

MEMORANDUM

To: Members, Subcommittee on Immigration and Claims

From: George Fishman, Chief Counsel
Lora Ries, Counsel

Date: July 19, 2000

Re: Hearing on H.R. 3083

The Subcommittee will hold a hearing on Thursday, July 20, 2000 at 10:00 a.m. in 2226 Rayburn. The hearing will be on H.R. 3083, the "Battered Immigrant Women's Protection Act of 1999."

I. **Background**

Supporters of the Battered Immigrant Women's Protection Act state that the purpose of the bill is to restore and expand legal protections for battered immigrants so they may flee violent homes, obtain court protection, cooperate in the criminal prosecution of their abusers, and take control of their lives without the fear of deportation.

Several immigration provisions for battered immigrants and their children already exist. They are listed below along with the dates when they were created.

1. A waiver of filing the joint petition with the other spouse required to remove conditional permanent resident status for battered spouses and children (Immigration Act of 1990).
2. Ability to self-petition for permanent resident status by battered spouses of United States citizens (USC) who have or whose children have been battered or subject to extreme cruelty. This visa also classifies the battered immigrant's children to be included, regardless of the relationship between the child and the abusive USC (Violence Against Women Act (VAWA) 1994).

3. Self-Visa Petition for battered children of USCs (VAWA 1994).
4. Ability to self-petition for permanent resident status by battered spouses of lawful permanent residents (LPRs) who have or whose children have been battered or subject to extreme cruelty. This visa also classifies the battered immigrant's children to be included, regardless of the relationship between the child and the abusive LPR (VAWA 1994).
5. Self-Visa Petition for battered children of LPRs (VAWA 1994).
6. Suspension of deportation for battered immigrant spouses of USCs and LPRs, battered immigrant children of USCs and LPRs, and the battered children's parents (VAWA 1994).
7. Cancellation of removal for battered immigrant spouses of USCs and LPRs, battered immigrant children of USCs and LPRs, and the battered children's parents (Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 1996).
8. Waiver of inadmissibility for entering the U.S. without inspection if there was a substantial connection between the alien's unlawful entry into the U.S. and the battery or cruelty (IIRIRA 1996). Because the INS has not yet issued regulations for this waiver, very few, if any, waiver applications will likely have been adjudicated.
9. Waiver of 3 and 10-year bars to admissibility for unlawful presence in the U.S. if there was a substantial connection between the alien's unlawful presence in the U.S. and the battery or cruelty (IIRIRA 1996). Because the INS has not yet issued regulations for this waiver, very few, if any, waiver applications will likely have been adjudicated.
10. Exemption from requirement that the spouse submit an affidavit of support, which is used to overcome the public charge ground of inadmissibility (IIRIRA 1996).
11. Qualification for federal benefits, such as Head Start, educational assistance programs, and child nutritional programs. The battered alien must show: she was battered or subjected to extreme cruelty in the U.S.; a substantial connection exists between the battery or cruelty and the need for the benefits to be provided; and the alien has been approved for, or has a pending petition or application that sets forth a prima facie case for, immigration preference or cancellation of removal. In addition, to be classified as a qualified alien, a battered spouse and children cannot be residing with the abusive spouse or parent (IIRIRA 1996, amending the Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

Other provisions and policies exist that help battered immigrants. Section 384 of IIRIRA prohibits the Attorney General from determining that an alien is inadmissible or deportable based solely on information provided by that alien's abusive spouse, parent, or other family member.

This section also prohibits the disclosure of information concerning a battered alien.

In a May 6, 1997, INS Memo, the Office of Programs wrote that removal of battered aliens is not an INS priority and placing these cases in deferred action will almost always be appropriate. Therefore, despite these illegal aliens' fears that they will be deported, the opposite appears to be the reality.

II. Immigration Provisions of H.R. 3083

H.R. 3083 greatly expands the current immigration relief already available to immigrants and their children, including illegal aliens claiming to be battered. The bill restores section 245(i) so that battered immigrants may remain in the United States while applying for adjustment of status. It removes the annual cap on cancellations of removal (4,000) for battered immigrants. The bill also eliminates the time limitation (90 days) for filing a motion to reopen all type of proceedings to apply for battered immigrant relief.

If a beneficiary gives credible evidence of battery or extreme cruelty, H.R. 3083 requires the INS to adjudicate the visa petition even if the petitioning spouse withdrew the petition, failed to appear at an interview, failed to file an affidavit of support, or regardless of prior revocation or denial of the petition. The bill also permits a battered spouse with a self-petitioning visa based on battery or abuse to re-marry without revocation of the visa.

H.R. 3083 waives many grounds of inadmissibility and deportability, regardless of whether the grounds are related to battery or abuse, including crimes involving moral turpitude, drug trafficking, misrepresentation, unlawful presence, entry without inspection, and falsely claiming to be a U.S. citizen. Where current waivers exist for battered immigrants, but require a connection between the offense and battery, the bill eliminates the nexus requirements. H.R. 3083 waives excessive absences from the U.S. for suspension of deportation and cancellation of removal cases if the absence was connected to battery or cruelty. The bill also waives the good moral character requirement and eliminates the 3 and 10-year bars to admission to the U.S. for battered immigrants and their children.

The bill states that the Attorney General is not limited by a criminal court record and may waive application of domestic violence, stalking, and child abuse charges, violators of protection orders, and aggravated felonies if the alien is battered or subjected to extreme cruelty and was not the "primary perpetrator" of violence in the relationship. It should be noted, however, that domestic violence cases are often not clear-cut. Many times both spouses are involved in the assault against each other and police may arrest both parties. Just as police cannot truly determine who started a fight or who may have acted in self-defense, nor can INS examiners or Immigration Judges at a time much more distant from the event.

H.R. 3083 creates the term "intended spouse," who is someone married to a citizen or permanent resident, but whose marriage is not legitimate because of bigamy by the U.S. citizen or permanent resident. The bill provides the same relief for these "intended spouses" as the

relief available to battered aliens. The bill also removes the requirement that a battered alien live with her abuser in the U.S. As such, relief is granted to battered immigrants living abroad. It also deletes the requirement for a self-petition visa that an alien show that extreme hardship would result if the alien were deported from the U.S.

The bill gives immigration relief to women who came to the U.S. with a fiancé visa, but never married or failed to marry the petitioner within 90 days. Battered immigrant relief is available if the woman later marries the abusive citizen or another citizen or lawful permanent resident who abuses her.

H.R. 3083 also extends battered immigrant relief to victims of elder abuse. It permits children over 21 years old to self-petition for a visa if they can show that one or more incidents of battery or extreme cruelty had occurred before turning 21. They may also include their children in the self-petition. The bill permits divorced battered aliens to naturalize in 3 years, as if no divorce occurred, instead of 5 years.

The bill greatly expands who is eligible for cancellation of removal. It provides the relief for aliens who: (1) suffered elder abuse; (2) are over 21, but were abused by a parent while under 21; and (3) are spouses of bigamists. The bill also permits child abuse victims applying for cancellation of removal or suspension of deportation to include their children and parents.

H.R. 3083 allows battered aliens and children of Cuban Adjustment, NACARA (Nicaraguan Adjustment and Central American Relief Act), and HRIFA (Haitian Refugee Immigration Fairness Act) applicants to self-petition for relief under their spouse's respective form of relief.

Finally, H.R. 3083 creates a new "T" visa category for aliens (and their spouses, children, and parents) who: (1) possess material information concerning criminal activity; (2) are willing to supply or have supplied such information to law enforcement officials; (3) would be helpful to a federal or state investigation or prosecution were the alien to remain in the U.S.; and (4) have suffered substantial physical or mental abuse as a result of the criminal activity. Most of this provision overlaps with the trafficking of persons provisions in H.R. 3244, the "Trafficking Victims Protection Act," which has already passed the House.

III. Non-Immigration Provisions of H.R. 3083

The bill was also referred to the Committee on Ways and Means because it provides battered aliens with several welfare benefits, including food stamps, SSI benefits, and housing.