U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
Falls Church, Virginia

In re:	)	
	)	
Nvart Idinyan	)	A75 900 716
(formerly Nvart Huckfeldt)	)	
	)	
	)	
	)	In Removal Proceedings
Respondent	)	

BRIEF IN SUPPORT OF THE IMMIGRATION JUDGE'S DECISION

THIS CASE SHOULD BE AFFIRMED WITHOUT OPINION OR SHOULD BE SUBJECT TO SINGLE MEMBER REVIEW UNDER 8 C.F.R. §1003.1(a)(7)(ii)(*See* argument below)

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Respondent, Nvart Idinyan ("Nvart" or "Ms. Idinyan"), through counsel, respectfully requests that the Board of Immigration Appeals affirm without opinion the decision of the Immigration Judge which granted Ms. Idinyan cancellation of removal under the Violence Against Women Act.

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I. STATEMENT THAT THIS CASE SHOULD BE AFFIRMED WITHOUT OPINION UNDER 8 C.F.R. §1003.1(a)(7)(ii)

This case should be affirmed without opinion. The Department of Homeland Security has presented a number of arguments, none of which have any legal basis. The result of the decision of the Immigration Judge was sound and correct. Respondent therefore respectfully requests that this case be affirmed without opinion.

II. STATEMENT OF THE CASE AND FACTS

Nvart Noland is a 30-year-old native and citizen of Armenia who initially entered the United States on a visitor visa June 5, 1996. (Exhibit 1, Notice to Appear). At the time she entered the United States, she was married to a U.S. citizen named Vaughn Huckfeldt (Mr. Huckfeldt). (Tr. at 27:20-23).

Nvart was only 19 years old when she first met Vaughn Huckfeldt in Armenia. (Tr. 42:14 - 15.) After only a few days, Mr. Huckfeldt convinced Nvart to marry him. (Tr. at 237:9-19.) Mr. Huckfeldt told Nvart that he planned for them to live in Armenia. (Tr. at 237:13-19.) The couple married in 1994. (Tr. 236:18.) Just a few months after

she married Mr. Huckfeldt, Nvart became pregnant. (Tr. at 238:24.) Mr. Huckfeldt insisted that they travel to the U.S. so that their child would be born a U.S. citizen. (Tr. at 143:17-21.) Mr. Huckfeldt acknowledged that he was aware that the child could still obtain U.S. citizenship even if the child was born in Armenia, but Mr. Huckfeldt claimed that he did not trust "the INS" to handle that properly (despite the fact that registering the birth of a child of a U.S. citizen abroad is under the purview of the U.S. State Department). (Tr. at 143:19-21.)

Nvart was more than 8 months pregnant when she entered the United States. (Tr. at 239:1-6.) Upon their arrival at the Los Angeles Airport, Mr. Huckfeldt procured a car for them to travel from Los Angeles to Dallas, Texas. The car had no air conditioning. (Tr. 239:8-19) Mr. Huckfeldt drove almost straight through to Dallas, stopping only to take short naps, and once for 5 hours at a hotel. (Tr. 239:20-25. Tr. 240:1-5.) Ms. Idinyan was miserable. The couple finally arrived in Dallas at Mr. Huckfeldt's daughter's house, where Mr. Huckfeldt planned for them to live. (Tr. 240:6-10.) Mr. Huckfeldt had told Nvart that his daughter "had invited" them to stay with her. (Tr. 162:12-14.) Nvart would later find out that Mr. Huckfeldt's daughter had never issued any such invitation. (Exhibit 8, Statement of Nvart Idinyan). Nvart's son Joseph was born July 2, 1996. (Exhibit 6, Birth Certificate for Joseph Huckfeldt.)

Nvart delivered her son Joseph at her sister-in-law's home with the help of a midwife. (Tr. at 240:17-19.) Mr. Huckfeldt had refused to take Nvart to a hospital because he claimed he could not afford it. (Tr. at 240:13-16.) This is in direct conflict with a statement Mr. Huckfeldt provided to the INS in 1998 claiming that he had been Executive Director of the National Policy Analysis Center since 1977, and his salary was

"in excess of $100,000.00." He added that this "definitely a permanent position." (Exihibit 2, Letter to INS in Dallas from Vaughn Huckfeldt dated November 3, 1989.) (Note: counsel for Respondent assumes that this is a typo, as a handwritten note on the letter is dated November 23, 1998).

After about a year and a half of living at Mr. Huckfeldt's sister's home, Mr. Huckfeldt announced to Nvart that they would be going on "a vacation" to Colorado, stopping in Boulder to see Mr. Noland's son. (Tr. at 241:4-8.) However, on the way back from Boulder, Mr. Huckfeldt stopped in Montrose, Colorado, and informed Nvart that he would be moving all of their things from Dallas to Montrose. (Tr. at 241:4-8.) He provided no explanation as to why they had to leave Dallas. (Tr. at 241:9-11.) After about a week, Mr. Huckfeldt purchased a run-down trailer with no heat and no telephone for his wife and 1 year old son Joseph. (Tr. at 242:1-18; Tr. at 96:1-8.) The pastor at Mr. Huckfeldt's and Ms. Idinyan's local church often invited Ms. Idinyan and Joseph to his home so that she and Joseph could stay warm. (Tr. 96:2-8.)

Nvart had no money and no way to provide for her baby. Mr. Huckfeldt did not provide enough income for Nvart and the baby to survive, so Nvart was forced to find employment. (Tr. at 96:1-21. Tr. 242:24-25. Tr. 243:1-4.) However, Nvart did not have employment authorization because Mr. Huckfeldt had not yet filed adjustment of status paperwork for her. Mr. Huckfeldt lied to Nvart's first employer, explaining that she had employment authorization pursuant to paperwork Mr. Huckfeldt had filed. (Tr. at 96:15 – 21.) Instead, Mr. Huckfeldt had instructed Ms. Idinyan to lie and use his social security number. Mr. Huckfeldt did not file any paperwork on Ms. Idinyan's behalf until November of 1998, more than two years after Ms. Idinyan first entered the United States.

(Exhibit 2, Adjustment of Status paperwork filed by Vaughn Huckfeldt on behalf of his wife Nvart Huckfeldt.)

Throughout their marriage, Ms. Idinyan suffered physical, emotional, and sexual abuse at the hands of Vaughn Huckfeldt. The abuse began in Armenia, when Mr. Huckfeldt raped Ms. Idinyan early in their marriage. Mr. Huckfeldt became upset when he discovered Ms. Idinyan smoking outside. He then grabbed her by the throat and dragged her inside, into the bathroom. He then proceeded to rape her. (Tr. 75:11-25; 76:1-7.)

The abuse continued after Ms. Idinyan came to the United States, starting with the road trip from Los Angeles to Dallas in an unconditioned car in the summertime when Ms. Idinyan was more than 8 months pregnant. (Tr. 239:1-6.) While they lived in Texas, Mr. Huckfeldt kept Ms. Idinyan isolated from the outside world. When she finally started to make some friends, Mr. Huckfeldt became irate and forbade Ms. Idinyan from seeing them. (Tr. 243:8-16, Exhibit 8, Nvart Idinyan's statement.) When Ms. Idinyan tried to discuss with her husband the prospect of getting a job, Mr. Huckfeldt repeatedly told her that "no one would want [her]" and "no one would hire [her]." (Exhibit 8, Statement of Nvart Idinyan.)

Despite Ms. Idinyan's pleading, Mr. Huckfeldt refused to file paperwork for Ms. Idinyan's adjustment of status. (Tr. 243:17-25. Tr. 244:1-8.) He repeatedly threatened to have her deported. (Tr. 244:12-21.) He also threatened to kidnap Joseph, promising Ms. Idinyan that she would never see Joseph again. (Tr. 244:15-23.) After their separation, Mr. Huckfeldt said to Ms. Idinyan regarding Joseph that "[s]omeday, he

won't ever come back to you." (Exhibit 8, Psychological Assessment by Dr. Karen Cain.)

On two separate occasions, Mr. Huckfeldt became furious with Ms. Idinyan and physically dragged her, causing her pain. (Tr. 245:1-21.) During one of those incidents, Mr. Huckfeldt pushed her against a wall, shouting at her. (Tr. 245:1-21)

One evening after Ms. Idinyan and Mr. Huckfeldt had an argument, Mr. Huckfeldt demanded that his wife leave the trailer. (Tr. 247:1-8.) While Ms. Idinyan was gone, Mr. Huckfeldt called the restaurant where she worked and informed them that she did not have a valid social security number. (Tr. 247:10-21.) Ms. Idinyan had been using Mr. Huckfeldt's social security number, upon his instructions. (Tr. 247:1 – 21, 248:6 – 16.) When Mr. Huckfeldt called Ms. Idinyan's place of employment to report this, she was fired on the spot. (Tr. 247:1-21.)

Ms. Idinyan testified that she became aware of angry creditors of Mr. Huckfeldt's before she and Mr. Huckfeldt came to the United States in 1996. (Tr. 37:1-23. Tr. 91:6-19.) Ms. Idinyan further testified that after she and Mr. Huckfeldt came to the United States, she became of many more creditors in Armenia. (Tr. 39:3-11.) Mr. Huckfeldt had left instructions with these creditors to contact Ms. Idinyan's family in Armenia, despite the fact that the family knew nothing about Mr. Huckfeldt's debts or business dealings. (Tr. 39:14-19.) As a result, the creditors began targeting Ms. Idinyan's family in Armenia. (Tr. 39:20-25. Tr. 93:1-25.) Ms. Idinyan testified that some of Mr. Huckfeldt's creditors beat her father and threatened to kidnap her brothers. (Tr. 39:23-25. Tr. 40:7-25.)

In November of 1998, Mr. Huckfeldt finally filed documents so that Ms. Idinyan could apply to adjust her status and apply for employment authorization. (Exhibit 2, Adjustment of Status papers filed by Vaughn Huckfeldt.) Strangely, Mr. Huckfeldt insisted on filing the paperwork in Dallas, Texas, even though they were now living in Colorado. (Tr. 109:8-24.) Mr. Huckfeldt told Ms. Idinyan that there was no INS office in Colorado. (Tr. 109:8-24.) This was a lie. Mr. Huckfeldt and Ms. Idinyan made the drive to Dallas, where he filed the paperwork using his daughter's address as his own. (Exhibit 2, Adjustment of Status papers filed by Vaughn Huckfeldt, listing a Texas address.) DHS did not address this fact in testimony or in its brief.

Mr. Huckfeldt forced sex on Ms. Idinyan using blackmail. In early 1999, Ms. Idinyan told her husband that she wanted to discuss the terms of a proposed separation. Mr. Huckfeldt agreed to discuss the terms, but only if she agreed to go for a drive out to the woods. (Tr. 249:14-23.) Mr. Huckfeldt drove out to the woods, and then forced his wife to have sex with him. (Tr. 249:14-23.) In addition, he told Ms. Idinyan that he would only agree to a trial separation if Nvart agreed to satisfy him sexually during that three month period. (Tr. at 249:14-25.)

One day in December of 1998, Ms. Idinyan was so depressed as a result of Mr. Huckfeldt's ongoing abuse that she swallowed a handful of aspirin in an attempt to commit suicide. (Tr. 250:15-25. Tr. 251:21-25.) Mr. Huckfeldt called 911. (Tr. 252:2-4.) However, when the police arrived, Mr. Huckfeldt refused to allow them inside. Instead he identified himself as "Dr. Huckfeldt," and told the police officer that Nvart was "fine." (Tr. 252:4-8.) One of the officers to respond to the incident slipped Ms.

Idinyan a card for the Tri-County Resource Center of Montrose, an organization that assists abused women. (Tr. 252:19-18. Exhibit , Affidavit by Betty Wolfe.)

Shortly after that incident, Ms. Idinyan called the Tri-County Resource Center and began to undergo counseling. The Tri-County Resource Center found that she was the victim of domestic abuse. (Exhibit 8, Intake Sheets and Affidavit from Jan Miller, Interim Director of the Tri-County Resource Center.)

Around that same time, Mr. Huckfeldt scheduled an appointment with Randolph Stanko, a marriage counselor. (Tr. 98:16-25.) However, on January 27, 1999, Mr. Huckfeldt appeared for the appointment without his wife. (Exhibit 8, Letter from Randolph Stanko, LMFT.) Mr. Stanko explains in his letter that the purpose of Mr. Huckfeldt's visit was to prepare Mr. Stanko for Ms. Idinyan's alleged "mental illness," so that Mr. Stanko would not be "fooled" by her. (Exhibit 8, Letter from Randolph Stanko, LMFT.) Mr. Stanko stated in his letter that he found Mr. Huckfeldt to be "deceiving." Mr. Stanko eventually met with Ms. Idinyan alone, and found that she "was clearly responding to her husband as many abused victims do in the presence of their perpetrators." (Id.)

Nvart finally obtained a divorce from Mr. Huckfeldt in December of 1999. (Exhibit 8, Application for Cancellation of Removal.) After her separation from Mr. Huckfeldt, Ms. Idinyan met Max Noland, a U.S. citizen whom she would later marry. Unbeknownst to her, on November 15, 1999, Mr. Huckfeldt withdrew the I-130 he had filed and submitted a document to CIS in Dallas alleging marriage fraud. (Exhibit 2, Letter from Vaughn Huckfeldt to INS Dallas alleging marriage fraud.) A Notice to Appear was issued for Ms. Idinyan January 12, 2000 in Dallas, Texas. (Exhibit 1, Notice

to Appear.) Because the address Mr. Huckfeldt had provided to CIS was his daughter's in Dallas, Ms. Idinyan never received notice of the allegations of marriage until early 2000, when she went to CIS in Denver to renew her employment authorization.

In May of 2000, Ms. Idinyan hired Michael Varallo to represent her. Mr. Varallo attended Ms. Idinyan's first two Master Calendar Hearings in May and August of 2000. Michael Varallo was subsequently disbarred for incompetent representation. At the August 9, 2000 hearing, Mr. Varallo told the Court that he planned to file for relief under VAWA. (Tr. 10:1-3.) For some unknown reason, Mr. Varallo never filed any petitions or applications under VAWA.

Ms. Idinyan later hired Sandra Saltrese to represent her, and Ms. Saltrese attended the August 8, 2001 Master Calendar Hearing, as well as the November 27, 2001 Hearing on the Allegations of Marriage Fraud. At the August 8, 2001 hearing, Ms. Saltrese indicated to the court that Ms. Idinyan was eligible for benefits as a battered spouse, and that Ms. Saltrese intended to file an I-360 self-petition. (Tr. 184:1-2.) At the November, 27, 2001 hearing, the Immigration Judge found that Ms. Idinyan had not committed marriage fraud at the November hearing. (Tr. 180:10-11.) The Immigration Judge set a date for March 6, 2002, to hear what forms of relief Ms. Idinyan planned to pursue. At the March 6, 2002, hearing, Ms. Saltrese indicated that she planned to file an I-360 self-petition as well as cancellation of removal under VAWA on behalf of Ms. Idinyan. (Tr. 188:8-15.) The Immigration Judge set a date of May 23, 2002, to come back to ensure that applications have been filed.

The next hearing on the transcript is undated, but counsel for Respondent assumes that that portion of the transcript is indeed the May 23, 2002 hearing. At that hearing, the

Immigration Judge set a date for a Status Conference on August 20, 2002. It is not clear exactly what transpired between August 20, 2002 and October 25, 2004. What is clear is that Ms. Saltrese did not file an I-360 self-petition or an application for cancellation of removal under VAWA.

Undersigned counsel was hired in August of 2004. October 25, 2004, was the first Master Calendar Hearing at which undersigned counsel appeared on behalf of the Respondent. (Tr. 197:1-13.) At that hearing, undersigned counsel for Ms. Idinyan claimed relief in the form of asylum, and potentially cancellation of removal under VAWA. Counsel for respondent informed the Immigration Judge that she would appreciate the opportunity to confirm that Ms. Idinyan was eligible for cancellation of removal. The Immigration Judge consented to this request. (Tr. 208:6-12.) The Immigration Judge set a date for Ms. Idinyan's individual hearing of November 17, 2004. (Tr. 211:22-23.) The Immigration Judge set a deadline for filing applications November 10, 2004. (Tr. 214:6-14.) Ms. Idinyan's application for cancellation of removal under the VAWA was heard November 17, 2004.

Vaughn Huckfeldt has not been seen or heard from since he testified at Ms. Idinyan's hearing November 27, 2001. His child support debt continues to soar, as he has not made any of his court-ordered child support payments to Ms. Idinyan since 2001. (Tr. 276:20-21. Recent reports of Mr. Huckfeldt's whereabouts put him in Germany. (Tr. 276:25. Tr. 277:1-11.)

III. ARGUMENTS

a. None Of The Evidence DHS Cites In Support Of Its Argument That Stems Directly From The Abuser, Vaughn Huckfeldt, May Be Considered To Make An Adverse Determination Of

Admissibility Or Deportability Against The Respondent In This Case, And Should Be Stricken From The Record.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), codified at 8 USCS § 1367, precludes any employee of the Department of Justice from using evidence provided by an abuser. The relevant section states as follows:

§ 1367. Penalties for disclosure of information

> (a) In general. Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice (including any bureau or agency of such Department)--
>
> (1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by--
>
> (A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,
>
> (B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,
>
> (C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),
>
> (D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, or
>
> (E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act *[8 USCS § 1101*(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity,
> unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act *[8 USCS § 1251*(a)(2)]; or
> (2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate

> Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act *[8 USCS § 1154*(a)(1)(A)(iii) or (iv), § 1154(a)(1)(B)(ii) or (iii), § 1186a(c)(4)(C), § 1101(a)(15)(U), or § 1229b(a)(3)] as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.
>
> The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

8 USCS § 1367(a).

Support for DHS' arguments flows almost entirely and directly from the abuser's testimony. This is an outrage. The hearing at which Mr. Huckfeldt testified was on DHS' allegations of marriage fraud. That testimony cannot now serve as a tool to remove the Respondent. 8 USCS § 1367(a) was enacted specifically to protect victims of domestic violence from further harm from their abuser. In its blatant disregard of the law and a maliciousness that has saturated this case from the very beginning, DHS violates not only a federal statute, but also the bounds of common decency.

Counsel for the Government present at the Master Calendar Hearing on August 9, 2000, Elizabeth Posont, was clearly aware of this restriction, as is evident in the following statement she makes to the Immigration Judge:

> I guess the problem with this type of case, Judge, is that if the respondent is going to apply for a three-year suspension case or self-petition, I guess she can't self-petition now that she's divorced, I just want the -- if there's going to be a battered spouse claim I need it on the table before I go forward with the USC as a witness.

(Tr. 9:20 – 25.)

Counsel for the Respondent, Michael Varallo, responded to this statement with the following declaration: "There's going to be a battered spouse claim. In fact, I have the evidence that back that up." (Tr. 10:1-3.)

In December of 2000, DHS submitted to the Court a statement made by Vaughn Huckfeldt. This statement contains numerous assaults on Ms. Idinyan's character, which, apart from being completely irrelevant to the case, illustrate the continuing psychological and emotional abuse by Mr. Huckfeldt. Mr. Huckfeldt makes numerous accusations intended to show that Ms. Idinyan is a woman of questionable morals when it comes to sex. In a statement DHS submitted December 20, 2000, Mr. Huckfeldt writes that Ms. Idinyan would "sneak away late at night and spend the night in parties drinking alcohol with older men…" and that she "would easily go with a group of boys to the dismay of her parents." Mr. Huckfeldt continues that "Nvart did not show any sign of being a virgin when we started a sexual relationship…" Mr. Huckfeldt asserts that Ms. Idinyan contracted a "sexual disease…, then small live white worms crawling in her virginia." (Exhibit 2, Letter from Vaughn Huckfeldt to INS alleging marriage fraud.) In his testimony, Mr. Huckfeldt stated that Nvart instigated sex "95 percent of the time." (Tr. 160:20-23.) It is clear that Mr. Huckfeldt's goal is to discredit Ms. Idinyan by painting a picture of a woman of ill repute. This is similar to the "she was asking for it" defense in criminal rape cases, in which a rapist attempts to justify his actions by showing that the victim dressed and acted in a provocative manner.

Even if the evidence is not excluded under 8 U.S.C.S. § 1367, Mr. Huckfeldt's testimony cannot be considered in making an adverse determination of removability against Ms. Idinyan because it would render the proceedings fundamentally unfair. The Immigration Judge heard Mr. Huckfeldt's testimony for purposes of determining the issue of marriage fraud only. The Immigration Judge deemed that cross-examination of

Mr. Huckfeldt was not necessary, as he was prepared to issue a finding in favor of Ms. Idinyan at the end of the Government's direct examination of Mr. Huckfeldt.

Because counsel for the Respondent never had an opportunity to cross-examine Mr. Huckfeldt, his testimony may not now be considered in making an adverse determination of removability against Ms. Idinyan. To allow the testimony would constitute a violation of due process under the Fifth Amendment's procedural and substantive due process right to a fundamentally fair hearing. *Bridges v. Wixon,* 326 U.S. 135, 154 (1945). *Michelson v. I NS,* 897 F.2d 465, 468 (10th Cir. 1990).

b. The Legislative Intent of the Violence Against Women Act Was Clearly to Include Such Persons as the Respondent in the Class of Aliens Eligible Under INA § 240A(b)(2).

DHS argues that Ms. Idinyan is not within the class of immigrant women Congress intended to protect in enacting VAWA. The statute is clear as to who is eligible for relief under INA § 240A(b)(2):

> (2) SPECIAL RULE FOR BATTERED SPOUSE OR CHILD.-The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that-
>
> (A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);
>
> (B) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;
>
> (C) the alien has been a person of good moral character during such period;

> (D) the alien is not inadmissible under paragraph (2) or (3) of § 212(a), is not deportable under paragraph (1)(G) or (2) through (4) of § 237(a), and has not been convicted of an aggravated felony; and
>
> (E) the removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.
>
> In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

DHS argues that INA § 240A(b) was not intended to benefit applicants who are divorced from their abuser, or who are remarried. There is no support for this argument in the statute. As the Ninth Circuit Court has stated previously, "[t]here is no justification for adding limiting language to a clear and unambiguous statute and regulation." *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (citing *Vincent v. Apfel*, 191 F.3d 1143, 1148 (9th Cir. 1999). The *Hernandez* Court pointed out that "this conclusion is strengthened by the fact that Congress chose to add the very factor proposed by the INS elsewhere, but not here." *Id*. See INA § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii) (allowing a battered alien to self-petition only if she is still married to the abuser, or if she was divorced from the abuser within the past two years).

DHS' argument is illogical and contravenes public policy. The inevitable conclusion of this argument is that cancellation of removal under the Violence Against Women Act only applies to women currently in abusive relationships, not to women who have managed to escape abusive relationships. The *Hernandez* Court rightly pointed out the following:

> Congress's goal in enacting VAWA was to eliminate barriers to women leaving abusive relationships. H.R. REP. NO. 103-395, at 25 (stating that the goal of the bill is to "permit battered immigrant women to leave their batterers without fearing deportation")…The notion that Congress would require women to remain with their batterers in order to be eligible for the

> forms of relief established I VAWA is flatly contrary to Congress's articulated purpose in enacting section 244(a)(3)

Id. Congress carved out an exception for self-petitioners under INA § 204(a)(1)(B)(ii)(II)(aa)(CC), which provides that self-petitioners, if divorced from the abuser, must have obtained the divorce because of the abuse, and the divorce must have occurred in the last two years preceding the date of the petition. No such exception exists for battered spouses and children under INA § 240A(b). To impose such a restriction would be arbitrary and unjust.

The Act was tailored to include exactly such persons as Nvart Idinyan. The record is clear that Ms. Idinyan suffered abuse by her United States citizen husband. The record is clear that Ms. Idinyan would not have been eligible to adjust her status based on her marriage to Lloyd Noland, her late United States citizen husband, due to the vengeful and completely fictitious allegations of marriage fraud perpetrated by her ex-husband, Vaughn Huckfeldt. The Immigration Judge confirms this in his Oral Decision:

> The allegations from the Immigration and Naturalization Service clearly show that the Government has taken the position that the marriage between the respondent and her first husband was an immigration marriage. This would disqualify her for the benefits of an I-130 petition filed by her now husband. The Court thinks it is unlikely under the circumstances that the Department of Homeland Security would be granting an I-130 anytime soon.

Oral Decision at 3.

c. The Respondent Has Met Her Burden Of Establishing That She Suffered Abuse And Is Therefore Eligible For Relief Under INA § 240A(B).

Ms. Idinyan has proven by a preponderance of the evidence that she was the victim of domestic abuse by her ex-husband, Vaughn Huckfeldt. 8 C.F.R. § 1240.8. In

VAWA cases, the Immigration Judge may consider any credible evidence relevant to the application. INA § 240A(b)(2)(D). This standard is as follows:

> (D) CREDIBLE EVIDENCE CONSIDERED- In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

Ms. Idinyan's credible testimony and statement included numerous incidents of abuse. Ms. Idinyan testified that Mr. Huckfeldt raped her when they were still living in Armenia. (Tr. 75:8-25, 76:1-6.)

In her statement and in her testimony, Ms. Idinyan describes the cross-country trip Mr. Huckfeldt took her on when she was more than 8 months pregnant. They drove cross-country through the desert in a car with no air conditioning, stopping once at a hotel for five hours.

Mr. Huckfeldt tried to keep Ms. Idinyan isolated. Ms. Idinyan testified that while living in Dallas, when Ms. Idinyan began making friends, Mr. Huckfeldt told her that they were "evil." (Tr. 243:8 – 16.) He became irate if Ms. Idinyan socialized with her new friends, screaming at her. When Ms. Idinyan invited her friends over to the house, Mr. Huckfeldt would "make problems" so that the friends would then leave. (Exhibit 8, Statement by Nvart Idinyan.)

Ms. Idinyan testified that the trailer Mr. Huckfeldt purchased as their home was uninhabitable. Mr. Huckfeldt could not afford to purchase the propane required to heat the trailer in the winter. This is particularly odd in light of Mr. Huckfeldt's assertion in a cover letter he sent to the INS in November of 1998 that his current salary for his position as Executive Director with the National Policy Analysis Center was $100,000, and was

"definitely a permanent position." (Exhibit 2, Letter to Dallas INS from Vaughn Huckfeldt dated November 3, 1989.) (note: counsel for Respondent assumes that this is a typo, as a handwritten note on the letter is dated November 23, 1998).

Mr. Huckfeldt did not file for Ms. Idinyan until November of 1998. Strangely, Mr. Huckfeldt insisted on filing the paperwork in Dallas, Texas, even though they were now living in Colorado. (Tr. 109:8-24.) Mr. Huckfeldt told Ms. Idinyan that there was no INS office in Colorado. (Tr. 109:8-24.) This was a lie.

Mr. Huckfeldt had told Ms. Idinyan that he could not file her paperwork because of money. (Tr. 108:15-23.) Again, this is particularly odd in light of Mr. Huckfeldt's assertion in a cover letter he sent to the INS in November of 1998 that his current salary for his position as Executive Director with the National Policy Analysis Center was $100,000, and was "definitely a permanent position." (Exhibit 2, Letter to Dallas INS from Vaughn Huckfeldt dated November 3, 1989.) (Note: counsel for Respondent assumes that this is a typo, as a handwritten note on the letter is dated November 23, 1998).

Ms. Idinyan testified that Mr. Huckfeldt verbally abused her by repeatedly telling her how stupid she was, and threatening to have her deported and to take their son Joseph, a U.S. citizen, from her. (Tr 97:13-20. Tr. 244:9-23.)

Ms. Idinyan testified that Mr. Huckfeldt raped her in the United States, and used sex as a blackmail tool. (Tr. 98:1-15. Tr. 249:14-23.) Mr. Huckfeldt told Ms. Idinyan that he would only agree to a separation if she promised to continue to have sex with him during the separation. (Tr. 98:11-15. Tr. 256:21 – 25.)

Ms. Idinyan testified that Mr. Huckfeldt insisted that Nvart go see a family therapist, Randolph Stanko, because she had "mental problems." (Tr. 98:16-24.) Ms. Idinyan further testified that Mr. Huckfeldt signed her name to a document stating that she wanted to work on her marriage. (Tr. 99:6 – 14.) Instead, Ms. Idinyan told Mr. Stanko that she was unhappy in her marriage, who advised her that she was in an abusive relationship. (Tr. 99:15 – 20.) DHS describes a letter submitted by Randolph Stanko as "conclusory in nature." (DHS Brief at 34.) (Note: DHS adds "title and profession unknown," despite the fact that Mr. Stanko signed the letter "Randolph Stanko, LMFT." LMFT is an acronym for "Licensed Marriage and Family Therapist." (DHS Brief at 34.) DHS does not include the fact that Mr. Stanko found Mr. Huckfeldt to be "deceptive." Mr. Stanko found that Nvart "was clearly responding to her husband as many abused victims do in the presence of their perpetrator." Mr. Stanko adds that Nvart is "honorable, honest, a hard worker and devoted to her loved ones." (Exhibit 8, Letter from Randolph Stanko.)

Ms. Idinyan testified that after an argument she had with Mr. Huckfeldt, he ordered her to leave the house. When she returned, Mr. Huckfeldt apologized tearfully for all of the things he had done to hurt Ms. Idinyan and her family. What Mr. Huckfeldt did not tell her was that while she was out, Mr. Huckfeldt had called Ms. Idinyan's place of employment, the True Grit Café, and had her fired. He informed Ms. Idinyan's boss that Ms. Idinyan was working with a false social security number, after he had instructed her to use it. (Tr. 247:1 – 21, 248:6 – 16.)

Mr. Huckfeldt's tearful apology is a case study of an abusive relationship. The Ninth Circuit Court provides an insightful explanation of abuser behavior in the landmark VAWA case *Hernandez v. Ashcroft:*

> Information in the record also explained that "domestic violence is not an isolated, individual event, but rather a pattern of perpetrator behaviors used against the victim." Anne L. Ganley, *Understanding Domestic Violence*, *in* IMPROVING THE HEALTH CARE RESPONSE TO DOMESTIC VIOLENCE 18 (Carole Warshaw & Anne L. Ganley eds., 1996). Explaining the connection between violence and other tactics of control, this work stated:
>
> Sometimes physical abuse, threats of harm, and isolation tactics are interwoven with seemingly loving gestures (e.g., expensive gifts, intense displays of devotion, sending flowers after an assault, making romantic promises, tearfully promising it will never happen again). Amnesty International (1973) describes such "occasional indulgences" as a method of coercion used in torture. With such tactics, the perpetrator provides positive motivation for victim compliance. . . . The message is always there that if the victim does not respond to this "loving" gesture or verbal abuse, then the perpetrator will escalate and use whichever tactic, including force, is necessary to get what he wants.

Hernandez v. Ashcroft, 345 F.3d 824, 837 (9th Cir. 2003).

Mr. Huckfeldt finally filed an I-130 and I-485 for Ms. Idinyan November 23, 1998, almost two and a half years after he first brought Ms. Idinyan to the United States. (Exhibit 2, Adjustment of status papers filed by Vaughn Huckfeldt.)

Ms. Idinyan attempted suicide on December 15, 1998. (Tr. 251:21 – 25, 252:1 – 16. Exhibit 8, Letter from Betty Wolfe, Deputy Sheriff of Ouray County.)

The record includes numerous statements from various law enforcement officials attesting to the abuse Ms. Idinyan suffered. First, there is a statement from Betty Wolfe, a Deputy Sheriff for the Ouray County Sheriff's Department. (Exhibit 8.) Ms. Wolfe has received over 100 hours of domestic violence training and was a member of the 7th

Judicial District Domestic Violence Training Team. Ms. Wolfe states that the incident described happened approximately six years ago. Ms. Wolfe states the following:

> My experience and training led me to believe that Nvart was in a domestic violence situation, but was afraid to discuss the matter with me. I perceived that Von Huckfeldt was trying to control Nvart using deportation of Nvart and her family as an intimidation factor. If left information for the Tri-County Resource Center, a domestic violence center in Montrose, with Nvart, telling her that she should call them for assistance.

(Exhibit 8, Letter from Betty Wolfe.)

In addition, the record includes two U Visa Certification Forms. The first certification form was submitted by David J. Scott, the Marshall of Ridgway, Colorado. (Exhibit 8, Certification Form from David J. Scott.) Mr. Scott wrote on that form that Nvart Idinyan was a victim of human trafficking, domestic violence, and sexual exploitations. The form was signed by Mr. Scott and dated September 23, 2004. The second certification form was submitted by Dominic Mattivi, Jr., Ouray County Sheriff. (Exhibit 8, Certification Form from Dominic Mattivi.) Mattivi wrote on that form that Nvart Idinyan "was the primary victim in a domestic violence and custody case. Nvart and the Sargsyan family can provide testimony to these crimes and possibly others committed by Mr. Vaughn Huckfeldt." (Exhibit 8, Certification Form from Dominic Mattivi.) The form was signed by Mr. Mattivi and dated September 21, 2004.

Dr. Susannah Smith submitted a statement November 9, 2004, in which she states that Ms. Idinyan and her son "were victims of domestic violence from her former and then husband, Vaughn Huckfeldt." (Exhibit 8, Statement of Dr. Susannah Smith.) Dr. Smith also testified to this fact. She describes Ms. Idinyan as having endured "many, many years of abuse and almost a slavery type situation with Vaughn…". (Tr. 313:10 –

25; 314:1 – 4.) Dr. Smith diagnosed Nvart as having post-traumatic stress disorder. (Exhibit 8, Statement of Dr. Susannah Smith, Tr. 313:21 – 25.)

DHS argues in its brief that Ms. Idinyan sought treatment from Dr. Smith as part of her "calculated move to claim immigration benefits as a battered spouse." (DHS Brief at 34.) DHS states that "the respondent went to see Dr. Smith in May 2000, five months after she and her family were placed in removal proceedings, a year and a half after she separated Mr. Huckfeldt, and a year and a half into her happy marital relationship with Mr. Noland." (DHS Brief at 35.) It is noteworthy that Ms. Idinyan was referred to Dr. Smith through the crime victims compensation fund through the District Attorney's office. (Tr. 313:17 – 21.)

The record includes a statement from Jan Miller, Interim Director of the Tri-County Resource Center in Ouray, which says simply, "Nvart Huckfeldt has been a client with the Tri-County Resource Center since January of 1999 due to family violence perpetrated by her ex-husband Vaughn Huckfeldt." (Exhibit 8, Letter from Jan Miller.)

In her psychological assessment, Dr. Karen Cain refers to a statement Vaughn Huckfeldt made in the video tape to which DHS refers. Mr. Huckfeldt made this statement to Ms. Idinyan, in reference to their son: "Someday, he won't ever come back to you." (Exhibit 8, Psychological Assessment of Dr. Karen Cain.)

After his divorce from Ms. Idinyan, Mr. Huckfeldt continued his criminal behavior. On August 24, 2000, a Montrose County Judge issued a permanent restraining order against Mr. Huckfeldt as a result of Mr. Huckfeldt's harassment of a woman named Maureen Williams. (Exhibit 8, Permanent Civil Restraining Order Issued Against Vaughn Huckfeldt.) In addition, Mr. Huckfeldt has not paid child support to Ms. Idinyan

in over three years. This is a blatant violation of the law. (Exhibit 8, Notice dated February 25, 2003, from the Montrose County Child Support Enforcement Unit to Nvart Idinyan.)

Even DHS admits to Mr. Huckfeldt's pattern of criminal behavior, in its assertion that Mr. Huckfeldt "helped [Ms. Idinyan] the best way he knew to work in the country by letting her use his social security number." (DHS Brief at 33.) Certainly a better solution would have been for Mr. Huckfeldt to properly file an I-130, I-485, and I-765 on her behalf within the limits of the law.

Despite the voluminous evidence described above, DHS argues that Ms. Idinyan has not met her burden of showing that she suffered abuse by Mr. Huckfeldt. As support for this position, DHS offers only the testimony and personal statements from Vaughn Huckfeldt, the abuser. None of this testimony may be used against Ms. Idinyan under 8 USCS § 1367, as well as the 5th Amendment right to due process, as counsel for the Respondent was never afforded an opportunity to cross-examine Mr. Huckfeldt at the hearing in November of 2001.

DHS' response to the mountain of evidence clearly showing that Nvart Idinyan was abused by Vaughn Huckfeldt is that somehow Ms. Idinyan concocted an elaborate ruse in order to obtain immigration benefits. In its brief, DHS argues that Ms. Idinyan

> orchestrated a sequence of events in a calculated move to claim immigration benefits as a battered spouse. The evidence of record shows that the respondent started her abused-spouse claim three days before her family arrived in the U.S. and two weeks before leaving Mr. Huckfeldt.

(DHS Brief at 34.)

This outrageous statement shocks the conscience. Ms. Idinyan's family arrived in the United States in January of 1999. Ms. Idinyan was not aware that she had been

placed in Immigration Proceedings until March of 2000. Ms. Idinyan consulted with an attorney for the first time in May of 2000. To conclude that Ms. Idinyan, whose English was far from fluent at that time, was sufficiently familiar with the Immigration and Nationality Act and the Violence Against Women Act to be aware of and understand the criteria for eligibility for Cancellation of Removal under INA § 240A(b) is absolutely ludicrous.

In order for the government's argument to stand, one must conclude that not only was Ms. Idinyan lying, but the following people conspired with Ms. Idinyan in this "calculated move:"

1. Betty Wolfe, Deputy Sheriff for Ouray County
2. David J. Scott, the Marshall of Ridgway, Colorado
3. Dominic Mattivi, Jr., Ouray County Sheriff
4. Dr. Susannah Smith
5. Dr. Karen Cain
6. Randolph Stanko, LMFT ("Licensed Marriage and Family Therapist")
7. Jan Miller, Interim Director of the Tri-County Resource Center

Furthermore, the record includes nine affidavits from friends, neighbors, co-workers, and Ms. Idinyan's current employer, which describe Ms. Idinyan as honest, hard-working, strong, and kind. If DHS' theory is correct, then all nine of these affiants are either lying or were duped by Ms. Idinyan. This is absurd.

Finally, if DHS' theory is correct that Ms. Idinyan planned to obtain relief from removal as a battered spouse, she would not have remarried, and she would have filed an I-360 self-petition under VAWA within two years of her divorce from Mr. Huckfeldt.

In its brief, DHS insinuates that because Ms. Idinyan stayed with Mr. Huckfeldt, she must be lying about the abuse that occurred in their marriage: "She stated that

despite the rapes, dragging, grabbing by the throat and lying to her, she became pregnant (while taking contraceptives) and decided to come to the US with him." (DHS brief at 12.)

The *Hernandez* court acknowledged that

> Congress recognized that lay understandings of domestic violence are frequently comprised of "myths, misconceptions, and victim blaming attitudes," and that background information regarding domestic violence may be crucial in order to understand its essential characteristics and manifestations. H.R. REP. NO. 103 -395, at 24.

Hernandez v. Ashcroft, 345 F.3d 824, 836 (9th Cir. 2003). The victim-blaming tone of the Government's brief is an example of such attitudes, and illustrates perfectly the reason the VAWA was enacted in the first place.

The Hernandez court further explains victim behavior like that of Ms. Idinyan's:

> Victims use many different strategies to cope with and resist the abuse. Such strategies include . . . accepting the perpetrator's promises that it will never happen again, saying that she "still loves him," being unwilling to leave the perpetrator or terminate the relationship, and doing what he asks. These strategies may appear to be the result of passiveness or submission on the part of the victim, when in reality she has learned that these are sometimes successful approaches for temporarily avoiding or stopping the violence.

Id. at 838.

In its efforts to discredit Ms. Idinyan, DHS refers to a letter written by Ms. Idinyan's mother, Susan Idinyan, to Nvart Idinyan:

> I was very glad that you had sent a picture where you are together, and that you are getting along well with each other. No other father will be able to give so much happiness to your sweet baby like Vaughn.

(DHS Brief at 40. Exhibit 5, Letter from Susan Idinyan.)

DHS concludes that this letter is proof that Ms. Idinyan and Mr. Huckfeldt had a "good marriage." *Id*. At the November, 2001 hearing, DHS did not ask Ms. Idinyan if

she disclosed the abuse in her marriage to her mother. DHS did not ask Ms. Idinyan how often she spoke with her mother on the telephone. DHS did not ask Ms. Idinyan how often she wrote her mother. The letter itself indicates that Susan Idinyan did not even know how to reach her daughter, as she writes, "[s]omehow let me know your address and telephone number. After you read my letter write a response and write down your address and telephone number each character separate so that we will get it right." (Exhibit 5, Letter from Susan Idinyan.)

At the November, 2001 hearing, DHS refers to the video tape Ms. Idinyan submitted the court in which Mr. Huckfeldt is heard saying to Ms. Idinyan regarding their son Joseph, "[s]omeday, he won't ever come back to you." (Exhibit 8, Report by Dr. Karen Cain.) DHS expressed the following non-expert opinion to the Court.

> Just to inform the Court, I do have the video tape because his ex-wife, the respondent, did send it to the INS. She has sent it to the INS saying that the way she was threatened and abusing her and I have watched the video tape which the Court can watch and I don't see no abuse.

(Tr. 172:21-25.)

This statement is indicative of the unsubstantiated and shameless conclusions drawn by DHS throughout the November, 2001 hearing, and throughout its brief. Counsel for DHS is not an expert on domestic violence, and is not qualified to make such a determination. Furthermore, Dr. Cain cites this statement in her psychological assessment of Mr. Huckfeldt. (Exhibit 8, Letter from Dr. Karen Cain.)

In support of its argument that Ms. Idinyan suffered no abuse, DHS cites in its brief a statement by the Immigration Judge in his Oral Decision on the allegations of fraud. The Immigration Judge stated as follows: "And I would hope that the two of you are able to somehow reconcile between the two of you." (Tr. 178:20 – 25.) Given that

two separate attorneys representing Ms. Idinyan had stated in previous hearings that they planned to file for relief under the Violence Against Women Act, it is inappropriate and unimaginable that the Immigration Judge would recommend to a victim of abuse that she "reconcile" with her abuser.

Nevertheless, the Immigration Judge's statement, in contrast to what DHS states in its brief, does *not* demonstrate an absence of abuse against Ms. Idinyan. Rather what this statement demonstrates is that the Immigration Judge had heard testimony on the allegations of marriage fraud only. At that time, no evidence had been submitted to the court in support of Ms. Idinyan's VAWA claim.

d. The Respondent Met Her Burden Of Showing That Her Removal Would Cause Extreme Hardship To Herself And Her United States Citizen 9-Year Old Son.

The Immigration Judge ruled correctly in that Ms. Idinyan and her U.S. citizen 9-year-old son Joseph would suffer extreme hardship if Ms. Idinyan were removed to Armenia. The Immigration Judge explains his reasoning at the beginning of the hearing:

> If the respondent here is married to a U.S. citizen, has a U.S. citizen child and should she be deported I think this comes classically under the extreme hardship level that you're talking about. We don't even have to go to the – we're using the lesser level that we used for suspension of deportation…

(Tr. 233:5-10.)

Under § 240A(b), an applicant for cancellation of removal must show that her "removal would result in extreme hardship to the alien, the alien's child, or the alien's parent." In this case, that includes Ms. Idinyan and her U.S. citizen son Joseph. DHS makes no mention of the obvious hardship Ms. Idinyan's 9-year-old U.S. citizen son

Joseph will suffer, other than to mention that he is "of a very young age." (DHS Brief at 42.)

The Federal Regulations list in detail the factors considered in determining hardship for a cancellation case for a battered spouse or child. First, the regulations state that an applicant may show extreme hardship to herself or a parent, spouse, or child. 8 C.F.R. § 1240.58(a)

> (b) To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:
>
> > (1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;
> >
> > (2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;
> >
> > (3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
> >
> > (4) The alien's ability to obtain employment in the country to which the alien would be returned;
> >
> > (5) The length of residence in the United States;
> >
> > (6) The existence of other family members who are or will be legally residing in the United States;
> >
> > (7) The financial impact of the alien's departure;
> >
> > (8) The impact of a disruption of educational opportunities;
> >
> > (9) The psychological impact of the alien's deportation;
> >
> > (10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

C.F.R. § 1240.58(b)

The Board has provided further guidance in it's the following decisions: *Matter of Anderson,* 16 I&N Dec. 596 (BIA 1978) and *Matter of OJO*, 21 I&N Dec. 381 (BIA 1996). The factors the Board considers include, but are not limited to the following:

1. family ties in the United States and abroad;
2. length of residence in the United States;
3. condition of health;
4. conditions in the country to which the alien is returnable -- economic and political;
5. financial status -- business and occupation;
6. the possibility of other means of adjustment of status;
7. special assistance to the United States or community;
8. immigration history;
9. position in the community.

Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

The regulations add factors to be considered for VAWA cases:

(c) For cases raised under section 244(a)(3) of the Act, the following factors should be considered in addition to, or in lieu of, the factors listed in paragraph (b) of this section.

(1) The nature and extent of the physical or psychological consequences of abuse;

(2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);

> (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
>
> (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
>
> (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
>
> (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.

8 C.F.R. § 240.58(c)

Ms. Idinyan's son Joseph is 9 years old. He does not speak Armenian. He has never been to Armenia. He knows nobody in Armenia. With the death of Lloyd "Max" Noland, Joseph has recently lost the only father he has ever really known. As the expert witness, Professor Ronald Suny, explains in his affidavit, Armenia has no real rule of law. The public education system has collapsed, and the country is an economic "basket case." (Exhibit 8, Affidavit of Ronald Suny.) Life in Armenia for Joseph would be not only traumatic, but dangerous.

Ms. Idinyan explained in her testimony that Mr. Huckfeldt's creditors threatened Ms. Idinyan's family in Armenia, and even beat her father. (Tr. 39:23-25. Tr. 40:7-25.) Professor Suny stated in his affidavit that there is no rule of law, and that Ms. Idinyan and her family would be extremely vulnerable in Armenia. (Exhibit 8, Affidavit of Ronald Suny.)

Ms. Idinyan's entire immediate family is in the United States. DHS misstates the facts in its brief:

> The record shows that the respondent has no family in the US. Her mother, father, sister, and brothers [who are also her stepchildren] are in the US in violation of law. The IJ found that they all obtained their student visas by fraud and have been denied relief from removal. Thus, they all, except for her 8-yeard-old son, could be removed from the US to Armenia at any time.

(DHS Brief at 42.)

All of Ms. Idinyan's family members are currently in immigration proceedings, and have yet to go before the Immigration Judge on the merits of their cases. They do not have final orders of removal, and have pending applications for relief before CIS as well.

Ms. Idinyan has thoroughly integrated into her community. As is evident from the affidavits of good moral character provided on Ms. Idinyan's behalf, she has spent the past nine years earning the respect, admiration, and trust of the communities of Ridgway and Ouray. The people of these towns have truly rallied behind Ms. Idinyan and consider her a valuable member of their communities.

Joseph has thrived and is now a happy, well-adjusted child. Ms. Idinyan has full custody of Joseph, and Mr. Huckfeldt was permitted supervised visitation only. Mr. Huckfeldt has not paid child support in over three years. In addition, Mr. Huckfeldt has spent a significant amount of time in Armenia and is quite familiar with the geography as well as the laws there. Were Ms. Idinyan forced to return to Armenia with her son, she would have no protection of the laws of the United States. Nothing would prevent Mr. Huckfeldt from taking Joseph from Ms. Idinyan, and there would be no way to enforce the child support order currently outstanding for Joseph.

DHS declares that Ms. Idinyan has other relief available in that she file an I-360 widow petition. This is absolutely disingenuous. Surely DHS realizes that CIS' finding that Ms. Idinyan committed marriage fraud makes it almost impossible that CIS would approve a widow petition for Ms. Idinyan. As the Immigration Judge himself points out in his Oral Decision:

> The allegations from the Immigration and Naturalization Service clearly show that the Government has taken the position that the marriage between the respondent and her first husband was an immigration marriage. This would disqualify her for the benefits of an I-130 petition filed by her new husband.

(Oral Decision at 3.)

Accordingly, the Government's position would also disqualify Ms. Idinyan for the benefits of an I-360 widow petition. INA § 201(b)(2)(A)(i); 8 U.S.C. § 1151(b)(2)(A)(i); 8 § C.F.R. 204.2.

e. DHS Was Not Deprived Of Its Right To Present Its Case.

DHS had ample opportunity to prepare for this case. In its brief, the Government cites the transcript in referring to a statement made on August 9, 2000 by Elizabeth Posont, counsel for DHS that she needed the battered spouse claim "on the table." (Tr. 9:20 – 25.)

Counsel for the Respondent, Michael Varallo, responded to this statement with the following declaration: "There's going to be a battered spouse claim. In fact, I have the evidence that back that up." (Tr. 10:1-3.)

Ms. Idinyan's attorney, Michael Varallo, withdrew from the case in January on 2001. Mr. Varallo was ordered disbarred December 20, 2002. The next hearing did not occur until August 8, 2001, at which time Ms. Idinyan was represented by Sandra

Saltrese. At the hearing on the allegations of marriage fraud, Ms. Saltrese indicated to the Court that Ms. Idinyan was eligible for three-year cancellation of removal under INA § 240A(b) as a battered spouse. (Tr. 181:16-20.) Ms. Saltrese also indicated that she intended to file an I-360 Self-Petition for a Battered Spouse. (Tr. 184:1 – 2.) At the next hearing on March 6, 2002, the Immigration Judge confirmed with Ms. Saltrese that she would file an I-360 Self-Petition for a battered spouse, as well as three-year cancellation of removal under INA § 240A(b) as a battered spouse. (Tr. 188:8 – 15.)

Ms. Idinyan retained the Joseph Law Firm, P.C. August 24, 2005. The Joseph Law Firm, P.C. promptly took steps to obtain Ms. Idinyan's file from her previous attorney. At Ms. Idinyan's Master Calendar Hearing on October 25, 2004, attorneys with the Joseph Law Firm, P.C. informed the Immigration Judge that the files they received from Ms. Idinyan's previous attorney were such a mess that they could not determine what applications had been filed, if any.

Undersigned counsel for Ms. Idinyan informed the Immigration Judge that she would like the opportunity to confirm Ms. Idinyan's eligibility for three-year cancellation of removal under INA § 240A(b) as a battered spouse. The Immigration Judge responded to his request with, "Yes. Go ahead." (Tr. 208:6 – 12.)

The Immigration Judge set the case for an individual hearing on the merits for November 17, 2004, 23 days later. The Immigration Judge set a filing deadline of November 10, 2004. The Government was put on notice on October 25, 2004 of the possibility of an application for three-year cancellation of removal under INA § 240A(b) for a battered spouse. On November 10, 2004, undersigned counsel submitted to the court the cancellation application, along with all of the supporting evidence. DHS states

in its brief that it did not receive the submission to the court until November 16, 2004, just one day prior to the hearing. (DHS Brief at 44.) The submission was sent via U.S. mail to DHS on November 10, 2004. The Respondent cannot be held responsible for inefficient internal mail procedures at DHS.

Finally, DHS made no objection at any time to the application or any of the other documents submitted in support of the cancellation application, or to the hearing on cancellation itself. Having waived the opportunity to object, DHS cannot now raise the objection. DHS did make the argument for the record that Ms. Idinyan is not eligible for cancellation because she has been divorced since December of 1999 and later remarried. Because DHS failed to raise the issue that it was not prepared to go forward with a hearing on cancellation of removal, and because DHS made no objection based on a lack of notice or lack of preparation on its part, DHS is precluded from raising this issue on appeal.

Even if the Board were to find that DHS was not provided ample opportunity to prepare for this case, DHS is nevertheless precluded from presenting Vaughn Huckfeldt as a witness under 8 U.S.C.S. § 1367.

f. The Immigration Judge Was Correct In His Finding That Ms. Idinyan Did Not Commit Marriage Fraud.

The Immigration Judge's finding that Ms. Idinyan did not commit marriage fraud was sound and proper. The couple married in November of 1995, and had a child together in June of 1996. Ms. Idinyan moved out of their home, initiating the separation in March of 1999. (Exhibit 8, Statement of Nvart Idinyan.) It was a turbulent marriage

during which Ms. Idinyan suffered physical, sexual, verbal, and emotional abuse from Vaughn Huckfeldt.

Mr. Huckfeldt makes a multitude of allegations in his testimony. If the Board determines that 8 U.S.C.S. § 1367 does not apply to Mr. Huckfeldt's testimony, counsel for the Respondent requests the opportunity to cross-examine Mr. Huckfeldt in order to impeach his credibility and to show that his testimony was insufficient to result in a finding of marriage fraud against Ms. Idinyan.

In its brief, DHS states that Mr. Huckfeldt "testified that the respondent expressed concerns about their child being born outside the United States. They decided to come the United States for the birth of their child…" (DHS Brief at 16 – 16, citing Tr. 143:12 – 19, Tr. 144: 11 – 16, and TR 145:18 – 20.) DHS further states that "Mr. Huckfeldt also testified that once pregnant the respondent asked to come to the US because she wanted the child to be born in the US." (DHS Brief at 46.) Ms. Idinyan's testimony contradicts this, as she states that coming to the U.S. to have her son was Mr. Huckfeldt's idea. (Tr. 27:24 – 25, Tr. 28:1 – 5.) Ms. Idinyan's version is supported by Mr. Huckfeldt's statement that "it's definitely better for [Joseph] to be born in the United States." (Tr. 143:16 – 17.) Mr. Huckfeldt goes on to state the following:

> You know, I'm sorry to say this about the INS but the INS is, is known overseas as if they can create a problem for you they will. I mean I have a lot of friends in, at the Embassy but when we went to get a visa for her to come over it took us six months. I mean we would have the gentleman over to, for, after Sunday church for dinner and the next, you know, and go in to see him on Tuesday and he would say, well, I've got all your paperwork now but now I need another thing. And for six months he kept needing one more thing in the process…"

(Tr. 143:19 – 25, Tr. 144:1 – 3.)

This statement is telling in many ways. First, it illuminates the fact that Mr. Huckfeldt, knowing that he could register Joseph as a U.S. citizen even if we was born outside of the United States, chose instead to return to the United States for Joseph's birth. This contradicts DHS' position that it was Ms. Idinyan's idea and desire to come to the United States, as part of her "calculated move" to obtain immigration benefits. Second, Mr. Noland's statement begs the question as to why he mentions that he has "a lot of friends.. at the Embassy," and why he included the fact that he would have one of those friends over for dinner, yet the visa application process still dragged on. Mr. Huckfeldt's statement implies that because of his connections at the Embassy, he expected to have his wife's visa application approved quickly.

As far as what type of visa Mr. Huckfeldt obtained for Ms. Idinyan, he explains as follows:

> I think we applied for a business visa. I think we finally just got a, a tourist visa because the business visa was $200 and we didn't wanna pay the difference.

(Tr. 144:6 – 8.)

This statement is yet another example of Mr. Huckfeldt's total disregard for the laws of the United States. He first stated that the plan was that he and Ms. Idinyan would travel to the United States, she would have the baby, and then Mr. Huckfeldt and Ms. Idinyan would travel throughout the United States, performing work on behalf of a non-profit organization. (Tr. 144:13 – 25, Tr. 145:1 – 20.) The law is quite clear that this type of work is not permitted on a visitor visa, but only on a business visa. (FAM 41.31.)

Mr. Huckfeldt testified that in discussing the prospect of divorce to Ms. Idinyan, he told her the following:

> Matter of fact, my comment to her was, look, you're better off waiting a couple of years and you have a green card and then if you divorce, you know, yeah that's not gonna be looked on positively but I said if you get a divorce now, you know, I've got to withdraw my application. I'm no longer married to you.

(Tr. 169:10 – 16.)

This statement by Mr. Huckfeldt is subject to two possible interpretations: First, Mr. Huckfeldt believed that he and Ms. Idinyan had a real marriage, and he advised her to wait to file for divorce so that she could still adjust her status. If this scenario is correct, then the only explanation is that Mr. Huckfeldt later fabricated the marriage fraud allegations in order to seek revenge against Ms. Idinyan for proceeding with the divorce.

The second possible scenario is that Mr. Huckfeldt believed the marriage was fraudulent, yet nevertheless advised Ms. Idinyan to wait to file for divorce. This scenario is much more unlikely, as it is difficult to imagine that Mr. Huckfeldt would have felt so generous toward Ms. Idinyan had he truly believed the marriage was fraudulent. In addition, if Mr. Huckfeldt believed that his marriage was fraudulent, he was perpetuating the fraud himself by advising Ms. Idinyan not to proceed with the divorce so that she could still get her green card in the end.

DHS makes the following statement in its brief regarding Ms. Idinyan's testimony:

> She testified that she wanted to get her "green card" in case something happened to Mr. Huckfeldt and she would want to work to support herself and her child. Later, she stated that the reason she wanted to get her "green card" was because while in the US she found out the creditors were after them because Mr. Huckfeldt was not getting them the visas.

(DHS Brief at 8, citing Tr. 36:7 – 20.)

This statement is misleading, as it implies that Ms. Idinyan changed her reason for wanting to adjust her status during the course of her testimony. This is not an accurate portrayal of Ms. Idinyan's testimony. Ms. Idinyan gave both reasons in her answer, and explained herself sufficiently. Ms. Idinyan testified that she was aware of some creditors of Mr. Huckfeldt's she and Mr. Huckfeldt were still in Armenia. She also testified that she became aware of more creditors, and the severity of the situation, after she arrived in the United States. Finally, as an additional reason to adjust her status, Ms. Idinyan stated that she needed to be able to work legally in order to support her son. (Tr. 36:1 – 25, Tr. 37:1 – 25, Tr.: 38:1 – 25.) All of these reasons are legitimate, and they do not conflict with one another. Counsel for the Government repeatedly interrupted Ms. Idinyan during this line of questioning and did not allow her to complete her answers or her explanations. In spite of this, Ms. Idinyan managed to provide perfectly adequate answers to the Government's questions. The Government now attempts to present a skewed version of that testimony in an effort to discredit Ms. Idinyan as a witness.

In support of its assertion that Ms. Idinyan committed marriage fraud, DHS offers, among other things, these three ridiculous pieces of evidence:

First, DHS offers as evidence Mr. Huckfeldt's testimony that "a friend of his in Armenia overheard the Respondent telling a friend of hers that she was marrying him to get her and her family to the U.S." (DHS Brief at 20, citing Tr. 175:21 – 25 and Tr. 176:1 – 20.) This purported evidence is testimony provided by a person the Immigration Judge has found to be an abuser. Furthermore, the testimony constitutes double hearsay. Finally, DHS offers no corroborating evidence, such as an affidavit, or even a signed letter, to support this allegation.

Second, DHS states that Mr. Huckfeldt testified "that a friend of his in Montrose, Colorado, asked the respondent if she married him to get to the US and the respondent nodded." (DHS Brief at 20, citing Tr. 175:21 – 25 and Tr. 176:1 – 20.) This is also double hearsay. DHS provided no notarized statements describing this purported incident, and the persons who allegedly made these comments were not provided as witnesses at the hearing on the allegations of marriage fraud in 2001.

The final statement regarding Mr. Huckfeldt's testimony is this: "He told the IJ that he never suspected, nor would had he believed it in 1999, that the respondent was such a great actor, better than Meryl Streep, in his opinion." (DHS Brief at 20, citing Tr. 176:17 – 20.) What is most appalling about the statement is not simply that Mr. Huckfeldt uttered it in the first place, but that DHS then attempted to give it legitimacy by actually citing the statement in its brief. Even if the Board deems that the abuser's testimony is allowed despite 8 U.S.C.S. § 1367, this particular quotation offers no probative value whatsoever, other than further proof of Mr. Huckfeldt's ongoing desire for vengeance against Ms. Idinyan.

IV. CONCLUSION

The Immigration Judge was correct to grant cancellation of removal under 240A(b) for battered spouses to Nvart Idinyan. The Immigration Judge was also correct that Ms. Idinyan did not commit marriage fraud. The record of abuse perpetrated against Nvart Idinyan by Vaughn Huckfeldt is substantial, refuted only by Mr. Huckfeldt's personal testimony and statements. This evidence may not be considered under 8 U.S.C. § 1367. DHS' theory that Nvart Idinyan has been planning to apply for immigration

benefits as a battered spouse since January of 1999 is preposterous, and should be treated accordingly.

V. PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully requests that the decision of the Immigration Judge be affirmed and that the Respondent be granted relief in the form of Cancellation of Removal for battered spouses.

Respectfully submitted and dated this 9th day of August, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of this brief via first class mail on August 9, 2005 to:

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