the filing of a petition for a civil protection order.

Protection orders can help battered immigrants leave their citizen or lawful permanent resident abusers and document their VAWA cases. If the last incident of abuse took place more than a few months earlier, the battered immigrant's attorney should fully document the abuse and demonstrate to the court that additional protection is needed now because the victim is taking steps to free herself from her abuser by filing for immigration relief.

Who can Obtain a Protection Order?

State statutes and case law define the relationship required between the parties to be eligible for protection. Advocates and attorneys should consult their state statutes to determine who is eligible in their states. The types of relationships protected may include:

- Current or former spouses
- Family members who are related by blood or marriage (i.e., parents, children, siblings, aunts, uncles, grandparents, and in-laws)
- Current or former household members
- Persons who have a child in common

- Persons who are currently or were formerly in dating or intimate relationships
- Persons in same sex relationships
- A few trend-setting states allow protection orders to be issued to persons who offer refuge to victims of domestic violence or to employers

Most jurisdictions allow an abused adult to file on his or her own behalf. Most states allow an adult to file on behalf of a child or an incompetent adult. Some progressive states allow minors to petition for protection on their own behalf.

Protection orders are available whether or not the parties plan to separate. A battered immigrant may prefer to remain with her abuser because he has filed an application for her with INS. Consequently, she may want an order requiring the abuser to attend a batterer intervention program and refrain from assaulting, threatening, or harassing her in the future, but she may not want him ordered out of the home. Other battered immigrants may prefer this type of protection until INS approves their self-petitions or grants them work authorization, after which they may seek to modify their protection orders to have the abuser evicted or ordered to stay away.

Grounds for Issuance of a Protection Order

States condition the issuance of a protection order on an underlying act of abuse which may constitute a criminal act, including: battery, assault, kidnapping, burglary, criminal trespass, interference with child custody, rape and sexual assault, interference with personal liberty, false imprisonment, child abuse, and stalking. Some states authorize the issuance of protection orders for behavior that has not physically harmed the petitioner or may not be considered criminal behavior, including emotional abuse, threats, stalking, and destruction of property, including harm to pets.

Jurisdiction

Jurisdiction for protection orders generally exists in the state where the underlying acts of abuse (or threats) have taken place or where the victim is present. The VAWA requires that each state, tribe, or territory give full faith and credit to a sister state's protection order (including an *ex parte* order) as long as due process requirements were met in the issuing state.[41]

Relief Available Under Civil Protection Orders

Include all forms of relief necessary to protect the victim. Gaps in the relief provided or a lack of specificity in the drafting of the order can lead to future violence and make enforcement of the order difficult if not impossible. Because batterers often are also abusive to the petitioner's children, it is important to include the children specifically by name in all appropriate provisions.

Attorneys can utilize the following remedies to address specific client needs. Even if clients do not initially request these provisions, they may find them to be useful. The checklist includes relief generally available in jurisdictions, as determined by statute, catch-all provisions, or case law. Attorneys should discuss the following options fully with each client:

- ***The respondent shall not molest, assault, harass, or in any manner threaten or physically abuse the petitioner and/or his/her child(ren).***

  Protection orders should always include a no further abuse clause. Without this clause, enforcement through contempt or criminal prosecution will be very difficult. Clearly word the clause so that the abuser knows specifically which types of actions are forbidden.

- ***The respondent shall stay 150 yards away from the petitioner's home, person, workplace, school, children, place of worship, day care provider, friend's/family member's home (specific address if it is already known to respondent).***

  Clearly define where the respondent is forbidden to go. Include in the stay away provision all locations frequented by the petitioner, including places such as the community center in the petitioner's cultural community, the petitioner's hairdresser, and the homes of relatives. If the petitioner is in hiding, the order should prohibit the respondent from going to the petitioner's residence without revealing its location and prohibit the respondent from attempting to locate the petitioner either directly or through third parties. The order may also provide a minimum distance the respondent must stay away from the petitioner and any other people specified in the order.

  It may be particularly important to order a respondent to refrain from contacting the petitioner at work. A battered immigrant may have permission from INS to work, but only at an authorized workplace; if she loses the job because of her batterer's harassment, and is forced to find alternate employment, she may violate the terms of her legal immigration visa.

- ***The respondent may not contact petitioner and/or his/her children in any manner: either personally, in writing, by telephone, or through third parties.***

  Batterers frequently adopt less violent, but harassing behaviors following the issuance of a protection order. Their intent is to continue to assert power and control over the victim in a manner less likely to draw the attention of legal or law enforcement authorities. This provision will help deter such behavior.

- ***The respondent shall vacate the residence at (location) by (date and time). The (local) police department shall stand by and shall give respondent 15 minutes to collect his/her personal belongings. Personal belongings include clothes, toiletries, and one set of sheets and pillowcases. No other property may be removed from the premises without petitioner's permission. The police shall take all keys and garage-door openers from respondent, check to see that they are the right ones, and then turn keys over to petitioner.***

Vacate orders require the respondent to leave the home shared with or owned by the petitioner. To protect the safety of the petitioner and her children, the order should specify how the respondent is to move out. Include additional provisions prohibiting the respondent from re-entering the home, and ordering respondent to surrender all keys, refrain from damaging the premises or property, and refrain from shutting off utilities or discontinuing mail service. In cases of battered immigrants, abusers should be required to vacate the home immediately so that they do not have the time to remove, hide, or destroy important documents or other evidence the victim may need for her immigration case.

- ***The respondent shall relinquish possession and/or use of the following personal property (list specifically itemizing property in question) as of (date and time).***

  The court can order the respondent to relinquish certain items of personal property, including the family vehicle, or restrain respondent from taking, selling, or destroying certain personal property. This provision can be particularly useful for battered immigrants who need to retrieve documents for their immigration cases. (See the following section on specific protection for battered immigrants.) If the protection order has a vacate provision, it may be appropriate to order the respondent to relinquish use of all the property except for personal belongings and any enumerated items. If both parties have vacated the home, the order should clearly state which items the respondent may remove from the family home.

- ***As of (date and time) the respondent shall turn over to the (local) police department any and all weapons that the respondent owns or possesses and all licenses the respondent has authorizing the possession of or purchase of weapons.***

  The court should prohibit the respondent from possessing any weapon,[42] revoke the respondent's weapon license, and prohibit the respondent from purchasing or receiving a weapon during the duration of the protection order. The court may also order the local police to search for and confiscate weapons when they assist with a vacate order or are called for assistance. Courts should require the respondent to submit a receipt proving that the weapons were relinquished as ordered.

- ***The respondent shall participate in and successfully complete the following (intervention program).***

  Courts may order respondents to attend counseling programs, including batterer's intervention programs, substance abuse, or mental health counseling programs, where appropriate. Only batterer intervention programs that have been certified as having specific expertise working with domestic violence perpetrators should be used. Joint or family counseling is inappropriate where there has been domestic violence. Substance abuse treatment alone is insufficient to address battering behavior. If the respondent is not fluent in English, he should be ordered to attend a certified program conducted in his language; if no such program is available, he should be ordered to arrange for an interpreter to accompany him to all sessions.

- ***Temporary custody of the minor child(ren) is awarded to petitioner until further order of this court or the expiration date of this order.***

  Include a custody order as part of a protection order when children are involved. Even when children have not been abused themselves, studies show that children living in violent homes are adversely affected.[43]

- ***The respondent has rights of visitation with the minor child(ren) under the following conditions: (add <u>specific requirements</u>).***

  Craft a visitation arrangement that ensures the safety of the petitioner and the children. The National Council of Juvenile and Family Court Judges recommends against unsupervised visitation until the abusive parent has successfully completed a domestic violence treatment program and, if warranted, a substance abuse treatment program. Supervised visitation can be arranged through either an approved third party or a local supervised visitation center. If the petitioner believes that visitation need not be supervised, the order should clearly provide when, where, and how visitation should take place. Particularly if there is a stay away or no contact provision, the order should specify a drop off and pick up arrangement that will not result in contact between the parties, such as the home of a relative. If this is not possible, exchange of the children should take place in a public place such as a museum, McDonald's, or local police precinct. If there is no reasonable way that the petitioner and/or the children can be safe during visitation, request that visitation rights be suspended until further order of the court. Be prepared to show the judge why visitation is not feasible and argue that continued conflict between the parents is not in the child(ren)'s best interest.

- ***The respondent shall pay support for (minor child) and/or petitioner in the amount of (dollar amount), bi-weekly.***

  Victims who have a minor child with the respondent may be entitled to child support or family maintenance. Use your state's child support guidelines to determine the amount of the award and make certain that child support orders are paid through wage withholding so the respondent cannot use child support payments as a coercive tool. Other monetary payments could include payment of specific bills, health insurance, rent or mortgage payments, or spousal support.

  Financial relief may be particularly important for battered immigrants who are undocumented, do not have work authorization, or are only able to obtain limited public assistance. Without the ability to support themselves or their children, battered immigrants may be forced to return to their abusers. Obtaining financial support from their children's father will also strengthen the battered immigrant's ability to prove good moral character in her immigration case.

- ***The respondent shall pay for the repair of the petitioner's damaged property, all costs associated with the changing of petitioner's locks, and all medical expenses the petitioner incurred as a result of respondent's violence.***

  Courts can order the batterer to provide restitution to the victim. Victims may be entitled to reimbursement for economic losses, including: medical costs, repair of damaged property, attorney's fees, and court costs. Respondent also can be ordered to continue paying health insurance for the victim and child(ren).

- ***The (local) Police Department shall assist the petitioner in enforcing this order and shall pay special attention to calls for assistance from petitioner and/or (petitioner's address).***

  Counsel may ask the court to instruct law enforcement to transport the petitioner to a shelter, accompany the petitioner home, serve process, and assist with vacate orders or orders dealing with the relinquishment of personal property or weapons.

Catch-all Provisions & Specific Provisions Which May Be Used to Assist Battered Immigrants

Most protection order statutes include a "catch all" provision that can be used creatively to obtain specific relief for battered immigrants.[44] Such provisions can be used to ensure that protection orders address potential areas of ongoing conflict, and remove barriers that prevent victims from leaving their abusers. They also provide an avenue to address concerns specifically related to the petitioner's culture.

Catch-all provisions have been broadly interpreted, and generally allow courts to order additional relief as necessary to prevent further abuse. In *Powell* v. *Powell,*[45] for example, the District of Columbia Court of Appeals held that courts had the authority to grant monetary relief in civil protection order proceedings, although this remedy was not specifically provided by statute.[46] Similarly, In *Maldonado v. Maldonado*,[47] the Court confirmed that the catch-all provision covered a wide range of relief, including provisions to assist the battered immigrant petitioner:

> [T]he husband shall relinquish possession and/or use of the wife's pocketbook, wallet, working permit, ID card, bank card, Social Security card, passport, and any other item of the children's personal belongings, table, four chairs and dishes . . . the husband shall not withdraw the application for permanent residence that he had filed on behalf of the wife.[48]

The following forms of relief may be particularly helpful for battered immigrants who have needs beyond those faced by non-immigrant victims, such as, the need for specific documentation and paperwork required in immigration cases.

- ***The respondent shall give petitioner access to, or copies of, any documents supporting petitioner's immigration application.***

  If a battered immigrant's husband has filed papers for her with the INS, the petitioner may need access to supporting documentation to pursue the immigration case. The petitioner should consult an immigration attorney to find out which documents should be requested.

- ***The respondent shall not withdraw the application for permanent residency which has been filed on petitioner's behalf.***

  Abusers who have filed applications for permanent residency on behalf of their abused spouses frequently threaten to withdraw such applications if the victims seek help to end the violence or leave the relationship. This type of provision in a civil protection order may provide enough leverage in some cases to prevent abusers from withdrawing such applications. The amount of evidence which a United States citizen or lawful permanent resident spouse must provide to attain lawful permanent residency for a spouse is substantially lower than the burden a battered immigrant must meet under the VAWA. Thus, for many battered immigrants, requiring the abuser to cooperate by completing the petition he has already filed is an option that should be pursued, if possible.

- ***The respondent shall not contact INS, the (insert particular) Consulate, or the (insert particular) Embassy about petitioner's immigration petition.***

  If an abuser has threatened to "have the victim deported," this type of provision may prevent an abuser from interfering with the petitioner's immigration case, since the threat of contempt or a misdemeanor charge will be present.

- ***The respondent shall take any and all action necessary to ensure that the petitioner's application for permanent residency is approved.***

  This type of general provision can also be used to prohibit abusers from obstructing a battered spouse's immigration case.

- ***The respondent shall relinquish possession and/or use of the following items: petitioner's pocketbook, wallet, working permit, ID card, bank card, social security card, passport, certificate of naturalization or citizenship (if applicable), alien registration receipt card or passport stamp to prove permanent residency (if applicable).***

  Protection orders can be used creatively to obtain evidence needed to prove lawful immigration status or to win an immigration case in which the victim is applying for legal status.

- ***The respondent shall relinquish possession and/or use of the following items: respondent's passport, certificate of naturalization or citizenship, alien registration receipt card or***

passport stamp to prove permanent residency, working permit, ID card, bank card, baptismal certificate, Social Security card.

A petitioner may need to have documents that belong to the respondent in order to prove the respondent's immigration status. This proof is a required element of the petitioner's VAWA self-petition or cancellation of removal case. Some of this information may also be useful in child support proceedings.

- ***The respondent shall relinquish possession and/or use of the following items: the parties' marriage certificate, family photos, papers, documentation, or other objects relating to the marriage, copies of the respondent's divorce certificates for any previous marriages and/or information about where such divorce decrees may be obtained.***

  This documentation may be needed to prove that the battered spouse entered into a good faith marriage, one element of a VAWA immigration case.

- ***The respondent shall relinquish possession and/or use of the following items*: *children's early school records, rent receipts and income tax returns.***

  This documentation may be needed to prove that the parties resided to together and to establish the validity of the parties' marriage.

- ***The respondent shall not remove the children from the court's jurisdiction and/or the United States absent a court order and shall relinquish the children's passports to the petitioner or the court.***

  Batterers often threaten to abduct children as a control tactic. When batterers remove children to other countries, it may be particularly difficult to trace or retrieve the children. After a civil protection order is entered, a copy of this court order should be forwarded to the United States Department of State, Office of Passport Services, to prevent the issuance of passports or duplicate passports for the children if the respondent attempts to obtain them.

- ***The respondent shall sign a statement informing the (particular) embassy or consulate that it should not issue a visitor, or any other type of visa, or any visa to the child absent an order of the court.***

  The petitioner and court should also sign this statement. A copy of the court order can then be filed with any potentially relevant consulates and/or embassies to prevent the issuance of a visa.

- ***The respondent shall pay all fees associated with the petitioner's and/or children's immigration cases.***

  This provision could assist battered spouses to pay the financial fees or penalties required to pursue particular immigration actions.

- ***The respondent shall sign a prepared FOIA (Freedom of Information Act) form. This form shall be sent to the petitioner or the petitioner's attorney.***

  FOIA requests are used to obtain copies of INS case files that relate to the respondent. A FOIA request signed by the respondent can provide the petitioner with access to information on the abuser's previous divorces, statements about the validity of his marriage to the petitioner, and proof of his legal immigration status. All of these issues are critical elements in the petitioner's VAWA case.

Trial Issues

Preparation: Advocates and attorneys can do the following to help prepare clients for civil protection order proceedings:

- ask clients about their expectations of the legal system
- describe how the U.S. legal system functions
- review court procedures
- review potential questions that may be asked by the defense attorney and/or the judge
- explain proper courtroom dress and behavior

Service of Process: Most states specifically provide that notice of the protection order hearing and any *ex parte* order be served personally on the respondent. Many states require the police to serve the respondent. Some states allow for service by mail or publication if personal service cannot be effected.

Standard of Proof in *Ex Parte* Proceedings: The standard is generally good cause, but may vary by state. Good cause may be shown by evidence that the respondent abused the victim and that the victim reasonably fears abuse in the future.

Standard of Proof in Full Protection Order Proceedings: The standard is generally a preponderance of the evidence, but may vary by state. The burden usually can be met by showing that the petitioner has been the victim of recent abuse by the respondent. Courts have acknowledged that past abuse is a factor to consider in determining whether the standard of proof has been met. The standard can be satisfied based on petitioner's testimony alone. However, using witnesses, photographs, medical reports, and police reports whenever possible to corroborate the victim's testimony will help victims obtain comprehensive remedies addressing their particular needs. Such evidence will also assist the petitioner in proving her case if the respondent contests the case or seeks custody.

Negotiating a Consent Order: Attempt to negotiate a consent order with the respondent or the respondent's counsel if the respondent is represented. If the respondent is unwilling to consent to provisions which protect the petitioner's or children's physical safety and economic security, be prepared to litigate the case. It is not advisable to consent to a protection order that is issued without a finding of abuse or an admission of guilt by the respondent. Orders entered without a finding of abuse or an admission of guilt can undermine the petitioner's immigration and/or custody case. Advise your client to sign the consent order or to litigate the case based on the strength of your case, the court's willingness to grant the specific provisions you are seeking, your client's desire to testify and/or hold the batterer accountable, and the need for a judicial finding of domestic violence in future immigration and custody cases. Prioritize your client's safety, including her ability to obtain immigration relief without her abuser's cooperation. Note that this process is a negotiation; domestic violence cases should never be mediated.

Inform the Court About:

- the history of violence
- injuries to the petitioner
- the impact of the violence on the petitioner and/or the children, including threats to abduct the children
- respondent's access to weapons
- threats made against petitioner and/or family members
- drug and/or alcohol abuse by the respondent
- respondent's history of mental illness
- threats of suicide by the respondent
- respondent's criminal record

Right to a Jury: Respondent has no right to a jury in civil protection order proceedings -- either issuance or modification.

Right to Counsel: Respondent has no right to appointed counsel in the issuance or modification of a protection order, even when custody is at issue.

Double Jeopardy: Criminal prosecution for a specific act should never preclude the victim from filing for a protection order based on that same incident. If the criminal case is dismissed, a criminal stay away order will cease even though the victim needs continued protection.

Mutual Protection Orders

A mutual protection order is one that is entered against both parties, requiring both parties to abide by the restraints and other forms of relief in the order. Batterers often file false petitions for civil protection orders (in addition to false criminal charges) after victims take legal action against them. Some batterers do not file petitions, but allege during civil protection order hearings that they have been abused. Under these circumstances, courts sometimes issue mutual protection orders in the mistaken belief that such orders will prevent future violence against either party. However, when mutual protection orders are entered against innocent victims, both batterers and victims learn that the system can be manipulated, and that courts are unwilling to determine who has been abused and order appropriate legal protection.

Mutual protection orders may also prevent enforcement of the order in a foreign jurisdiction. The VAWA requires all states, tribes, and territories to grant full faith and credit for all orders if the following safeguards are met: 1) a petition articulating grounds for issuance of each order was filed; 2) the person against whom the order was entered was served with notice of the petition; 3) the person against whom the order was entered had an opportunity for a hearing before a court; and 4) the court made specific findings that each party was entitled to such an order.[49]

Be wary of mutual orders entered against the petitioner without the respondent filing a petition, presenting evidence of abuse, and obtaining a court ruling that your client committed an offense of domestic violence. Orders of this kind violate the petitioner's due process rights and should be opposed.[50] Further, issuance of any protection order against a battered immigrant who is a non-citizen is extremely dangerous. If the abuser ever claims that the petitioner violated the order and a court believes such claims, the non-citizen battered immigrant can be deported.

Additional Uses of Civil Protection Orders for Battered Immigrants

Civil protection orders not only protect battered immigrants from continued abuse, but also provide critical evidence that can help prove VAWA immigration claims. Additionally, if a battered immigrant's abusive spouse or partner is a non-citizen, obtaining a protection order can pose a significant deterrent to ongoing violence, since conviction of a domestic violence offense can lead to deportation.

COMMON QUESTIONS & ANSWERS

Can battered immigrants file cases in civil court?

Yes, even undocumented people can file custody and civil protection order cases. Battered immigrants may hesitate to seek custody and civil protection orders because of their fear of the legal system and their fear of deportation. Attorneys and advocates working with battered

immigrants considering filing cases in civil court should talk with them to weigh the risks and benefits of initiating such actions.

My client's abuser has suggested his mother as a person to handle visitation exchanges. My client does not particularly get along with her mother-in-law but she does not object to this arrangement. Is this a good idea?

No. The person handling visitation exchange should be a neutral third party. Because of the safety concerns inherent in visitation exchange in domestic violence cases, the best course would be to have the exchange occur at a police station or a visitation center. A friend or family member of the abuser is not the best course.

My client is filing a self-petition. The process is lengthy and she is getting worm out from the work and the constant harassment she is facing from her abuser. She is also getting discouraged because we are having a hard time obtaining documents that are under the abuser's control that are crucial for her self-petition. What can we do to make the process easier?

You should talk to your client about filing for a civil protection order. In your situation, a civil protection order can accomplish a couple of goals. First, it may serve to stop the harassment. Second, under the "catch-all" provision in your state's civil protection order law, you can ask the court to order the abuser to turn over all of the documents that are necessary for your client's self-petition.

CHAPTER REVIEW

κ CHILD CUSTODY ISSUES DISCUSSED IN THIS CHAPTER INCLUDE:

T the impact of domestic violence on children;

T domestic violence and custody litigation;

T custody issues for battered immigrants;

T practice issues;

T legislative trends in custody statutes;

T the importance of not consenting to joint custody or mediation;

T preventing abusers from manipulating custody proceedings;

T addressing judicial concerns;

- T seeking safe custody and visitation orders;
- T complying with interstate jurisdiction;
- T how custody and support proceedings can lay the groundwork for immigration cases;
- T the problem of international parental kidnaping.

κ **CIVIL PROTECTION ORDER ISSUES DISCUSSED IN THIS CHAPTER INCLUDE:**

- T the types of protection orders available;
- T how to and who can obtain a protection order;
- T grounds for issuance of a protection order and jurisdiction over protection orders;
- T relief available under civil protection orders;
- T provisions of particular assistance to battered immigrants;
- T trial issues;
- T mutual protection orders (a protection order that is entered against both parties);
- T additional uses of civil protection orders for battered immigrants.

ENDNOTES

1.Bonnie E. Carlson, *Children's Observations of Interparental Violence, in* BATTERED WOMEN AND THEIR FAMILIES 147, 160 (Albert R. Roberts, 1984); Murray A. Straus, CHILDREN AS WITNESSES TO MARITAL VIOLENCE: A RISK FACTOR FOR LIFE LONG PROBLEMS AMONG A NATIONALLY REPRESENTATIVE SAMPLE OF AMERICAN MEN AND WOMEN (presented at the Ross Roundtable on Children and Violence, September, 1991).

2.LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 59 (1984).

3.Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements,* 7 MEDIATION Q. 347, 348 (1990).

4. *See id*. at 349.

5. *See id.* at 351.

6. *See id.*

7. *See id.* at 352.

8. *See, e.g.,* Power and Control Wheel, developed by the Duluth Domestic Violence Intervention Project.

9.HOWARD DAVIDSON, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION 20 (1994).

10.Daniel G. Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 SOCIAL WORK 51, 53 (1994).

11. Nearly 30% of all female homicide victims were killed by their current or former husbands or boyfriends. The rate of intimate partner violence against women who were separated from their husbands was 25 times higher than against married women. RONET BACHMAN & LINDA SALTZMAN, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY (U.S. Dep't. of Justice, 1, 4 (1995).

12.Anne L. Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases, in* DOMESTIC VIOLENCE IN CIVIL COURT CASES 37 (Family Violence Prevention Fund 1992).

13.Courts should not consider immigration status in domestic relations proceedings involving immigrant victims of domestic violence. This will ensure that children of battered immigrants will be protected in the same manner as all other children. *See* DAVIDSON *supra* note 9.

14.The Family Violence Project of the National Council of Juvenile and Family Court Judges, *Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice,* 29 FAM.. L. Q. 197, 225 (1995).

15.H.R. CON. RES. 172, OCT. 25, 1990.

16.S*ee, e.g.* ALA. CODE ə 30-3-131 (Supp. 1996); DEL. CODE ANN. tit. 13, ə 705A (Supp. 1996); HAW. REV. STAT. ə 571-46 (1997); LA. REV. STAT. ANN. ə 9:364 (West Supp. 1997); NEV. REV. STAT. ə 125.480 (1995); N.D. CENT. CODE ə 14-09-06.2 (Supp. 1997); OKLA. STAT. tit. 43, ə 112.2 (Supp. 1997).; S.D. CODIFIED LAWS ə 25-4-45.5 (Michie Supp. 1997).

17.*See, e.g.,* N.D. CENT. CODE ə 14-09-06.2(l) (j) (1991 & Supp. 1995).

18. D.C. CODE ANN. ə 16-914(a-2) (1989 & Supp. 1996).

19. *See, e.g.,* TEX. FAM. CODE ANN. ə 153.004(b) (West 1996); WASH. REV. CODE ANN. ə 26.09.191(1)(c) (West Supp. 1996).

20.National Council of Juvenile and Family Court Judges, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE, ə 407 (1994).

21.Telephone conversation with Linda Oman (Dec. 8, 1997).

22. *See id.*

23.Leslye Orloff, Jennifer Lewkowski, and Rachel Little, *Ensuring that Battered Immigrants who Seek Help from the Justice System are not Reported to the INS* (forthcoming law enforcement reporting manual) (contact Leslye Orloff for more information at 202/326-0040).

24.HR Rep No 395, 103d Cong, 1st Sess 26-27 (1993). Congress referred to a survey which found that in

Washington, D.C., 77% of Latina immigrant women married to U.S. citizens or lawful permanent residents were abused, and that in 69% of these cases, the abuser never filed a visa petition on behalf of the victim.

25.Eva J. Klain, *Parental Kidnapping, Domestic Violence and Child Abuse: Changing Legal Responses to Related Violence*, 1, 1-5. (American Prosecutors Research Institute's National Center for Prosecution of Child Abuse) 1995.

26. *See* 42 U.S.C. ə 11601-11610 (1995).

27. *See id.; See also* PAULA FASS, KIDNAPPED: CHILD ABDUCTION IN AMERICA 192 (1997) (serious inaccuracies discovered in most recent federal report on parental kidnapping).

28. *See* Klain, *supra* note 25, at 2. One small study of 65 left-behind parents found that international parental kidnappings are more likely to take place before a divorce is finalized, while domestic kidnappings are more likely to occur after finalization of a divorce. Rosemary Janvier et al., *Parental Kidnapping: A Survey of Left-Behind Parents,* 41 JUV. & FAM. COURT JUDGES 1, 3 (1990).

29.Klain, *supra* note 25 at 4; *see also* Agopian, *The Impact on Children of Abduction by Parents* 63 CHILD WELFARE 511 (1984).

30.Although a state's parental kidnapping statute may not explicitly provide for this, the criminal common law often provides a defense of necessity that would apply in these situations. Klain, *supra* note 25 at 16.

31.Some states require the hiding parent to initiate a custody action (and presumably serve process, if able) within a fixed time to use a necessity defense to parental kidnapping charges. See Klain, *supra* note 25 at 5-8.

32.A distinction may be made between threats to kidnap or "take" the children, and "threats" to win custody of the children through legal proceedings. While the latter may still indicate a risk for kidnapping, as in some circumstances it may still indicate a willingness to use the child to coerce the other parent, as a legal matter this is not considered a threat to kidnap.

33.Parents should consult with experts in child psychology and/or parental kidnapping, possibly available through their local state coalition against domestic violence, or through national child protection organizations listed below. *See also* PATRICIA HOFF, FAMILY ABDUCTION: HOW TO PREVENT AN ABDUCTION AND WHAT TO DO IF YOUR CHILD IS ABDUCTED (National Center for Missing and Exploited Children, 4th ed. 1994).

34.SUSAN L. KEILITZ, PAULA L. HANNAFORD & HILLERY S. EFKEMAN, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE (National Center for State Courts 1997).

35.Murray A. Straus, *Victims and Aggressors in Marital Violence*, AMERICAN BEHAVIORAL SCIENTIST 681, 704 (1990).

36.*See supra* note 34.

37. LENORE WALKER, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST (1994)

38. PETER FINN & SARAH COLSON, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (1990).

39. *See id.*

40. Leslye E. Orloff, *Effective Advocacy for Domestic Violence Victims Role of the Nurse-Midwife,* 41 J. NURSE

MID-WIFERY 473, 484 (1996).

41.18 U.S.C. ə 2265 (1998).

42.The federal Violence against Women Act prohibits persons who have protection orders issued against them from possessing firearms. 18 U.S.C. ə 922(d)(8)-(g)(8) (1998).

43.*See, e.g.*, HOWARD A. DAVIDSON, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN & THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN, A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (1994).

44.*But see* IND. CODE ANN. ə 34-4-5.1-2 (West 1997) and KAN. STAT. ANN. ə 60-3107 (1996).

45.547 A.2d 973 (D.C. 1988).

46. *See id.* at 975.

47.631 A.2d 40 (D.C. 1993).

48. *See id.* at 41.

49.18 U.S.C. ə 2265(c)(1)(2) (1998).

50.Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1074-78 (1993).

Chapter Twelve
AND IN THE END: COLLABORATION

September 8, 2000

Without legal assistance, battered immigrants may be unaware of their legal rights or unable to navigate procedures in immigration, criminal, family, or domestic violence proceedings. Training is essential for all advocates or attorneys providing assistance to battered immigrant clients. Untrained attorneys can create problems for their battered clients in one legal sphere while attempting to help in another. A family law attorney, for instance, might preclude a battered immigrant from being eligible to self-petition under the VAWA by obtaining a final divorce for the client. Conducting trainings with attorneys and advocates is a critical first step towards improving legal responses to the complex issues confronted by battered immigrants.

THE NEED FOR COLLABORATION BETWEEN DOMESTIC VIOLENCE AND IMMIGRATION EXPERTS

Immigrant victims of domestic violence frequently have a range of interwoven needs, which can be addressed through legal proceedings. These may include the following:

- safe housing
- financial relief including public benefits, child support, or victim compensation benefits
- an end to the violence
- child care
- employment
- access to domestic violence services, including shelter, crisis counseling, safety planning, and legal advocacy
- lawful immigration status
- a civil protection order, divorce, or custody order

Collaboration between advocates and legal specialists is necessary because even the most committed domestic violence lawyer, battered women's advocate, or immigration attorney cannot meet a client's wide ranging legal needs alone.

Collaboration between domestic violence lawyers, immigration lawyers and advocates and immigrant rights' advocates is also crucial to successfully serving a battered immigrant client's overall interests, since developments in one case may affect another case. Each specialist must be aware of the impact of different strategies on related cases. For instance, a family law attorney should consider whether obtaining public benefits or a divorce for a client would harm the client's immigration case. A domestic violence advocate should inform a client that filing criminal charges against a non-U.S. citizen spouse may result in his deportation following a conviction, and the subsequent loss of child support. Immigration attorneys should consider whether filing for immigration relief might cause an abuser to stop paying financial support that a

client may need. All attorneys should ensure that they have conducted safety planning with clients -- prior to taking legal steps that might cause batterers to physically assault their victims.

CHALLENGES IN COLLABORATING

Despite the need for collaboration, domestic violence, criminal and immigration law specialists may confront challenges when they attempt to work together. Advocates and attorneys working on domestic violence and immigration issues in community organizations may have had little prior contact. Domestic violence advocates and attorneys may not be aware of immigrant rights' organizations, and vice versa. Staff working in these agencies should meet each other, exchange information, and offer to provide cross-trainings. Conflicts can be resolved by working together to understand the varying perspectives of each group.

Ideological differences may also raise conflicts. For example, battered women's advocates may emphasize victim empowerment -- including a victim's right to refrain from pursuing criminal charges, while law enforcement personnel struggle to hold offenders accountable for crimes. Similarly, immigration officials may want to deport non-citizen perpetrators of domestic violence. Victims may find it difficult to cooperate in a criminal prosecution that could protect the family, but leave them without child support payments if abusers are convicted and deported.

HOW TO ENHANCE COLLABORATION

Collaboration requires parties to exchange information about their underlying goals for advocacy and to educate each other about their areas of expertise. Advocates and attorneys may need to learn new legal terminology, so that battered women's advocates understand what a USC and LPR are, and immigration attorneys know about civil protection orders and VAWA. Immigration law representatives/attorneys, family law attorneys, and victim advocates may also need to adjust their practice skills to better serve battered immigrant clients. For instance, immigration lawyers should learn to conduct safety planning with clients, while domestic violence lawyers should seek civil protection orders which include immigration related provisions.

Attorneys and advocates will be better able to assist battered immigrants if they receive training in related fields of law. While joint trainings can be based on this manual, cross-trainings can also be held separately. For instance, a local domestic violence program or a state domestic violence coalition could develop a training for immigration attorneys or organizations on relevant domestic violence issues. An immigrant rights' organization or bar association could conduct trainings on basic immigration law, or those parts of immigration law which affect battered immigrants, for family law attorneys or domestic violence program staff. Such trainings would improve the substantive knowledge of attorneys and program staff who work with battered immigrants, and would also provide them with contact information for local community resources and individuals.

All local trainings should provide participants with an updated, comprehensive list of referrals for battered immigrant clients. Such a list should include:

- National Domestic Violence Hotline [800-799-SAFE, TTY: 800-787-3224]
- Immigrant Women Program of the NOW Legal Defense and Education Fund [202-326-0040]
- National Immigration Project of the National Lawyer's Guild
- [617-227-9727]
- Family Violence Prevention Fund [415-252-8900]
- local domestic violence shelter
- local domestic violence crisis hotline
- local police
- local family law bar association
- local immigrant rights' organization
- local immigration law bar association
- local domestic violence counseling programs

The National Network on Behalf of Battered Immigrant Women can provide advocates and attorneys with technical assistance on family law, welfare, and immigration law cases. The Network can also help identify immigration attorneys in a particular jurisdiction to assist battered immigrants. The Preface of this manual contains the contact information for the Network.

Domestic violence and immigration advocates and attorneys can work together on long term projects in their own communities. They can convene multidisciplinary task forces, or form subcommittees on pre-existing domestic violence coordinating councils. Their goals should include developing local training and outreach on issues affecting immigrant victims of domestic violence. Additionally, these groups could develop state legislation that better serves battered immigrants, such as legislation that provides battered immigrants with access to public benefits if they leave their abusers and need financial help to support their children.

APPENDIX A
Sample Forms

I-360, Petition for Amerasian, Widow(er), or Special Immigrant
I-485, Application to Register Permanent Residence Status
I-485A, Supplement A to Form I-485
I-765, Application for Employment Authorization

INSTRUCTIONS

Purpose of This Form.
This petition is used to classify an alien as:

- an Amerasian;
- a Widow or Widower;
- a Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident;
- a Special Immigrant (Religious Worker; Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Juvenile Court Dependent; or Armed Forces Member).

Initial Evidence Requirements.
If these instructions state that a copy of a document may be filed with this petition, and you choose to send us the original, we may keep that original for our records. Any foreign language document must be accompanied by an English translation certified by the translator that he/she is competent to translate from the foreign language into English and that the translation is accurate.

Amerasian. Any person who is 18 or older, an emancipated minor, or a U.S. corporation may file this petition for an alien who was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a U.S. citizen.

The petition must be filed with:

- copies of evidence the person this petition is for was born in one of the above countries between those dates. If he/she was born in Vietnam, you must also submit a copy of his/her Vietnamese I.D. card, or an affidavit explaining why it is not available;
- copies of evidence establishing the parentage of the person, and of evidence establishing that the biological father was a U.S. citizen. Examples of documents that may be submitted are birth or baptismal records or other religious documents; local civil records; an affidavit, correspondence or evidence of financial support from the father; photographs of the father (especially with the child); or, absent other documents, affidavits from knowledgeable witnesses which detail the parentage of the child and how they know such facts;
- a photograph of the person;
- if the person is married, submit a copy of the marriage certificate, and proof of the termination of any prior marriages; and
- if the person is under 18 years old, submit a written statement from his/her mother or legal guardian which:
  - irrevocably releases him/her for emigration and authorizes the placing agencies to make necessary decisions for his/her immediate care until a sponsor receives custody;
  - shows an understanding of the effects of the release, and states whether any money was paid or coercion used prior to obtaining the release; and
  - includes the full name, date and place of birth, and present or permanent address of the mother or guardian, and with the signature of the mother or guardian on the release authenticated by a local registrar, court of minors, or a U.S. immigration or consular officer.

The following sponsorship documents are also required. You may file these documents with the petition, or wait until we review the petition and request them. However, not filing them with the petition will add to the overall processing time.

- An Affidavit of Financial Support, executed by the sponsor, with the evidence of financial ability required by that form. Please note that the original sponsor remains financially responsible for the Amerasian if any subsequent sponsor fails in this area;
- Copies of evidence showing that the sponsor is at least 21 years old and is a U.S. citizen or permanent resident;
- Fingerprints of the sponsor on Form FD-258; and
- If this petition is for a person under 18 years old, the following documents issued by a placement agency must be submitted:
  - a copy of the private, public or state agency's license to place children in the U.S., proof of the agency's recent experience in the intercountry placement of children and of the agency's financial ability to arrange the placement;
  - a favorable home study of the sponsor conducted by a legally authorized agency;
  - a pre-placement report from the agency, including information regarding any family separation or dislocation abroad that would result from the placement;
  - a written description of the orientation given to the sponsor and to the parent or guardian on the legal and cultural aspects of the placement;
  - a statement from the agency showing that the sponsor has been given a report on the pre-placement screening and evaluation of the child; and
  - a written plan from the agency to provide follow-up services, including mediation and counseling, and describing the contingency plans to place the person this petition is for in another suitable home if the initial placement fails.

Widow/Widower of a United States Citizen. You may file this petition for yourself if:

- you were married for at least two years to a U.S. citizen who is now deceased and who was a U.S. citizen at the time of death;
- your citizen spouse's death was less than two years ago;
- you were not legally separated from your citizen spouse at the time of death; and
- you have not remarried.

The petition must be filed with:

- a copy of your marriage certificate to the U.S. citizen and proof of termination of any prior marriages of either of you;
- copies of evidence that your spouse was a U.S. citizen, such as a birth certificate if born in the U.S.; Naturalization Certificate or Certificate of Citizenship issued by this Service; Form FS-240, Report of Birth Abroad of a Citizen of the United States; or a U.S. passport which was valid at the time of the citizen's death; and
- a copy of the death certificate of your U.S. citizen spouse.

Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident. You may self-petition for immediate relative or family-sponsored immigrant classification if you:

- are now the spouse or child of an abusive U.S. citizen or lawful permanent resident;
- are eligible for immigrant classification based on that relationship;
- are now residing in the United States;
- have resided in the United States with the U.S. citizen or lawful permanent resident abuser in the past;
- have been battered by, or have been the subject of extreme cruelty perpetrated by:
  - your U.S. citizen or lawful permanent resident spouse during the marriage; or are the parent of a child who has been battered by or has been the subject of extreme cruelty perpetrated by, your abusive citizen or lawful permanent resident spouse during your marriage; or
  - your citizen or lawful permanent resident parent while residing with that parent;
- are a person of good moral character;
- are a person whose deportation would result in extreme hardship to yourself, or to your child if you are a spouse; and
- if you are a spouse, entered into the marriage to the citizen or lawful permanent resident abuser in good faith.

NOTE: Divorce or other legal termination of the marriage to the abuser AFTER the self-petition is properly filed with INS will not be the sole basis for denial or revocation of an approved self-petition. If you remarry before you become a lawful permanent resident, however, your self-petition will be denied or the approval revoked.

Your self-petition may be filed with any credible relevant evidence of eligibility. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the INS; therefore, you are encouraged to provide the following evidence:

- evidence of the abuser's U.S. citizenship or lawful permanent resident status;
- marriage and divorce decrees, birth certificates, or other evidence of your legal relationship to the abuser;

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- one or more documents showing that you and the abuser have resided together in the United States in the past, such as employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, or affidavits;
- one or more documents showing that you are now residing in the United States, such as the documents listed above;
- evidence of the abuse, such as reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. If you have an order of protection or have taken other legal steps to end the abuse, you should submit copies of those court documents;
- if you are more than 14 years of age, your affidavit of good moral character accompanied by a local police clearance, state-issued criminal background check, or similar report from each locality or state in the United States or abroad in which you have resided for six or more months during the 3-year period immediately preceding the filing of your self-petition;
- affidavits, birth certificates of children, medical reports and other relevant credible evidence of the extreme hardship that would result if you were to be deported; and
- if you are a spouse, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding your courtship, wedding ceremony, shared residence and experiences showing that your marriage was entered into in good faith.

Special Immigrant Juvenile. Any person, including the alien, may file this petition for an alien who:
- is unmarried and less than 21 years old;
- has been declared dependent upon a juvenile court in the United States or who such a court has legally committed to, or placed under the custody of, an agency or department of a state and who has been found eligible for long-term foster care; and
- has been the subject of administrative or judicial proceedings in which it was determined that it would not be in the juvenile's best interests to be returned to the juvenile's or his/her parent's country of nationality or last habitual residence.

NOTE: After a special immigrant juvenile becomes a permanent resident, his or her parent(s) may not receive any immigration benefit based on the relationship to the juvenile.

The petition must be filed with:
- a copy of the juvenile's birth certificate or other evidence of his or her age;
- copies of the court or administrative document(s) upon which the claim to eligibility is based.

Special Immigrant Religious Worker. Any person, including the alien, may file this petition for an alien who for the past 2 years has been a member of a religious denomination which has a bona fide nonprofit, religious organization in the U.S.; and who has been carrying on the vocation, professional work, or other work described below, continuously for the past 2 years; and seeks to enter the U.S. to work solely:
- as a minister of that denomination; or
- in a professional capacity in a religious vocation or occupation for that organization; or
- in a religious vocation or occupation for the organization or its nonprofit affiliate.

NOTE: A petition for a special immigrant for a person who is not a minister may only be filed until October 1, 1997.

The petition must be filed with:
- a letter from the authorized official of the religious organization establishing that the proposed services and alien qualify as above;
- a letter from the authorized official of the religious organization attesting to the alien's membership in the religious denomination and explaining, in detail, the person's religious work and all employment during the past 2 years and the proposed employment; and
- evidence establishing that the religious organization, and any affiliate which will employ the person, is a bona fide nonprofit religious organization in the U.S. and is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. government in the Canal Zone. Any person may file this petition for an alien who, at the time the Panama Canal Treaty of 1977 entered into force, either:
- was resident in the Canal Zone and had been employed by the Panama Canal Company or Canal Zone Government for at least 1 year; or
- was a Panamanian national and either honorably retired from U.S. Government employment in the Canal Zone with a total of 15 or more years of faithful service or so employed for 15 years and since honorably retired; or
- was an employee of the Panama Canal Company or Canal Zone government, had performed faithful service for 5 years or more as an employee, and whose personal safety, or the personal safety of his/her spouse or child, is in danger as a direct result of the special nature of his/her employment and as a direct result of the Treaty.

The petition must be filed with:
- a letter from the Panama Canal Company, Canal Zone government or U.S. government agency employing the person in the Canal Zone, indicating the length and circumstances of employment and any retirement or termination; and
- copies of evidence to establish any claim of danger to personal safety.

Special Immigrant Physician. Any person may file this petition for an alien who:
- graduated from a medical school or qualified to practice medicine in a foreign state;
- was fully and permanently licensed to practice medicine in a State of the U.S. on January 9, 1978, and was practicing medicine in a State on that date;
- entered the U.S. as an "H" or "J" nonimmigrant before January 9, 1978; and
- has been continuously present in the U.S. and continuously engaged in the practice or study of medicine since the date of such entry.

The petition must be filed with:
- letters from the person's employers, detailing his/her employment since January 8, 1978, including the current employment; and
- copies of relevant documents that demonstrate that the person filed for meets all the above criteria.

Special Immigrant International Organization Employee or family member. Certain long-term "G" and "N" nonimmigrant employees of a qualifying international organization entitled to enjoy privileges, exemptions and immunities under the International Organizations Immunities Act, and certain relatives of such an employee, may be eligible to apply for classification as a Special Immigrant. To determine eligibility, contact the qualifying international organization or your local INS office. The petition must be filed with:
- a letter from the international organization demonstrating that it is a qualifying organization and explaining the circumstances of qualifying employment and the immigration status held by the person the petition is for; and
- copies of evidence documenting the relationship between the person this petition is for and the employee.

Armed Forces Member. You may file this petition for yourself, if:
- you have served honorably on active duty in the Armed Forces of the United States after October 15, 1978;
- you originally lawfully enlisted outside the United States under a treaty or agreement in effect on October 1, 1991, for a period or periods aggregating:
  - twelve years, and were never separated from such service except under honorable conditions; or
  - six years, are now on active duty, and have reenlisted to incur a total active duty service obligation of at least 12 years;
- you are a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and
- the executive department under which you have served or are serving has recommended you for this special immigrant status.

The petition must be filed with:
- certified proof issued by the authorizing official of the executive department in which you are serving or have served which certifies that you have the required honorable active duty service and/or commitment; and
- your birth certificate.

General Filing Instructions.
Please answer all questions by typing or clearly printing in black ink only. Indicate that an item is not applicable with "N/A". If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item the answer refers to. Every petition must be properly signed, and accompanied by the proper fee. If you are under 14 years of age, your parent or guardian may sign the petition.

Where to File.
If you are filing for a Special Immigrant Juvenile, file the petition at the local INS office having jurisdiction over the place he/she lives.

If you are filing for Amerasian classification and the person you are filing for is outside the United States, you may file this petition at the INS office that has jurisdiction over the place he/she lives or the office that has jurisdiction over the place he/she will live.

If you are in the United States and filing as a Widow/Widower or as the Self-petitioning Spouse or Child of an Abusive U.S. Citizen, you may file this petition together with your application for adjustment of status. If you are in the United States, filing as the self-petitioning spouse or child of abusive lawful permanent resident, and have an immediately available immigrant visa number, you may also file this petition together with your application for adjustment of status. See the adjustment of status instructions for information about where to file.

If this petition is for an Amerasian, a Widow/Widower, or a Special Immigrant Armed Forces Member, and that person lives outside the United States, you may file this petition at the INS office overseas or the U.S. consulate or Embassy abroad having jurisdiction over the area in which he or she lives.

In all other instances file this petition at an INS Service Center, as follows:

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail this petition to USINS, Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479-0001.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail this petition to USINS, Texas Service Center, P.O. Box 152122, Dept. A, Irving, TX 75015-2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail this petition to USINS, California Service Center, P.O. Box 10360, Laguna Niguel, CA 92607-0360

If you live elsewhere in the U.S., mail this petition to USINS, Nebraska Service Center, 850 S Street, Lincoln, NE 68501-2521

Fee.
The fee for this petition is $80.00, except that there is no fee if you are filing for an Amerasian. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service.

Initial processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your petition.

NOTE: A Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident may submit any relevant credible evidence in place of the suggested evidence.

Requests for additional information or interview. We may request additional information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you establish that the person this petition is for is eligible for the requested classification, we will approve the petition. We will send it to the U.S. Embassy/Consulate for visa issuance unless he or she is in the U.S. and appears eligible and intends to apply for adjustment to permanent resident status while here. If you do not establish eligibility, we will deny the petition. We will notify you in writing of our decision.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1154. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 15 minutes; (2) completing the form, 20 minutes; and (3) assembling and filing the application, 85 minutes for an estimated average of 2 hours per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, (1115-0117) 425 I Street, N.W., Room 5307, Washington, D.C. 20536.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0117
Petition for Amerasian, Widow or Special Immigrant

START HERE - Please Type or Print

Part 1. Information about person or organization filing this petition.

(Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want INS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name	Given Name	Middle Initial
Company or Organization Name		

Address - C/O

Street Number and Name		Apt. #
City	State or Province	
Country		ZIP/Postal Code
U.S. Social Security #	A #	IRS Tax # *(if any)*

Part 2. Classification Requested (check one):

a. ☐ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past 2 years
c. ☐ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☐ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain: _____

Part 3. Information about the person this petition is for.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name		Apt. #
City	State or Province	
Country		ZIP/Postal Code
Date of Birth *(Month/Day/Year)*	Country of Birth	
U.S. Social Security # (if any)	A # *(if any)*	

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

Complete the items below if this person is in the United States:

Date of Arrival *(Month/Day/Year)*	I-94#
Current Nonimmigrant Status 175	Expires on *(Month/Day/Year)*

Form I-360 (Rev. 03/07/96) N

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner/ Applicant Interviewed ☐ Beneficiary Interviewed	

☐ I-485 Filed Concurrently
☐ Bene "A" File Reviewed

Classification

Consulate

Priority Date

Remarks:

Action Block

To Be Completed by *Attorney* or *Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

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Part 4. Processing Information.

Below give the United States Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City	Country

If you gave a United States address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name	Address

Sex of the person this petition is for.	☐ Male	☐ Female
Are you filing any other petitions or applications with this one?	☐ No	☐ Yes (How many? _____)
Is the person this petition is for in exclusion or deportation proceedings?	☐ No	☐ Yes (Explain on a separate sheet of paper)
Has the person this petition is for ever worked in the U.S. without permission?	☐ No	☐ Yes (Explain on a separate sheet of paper)
Is an application for adjustment of status attached to this petition?	☐ No	☐ Yes

Part 5. Complete only if filing for an Amerasian.

Section A. Information about the mother of the Amerasian

Family Name	Given Name	Middle Initial

Living? ☐ No (Give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage. Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name	Given Name	Middle Initial

Date of Birth (Month/Day/Year)	Country of Birth

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

Home Phone #	Work Phone #

At the time the Amerasian was conceived:

☐ The father was in the military (indicate branch of service below - and give service number here): _____

☐ Army ☐ Air Force ☐ Navy ☐ Marine Corps ☐ Coast Guard

☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

☐ The father was not in the military, and was not a civilian employed abroad. *(Attach a full explanation of the circumstances.)*

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.

Section A. Information about the Juvenile

List any other names used.

Answer the following questions regarding the person this petition is for. If you answer "no" explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state?	☐ No	☐ Yes
Does he/she continue to be eligible for long term foster care?	☐ No	☐ Yes

Continued on next page.

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.

Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.

Family Name	Given Name	Middle Initial

Date of Birth *(Month/Day/Year)*	Country of Birth	Date of Death *(Month/Day/Year)*

He or she is now, or was at time of death a *(check one):*

- ☐ U.S. Citizen born in the United States.
- ☐ U.S. Citizen born abroad to U.S. citizen parents.
- ☐ U.S. Citizen through Naturalization *(Show A #)* _____
- ☐ U.S. lawful permanent resident *(Show A #)* _____
- ☐ Other, explain _____

Section B. Additional information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place you and the person in Seciton A were married. *(If you are a self-petitioning child, write: "N/A")*

When did you live with the person named in Section A? From *(Month/Year)*_____until *(Month/Year)*_____.

If you are filing as a widow/widower, were you legally separated at the time of the U.S citizens's death? ☐ No ☐ Yes, *(attach explanation)*.

Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes *(show child(ren)'s full names):*

Part 8. Information about the spouse and children of the person this petition is for.

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Spouse ☐ Child		A #
B.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
C.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
D.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
E.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
F.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #

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G. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship ☐ Child		A #
H. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship ☐ Child		A #

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. consulate or INS office overseas, sign in front of a U.S. INS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature	Date

Signature of INS or Consular Official	Print Name	Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for a requested benefit, and it may have to be denied.*

Part 10. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date

Firm Name
and Address

The American Bar Association Commission on Domestic Violence
The Immigrant Women Program of the NOW Legal Defense and Education Fund
Ayuda, Inc.

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Residence or Adjust Status

Purpose of This Form.
This form is used by a person who is in the United States to apply to the Immigration and Naturalization Service (INS) to adjust to permanent resident status or register for permanent residence. It may also be used by certain Cuban nationals to request a change in the date their permanent residence began.

Who May File.
Based on an immigrant petition. You may apply to adjust your status if:

- an immigrant visa number is immediately available to you based on an approved immigrant petition; or
- you are filing this application with a complete relative, special immigrant juvenile or special immigrant military petition, which if approved, would make an immigrant visa number immediately available to you.

Based on being the spouse or child (derivative) at the time another adjustment applicant (principal) files to adjust status or at the time a person is granted permanent resident status in an immigrant category that allows derivative status for spouses and children.

- **If the spouse or child is in the United States**, the individual derivatives may file their Form I-485 adjustment of status applications concurrently with the Form I-485 for the principal beneficiary, or file the Form I-485 at anytime after the principal is approved, if a visa number is available.
- **If the spouse or child is residing abroad**, the person adjusting status in the United States should file the **Form I-824, Application for Action on an Approved Application or Petition, concurrently** with the principal's adjustment of status application to allow the derivates to immigrate to the United States without delay, if the principal's adjustment of status application is approved. **No I-824 fee will be refunded if the principal's adjustment is not granted.**

Based on admission as the fiance(e) of a U. S. citizen and subsequent marriage to that citizen. You may apply to adjust status if you were admitted to the U. S. as the K-1 fiance(e) of a U. S. citizen and you married that citizen within 90 days of your entry. If you were admitted as the K-2 child of such a fiance(e), you may apply based on your parent's adjustment application.

Based on asylum status. You may apply to adjust status if you have been granted asylum in the U. S. after being physically present in the U. S. for one year after the grant of asylum, if you still qualify as an asylee or as the spouse or child of a refugee.

Based on Cuban citizenship or nationality. You may apply to adjust status if:

- you are a native or citizen of Cuba, were admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year; or
- you are the spouse or unmarried child of a Cuban described above, and regardless of your nationality, you were admitted or paroled after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

Based on continuous residence since before January 1, 1972. You may apply for permanent residence if you have continuously resided in the U.S. since before January 1, 1972.

Applying to change the date your permanent residence began. If you were granted permanent residence in the U. S. prior to November 6, 1966, and are a native or citizen of Cuba, his or her spouse or unmarried minor child, you may ask to change the date your lawful permanent residence began to your date of arrival in the U. S. or May 2, 1964, whichever is later.

Other basis of eligibility. If you are not included in the above categories, but believe you may be eligible for adjustment or creation of record of permanent residence, contact your local INS office.

Persons Who Are Ineligible.
Unless you are applying for creation of record based on continuous residence since before January 1, 1972, or adjustment of status under a category in which special rules apply (such as asylum adjustment, Cuban adjustment, special immigrant juvenile adjustment or special immigrant military personnel adjustment), **you are not eligible for adjustment of status if <u>any</u> of the following apply to you:**

- you entered the U.S. in transit without a visa;
- you entered the U.S. as a nonimmigrant crewman;
- you were not admitted or paroled following inspection by an immigration officer;
- your authorized stay expired before you filed this application; you were employed in the U.S. prior to filing this application, without INS authorization; or you otherwise failed to maintain your nonimmigrant status, other than through no fault of your own or for technical reasons, unless you are applying because you are an immediate relative of a U.S. citizen (parent, spouse, widow, widower or unmarried child under 21 years old), a K-1 fiance(e) or K-2 fiance(e) dependent who married the U.S. petitioner within 90 days of admission or an "H" or "I" or special immigrant (foreign medical graduates, international organization employees or their derivative family members);
- you are or were a J-1 or J-2 exchange visitor, are subject to the two-year foreign residence requirement and have not complied with or been granted a waiver of the requirement;
- you have an A, E or G nonimmigrant status, or have an occupation which would allow you to have this status, unless you complete Form I-508 (I-508F for French nationals) to wave diplomatic rights, privileges and immunities, and if you are an A or G nonimmigrant, unless you submit a complete Form I-566;
- you were admitted to Guam as a visitor under the Guam visa waiver program;
- you were admitted to the U.S. as a visitor under the Visa Waiver Pilot Program, unless you are applying because you are an immediate relative of a U.S. citizen (parent, spouse, widow, widower or unmarried child under 21 years old);
- you are already a conditional permanent resident;
- you were admitted as a K-1 fiance(e) but did not marry the U.S. citizen who filed the petition for you, or were admitted as the K-2 child of a fiance(e) and your parent did not marry the U.S. citizen who filed the petition.

General Filing Instructions.

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with **"N/A."** If the answer is "**none,**" write **"none."** If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item to which the answer refers.You must file your application with the required **Initial Evidence** described below, beginning on this page**.** Your application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign your application.

Translations. Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this application, and you choose to send us the original, we may keep the original for our records.

Initial Evidence.
You must file your application with the following evidence:

- **Birth certificate.** Submit a copy of your foreign birth certificate or other record of your birth that meets the provisions of secondary evidence found in 8 CFR 103.2(b)(2).
- **Copy of passport page with nonimmigrant visa.** If you have obtained a nonimmigrant visa(s) from an American consulate abroad within the last year, submit a photocopy(ies) of the page(s) of your passport with the visa(s).
- **Photos.** Submit two (2) identical natural color photographs of yourself, taken within 30 days of the application. Photos must have a white background, be unmounted, printed on thin paper and be glossy and unretouched. They must show a three-quarter frontal profile showing the right side of your face, with your right ear visible and with your head bare. You may wear a headdress if required by a religious order of which you are a member. The photos must be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 and 1/4 inches. Lightly print your A# (or your name if you have no A#) on the back of each photo, using a pencil.
- **Fingerprints.** If you are between the ages of 14 and 75, you must be fingerprinted. After filing this application, INS will notify you in writing of the time and location where you must go to be fingerprinted. Failure to appear to be fingerprinted may result in denial of your application.
- **Police clearances**. If you are filing for adjustment of status as a member of a special class described in an I-485 supplement form, please read the instructions on the supplement form to see if you need to obtain and submit police clearances, in addition to the required fingerprints, with your application.
- **Medical examination (Section 232 of the Act).** When required, submit a medical examination report on the form you have obtained from INS.

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-- **A. Individuals applying for adjustment of status through the INS Service Center: 1) General:** If you are filing your adjustment of status application with the INS Service Center, include your medical exam report with the application, unless you are a refugee or asylee. **2) Refugees**: If you are applying for adjustment of status one year after you were admitted as a refugee, you only need to submit a vaccination supplement with your adjustment of status application, not the entire medical report, **unless** there were medical grounds of inadmissibility that arose during the initial exam you had overseas.

-- **B. Individuals applying for adjustment of status through the local INS office and asylees applying for adjustment of status through the Service Center:** If you are filing your adjustment of status application with the local INS office, or if you are an asylee filing an adjustment of status application with the Service Center, one year after you were granted asylum, do not submit a medical report with your adjustment of status application. Wait for further instructions from INS about how and where to take the medical exam and submit the medical exam report.

-- **Fiance(e)s:** If you are a K-1 fiance(e) or K-2 dependent who had a medical exam within the past year as required for the nonimmigrant fiance (e) visa, you only need to submit a vaccination supplement, not the entire medical report. You may include the vaccination supplement with your adjustment of status application.

-- **Individuals not required to have a medical exam:** The medical report is not required if you are applying for creation of a record for admission as a lawful permanent resident under section 249 of the Act as someone who has continuously resided in the United States since January 1, 1972 (registry applicant).

- **Form G-325A, Biographic Information Sheet.** You must submit a completed G-325A if you are between 14 and 79 years of age.
- **Evidence of status.** Submit a copy of your Form I-94, Nonimmigrant Arrival/Departure Record, showing your admission to the U.S. and current status, or other evidence of your status.
- **Affidavit of Support/Employment Letter.**

-- **Affidavit of Support.** Submit the Affidavit of Support (Form I-864) if your adjustment of status application is based on your entry as a fiance(e), or a relative visa petition (Form I-130) filed by your relative or on an employment based visa petition (Form I-140) based on a business that is five percent or more owned by your family.

-- **Employment Letter.** If your adjustment of status application is based on an employment based visa petition (Form I-140), you must submit a letter on the letterhead of the petitioning employer which confirms that the job on which the visa petition is based is still available to you. The letter must also state the salary that will be paid.

(Note: The affidavit of support and/or employment letter are not required if you applying for creation of record based on continuous residence since before January 1, 1972, asylum adjustment, or a Cuban or a spouse or unmarried child of a Cuban who was admitted after January 1, 1959.)

- **Evidence of eligibility.**
  - -- **Based on an immigrant petition.** Attach a copy of the approval notice for an immigrant petition which makes a visa number immediately available to you, or submit a complete relative, special immigrant juvenile or special immigrant military petition which, if approved, will make a visa number immediately available to you.
  - -- **Based on admission as the K-1 fiance(e) of a U.S. citizen and subsequent marriage to that citizen.** Attach a copy of the fiance(e) petition approval notice, a copy of your marriage certificate and your Form I-94.
  - -- **Based on asylum status.** Attach a copy of the letter or Form I-94 which shows the date you were granted asylum.
  - -- **Based on continuous residence in the U.S. since before January 1, 1972.** Attach copies of evidence that shows continuous residence since before January 1, 1972.
  - -- **Based on Cuban citizenship or nationality.** Attach evidence of your citizenship or nationality, such as a copy of your passport, birth certificate or travel document.
  - -- **Based on derivative status as the spouse or child of another adjustment applicant or person granted permanent residence based on issuance of an immigrant visa.** File your application with the application of that other applicant, or with evidence that it is pending with the Service or has been approved, or evidence that your spouse or parent has been granted permanent residence based on an immigrant visa and:
    - If you are applying as the spouse of that person, also attach a copy of your marriage certificate and copies of documents showing the legal termination of all other marriages by you and your spouse;
    - If you are applying as the child of that person, also attach a copy of your birth certificate, and if the other person is not your natural mother, copies of evidence (such as a marriage certificate and documents showing the legal termination of all other marriages and an adoption decree) to demonstrate that you qualify as his or her child.
- **Other basis for eligibility.** Attach copies of documents proving that you are eligible for the classification.

Where to File.
File this application at the INS office having jurisdiction over your place of residence.

Fee. The fee for this application is **$220,** except that it is **$160** if you are less than 14 years old. There is no application fee if you are filing as a refugee under section 209(a) of the Act. If you are between the ages of 14 and 75, there is a $25 fingerprinting fee in addition to the application fee. For example, if your application fee is $220 and you are between the ages of 14 and 75, the total fee you must pay is $245. You may submit one check or money order for both the application and fingerprinting fees. Fees must be submitted in the exact amount. **DO NOT MAIL CASH.** Fees cannot be refunded. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

-- if you live in Guam and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."

-- if you live in the U.S. Virgin Islands and are filing this application in the U.S. Virgin lslands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check in payment of an application fee will render the application and any document issued invalid. A charge of $30 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.

Acceptance. Any application that is not signed, or is not accompanied by the correct application fee, will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. An application is not considered properly filed until accepted by the INS.

Initial Processing. Once an application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for More Information. We may request more information or evidence. We may also request that you submit the originals of any copy. We may return these originals when they are no longer required.

Interview. After you file your application you will be notified to appear at an INS office to answer questions about the application. You will be required to answer these questions under oath or affirmation. You must bring your Arrival-Departure Record (Form I-94) and any passport to the interview.

Decision. You will be notified in writing of the decision on your application.

Selective Service Registration. If you are a male at least 18 years old, but not yet 26 years old, and required according to the Military Selective Service Act to register with the Selective Service System, the INS will help you register. When your signed application is filed and accepted by the INS, we will transmit your name, current address, Social Security number, date of birth and the date you filed the application to the Selective Service to record your registration as of the filing date. If the INS does not accept your application, and if still so required, you are responsible to register with the Selective Service by other means, provided you are under 26 years of age. If you have already registered, the Selective Service will check its records to avoid any duplication. (**Note: men 18 through 25 years old, who are applying for student financial aid, government employment or job training benefits should register directly with the Selective Service or such benefits may be denied. Men can register at a local post office or on the Internet at http://www.sss.gov).**

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Travel Outside the U.S. for Adjustment of Status Applicants Under Sections 209 and 245 of the Act and Registry Applicants Under Section 249 of the Act. Your departure from the U.S. (including brief visits to Canada or Mexico) constitutes an abandonment of your adjustment of status application, unless you are granted permission to depart and you are inspected upon your return to the U.S. Such permission to travel is called "advance parole." To request advance parole, you must file Form I-131, with fee, with the INS office where you applied for adjustment of status.

-- **Exceptions: 1) H and L nonimmigrants:** If you are an H or L nonimmigrant who continues to maintain his or her status, you may travel on a valid H or L visa without obtaining advance parole. **2) Refugees and Asylees:** If you are applying for adjustment of status one year after you were admitted as a refugee or one year after you were granted asylum, you may travel outside the United States on your valid refugee travel document, if you have one, without the need to obtain advance parole.

-- **WARNING:** Travel outside of the U.S. may trigger the 3-and 10-year bars to admission under section 212(a)(9)(B)(i) of the Act for adjustment applicants, but not registry applicants. This ground of inadmissibility is triggered if you were unlawfully present in the U.S. (i.e., you remained in the United States beyond the period of stay authorized by the Attorney General) for more than 180 days before you applied for adjustment of status, and you travel outside of the U.S. while your adjustment of status application is pending. **(Note:** Only unlawful presence that accrued on or after April 1, 1997, counts towards the 3-and 10-year bars under section 212 (a)(9)(B)(i) of the Act.)

-- If you become inadmissible under section 212(a)(9)(B)(i) of the Act while your adjustment of status application is pending, you will need a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act before your adjustment of status application can be approved. This waiver, however, is granted on a case-by-case basis and in the exercise of discretion. It requires a showing of extreme hardship to your U.S. citizen or lawful permanent resident spouse or parent, unless you are a refugee or asylee. For refugees and asylees, the waiver may be granted for humanitarian reasons, to assure family unity or if it is otherwise in the public interest.

Penalties. If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice. We ask for the information on this form and associated evidence to determine if you have established eligibility for the immigration benefit you are seeking. Our legal right to ask for this information is in 8 USC 1255 and 1259. We may provide this information to other government agencies, including the Selective Service System. Your failure to provide this information on this form and any requested evidence may delay a final decision or result in denial of your application.

Paperwork Reduction Act Notice. A person is not required to respond to a collection of information unless it displays a current valid OMB number. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is computed as follows: (1) 20 minutes to learn about the law and form; (2) 25 minutes to complete the form and (3) 270 minutes to assemble and file the application, including the required interview and travel time -- for a total estimated average of 5 hours and 15 minutes per application. If you have comments regarding the accuracy of this estimate or suggestions to make this form simpler, you should write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536; OMB No. 1115-0053. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

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OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Section of Law
- ☐ **Sec. 209(b), INA**
- ☐ **Sec. 13, Act of 9/11/57**
- ☐ **Sec. 245, INA**
- ☐ **Sec. 249, INA**
- ☐ **Sec. 2 Act of 11/2/66**
- ☐ **Sec. 2 Act of 11/2/66**
- ☐ **Other** _____

Country Chargeable

Eligibility Under Sec. 245
Approved Visa Petition
Dependent of Principal Alien
Special Immigrant
Other _____

Preference

Action Block

To be Completed by *Attorney or Representative,* if any
☐ Fill in box if G-28 is attached to represent the applicant.
VOLAG #

ATTY State License #

Part 1. Information About You.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name	Apt. #

City

State	Zip Code

Date of Birth (month/day/year)	Country of Birth

Social Security #	A # (if any)

Date of Last Arrival (month/day/year)	I-94 #

Current INS Status	Expires on (month/day/year)

Part 2. Application Type. *(check one)*

I **am applying for an adjustment to permanent resident status because:**

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Atttach a copy of the approval notice-- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☐ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)

_____

_____

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2,1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

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Part 3. Processing Information.

A. City/Town/Village of Birth	Current Occupation
Your Mother's First Name	Your Father's First Name

Give your name exactly how it appears on your Arrival /Departure Record (Form 1-94)

Place of Last Entry Into the U.S. (City/State)		In what status did you last enter? *(Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.)*
Were you inspected by a U.S. Immigration Officer? ☐ Yes ☐ No		
Nonimmigrant Visa Number		Consulate Where Visa Was Issued
Date Visa Was Issued (month/day/year)	Sex: ☐ Male ☐ Female	Marital Status ☐ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for permanent resident status in the U.S.? ☐ No ☐ Yes If you checked "Yes," give date and place of filing and final disposition.

B. List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

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Part 3. Processing Information. *(Continued)*

Please answer the following questions. (If your answer is **"Yes"** to any one of these questions, explain on a separate piece of paper. Answering **"Yes"** does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)

1. Have you ever, in or outside the U. S.:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☐ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☐ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☐ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.? ☐ Yes ☐ No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☐ No
3. Have you ever:
   a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☐ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☐ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☐ No
   d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☐ No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No
5. Do you intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☐ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☐ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☐ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☐ No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☐ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☐ No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☐ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fradulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit? ☐ Yes ☐ No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☐ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☐ No
13. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☐ No
14. Do you plan to practice polygamy in the U.S.? ☐ Yes ☐ No

Continued on back

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Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

Selective Service Registration. The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

Signature	***Print Your Name***	***Date***	***Daytime Phone Number***

Please Note: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.*

Part 5. Signature of Person Preparing Form, If Other Than Above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	***Print Your Name***	***Date***	***Daytime Phone Number***

Firm Name and Address

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0053
Supplement A to Form I-485

START HERE - Please Type or Print

Part 1. Information about Applicant

Family Name	First Name	Middle Name

Address - C/O

Street Number and Name	Apt. Suite

City	State or Province	

Country	ZIP/Postal Code

INS A #	Date of Birth *(month/day/year)*	Country of Birth

Part 2. Basis for Eligibility *(check one)*

1. On Form I-485, Part 2, I checked application type *(check one):*

a.	An immigrant petition . . .	**Go to #2.**
b.	My spouse or parent applied . . .	**Go to #2.**
c.	I entered as a K-1 fiance . . .	**Stop Here. Do Not File This Form.**
d.	I was granted asylum . . .	**Stop Here. Do Not File This Form.**
e.	I am a native or citizen of Cuba . .	**Go to #3.**
f.	I am the husband, wife or child of a Cuban	**Go to #3** .
g.	I have continuously resided in the U.S. .	**Stop Here. Do Not File This Form.**
h.	Other . . .	**Go to #2.**
i.	I am already a permanent resident . . .	**Stop Here. Do Not File This Form.**
j.	I am already a permanent resident and am the husband, wife or unmarried child of a Cuban...	**Stop Here. Do Not File This Form.**

2. I have filed Form I-360; and I am applying for adjustment of status as a special immigrant juvenile court dependent or a special immigrant who has served in the United States Armed Forces *(check one)*:

Yes **Stop Here. Do Not File This Form.** No **Go to #3.**

3. On Form I-485, Part 2, I checked block (e) or (f) and I last entered the United States legally after having been inspected and admitted or paroled. Yes **Stop Here. Do Not File This Form** No **Go to #11.**

4. I last entered the United States *(check one)*:

As a stowaway.	**Go to #11** .	Legally without a visa as a visitor for	
Legally as a crewman (D-1/D-2 visa).	**Go to #11.**	tourism or business.	**Go to #5.**
Without inspection.	**Go to #11.**	Legally as a parolee.	**Go to #5.**
Legally in transit without visa status.	**Go to #11.**	Legally with another type of visa (show type ___)	**Go to #5.**

5. I last entered the United States legally without a visa as a visitor for tourism or business; and I am applying for adjustment of status as the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen *(check one)*:

Yes **Stop Here. Do Not File This Form.** No **Go to #6.**

6. I last entered the United States legally as a parolee, or with a visa (except as a crewman), or as a Canadian citizen without a visa; and I am applying for adjustment of status *(check one)*:

As the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen.
Stop Here. Do not File This Form.
As a special immigrant retired international organization employee or family member of an international organization employee or as a special immigrant physician; and I have filed Form I-360. **Stop Here. Do Not File This Form.**
Under some other category. **Go to #7.**

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed	
File Reviewed	**Class of Adjustment Code:** ____ ____ ____

To Be Completed by *Attorney* or *Representative*, if any

Check if G-28 is attached showing you represent the petitioner

VOLAG#

ATTY State License #

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Part 2. continue.

7. I am a national of the (former) Soviet Union, Vietnam, Laos or Cambodia who last entered the United States legally as a public interest parolee after having been denied refugee status; and I am applying for adjustment of status under Public Law 101-167 *(check one)*:

   Yes **Stop Here. Do Not File This Form.** No **Go to #8.**

8. I have been employed in the United States after 01/01/77 without INS authorization *(check one)*:

   Yes **Go to #9.** No **Go to #10.**

9. I am applying for adjustment of status under the Immigration Nursing Relief Act (INRA); I was employed without INS authorization only on or before 11/29/90; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one)*:

   Yes **Stop Here. Do Not File This Form.** No **Go to #10.**

10. I am now in lawful immigration status; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one):*

    Yes **Stop Here. Do Not File This Form .**
    No, but I believe that INS will determine that my failure to be in or maintain a lawful immigration status was through no fault of my own or for technical reasons. **Stop Here. Do Not File This Form,** and attach an explanation to your Form I-485 application.
    No **Go to #11.**

11. I am unmarried and less than 17 years old *(check one)*:

    Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
    No **Go to #12.**

12. I am the unmarried child of a legalized alien and am less than 21 years old, or I am the spouse of a legalized alien; and I have attached a copy of my receipt or approval notice showing that I have properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program *(check one)*:

    Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
    No **Go to #13.**

13. **File This Form and Form I-485. You must pay the additional sum:**

    $130.00 - Fee required with Form I-485* and
    $650.00 - Additional sum under section 245(i) of the Act

    $780.00 - Total amount you must pay.

*If you filed Form I-485 separately, attach a copy of your filing receipt and pay only the additional sum of $650.00. In #11 and /or #12, show the answer you would have given on the date you filed Form I-485.

Part 3. Signature.

Read the information on penalties in the instructions before completing this section. If someone helped you prepare this petition he or she must complete Part 4.

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Your Name	Date	Daytime Telephone No.

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 4. Signature of person preparing form if other than above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Telephone No.

Firm Name
and Address

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Completing the Work Authorization Form

Applicants should state whether they are filing for permission to accept employment (initial applicants), replacement (of lost cards), or renewal (includes extensions). The numbered questions for the most part are self-explanatory. Certain questions require further explanation. While reading this section, refer to the sample work authorization form that can be found in the appendix.

Item No. 9 - Social Security. An applicant should list his or her social security number, or indicate that he or she does not have one or that it is pending.[i]

Item No. 11 - Prior Authorizations. If the immigrant was authorized to work previously, the dates should be listed, as well as the location of the issuing office. A copy of any prior authorization should be attached.

Item No. 12 - Date of Last Entry. This refers to the date of the immigrant's last entry into the United States, not to the immigrant's original date of entry. An immigration attorney should review the form with the client and determine whether the legal standards have been met.[ii]

Item No. 13 - Place of Entry. This may include the name of a border town or can be shown by the inspection stamp on a passport.

Item No. 14 - Manner of Entry. An immigrant who entered on a valid visa should indicate the type of visa, such as B-2 Visitor (tourist). If the immigrant entered without a visa, he or she should indicate EWI (entry without inspection). In this case, an immigration attorney should review the application because 245(I) no longer applies. In this case no application should be filed without having an immigration attorney review it because many battered immigrants who entered without inspection and filed their applications with INS after January 14, 1998 will be required to leave the U.S. to obtain lawful permanent residency and are no longer eligible to adjust status in the United States. Such applicants may be ineligible for adjustment and may need another avenue to access work authorization, such as deferred action status flowing from a self-petition . Any immigrant who entered without inspection should be certain that he or she is eligible for work authorization otherwise he or she may unwittingly subject themselves to being placed in removal proceedings. Any immigrant who entered without inspection should be certain that he or she is eligible and should avoid making a misrepresentation. Otherwise, the immigrant may face a three or ten year bar in the future.

Item No. 16 - Statutory Section Number Under Which Application is Made. The immigrant must determine under what status he or she is applying. The reverse side of the form contains a list of categories. For example, self-petitioners who have deferred action status will fill in the box with - (c)(14), asylum applicants with (c)(8), and those who have filed an adjustment application with (c)(9).

Copies of all requested documents must be provided, and certain other documents, such as the following, should be attached:

- ! Previously issued employment authorization documents
- ! Another form of identification
- ! Notice of the approved petition, application filed, or papers filed with the immigration court
- ! A small white card (Form I-765 Card) with the applicant□s signature and thumbprint[iii]
- ! Two photos will be required with the application

Finally, the applicant and anyone helping to fill out the form must sign and date the application. Lying on this form constitutes perjury, so the applicant must have a legal foundation for the application. Advocates assisting battered immigrants with VAWA self-petitions should refer clients to an immigration attorney for assistance in completing the form.

i.The lack of a social security number does not preclude the issuance of an employment authorization document. More often than not, immigrants must show their employment authorization document when applying for a social security card.

ii.For example, the last departure may have been authorized under a grant of advance parole or parole or the re-entry may have followed a brief and casual absence under Section 240A(d)(ii) of IIRAIRA. *See* 8 U.S.C. ə1229(d)(ii) (1999).

iii. The failure to include this card with the employment authorization application may not necessarily result in a rejection of the application.

Work Authorization Application
I-765

Application for Employment Authorization

INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION

The Immigration and Naturalization Service (INS) recommends that you retain a copy of your completed application for your records.

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PART 1. GENERAL.

Purpose of the Application. Certain aliens who are temporarily in the United States may file a Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD). Other aliens who are authorized to work in the United States without restrictions should also use this form to apply to the INS for a document evidencing such authorization. Please review Part 2 ELIGIBILITY CATEGORIES to determine whether you should use this form.

If you are a Lawful Permanent Resident, a Conditional Resident, or a nonimmigrant authorized to be employed with a specific employer under 8 CFR 274a.12(b), please do **NOT** use this form.

DEFINITIONS.

Employment Authorization Document (EAD): Form I-688; Form I-688A; Form I-688B; or any successor document issued by the INS as evidence that the holder is authorized to work in the United States.

Renewal EAD: an EAD issued to an eligible applicant at or after the expiration of a previous EAD issued under the same category.

Replacement EAD: an EAD issued to an eligible applicant when the previously issued EAD has been lost, stolen, mutilated, or contains erroneous information, such as a misspelled name.

Interim EAD: an EAD issued to an eligible applicant when the INS has failed to adjudicate an application within 90 days of receipt of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995. The interim EAD will be granted for a period not to exceed 240 days and is subject to the conditions noted on the document.

PART 2. ELIGIBILITY CATEGORIES.

The INS adjudicates a request for employment authorization by determining whether an applicant has submitted the required information and documentation, and whether the applicant is eligible. In order to determine your eligibility, you must identify the category in which you are eligible and fill in that category in question 16 on the Form I-765. Enter only **one** of the following category numbers on the application form.

NOTE: **Category (c)(13) is no longer available.** You may not renew or replace your EAD based on (c)(13). If you have an EAD based on that category, please review the categories below to determine if you are eligible under another category.

APPLICATIONS TO BE FILED AT SERVICE CENTERS.

Asylee, (granted asylum) -- (a)(5). File your EAD application with a copy of the INS letter granting you asylum. It is not necessary to apply for an EAD as an asylee until 90 days before the expiration of your current EAD.

Refugee--(a)(3). File your EAD application with either a copy of your Form I-590, Registration for Classification as Refugee, approval letter or a copy of a Form I-730, Refugee/Asylee Relative Petition, approval notice.

Paroled as a Refugee--(a)(4). File your EAD application with a copy of your Form I-94, Departure Record.

Asylum Applicant (with a pending asylum application) who Filed for Asylum on or after January 4, 1995--(c)(8). If you filed a Form I-589, Request for Asylum and for Withholding of Deportation, on or after January 4, 1995, you must wait at least 150 days before you are eligible to apply for an EAD. If you file your EAD application early, it will be denied and you will have to file a new application. File your EAD application with:

- A copy of the INS acknowledgement mailer which was mailed to you; or
- Other evidence that your Form I-589 was filed with the INS; or
- Evidence that your Form I-589 was filed with an Immigration Judge at the Executive Office for Immigration Review (EOIR); or
- Evidence that your asylum application remains under administrative or judicial review.

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Asylum Applicant (with a pending asylum application) who Filed for Asylum and for Withholding of Deportation Prior to January 4, 1995 and is *NOT* in Exclusion or Deportation Proceedings--(c)(8). You may file your EAD application at any time; however, it will only be granted if the INS finds that your asylum application is not frivolous. File your EAD application with:

- A complete copy of your previously filed Form I-589; and
- A copy of your INS receipt notice; or
- A copy of the INS acknowledgement mailer; or
- Evidence that your Form I-589 was filed with EOIR; or
- Evidence that your asylum application remains under administrative or judicial review; or
- Other evidence that you filed an asylum application.

Asylum Applicant (with a pending asylum application) who Filed an Initial Request for Asylum Prior to January 4,1995, and *IS IN* Exclusion or Deportation Proceedings--(c)(8). If you filed your Request for Asylum and Withholding of Deportation (Form I-589) prior to January 4. 1995 and you ARE IN exclusion or deportation proceedings, file your EAD application with:

- A date-stamped copy of your previously filed Form I-589; or
- A copy of Form I-221, Order to Show Cause and Notice of Hearing, or Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge; or
- A copy of EOIR-26, Notice of Appeal, date stamped by the Office of the Immigration Judge; or
- A date-stamped copy of a petition for judicial review or for *habeas corpus* issued to the asylum applicant; or
- Other evidence that you filed an asylum application with EOIR.

Asylum Applicant under the ABC Settlement Agreement--(c)(8). If you are an El Salvadoran or Guatemalan national eligible for benefits under the ABC settlement agreement, American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991), there are special instructions applicable to filing your Form I-765 which supplement these instructions. These instructions and the application can be obtained by asking for an "ABC packet" at your local INS office or by calling 1-800- 755-0777.

Deferred Enforced Departure (DED) / Extended Voluntary Departure--(a)(11). File your EAD application with evidence of your identity and nationality.

F-1 Student Seeking Optional Practical Training in an Occupation Directly Related to Studies--(c)(3)(i). File your EAD application with a Certificate of Eligibility of Nonimmigrant (F-1) Student Status (Form I-20 A-B/I-20 ID) endorsed by a designated school official within the past 30 days.

F-1 Student Offered Off-Campus Employment under the Sponsorship of a Qualifying International Organization--(c)(3)(ii). File your EAD application with the international organization's letter of certification that the proposed employment is within the scope of its sponsorship, and a Certificate of Eligibility of Nonimmigrant (F-1) Student Status--For Academic and Language Students (Form I-20 A-B/I-20 ID) endorsed by the designated school official within the past 30 days.

F-1 Student Seeking Off-Campus Employment Due to Severe Economic Hardship--(c)(3)(iii). File your EAD application with Form 1-20 A-B/I-20 ID, Certificate of Eligibility of Nonimmigrant (F-1) Student Status--For Academic and Language Students; Form I-538, Certification by Designated School Official, and any evidence you wish to submit, such as affidavits, which detail the unforeseen economic circumstances that cause your request, and evidence you have tried to find off-campus employment with an employer who has filed a labor and wage attestation.

J-2 Spouse or Minor Child of an Exchange Visitor--(c)(5). File your EAD application with a copy of your J-1's (principal alien's) Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66). You must submit a written statement, with any supporting evidence showing, that your employment is not necessary to support the J-1 but is for other purposes.

M-1 Student Seeking Practical Training after Completing Studies--(c)(6). File your EAD application with a completed Form I-538, Application by Nonimmigrant Student for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment, Form I-20 M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status--For Vocational Students endorsed by the designated school official within the past 30 days.

Dependent of CCNAA E-1 Nonimmigrant--(c)(2). File your EAD application with the required certification from the American Institute in Taiwan if you are the spouse, or unmarried child, of an E-1 employee of the Coordination Council for North American Affairs.

Dependent of NATO Personnel--(c)(7). File your EAD application with a letter from the Department of Defense or NATO / SACLANT verifying your principal alien's status, your status, and your relationship to your principal alien.

N-8 or N-9 Nonimmigrant--(a)(7). File your EAD application with the required evidence listed in Part 3.

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Family Unity Program--(a)(13). File your EAD application with a copy of the approval notice, if you have been granted status under this program. You may choose to file your EAD application concurrently with your Form I-817, Application for Voluntary Departure under the Family Unity Program. The INS may take up to 90 days from the date upon which you are granted status under the Family Unity Program to adjudicate your EAD application. If you were denied Family Unity status solely because your legalized spouse or parent first applied under the Legalization/SAW programs after May 5, 1988, file your EAD application with a new Form I-817 application and a copy of the original denial. However, if your EAD application is based on continuing eligibility under (c)(12), please refer to **Deportable Alien Granted Voluntary Departure.**

K-1 Nonimmigrant Fiance(e) of US. Citizen or K-2 Dependent--(a)(6). File your EAD application if you are filing within 90 days from the date of entry. This EAD cannot be renewed. Any EAD application other than for a replacement must be based on your pending application for adjustment under (c)(9).

Citizen of Micronesia or the Marshall Islands or Palau--(a)(8). File your EAD application if you were admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories.

B-1 Nonimmigrant who is the personal or domestic servant of a nonimmigrant employer--(c)(17)(i). File your EAD application with:

- Evidence from your employer that he or she is a B, E, F, H, I, J, L, M, O, P, R, or TN nonimmigrant and you were employed for at least one year by the employer before the employer entered the United States or your employer regularly employs personal and domestic servants and has done so for a period of years before coming to the United States; and
- Evidence that you have either worked for this employer as a personal or domestic servant for at least one year or, evidence that you have at least one year's experience as a personal or domestic servant; and
- Evidence establishing that you have a residence abroad which you have no intention of abandoning.

B-1 Nonimmigrant Domestic Servant of a US. Citizen--(c)(17)(ii). File your EAD application with:

- Evidence from your employer that he or she is a U.S. citizen; and
- Evidence that your employer has a permanent home abroad or is stationed outside the United States and is temporarily visiting the United States or the citizen's current assignment in the United States will not be longer than four (4) years; and
- Evidence that he or she has employed you as a domestic servant abroad for at least six (6) months prior to your admission to the United States.

B-1 Nonimmigrant Employed by a Foreign Airline--(c)(17)(iii). File your EAD application with a letter from the airline fully describing your duties and indicating that your position would entitle you to E nonimmigrant status except for the fact that you are not a national of the same country as the airline or because there is no treaty of commerce and navigation in effect between the United States and that country.

APPLICATIONS TO BE FILED AT LOCAL INS OFFICES.

Temporary Protected Status (TPS)--(a)(12). File your EAD application with Form I-821, Application for Temporary Protected Status.

- Initial TPS-based application only: include evidence of identity and nationality as required by the Form I-821 instructions.

Temporary treatment benefits --(c)(19) -- For and EAD based on 8 CFR 244.5. Include evidence of nationality and identity as required by the Form I-821 instructions.

- Extension of TPS status: include a copy (front and back) of your last available TPS document: EAD, Form I-94 or approval notice.
- Registration for TPS only without employment authorization: file the Form I-765, Form I-821, and a letter indicating that this form is for registration purposes only. No fee is required for the Form I-765 filed as part of TPS registration. (Form I-821 has separate fee requirements.)

Note-- If you are using this application to register for TPS only and do not want to work in the United States, you must indicate this application is for registration puposes only. No fee is required

Granted Withholding of Deportation--(a)(10). File your EAD application with a copy of the Immigration Judge's order. It is not necessary to apply for a new EAD until 90 days before the expiration of your current EAD.

Dependent of A-1 or A-2 Foreign Government Officials--(c)(1). File your EAD application with a Form I-566, Inter-Agency Record of Individual Requesting Change/Adjustment to or from A or G Status; or Requesting A, G, or NATO Dependent Employment Authorization, with the Department of State endorsement.

Dependent of G-1, G-3 or G-4 Nonimmigrant--(c)(4). File your EAD application with a Form I-566, Inter-Agency Record of Individual Requesting Change/Adjustment to or from A or G Status; or Requesting A, G, or NATO Dependent Employment Authorization with the Department of State endorsement if you are the dependent of a qualifying G-1, G-3 or G-4 officer of, representative to, or employee of an international organization and you hold a valid nonimmigrant status.

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Adjustment Applicant--(c)(9). File your EAD application with a copy of the receipt notice or other evidence that your Form I-485, Application for Permanent Residence, is pending. You may file Form I-765 together with your Form I-485.

Applicant for Suspension of Deportation--(c)(10). File your EAD application with evidence that your Form I-256A, Application for Suspension of Deportation, is pending.

Paroled in the Public Interest--(c)(11). File your EAD application if you were paroled into the United States for emergent reasons or reasons strictly in the public interest.

Deportable Alien Granted Voluntary Departure--(c)(12). File your EAD application with a copy of the order or notice granting voluntary departure, and evidence establishing your economic need to work.

Deferred Action--(c)(14). File your EAD application with a copy of the order, notice or document placing you in deferred action and evidence establishing economic necessity for an EAD.

Adjustment Applicant Based on Continuous Residence Since January 1, 1972--(c)(16). File your EAD application with your Form I-485, Application for Permanent Residence; a copy of your receipt notice; or other evidence that the Form I-485 is pending.

Final Order of Deportation--(c)(18). File your EAD application with a copy of the order of supervision and a request for employment authorization which may be based on, but not limited to the following:

- Existence of economic necessity to be employed;
- Existence of a dependent spouse and/or children in the United States who rely on you for support; and
- Anticipated length of time before you can be removed from the United States.

PART 3. REQUIRED DOCUMENTATION WITH EACH APPLICATION.

All applications must be filed with the documents required below, in addition to the evidence required for the category listed in Part 2 ELIGIBILITY CATEGORIES, with fee, if required.

If you are required to show economic necessity for your category (See Part 2), submit a list of your assets, income and expenses.

Please assemble the documents in the following order:

Your application with the filing fee. See Part 4 FEE for details.

If you are mailing your application to the INS, you must also submit:

- Form I-765 Signature Card. If one is not enclosed with your application, ask your local INS office for one. Sign the card in the blue box marked "signature". Your signature must fit within the blue box. DO NOT fold this card when you mail your application.
- A copy of Form I-94 Departure Record (front and back), if available.
- A copy of your last EAD (front and back).
- 2 photos with a white background taken no earlier than 30 days before submission to the INS. They should be unmounted; printed on thin paper; glossy; and unretouched. The photos should show a three-quarter front profile of the right side of your face, with your right ear visible. Your head should be bare unless you are wearing a headdress as required by a religious order to which you belong. The photo should not be larger than 1 ½ X 1 ½ inches, with the distance from the top of the head to just below the chin about

  1 ¼ inches. Lightly print your name and your A#, if

PART 4. FEE.

Applicants must pay a fee of $100 to file this form unless noted below. If a fee is required, it will not be refunded. Pay in the exact amount. Checks and money orders must be payable in U.S. currency. Make check or money order payable to "Immigration and Naturalization Service." If you live in Guam make your check or money order payable to "Treasurer, Guam." If you live in the U.S. Virgin Islands make your check or money order payable to "Commissioner of Finance of the Virgin Islands." A charge of $30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. Please do **not** send cash in the mail.

Initial EAD: If this is your initial application and you are applying under one of the following categories, a filing fee is not required:

- (a)(3) Refugee;
- (a)(4) Paroled as Refugee;
- (a)(5) Asylee;
- (a)(7) N-8 or N-9 nonimmigrant;
- (a)(8) Citizen of Micronesia, Marshall Islands or Palau;
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure;
- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel; or (c)(8) Applicant for asylum [an applicant filing under the special ABC procedures must pay the fee].

Renewal EAD: If this is a renewal application and you are applying under one of the following categories, a filing fee is not required:

- (a)(8) Citizen of Micronesia, Marshall Islands, or Palau.
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure; or
- (c)(l) or (c)(4) Dependent of certain foreign government or international organization personnel.

Replacement EAD: If this is your replacement application and you are applying under one of the following categories, a filing fee is not required:

- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel.

You may be eligible for a fee waiver under 8 CFR 103.7(c).

The INS will use The Community Service Administration Income Poverty Guidelines ("Poverty Guidelines") found at 45 CFR 1060.2 as the basic criteria in determining the applicant's eligibility when economic necessity is identified as a factor.

The Poverty Guidelines will be used as a guide, but not as a conclusive standard, in adjudicating fee waiver requests for employment authorization applications requiring a fee.

PART 5. WHERE TO FILE.

If your response to question 16 is

(a)(3), (a)(4), (a)(5), (a)(7), or (a)(8)

mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(6), (a)(11), (a)(13),
(c)(2), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), (c)(5), (c)(6), (c)(7), (c)(8),

mail your application based on your address to the appropriate Service Center:

If you live in: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia or the U.S. Virgin Islands, mail your application to:

INS Service Center
75 Lowerwelden Street
St. Albans, VT 05479-0001

If you live in: Arizona, California, Guam, Hawaii or Nevada, mail your application to:

INS Service Center
P.O. Box 10765
Laguna Niguel, CA 92607-0765

If you live in: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, N. Carolina, Oklahoma, S. Carolina, Tennessee or Texas, mail your application to:

INS Service Center
P.O. Box 851041
Mesquite, TX 75185-1041

If you live elsewhere in the U.S., mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(10), (a)(12),

(c)(1), (c)(4), (c)(10), (c)(11), (c)(12), (c)(14), (c)(16),

apply at the local INS office having jurisdiction over your place of residence.

If your response to question 16 is **(c)(9)**, file your application at the same local INS office or Service Center where you submitted your adjustment application.

If your response to question 16 is **(c)(8)** under the special ABC filing instructions and you are filing your asylum and EAD applications together, mail your application to the office where you are filing your asylum application.

PART 6. PROCESSING INFORMATION.

Acceptance. An application filed without the required fee, evidence, signature or photographs (if required) will be returned to you as incomplete. You may correct the deficiency and resubmit the application; however, an application is not considered properly filed until the INS accepts it. If your application is complete and filed at an INS Service Center, you will be mailed a Form I-797 receipt notice.

Decision on your application.

- **Approval.** If approved, your EAD will either be mailed to you or you may be required to appear at your local INS office to pick it up.
- **Request for evidence.** If additional information or documentation is required, a written request will be sent to you specifying the information or advising you of an interview.
- **Denial.** If your application cannot be granted, you will receive a written notice explaining the basis of your denial.

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Ayuda, Inc.

No decision

- **Interim EAD**. If you have not received a decision within 90 days of receipt by the INS of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995, you may obtain interim work authorization by appearing in person at your local INS district office. You must bring proof of identity and any notices that you have received from the INS in connection with your application for employment authorization.

PART 7. OTHER INFORMATION.

Penalties for Perjury. All statements contained in response to questions in this application are declared to be true and correct under penalty of perjury. Title 18, United States Code, Section 1546, provides in part:

> . . . Whoever knowingly makes under oath, or as permitted under penalty of perjury under 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement-shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

Authority for Collecting this Information. The authority to require you to file Form I-765, Application for Employment Authorization, when applying for employment authorization is found at 8 CFR 274A(b)(1)(C)(iii). Information you provide on your Form I-765 is used to determine whether you are eligible for employment authorization and for the preparation of your Employment Authorization Document if you are found eligible. Failure to provide all information as requested may result in the denial or rejection of this application. The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the INS investigations.

Paperwork Reduction Act. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Immigration and Naturalization Service (INS) tries to create forms and instructions which are accurate and easily understood. Often this is difficult because immigration law can be very complex. The public reporting burden for this form is estimated to average three (3) hours and twenty-five (25) minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The INS welcomes your comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden to Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4307r, Washington, DC 20536; OMB No. 1115-0163. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0163

Application for Employment Authorization

Do Not Write in This Block

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under §274a.12 _____		

☐ Application Approved. Employment Authorized / Extended (Circle One) until _____ (Date).
_____ (Date).

Subject to the following conditions: _____

☐ Application Denied.
- ☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
- ☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (14), (18) and 8 CFR 214.2(f)

I am applying for:
- ☐ Permission to accept employment
- ☐ Replacement (of lost employment authorization document).
- ☐ Renewal of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship/Nationality

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (Month/Day/Year)

7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used)

10. Alien Registration Number (A-Number) or 1-94 Number (if any)

11. Have you ever before applied for employment authorization from INS? ☐ Yes (if yes, complete below) ☐ No

Which INS Office? Date(s)

Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to Part 2 of the instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).

Eligibility under 8 CFR 274a.12

( ) ( ) ( )

Certification

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the Instructions in Part 2 and have identified the appropriate eligibility category in Block 16.

Signature Telephone Number Date

Signature of Person Preparing Form if Other Than Above: I declare that this document was prepared by me at the at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

The American Bar Association Commission on Domestic Violence
The Immigrant Women Program of the NOW Legal Defense and Education Fund
Ayuda, Inc.

APPENDIX B
Power & Control Wheel

POWER AND CONTROL
Tactics of Men Who Batter



DOMESTIC ABUSE INTERVENTION PROJECT
206 West Fourth Street
Duluth, Minnesota 55806
218-722-4134

APPENDIX C
Expert Testimony Concerning Battering

BY

MARY ANN DUTTON

AND

GISELLE AGUILAR HASS

September 8, 2000

The American Bar Association Commission on Domestic Violence
The Immigrant Women Program of the NOW Legal Defense and Education Fund
Ayuda, Inc.

THE USE OF EXPERT TESTIMONY CONCERNING BATTERING AND ITS EFFECTS ON IMMIGRANT WOMEN[1]

This appendix will review research data and provide information about the dynamics of domestic violence in immigrant families on questions and issues that are relevant to fact finders who decide cases involving battered immigrant women. Attorneys and advocates representing battered immigrant women in VAWA cases are encouraged to include a copy of this material as supporting evidence in the VAWA case. This chapter will also be useful to help fact finders learn more about domestic violence in immigrant families and can be used as part of training for INS officers and immigration judges.

A review of research findings supplemented where appropriate by expert affidavits or testimony concerning battering and its effects can help fact finders more effectively assess evidence in immigration cases involving battered women. Research findings concerning battering also can dispel common myths and misunderstandings about domestic violence,[2] including stereotypes about battered women, batterers and immigrants that may interfere with the fact finders ability to assess the case fairly and effectively.

Immigration and Naturalization Service (INS) adjudicators and immigration judges should carefully review all research and expert information submitted with a VAWA self-petition, cancellation of removal or suspension of deportation cases or a battered spouse waiver request that present research data and findings on domestic violence and the dynamics of domestic violence as it is experienced by immigrant battered woman and abused children. This information will help adjudicators better understand and consider the evidence presented, against a background of the research on domestic violence and immigrants. This research and expert information will help answer questions the fact finder may have about the violence in the relationship, the abuser's actions, the abuser victim's demeanor, the abuse victim's needs and fears and the potential for ongoing violence and barriers that may force the victim back into the abusive relationship.

Fact finders should also know that battered women's advocates can provide valuable credible evidence of abuse and the effect the domestic violence has had on the immigrant victim seeking relief from the INS or the immigration judge. Battered women's advocates possess the expertise to provide the fact finder with general information based on research and experience on the dynamics of domestic violence as well as information specific to an individual case.

Affidavits and testimony of expert witnesses can be either generic or case-specific. Generic testimony explains the understanding of battering, its effects and relevant cultural aspects, from the perspective of the scientific and specialized[3] knowledge in the social and psychological field. Generic testimony does not provide specific opinions or conclusions related to a particular case. On the other hand, case-specific testimony provides an analysis about a particular battered woman in the context of her life, her immigration and cultural status.

Case-specific testimony contextualizes the particulars of the case within the general state of knowledge in the field. Testimony of a specific nature requires face to face evaluation of the battered woman, often reviews of relevant documents, collection of information from collateral sources and specialized assessment measures.

Some studies have shown that expert testimony personalized to the particulars of the case is more effective and compelling than general information.[4] Licensed mental health professionals like psychologists, psychiatrists, counselors, and social workers can provide the adjudicator expert testimony on the dynamics of domestic violence and more detailed case-specific evaluations of the specific battered immigrant woman including diagnosis and treatment. However, fact finders should know that many battered immigrant women will not be able to present this testimony as part of their case. The only battered immigrant women who will be able to submit affidavits from licensed mental health professionals will be those who can afford to pay for treatment, whose treatment is covered by health insurance or who live in a community in which licensed mental health professionals are willing to provide services for free or at low-cost. Access to assistance from licensed mental health professionals is also limited for battered immigrant women by the lack of significant numbers of mental health professionals who may be fluent in the battered immigrant's language and familiar with her culture. Battered immigrants who cannot obtain affidavits or assistance from licensed mental health professionals should not be penalized for this fact.

Congress specifically intended to assure that battered immigrant women would not be required or penalized for failure to include an affidavit from a licensed mental health professional as evidence in their case when Congress included in the Violence Against women act provisions which require INS and immigration judges in VAWA cases to accept any credible evidence. In VAWA cases, battered women's advocates who work at local shelters, coalitions and domestic violence programs are experts in domestic violence who can provide the fact finder with credible evidence including research data on domestic violence, evidence on the dynamics of domestic violence and valid support evidence of abuse in individual cases. Other professionals, such as, police officers, trauma technicians, emergency medical technicians, and emergency room staff, who are not mental health professionals can also provide valuable evidence to the fact finder in domestic violence cases.

WHAT KIND OF OBSTACLES PREVENT BATTERED IMMIGRANTS FROM LEAVING THE ABUSERS OR FORCE THEM TO RETURN TO ABUSERS AFTER THEY ATTEMPT TO LEAVE?

It is a mistake to assume that if a domestic violence victim does not take active steps to separate from the batterer she is reluctant to leave him. The erroneous belief is that violence would stop with separation and battered women who stay are responsible for their own predicament. This myth is often cited as proof that other help will be ineffective, as if the battered woman is not motivated or would not benefit from assistance.

The reality found by psychological and social studies is that most women in battering relationships take steps to stop the violence.[5] Even when these strategies are not be understood

by observers, they have a logic of their own when viewed against the background of victim's mental and emotional state, her resources and the dynamics of abuse within the relationship. A significant portion of the help counseling and psychotherapy provide for battered women is assisting in identifying strategies most likely to be effective, and which are likely to produce further difficulties. This hastens her readiness to progress into more active or formal actions to reach a violent-free environment.[6]

Many battered women do leave their abusive partners but often after many attempts to do so.[7] A battered woman may seek help from the legal system at different points in her process of response to abuse. If she prematurely turns to the legal system or if the system is insensitive to her needs, it may not help the woman identify the danger and permanency of the abuse, and may become counterproductive and ineffective. This may lead to further avoidance of detection and further entrapment in the cycle of violence, with subsequent aggravation of both the violence and the battered woman's ability to cope. If, for example, a battered immigrant woman calls the police for help and they arrive, speak mainly to the abuser and fail to arrest her abuser when there is adequate evidence to support arrest, the battered immigrant is unlikely to call the police again. When legal involvement is effective and sensitive, it can lead to further empowerment and lead to safety for the woman and the children. Women who become involved in legal maneuvers to stop the violence need services that are supportive and sensitive to facilitate the achievement of safety and following through effectively until the violence stops.

Battered women are particularly vulnerable victims because domestic violence is not like other forms of interpersonal violence. Domestic violence occurs within the context of an intimate bond, where trust and loyalty have been established and the expectation of protection and affection exists.[8] The violence from the partner is usually part of a process of controlling behavior that includes also strong nurturant behavior. The abuse tends to build up progressively and take many different forms, including psychological, physical or sexual assault.[9] In general, the effect on the victim of a single act of violence changes depending on the role and relationship with the offender. Differences between man and women's social power, role expectation, size and strength combine to make intimate violence a very powerful method of terrorizing and intimidating the victim. Victims of domestic violence encounter difficulties walking away from abusive partners, even when they desire to do so, due to the power the perpetrator holds over them and the strength of the relationship. Victims are caught in a complex set of circumstances that make the decision to escape a very difficult one to reach.

Although culture and stressful conditions have not been found to increase the rates of intimate violence,[10] culture and stress have a significant effect on how a battered woman responds to the violence and affects her resources to escape the violence.[11] Immigrant battered women want as much as any other battered woman for the violence to stop, but culture, lack of support and immigration status limit their ability to deal with the violence and make them particularly vulnerable to failure in their attempts to escape a battering relationship. Battered immigrant women often live in conditions that tend to be more stressful and their options are often very limited.[12] These factors compound the difficulties battered immigrants experience when they attempt to end the violence and compound the psychological harm they suffer as a

result of the abuse.

Battered immigrant women and all battered women must overcome significant obstacles to leave an abusive relationship. When women attempt to leave, encountering obstacles they cannot overcome often forces them to return to their abusers. This next section outlines these obstacles in more depth.

Fear Of Retaliation From Batterer Against Self And Family Or Friends

The foremost important reason why women stay with batterers is their knowledge that separation from the abuser will not stop the violence and may actually make it worse.[13] Research data suggest that separated women are more likely to be assaulted by an intimate partner than are married women,[14] corroborating some women's fear and actual experience that their physical risks increase if they choose to leave the abusive relationship. Statistics reveal that when someone dies in a battering incident it is more likely to be the woman,[15] a situation of common knowledge among battered women. Further, research has shown that extreme sexual jealousy and separation, in particular, are associated with domestic homicides. Battered immigrant women experience high levels of extreme jealousy in abusive relationships. Cultures which socialize individuals into rigid gender roles often make women responsible if other men perceives them as sexually desirable, a situation which breeds significant jealousy on her partner and a desire to control her. Fact finders considering cases where sexual jealousy is an issue should be aware that this is a sign of the heightened danger. Given that the outcome of domestic violence is sometimes lethal, battered women live in constant fear of such possibility. In particular, homicidal threats from the batterer feeds the battered women's fears.

Some women may delay terminating an abusive relationship because she can monitor the abuser's behavior and try to adjust her efforts at protection accordingly if she stays. Battered women often make this strategic decision in order to preserve their lives. Thus, it is extremely important that decision makers in domestic violence cases do not interpret failure to leave an abuser sooner as evidence that suggests that the abuse was not occurring. In fact, often the contrary is true. Staying with the abuser may have saved her life and the lives of her children. Battered women need to be able to plan when and whether is safe to leave.

Similarly, immigrant battered women may fear death or serious injury, particularly when others, including children, depend on her. For immigrant battered women who lack relatives in the U.S. or have limited social supports, fear of dying and leaving their children motherless can be a very powerful incentive to remain with the abuser. Traditional values of some cultures socialize women to consider children's well being as more important than their own.[16] Some women may feel the need to withstand the violence rather than to risk being removed from the children's lives. Immigrant battered women who send money or help their family in other countries, may fear that death or disability could have grave consequences to her dependents overall well being. In addition to the danger to herself, many battered immigrant women fear that any action towards separation may produce violence against the children or family members as retaliation. Homicidal threats from abusers may not be limited to killing the battered woman and often include threats to children, family and friends, which are a very

powerful intimidation to women socialized to be caretakers.

Economic Factors

Immigrant battered women who must support children and who suffer from low income, unemployment or job instability, low employable skills and limited social opportunities are vulnerable to remain in violent relationships due to the economic dependence on the partner.[17] Low socioeconomic status has been found to strongly affect coping strategies for battered women[18] since it limits the alternatives for her and her children's survival. Working women who are being abused, usually do not have the energies and concentration to dedicate to their labor and obtain further job achievements. Work days may be lost when dealing with the injuries of recent abuse, filing police reports or court orders or trying to protect the children. The physical and psychological impact of abuse also leads to lower educational attainment and lower income levels than for those women who are not being battered by their partners.[19]

The vast majority of battered immigrants who qualify for VAWA relief or for battered spouse waivers are undocumented. They often remain undocumented after years of life in the U.S. because the U.S. citizen and lawful permanent resident spouses never filed or will not cooperate in helping them obtain lawful permanent resident status. Being undocumented contributes to diminished financial resources, as it prevents women from obtaining minimum wage jobs, or benefits such as medical insurance, paid vacation, sick leave, and pensions.[20] Immigration status may also limit their access to some types of public assistance or other public resources. In light of the fact that many immigrants live in immigrant communities in which they and their family members are economically disadvantaged in the U.S., often the likelihood of a battered immigrant obtaining financial support from relatives or friends can be very limited. Battered immigrants may be hesitant to ask for help for fear of becoming a burden to friends or relatives, or they may only have friends or family members in the United States who are connected to the abuser.

Additionally, there is often disparity between immigrant men and women in terms of command of the English language, with women having less access and opportunity to learn English than their partners.[21] Limited competency with the English language prevents women from obtaining employable skills, better paying jobs, performing bank transactions, and communicating with the police, prosecutor, shelters and social service agencies. These problems render many immigrant women overly dependent on their partners for daily functioning. Further, a number of abusive tactics may effectively interfere with an immigrant battered woman's ability to successfully assimilate to our society and become more autonomous. For instance, social isolation and restriction of the abused from opportunities to learn English and interact with the community at large can effectively prevent her from developing a support network that is independent of her partner's influence. Control of financial resources, information, mail, and legal documents places an abused victim in a position in which she has few or no economic or other supportive resources. Battered immigrant women facing these difficulties may see themselves as incapable of accomplishing anything on her own or effecting changes in their lives. With the knowledge that a significant proportion of men fail to pay child support after separation,[22] an immigrant battered women

may be realistically hesitant to abandon economic and social dependence on the abusive partner for fear of a significant decrease in the standard of living for her and her children coupled with no ability to envision how she can create a life with her children apart from her abuser. Anticipated fear of life as a single parent can be a powerful deterrent to battered immigrant women.

Immigrant battered women who have economic constraints, have not established savings and credit histories, have no reliable support system, do not speak the English language and/or are not versed in the social service or legal systems may face a real danger of becoming homeless when forced to flee violent home for their safety. Those that do leave are frequently forced into unsafe and overcrowded apartments.[23] Inability to speak English, lack of economic resources, lack of lawful work authorization and lack of access to domestic violence shelters exacerbate the problem and increase the danger that an immigrant battered woman will become frustrated in her attempts to leave the batterer and return to live with her batterer. Cultural issues, lack of basic knowledge of the system, limited knowledge of the English language and being undocumented may interfere with the woman's ability to rely on public assistance for herself for her children, compounding her economic dependence. These barriers make it very difficult for battered immigrant women with children to leave their abusers. To successfully assume economic independence a battered woman requires access to a strong support system, courage and an ability to attain lawful immigration status.

Fear That Danger To Children Will Increase Once The Mother Is No Longer Available To Protect Them

Research has found that a significant number of husbands who frequently abuse their wives also physically abuse their children.[24] The risk of physical danger to the children in abusive families is considerable. Many women passively withstand the violence inflicted upon them because it diverts their abusers from violence against the children.

Even though legal custody is granted in 83% of temporary and 80% of permanent protection orders, the respondent retains visitation rights in 60% of the final orders, with only 11 % of cases requiring supervised visitation.[25] Whether the father obtains custody of the children or just visitation privileges, his contact with the children separate from the mother usually increases. The risk of the batterer abusing unprotected children is a fear many battered women rightfully feel.

Further, the contact between father and the children tends to provide the primary forum for contact between the estranged batterer and the victim, once the parties have separated. The relationship with the children is thus often used by the abuser as a means of maintaining control over the victim. Whether it is caused by the desire to recover the lost relationship or by an injured self esteem and desire for retribution, the relationship with the children can become the conduit through which the abuser maintains control over his partner. The opportunity for continued abuse and control exists with visitation, unless there are clear provisions to minimize this possibility. Therefore, custody issues are an important component of the protection order or long term domestic relations relief after the battered woman separates from the abusive

partner. To be effective in protecting the victim and children from ongoing abuse custody and visitation orders must be carefully crafted to minimize ongoing contact between the parties. Once these orders are in place and working, any action that will undermine these orders (e.g. requiring a battered woman to travel abroad to obtain her lawful permanent residency or deporting her and/or her children) reopens possibilities for escalation of violence.

Immigrant battered women are often socialized to be the children's primary caretakers.[26] If they have young children or children with special needs, the risk of abuse to the children by a father untrained in their developmental needs and care will be of particular concern and will serve as a barrier that will prevent them from leaving the abusive relationship. This situation may in fact cause more problems for the children because witnessing violence in their homes tends to cause particular emotional and behavioral problems. Thus, these children are particularly vulnerable to further stresses.[27]

Furthermore, a battered immigrants may be unwilling to leave because she believes that her abuser will be legally entitled to custody of the children. All of her information about legal rights in the United States is often based on information provided to her by the abuser. She does not know about the laws in most states that require judges to consider domestic violence in custody cases and awards custody to the non-abusive parent. They believe the father will win custody or that unsupervised contact with the father will alienate the children emotionally from them. Women culturally socialized to see family loyalty and attachment as central to family relations will be very susceptible to the abuser's efforts to control and emotionally abuser them by alienating the children from them.[28]

Fear Of Losing Children Through Unsuccessful Custody Disputes Or Kidnaping

The American Psychological Association has issued the following statement regarding custody matters in relationships where domestic violence has been present: "In matters of custody, preference should be given to the non violent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety to the children and the other parent."[29]

Without legal custody, the battered woman is in the untenable position of being required to negotiate child-related concerns with an abusive partner or she may run the risk of being viewed as an uncooperative, unfriendly parent by some courts. Due to psychological, physical and economic abuse, and social-cultural norms, an immigrant battered woman often lacks the bargaining power and the psychosocial strength necessary to negotiate an equitable agreement which could protect her and her children's well being. Her significant fear of future violence, separation from the children or financial devastation makes fair negotiations impossible. For this reason mediation is not recommended in domestic violence cases and thus, complex, highly contested litigation often results.

An immigrant battered woman with limited economic means, English language limitations, limited social support, housing and employment difficulties may be vulnerable to

pressure to give up custody of the children, or may be overpowered by advise from others or threats from the abuser to take the children. Threats of kidnapping the children by the batterer needs to be taken very seriously. If the batterer is from a foreign country, he may have familiarity and have contacts in another country which facilitate abduction. Many immigrant battered women may feel paralyzed to make any move towards separation when their abusers threaten child abduction. Studies have found that cases of kidnapping children tend to have certain characteristics in common: a significant portion of kidnaps are designed to hurt the other partner and domestic violence in the marriage occurred in over half of the relationships. International abduction has been found to be less likely to be fought within the court system and less likely to result in recovered children. Foreign born parents appear to be especially likely to abduct their children to another country and when they did so they were far more successful to evade detection and recovery of the children by the other parent.[30]

Fear Of Deportation

Immigration status is a tool that exacerbates the threats of separation from the children. When a U.S. citizen or lawful permanent resident threatens a spouse with deportation and separation from her children, the threats can be a very powerful deterrent to her separation actions, including calling the police, obtaining a protection order, or cooperating in her partner's criminal prosecution.

An undocumented status heightens psychological distress due to the fear of detection and deportation, increases social isolation and leads to further entrapment in an abusive marriage. Undocumented battered immigrant women face the untenable position of increasing their risk if they are identified as such when they seek help. It could inhibit her willingness to seek shelter or other social services that might assist her, since she may incorrectly believe that seeking assistance will lead to her deportation. Furthermore, when a U.S. citizen or lawful permanent resident husband abuses a wife dependent on him to attain legal immigration status in the U.S. for the wife or the children, the threat that he will have her or her children deported if she calls the police or otherwise seeks help to tend the abuse is all the more powerful and effective. For battered immigrants married to U.S. citizens or lawful permanent residents this barrier is often the strongest deterrent to her leaving the abusive relationship and seeking help.

Deportation by its very nature is a stressful and even traumatic experience for anyone. Living with the risk of deportation for battered immigrant women complicates her already troubled life and significantly limits her options to escape the violence. A woman may fear deportation when she has migrated to escape poverty, civil war or natural disasters in her home country. The thought of having to begin a new life, perhaps without her children, with limited social support due to social ostracism, and sometimes being followed by the abuser, can be very a powerful deterrent to take actions which could exposed her as an undocumented immigrant.

Lack Of Social Support

It has been established that very often, a victim of abuse turns to a social support system to protect her against further violence and/or to help her recover from the effects of violence.[31]

In order to heal, the abused must first find safety and social support. For battered women, lack of interpersonal support has been associated with more desperate ways of coping and can lead to her taking the law into her own hands and murdering her batterer.[32]

For battered immigrants, the establishment of this interpersonal support system can be difficult. Often, upon arrival to the U.S. immigrant women have few pre-existing social contacts. Those relatives and friends she does have in the United States she has often met through her abuser. When she has family members of her own in the United States her abuser may have isolate her from them or may threaten to harm them if they help her. Those who may wish to help may face cultural limitations or financial constraints.

Cultural values and social expectations may make the immigrant battered women embarrassed to reveal the occurrence of violence at home and may interfere with the establishment of meaningful, close and trusting social bonds within and outside the community. Some cultural groups tend to believe that the immigration to the U.S. will bring personal fulfillment and happiness by mere exposure to the economic and social richness of this country. Breaking this stereotype and admitting negatives can be a very shamming experience for some battered women who could be disbelieved and dismissed by members of the same cultural group.

The abuse and control cycle itself also interferes with the development of social relationships by decreasing contact independent of the abusive partner. For instance, abused women often become isolated and withdrawn as they or they partners try to hide the evidence of abuse from their friends and family. Often, the shame, enhanced vulnerability, sense of betrayal from a loved one and hopelessness contributes to the immigrant battered woman emotional and physical alienation from others in her family or community.

Ignorance Or Reluctance To Use Institutional Resources Available To Help

For the general population it is estimated that women subjected to violence by an intimate partner fail to report the crime to law enforcement agents six times more often than women experiencing violence by a strangers.[33] Immigrant battered women may be even more reluctant to report the violence due to the lack of understanding of their legal rights and their undocumented immigration status, resulting in fear of detection and deportation.

Battered immigrants do not know that they can safely seek help from shelters, police and the courts without risking being reported to immigration and Naturalization Services. Immigrant women frequently lack the knowledge and understanding of the various social and legal systems that can help them. Many come from countries in which police and courts offer no protection to battered women and when women do seek help those husbands who have more money and ties to the government can have the case dismissed. For instance, for those women fleeing civil war and social violence in their home countries, law enforcement and government agencies may evoke memories of torture, imprisonment or assault perpetrated by those institutions in their home country against their family or themselves. Thus, negative expectations about help that may be available and conflicting beliefs regarding help seeking

behavior may also limit immigrant women's utilization of services.[34]

When battered immigrants surmount those barriers and ask for assistance prosecutors, courts and even shelters are often slow to respond and/or insensitive to the special needs of immigrant and refugee women, which leads to further frustration and early drop out.

Cultural, Religious And Social Norms That Make Women Responsible For The Emotional Health Of The Intimate Relationship

For some immigrants, cultural values that dictate gender specific roles and behavior may require conformity to male authority. In some cultures, women's suffering and perseverance in the face of adversity are highly valued virtues.[35] For battered immigrants in a relationship of gender inequality, attempts to obtain some parity in the relationship may lead in the short term to an increase in the abuse, due to the man's perceived loss of power and sense of incompetence.[36]

Breaking up the family can be very difficult for immigrant women whose cultural mandates to keep the family together can be very strong.[37] Some immigrant women may hold cultural and/or religious values that reinforce tolerating the abuse. Some cultural communities will censure women who disclose abuse and escape from a husband by shaming her or her family members, through ostracism and social sanctions, regardless of the husband's violence and transgressions. Divorce as an option to escape an abusive relationship is often seen by the abused as a further complication. Divorce and remarriage are socially stigmatized in some cultural and religious subgroups, and these women and their children tend to be ostracized by their communities.[38] For some immigrant women cultural and religious values consider marriage as permanent and sacred. In other cultures divorce can only be initiated by the husband.[39] Immigrant battered women bound by these beliefs may find it difficult to break away and reach out for help.

Social expectations that women have to remain in the role of caretakers within their families are also barriers to escaping abusive relationships.[40] Religious beliefs and cultural mandates that censure divorce and mandate sacrificing for the reputation and union of the family may be used by relatives and friends of battered women to advise her to stay with her abuser. For many immigrant women who may come from cultures where women are expected to remain in marriage regardless of the negatives, acting contrary to those beliefs can have a serious impact and can increase danger to the victim.

In some cultures even the presence of relatives who witness the violence may not deter the batterer. Family members will ignore or condone the violence in some cultures.[41] Cultural mandates to keep private matters within the family may limit the battered woman's access to support beyond the batterer and the extended family. Family members may place keeping domestic violence a family secret above the victim's safety and in doing so may reinforce the batterer's position of authority. The traditional disempowerment of women in immigrant and refugee families reinforces many women's hesitation to seek help as it involves taking a decisive action against a family member, often considered inappropriate for her role.

Interest In Protecting Partners From Legal Risks

Complaints of domestic violence and subsequent legal system involvement with the family can place the batterer under the scrutiny of the law. A battered immigrant woman may fear that the consequences to the abuser may extend to other spheres of his live, complicating the situation for him and by extension for her and for their children. If a battered immigrant's access to legal immigration status is tied to the abuser, she may be unwilling to seek help or cooperate in is criminal prosecution because then he will not help her obtain lawful status and she may not know that she qualifies for immigration benefits on her own. Additionally, loss of income or employment, social stigma, violation of probation from previous conviction can be long term consequences of legal system involvement for the abuser. These effects may compound his unwillingness to change his behavior or work things out with the victim in legal procedures. Finally, many battered immigrant women are reticent to seek assistance because they fear that the consequences of legal system involvement in the relationship will lead to the abuser's retaliation against the abuse victim and/or her family members.

Poor Physical And/Or Psychological Health Of Battered Women And Their Children

Intimate abuse leads to health problems for the victim, such as bruises, broken bones, cuts, miscarriages, internal injuries, scars, damage to joints, partial loss of hearing or vision among others. In addition, battered women often suffer from longer term health problems such as permanent injuries or organ malfunction, chronic headaches, recur-rent vaginal infections, and unwanted pregnancies. In sum, living in a violent home has a profound effect on the physical and mental health of battered women.[42] Poor health status or health concerns for themselves or their children can be a significant deterrent to a battered immigrant to leaving her abuser. In spite of their increased health risks, women and children in violent homes often receive less medical care than women and children living in a non-violent home.[43] Dependence upon a husband's medical insurance and fear that government health assistance will not be available for herself or the children can keep a woman locked in the violent relationship.

Aside from medical problems, short and long terms psychological effects of battering have been well documented in medical, psychological and social work literature. Older literature conceptualized the Battered Woman's Syndrome, a concept no longer considered appropriate.[44] The most extensive research of battering and its effects comes from traumatology studies and the Post Traumatic Stress Disorder literature.[45] Symptoms such as depression, anxiety, mood disorders, dissociation, substance abuse and suicidal attempts have also been found to be associated to the trauma of intimate violence.[46] In addition, repeated victimization progressively heightens a battered women's fears, terror and perception of intimidation, weakening her ability to act to stop the violence.[47] Multiple victimization across the life span has been linked to the battered woman's clinical presentation and response to the abuse.[48] In this sense, tolerance for stress is permanently harmed by the cumulative experience of trauma, and women who have been traumatized numerous times during their life time tend to be more vulnerable and respond in less adaptive ways to further victimization. Past trauma has been identified as a risk factor for women to remain longer in abusive relationships.[49] Thus, many battered immigrants who may have been exposed in their home countries to other forms

of victimization such as child abuse, torture, rape, warfare and natural disasters are more vulnerable to the effects of violence by their intimate partner than are battered women who have not had such experiences.[50] Women who have been subjected in their home countries to culture-bound practices designed to make them more acceptable and desirable to men, such as genital mutilation, child marriage, or pathological dieting, may have been emotionally scarred by such experiences.[51] The immigration process also places women at risk of further traumatization since many women may experience rape and sexual assault during travel to the U.S. or by employers who take advantage of them in the U.S.

Whether the children are abused by the batterer or are merely exposed to the domestic violence, they may present symptoms related to the stress and traumatization. A battered woman's stress can be compounded when the children present symptoms and maladaptive behaviors which she needs to address. Separation from a battering partner does not guarantee removing the children from the violence when there will be ongoing contact through visitation. Thus, many battered women fearing that the legal struggles, relocation, financial uncertainty and the potential risks of a continued relationship with the batterer during visitation will prove to be more damaging to the children and worsen their children's psychological state, will choose instead to remain with their abusers.

Loss Of An Intimate Relationship That May Provide For Some Important Needs For The Victim

It has been established that in the cycle of domestic violence, affection and attention coexist with the violence and control. After an abusive incident the perpetrator may again treat the victim as he did during courtship.[52] To lose this nurturant part of the relationship as well as the sexual gratification of a marriage is difficult for any woman. A woman's need for security, closeness and affection from her partner which is often met by the relationship despite the episodes of violence, may be central to her minimization of the danger and the decision to stay.[53] For battered immigrants, choosing to leave a partner who has provided the only familiar environment in the midst of a foreign culture with no social support can be very frightening, in spite of the negative conditions of abuse in the marriage. Immigrant women may be thus hesitant to add this loss to their already stressful circumstances.

Hope that the abuser will change can be a powerful factor keeping a battered woman in an abusive relationship. Batterers may promise to change and may tell the victim that he knows his abusive behavior was wrong. Batterers often ask for forgiveness. An immigrant woman who may think it is her duty to stay with her husband may choose to try to help him to change his behavior. This is, however, rarely effective because it assumes that it is under the victim's control to change her battering husband.

WHY WOULD A BATTERED IMMIGRANT WOMAN FIND IT DIFFICULT TO RETURN TO HER HOME COUNTRY, WHETHER VOLUNTARILY OR THROUGH DEPORTATION?

Many people who do not fully understand the dynamics of domestic violence, the

psychology of abusers, the effect of abuse on victims, and victim's needs to heal wrongly believe that a battered immigrant woman may be better off in her home country where she can find familiar surroundings, the protection of family and can be separated from the abuser once and for all. For many immigrant domestic violence victims returning home will actually increase the danger to her. Deportation does not necessarily stop the violence or insulate her from the abuser's ongoing control. Abusers of immigrant women often find many ways of continuing to abuse and control her. He may damage her reputation so that no one in her home country will help or employ her. He may use his own network of family and friends in that country to boycott her efforts at reintegration.

Abusers who are citizens or lawful permanent residents may follow her to the home country to continue the abuse. If the abuser is deported to her home country deporting her to the same country can pose significant danger to her. In many third world countries, domestic violence is only recently being identified as a social problem and legal and community services to protect victims are non existent or still very much in their infancy compared with the U.S.[54] Lack of social services for abuse victims and lack of enforceable laws to protect them increase the likelihood that violence perpetrated in the victim's home country could be even more damaging as it goes undetected and unpunished.

Deportation by its very nature is an inherently stressful and anxiety producing experience. Deportation is a process forcibly removes an individual from his or her familiar surroundings and from the U.S. where laws can protect her to a country where political, social or economic circumstances may be adverse and unresponsive to the needs of battered women. If the battered woman fled her country to escape political turmoil, economic depression or domestic violence perpetrated there, the return to such unbearable conditions is very frightening. Even in a home country with the best of circumstances, the battered immigrant will have to start over again obtaining employment, building a social network, procuring housing and finding a support system that can help her survive the trauma of both the violence and the deportation. If the battered immigrant has a child with a U.S. citizen or lawful permanent resident abuser, deportation may result in loss of custody of the children and may sever her permanently from them. If she takes the children with her she may be forced to violate court ordered visitation and will risk parental kidnapping by the abusive father back to the U.S. where she can never see her children again.

Further, cultural values against a divorced or separated woman can make the return unbearably painful and can undermine her social reintegration. A woman who returns to the home country having lost her husband and children, may run the risk in some societies of having her own family turn against her. This is particularly true in cultures that value family unity and respectability at any cost.

Battered immigrant women who have established a life in the U.S. may fear losing her home, friends, social support group, and even her children, by virtue of the deportation process. Many battered women may have some or all of their family in the U.S., which makes returning to their home country an undesirable option as it will result in loss of family contact. For an immigrant battered woman who has developed a positive support network of family and friends

in the U.S., their shelter, their protection, their advise and support tend to greatly alleviate her stress and assist her to protect herself as well as her children. Given the difficulties in procuring positive social support, its loss can be devastating for the immigrant battered woman who faces deportation. Fear of losing their social support network through deportation could result in significant psychological harm and could hinder the abused's ability to escape from the abusive relationship.

The prospect of potential deportation could exacerbate a battered immigrant woman's feelings of depression, loneliness, and despair. Such an increase in depression and hopelessness may even increase the likelihood of suicide attempts. Deportation will in many instances significantly hinder a battered immigrant woman's ability to recover from the psychological impact of past abuse. If she believes that she may be deported if she leaves her husband, she may choose to stay with the abuser despite risks of further injury.

Deportation may also replicate the process of coercive control exercised by the batterer. Many, if not most, batterer's of immigrant women threaten their victims as one means of exercising power and control. In the immigration context, the batterer may tell his victim that she will be deported if she refuses to accede to his wishes or if she reports the abuse to authorities. A battered immigrant who has been subjected to such threats is likely to perceive deportation as an institutionalized implementation of the batterer's previous threats, which would only exacerbate the abused's feelings of helplessness and depression within the abusive relationship. This will significantly impede her ability to recover from the trauma of abuse.

When a battered immigrant has children who were born in the United States she may fear either losing them or moving them to a country where conditions can be very difficult and where she and they may be ostracized. U.S. citizenship provides her children opportunities in life and the possibility of greater societal protection than she encountered while growing up in her own country. Battered immigrants who contemplate deportation or voluntary return to their home countries must weigh the effects this move will have on U.S. citizen children who will be deprived of opportunities. They must also evaluate the dangers of leaving children behind in the U.S. where they are subject to ongoing harm from the abuser.

Finally, battered immigrant women from third world countries who have established a life in the U.S. often become very attracted to American values and culture which tends to give women more opportunities. Whether the abused woman or her daughters benefit from these opportunities, the fear of losing them and being forced to return to a society in which battered immigrant woman's life and that of her daughters is more constrained by virtue of gender alone can be very frightening. Even women who spend a short time living in the U.S. have wide exposure to the culture and achieve some form of intellectual acculturation to American society, and its tradition of justice and freedom. Deporting abuse victims back to a culture with strictly prescribed gender roles can be extremely stressful.

HOW MIGHT DOMESTIC VIOLENCE AFFECT A BATTERED IMMIGRANT WOMAN'S CREDIBILITY AND ABILITY TO DEMONSTRATE GOOD MORAL CHARACTER?

The psychological impact of physical, psychological, and sexual abuse can interfere with a battered woman's ability to present her case in an effective manner before the court. She may appear angry and hostile, socially withdrawn and passive, highly anxious and cognitively disorganized, terrorized, or numb and detached. Each of these presentations may be related to understandable and "normal" reactions to trauma.[55] A victim's overall demeanor and oral testimony in court, especially if she is again encountering the batterer in court, may be strongly influenced by these responses.

Victims use many strategies in their efforts to resist, avoid, escape, and stop the violence and abuse against them and their children.[56] Some of these strategies may later give the appearance of weakness of character, moral defect, or even colluding in the violent cycle. For instance, recent National Institute of Justice research indicates that approximately 40% of victims use physical force to fight back against their batterer's attacks.[57] It is important to remember that even when men and women use the same type of aggressive behavior, women are injured at much higher rates than are men. Women who resort to using physical force to defend themselves often do so because they perceive that there are no other options to stop the abuse. They may feel trapped in the relationship because previous efforts to seek help from the courts were unsuccessful. The use of physical aggression by a battered victim must be considered within the context of her attempts to protect herself and her children against even more serious violence from the batterer and her survival instincts. Battered women and battered immigrant women may be wrongly charged with domestic violence assault when they were acting in self-defense. This occurs when untrained police arrest both parties and when police and prosecutors do not take the time to determine which party is the primary perpetrator of abuse in the relationship.

Undocumented residency status, the batterer's threats of deportation, and continued threats of harm to her or to children may effectively keep her from seeking help. Her coerced involvement in illegal activities can, in turn, keep the battered woman from seeking help, often rightfully fearing that she, as well as her abusive partner, are at legal risk.

Another difficulty some battered immigrants may have in establishing good moral character may arise when the battered woman may abuse substances. It is not an uncommon occurrence for some battered women to use drugs or alcohol as self-medication of uncontrolled depression and anxiety because of the abusive relationship. The psychological effects of the abuse and control are numerous and usually fall within a diagnostic category of Post-Traumatic Stress Disorder.[58] However, some immigrant battered women may be hesitant to seek mental health assistance due to their fear that if they disclose the abuse they may be pressured into compromising decisions or situations. Conversely, if they seek counseling and the violence is not disclosed then the treatment could be ineffective, due to a lack of understanding of the root causes of the victim's psychological problems. Worse, it may serve to establish a record of mental problems which may later prove to be very damaging to the battered immigrant in a court battle.

For immigrant battered women often times the fear of deportation, language limitations,

economic constraints, lack of transportation and ignorance of the mental health system can lead to their inability to access mental health resources and not getting the help needed. Untreated, the effects of intimate violence and control tend to become aggravated and permeate into other spheres of functioning, such as work and parenting, which can be vital to a battered women's functioning and survival. To cope, some immigrant battered women may turn to mood altering substances.[59] When fact finders in domestic violence cases see evidence of substance abuse, they should review this evidence in light of the full history of abuse and the positive steps the abuse victim has taken to protect herself and the children, rather than automatically considering this as evidence of lack of good moral character.

When the battered woman has a criminal conviction, it is important to assess whether the battered woman was coerced to engage in acts that are illegal. In order to reduce the risk of increased abuse or even death, the battered woman may commit criminal acts under duress from her abuser. Sometimes those acts may represent desperate attempts to placate a controlling husband who may demand certain amount of financial contribution from her or hold her responsible for issues outside her control.

When charged with a criminal act, a battered immigrant woman may continue to operate under the batterer's coercive control as she follows his demands to assume the responsibility herself, perhaps protecting the abuser from more serious involvement. She may follow the counsel of an attorney who is unaware of the implications that specific actions in the criminal case may have for her immigration status. In both cases, the negative psychological effects of violence and abuse, especially passive helplessness and dependency on more powerful figures, depression and low self-esteem, high levels of anxiety, cultural values that mandate deference to authority and limited knowledge of the legal system, may increase the immigrant battered woman's inclination to rely unquestioningly on her defense attorneys advice. As a result, she may agreed to proceed in the criminal case with an arrangement that may avoid trial but unbeknownst to her will cut her off from VAWA immigration relief or make her deportable. She will agree to do this upon her attorney's advice even when she could have won her cause if had gone to trial.

WHY IS IT IN THE BEST INTEREST OF THE CHILD TO BE PLACED IN THE CUSTODY OF THE NON-ABUSIVE PARENT EVEN WHEN THE PARENT HAS NOT ATTAINED LAWFUL PERMANENT RESIDENT STATUS?

In addition to the violence against the woman, often the batterer directs the violence towards the children.[60] Children who grow up in a household fraught with violence may become direct victims themselves, either as targeted by the abuser's desire for power and control or if they intervene in a battering incident to protect their mother. Children who are abused suffer physical harm and also significant harm to their developing personalities. These children tend to be often as traumatized as their battered mother by the violence in the family and are at high risk of permanent injury or death.

Even when the children are not physically victimized themselves, they often are witness to the physical, and even sexual, abuse of their mothers, and the strategies of control and

psychological abuse the batterer uses.[61] Mere exposure to witnessing abuse perpetrated on their mother amounts to secondary traumatization, which has been found to produce consequences for children similar in type to direct abuse.[62] Children exposed to parental violence suffer from negative effects on their emotional development and often suffer traumatization. Children tend to respond to witnessing the marital violence with internalizing symptoms such as depression and somatization; and externalizing behavior such as aggressive behavior, hyperactivity, impulsivity and even delinquency.[63]

Additionally, children who witness abuse at home have poorer psychological and social adjustment over the long term.[64] A study comparing the effects of family discord to the effects of parental psychiatric illness on children found family conflict to be more detrimental.[65] It has been found that boys who witness marital violence are likely to become abusive husbands, underlining a theory of an intergenerational transmission of violence.[66] Not all children affected by violence in their homes grow up to repeat the abuse, but there is a strong connection between witnessing violence in childhood and later involvement in some form of interpersonal violence either intimate, child abuse or retribution on aging parents.[67]

Moreover, children growing up in violent homes do not have a family who consistently provide the nurturance and security which are key to their psychological development. The sense of safety and nurturance necessary for normal developmental growth is often not present in relationships where control and violence are characteristic. Children may learn to lie to deal with their divided sense of loyalty and to protect their parents or themselves from undesirable situations. Children may become part of the "conspiracy of silence," characteristic of violent homes. Children often feel responsible for the violence; thus, they may behave “pseudo-mature” or change their behavior constantly in the hope that it will stop the violence.

Children can be harmed in other indirect ways, as the fear and confusion about the abuse interferes with their ability to profit from their education, makes them vulnerable to nutritional and sleeping deficits, and disrupts their social development. Aside from not having the mental energy to attend to those activities, children from violent homes are usually shifted between relatives, change schools frequently, miss school days, are kept socially isolated and may be overburdened with chores and responsibilities beyond their developmental maturity. Additionally, the stresses associated with domestic violence may decrease parent availability to the children and diminishes their ability to understand and respond to the children's needs.[68] These difficulties create further deficits and vulnerabilities to the children's already stressed lives.

When children are immigrants themselves they may have the added stresses of acculturation, assimilation to a new educational system, and learning a foreign language. Cumulative stresses that come from previous negative experiences in their home countries and/or current difficulties to adapt to a new environment places them at risk of poorer coping. Children who are U.S. citizens born of immigrant mothers or immigrant families may have also the added stresses of having to maintain two languages and two cultures, and struggle to understand the different set of values they face in a violent household. Children with immigrant mothers may have to deal with the new experiences of discrimination and social

ostracism by their own or their mother's race and social status. These situations add stress and complicate even further their ability to deal with the violence at home.

Selective child abuse, or abuse directed to some but not all the children in a family is extremely harmful.[69] This specific kind of abuse may occur during certain developmental stages (such as young childhood or adolescence), for children from previous relationships, for children of an unfavored gender, or those with whom the batterer have weaker bonds. Aside from these factors, immigrant families are also at risk when due to immigration patterns they have children who were separated from their parents due to delayed family reunification. The occurrence of selective child abuse may create a hierarchy of violence which breeds other forms of intrafamilial abuse, such as between siblings themselves or children to their parents.

Studies have shown that it is the quality of the family life, its level of nurturance and communication, rather than the structure of the family (e.g., having both parents), which is associated with the children's present and future emotional health.[70] The presence of a batterer, regardless of what positive relationships or parental skills he may have with the children, can present a strong negative influence on the children. When the abuser's models to the children the undesirable habits and values that underlie the abuse to an intimate partner, children learn and are harmed by his influence.[71] They learn from the abuser inappropriate ways of resolving conflict, and may develop the belief that interpersonal problems are to be resolved by behaving either aggressively or passively, instead of assertively.[72] Being afraid and confused by the violence the abuser is perpetrating in the family also undermines the trust and attachment children need to place in their caretakers.

Children who are growing up in homes with domestic violence are in need of legal protection, and social and mental health attention. If children who have suffered direct or indirect abuse are placed with the abusive father, the battered woman is doubly victimized and the children are at risk of being used for purposes of retaliation and control over their mother.[73] Children who are used by the abuser to get to the mother may believe that they are not loved or valued by themselves but that their father's obsession and anger with they mother is more important than they are.

The conjoint healing of abused women and their children has been considered the ideal therapeutic situation, because the attachment relationship with the mother is the most important context of a child's development.[74] Children who have witnessed violence in their home tend to believe that the mother has been unable to protect herself and thus will be unable to protect her children. To find safety and healing together gives battered mothers and their children the opportunity to dispel these wrongful beliefs, overcome trauma and repair their compromised relationship.

[1] Written by Drs. Giselle Aguilar Hass and Mary Ann Dutton.
[2] *See* Mary Ann Dutton, Impact of Evidence Concerning Battering and its Effects in Criminal Trial Involving *Battered Women, in* THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: RESEARCH REPORT (National Institute of Justice 1996).
[3] Scientific knowledge is derived from scientific research and specialized knowledge is based on experience, skill or training.
[4] *See* R. Schuller, *The Impact of Battered Women Syndrome Evidence on Jury Decision Processes*, 16 LAW AND

HUMAN BEHAVIOR 597 (1992).
[5] VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY (1996).
[6] *See* L. Walker, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST, (American Psychological Association 1994).
[7] *See, e.g.,* VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 4 (Aug. 1995); FEMALE VICTIMS OF VIOLENT CRIME, BUREAU OF JUSTICE STATISTICS (1991).
[8] S.F. Turner & C.H. Shapiro, *Battered Women: Mourning the Death of a Relationship*, SOCIAL WORK (Sept/Oct. 1986).
[9] *See* Mary Ann Dutton, EMPOWERING AND HEALJNG THE BATTERED WOMAN: A MODEL OF ASSESSMENT AND INTERVENTION (1992).
[10] *See supra* note 5.
[11] *See* S. Torres, *A Comparison Of Wife Abuse Between Two Cultures: Perceptions, Attitudes And Extent,* 12 ISSUES IN MENTAL HEALTH NURSING 113 (1991).
[12] A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services 1990). This study reported the following findings: 75% of the immigrant Latina and Filipina women living in the San Francisco Bay area surveyed had very low incomes (Latinas under $750 and Filipinas under $1000 a month), 55% of the women who worked, did so only part time. Of the Latinas who did not work 53% were supported by their husbands and 20% by other family members, 60% of Latina women had 1-3 children and 17 had 4-8 children.
[13] Between 1995-96, 80 percent of women who were stalked by former husbands were physically assaulted by that partner. STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (Center for Policy Research 1997). *See also supra* note 5; B.E. Carlson, *Battered Women And Their Assailants,* 22 SOCIAL WORK 455 (1997).
[14] In 1992, divorced or separated (legally or due to marital discord) women had higher victimization rates of violence by intimates (16 per 1,000) than women who never married (7 per 1,000) or married women (1.5 per 1,000). VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 4 (Aug. 1995).
[15] In 1996 over 1,800 murders were committed by intimates, and nearly 3 out of 4 of these had a female victim. VIOLENCE BY INTIMATES, BUREAU OF JUSTICE STATISTICS (March 1998). *See also* ANGELA BROWNE, WHEN BATTERED WOMEN KILL (1987).
[16] See "marianismo" concept in which women are socialized to imitate the Virgin Mary including such virtues as virginity, the sacrament of marriage forever, servitude to family, martyrdom, and subordination to males. O.M. Espin, *Cultural And Historical Influences On Sexuality In Hispanic/Latin Women, in* ALL AMERICAN WOMEN: LINES THAT DIVIDE, TIES THAT BIND 272 (J. Cole, ed. 1986).
[17] DEANNA JANG, LENI MARIN, GAIL PENDLETON, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN (1997).
[18] *See* M. FERNANDEZ-ESQUER, & MCCLOSKEY, MEXICAN AMERICAN AND ANGLO BATTERED WOMEN COPING STRATEGIES (1992). *See also* E.W. Gondolf, E. Fisher & R.J. McFerron, *Racial Differences Among Shelter Residents: A Comparison Of Anglo, Black And Hispanic Battered,* 3 JOURNAL OF FAMILY VIOLENCE (1988).
[19] See the analysis of gender violence in a country's economic development. L. HEISE, J. PINAGUY, & A. GERMAIN, VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (1994).
[20] "Undocumented are non citizens who enter the U.S. without INS permission or whose legal immigration documents have expired since they entered. . . . Although being in the U.S. without documents is not a crime, INS try to remove undocumented individuals when they are identified often through their employment and work placement." DEANNA JANG, LENI MARIN, GAIL PENDLETON, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 53 (1997).
[21] A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services 1990). This study also found that 48 % of the Latinas interviewed spoke no English, and 38% spoke only basic English.
[22] *See* THE SOCIAL CAUSES OF HUSBAND-WIFE VIOLENCE (Murray Straus & Gerald Hotaling, eds. 1980).
[23] A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services (1990).
[24] *See* Murray Straus, *Victims and Aggressors in Marital Violence,* 23 AMERICAN BEHAVIORAL SCIENTIST 681

(1990).
[25] *See* SUSAN KEILITZ, PAULA HANNAFORD, & HILLERY EFKEMAN, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE (1997).
[26] *See supra* note 16. *See also* J. Perilla, R. Bakerman, & F. Norris, *Culture and Domestic Violence: The Ecology of Abused Latinas*, 9 VIOLENCE AND VICTIMS (1994).
[27] *See* A. Tomkins, S. Mohamed, M. Steinman, R. Macolirii, M. Kenning, & J. Aftank, *The Plight of Children who Witness Women Battering: Psychological Knowledge and Policy Implications* 18 LAW AND PSYCHOLOGY REVIEW 137.
[28] Although research to establish the reliability of the Parent Alienation Syndrome is considered insufficient (in APA, 1996, see supra note 5) the concept has been used by family courts to describe one parent's attempts to interfere with the children's attachment to the other parent, a situation found in highly conflictive separations or divorces.
[29] *Supra* note 5 at 99.
[30] In a study of 371 families, researchers found that 55% of abductors were men, 77% snatched the children in order to hurt the other parent, 31.8% of the children abducted were believed to be taken outside the U.S., foreign born parents were more than twice as likely as an American born to abduct a child, and were specially likely to take the abducted children to another country. Hegar & Greif*, Newsletter of the National Center on Women and Family Law,* vol. 13, p. 3.
[31] Immigration status is a tool that exacerbates the threats of separation from the children. When a U.S. citizen or lawful permanent resident husband threatens a wife dependent on him for immigration status with deportation and separation from her children, his threats can be a very powerful deterrent to her separation actions, including calling the police, obtaining a protection order, or cooperating in her partner's criminal prosecution.
[32] *See* M. O'Keefe, *Incarcerated Battered Women Who Killed their Abusers and those Incarcerated for Other Offenses,* 12 JOURNAL OF FAMILY VIOLENCE 1 (1997). *See also* Mary Ann Dutton, L. Hoenecker, P. Halle, & K. Burghardt, *Traumatic Responses Among Battered Women no Kill,* Paper Presented at the Seventh Meeting for the International Society for Traumatic Stress Studies, Washington, D.C. (1991).
[33] Also, only about half of the incidents of intimate violence experienced by women are reported to the police. VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).
[34] *See* P. Ruiz & J. Langrod, *Cultural Issues in the Mental Health of Hispanics in the United States*, 2 THE AMERICAN JOURNAL OF SOCIAL PSYCHIATRY 35 (1982). *See also* M.J. O'Sullivan, & B. Lasso, *Community Mental Health Services for Hispanics: A Test of the Culture Compatibility Hypothesis*, 14 HISPANIC JOURNAL OF BEHAVIORAL SCIENCES 455 (1992); R.F. Munoz, *The Spanish-Speaking Consumer and the Community Mental Health, in* MINORITY MENTAL HEALTH 362 (E.E. Jones & S.J. Korchin, eds.).
[35] *See supra* note 16. *See also* O.M. ESPIN, LATINA REALITIES: ESSAYS ON HEALING, MIGRATION & SEXUALITY (1997). *See also* C.G. Tran, Domestic Violence Among Vietnamese Refugee Women: Prevalence, Abuse Characteristics, Psychiatric Symptoms, And Psychological Factors (Unpublished doctoral dissertation, Boston University 1997).
[36] *See* Perilla, Bakerman & Norris, *The Ecology Of Abused Latinas,* 9 VIOLENCE AND VICTIMS 325 (1994); S. Torres, *A Comparison Of Wife Abuse Between Two Cultures: Perceptions, Attitudes, And Extent,* 12 ISSUES IN MENTAL HEALTH NURSING 113 (1991).
[37] *See supra* notes 16 and 35.
[38] *See Tran supra* note 35.
[39] *See* N. Kibria, *Power, Patriarchy, And Gender Conflict In The Vietnamese Immigrant Community,* 4 GENDER AND SOCIETY 9 (1990).
[40] *See* Lenore E. Walker, THE BATTERED WOMAN SYNDROME (1984).
[41] *See supra* note 11.
[42] Battered women are 4 to 5 times more likely than non battered women to require psychiatric treatment and 5 times more likely to attempt suicide, abuse may be the single most important precipitant for female suicide yet identified. E. Stark & A. Flitcraft, *Spouse Abuse, in* VIOLENCE IN AMERICA: A PUBLIC HEALTH APPROACH 14 (Rosenburg & Fenley, eds. 1991). For extensive description of physical effects of violence see M. Koss, P. Koss & J. Woodruff, *Deleterious Effects of Criminal Victimization on Women's Health and Medical Utilization*, 151 ARCHIVES OF INTERNAL MEDICINE 342 (1991).
[43] DIAGNOSTIC AND TREATMENT GUIDELINES ON DOMESTIC VIOLENCE (American Medical Association 1992).

[44] "The term Battered Women Syndrome does not adequately reflect the breadth or nature of the empirical knowledge about battering and its effects." THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: RESEARCH REPORT vii (National Institute of Justice 1996).
[45] This diagnosis was originally conceived to accommodate normal persons who develop psychological symptoms because of the nature of the trauma experienced, a no longer required criteria to be met in the newest revision of this diagnosis. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (American Psychiatry Association 1980 & 1994).
[46] See description of symptoms related to intimate violence in M. Koss, *supra* note 42.
[47] Mary Ann Dutton & K. Chrestman, *Multiple Victimization Across Trauma Groups,* Paper presented at the Seventh Annual Meeting of the International Society for Traumatic Stress Studies, Washington D.C. (1991).
[48] *See supra* note 33.
[49] *See* R.J. Gelles, & C. Cornell, INTERNATIONAL PERSPECTIVES IN FAMILY VIOLENCE (1983).
[50] Historically, women have been subjected to rape in wars. Mass rapes have been reported to occur recently in the civil wars of Bosnia, Cambodia, Liberia, Peru, Somalia, and Uganda. S. Swiss & J. Giller, *Rape as Crime of War: A Medical Perspective,* 270 JAMA 612 (1993).
[51] *See* L. Herse, J. Pitanguy & A. Germain, VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (1994).
[52] *See supra* note 6. *See also* LENORE E. WALKER, THE BATTERED WOMAN (1979).
[53] *See supra* note 8.
[54] *See supra* note 51 at 30. "Laws in other countries make it almost impossible to prosecute violence against women, especially violence perpetrated by an intimate partner." In Guatemala, for example, the Civil Code grants a husband the right to prohibit his wife from working outside the house; in Ecuador, a husband had the right to force his wife to live with him regardless of the abuse; in Chile divorce is illegal for any reason; in Pakistan the law considers a woman incompetent as a witness in cases of rape, which makes any conviction very hard to obtain.
[55] *See supra* note 2.
[56] Examples of strategies women use to avoid, escape or resist batterers: calling the police, calling shelters, leaving the home or scene, complying with the batterer's demands (apparently or superficially), talking to friends, hiding, avoiding the batterer, seeking professional help, "being nice" and not upsetting the batterer, keeping information from the batterer, avoiding conflict and keeping peace, "walking on eggshells", separating or divorcing the batterer, fighting back with physical force, obtaining a gun or other weapon. *Supra* note 5.
[57] Overall three fourths of female victims of non lethal intimate violence actively defended themselves against the batterer: 60% tried to escape, called the police or other help, or used other non confrontational means of self-defense, 17 % confronted the offender by struggling, shouting, chasing or other means without a weapon (15%) or with a weapon (2%). VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).
[58] DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (American Psychiatry Association 1994).
[59] Most battered women who drink begin drinking excessively only after the onset of abuse. H. Amaro, L. Fried, H. Cabral, & B. Zuckerman, *Violence During Pregnancy and Substance Abuse,* 80 AMERICAN JOURNAL OF PUBLIC HEALTH 575 (1990).
[60] VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).
[61] *See* E. Blakely, D. Engehnan & J. Kolbo, *Children Who Witness Domestic Violence: A Review Of Empirical Literature,* 11 JOURNAL OF INTERPERSONAL VIOLENCE 281 (1996).
[62] See M. O'Keefe, *Adjustment of Children from Maritally Violent Homes,* 75 FAMILIES IN SOCIETY 403 (1994). *See also* L.A. Mc Closkey, A.J. Figueredo, & M.P. Koss, *The Effects of Systemic Family Violence in Children's Mental Health,* 66 CHILD DEVELOPMENT 1239 (1995).
[63] *See* F. Blakely, D. Engleman, & J. Kolbo, *Children no Witness Domestic Violence: A Review Of Empirical Literature,* 11 JOURNAL OF INTERPERSONAL VIOLENCE 281 (1996). *See also* J.W. Fantuzzo et al., *Effects Of lnter-Parental Violence On The Psychological Adjustment And Competencies Of Young Children*, 59 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 258; A. Figueredo, M. Koss & L. McCloskey, *The Effects of Systematic Family Violence,* 66 CHILDREN'S MENTAL HEALTH CHILD DEVELOPMENT 1239 (1995); K. O'Leary, & A. Rosenbaum, *Children: The Unintended Victims Of Marital Violence*, 51 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 692 (1981).
[64] See J.L. Mathias, P. Mertin, & A. Murray, *The Psychological Functioning of Children from Backgrounds of Domestic Violence*, 30 AUSTRALIAN PSYCHOLOGIST 47 (1995).

[65] *See* R.E.Emery, *Inter-Parental Conflict And The Children Of Discord And Divorce*, 92 PSYCHOLOGY BULLETIN 310 (1982).
[66] *See* M.A. STRAUS, R. GELLES, & S. STEINMETZ, BEHIND CLOSED DOORS: VIOLENCE IN AMERICA (1980).
[67] *See supra* note 5.
[68] *See* A. Tomkins, S. Mohamed, M. Steinman, R. Macolini, M. Kenning, & J. Afrank, *The Plight Of Children Who Witness Women Battering: Psychological Knowledge And Policy Implications,* 18 LAW AND PSYCHOLOGY REVIEW 137.
[69] This is also known as scapegoating within the literature of child abuse. *See* D. Kolko, *Child Physical Abuse, in* THE AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN HANDBOOK ON CHILD MALTREATMENT 21 (J. Briere, L. Berliner, J.A. Bull-dey, C. Jenny, & T. Reid, eds.).
[70] Numerous studies cite effects of divorce as being rrjild when compared with the effects of growing up in a violent home. Further, there is a strong body of research supporting the theory that adjustment to divorce and parental separation is like any other stressful life situation in which the outcome does not always have to be negative and it may well be strength and resiliency. *See* B. Long, *Parental Discord Versus Family Structure: Effects Of Divorce On The Self-Esteem Of Daughters,* 15 JOURNAL OF YOUTH AND ADOLESCENCE 19 (1986). *See also* R.E. Emery, *Interparental Conflict And The Children Of Discord And Divorce,* 92 PSYCHOLOGICAL BULLETIN 310 (1982). D. Mechanic & S. Hansell, *Divorce, Family Conflict And Adolescent's Well Being,* 30 HEALTH AND SOCIAL BEHAVIOR 105.
[71] Studies have found that battered mothers tend to recognize the danger and negative influence on the children more readily than the batterer, and it is their perception of the children's needs which partially influence the decision to leave or stay. *See* A. Henderson, *Children Of Abused Wives: Their Influence On Their Mother's Decisions,* CANADA MENTAL HEALTH 10 (June/September 1990).
[72] See M. Rosenberg, *Children Of Battered Women: The Effects Of Witnessing Violence In Their Social Problems Solving Abilities*, 10 BEHAVIOR THERAPIST 85 (1987).
[73] The Office of Women's Health reports that 30 to 70% of children who live in violent homes become victim themselves of abuse or neglect. S.J. Blumenthal, *Violence Against Women Fact Sheet,* Office of Women's Health (July 1995). *See also* P. Choice, L. Lamke, & J. Pittman, *Conflict Resolution Strategies and Marital Distress as Mediating Factors in the Link Between Witnessing Inter-parental Violence and Wife Battering,* 10 VIOLENCE AND VICTIMS 107 (1995).
[74] D. Douglas, *Intervention With Male Toddlers Who Have Witnessed Parental Violence*, *in* FAMILY IN SOCIETY: THE JOURNAL OF CONTEMPORARY HUMAN SERVICES 515 (Nov. 1991).

APPENDIX D
Resource Lists

RESOURCES

(Note: This is a short list. Contact each organization for a full listing.)

TECHNICAL ASSISTANCE

The Family Violence Prevention Fund (FVPF), the Immigrant Women Program of NOW Legal Defense (IWPNOW), and the National Immigration Project of the National Lawyers Guild (NIPNLG) all provide technical assistance, with each focusing on its areas of expertise.

FVPF: domestic violence in immigrant communities, special needs of battered immigrant women, access to shelter, culturally sensitive services.

Family Violence Prevention Fund
383 Rhode Island St., Ste. 304
San Francisco, CA 94103
To order publications: phone (415) 252-8089; email ordering@fvpf.org; www.fvpf.org
For technical assistance, call Leni Marin: phone (415) 262-8900; fax (415) 626-8651; email: leni@fvpf.org

IWPNOW: family law and protection orders, shelter access, access to welfare, and basic VAWA immigration advice.

Immigrant Women Program of NOW Legal Defense and Education Fund
110 Maryland Ave., N.E., Ste. 311
Washington, D.C. 20002
For both publications and technical assistance, call Leslye Orloff or Janice Kaguyutan: phone (202) 546-1100; fax (202) 546-3850; email: immwomenpro@aol.com

NIPNLG: access to immigration status.

National Immigration Project of the National Lawyers Guild
14 Beacon St., Ste. 602
Boston, MA 02108
For publications, phone 617-227-9727 ext. 3; email: nip@nlg.org; www.nlg.org under "National Immigration Project (domestic violence)."
For technical assistance, call Gail Pendleton: phone (617) 227-9727 ext. 2; fax (617) 227-5495; email: nipgail@nlg.org.

FVPF and IWPNOW also have brochures for battered immigrants in many languages.

PUBLICATIONS

For Domestic Violence Service Providers

Battered Immigrant Women Legislation Information, IWPNOW. Free.

Domestic Violence in Immigrant and Refugee Communities: Asserting the Rights of Battered Women, 2d Ed., Jang, Marin and Pendleton, eds., FVPF, the Northern California Coalition for Immigrant Rights and the NIPNLG (1997).$75.00, order from FVPF.

Introductory Material on Serving Battered Immigrants, IWPNOW. $5.

Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrants: A "How to Manual" for Advocates and Service Providers, IWPNOW. $30.

Working with Battered Immigrant Women: A Handbook to Make Services Accessible, Volpp, Marin ed., FVPF. $8.00, English and Spanish.

For Attorneys, Advocates and Service Providers Helping with VAWA Immigration Applications

Resources on New Rights for Battered Immigrants (training materials), NIPNLG. $16 (basic packet).

Domestic Violence and Immigration: Using the Immigration Provisions of the Violence Against Women Act, American Bar Association Commission on Domestic Violence (forthcoming summer 2000). Will be available at no cost from the National Criminal Justice Reference Service. For information, call the American Bar Association Commission on Domestic Violence at 202-662-1744.

For Judges and Law Enforcement Personnel

Cultural Considerations in Domestic Violence Cases: A National Judges Benchbook, Ramos & Runner, FVPF (1999). $47.00.

Domestic Violence and Immigration in the Criminal Justice System, Maher & Pendleton, American Bar Association Commission on Domestic Violence (forthcoming summer 2000). Will be available electronically at no cost on the Commission on Domestic Violence's web site and the Violence Against Women Office web site.

Working with Battered Immigrant Women: A Guide for Prosecutors, Breall & Adler (Volcano Press, 2000). For cost and to order, call Ruth Gottstein at 209-296-3445.

APPENDIX E
National Network on Behalf of Battered Immigrants Form

The American Bar Association Commission on Domestic Violence
The Immigrant Women Program of the NOW Legal Defense and Education Fund
Ayuda, Inc.

National Network on Behalf of Battered Immigrant Women

MEMBERSHIP FORM

Name / Title:

Organization:

Address:

Telephone:

Fax:

Email:

Describe Your Organization (check all that apply):

_____ Domestic Violence Program
_____ Legal Services Agency
_____ Health Care Provider
_____ University / Law School
_____ Law Firm / Pro Bono Atty.
_____ Government Agency
_____ Media
_____ Immigration Lawyer
_____ Immigrant Rights Advocacy Program
_____ Family Lawyer
_____ Research/ Policy Institute
_____ Other/Describe
_____ Social Services Agency (Non-governmental)

Please List What Type of Services You or Your Organization Provides:

PLEASE RETURN THIS FORM TO:

Immigrant Women Program, NOW Legal Defense & Education Fund
1522 K Street, N.W., Suite 550, Washington, D.C. 20005
Tel: 202-326-0040; Fax: 202-589-0511

National Network on Behalf of Battered Immigrant Women is Co-chaired by:

Immigrant Women Program	Family Violence Prevention Fund	National Immigration Project
NOW Legal Defense & Education Fund		National Lawyer's Guild
(202) 326-0040	(415) 252-8900	(617) 227-9727

APPENDIX F
Trainer Materials

Sample Agenda for Three Hour Training

9:00 - 9:05 a.m.	**Introduction** Introduce Faculty; Purpose of Training; Review of Agenda & Logistics
9:05 - 9:15	**Overview & Dynamics of Domestic Violence for Immigrants**
	Power & Control - poll audience; if most know power & control, focus on immigrants; if not, explain general power & control and add information on how specific for immigrants
	Barriers Faced by Battered Immigrants – using overhead, review the barriers immigrants face when trying to access help
	Screening & Interviewing– share ways to screen for domestic violence with immigrant victims & note importance of asking open-ended questions
	Safety Planning – using overheads, audience participation, & sample safety plans, discuss safety issues for battered immigrants; poll audience, if they are familiar with safety planning no need to spend much time explaining it generally
9:15 – 9:25	**Immigration Definitions & Remedies for Battered Immigrants**
9:25 – 9:30	**History & Purpose of VAWA**
9:30 – 9:40	**VAWA's Self-Petitioning Requirement**
9:40 – 9:55	**Battering & Extreme Cruelty**
9:55 – 10:10	**Good Moral Character**
10:10 – 10:25	**Extreme Hardship**
10:25 – 10:40	**Break**
10:40 – 10:55	**Work Authorization**
10:55 – 11:10	**Economic Relief**
11:10 – 11:25	**Civil Protection Orders, Custody & VAWA**
11:25 – 11:45	**Small Group discussion of Hypo or Pop Quiz**
11:45 – 12:00	**Q & A and Evaluations**

Sample Agenda for One-Day Training

8:00 - 8:45 a.m. **Introduction**
Introduce Faculty
Purpose of Training
Review of Agenda & Logistics
Audience Identification & Introductions

Cultural Sensitivity Exercise
Suggestion - Map of the World – training participants will identify countries from which their past and current clients have come from & stickers will be placed on map; to add twist to illustrate the language barrier, find someone in audience who speaks unusual language & have that person introduce the exercise in that language

8:45 - 9:30 **Overview & Dynamics of Domestic Violence Issues for Battered Immigrants**

Power & Control (general) – using overhead, with audience participation, review Power & Control Wheel

Power & Control for Immigrants – using overhead, review the unique ways abusers maintain power & control over immigrant victims

Barriers Faced by Battered Immigrants – using overhead, review the barriers immigrants face when trying to access help

Screening – share ways to screen for domestic violence with immigrant victims

Interviewing – discussing importance of asking open-ended questions

Safety Planning – using overheads, audience participation, & sample safety plans, discuss safety issues for battered immigrants

9:30 – 9:45 **Immigration Definitions & Remedies for Battered Immigrants**

using overhead, lecture on basic immigration definitions & the remedies available to battered immigrants

9:45 – 10:15 **History & Purpose of VAWA**

using overheads, review the collaboration between domestic violence and immigration advocates in securing the passage of VAWA; encourage

The American Bar Association Commission on Domestic Violence
The Immigrant Women Program of the NOW Legal Defense and Education Fund
Ayuda, Inc.

collaboration between advocates and lawyers

10:15 – 10:30 Break

10:30 – 11:00 Introduction to VAWA's Self-Petitioning Requirement

using overhead, lecture on the basic requirements of VAWA self-petitioning; point out the effect of divorce on self-petitioning

11:00 – 11:30 Battering & Extreme Cruelty

Interactive exercise – ask audience how they would go about proving battering & extreme cruelty; what evidence would they prevent? Document audience responses on flip chart paper

11:30 – 12:00 Good Moral Character

using overheads, review factors that would lead to a finding of LACK OF good moral character; stress the fact that a criminal history on the battered immigrant's part is a strong presumption against good moral character; using overheads, review the consequences of: a battered immigrant's criminal history and an abuser's criminal history; encourage collaboration with prosecutors to protect battered immigrant's ability to utilize VAWA remedies

12:00 – 12:30 Extreme Hardship

Interactive exercise – using overheads from the introduction, ask audience how they would prove extreme hardship. Document audience responses on flip chart paper

12:30 – 1:30 Lunch on your own

1:30 – 2:00 Obtaining Lawful Permanent Residency & Cancellation of Removal

using overheads, review requirements

2:00 – 2:45 Economic Relief & Public Charge Issues

Why Economics are Important for a VAWA Self-Petition

Work Authorization – using overhead, review the requirements for work authorization & the process for obtaining authorization

Court-Ordered Economic Relief – using overheads & audience

participation, review the types of court-ordered relief victims are eligible for

VOCA – using overheads, review the requirements and benefits of VOCA compensation & assistance

2:45 – 3:00 **Break**

3:00 – 3:30 **Civil Protection Orders, Custody & VAWA**

using overheads, discuss the relief available under protection orders & specific relief for battered immigrants; using overhead, discuss the issues surrounding child custody:

- how a cpo can help with child custody
- how abusers use immigration status in custody cases

3:30 – 4:30 **Preparing Self-Petitions & Responding to Notices of Action**

walk trainees through the blank forms explaining the information needed; if time allows, prepare self-petition for hypothetical battered immigrant

4:30 – 5:00 **Q & A and Evaluations**

Sample Agenda for Two-Day Training

Day One

9:00 - 10:00 a.m. **Introduction**
Introduce Faculty; Purpose of Training; Review of Agenda & Logistics
Audience Identification & Introductions; Cultural Sensitivity Exercise

10:00 – 10:45 **Overview & Dynamics of Domestic Violence Issues for Battered Immigrants**

Power & Control (general) – using overhead, with audience participation, review Power & Control Wheel

Power & Control for Immigrants – using overhead, review the unique ways abusers maintain power & control over immigrant victims

Barriers Faced by Battered Immigrants – using overhead, review the barriers immigrants face when trying to access help

Screening – share ways to screen for domestic violence with immigrant victims

Interviewing – discussing importance of asking open-ended questions

Safety Planning – using overheads, audience participation, & sample safety plans, discuss safety issues for battered immigrants

10:45 **Break**

11:00 - 12:00 **Immigration Definitions & Remedies for Battered Immigrants**

using overhead, lecture on basic immigration definitions & the remedies available to battered immigrants

12:00 – 1:00 **Lunch on Your Own**

1:00 – 1:30 **Definitions Exercise**

to reinforce the dry definitions learned right before lunch, do a fun exercise to get group moving around to room to match definitions (see Tips for Trainers, Appendix F)

1:30 – 2:00 History & Purpose of VAWA

using overheads, review the collaboration between domestic violence and immigration advocates in securing the passage of VAWA; encourage collaboration between advocates and lawyers

2:00 – 2:30 Introduction to VAWA's Self-Petitioning Requirement

using overhead, lecture on the basic requirements of VAWA self-petitioning; point out the effect of divorce on self-petitioning

2:30 Break

2:45 – 3:30 Battering & Extreme Cruelty

Interactive exercise – ask audience how they would go about proving battering & extreme cruelty; what evidence would they prevent? Document audience responses on flip chart paper

3:30 – 4:15 Good Moral Character

using overheads, review factors that would lead to a finding of LACK OF good moral character; stress the fact that a criminal history on the battered immigrant's part is a strong presumption against good moral character; using overheads, review the consequences of: a battered immigrant's criminal history and an abuser's criminal history; encourage collaboration with prosecutors to protect battered immigrant's ability to utilize VAWA remedies

4:15 – 5:00 Extreme Hardship

Interactive exercise – using overheads from the introduction, ask audience how they would prove extreme hardship. Document audience responses on flip chart paper

5:00 p.m. Adjourn for the Day

<u>Day Two</u>

9:00 – 9:30 Obtaining Lawful Permanent Residency & Cancellation of Removal

using overheads, review requirements

9:30 – 10:30 Economic Relief for Battered Immigrants

Why Economics are Important for a VAWA Self-Petition

Work Authorization – using overhead, review the requirements for work authorization & the process for obtaining authorization

Court-Ordered Economic Relief – using overheads & audience participation, review the types of court-ordered relief victims are eligible for

VOCA – using overheads, review the requirements and benefits of VOCA compensation & assistance

Q&A / Brainstorm Other Ideas

10:30 Break

10:45 – 12:00 Civil Protection Orders, Custody & VAWA

using overheads, discuss the relief available under protection orders & specific relief for battered immigrants; using overhead, discuss the issues surrounding child custody: how a cpo can help with child custody and how abusers use immigration status in custody cases; using Lili hypo from the manual, arrange participants in small groups to discuss what type of relief she could ask for in a civil protection order petition; have small groups report back

12:00 – 1:00 Lunch on Your Own

1:00 – 2:00 Preparing Self-Petitions & Responding to Notices of Action

go through the blank forms explaining the information needed; Q&A

2:00 – 4:00 Small Group Exercise & Report Back

arrange participants in small groups (preferably into practice area teams if participants are diverse; see Tips for Trainers for more information on this type of group exercise); have group review a hypo (can use the Lili hypo) and discuss challenges, what they would suggest for client, how they would prove the case, etc.; and/or, can do pop quiz (see Tips for Trainers); allow time for small groups to report back to the large group for discussion of issues

4:00 – 5:00 Q&A; Training Evaluations, Wrap-Up

4:30 – 5:00 Q & A and Evaluations

TIPS FOR TRAINERS

EACH TRAINING IS UNIQUE

The materials provided in this manual are designed to give you a basic framework for developing training programs on the impact of domestic violence on immigration law. As a trainer, however, you should always keep in mind that the shape and content of these trainings will vary greatly depending on a number of factors. You may find that no two trainings you do are alike. On the other hand, you may find that "one size fits all" in your community. As the trainer, it is your responsibility to make that assessment, in order to provide the program best suited to each training situation.

KNOW YOUR AUDIENCE

In order to deliver an effective training, you must take the time to assess the previous knowledge and experience of the participants you expect to train. Most persons attending the trainings you will organize will have a strong interest in domestic violence and immigration issues already. The reasons for their interest in these two topics -- as well as their background knowledge of the issues -- will vary, however. Immigration representatives and attorneys may have substantial knowledge about the complex framework of immigration regulations and statutes, but they may have little understanding of domestic violence, or of family and criminal law issues. In contrast, victim advocates may be intimately familiar with patterns of domestic violence, yet know nothing about immigration law. Family and criminal law attorneys may have varying degrees of knowledge about domestic violence and/or immigration issues. These differing levels of knowledge among participants can make it difficult for trainers to teach at a pace that is appropriate for all participants. To address this problem, trainers can teach at a moderate pace, while incorporating the knowledge of experienced participants to add breadth to the program.

KNOW YOUR GOALS

As you design your training program you should also take into account your own goals: What do you hope the participants will take away from the training? What kind of action do you hope they will take once they have completed the training? Where would you like them to turn for further information once the training is over? Knowing your goals will help you to determine what topics you will cover and what materials you will distribute to the training participants. Thinking about your goals ahead of time will help you to conduct a more focused training.

TIMING IS EVERYTHING

The length of time available will also have an important impact on the shape of the training you design. If you only have a few hours or less than a day, how will you decide what to include in your training? Knowing your audience will help you to design your training program and determine what topics you will cover. For instance, if you are training a group of experienced domestic violence attorneys who have little or no knowledge of immigration law,

you may decide to forgo a discussion of the dynamics of domestic violence and safety planning and delve right into the immigration law information. Be aware of your time constraints and design your training accordingly.

IMPARTING AT LEAST A BASIC UNDERSTANDING IS CRUCIAL

Despite these factors -- the audience, your goals, and time constraints -- certain training strategies should be employed across the board to increase audience participation and interest, and to enhance learning. All trainers should understand **why** it is crucial to provide training on domestic violence and immigration law before learning **how** to design such trainings.

MAKING THIS A REAL LEARNING EXPERIENCE

The immigration law you must impart in this training can be very daunting to those in the audience who are unfamiliar with the field. Immigration law is full of specialized terms, acronyms and processes which may be as overwhelming to many of the participants as a foreign language. Equally, many of the concepts you would like to impart about the cultural issues that create different domestic violence dynamics in cases involving battered immigrant women may seem counterintuitive or just plain unfamiliar to trainees unused to working with battered immigrants.

Your trainees may feel overwhelmed by the material you present. They may feel that parts do not have relevance to their professional concerns. They may feel uncomfortable being asked to see the system in which they work through a battered immigrant's eyes. They may be insistent that there is a limit to which they can tailor their services to the needs of battered immigrants. They may be bored by the large amount of material you will need to present.

A good trainer or educator uses what Paolo Freire, an internationally renowned educator and philosopher, calls a "pedagogy of questions" rather than a "pedagogy of answers." Freire points out that learning is made harder if the material is presented as a set of facts to be memorized or accepted unquestioningly. He encourages educators to offer material to students as a means of discovering skills and tools that will help them do their work.[1] It is crucial for you to remember, as you train, that the trainees came to your program because they had questions about how domestic violence issues and immigration issues intersect. Present the information in a way that challenges the trainees to apply what you are teaching to their own professionals situations. Engaging the trainees in the process of training will give them greater incentive to learn the material.

KEEPING UP WITH CHANGES IN IMMIGRATION LAW

Other challenges may be raised due to the subject matter. The pervasiveness of family violence in the United States suggests that some participants may have difficulty with the subject matter based on a history of violence within their own families. Trainers must therefore address domestic violence issues in a sensitive manner. Updated and comprehensive referral lists for services should always be provided to training participants.

Other participants may react in a hostile way or express stereotypes about victims or perpetrators when domestic violence legal issues are raised. Participants may have preconceived notions about domestic violence law which have been shaped by their own family experiences or relationships with intimate partners, and by popular culture. It is crucial for trainers to dispel these myths, since relying on such stereotypes can endanger clients and interfere with providing appropriate legal services. For instance, an attorney who believes that a battered woman "should just get up and leave" may not realize that the most dangerous time for a victim is often immediately after separating from an abuser. Attorneys must be prepared to conduct safety planning or secure court orders to prevent separation violence.

Discussion of immigration law issues may also raise stereotypes. Participants may have misperceptions about individuals from particular countries or may be xenophobic. Such stereotypes pose an obstacle to understanding client needs and invoking appropriate legal remedies. For instance, a family law attorney who perceives clients from South America or Africa as coming from "macho" or "primitive" cultures may fail to identify and respond to domestic violence issues.

The nature of immigration law may also create challenges for trainers. For non-immigration law experts, immigration issues can seem very complex or dry. To combat potential confusion on the part of non-immigration experts, trainers can utilize interactive exercises to teach participants about the intricacies of immigration law. Examples of some interactive exercises can be found at the end of this chapter. Additionally, immigration law is evolving at a rapid rate due to recent legislative initiatives, so trainers must update materials as needed.

LEARNING STYLES

Since individuals absorb information in different ways, teaching strategies should be varied to meet the diverse needs of participants. Using different senses in interactive exercises can reinforce the subject matter because certain individuals learn best through visual stimuli, others through auditory stimuli, and still others through kinesthetic stimuli. In addition, most people learn best when they are active participants in the learning process. While some individuals may be comfortable participating in large groups, others may be more likely to participate in smaller groups; therefore, group sizes should be varied during different parts of the training.

Trainers should also vary the types of activities in order to maintain the attention of the group. Because it is natural for the mind to seek variety, novel images and changing activities assist participants to absorb greater amounts of material.[2] In many cases, participants will be able to focus on one activity for a maximum of 45 minutes, and their concentration will be vastly improved if activities take place during smaller chunks of time. Trainers can use a variety of techniques to engage participants and fulfill their need for an active learning environment -- including changing speakers, using different visual aids, involving different members of the audience, and varying the group size.

Participants are also more likely to absorb domestic violence and immigration law issues if they perceive the training as relevant to their practice and experience. It may be useful to survey participants prior to the training about their goals for the training, and then tailor the training to these goals. Additionally, the experience of participants should be a key focus of the training. Case studies can help illustrate legal concepts, and a training will be more useful if it teaches participants how the laws are applied in practice.

Trainers can adapt models used in judicial education for domestic violence and immigration law trainings. The Kolb model "Learning Circle" describes four building blocks for learning: direct experience, reflections on experience, abstract principles, and application. The following types of exercises can utilize this model:[3]

(1) direct experience: role play, demonstration, case studies, films, interviews
(2) reflections on experience: small groups, reflection papers, journals, dialogue
(3) abstractions, principles: articles, lectures, films, checklists, charts, laws
(4) application: role play, individual/group projects, plans of action, hypotheticals

Regardless of format, trainers should repeat important concepts to reinforce learning.[4]

THE ROLE OF TRAINERS

Energetic and enthusiastic trainers are the key to successful trainings irrespective of subject matter. When conducting a training on domestic violence and immigration law, it is important that all trainers have a comprehensive understanding of both issues, although some trainers may have a domestic violence background, while others specialize in immigration law. As in all trainings, the trainers should reflect the diversity of the community. Trainers should take turns speaking or leading activities in order to maintain participant interest.

In addition to exhibiting enthusiasm and knowledge of the subject matter, a trainer can use specific techniques to keep the participants involved. Trainers should:

- **circulate around the room** so that participants remain focused on them

- **involve participants in the training**, by leading interactive exercises and asking questions of participants

- **respond immediately and thoroughly** to questions posed by training participants; when trainers do not know the answers, they should indicate that they will research the answer and provide it to all participants at a later time.

LOGISTICS

Trainers should ensure that the physical environment is suitable for a lengthy training: rooms should be set at a comfortable temperature. Participants should have easy access to food, drink, and restrooms during breaks. While the training facility need not be lavish, participants

should have chairs that are comfortable enough for the length of the training. Additionally, room size should be adequate to allow trainers and participants to move around freely for exercises that require movement.

Trainers should arrive early and check equipment to be sure it is functioning. Additionally, all participants should be able to see visual aids from their position in the room. Ensuring that these logistical details are in place paves the way for a smooth training and allows participants to concentrate on the substance of the training, rather than their physical discomfort.

TRAINING STRATEGIES

Trainers should begin the training on time with an "icebreaker" activity. The activity may be as simple as dividing participants into pairs, asking them to share what they hope to learn from the training, and having them report their partners' answers back to the group.[5] Trainers should briefly address logistics next, and should share the agenda of the training. This information lets participants know what to expect and sets them at ease.

Throughout the training, trainers should vary the pace and format of the activities. Small group activities should be conducted frequently to encourage greater participation. If materials need to be distributed, they should be given out at times that will not distract participants from the substantive matters being discussed: at the beginning, during breaks, or immediately prior to the related activity.

SAMPLE EXERCISES

The following exercises and tools can be adapted to any subject matter. Throughout this manual, specific exercises and the amount of time needed are suggested for teaching the domestic violence or immigration law topic covered in each chapter. However, the following exercises can also be used as needed.

! **Role Plays**
Role plays can be an excellent way to keep the attention of an audience and to demonstrate important legal strategies. Trainers must enjoy performing and should practice role plays in advance, but they are well worth it. Participants learn extremely well from observing role plays because the format keeps them engaged.

! **Scripts**
As a variation on role plays, audience members can be asked to read a portion of a script and play a particular role -- for example, the role of a client seeking immigration advice. A trainer then interacts with the "client" to illustrate appropriate legal strategies. The involvement of an audience member in the performance often keeps the attention of other participants, who identify with this performer.

! **Improvisations**
Improvisations require audience members to participate in role plays using their own

creativity and knowledge. As a wind-up to a training, for example, small groups might be assigned to develop an improvisational performance reflecting one part of the legal process (a civil protection order hearing, a hearing before an immigration judge).

! **Experiential Learning**

This term covers a wide variety of exercises. The general idea is that people learn better if they have an emotional connection to the material or understand the context in which legal services are provided. In the case of domestic violence or immigration law, this might involve trainers -- or a survivor who has been through the process -- recreating what it is like to be a battered immigrant in a new country, unable to comprehend the language or court procedures.

! **Movement Exercises**

Any activities that require participants to get up and move around can revitalize their energy and help them learn. Such an exercise could require people to locate their unknown partner (see exercise matching immigration law terms with definitions) or move to another part of the room for discussion.

! **Train Exercise**

This exercise allows participants to move around the room in small groups and add to the efforts of previous groups. For instance, four corners of the room might be labeled "cultural barriers," "immigration law hurdles," "economic needs," and "safety issues." Each group would begin in one corner and list solutions to the particular obstacle. Then the groups would rotate and add to the emerging lists, building on the work of the former group.

! **Group Discussions**

Any type of group discussion is preferable to a lecture format because it engages participants. Discussions can be conducted after short presentations on particular issues in order to reinforce important points. For variation, trainers may assign particular roles to participants in the discussion. For example, the implications of self-petitioning under the Violence Against Women Act could be discussed from the perspective of a judge, immigration attorney, victim advocate, family law attorney, or criminal lawyer.

Small groups are a great way for training participants to get to know each other. To prevent training participants from forming groups with people they already know, you may want to have everyone count off and separate into groups according to number. That way, people who know each other and sat together at the training will not be placed in the same small group. Training participants may be hesitant about forming small groups at first, but small groups allow for greater participation. Individuals who feel uncomfortable speaking up in the larger group may feel more comfortable sharing opinions with a smaller group of people.

Another great way to use small groups works best with a multi-disciplinary group. Have the training participants divide up into small groups, each of which include a number of different "players" in the system, all of which may work with a particular battered immigrant at some point in her case. For instance, each group may include an immigration attorney, a battered women's advocate, and a family attorney. The differing perspective of each of these "players" will add value to any small group discussion and may help each person see situations from a new perspective. When using this type of exercise, emphasize the "team" aspect and encourage training participants to view their daily work with battered immigrants as part of this "team" approach.

! **Use of Props**

Visual aids can be useful for reinforcing key points and for maintaining the interest of an audience. Large posters, relevant props, magic markers, or post-its can enliven an activity.

! **Test Exercises**

Short tests on the subject matter can provide a useful tool to evaluate participant understanding of the subject matter -- and the effectiveness of the training. Reviewing test answers with the group can also reinforce important concepts. Traditional short-answer tests may be useful in some cases, and non-traditional alternatives, such as a quiz show or Jeopardy game format, can involve participants fully without invoking test anxiety.

! **Games**

Learning through games can be particularly engaging for participants. This requires trainers to prepare thoroughly in advance, for example, to develop a game show, board game, or jigsaw puzzle on the subject matter. In the context of domestic violence and immigration law, a "human board game" could be developed, representing a battered immigrant's attempts to navigate legal proceedings, i.e. jumping through hoops and over hurdles.

! **Overhead Transparencies or PowerPoint Presentations**

Putting important information on overhead transparencies or in a Power Point presentation can reinforce key concepts for participants. Overheads and presentations should be easy to read, and should follow the trainer's speaking points. They can also be used with audience participation; for examples, questions may be listed on the overhead or presentation, and answered with assistance from participants.

USE OF EVALUATIONS AND FOLLOW-UP

Evaluations should be incorporated into trainings. First, they should determine whether

participants mastered the subject matter -- which reflects the quality of the training. Additionally, participants should provide direct written and/or oral feedback on the training, which can assist trainers to improve the program. Where possible, trainers should provide information to participants about resources within their own communities so that they may be linked to these resources.

ENDNOTES

1.Neal Bruss and Donaldo P. Macedo, AToward a Pedagogy of the Question: Conversations with Paolo Freire,≅ 167 J. EDUC. 7, 8-9 (1985).

2.ELLEN J. LANGER, THE POWER OF MINDFUL LEARNING 39, 43 (1997).

3.STATE JUSTICE INSTITUTE, EDUCATION FOR DEVELOPMENT: PRINCIPLES AND PRACTICES IN JUDICIAL EDUCATION (1992).

4.ROBERT L. JOLLES, HOW TO RUN SEMINARS AND WORKSHOPS: PRESENTATION SKILLS FOR CONSULTANTS, TRAINERS, AND TEACHERS 13 (1993).

5.Other icebreakers include: 1) describe scavenger hunt activity; 2) contributing to cooperative efforts activity.

Entire Lili Hypo from Chapters 1-10

Lili has lived with her husband, who is a lawful permanent resident, in the United States for five years, and he has abused her throughout their marriage. Her husband isolates Lili from her family, and gets angry if she expresses her opinion or tries to protect the children. He has hit her in front of the children, grabbed her, pulled her hair, and thrown her around the house. One day he pushed her off of the front porch and refused to let her go to the doctor, despite a broken ankle. He also punished her by not making repairs to the house -- which is very cold because the hot water heater has been broken for three years.

Lili comes into your office to ask about child custody. She is just looking for information – she makes it clear that she does not want to file for custody. She just wants to know what her rights are. She does not mention violence in her family, but you sense there is something "off" about her. She seems skittish and frightened to be in your office. When you ask about her husband she becomes defensive and immediately asks whether her children could be taken away. You are confused because while Lili came to your office she seems reluctant to talk with you.

Through careful interviewing and screening you have determined that Lili's husband has been abusing her, both physically and emotionally. Lili is afraid that if she leaves with the children, her husband will try to kill her. He has already killed two of the family's dogs, and he has physically abused Lili and the children. Lili lives in a trailer over 10 miles from the nearest town, and several miles from neighbors. Her only real friend in the United States is her mother-in-law, who lives about 1 mile away.

Lili met her husband and gave birth to her first child in China. Then she came to the United States and married her husband here. He is a lawful permanent resident. During the following five years, the couple had two more children, who are U.S. citizens. Lili's husband promised to file immigration papers for her and their oldest child, but never did.

Lili's husband began to abuse her when she came to the United States. Lili was afraid to get help because of her undocumented immigration status. Her husband told her that the police would not help her because of her immigration status. He threatened to call INS and have her deported if she seeks help.

Lili's husband has told her many times that she can't get legal immigration status without his help. When she thinks about calling the police because of the violence, he tells her that he will make sure she is deported, without her children, if she makes the call. Lili wants to know if there is anything she can do to obtain immigration status for her oldest child and herself without her husband's cooperation.

Once, when Lili asked her husband to stop beating the children he threw her off the porch, causing her to twist her ankle. He refused to take Lili to the doctor. Another time, Lili's husband struck her on the head with a frying pan while she was sleeping

because she hadn't made his breakfast. Her husband told her never to speak unless he gave permission. Lili was scared of her husband because they lived in an isolated area and she didn't know her neighbors. Recently, Lili's husband killed her favorite dog with a hatchet, told her that the dog deserved it and hinted to Lili that he would do the same to her. Lili believes that her husband will try to kill her if she leaves with the children.

Lili's husband refused to help her with her immigration status. She is afraid if she leaves her husband she might be sent back to China. Her husband's family lives there and he has told her that his family might attack and punish her for leaving him.

Lili has fled to another state because of her husband's abuse and she is getting help and support from a local domestic violence shelter and counseling program. As evidence for her VAWA self-petition, she has been told to obtain a police clearance letter from the community in which she formerly lived with her husband. However, she does not want to go back because she is afraid of her husband and has no friends with whom she can stay. The police in her former town were unwilling to protect her when she lived there.

Lili's husband has discovered the town she fled to, and he has confronted her in front of the shelter where she is staying. He refused to leave on one occasion, and the staff had to call the police to get him to leave. Lili has decided to file for a civil protection order. She also went to a doctor to get her ankle checked out. Her children are doing well in school and have made new friends.

Lili plans to go to her old home one morning this week, when she knows her husband will be at work, to gather some items. A shelter advocate has arranged for a police escort (the advocate helped to convince an understanding officer of the need for an escort) just in case Lili's husband shows up at the home while they are there. Lili wants to pick up more clothes, toys for the children, important documents, and personal items. Lili has also told the children that in order to make the shelter more like home, Lili also took some family photos and scrapbooks she had made with the children. Lili wonders if there is anything specific she should get from her home while she is there.

Lili filed her self-petition and was just notified that her self-petition was approved by the INS. She now wants to obtain lawful permanent residency so that she may permanently live, work and raise her family in the United States. Lili does not know whether she can adjust her status in the United States or whether she must travel abroad and go through consular processing. Lili does not want to leave the United States because she is afraid that her husband will follow her to China. She is also afraid of leaving her children in the U.S., but she cannot afford to take them with her to China.

Lili took a job at a local fast food restaurant to support her and her children. One day, the INS conducted a work site raid, and Lili was arrested, but not detained. Months later, Lili was served with a Notice to Appear at an Immigration Court Hearing. It charged her with being removable from the United States on the grounds that she entered without inspection, and engaged in unauthorized employment. The charging document

set a court date for Lili to appear before an immigration judge in the next thirty days. Lili was working without legal authorization from INS, but needed to work to feed her children. Lili wants to know what she can do to avoid deportation. Can she apply for cancellation of removal relief under VAWA?

Throughout her marriage, Lili took care of the children and relied on her husband for financial support. After leaving her husband, Lili was forced to work without authorization. She was caught and now has had to borrow money from her mother and other relatives to put food in her children's mouths. She wants to be able to work to support herself and her family, and to repay the loans. Lili wonders what else she can do to support her family.

Once Lili received work authorization, she found a part-time receptionist job at a local car dealership. She enjoyed the job because it allowed her to get out of the house and interact with people. After work on her second day, Lili's husband became angry with her and followed her home after work. Somehow he had discovered where she was working. An altercation ensued and Lili's husband punched her in the face. The next morning, Lili had a black eye so she did not go to work. Lili was humiliated and did not want her boss and co-workers to see her that way.

Over the next couple of weeks, Lili's husband made it extremely difficult for her to continue working. He would show up unexpectedly and argue with Lili or linger outside of the dealership waiting for her shift to end. One day, Lili's boss told her to make sure her husband stays away from the dealership because he was a disruption and bad for business. However, Lili's husband would not stay away and Lili consequently lost her job. Now Lili is without work and she is afraid that her husband will cause problems anywhere she works. Lili comes to you to find out if she has any options to ensure that she will have some income to support her family.

Lili comes to you to tell her about the difficulty she has been having with her husband. She wants to be able to hold down a job, but her husband is interfering so much that she is afraid to try to find a new one for fear that he will just make her lose it like he did the last one. Lili is getting more and more afraid of her husband. She is also afraid of losing custody of her children. Lili asks you what she can do to get some peace away from her husband. Even though it goes against the grain of what she has learned from her family, what she really wants right now is a divorce so that she will finally feel free of him.

Hypothetical Case for Use with Pop Quiz

I am a citizen of Mexico and am married to a U.S. citizen. I am living in the U.S. illegally and have been for almost 5 years. My husband will not let me get my green card and I do not know what to do. Our marriage is not a good one, but I am stuck.

We live in two adjoined trailers in Michigan over 10 miles away from the nearest town and several miles from our neighbors. I do not know any of them and rarely see them. My mother-in-law is my only real friend here, and she lives about 2 mile away. My husband were married in Mexico and have been in the U.S. for five years. We have 2 children, ages 4 and 1, both born in the U.S. and my husband keeps their birth certificates with him.

In October 1992, my husband deeply hurt and humiliated me when he ordered me to apologize in front of his friends for not having been humble towards him lately. In the summer of 1992 when I was suffering from a bladder infection, my husband accused me of having a venereal disease. I was pregnant at the time and he forced me to see a doctor to verify that it wasn=t a venereal disease. I was devastated because I believe in fidelity and have been completely devoted to my husband. My husband has also threatened to marry a second wife. He told our children they would soon have a new mother, and my son gets upset and cries. He told me to go to Mexico and not come back. When I told him that I do not have a green card and passport, he said that is exactly the way he what he wants it. I would never leave without my children. I love them very much.

My husband has kept me isolated from my family. Two years ago, my mother, one brother, two sisters and their three girls came to visit us here for the first time. When my sister asked my husband why he wouldn=t petition for my green card, he insulted her and told her to leave. He would not talk to me or my family for the rest of the time they were here, and when they left, he struck me several times.

In the winter of 1994-95, he ordered me up at 5:30am to cook breakfast for the family. When I lay asleep, he grabbed my hair and pulled me out of bed. He pushed me against the wall and told me this was my fault. If I would have gotten up when he told me, this would never have happened. I got very scared and tried to get away from him, then he hit me several times on the face and threw me on the bed and walked out of the house. When he returned, he did not talk to me for several days.

He gets angry when I voice my opinions that are different from his or when I try to protect the children. I rebel against his mental and emotional abuse. One day he pushed me off of our front porch. I twisted my ankle when I landed, but he said that I could not go to the doctor. We live so far from town, and I do not have a driver=s license so I could not take myself. My ankle is still not normal. He also punishes me by not making repairs to the house. The hot water heater has been broken for three years. There is also a six inch hole in the living room floor but he only covered it up by laying a six foot piece of plywood on top. My husband still does not heat the house enough and it gets very cold in the winter.

When my favorite of all our dogs was too old to breed anymore, my husband took her up the hill and killed her with a hatchet. He left her laying there where I found her the next day. He told me that she deserved it. Just two weeks ago, he killed one of our other puppies because it had a broken leg.

Since this has happened, I have not talked to him. I believe that he will actually try and kill me if I leave with the children. He has hit me many times. Every time I threaten to call the police, he tells me to go ahead, because if I do, he will get me sent back to Mexico without my children. He told me the other night that he will divorce me. I think he will divorce me just so he can get the children. I cannot live like this anymore. Please help me to get my green card and keep my children. I am very afraid of my husband and I want my children to be safe.

Pop Quiz Questions

1) What can you do to help this battered immigrant woman get her lawful permanent residency under the Violence Against Women Act?

2) What advocacy team would you want to put together to help her?

3) How does the threat of divorce affect her case?

4) What witnesses and evidence would you use to prove extreme cruelty?

5) What evidence would you use to prove extreme hardship in this case?

6) What would you want to have the abuse victim take with her before she leaves the house and why?

Pop Quiz Suggested Answers

1) What can you do to help this battered immigrant woman get her lawful permanent residency under the Violence Against Women Act?

document the history of abuse by interviewing her and writing down her story**;**

help her file a Civil Protection Order;

contact domestic violence and immigration attorneys;

take photographs of any bruises or cuts she may still have on her body, in addition to her now abnormal ankle;

document that her marriage was entered into in good faith by helping her get copies of her marriage certificate and the birth certificate=s of her children;

help her show that she is of Agood moral character≅ by documenting:

a) her commitment to her children;

b) the animals that she takes care of;

c) the fact that she has never sustained a conviction while living in Michigan over the last 3 years by obtaining a police clearance report in her area.

ensure she and her children receive medical and/or psychological counseling or assistance**;**

contact witnesses, neighbors, friends and relatives who can testify, through affidavit evidence, of the abuse they witnessed directly or indirectly (such as her abusive spouse=s mother, the spouse=s friends and her son who witnessed and experienced abuse);

obtain the doctor=s report for her forced venereal disease examination to show that her husband perpetrated extreme cruelty upon her;

obtain her children=s school records, if there are any, and their birth certificates in order to help her prove that her children are unable to speak Chinese and would suffer extreme hardship if they were to accompany their mother back to China;

document any bruises or cuts on her childrens= bodies in order to show that they would be subjected to extreme hardship and abuse if they were to remain with their father if their mother is deported;

gather information on domestic violence protections in China;

call the housing inspector and Humane Society to go out to the house when you try and help her leave her house.

2) What advocacy team would you want to put together to help her?

1) immigration attorney or accredited representative

2) domestic violence attorney or advocate

3) family lawyer

4) immigrant=s advocate familiar with victim=s community

3) How does the threat of divorce affect her case?

If her divorce becomes final before she files her self-petition, she could lose her ability to file for the self-petition under VAWA;

The only other relief she would then be eligible for would be suspension of deportation Or cancellation of removal under VAWA which can be difficult to obtain in some jurisdictions

4) What witnesses and evidence would you use to prove extreme cruelty?

victim=s son detailed affivdavit describing his emotional abuse and subjection to the use of power and control tactics by his father (evidence);

abusive husband=s friends (witnesses);

mother-in-law (witness);

battered spouse=s mother, brother, two sisters and their daughters (witnesses);

doctor=s report for the venereal disease examination (evidence);

photographs of the six inch hole in the living room (evidence);

photographs of the dogs who were killed if any were or still can be taken (evidence);

the child=s counselor who could discuss the effects of witnessing domestic violence on

the child.

5) What evidence would you use to prove extreme hardship in this case?

if deported she would lose protection of any Civil Protection Order you helped her obtain;

her deportation would interfere with U.S. court orders awarding her custody of the children and child support;

deportation would undermine the benefits she is receiving from a domestic violence victim support group and/or individual counselling you arranged for her;

deportation would result in her son being taken out of a counselling program that is helping her son deal with the consequences of having witnessed his mother=s abuse;

testimony from the child=s counselor that English is the only language her son is comfortable speaking;

the adverse psychological impact that deportation or removal has on adults who are victims of domestic violence;

her testimony and expert testimony that if she were deported there would be danger in leaving her children in the custody of the abusive husband;

evidence that the impact of her losing access to the U.S. courts and criminal justice system (ie. for obtaining protection orders, child support, etc.) would be severe;

evidence that the children may be deprived of their right to receive child support payments and that the children=s mother would be unable to enforce any support orders in China;

evidence of the standard of living, rights and privileges to which the children have become accustomed contrasted with that of those children who live in China without these comforts and benefits, showing that the older the child, the greater the hardship they suffer if they were subjected to a less-privileged life ;

empirical evidence which shows that when a mother is forced to leave her children, especially during the formative years, the separation would cause tremendous emotional hardship on both the parent and children;

medical reports documenting her severely twisted ankle, and how the treatment and level of comfort she must receive in order to alleviate her pain may not be available to her returning as a single woman in China;

evidence that she and her children will need counselling and other supportive services

which may not be readily accessible in China;
evidence that social practices or laws in China which suggest that deportation could result in ostracization to the mother for leaving an abusive relationship, being a single mother or for taking action to stop the abuse;

her mother-in-law=s testimony that the abuse victim Ais just like you and me≅ or that she would want to have this person as a neighbor and friend;

her brother and sister=s affidavit and testimony that the abuse victim never intended to violate immigration law and that she wanted her husband to file the joint petition and that, but for his abuse, she would be in this country legally;

evidence that her husband has the ability to travel to China and that China has no laws that can protect her from future abuse.

6) What would you want to have the abuse victim take with her before she leaves the house and why?

the birth certificates of her children if she can access them, in order to show that they are U.S. citizens and, therefore, eligible for benefits while she self-petitions under VAWA (birth certificates are also evidence of the validity of the marriage);

a copy of her marriage certificate to the U.S. citizen, to show that she is legally married and therefore eligible to self-petition under VAWA for permanent residency;

any photographs of her abused body which she may have taken over the years;

any documentation of her abuse (such as a diary);

photographs of her wedding, wedding invitations and any other evidence of the wedding to show that they were legally married;

any documentation of her husband=s financial assets;

any medical records of her children in the U.S. (Including vaccinations, check-ups);

personal letters or cards sent to her by her abusive spouse to show that the marriage was entered into in good faith;

names, addresses and telephone numbers of people who knew the woman and abuser as a married couple;

copies of court documents, such as Civil Protection Orders against her spouse, or any police reports that were filed incident to abuse;

medical documents that provide information of their relationship (such as the doctor=s report regarding the venereal disease examination and her pregnancy);

any identification with her married name indicated on it

letters or cards (if any) sent to her family members by the abuser;

letters from her employer (if she had one) stating that she changed her name, or listed the abuser as a contact in emergencies;

any joint insurance policies, leases, bank accounts or income tax returns;

her husband's social security number to help prove his citizenship and to help her obtain child support;

copies of letters, bills received by her at the address she shares with the abuser;

copy of her husband=s birth certification or passport.