

**IMMIGRATION ACT OF 1989
(PART 3)**

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

AND THE

IMMIGRATION TASK FORCE

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 358, H.R. 672, H.R. 2448, H.R. 2646, and H.R. 4165

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1 the alien is not inadmissible or ineligible for a visa under
2 section 212(a)(15) of the Immigration and Nationality Act.

3 **SEC. 204. TREATMENT OF HONG KONG AS SEPARATE FOREIGN**
4 **STATE FOR NUMERICAL LIMITATION PUR-**
5 **POSES.**

6 In applying section 202 of the Immigration and Nation-
7 ality Act for fiscal years beginning with fiscal year 1991,
8 Hong Kong shall be treated as a separate foreign state, and
9 not as a colony or other component or dependent area of a
10 foreign state.

11 **TITLE III—OTHER IMMIGRATION**
12 **PROVISIONS**

13 **Subtitle A—Provisions Relating to**
14 **Marriage Fraud**

15 **SEC. 301. BATTERED SPOUSE OR CHILD WAIVER OF THE CON-**
16 **DITIONAL RESIDENCE REQUIREMENT.**

17 (a) **IN GENERAL.**—Section 216(c) of the Immigration
18 and Nationality Act (8 U.S.C. 1186a(c)) is amended by
19 adding at the end the following new paragraph:

20 “(5) **BATTERED SPOUSE WAIVER.**—(A) The At-
21 torney General shall remove the conditional basis of
22 the permanent resident status for any alien who fails to
23 meet the requirements of paragraph (1), if the alien
24 demonstrates—

1 “(i) that the alien spouse entered into the
2 qualifying marriage in good faith; and

3 “(ii) through credible evidence, that the alien
4 spouse was battered by, or was the subject of ex-
5 treme mental cruelty perpetrated by, his or her
6 spouse or parent.

7 “(B) The Attorney General shall (by regulation)
8 establish measures to protect the confidentiality of in-
9 formation concerning any abused alien spouse or child,
10 including information regarding the whereabouts of
11 such spouse or child.”.

12 (b) **EFFECTIVE DATE.**—The amendment made by sub-
13 section (a) shall apply with respect to any marriage covered
14 by the Immigration Marriage Fraud Amendments Act of
15 1986 (Public Law 99-639).

16 **SEC. 302. BONA FIDE MARRIAGE EXCEPTION TO FOREIGN**
17 **RESIDENCE REQUIREMENT FOR MARRIAGES**
18 **ENTERED INTO DURING CERTAIN IMMIGRA-**
19 **TION PROCEEDINGS.**

20 (a) **IN GENERAL.**—Section 245(e) of the Immigration
21 and Nationality Act (8 U.S.C. 1255a(e)) is amended—

22 (1) in paragraph (1), by striking “An alien” and
23 inserting “Except as provided in paragraph (3), an
24 alien”, and

APPENDIX 15.—JOINT STATEMENT OF ASIAN WOMEN'S SHELTER, CALIFORNIA WOMEN OF COLOR AGAINST DOMESTIC VIOLENCE, COALITION FOR IMMIGRANT AND REFUGEE RIGHTS AND SERVICES, EQUAL RIGHTS ADVOCATES, SAN FRANCISCO DOMESTIC VIOLENCE CONSORTIUM

INTRODUCTION

Five California organizations, three of which are coalitions representing a number of organizations and individuals, submit the following testimony in support of H.R. 2580, the domestic violence amendment to the Immigration Marriage Fraud Act Amendments of 1986 (IMFA). We would like to thank the subcommittee for this opportunity to provide this testimony on this important issue. We would like to not only support H.R. 2580, but also take the opportunity to express some additional concerns we have regarding domestic violence and immigration issues.

The two year conditional residency requirement imposed by IMFA has created particular and serious problems for immigrant victims of domestic violence, creating for immigrant women another barrier to escape from abuse. An amendment to IMFA is necessary to effect the purposes for which IMFA was enacted without also further victimizing battered immigrant women.

The five groups submitting this testimony have worked extensively for immigrant rights, women's and battered women's rights, or both.

ASIAN WOMEN'S SHELTER is a community based organization that provides shelter and supportive services to abused Asian women. The program emphasizes services to non-English speaking or limited English speaking Asian women.

CALIFORNIA WOMEN OF COLOR AGAINST DOMESTIC VIOLENCE is a 100 member statewide network of women of color working in the field of domestic violence. Its purpose is to provide support to women of color working in the field of domestic violence in their respective programs and in the movement and to advocate for the needs of

battered women of color and their children.

COALITION FOR IMMIGRANT AND REFUGEE RIGHTS AND SERVICES is a coalition of over 80 organizations that work on behalf of immigrants and refugees. CIRRS coordinates community outreach campaigns, information dissemination, service delivery and advocacy efforts to defend and expand the rights of documented and undocumented immigrants and refugees. CIRRS has created an active Immigrant Women's Task Force that works specifically on the particular needs of immigrant women.

EQUAL RIGHTS ADVOCATES is a public interest law firm dedicated to achieving equality of rights under law for women. ERA's primary program areas are legal representation, public education, advice and counseling and public policy advocacy. Its legal representation program currently includes litigation on behalf of documented and undocumented immigrant women. Its public education and public policy advocacy efforts include a survey on the effects of the Immigration Reform and Control Act of 1986 and IMFA on women, including battered women.

SAN FRANCISCO DOMESTIC VIOLENCE CONSORTIUM is composed of ten San Francisco agencies providing legal, shelter, crisis and counseling services to victims/survivors of domestic violence and their children.

DOMESTIC VIOLENCE - A NATIONAL SOCIAL PROBLEM

A woman is battered every 15 seconds in this country. Violence occurs in one-fourth to one-half of all marriages and other intimate sexual relationships, and according to the Department of Justice, in approximately 95% of these cases the violence is perpetrated by a

man against a woman. Domestic violence includes verbal, emotional, sexual and physical abuse and can be lethal. Nearly a third of female homicide victims are killed by their husbands or boyfriends. (U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports for 1983, Washington, D.C.: U.S. Government Printing Office, 1984).

Domestic violence is a social problem which affects all races, ethnic groups, religions, and socio-economic groups, yet it is largely unreported. Immigrants are no exception. The lack of bilingual and culturally appropriate social and legal services, outreach and education for immigrants, and immigrants' fear of using law enforcement, the courts, and other government and social service agencies, compels us to conclude that domestic violence is probably far more underreported among immigrant populations than among the general population.

WOMEN AND IMMIGRATION

It is essential that a well-conceived national immigration policy be shaped to fit the characteristics and needs of the immigrant population. A large proportion of immigrants are women. Since 1930, women and children have accounted for approximately two-thirds of all legal immigration to the United States. M. Houston, R. Kramer, and J. Barrett, "Female Predominance in Immigration in the U.S. Since 1930: A First Look," International Migration Review, vol. 18:4, Winter 1984, pp. 908-55. The current approximately 50/50 split between male and female immigrants includes an increasing proportion of women. "Wave of Poor Immigrant Children in Straining Schools and Housing," New York Times, Jan. 29, 1989, p. 1. The

Immigration and Naturalization Service (INS) has reported that in fiscal 1986 the border patrol detained 226,945 Mexican women and children, a 40% increase from fiscal 1984. J. Juffer, "Abuse at the Border: Women Face a Perilous Crossing," The Progressive, April, 1986, pp. 14-19. Because up to one-half of all women in the United States in intimate relationships with men are abused by their partners, immigration laws that concern the marital relationship must be tailored to the reality of this endemic abuse.

H.R. 2580

IMFA creates for the first time in U.S. immigration law a two-year waiting period between the time a person begins the process of applying for lawful permanent residence based on marriage and the time s/he achieves that status. At the end of this two year period of conditional residency, the immigrant spouse and the petitioning spouse must together file a joint petition for removal of the condition and instatement to permanent resident status. The requirement that the spouses together file the joint petition may be waived for extreme hardship or when the immigrant entered the marriage in good faith and terminated the marriage for good cause.

These provisions create particular, and presumably unintended, problems for battered immigrant women. First, the waiting period ties the battered woman to her abuser for a minimum of two years from the date she receives conditional residence. The already considerable barriers to escaping the abusive spouse become seemingly insurmountable to a woman who is waiting for the lapse of the two year period in order to complete the process of immigrating legally. Second, the filing of the joint petition at the end of the

two year period requires the cooperation of the abusive spouse, making the victim of abuse further dependent on her abuser.

Third, the waiver provision itself, which might seem to remedy unintended, harsh consequences of the two year waiting period and the joint petition requirement, fails to provide the apparently intended relief to battered women. The waiver does not clearly and unequivocally apply to all cases of spouse abuse, failing to recognize the particular and particularly serious problems faced by battered immigrant women. The "good cause" waiver would require battered woman to prove in each case that termination of a marriage because of abuse is "good cause." Such a proof requirement could lead to an inquiry into the abuse for the purpose of a determination, made by the INS, whether the abuse was serious enough to amount to "good cause." The waiver provision seems to require that the parties' marriage have been dissolved and, further, that the battered woman have initiated the dissolution proceedings. A woman still married to the abuser who refuses to file a joint petition, a woman who has not filed for dissolution or whose dissolution is pending, or a woman who did not herself initiate the dissolution proceedings would fall into a limbo in which she would not have the cooperation of the spouse in filing a joint petition, but would be ineligible for the waiver. Finally, eligibility for the waiver requires adherence to strict time limitations for filing the application for the waiver.

H.R. 2580 would remedy many of the problems IMFA creates for battered women. By creating a specific waiver of the joint petition for battered immigrating spouses, IMFA clearly codifies the stated Congressional intent that the waiver be available to victims of

spouse abuse. See Senate Report 99-491. Under H.R. 2580, a battered woman can be assured that she is not required to stay with her abuser in order to complete the process of immigrating legally. Further, she can be assured that she will not be disabled from protecting herself from abuse by dependence on her abuser's cooperation in filing the joint petition. H.R. 2580 specifically makes the waiver available in all cases of abuse, without the necessity of proof that the abuse was such as to warrant a woman in leaving her abuser, and without regard to the current status of the marriage. For these reasons, we fully support H.R. 2580, and hope it is a starting point for careful consideration of other provisions of immigration law that specifically affect battered women.

BATTERED IMMIGRANT WOMEN AND CURRENT IMMIGRATION LAW

Case Examples

The following actual cases illustrate the problems encountered by immigrant women who are subject to spouse abuse. In each of these instances, the woman's attempt to seek lawful immigration status based on her marriage was compromised by the abuse. Conversely, the woman's immigration status rendered her particularly vulnerable to abuse and its escalation.

Su Lin, a 27 year old woman from Taiwan, initially came to the United States as a student. She had been in San Francisco for two years attending school when she met her husband. Throughout their three year marriage Su Lin had been abused physically, emotionally, sexually and financially. Su Lin sought shelter in fear that her

husband would cause her to miscarry her unborn child after he had beaten her severely around her abdomen. While in shelter, Su Lin constantly expressed fear of leaving her husband. She was approaching her second joint interview at INS on her application for permanent residence, and he had repeatedly told her he would cause her to be deported if she did not do what he wanted. Her husband had repeatedly threatened to harm her family in Taiwan. She was in the shelter for four months. During this time, she filed for the waiver of the requirement to file the joint petition to remove her conditional residency citing hardship and just cause for terminating the marriage. The legal assistant who worked with her was not able to assure her that the waiver would be approved. Because of this uncertainty, Su Lin returned to her husband to ask him to go to the joint interview with her, and was again severely beaten. After she gave birth to her child, Su Lin left the shelter and returned to her abusive spouse. She found out two months later that her petition had been approved. She remains in the abusive situation still fearing that her husband will follow through on his threats to her family.

Maria is a 25 year old Peruvian woman who met her husband in Peru. He is U.S. citizen and promised to marry her if she came to the United States with him. After Maria became pregnant, she agreed to go to the United States where the couple married. Within three weeks of the birth of their child, Maria's husband began physically abusing both her and the child. Child Protective Services became involved when neighbors observed the man hitting the newborn infant. The child was removed from the home, and the man threw Maria out

onto the street, saying that he wanted nothing to do with her or the child. The couple had begun the process of applying for temporary residency for Maria. They had met with an attorney regarding assisting them with the interview process, since neither felt they could do it without legal assistance. When Maria was thrown out of her home, she sought shelter and assistance in getting her child back. She was able to get her daughter back but had no way to survive without a job, childcare or English speaking skills. Her husband denied all responsibility for the child, and would not give his wife the money to return to Peru. The last time she saw her husband, he threatened to have her arrested for not having her green card. Maria fled -- and has not been heard from since she left the shelter.

Katrina came to the U.S. three years ago with her mother and her American husband whom she had married in the Philippines. Katrina is undocumented, but her two year old daughter is a U.S. citizen. As an undocumented woman married to a U.S. citizen, Katrina's legal residency depends upon her husband's willingness to verify the "legitimacy" of their marriage in an interview with the INS. Katrina's husband has beaten her repeatedly during the past two years and recently he forced her mother to move out of the house and move in with a friend. Katrina finally sought help from a battered women's shelter but soon returned to her husband when he threatened to report her to the INS and have her deported. Katrina feels she should return to the Philippines with her mother and her daughter, both to flee the violence and to eke out a living on her own, which she is not able to do as an undocumented woman in this

country. But she is afraid of losing custody of her child if she leaves the country. Because of her fear she refuses to seek a protective order against her husband.

Lorena, 42, is from Nicaragua. She has been in this country for the last several years and is undocumented. Lorena's husband, a U.S. citizen, is extremely physically abusive to her as is his family with whom they live. Lorena has two children, who are U.S. citizens. Lorena's son is extremely withdrawn. When he does communicate, it is by hitting his sister or another family member. Lorena fears that her son will grow up to be just like his father, but is afraid to leave because her husband has threatened her and her children's lives if she should divorce him. He has pointed loaded guns at all of the family. Lorena has tried to get help from a battered women's shelter, but has not been able to stay away for more than a few days out of fear of reprisal. Lorena's husband has petitioned for her permanent residency, but Lorena is afraid to ask him for further help. Her husband says he will not help her become a permanent resident until he is convinced that she is not going to leave with the children once she becomes a permanent resident. The last time Lorena came into shelter, she had been severely beaten. She feared that her husband was going to begin sexually abusing their daughter. Currently, Lorena is back with her husband. She had hoped to file for a waiver of the requirement to file the joint petition to remove her conditional residency, but the deadline has passed and her conditional residency has expired.

Ana is a 27 year old woman from Mexico. She came to the U.S.

with her husband in 1981. Her husband has successfully petitioned for amnesty, and is a legal temporary resident. Her husband convinced her that she did not need to apply for amnesty because she would become a temporary legal resident when simply through his filing because of their marriage. Throughout their eight year marriage, Ana has been abused physically, emotionally and sexually by her husband. In 1986 her husband systematically beat her every day with a belt. Ana and her husband have three children, ages 5, 3, and 1. It was not until it became apparent that her husband was molesting her 3 year old daughter that Ana called for help. Ana came into shelter and stayed for several months. She currently has an apartment of her own and has her children with her. Ana applied for a protective order against her husband and is receiving APDC for her children. Because of her husband's lies, Ana did not apply for amnesty and remains undocumented. With each contact she has had with the court and social service system, she fears she is a risk to her ability to remain in the country with her children. She says that she would not have taken these steps just for herself, but is willing to risk deportation to save her daughter from further abuse.

Use of Wife's Immigration Status as Abuse

In a battering relationship, the batterer, in addition to his use of physical and verbal abuse, also uses other means of controlling a woman's life, including by keeping her isolated from support systems such as friends and relatives, keeping control of the finances, and preventing her from getting employment or attending school. As illustrated in the above examples, when the woman is an immigrant, control of her right to remain in this

country is another powerful means for an abusive husband to ensure that she will not leave him, assert her legal rights or seek shelter or other assistance.

Under current immigration law, the petitioner spouse (i.e. the U.S. citizen or lawful permanent resident spouse who files the petition to classify his spouse as a person eligible to immigrate to the U.S.) has full control over whether the immigrant spouse gets permanent residence status. The immigrant wife is dependent on the petitioner husband to initiate her application for permanent residence. If the husband has not yet filed the petition and refuses to file, the wife cannot obtain lawful permanent residence through the marriage even though she entered the marriage in good faith and even though she may have U.S. citizen children.

A battered woman faced with the above situation is even more vulnerable. She is left in an undocumented or "illegal" status and has no right to work or receive public benefits. If apprehended by the INS, she could be arrested and subject to deportation. The fear of deportation, along with language and cultural barriers, keeps her from calling the police, getting a protective order, or seeking shelter, medical attention or other services. These barriers serve to trap her in the violent relationship.

Even if the petitioner husband files the initial petition, he can withdraw it at any time prior to its approval by INS. Just as the beneficiary wife cannot require the petitioner husband to file the petition, she cannot require him to permit the process to continue once it is begun.

Effect of the Immigration Marriage Fraud Amendments of 1986

The Immigration Marriage Fraud Amendments of 1986 have exacerbated the problems for many immigrant battered women by creating a second step in the petition process which again requires the petitioner's cooperation. Even if the petitioner husband files the initial petition for the beneficiary wife, if he so chooses, he can refuse to cooperate in filing the joint petition to remove the conditional status and thus cause her to be rendered deportable when the conditional status automatically terminates.

The waiver provision of the amendment would seem to remedy this problem. As the above examples illustrate, however, an immigrant woman who is a victim of domestic violence is often unable to avail herself of this remedy for a number of reasons. First, it is unclear what standard is used to determine eligibility for a waiver. The statute does not make it clear whether spouse abuse constitutes "good cause" to terminate a marriage or whether it establishes "extreme hardship". A battered immigrant woman who is frightened both of her spouse and of government agencies needs clarity.

In addition, under the statute as it currently reads, it is open to interpretation whether the law requires that the beneficiary actually initiate the termination of the marriage by filing for dissolution or divorce. In the event that requirement is intended, the law would render the waiver unavailable to many women who need and deserve it. For an immigrant woman without access to the legal system because of language, cultural and economic barriers, assistance to file for dissolution of marriage may not be available. She may also have very real fears about instituting legal actions (e.g. dissolution of marriage) that may require continuing contact

with the batterer. Because of the dynamics of domestic violence, the woman, who may still love her husband, might be reluctant to seek a divorce or other assistance. Finally, if the statute is interpreted to require that the immigrating spouse initiate dissolution proceedings, an abusive husband would be able to thwart intentionally the battered woman's ability to use the waiver intended for her use. The husband, who, as a U.S. citizen or lawful permanent resident, has for the most part a better understanding of the legal system and greater access to legal help than his immigrant wife, could deliberately prevent her from qualifying for the "good cause" waiver by initiating the dissolution proceedings himself.

Adding to the difficulty in meeting all the above requirements and in seeking legal assistance, are the strict time limitations imposed by IMFA. If the beneficiary wife does not apply for a waiver within the 90 day window period, her conditional status automatically terminates and she could be subject to immediate deportation. She may not even be aware that there are additional requirements to meet before she can obtain her permanent residency and may not find out until the deadline has passed. Although INS sends notices to the parties, these notices are in English, and often the batterer controls the mail and will not inform his wife of its contents. She may also be absent from her permanent address having fled the home to a shelter or other safe place.

RECOMMENDATIONS

We make the following recommendations:

1. We urge Congress to enact H.R. 2580;
2. We urge Congress to consider legislation to change

immigration law to allow victims of domestic violence, who entered into good faith marriages with U.S. citizens or lawful permanent residents, to file petitions for permanent residency without the cooperation of the spouse and to prohibit a battering spouse to withdraw a petition once it is filed;

3. We urge Congress to consider an amendment to the current Immigration Marriage Fraud Amendments of 1986 to require the Attorney General to waive for victims of domestic violence the deadline for filing the application for waiver of the joint petition requirement.

CONCLUSION

We thank Congresswoman Louise Slaughter for introducing HR 2580 and bringing this issue before Congress and the public. We would like once again to thank the Subcommittee for the opportunity to provide this testimony. We would be pleased to respond to any questions the Subcommittee might wish to address to us on this important piece of legislation.