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## **Battering or Extreme Cruelty in the Context of Elder Abuse**

Excerpt from "Toolkit for Adult Protective Services' Use of the U Visa" February, 2014<sup>1</sup>

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Department of Homeland Security regulations define domestic violence under immigration law as battering or extreme cruelty:

"[W]as battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), forced prostitution shall be considered acts of violence"<sup>2</sup>

"The acts mentioned in this definition-rape, molestation, incest if the victim is a minor, and forced prostitution-will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence."<sup>3</sup>

"It is not possible to cite all perpetrations that could be act of violence under certain circumstances The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."<sup>4</sup>

"[T]he regulatory definition has proven be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty"<sup>5</sup>

This DHS regulation's description of battering or extreme cruelty is broad enough to be consistent with and include the Centers for Disease Control and Prevention (CDC) definitions of elder abuse:<sup>6</sup>

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<sup>2</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/regulations/1996VAWAregsself-petition.pdf/view>

<sup>3</sup> *Id.* at 13066.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 13065.

<sup>6</sup> *Elder Abuse: Definitions*, Center for Disease Control and Prevention, *available at*, <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Feb. 26, 2014).

“Elder abuse is any abuse and neglect of persons age 60 and older by a caregiver or another person in a relationship involving an expectation of trust.”<sup>7</sup>

The CDC also provides a list of forms of elder abuse that are congruent with the Department of Homeland Security’s approach to “battering or extreme cruelty”. According to the CDC forms of elder abuse include:

- Physical Abuse defined as an act injuring an elder or vulnerable adult , including but not limited to being scratched, bitten, slapped, pushed, hit, burned, etc.), assaulted or threatened with a weapon (e.g., knife, gun, or other object), or inappropriately restrained.<sup>8</sup>
- Sexual Abuse or Abusive Sexual Contact is defined as any sexual contact against an elder’s or vulnerable adult’s will. This includes acts in which the elder is unable to understand the act or is unable to communicate. Abusive sexual contact is defined as intentional touching (either directly or through the clothing), of the genitalia, anus, groin, breast, mouth, inner thigh, or buttocks.<sup>9</sup>

Forms of abuse that would constitute or contribute to extreme cruelty under immigration law include:

- Psychological or Emotional Abuse,<sup>10</sup> such as an elder or vulnerable adult who experiences trauma after exposure to threatening acts or coercive tactics. Examples include:
  - humiliation or embarrassment;
  - controlling behavior (e.g., prohibiting or limiting access to transportation, telephone, money or other resources);
  - social isolation;
  - disregarding or trivializing needs; or
  - damaging or destroying property.
- Neglect,<sup>11</sup> defined as the failure or refusal of a caregiver or other responsible person to provide for an elder’s basic physical, emotional, or social needs, or failure to protect them from harm. Examples include:
  - Failure to provide adequate nutrition, hygiene, clothing, shelter, or access to necessary health care; or
  - failure to prevent exposure to unsafe activities and environments.
- Abandonment or willful desertion<sup>12</sup> of an elderly person or vulnerable adult by caregiver or other responsible person may also be a form of extreme cruelty.
- Financial Exploitation<sup>13</sup> may also be considered extreme cruelty in regard to elders and vulnerable adults, if it instills fear and uncertainty as to their future, and/or demands they relinquish control of their financial affairs as a form of control or coercion. Many such acts are crimes examples of which include forgery, misuse or theft of money or possessions; use of coercion or deception to surrender finances or property; or improper use of guardianship or power of attorney.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*