



WEBINAR
**ADVOCATES' INTRODUCTION TO
 GENDER-BASED ASYLUM FOR
 SURVIVORS OF DOMESTIC VIOLENCE
 AND SEXUAL ASSAULT**


Presented by: U.S. Department of Justice Office on Violence Against Women in partnership with the National Immigrant Women's Advocacy Project (NIWAP), Tahirih Justice Center, and American Gateways



This project was supported by Grant No. 2015-TA-AX-K043 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.




How to Use this Technology



- Raise hand
- Text chat
- PowerPoint slides
- Polling questions
- Phone

Please send a private chat message for help.

Call iLinc Technical Support at 800.799.4510.





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Learning Objectives:
 By the end of this training, you will be better able to:

- Describe immigration protections and benefits available through gender-based asylum for survivors of domestic violence and sexual assault
- Identify and support immigrant survivors that are eligible for gender-based asylum
- Connect immigrant survivors to attorneys and resources available for survivors of gender-based violence



Let's see who is on the call with us. Please check the box that best describes you:

Answer on the left



A. Advocate
 B. Attorney that works with survivors of DV/SA
 C. Attorney working for LSC funded agency
 D. Other - Tells who you are in the chat box

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Unique Barriers for Immigrant Victims of Domestic Violence to Access Justice

- Language Issues:
 - Victim has little to no English language skills
 - Police have no bilingual officer/access to interpreter
 - Forcing her to sign documents in English (family law)
- Distrust of police from home country
- Lack of information regarding legal rights and legal system often through deliberate misinformation by abuser
- Limited access to public benefits

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Unique Barriers, Cont'd.

- Inability to work legally/forcing her to work illegally
- Controlling access to her documents
- Lack of culturally sensitive social services:
 - No bi-lingual staff or therapists
 - Services are restricted because of immigration status
- Isolation of culture:
 - Only support in the US is abuser's family
 - Fears of what her cultural community will think
 - Discouragement/intervention by community members as alternative to reporting the crime

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How Immigration Status Is Used As A Tool of Abuse

- **Failing to file** in order to legalize her status
- **Threatening to Withdraw** a pending application
- **Lying to her** about his ability to apply for her
- **Threats to report** her to ICE or local police
- Using lack of immigration status in **child custody proceedings**
- **Lying about her ability** to access the civil and criminal justice system
- **Forcing her to violate immigration laws**- i.e. work illegally, already married but forces her to come in on visitors' visa/fiancé visa

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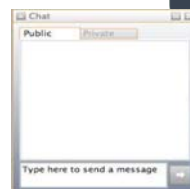
Why Immigration Status Is A Tool of Abuse

- Legal immigration status largely depends on the victim's relationship to their abuser
- Abusers often use their power over their spouse or child's immigration status to control, threaten, isolate, harass and coerce the immigrant victims
- Vulnerable status deters victim from taking action to protect herself
- Abusers' own vulnerable immigration status may deter victim from accessing the criminal justice system

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A Holistic Approach



Other than immigration status, what are some of the other needs that survivors of DV/SA may have?

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True Justice Requires Holistic Services



DV/SA Survivors May Be Eligible for These Immigration Options

- **U Visa**- Victim of a serious crime who cooperates with Law Enforcement
- **VAWA**- Abused family member of USC/LPR
- **Asylum**-Victim of persecution based on religion, race, nationality, political opinion or particular social group
- **Human Trafficking**- Victim of Forced Commercial Sex Act or Forced Labor
- **Special Immigrant Juvenile Status**- Children who are unable to reunite with parent due to abandonment, abuse or neglect
- **Forced Marriage**-State family law remedies to protect victims forced into marriage against their will in the United States

Victory for Survivors in 2014

- The Board of Immigration Appeals recognized domestic violence may serve as a basis for asylum in addition to other specific elements.
 - Matter of A-R-C-G-, 26 I. &N. Dec. 388 (BIA 2014)



Gender-Based Asylum Provides Protection from Persecution in a Woman's Country of Origin

Raise Your Hand if You Have

Encountered an immigrant survivor who fled from her home country and abuser and is fearful to return to her country?




Typical Ways You May Encounter a Gender-Based Violence Survivor

- She might be seeking assistance for another service
- Domestic violence victim abused in home country flees to the U.S.
- Survivor of sexual assault perpetrated by a member of the military or government in the victim's home country

Benefits of Asylum

- Legal status and work authorization
- Eligible for same public benefits as a refugee
- Can petition for qualifying family members
 - spouse (non-abuser),
 - unmarried children who were under the age of 21 at the time of filing
- Can apply for Lawful Permanent Resident status (“green card”) after one year




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Refugees & Asylees – Same Definition:

Immigration and Nationality Act (“INA”) § 101(a)(42(A):


“any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”



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Elements of an Asylum Claim

- Persecution
- Well-founded fear
- Nexus (“on account of”)
- Statutory ground – one of five
- Failure of state protection




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Harm Constituting Persecution

Threats to life or Freedom	Torture	Severe Economic Persecution
Physical Harm-beatings/assault	Rape or Sexual Assault	Prolonged Detention or Confinement
Female Genital Mutilation/Cutting	Servitude or Child Soldier	Forced Marriage

*Psychological harm may not be persecution in the Fourth Circuit



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Raise Your Hand if You Have Encountered an immigrant woman who faced threats of death in her home country upon refusing to pay “renta” (or extortion requests) from gang members?




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Humanitarian Asylum – Based on Past Persecution Alone

Asylum may be granted in exercise of discretion (aka Humanitarian Asylum) if there are either:

- Compelling reasons arising out of severity of past persecution (see *Matter of Chen* and *In re S-A-K and H-A-K*)

OR

- A reasonable possibility of **other serious harm** upon return(see *Matter of L-S-*):
 - No nexus to protected ground
 - Must be so serious it equals persecution
 - Current conditions/new physical or psych harm



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Well-founded Fear – Future Harm

- Future fear of harm must be both **subjective** and **objective**.
- Subjective fear
 - Credible testimony that the applicant genuinely fears persecution, see 8 CFR § 208.13(b)(2)
- Objective fear
 - A “reasonable person in like circumstances would fear persecution”
 - “Reasonable possibility” of persecution – Objective factor is satisfied if there is as little as a **10% chance of future** persecution. See *Cardoza-Fonseca*, Sup. Ct.

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How to Prove Subjective Fear?

- The survivor’s written declaration
- The survivors live testimony in the asylum office or on direct examination in court
- Letters/affidavits from friends, family, etc, relating that the survivor’s expressed fear/manifests fear to that person
- Psychological evaluation
- Letter from therapists or other service providers

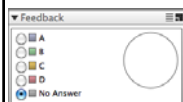
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In what ways can advocates support immigrant survivors applying for gender-based asylum ?

- Assist survivor collect documentation of victimization
- Support and/or connect survivors with professionals experienced in working with survivors of trauma
- Provide expert testimony
- All of the above

Answer
on the left



Share in the chat box other ways advocates can support survivors

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Nexus – “on account of”

- Persecutor is motivated by one of five statutory grounds
- Must present “some evidence” (direct or circumstantial) harm is “on account of” one of five grounds. (*Elias-Zacarias*)
- The statutory ground:
 - “was or will be **at least one central reason** for persecuting the applicant” (REAL ID Act)
 - can be “a reason,” not “the primary reason” for the persecution (see *Matter of J-B-N- & S-M*; 4th Cir. agrees)

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Gender-Based Asylum

- Actual or imputed political opinion: about women’s roles in society and control over their own bodies.
- Religious beliefs: that differ from her persecutor’s religious beliefs concerning the proper role of women in society.
- Membership in a particular social group: of women with shared immutable characteristics. (i.e. who are of a certain age and tribe and have not undergone FGM or who are in domestic relationships and treated as property by virtue of their relationship).

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Failure of State Protection


- Government must be either:
 - the persecutor, or
 - unwilling or unable to protect the applicant from non-state actors
- Government has not taken reasonably effective steps to control harm or suffering
- Applicant’s attempts to seek government assistance would be futile

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Bars to Asylum


- One year filing deadline
 - Not applicable to unaccompanied minors
 - Exception= Changed/Extraordinary Circumstances
- “Safe Third Country” = Canada
- Firm Resettlement (offer of permanent residency)
- Persecution of others
- Conviction for a “particularly serious crime”
- Terrorism grounds



Raise your hand if you: Are already screening for immigration remedies such as the VAWA Self-Petition or U visa ?





How Gender-Based Asylum Differs from other Immigration Remedies



U and T Visas

- Crime victim in the US or violated a U.S. criminal law
- Suffered substantial physical or mental abuse due to the crime
- Helpful in the detection, investigation or prosecution of the crime
- Needs a U visa Certification
- Victim of a severe form of human trafficking in the US on account of the trafficking
- Extreme hardship involving unusual and severe harm upon return to home country
- Must comply with all reasonable LEA requests UNLESS trauma from trafficking prevents you from doing so




VAWA and Asylum

- Spouse or child of a USC/LPR or parent of an adult USC son or daughter
- Battered or subject to Extreme Cruelty
- Good Faith Marriage (if based on marriage relationship)
- Shared Residence
- Good Moral Character

Individual cannot return to their home country b/c the government is unwilling and unable to protect them from persecution based on one of five protected grounds:

- Religion;
- Nationality;
- Political Opinion
- Race
- Membership in a Particular Social Group



Membership in a Particular Social Group

Based on some characteristic that a person cannot change about themselves-

- Gender based cases – FGC, Forced Marriage, Family Violence, Consequences of divorce or refusal to comply with gender norms
- LGBT
- Gang and Narco cases



Asylum Process

- Can apply affirmatively or defensively
- One Year Filing Deadline
- Risks to filing asylum case
 - Can be put into removal proceedings if referred by the Asylum Office
 - If file a frivolous claim, can bar you from other forms of relief
- Should not be filed without speaking with an attorney
- What should be the role of the advocate?

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Role of the Advocate When Working with an Attorney

- Identifying factors in a survivors experience
- Assist in gathering critical supporting documentation
- Help the survivor tell their story
- Connect survivors to resources

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Access to LSC Funded Legal Services

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Prior to Issuance of LSC Regulations Implementing VAWA 2005

- There was uncertainty about whether LSC funded programs could represent immigrant survivors of domestic violence, sexual assault and human trafficking because
 - LSC regulations from 1997 did not permit representation
 - However, representation was allowed under
 - VAWA 2005
 - LSC program

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As a Result...

- 20.6% of immigrant crime survivors were turned away from LSC funded programs
 - Based on their lack of legal immigration status.
- 26.1% of immigrant survivors were turned away because the LSC program was uncertain whether they could represent immigrant survivors.
- Link to the report: <http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/2%20%20Appendix%20%20%20LSC%20Report%20on%20Immigrant%20Crime%20Victim%20Access%20-%20NIWAP%206%2018%2013.pdf>

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2014 LSC Regulations Implementing VAWA 2005




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2014 LSC Regulation Implements VAWA 2000 and VAWA 2005

- Issued in April 2014
- Implements VAWA 2000 and 2005's expanded protections for immigrant survivors
- Creates two paths an immigrant can pursue to receive assistance from any LSC funded program:
 1. Representation under Anti-Abuse Laws under 45 C.F.R. § 1626.4 **OR**
 2. Representation based on Immigration Status under 45 C.F.R. § 1626.5




Importance of Access to Legal Assistance under Anti-Abuse Laws

- LSC funded programs can represent the following immigrant survivors **without regard to the survivor's immigration status**
 - Battered or subjected to extreme cruelty
 - Victim of sexual assault or trafficking
 - Victim of severe forms of trafficking in persons
 - Victim of a U visa criminal activity
- Representation is available whether or not the survivor has filed for or plans to file for VAWA related or any other form of immigration relief



Understanding the Difference Between the Two Paths: Anti-Abuse Statutes and Legal Immigration Status Based Eligibility



Survivors Who are Eligible for LSC Funded Legal Assistance under Anti-Abuse Laws

<ul style="list-style-type: none"> ✓ Survivors that were battered or subjected to extreme cruelty, including all survivors of domestic violence, even those who were not married or related to the perpetrator ✓ Survivors that have been abused or subjected to extreme cruelty by a parent, step-parent, spouse, former spouse ✓ Survivors of sexual assault ✓ Survivors of human trafficking 	<ul style="list-style-type: none"> ✓ Survivors of severe forms of human trafficking (continued presence and T visas eligible) ✓ Survivors of U visa criminal activity that has occurred in the United States or has violated United States law ✓ Children of all of the eligible survivors listed in the anti-abuse regulations
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Eligibility for LSC Funded Legal Assistance Based on Immigration Status

<ul style="list-style-type: none"> ✓ Immigrants who filed for lawful permanent residency and are: <ul style="list-style-type: none"> - the spouse of a U.S. citizen - the parent of an over 21-year old U.S. citizen son or daughter - the under 21 year old unmarried child of a U.S. citizen ✓ Conditional entrants admitted prior to April 1, 1980 ✓ Citizens of Palau, Micronesia, and the Marshall Islands who reside in the U.S. ✓ Canadian-born American Indians who are at least of 50% Indian by blood 	<ul style="list-style-type: none"> ✓ U.S. Citizen children, lawful permanent resident children and other children of applicants who also have any of the other forms of immigration statuses listed ✓ Members of the Texas Band of Kickapoo ✓ Approved Refugees and Asylees ✓ Lawful and conditional permanent residents ✓ Persons granted deferral of removal/deportation ✓ IRCA 1986 Agricultural workers ✓ Agricultural laborers (H-2A) ✓ Forestry workers (H-2B)
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Asylum & Access to LSC Funded Legal Services

- Once asylum is granted, an immigrant is eligible to receive legal assistance on the immigration based track
- By operation of the regulation, undocumented immigrants applying or have pending applications for asylum generally do not have access to LSC funded legal services

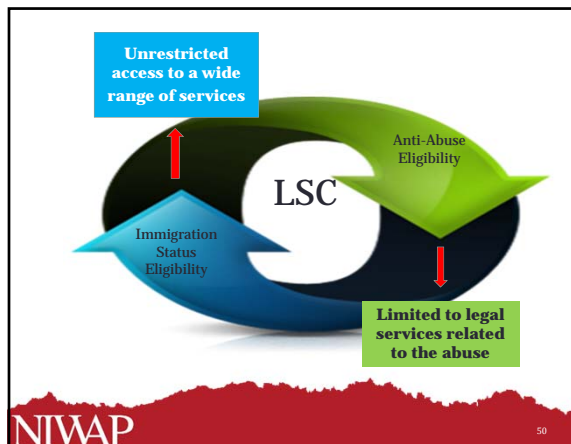


Legal Services "Related to the Abuse" Under Anti-Abuse Statutes

- Legal services needed to:
"escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse."

45 C.F.R. 1626.4(b)(2)(2014)

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Gender-Based Asylum & LSC

- Gender-based asylum case must be related forms of abuse listed under the Anti-Abuse laws track (45 C.F.R. § 1626.4)
- Eligibility based on Anti-Abuse laws is the only way to access legal services during the asylum application process

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Representation and Where the Abuse Occurred

- With regard to where the victimization occurred, inside or outside of the U.S.
 - Where part of the abuse occurred within the U.S. or violated U.S. law: **representation allowed** (law and regulation)
 - For survivors of domestic violence or sexual assault that occurred abroad and violated U.S. law: **representation allowed** (Program Letter 14-3 clarifies representation)

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Access to LAV Funded Legal Services

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Legal Assistance for Victims (LAV) Restrictions to Representation

- Age requirements
- Representation is limited to direct victim of
 - Domestic violence;
 - Sexual assault;
 - Dating violence; and/or
 - Stalking
 - Includes trafficking victims who are also victims of the above

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LAV Representation Considerations

- Location of the abuse is not relevant to representation
- No restriction on asylum case representation

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Gender- Based Asylum Resources

- **Asista** – OVW Technical Assistance Provider Asylum Series
 - Webinar 1: Asylum Overview for Attorneys and
 - Webinar 2: Mechanics of Filing an Asylum
 - Webinar 3: Advanced Asylum Legal Issues<http://www.asistahelp.org/>
- **The Center for Gender & Refugee Studies:** <http://cgrs.uchastings.edu/>
- **Immigration Advocates Network** <http://www.immigrationadvocates.org/>

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Additional Resources

- Lutheran Immigration and Refugee Service: Guide for Asylum Seekers: http://lirs.org/wp-content/uploads/2014/11/LIRS_FirstSteps_AsylumSeekers.pdf
- USCIS on Asylum: <http://www.uscis.gov/humanitarian/refugees-asylum/asylum>

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Technical Assistance and Materials

- PowerPoint slides and materials for this webinar at www.niwap.org/go/gbasylum
- NIWAP's - LSC Webinar at www.niwap.org/go/legalservices/
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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Questions



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