

JUDGES GUIDE TO

# Domestic Violence Cases

## IMMIGRATION AND DOMESTIC VIOLENCE

2004

[Although this guide has not been revised since 2004, an error on page 19 was corrected. An updated guide is anticipated in 2011.]



ADMINISTRATIVE OFFICE  
OF THE COURTS

The preparation of this publication was financially assisted through Grant Award Number CW03021535 from the Governor's Office of Homeland Security/Emergency Services (OHS/OES). The opinions, findings, and conclusions in this publication are those of the author and do not necessarily represent those of OHS/OES. OHS/OES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and authorize others to do so.

This project was supported by Grant No. 2003-WF-BX-4206, awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position of the U.S. Department of Justice.

## ABOUT THIS PROJECT

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### ACKNOWLEDGMENTS

We would like to give special thanks to Asian Pacific Islander Legal Outreach for their help in providing information and support for this guide to domestic violence cases.

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Published September 2004; covers case law through 32 C4th and 118 CA4th, and all legislation to 7/1/2004.

This report is also available on the California Courts Web site: <http://serranus.courtinfo.ca.gov>. For additional copies or more information about this report, please call the Center for Families, Children & the Courts at 415-865-7739 or write to:

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# **FOREWORD**

## **How to use this bench guide**

This bench guide is a comprehensive summary of many types of immigration relief and their intersection with systems serving domestic violence victims. Reading the whole guide will give you a comprehensive background. If you only have time to read parts of the guide, please read the first three chapters. These chapters will give you the background necessary to understand what challenges domestic violence victims face as well as a brief background on immigration law.

As situations occur, you will want to ascertain what rights and remedies a domestic violence victim may face or what will happen to a victim if the abuser faces criminal conviction. You will need to determine what possible forms of relief are available to the domestic violence victim. The following flow charts will assist you in this process. The charts specify which chapter may be relevant to you in a particular situation. Finally, Appendix A contains a very useful referral guide. It is very difficult to obtain any of these types of relief without a legal advocate, and court referrals will always improve access to legal protections for immigrant domestic violence victims.

A reference guide to the many acronyms used in this bench guide is contained in Appendix D.



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## Part I. Introduction

# Chapter 1 THE INTERSECTION OF IMMIGRATION AND DOMESTIC VIOLENCE

- I. [§1.1] The Purpose and Scope of This Bench Guide
- II. [§1.2] Barriers Facing Immigrant Domestic Violence Victims
- III. [§1.3] Why Domestic Violence Victims Do Not Want to Return to Their Home Country
- IV. [§1.4] Family and Juvenile Dependency Court Rulings
- V. [§1.5] Criminal Court Rulings

## I. [§1.1] THE PURPOSE AND SCOPE OF THIS BENCH GUIDE

Domestic violence victims navigate many systems in their search for safety. Their experiences in violent households lead them to seek remedies in family, juvenile dependency, and criminal courts. They rely on domestic violence advocates and attorneys to better understand their rights and roles in these systems. Court systems also provide valuable resources to domestic violence victims and help them to understand their rights through self-help booklets, self-help centers, and referrals.

In California, at least one out of four people is an immigrant (2000 Census <<http://factfinder.census.gov>>). As domestic violence impacts people of all races equally, immigrants are just as vulnerable (Bureau of Justice Statistics, *Violence Against Women: Estimates From the Redesigned Survey* (Aug. 1995)). In addition to the barriers faced by domestic violence victims in general, immigrant victims encounter numerous unique obstacles. Accessing court systems may affect their immigration status. Immigration systems may prevent them from having lawful status and lawfully working in the United States. Those without immigration status or work authorization may lack the economic self-sufficiency to live independently from their batterer.

Lack of immigration status may dictate a battered immigrant's ability to leave an abusive situation. Domestic violence victims sometimes leave an abusive relationship in spite of these barriers or without realizing that they are jeopardizing their status. For these individuals, immigration status will play a vital role in defining their rights and remedies in other systems.

This bench guide will inform judicial officers about the rights and remedies of domestic violence victims who are without lawful permanent residence or U.S. citizenship. It will dispel myths about immigration law and the manner in which it enables victims to seek relief. Identifying the requirements and process for a victim to request immigration relief will dispel these myths.

By understanding these rights, courts will be better equipped to make rulings that incorporate and acknowledge immigration status and relief and will also allow them to take steps to educate immigrant domestic violence victims who may not know about alternatives for immigration relief. Finally, court systems will have a better understanding of the additional barriers that immigrant domestic violence victims face in their abusive relationships.

TIP: Battered immigrants may not have access to immigration practitioners and may not realize that relief is available to them. Create a brochure identifying different forms of immigration relief and list local practitioners for referral. Provide these forms in several languages.

## II. [§1.2] BARRIERS FACING IMMIGRANT DOMESTIC VIOLENCE VICTIMS

Increasing globalization significantly affects immigration patterns. In many other countries, people have less economic opportunity than they would have in the United States (Erez, E., “Immigration, culture conflict and domestic violence/woman battering” (2000) 2(1) *Crime Prevention and Community Safety: An International Journal*). This makes a person economically vulnerable to the allure of the United States, even if he or she has no other family or friends in the United States. That economic vulnerability leads many immigrants to desire the American life. Unfortunately, for those who find themselves in abusive relationships, their vulnerability is further compounded by other factors.

Immigrant domestic violence victims face barriers affecting their access to the courts. Language barriers isolate them from the outside world (Erez, E., “Immigration, culture conflict” (2000)). Many immigrants do not speak English and thus cannot converse with people outside of their community. The language barriers that prevent a victim from understanding his or her rights bolster other domestic violence control mechanisms. For example, immigrants facing imminent danger may not know that the police should respond to them in their native language (Erez, E., “Immigration, culture conflict” (2000)). They may be unaware of specific resources for domestic violence victims because these materials are often disseminated only in English (Erez, E., “Immigration, culture

conflict” (2000)). Recent immigrants may not even realize that such resource remedies exist and are available to domestic violence victims (Erez, E., “Immigration, culture conflict” (2000)).

Abusive partners also control many immigrant domestic violence victims by reinforcing the idea that victims are dependent on the abusers to remain in the country. Abusive acts often include withholding immigration sponsorship (Narayan, U., “‘Male Order’ Brides: Immigrant women, domestic violence and immigration law” (1995) 10(1) *Hypatia* 104–119; Dasgupta, S. D., “Women’s realities: Defining violence against women by immigration, race, and class.” In *Issues in intimate violence*, edited by R.K. Bergen, Thousand Oaks, CA: Sage, 1998).

This bench guide sets out many methods for an immigrant to obtain relief without the assistance of his or her batterer. However, domestic violence victims usually do not access this information until after leaving an abusive relationship. Withholding sponsorship or threatening deportation thus creates additional barriers despite the existence of remedies.

### **III. [§1.3] WHY DOMESTIC VIOLENCE VICTIMS DO NOT WANT TO RETURN TO THEIR HOME COUNTRY**

An immigrant woman faces many fears and challenges in returning to her home country. Studies show that 85 percent of domestic violence victims are women (Bureau of Justice Statistics, *BJS Crime Data Brief: Intimate Partner Violence, 1993–2001* (Feb. 2003)). In reauthorizing the Violence Against Women Act, Congress removed the requirement that a self-petitioner must demonstrate an extreme hardship in his or her home country (Battered Immigrant Women Protection Act of 2000, Pub L 106-386). This relieved self-petitioners of providing proof of self-evident reality.

Other countries lack the systems of protection that the U.S. implements to keep domestic violence victims safe (Burton, Barbara, et al., *Justice, Change, and Human Rights: International Research and Responses to Domestic Violence* (International Center for Research on Women and the Center for Development and Population Activities, 2000) pp. 1, 18). In four countries (India, Mexico, Bulgaria, and Russia), the study found that government institutions did not provide adequate responses to existing protections within the law, and social services and government institutions were not adequately trained and equipped to support the needs of battered women. Consequently, immigrant women place little trust in criminal justice and other institutions to protect their safety. Immigrant women also fear that legal institutions in their home countries will separate them from their children (Erez, E., “Immigration, culture conflict” (2000)). Those with U.S.-citizen children worry that they

will not be able to take their children back to their home country and may consequently be separated from their children.

Other cultures place a negative stigma on divorce, domestic violence, and single motherhood. Many women know that remarriage is very unlikely (Dasgupta, S. D. & Warriar, S., “In the footsteps of ‘Arundhati’: Asian Indian women’s experience of domestic violence in the United States” (1996) 2(3) *Violence Against Women* 238). All of the factors discussed, in addition to the economic opportunities available in the U.S. force many immigrant women to stay in abusive relationships.

#### **IV. [§1.4] FAMILY AND JUVENILE DEPENDENCY COURT RULINGS**

Family and juvenile dependency courts address several different issues impacting domestic violence victims involved with the immigration system. Both courts make custody orders. In making these orders, courts must prioritize the well-being and best interests of the child. Fam C §3020; Welf & I C §360. However, immigration systems do not consider the best interests of a child. Consequently, immigration systems may remove a parent from the country and separate the parent from his or her U.S.-citizen child. The child may have no further contact with a parent despite a family or juvenile dependency order to the contrary. A juvenile dependency court may place a child in foster care or make guardianship orders because the only nonabusive parent has been removed from the country. A family court may award sole custody to an abusive parent if the nonabusive parent has been removed from the U.S. without making an allegation of the custodial parent’s abuse of the child.

**For example:**

Imran married and immediately sponsored Amira, who arrived shortly thereafter in the U.S. on a conditional green card. However, Imran’s violent temper soon emerged, and he pushed and hit Amira several times. On the day of the permanent residency interview, Imran refused to go with Amira, and her green card was denied. Amira became pregnant, thinking things would improve, but they didn’t even after Aliya was born. Amira was put in removal proceedings, and Imran insisted that he would not help her. She could not afford an attorney. She was ordered removed without being made aware of alternative remedies and was forced to return to Egypt without Aliya because she did not have any custody orders allowing her sole custody and the authority to take Aliya with her. As soon as Amira left, Imran obtained a dissolution judgment by default and was given sole custody of Aliya. Amira is likely to be ineligible to reenter the U.S. and will not have the ability to bring a custody action.

Family courts also have jurisdiction over spousal and child support orders. They consider the parties' earning capacity and can order wage earning withholding orders so that employers must directly deduct income from a paycheck for support to the other party. Fam C §§4058(b), 5230. An immigrant may not have the lawful ability to work. Courts should consider the ability to work and immigration work authorization as a factor in determining earning capacity. Otherwise a person ordered to seek employment by family court could violate federal immigration laws barring them from working without proper authorization. This poses a problem because courts should not inquire into a party's immigration status. However family courts should at least be knowledgeable about how imputed income can affect a party without work authorization.

Finally, family courts terminate marriages through dissolution or annulment. To grant annulment, the court must find that the marriage was entered into when one party was physically incapable, when one party was of unsound mind, or when the consent of one party was obtained by fraud or force. Fam C §2210. Immigration laws address the validity of a marriage for petitions based on family sponsorship. However, a petitioner must prove that the petitioner and the beneficiary spouses entered into a *good faith marriage*. This requirement means that a couple must not have entered into marriage for the sole purpose of deriving immigration benefits. 8 USC §1186a(b)(1)(A)(i). Although nullity judgments may impact immigration relief, a marriage lacking good faith significantly varies from a void or voidable marriage (see §4.7 for more extensive discussion).

## V. [§1.5] CRIMINAL COURT RULINGS

Criminal convictions impact those who are not U.S. citizens or lawful permanent residents. There are two different ways in which convictions affect an individual's immigration status. First, criminal convictions affect a person's *admissibility*. Every person who arrives in the U.S. and who applies to adjust his or her status must first be admissible. People with criminal convictions may be ineligible to obtain lawful permanent residence. Second, noncitizens may be removed from the United States if they trigger a *deportability* violation. Criminal conviction is among these violations.

Domestic violence victims who report their abusive partners to the police may jeopardize their partner's immigration status. Although crime victims may want their abuser prosecuted, they must weigh this against any immigration consequences. If an immigration court orders an abusive party removed, a domestic violence victim may lose the other parent who assists him or her in supporting their child. Victims may also worry about safety protections when visiting their home country if the abusive party has been removed there.

Immigrant domestic violence victims may also be seen as perpetrators of a crime. They are afraid of speaking to the police because of their inability to communicate what has transpired. Consequently, batterers and their family members give their version of the facts to the police (Shetty, Sudha and Kaguyutan, Janice, *Immigrant Victims of Domestic Violence: Cultural Challenges and Available Legal Protections* (National Resource Center on Domestic Violence and the Pennsylvania Coalition Against Domestic Violence, Feb. 2002)). This interpretation may alter the facts of a story and lead to the victim being portrayed as the perpetrator of the crime. The immigrant victim may not always have an opportunity to properly state his or her case. Many are thus wrongfully arrested as the dominant aggressors for domestic violence crimes (Bhattacharjee, Annanya, *Putting Community Back in the Domestic Violence Movement* (Mar. 21, 2002) <<http://www.znet.org>>).

Domestic violence victims who are arrested as the perpetrators may also unknowingly enter a guilty plea as part of a plea bargain that may jeopardize their status. Convictions can significantly impact a perpetrator's immigration status. Criminal judges should consider this risk before accepting a plea.

**TIP:** Criminal courts should work with local law enforcement to ensure that crime victims are provided with neutral interpretation. This requires adequate training on immigrant issues and investment in resources so that a police officer has access to an interpreter in any possible language.

**For example:**

Fen lives with her husband and his family. She was chopping vegetables for dinner when her husband Jason came in and slammed her into a wall because she was taking too long to cook. She called the police but they did not have a Cantonese interpreter. Fen's mother-in-law told the police she would interpret and told them that Fen came at Jason with a knife. Fen was arrested, and Jason obtained a civil and criminal restraining order. Jason had his whole family testify, and Fen was convicted.

## **Chapter 2**

### **MYTHS DISPELLED**

- I. [§2.1] Background
- II. [§2.2] Children Born in the United States
- III. [§2.3] Different Types of Status
- IV. [§2.4] Fleeing the United States
- V. [§2.5] Work Authorization
- VI. [§2.6] Permanent Residency
- VII. [§2.7] The Violence Against Women Act (VAWA)
- VIII. [§2.8] Asylum

#### **VI. [§2.1] BACKGROUND**

Most people understand very little about immigration law and procedure. It is a complicated and ever-changing area of law. It also plays a significant role in state, national, and international politics. The nature of politics and the media often perpetuates stereotypes and myths about immigration. It also sways public sentiment. This bench guide will dispel the many existing myths in American society by outlining the facts and relief available to immigrant domestic violence victims. Below are some of the broader misconceptions about immigration.

#### **VII. [§2.2] CHILDREN BORN IN THE UNITED STATES**

*Myth: Children born in the United States to undocumented people are also undocumented.*

All people born within the United States are born U.S. citizens (see §3.3 for more details). The status of a person's parents is irrelevant to his or her status as a citizen. 8 USC §1401(a). Once a person becomes or is born a U.S. citizen, the U.S. government cannot remove his or her citizenship status unless the person engages in a treasonous act, attempts to overthrow the government or bears arms against the U.S. government, or commits fraud while naturalizing. 8 USC §§1451(e), 1481(a)(7). All U.S. citizens, whether their parents have status, are entitled to the same rights under the laws of the United States.

*Myth: Undocumented people have children in the United States so that their children can petition for them.*

Children can only petition for their parents when they reach the age of 21. 8 USC §1151(b)(2)(A)(i). Undocumented immigrants may expect their children to sponsor them at age 21. However, it is unlikely that

undocumented immigrants have children specifically for this purpose, given that they will still have to wait more than 21 years in order to receive lawful status (see §3.6 for more details).

### VIII. [§2.3] DIFFERENT TYPES OF STATUS

*Myth: Lawful immigration status is the same thing as citizenship*

There are many ways to lawfully stay in the United States. Those with lawful status include those holding nonimmigrant visas, pending immigrant petitions, lawful permanent residence, and U.S. citizenship. An undocumented person or someone in another country cannot directly apply for citizenship. Only lawful permanent residents may apply for naturalization (see §3.3 for other naturalization requirements). This guide focuses on methods for people that people may use to obtain lawful status. This may include applying for naturalization once a person meets the requirements. However, naturalization is an ancillary immigration benefit. The focus of this guide is to provide information to courts to make them aware of different situations so that battered immigrants may access relief and so that court decisions do not jeopardize this lawful status.

### IX. [§2.4] FLEEING THE UNITED STATES

*Myth: Undocumented immigrants are most likely to flee the country on a moment's notice, potentially abducting their children.*

Undocumented immigrants who have accrued unlawful presence are subject to a three- and ten-year bar (see §3.15 for more details). If they leave the United States after having accrued at least six months of unlawful presence, they will be barred from reentering the United States for several years. This law impacts all undocumented immigrants. Often immigrants are aware that leaving the country will jeopardize their chances of reentering and obtaining status.

### X. [§2.5] WORK AUTHORIZATION

*Myth: All immigrants need work authorization to work lawfully.*

Not all immigrants need a work authorization to work lawfully. People lawfully entitled to work freely for any employer in the United States must have citizenship, lawful permanent residence (hold a green card), or an *employment authorization document* (work permit) (see §3.12 for more details).

*Myth: A work permit is the same thing as a work visa.*

Many people obtain work visas to come to the United States and work lawfully. They have a visa specific to their employer and position as approved by the U.S. Citizenship and Immigration Services (USCIS). However, a visa is a status that allows a person to remain lawfully in the United States. Therefore, a work visa is a status allowing a person to live

and work lawfully in a specific position for a limited duration. A work permit is a document that allows several classes of immigrants to work lawfully for any employer (see §3.11 for more details).

## **XI. [§2.6] PERMANENT RESIDENCY**

*Myth: Anyone can apply for lawful permanent residence.*

Many immigrants believe that anyone can apply for lawful permanent residence. There are actually very few methods by which a person may obtain lawful permanent residence status. Many immigrants gain residence through family sponsorship. Employers can also sponsor immigrants for lawful permanent residence. Domestic violence victims, refugees, asylees, and select others may also petition for lawful permanent residence.

*Myth: Any family member can sponsor another for permanent residence.*

Not any family member may sponsor another. United States citizens can sponsor their spouse, child, parent, or sibling. Lawful permanent residents may sponsor their spouse or unmarried children. No person can sponsor his or her cousin, uncle, aunt, grandparent, or grandchild (see §3.6 for more details).

*Myth: Anyone who can file an affidavit of support may sponsor someone else.*

Not everyone qualifies to sponsor an *alien*. Only those who qualify as a family petition sponsor are required to file an “affidavit of support.” Family petitioners must file an affidavit of support to show that their family member will not become a public charge of the government (see §3.7 for more details).

## **XII. [§2.7] THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

*Myth: Only women can self-petition under VAWA.*

Although the Violence Against Women Act (VAWA) created self-petitions and cancellation, men can also self-petition as domestic violence victims. The self-petitioning and cancellation requirements are gender neutral. All references to the abusive spouse or parent are in gender-neutral terms (see chap 4 for more details).

*Myth: A person needs to obtain a restraining order in order to successfully self-petition under VAWA.*

A person does *not* need a restraining order in order to successfully self-petition. The self-petition must show that he or she was abused. The U.S. Citizenship and Immigration Services (USCIS) looks at all credible evidence. A person may be unable to apply for a restraining order even though he or she was in an abusive situation. Because VAWA allows self-petitions based on extreme mental cruelty, the abusive party need only be

extremely emotionally abusive, and his or her actions need not rise to the level of fear necessary to obtain a restraining order (see §4.6 for more details).

*Myth: People without any remedies make up stories of abuse in order to get lawful permanent residence.*

VAWA and Immigration Marriage Fraud Amendments (IMFA) were designed to assist people who would have already obtained their lawful status if their abuser had been cooperative. When the spouse does not sponsor his or her spouse or child, it is a likely indication of control by an abusive party. The VAWA and IMFA waiver applicants are undocumented only because their spouse failed to support them through sponsorship. It is also difficult to submit a credible self-petition in which a story of abuse was fabricated. Finally, submitting false statements to USCIS in order to obtain immigration relief is a serious violation. If discovered, it may serve as a bar to that person adjusting his or her status.

### **XIII. [§2.8] ASYLUM**

*Myth: “Political asylum” is limited to those who have faced persecution based on their politics.*

Many refer to asylum as political asylum because they do not realize that asylum covers much broader categories. Political opinion is only one of five protected classes covered for asylum relief. Therefore, many who could be covered under the other protected categories of race, national origin, social group, and religion do not realize that they have this option (see chap 6 for more details).

## **Chapter 3**

# **THE ABC'S OF IMMIGRATION LAW**

- I. [§3.1] The “New I.N.S.”
- II. [§3.2] Types of Immigration Status
- III. [§3.3] United States Citizen
- IV. [§3.4] Lawful Permanent Resident Status
- V. [§3.5] Family Petitions
- VI. [§3.6] Timelines for Family Sponsorship
- VII. [§3.7] Additional Requirements for Family Sponsorship
- VIII. [§3.8] Employment-Based Adjustment
- IX. [§3.9] Alternative Methods to Adjust Status
- X. [§3.10] Bars for Adjusting Status
- XI. [§3.11] Immigrant Visa
- XII. [§3.12] Nonimmigrant Visa
- XIII. [§3.13] Without Status (Undocumented)
- XIV. [§3.14] Unlawful Presence
- XV. [§3.15] Three- and Ten-Year Bar and Unlawful Presence
- XVI. [§3.16] Work Authorization
- XVII. [§3.17] Removal

### **XIV. [§3.1] THE “NEW I.N.S.”**

The Homeland Security Act of 2002 removed the Immigration and Naturalization Service (INS) from the Department of Justice and into the Department of Homeland Security as well as divided it into several departments (Homeland Security Act of 2002, Pub L 107-296).

The main departments are:

- *United States Citizenship and Immigration Services (USCIS)*. This department has jurisdiction over applications for visas, permanent residence, and naturalization. This agency processes applications for people wishing to apply to remain in the United States.
- *Investigations and Customs Enforcement (ICE)*. This branch is in charge of investigating a wide range of issues and removing people from the United States.
- *United States Customs and Border Protection (CBP)*. This branch controls entry into the United States.

## **XV. [§3.2] TYPES OF IMMIGRATION STATUS**

It is important to understand the different types of status available to a person. Each status requires a different application procedure. Each type of status includes different rights and responsibilities. One status may not be confused for another.

## **XVI. [§3.3] UNITED STATES CITIZEN**

There are three ways in which a person can be a U.S. citizen. A person is (1) born in the United States (8 USC §1401(a)) or enumerated territories (Puerto Rico (8 USC §1402), Panama Canal Zone (8 USC §1403), U.S. Virgin Islands (8 USC §1406), Guam (8 USC §1407)), (2) born to a U.S. citizen abroad (8 USC §1401(c)–(e)) and registered at birth, or (3) naturalized.

In order to be eligible for naturalization, one must:

- Maintain continuous residency. A person must live in the U.S for five years, must not leave the country for more than six months immediately before filing, and must reside in the U.S. for at least half of that time. 8 USC §1427(a)–(b).
- Maintain good moral character. 8 USC §1427(a).
- Speak English (8 USC §1423(a)(1)). Waivers are available for people having lawful permanent residency for 15 years and are over 55 years of age, lawful permanent residency for 20 years and are over the age of 50 years (8 USC §1423(b)(2)), *or* a physical or mental impairment that prevents them from learning the English language. 8 USC §1423(b)(1). This request for the waiver should be accompanied by a medical doctor's assessment of this disability.
- Pass a civics test. 8 USC §1423(a)(2).
- Swear allegiance to the U.S. Constitution. 8 USC §1427(a).

## **XVII. [§3.4] LAWFUL PERMANENT RESIDENT STATUS**

*Lawful permanent resident* (LPR) status is the formal term for a green card holder. This person has the right to permanently live and work in the U.S. The process of obtaining a green card is called *adjustment of status*. One can adjust his or her status through several methods that will be detailed in this guide.

## **XVIII. [§3.5] FAMILY PETITIONS**

One may sponsor family members to obtain lawful permanent resident status. United States citizens may sponsor their spouse, minor and adult child, parent (if the citizen is over 21 years old), or sibling (if the

citizen is over 21 years old). 8 USC §§1151(b)(2)(A)(i), 1153(a)(1), (3)–(4). Lawful permanent residents may sponsor their spouse or unmarried minor or adult child. 8 USC §1153(a)(2).

### **XIX. [§3.6] TIMELINES FOR FAMILY SPONSORSHIP**

How long a beneficiary must wait in order to qualify for adjustment of status depends on his or her petitioner's status (U.S. citizen or lawful permanent resident), the family relationship they share, and his or her home country. The only people who are immediately eligible to adjust their status are immediate relatives (spouse, parent, or child) of U.S. citizens. 8 USC §1151(b)(2)(A)(i). The State Department issues a visa bulletin every month that details the processing times under each category. The visa bulletin is available online at [http://travel.state.gov/visa\\_bulletin.html](http://travel.state.gov/visa_bulletin.html). This bulletin determines how long a beneficiary party must wait to become eligible to adjust his or her status.

The family relationships are delineated by family preference categories (8 USC §1153(a)):

- Immediate relative: spouse, child under age 21, or parent of a U.S. citizen (8 USC §1151(b)(2)(A)(i)).
- First Preference: Unmarried sons and daughters of U.S. citizens age 21 years or older.
- Second Preference: Spouses of lawful permanent residents, their unmarried children under 21, and the unmarried sons and daughters of lawful permanent residents.
- Third Preference: Married sons and daughters who are 21 years or older of U.S. citizens.
- Fourth Preference: Brothers and sisters of U.S. citizens who are at least 21 years of age.

In addition to the preference category, the wait varies depending on the country of origin. For example, the following numbers are taken from the State Department's visa bulletin for April 2004 (U.S. Department of State, "Immigrant Numbers for April 2004" (Apr. 2004) 68(VIII) *Visa Bulletin*):

	All other	India	Mexico	Philippines
1	22Oct 00	22Oct00	16Oct94	15July90
2A	15July99	15July99	01Jan97	15July99
2B	08May95	08May95	22Dec91	08May95
3	08Oct97	08Oct97	01Mar95	01Mar90
4	22May92	22Feb91	22May92	15Mar82

**For example:**

In February 1995, Maria naturalized and became a U.S. citizen. She then petitioned for her son Jesus. At the time, Jesus was 24 years old and a citizen and resident of Mexico. Jesus had just married so he was given a 3rd preference category in March 1995. Jesus is eligible to adjust his status in April 2004.

The monthly bulletins are a good reference but it is important to note that the processing times are not always predictable. There may be no movement for some time followed by rapid movement.

**XX. [§3.7] ADDITIONAL REQUIREMENTS FOR FAMILY SPONSORSHIP**

The family sponsor must provide an *affidavit of support* in which he or she demonstrates to the federal government that he or she can support the beneficiary family member. 8 USC §1182(a)(4)(C)(ii). The sponsor or co-sponsor must earn 125 percent of the federal poverty guidelines in order to meet this guideline. 8 USC §1183a(a)(1)(A).

If a U.S. citizen sponsors his or her spouse and the couple has been married for less than two years, the beneficiary is issued a conditional green card. Conditional green cards expire after two years. Before the expiration of conditional residence, the conditional resident must remove the conditions on status (see §5.3) or lose status. The Immigration Marriage Fraud Amendments (IMFA) require this additional step for the couples to demonstrate that they married in good faith and did not commit marriage fraud (Immigration Marriage Fraud Amendments (IMFA), Pub L 99-639) (see chap 5 for more details).

**XXI. [§3.8] EMPLOYMENT-BASED ADJUSTMENT**

Employers may also sponsor employees for lawful permanent residence. The Department of Labor must certify that the beneficiary is qualified for the job and that the position qualifies as a *shortage occupation* (qualified applicants for this position are in short supply). 8 CFR §204.5. The application requires a commitment from the employer. There is a very high standard for the labor certifications and a lengthy processing time. Therefore, most employers would not risk sponsoring an employee who has not already been employed by them through a nonimmigrant employment visa.

**XXII. [§3.9] ALTERNATIVE METHODS TO ADJUST STATUS**

There are several other ways in which a person can adjust his or her status. Some forms of relief will be described in detail in later chapters. Among them are the Violence Against Women Act (VAWA) self-petition and cancellation, IMFA waiver, Special Immigrant Juvenile Status (SIJS),

asylum, U visas, and T visas. This guide will not cover other methods of relief such as adjusting a person's status to that of a refugee, business investor, diversity lottery winner, public interest parolee, or obtaining relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA). However, these forms of relief are not likely appropriate for domestic violence victims.

### **XXIII. [§3.10] BARS FOR ADJUSTING STATUS**

Everyone who has a basis to adjust status must also be admissible. Every noncitizen must also be admissible upon entry to the U.S. There are several grounds for inadmissibility:

- Health-related grounds—Communicable diseases of public health significance or physical or mental health disorders that are a threat to public safety. 8 USC §1182(a)(1)(A).
- Criminal convictions—Conviction for crimes of moral turpitude or crimes related to controlled substance violations, convictions of two crimes, trafficking of controlled substances, prostitution, and commercial vices. 8 USC §1182(a)(2).
- National security related grounds. 8 USC §1182(a)(3).
- Public charge—People who are likely to require government assistance. 8 USC §1182(a)(4).
- Those present in the U.S. without admission. 8 USC §1182(a)(6)(A) (see §3.14 for more details).
- False claim to citizenship. 8 USC §1182(a)(6)(C)(ii).
- Those who have been unlawfully present. 8 USC §1182(a)(9)(B) (see §3.14 for more details).
- Giving false information to procure an immigration benefit. 8 USC §1182(a)(6)(C)(i).

There are also waivers for many of these inadmissibility grounds. Inadmissibility grounds differ slightly from deportability grounds. A person who has violated a deportability ground will be removed from the U.S. after he or she has already been admitted.

### **XXIV. [§3.11] IMMIGRANT VISA**

Immigrant visas serve as a step in the process for a person abroad who will adjust his or her status once his or her visa is approved. 8 USC §1101(a)(16). For example, a family beneficiary outside the United States who is waiting for his or her priority date to become current, according to the visa bulletin, is actually waiting for an immigrant visa.

## XXV. [§3.12] NONIMMIGRANT VISA

Nonimmigrant visa holders are temporarily in the United States and intend to stay for a specific purpose and then return to their home country. 8 USC §1184(a). Nonimmigrant visas have a limited duration. Some nonimmigrant visa holders have the ability to work lawfully and others do not, depending on what type of visa they hold. Each visa has a different duration.

This chart lists some characteristics for some of the most common nonimmigrant visas:

	Type of visa	Duration	Work authorized
B1/B2	Temporary visitor for business or pleasure (8 USC §1101(a)(15)(B)).	Typically 3 months	No
F	Student (8 USC §1101(a)(15)(F)).	Varies	On campus during full-time enrollment <i>and</i> for 1 year after studies completed (8 CFR §274a.12(b)(6)).
H-1B	Specialty occupation (8 USC §1101(a)(15)(H)).	3 years (renewable once)	For primary visa holder, not for derivatives (8 CFR §274a.12(b)(9)).
K-1	Fiancé (8 USC §1101(a)(15)(K)(i)).		Yes (8 CFR §274a.12(a)(6)).

*Derivatives*, the spouse or child of the primary visa holder, also receive derivative nonimmigrant visas in some cases. They are not authorized for the same purpose as a primary visa holder. For example, USCIS does not allow the spouse of an H-1B holder to work lawfully. The derivative status also terminates when the family relationship severs. Thus a spouse of a primary visa holder will lose his or her derivative status when the marriage terminates. 8 USC §1101(a)(15).

## XXVI. [§3.13] WITHOUT STATUS (UNDOCUMENTED)

Of approximately 9.3 million undocumented immigrants in the U.S., 27 percent of that undocumented population resides in California (Passel, Jeffrey S., Capps, Randy, and Fix, Michael, *Undocumented Immigrants: Facts and Figures* (Urban Institute Immigration Studies Project, Jan. 12,

2004)). More undocumented immigrants reside in California than any other state (Passel, Capps, and Fix, *Undocumented Immigrants* (Jan. 12, 2004)). Women comprise 41 percent of the undocumented population nationwide (Passel, Capps, and Fix, *Undocumented Immigrants* (Jan. 12, 2004)). Court systems and services in California must make working with undocumented communities a priority.

People enter or remain in the United States without status for many reasons. They stay for economic opportunity, family reunification, or other reasons. With the numbers of undocumented people in the United States, ICE may not have the ability to keep track of and remove all the undocumented people in the U.S. in a timely manner. Therefore, many undocumented people manage to stay and work unlawfully.

## XXVII. [§3.14] UNLAWFUL PRESENCE

The following are different ways to accrue *unlawful presence*:

- Entry Without Inspection (EWI). Every person who enters the United States without lawful status must be inspected and admitted. This may happen at an airport, port, or border crossing. After being inspected, a person may lawfully enter (as evidenced by an I-94 document attached to the passport), be denied entry and return home, or be granted deferred entry and inspection that will occur at a later date. If one does enter without such inspection, they will accrue unlawful presence from the time they enter without inspection. 8 USC §1182(a)(9)(B)(ii).
- Overstay the duration of authorized stay. Nonimmigrant visas have a limited duration. If a person stays in the U.S. longer than authorized by his or her I-94, he or she has overstayed and is acquiring unlawful presence. 8 USC §1182(a)(9)(B)(ii).
- Determination by immigration authorities that a person has violated the terms of his or her visa. For example, if a student visa holder is not enrolled at least part time in his or her educational program, technically the visa is no longer valid. However, in order to accrue unlawful presence, USCIS or an immigration judge must make that determination (Office of Programs, *Section 212(a)(9)(B) Relating to Unlawful Presence* (U.S. Department of the Treasury, Immigration and Naturalization Service, Memorandum, September 19, 1997)).

## **XXVIII. [§3.15] THREE- AND TEN-YEAR BAR AND UNLAWFUL PRESENCE**

When people accrue unlawful presence and then leave the U.S., they trigger what is known as the *3/10-Year Bar*. If a person has acquired 180 days of unlawful presence before they leave the U.S., they will be barred from reentering the U.S. for three years. If a person acquires one year of unlawful presence, they will they be barred from reentering the U.S. for ten years. 8 USC §1182(a)(9)(B)(i)(I).

## **XXIX. [§3.16] WORK AUTHORIZATION**

Those who are granted work authorization receive an employment authorization document (EAD card). 8 CFR §274a.13(b). Lawful permanent residents and U.S. citizens do not need an employment authorization document to work lawfully. 8 CFR §274a.12(a)(1). Those without lawful permanent residence or U.S. citizenship must receive permission to accept employment. Only those classes of immigrants who qualify may apply for and receive proof of employment authorization in order to work lawfully. 8 CFR §274a.13(a).

Work authorization is not equivalent to a work visa. Work authorization allows an individual to accept any employment. Work visas are nonimmigrant visas as described in §3.12. The majority of those holding work visas do not require an additional EAD because they are limited to working for a specific employer and having an EAD would give the perception that they can work for any employer. 8 CFR §274a.12(b). All U.S. employers must verify that an individual has the proper documents before employing him or her. 8 CFR §274a.2.

## **XXX. [§3.17] REMOVAL**

*Removal* is the formal immigration term for what people know as *deportation*. The individual is ordered to appear in removal proceedings, which take place in immigration court. 8 USC §1229a(a)(1). Immigration courts are part of the U.S. Department of Justice, Executive Office of Immigration Review, and will consider alternative remedies for a person to remain in the United States.

An individual is placed in removal proceedings to decide on issues of inadmissibility or deportability. 8 USC §1229a(a)(1). People are placed in removal proceedings when they are denied certain affirmative applications or because they trigger certain inadmissibility or deportability criteria. For example, those who are denied the asylum applications are issued a “Notice to Appear” in immigration court.

Many undocumented people are concerned about participating in any legal proceedings that might identify them to ICE or USCIS. ICE may find

an undocumented person through several methods. Those convicted of crimes or present during a criminal bust are easily identifiable to ICE. Individuals may also report undocumented people to ICE or USCIS, although ICE is not likely able to investigate every such report. ICE does not investigate all public court documents. Courts also have no obligation to report these individuals. Thus undocumented people should not worry that seeking relief in family court or participating in juvenile dependency proceedings will automatically identify them to USCIS or ICE.

Convictions for any of the following crimes are grounds for a person's removal (8 USC §1227(a)(2)):

- Crimes of moral turpitude within five years after the date of admission.
- Conviction of more than one offense involving moral turpitude.
- Aggravated felony (8 USC §1101(a)(43)). Aggravated felonies include murder, rape or sexual abuse of a minor; illicit trafficking of a controlled substance; illicit trafficking of firearms; money laundering; explosive materials offense; firearm offenses; crimes of violence, theft, or racketeering with a sentence of at least one year; crimes demanding ransom; crimes relating to child pornography; controlling a business of prostitution; treason or other violations relating to national defense; fraud or deceit; alien smuggling; counterfeiting; perjury; and an attempt or conspiracy to commit an offense in this paragraph.
- Prostitution and commercialized vice.
- High-speed flight from an immigration checkpoint.
- Crimes violating controlled substance laws.
- Firearm offenses.
- Conspiracy.
- Domestic violence offenses.

Domestic violence offenses include the following (8 USC §1227(a)(2)(E)):

- Crime of violence committed by a current or former spouse, parent of a common child, person they live with, or any relationship included in state domestic violence laws.
- Stalking.
- Violation of a criminal or civil restraining order (including temporary orders).

## Part II. Domestic Violence—Specific Remedies

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**XXII. [§4.27] Differences Between the Standards for Proving Abuse With USCIS and Family Court****XXIII. [§4.28] Restraining Order Affecting Self-Petitioner's Good Moral Character****XXIV. [§4.29] Restraining Order Affecting LPR/U.S. Citizen Status of Battering Spouse****XXV. [§4.30] Impact of Terminating Marriage—Filing Deadlines****XXVI. [§4.31] Dissolution Versus Nullity****XXXI. [§4.1] PURPOSE AND SCOPE OF VAWA**

Congress passed the Violence Against Women Act (VAWA) in 1994. This law includes provisions for a very important new form of immigration relief. The law allows spouses and children of abusive U.S. citizens or lawful permanent residents to self-petition for their own lawful status. An individual who would otherwise be eligible for status based on the petition of his or her spouse or parent may self-petition. Congress wanted to create a provision so that immigration beneficiaries did not have to remain in an abusive relationship in order to receive their lawful status. Furthermore, they didn't want abusive partners to use immigration status as an additional control mechanism (Violence Against Women Act of 1993, HR 103-395, 103rd Cong., 1st Sess (1993)).

**XXXII. [§4.2] SELF-PETITIONING SPOUSE ELEMENTS**

In order for a person to successfully self-petition under VAWA, he or she must meet the burden of proving the following elements:

- Spouse of a U.S. citizen or lawful permanent resident
- Eligible for immigrant classification
- Residence with abuser
- Battered or subject to extreme mental cruelty
- Good faith marriage
- Good moral character

**XXXIII. [§4.3] SPOUSE OF A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT**

The self-petitioner must prove one of the following to meet the marriage requirement:

- Married to a U.S. citizen or lawful permanent resident when the I-360 petition is filed. 8 USC §1154(a)(1)(A)(iii)(II)(aa)(AA), (B)(ii)(II)(aa)(AA);
- Believed to be married to a U.S. citizen or lawful permanent resident but the marriage was invalid because of the bigamy of the perceived spouse (8 USC §1154(a)(1)(A)(iii)(II)(aa)(BB), (B)(ii)(II)(aa)(BB)); *or*
- Termination of marriage to U.S. citizen or lawful permanent resident occurred less than two years before filing (8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC), (B)(ii)(II)(aa)(CC)); *and*
  - U.S. citizen spouse died. 8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa).
  - Spouse lost status or citizenship due to domestic violence (8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb), (B)(ii)(II)(aa)(CC)(aaa)) *or*
  - Termination of marriage connected with battering or extreme mental cruelty (8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc), (B)(ii)(II)(aa)(CC)(bbb)).

If a marriage terminated due to battering or extreme mental cruelty, it is not necessary that a family court make this finding. These allegations will be submitted as part of the VAWA application by declaration and accompanying evidence. U.S. Citizenship and Immigration Services (USCIS) will assess whether abuse caused the termination of the marriage.

A marriage is valid if it was valid where it took place. Marriages in other countries are considered valid in California if they are valid in the other country. Similarly, common law marriages are valid for immigration purposes if the couple lived as common law husband and wife in a state that recognizes common law marriage.

#### **XXXIV. [§4.4] ELIGIBLE FOR IMMIGRANT CLASSIFICATION**

The self-petitioner must either be an immediate relative (the spouse or child under age 21) of a U.S. citizen or lawful permanent resident. 8 USC §§1151(b)(2)(A)(i), 1153(a)(2)(A). Congress created the VAWA self-petition to allow those who would otherwise be eligible to self-petition for their own status (Violence Against Women Act of 1993, HR 103-395, 103rd Cong., 1st Sess (1993)). However there are many others living in the U.S. who may be unable to return to their home country and rebuild their lives because of the abuse. VAWA does not apply to them if they were not married to a lawful permanent resident or a U.S. citizen, because the batterer would never have been eligible to sponsor them.

**TIP:** A self-petitioner may have difficulty finding documentation of the abusive spouse's immigration status. The self-petitioner may also need proof of the abuser's prior dissolutions and may not know in which county the judgment was entered. Judges can require an abusive party to turn over proof of status and prior dissolutions to the self-petitioner if requested.

### **XXXV. [§4.5] RESIDENCE WITH ABUSER**

A VAWA self-petitioner must also have resided with the abuser when he or she was a spouse or intended spouse. 8 USC §1154(a)(1)(A)(iii)(II)(dd). The statute does not establish a minimum amount of time during which the couple had to have lived together.

**For example:**

Li Mei met George while he was visiting Taiwan and they started dating. George returned to the U.S. and petitioned for Li Mei. She arrived in the United States on a fiancé visa. George and Li Mei immediately went to City Hall and got married. As soon as they returned home, George turned into another person. He locked her in the apartment and demanded that Li Mei perform sexual acts. When she refused, he beat her repeatedly. Two days later, while George was asleep, Li Mei ran out of the house. Li Mei is eligible for VAWA.

### **XXXVI. [§4.6] BATTERED OR SUBJECT TO EXTREME MENTAL CRUELTY (8 USC §1154(a)(1)(A)(iii)(I)(bb))**

The self-petitioner must prove that he or she was subject to spousal battery or extreme mental cruelty while married. USCIS considers "battered" to include "any act or threatened act of violence" (8 CFR §204.2(c)(1)(vi)) as well as acts that may not seem violent but are when considered as "part of an overall pattern of violence." 8 CFR §204.2(c)(1)(vi). This evidence is often difficult to obtain. Self-petitions should include declarations with extensive descriptions of the abuse. Self-petitioners are also encouraged to submit police reports, hospital records, letters from mental health experts and domestic violence advocates, and letters from witnesses. 8 CFR §204.2(c)(2)(iv). Physical abuse includes sexual abuse, which many self-petitioners fail to consider. Extreme mental cruelty may include isolation, threats to family members, economic abuse, prevention from working or causing them to be fired, put-downs, and extreme jealousy.

Consider the following in assessing whether a self-petitioner meets the requirements for spousal battery or extreme mental cruelty:

- Self-petitioners need not have experienced physical violence.
- One act of violence is enough to constitute battery.
- There is no statute of limitations on the abusive behavior; the abuse may have occurred many years ago.

**For example:**

Masako met her husband David when she was in the U.S. studying. After they married, her life became miserable. David forced Masako to sign a contract stating that she would not leave the house except with his permission. She was so scared. He would not let her receive calls from family members and confiscated her mail. She worked for a short time at a restaurant but David saw a male customer flirt with her and then got her fired. David saw her wearing a low-cut blouse once and took all of her clothes and burned them. Masako is eligible for VAWA.

**For example:**

Irina came to the United States after marrying George, whom she met when he was visiting Russia. Irina soon realized that George had a very violent temper. One day he slapped her so hard she fell to the floor. After that incident, she felt that she couldn't save their marriage. She could not afford to separate from him because she had no work authorization. Although Irina and George lived in the same house, they slowly severed any emotional ties they might have had. After five years, they were still married but barely interacted. Irina is eligible for VAWA.

TIP: Make findings of abuse where merited. Often, a person submits evidence of abuse as a means to obtain some other relief or to prosecute a perpetrator. Domestic violence victims will not know to ask for findings, even though these findings of abuse will provide evidence for their immigration application.

### XXXVII. [§4.7] GOOD FAITH MARRIAGE

The self-petitioner must have entered into the marriage in good faith. 8 USC §1154(a)(1)(A)(iii)(I)(aa). USCIS interprets this to mean that the self-petitioner must not have married for the “primary purpose of circumventing immigration laws.” 8 CFR §204.2(c)(1)(ix). As long as a couple did not marry primarily so that the beneficiary could get his or her status, the marriage should constitute good faith. Therefore, USCIS does

not require evidence of the traditional American notions of courtship in marriage to demonstrate that the couple married in good faith.

USCIS also does not require the couple to have married for a minimum period of time to establish good faith marriage. They also consider a variety of evidence to establish their alternative intent in marrying. This can include proof of joint accounts, joint living situations, proof of a relationship, and having a child born to the marriage. 8 CFR §204.2(c)(2)(vii).

The following situations constitute good faith:

- An arranged marriage in which the bride and groom do not meet before their wedding date.
- Two people who quickly marry in a city hall ceremony after discovering an unplanned pregnancy when they had not otherwise planned to marry.
- A long dating relationship in which the immigrant spouse wants to gain lawful permanent residence in addition to wanting to marry his or her spouse for personal happiness.

### **XXXVIII. [§4.8] GOOD MORAL CHARACTER (8 USC §1154(a)(1)(A)(iii)(II)(bb))**

All self-petitioners must prove that they have good moral character. Procedurally, USCIS requires self-petitioners to supply a police clearance letter from every locality or state in which they have lived for at least six months. 8 CFR §204.2(c)(2)(v). When the approved self-petitioners apply for adjustment of status, USCIS will do a thorough criminal background check.

Sometimes an abusive party will force his or her partner to commit a crime, as part of the overall abuse. VAWA allows an exception for arrests or convictions if there is a connection between the commission of the crime and the abuse. 8 USC §1154(a)(1)(C).

#### **For example:**

Siriporn dated and then married Krit. They later had a child.

Neither of them had much money. Krit knew someone who was a sex worker. This person asked Krit if Siriporn would be interested in doing the same kind of work. When Krit asked Siriporn, she refused. He then beat her up and told her never to disobey him again. He also made her feel guilty for not finding work to support their child, although he refused to sponsor her and get her a work permit. Siriporn was eventually arrested and convicted for prostitution. Siriporn qualifies for VAWA.

**XXXIX. [§4.9] INELIGIBLE FOR VAWA SELF-PETITIONS**

There are several situations in which individuals are ineligible for VAWA. Among them are:

- Dating/long-term relationships in which the parties have not yet married
- Same-sex relationships
- Abusers who are on a nonimmigrant visa and expect to adjust to lawful permanent resident status but have not yet received this status
- Abusers who are out of status but plan on remaining in the U.S. without status

**XL. [§4.10] SELF-PETITIONING PROCEDURE**

The VAWA self-petition is filed using form I-360. The Vermont Service Center of the USCIS adjudicates all VAWA self-petitions. When an application is filed on paper, an applicant does not provide witnesses or oral testimony to support the application. Self-petitioners submit all evidence as exhibits. The primary exhibit is the self-petitioner's declaration. For this reason, it is important that self-petitioners seek the assistance of a legal advocate.

USCIS must consider any credible evidence. 8 CFR §204.2(c)(2)(i). The lower burden on proof facilitates the process for domestic violence victims who may not have access to all the evidence necessary to support a claim. Vermont Service Center officers are also trained on the aspects of domestic violence.

An approved VAWA does not technically grant lawful status. It instead grants *deferred action*. Deferred action is an interim status for people typically expected to be eligible for a more permanent status in the near future. For this reason, Investigations and Customs Enforcement (ICE) has placed a low priority on removing people who are in deferred action (Williams, Johnny N., *Memorandum on Unlawful Presence* (U.S. Department of Justice, Immigration and Naturalization Service, June 12, 2002)).

Deferred action is not a permanent status. Most VAWA self-petitioners file their self-petition in order to eventually adjust their status to lawful permanent resident. However, as a benefit of an approved self-petition, all successful self-petitioners are immediately eligible to apply for work authorization. They also do not continue to accrue unlawful presence for the purposes of the 3/10-year bar (Williams, J., *Memo on Unlawful Presence* (June 12, 2002)).

## **XLI. [§4.11] CHILDREN**

VAWA self-petitions also allow the applicant to include his or her child as a derivative, if the child is under the age of 21. 8 USC §1154(a)(1)(A)(iii), (B)(ii)(I). The child need not meet the self-petition elements. The self-petitioner must only list his or her children as derivatives on the VAWA application. If approved, the child would then receive all the same benefits of a VAWA self-petitioner. If a child turns 21 before the adjustment of status is granted, then they receive a priority date as if they were a self-petitioner. 8 USC §1154(a)(1)(D)(i)(III). For abusive U.S. citizen-based self-petitions, the derivative would then fall into a priority 1 category, as the son or daughter of a U.S. citizen. For abusive lawful permanent resident-based self-petitions, the adult child would fall into category 2B, as the son or daughter of a lawful permanent resident. Similarly, if the son or daughter married, then his or her preference category would automatically change again. See §3.6 for the priority date timeline.

### **For example:**

Arti came to the U.S. and met her husband Budi. Arti had previously been married and had left her teenage sons in Indonesia with her parents. She hoped to earn enough money in the U.S. to pay for her children's college education in Indonesia. When Arti left Budi, she applied and had her VAWA approved. Her son Dian was 20 at the time. Dian turned 21 before his mother's adjustment was granted. His younger brother was immediately eligible to join his mother. Dian turned into a 1st preference category holder and waited several years to become eligible to adjust his status and come to the U.S.

## **XLII. [§4.12] SELF-PETITIONS FOR CHILDREN**

Children of abusive parents are also eligible to self-petition under VAWA. They must prove the same elements as spouses, except that instead of showing good faith marriage and lawful marriage, a self-petitioner must show that he or she is the child of the abusive lawful permanent resident or U.S. citizen. 8 USC §1154(a)(1)(A)(iv), (B)(iii).

Since a child can also be included on his or her parent's self-petition, a child might likely self-petition if the parent already has status or if the parent is ineligible for VAWA. The following are some situations in which a child would likely file his or her own self-petition:

- Parents already have status
- Parents never married
- Parent's marriage terminated over two years before and termination of marriage not connected with abuse

- Parent does not have good moral character
- Parents never lived together
- Only the child, and not the parent, experienced abuse

To qualify as a *child*, one must be under 21 and meet one of the following qualifications:

- Born to parents who are married to each other. 8 USC §1101(b)(1)(A).
- Considered a stepchild if the stepchild relationship (marriage of parent and stepparent) took place before the child turned 18. 8 USC §1101(b)(1)(B).
- Parentage is legitimated by the laws of where the child was born or where the father resides, if the legitimating occurs before child turns 18 and the parent in the legitimate relationship is the custodial parent at the time. 8 USC §1101(b)(1)(C).
- Born out of wedlock, and if the father is the abusive parent, then the father must establish a proof of relationship. 8 USC §1101(b)(1)(D).
- Under the age of 16 and adopted after living in adoptive parents' custody for at least two years. 8 USC §1101(b)(1)(E).
- An orphan under the age of 16 who is adopted or has a prospective adoptive parent who is a U.S. citizen. 8 USC §1101(b)(1)(F).
- Under the age of 18 who is adopted by a U.S. citizen if he or she is the natural sibling of a child under 16 who was adopted before or at the same time. 8 USC §1101(b)(1)(F).

### **XLIII. [§4.13] ADJUSTMENT OF STATUS**

An approved VAWA self-petitioner can eventually apply for adjustment of status. The timeline depends on the abusive party's immigration status and follows the preference categories system described in §3.6. Although the abusive party does not participate in the adjustment of status, the adjustment proceeds along the same timeline as if the abusive party had continued to sponsor his or her family members. An approved self-petition identifies the abuser as a U.S. citizen or a lawful permanent resident. Thus a self-petitioner's adjustment can only fall into three priority date categories:

- Spouse or child of a U.S. citizen: immediate relative (immediately eligible for adjustment of status)
- Spouse of a lawful permanent resident: preference category 2A
- Child of a lawful permanent resident: preference category 2B

If the abuser subsequently naturalizes and becomes a U.S. citizen, then the VAWA self-petitioner automatically moves into the immediate relative category and is eligible to adjust his or her status without waiting. 8 USC §1154(a)(1)(B)(v)(II). However, should the abuser lose his lawful permanent resident (LPR) or U.S. citizen (USC) status, this will not affect the self-petitioner's eligibility to adjust status as the spouse of an LPR or USC respectively. 8 USC §1154(a)(1)(A)(vi), (B)(v)(I).

**For example:**

Claudia separated from her husband Sebastian in 2002 after Sebastian started hitting her. Sebastian was a lawful permanent resident. Claudia immediately applied for VAWA, which took approximately one year to adjudicate. In 2003, Claudia received her VAWA approval and work authorization. Because Sebastian had not naturalized, Claudia, being from Chile, had a 2A priority category, and her wait was an estimated five years. However, in 2004, Claudia discovered that Sebastian naturalized. Claudia is now immediately eligible to apply for adjustment of status.

#### **XLIV. [§4.14] VAWA ADJUSTMENTS EXCEPTIONS**

Adjustment-of-status applicants must be admissible for them to be granted lawful permanent residence. VAWA includes several exceptions to the inadmissibility grounds not available to other adjustment-of-status applicants. Without these exceptions, many VAWA applicants would not otherwise be eligible for adjustment of status. The nature and challenges of the abuse would otherwise contribute to them being ineligible.

##### **A. [§4.15] WORKING WITHOUT AUTHORIZATION**

VAWA allows self-petitioners to obtain work authorization once their petition is approved. They are not eligible while their cases are pending unless they have a current adjustment-of-status application still pending based on a spousal petition. The Vermont Service Center currently has a one-year processing time. This places an incredible economic burden on immigrant domestic violence victims who are trying to be economically self-sufficient while their self-petition is pending with USCIS. Therefore, there is an exception allowing self-petitioners to adjust their status even if they have worked without authorization. 8 USC §1255(c).

##### **B. [§4.16] ENTRY WITHOUT INSPECTION**

USCIS bars immigrants from adjusting their status if they arrive in the U.S. without undergoing lawful entry and inspection. However, some VAWA self-petitioners qualify for an exception. 8 USC §1225(a). If a self-petitioner entered on or before April 1, 1997, then *entry without*

*inspection* is permitted. If a self-petitioner entered after April 1, 1997, then the self-petitioner must be able to connect the unlawful entry with the abuse. The Illegal Immigration Reform and Immigrant Responsibility Act created this new ground of inadmissibility, which took effect on April 1, 1997. Therefore, the exception is only required for those who arrived in the U.S. after April 1, 1997 (Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub L 104-208, 110 Stats 3009-546 (1996)).

**For example:**

Rosalinda married Jose in Honduras in 1998. Jose had just received his lawful permanent resident status after being sponsored by his brother. Jose didn't want to go through the petitioning process to bring Rosalinda with him, and he demanded that she illegally cross the border from Mexico; otherwise he would kill her family members. She was so scared that she immediately made plans and crossed the border illegally. Rosalinda is eligible for VAWA and adjustment of status.

**C. [§4.17] UNLAWFUL PRESENCE**

A basic premise of a VAWA self-petition is that an abusive partner is not likely to petition for a family member who is rightfully entitled to lawful status. VAWA self-petitioners often acquire *unlawful presence* because their abusive spouse or parent did not petition for them. Although applicants for other immigration relief face bars to adjustment if they had acquired unlawful presence, the same is not true of VAWA self-petitioners. VAWA self-petitioners can acquire any amount of unlawful presence and remain admissible. 8 USC §1182(a)(6)(A)(ii).

**D. [§4.18] CRIMINAL CONVICTION**

An abuser can force another to commit crimes as part of a pattern of control and coercion. If a self-petitioner connects criminal convictions with a pattern of abuse, then a self-petitioner is eligible for a waiver of admissibility and deportability if adjusting under VAWA. 8 USC §§1182(h), 1227(a)(7).

**E. [§4.19] PUBLIC CHARGE**

Family sponsors must provide an affidavit of support to demonstrate financial responsibility for their beneficiary. In abusive relationships, the would-be sponsor is often the abusive party. Self-petitioners are typically unable to provide this type of affidavit. Consequently, USCIS does not require VAWA self-petitioners to file an affidavit of support. 8 USC §1182(a)(4)(C)(i).

In addition, other adjustment-of-status applicants may not receive public benefits before adjusting status, because this indicates that they are likely to become a *public charge*. An exception exists so that VAWA self-

petitioners can access public benefits while they rebuild their lives and not trigger public charge admissibility issues. 8 USC §1182(s). Other exceptions under VAWA include a health-related waiver and misrepresentation. 8 USC §1182(g)(1), (i)(1).

#### **XLV. [§4.20] VAWA CANCELLATION**

The Violence Against Women Act created another form of relief known as VAWA cancellation of removal. It is a provision only available to people in *removal proceedings*. If there are no alternatives, a person may choose to put themselves in removal proceedings in order to avail himself or herself of the VAWA cancellation relief. Those already in removal proceedings for another reason might more often access this relief. Because the VAWA cancellation elements slightly differ from self-petition elements, a person who does not qualify for a self-petition may qualify for cancellation. For those not already in removal proceedings, this process is riskier than for those filing self-petitions. If a VAWA self-petitioner is unsuccessful, they are not automatically referred into removal proceedings. (This is an important consideration that may change in the future at which time denied VAWA self-petitions may be referred into removal proceedings.) However, denial of VAWA cancellation for those with no alternative relief results in them being ordered removed from the United States.

#### **XLVI. [§4.21] VAWA CANCELLATION ELEMENTS**

VAWA cancellation relief requires a person to prove the following:

- Battered or subjected to extreme cruelty by a spouse or parent who is or was a U.S. citizen, or is the parent of a child of a U.S. citizen and the child has been battered or subjected to extreme cruelty by such citizen parent. 8 USC §1229b(b)(2)(A)(i)(I).
- Battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident, or is the parent of a child of a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent. 8 USC §1229b(b)(2)(A)(i)(II).
- Battered or subjected to extreme cruelty by an intended spouse who was a U.S. citizen or lawful permanent resident, but whose marriage is not legitimate because of the intended spouse's bigamy. 8 USC §1229b(b)(2)(A)(i)(III).
- Good moral character. 8 USC §1229b(b)(2)(A)(iii).
- Extreme hardship. 8 USC §1229b(b)(2)(A)(v).
- Three years' physical presence. 8 USC §1229b(b)(2)(A)(ii).

- Not inadmissible. 8 USC §1229b(b)(2)(A)(iv).

#### **XLVII. [§4.22] RELATIONSHIP TO ABUSIVE PARTY**

This element is much broader than the VAWA self-petition requirement. In addition to being a child or spouse of the abusive party, other relationships qualify as well.

- *Son and daughter*: The Immigration Nationality Act (INA). defines son and daughter differently from a child. Although a child must be under 21 and includes stepchildren (see §4.8), the terms *son* and *daughter* refer to those over age 21. 8 USC §1229b(b)(2)(A)(i)(I).
- *Intended spouse*: This includes a person who believes he or she is married to the abusive party but is not because the abusive party has committed bigamy. It does not include common law marriages unless the marriage took place in a state where common law marriage is recognized. 8 USC §1229b(b)(2)(A)(i)(III); INA §240A(b)(2)(A)(i)(III).
- *Parent of a child of abusive party*: This relationship acknowledges a possible relationship where no marriage ever took place. 8 USC §1229b(b)(2)(A)(i)(I).

**For example:**

Soo was in removal proceedings after overstaying her visa. She had been in proceedings for several years. She met David one day and they started dating. She became pregnant and David became abusive. Just after her son was born, Soo broke off their engagement. However, her son was born in the U.S., and David fought for joint custody. If she is deported, she would not be able to take her son with her. Soo is eligible for VAWA cancellation. She is not eligible for a VAWA self-petition.

#### **XLVIII. [§4.23] EXTREME HARDSHIP**

In the VAWA reauthorization in 2000, Congress removed *extreme hardship* from the self-petition requirements. However, it remains an element of VAWA cancellation. The *respondent* (cancellation applicant) must prove that it would be an extreme hardship to return to his or her home country. 8 USC §1229b(b)(2)(A)(v). Citing examples of the lack of protection for domestic violence victims can provide proof for this requirement. One may also cite the lack of personal support a person may have in his or her home country.

**For example:**

When she was 17, Nusheen's family arranged her marriage to Ahmed, who lived in the U.S. She arrived in the U.S. on a tourist

visa. Once she arrived, Ahmed told her that they could not marry because he already had a wife, but that he also wanted Nusheen to live in a separate home with him as his second wife. Ahmed spent part of his time with his first wife but when he was with Nusheen, he forced himself on Nusheen and beat her if she did not comply. Nusheen got pregnant and had a child. Nusheen was very unhappy and told her parents that she wanted to come home to Pakistan. Her parents told her that she should stay with Ahmed and if she left him, they would rather kill her than face the shame of having her live with them as a single mother. She was ineligible for a VAWA self-petition because she never married. Nusheen is eligible for VAWA cancellation but would have to place herself in removal proceedings first.

#### **XLIX. [§4.24] PHYSICAL PRESENCE**

VAWA cancellation requires the respondent to be in the United States continuously for three years before applying for cancellation relief. 8 USC §1229b(b)(2)(A)(ii). This excludes recently arrived immigrants who may be in abusive relationships.

#### **L. [§4.25] PROCEDURE**

A respondent applies for and argues for VAWA cancellation relief in immigration court. If the cancellation is approved, then removal proceedings are effectively cancelled and the respondent adjusts his or her status in immigration court. 8 USC §1229b(b)(2)(A).

Those in removal proceedings may instead file a VAWA self-petition, if they more easily qualify for the self-petition. It is possible to continue the removal proceedings while a self-petition is adjudicated. At that point, a person is eligible to either administratively close the removal proceedings and adjust his or her status through USCIS or adjust his or her status directly in immigration court.

#### **LI. [§4.26] IMPACT OF A CIVIL OR CRIMINAL RESTRAINING ORDER AS PROOF OF ABUSE**

Family and criminal court judges may believe that issuing a restraining order is required for a person to obtain lawful permanent residence through VAWA. However, there are many reasons why granting or denying a restraining order does not reflect on a VAWA petition.

- VAWA petitions may be filed even before a restraining order hearing occurs.

- USCIS considers all credible evidence. Not everyone qualifies for or seeks a restraining order even if they have been battered or subject to extreme mental cruelty.
- A self-petitioner might have a restraining order issued against him or her because they were too scared to appear or to tell the truth when they appeared in court.

## LII. [§4.27] DIFFERENCES BETWEEN THE STANDARDS FOR PROVING ABUSE WITH USCIS AND FAMILY COURT

In family court, a person requesting a restraining order must demonstrate how the abuse has given him or her a reasonable fear of the abusive person and the need for a protective order. Fam C §6300. VAWA does not require proof of reasonable fear. In fact, USCIS does not require a VAWA self-petitioner to have separated from the abusive spouse. The goals and elements are different, but it is important to compare the two.

- Domestic Violence Prevention Act (DVPA) restraining orders are issued to prevent further domestic violence based on *past act or acts of abuse*. Fam C §6300. USCIS considers emotional abuse as well through the definition of *extreme mental cruelty*
- USCIS does not look at the time frame for the abuse. They do not require the abuse to have been recent, rather a spousal self-petition requires only that it occurred during the marriage

Because family, juvenile dependency, and criminal judges do not know the VAWA self-petitioning requirements and procedures, immigrant domestic violence victims face more bias when applying for restraining orders if a court believes that obtaining a restraining order is proof of their abuse.

TIP: When individuals request restraining orders, their immigration status must remain irrelevant when determining whether or not they have a reasonable fear .

## LIII. [§4.28] RESTRAINING ORDER AFFECTING SELF-PETITIONER'S GOOD MORAL CHARACTER

Issuing a civil restraining order against a self-petitioner does not impact the self-petitioner's good moral character. A criminal restraining order indicates a pending criminal case against him or her. A conviction could impact the self-petitioner's good moral character if he or she cannot

connect the conviction with the abuse. Furthermore, the violation of a civil restraining order is a criminal offense that triggers removability.

#### **LIV. [§4.29] RESTRAINING ORDER AFFECTING LPR/U.S. CITIZEN STATUS OF BATTERING SPOUSE**

A civil restraining order, unless violated, does not affect the immigration status of the abusive spouse because only criminal convictions trigger deportability issues. A criminal restraining order, if indicative of a pending criminal action against the batterer, affects a batterer's immigration status if it leads to even a misdemeanor conviction of domestic violence under Pen C §273.5. The abusive party must have status when the self-petition is filed. If an abusive party has lost his or her status before the self-petitioner files, the loss in status must have occurred less than two years before the filing and must be related to an incident of domestic violence, which triggered his or her deportability. 8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC)(aaa), (bbb). Thus it is important to consider the family of a defendant whose conviction may be unrelated to domestic violence though the relationship has been abusive.

When a batterer's conduct triggers deportability issues, social and economic implications may also arise. For example, the abusive party may provide the sole financial support for the family. His or her loss of status and deportation would cause serious financial repercussions to a family. The victim spouse may now no longer be able to access child and spousal support. Furthermore, deportation of a parent always leaves the other parent as the sole caretaker, which has nonfinancial implications as well.

TIP: Although criminal prosecution has many merits, consider the risks to an immigrant victim and batterer. Convicting a batterer of a crime may create additional obstacles for a victim rather than protect him or her. Consider the victim's perspective as part of the decision-making process. Provide the victim with legal resources so that he or she is aware of immigration relief and how a conviction of the batterer may impact him or her.

#### **LV. [§4.30] IMPACT OF TERMINATING MARRIAGE— FILING DEADLINES**

The self-petitioner may file under VAWA if he or she is still married. If the parties have terminated their marriage, the self-petitioner must file within two years of the termination and the termination of the marriage must be connected with the abuse. 8 USC §1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb), (ccc).

Battered immigrants are probably afraid of starting the dissolution process. For those in the process of obtaining immigration relief through their spouse, they may believe that they could automatically lose their status by separating. Most individuals do not understand the long and complicated process of family law dissolutions. Therefore, many believe that once they file a family law petition for dissolution, the dissolution will automatically be granted. Most self-petitioners are also unfamiliar with VAWA, so that once they file a dissolution petition, they may not believe that alternative immigration relief exists.

#### **LVI. [§4.31] DISSOLUTION VERSUS NULLITY**

Abusive spouses may file petitions for nullity as a mechanism to control their spouses. An abusive spouse may file a false proof of service or obtain a publication order for a summons as two methods of obtaining a default nullity judgment without his or her spouse even knowing about it. Also because many immigrants are non-English speakers, they ignore important legal papers instead of getting them translated because they do not realize the importance of the papers.

Many nullity judgments are appropriate. However, sometimes abusive spouses with valid marriages obtain nullity judgments that they believe will prevent their spouses from obtaining lawful immigration status.

When a self-petitioner attempts to prove good faith marriage under VAWA, a nullity judgment can jeopardize his or her claim. A nullity judgment may on its face destroy the claim of good faith marriage if the self-petitioner does not explain why a valid marriage ended with a nullity judgment. If a self-petitioner had a nullity judgment entered against him or her and they did not have an opportunity to argue against it, the self-petitioner may present that to USCIS as evidence that he or she did still marry in good faith. However, a self-petitioner or potential self-petitioner should contest a Petition for Nullity if there is no basis for nullity because it does create hurdles that a self-petitioner must overcome.

TIP: Beware of petitions for nullity in which one party is an immigrant and does not appear to contest the petition. This could indicate that the immigrant was unaware of the pending nullity action.

**For example:**

Mishka left her abusive husband four months after they married. She had relatives in another state so she went there immediately. One of her friends told her that Mishka's husband was looking for her to serve her with papers. She did not want to tell him where she was so she just ignored it. One year later when she was filing her

VAWA self-petition, she discovered a judgment of nullity had been entered by default. Because they had a valid good faith marriage, Mishka was able to find other documentation that was sufficient to support her claim for her VAWA self-petition.

## **Chapter 5**

# **THE PETITION TO REMOVE CONDITIONS ON RESIDENCE (INTERNATIONAL MARRIAGE FRAUD AMENDMENTS)**

- I. **[\$5.1] The Purpose of the Amendments**
- II. **[\$5.2] IMFA Requirements**
- III. **[\$5.3] Procedure to Jointly Remove Conditions on Residence**
- IV. **[\$5.4] Domestic Violence Victims Who Cannot File Jointly With Their Spouse**
- V. **[\$5.5] Conditional Green Card Expiration**
- VI. **[\$5.6] Benefits of a Conditional Green Card**
- VII. **[\$5.7] Procedure for Self-Petitioners**
- VIII. **[\$5.8] Possible Elements of an I-751 Waiver Petition to Remove Conditions on Residence**
- IX. **[\$5.9] Termination of Marriage**
- X. **[\$5.10] Extreme Hardship**
- XI. **[\$5.11] Children**
- XII. **[\$5.12] Impact of Civil or Criminal Restraining Order and Criminal Conviction**

### **LVII. [\$5.1] THE PURPOSE OF THE AMENDMENTS**

Marriage fraud is an act in which two people marry solely for the purpose of one person receiving immigration benefits. Marriage brokers also pair sponsors with immigrants who are unaware of immigration laws. Many undocumented people are vulnerable to this industry. They provide the cash in advance with no guarantee that the sponsor will continue to cooperate for the duration of the process.

The undocumented person commits fraud against the U.S. Government by participating. Undocumented immigrants typically do not know anything about the laws of the United States. They are usually desperate to remain in or come to the United States rather than live in an environment of economic hardship. Marriage brokers easily prey on this vulnerability.

In 1986, Congress enacted the International Marriage Fraud Amendments (IMFA) to reduce the amount of marriage fraud. It created additional requirements that a married couple must fulfill before the

spouse of a U.S. citizen may obtain lawful permanent residence (132 Cong Rec S17316 (Oct. 18, 1986)).

### **LVIII. [§5.2] IMFA REQUIREMENTS**

The IMFA requires a beneficiary of a spousal petition to receive a conditional green card, which expires two years after issuance. Requiring additional steps to make the conditional green card permanent should in theory reduce marriage fraud (132 Cong Rec S17316 (Oct. 18, 1986)). Fraudulent marriages would not likely last long enough to overcome the additional time and filing hurdles.

### **LIX. [§5.3] PROCEDURE TO JOINTLY REMOVE CONDITIONS ON RESIDENCE**

The IMFA conditional residence adds an extra step for the original family petition submitted by a U.S. citizen for his or her spouse. Because spouses of lawful permanent residents currently wait for approximately five years to become eligible to adjust their status, their beneficiaries are not required to have the two-year conditional period. Therefore, the IMFA only applies to beneficiary immigrants married to U.S. citizens for less than two years.

The U.S. citizen and spouse must jointly remove the conditions on residence by the following procedures:

- Spouse who is a U.S. citizen files a petition to sponsor spouse (the spouse may be in the U.S. or abroad). 8 CFR §204.2(a)(1).
- If petition is approved, beneficiary spouse is issued a conditional green card. 8 CFR §216.1.
- Ninety days before the conditional green card expires, the petitioner spouse and beneficiary spouse may jointly file a petition to remove conditions on status. 8 CFR §216.4(a).
- USCIS has the authority to interview the couple or waive the interview and issue a decision. 8 CFR §216.4(b).

If filing jointly, a couple must prove that they entered into the marriage in good faith. 8 CFR §216.4(a)(5). Processing times vary depending on the service center where the petition is filed.

### **LX. [§5.4] DOMESTIC VIOLENCE VICTIMS WHO CANNOT FILE JOINTLY WITH THEIR SPOUSE**

In 1990, Congress amended the IMFA to create several exceptions to the requirement that both parties must jointly file to remove the conditions on residence and appear at the interview together (Immigration Act of

1990, Pub L 101-649, 104 Stat 4978). Informally, this application is referred to as an *I-751 waiver*.

A person can independently file the “Petition to Remove Conditions on Residence” based on any of the following claims:

- Petitioner enters into the marriage in good faith but is subject to battery or extreme mental cruelty. 8 USC §1186a(c)(4)(C).
- Petitioner enters into the marriage in good faith and the marriage is terminated. 8 USC §1186a(c)(4)(B).
- Petitioner faces an extreme hardship in returning to his or her home country. 8 USC §1186a(c)(4)(A).
- Petitioner is self-petitioning because sponsoring spouse is deceased. 8 CFR §204.2(a)(1)(i)(A)(2).

The requirement allowing for the termination of marriage still allows room for marriage fraud. However, those self-petitioners whose marriages have already terminated must also prove that they married in good faith.

### **LXI. [§5.5] CONDITIONAL GREEN CARD EXPIRATION**

A conditional green card expires after two years whereas a permanent green card expires after ten years. When a conditional green card expires, the status expires along with it. The U.S. Citizenship and Immigration Services (USCIS) terminates status if an I-751 petition is not filed at the expiration of the conditional green card. 8 CFR §216.4(a)(6). When a permanent green card expires, it is only the card that is no longer valid. A person does not lose his or her lawful permanent resident (LPR) status when his or her ten-year green card expires. However, USCIS does require LPRs to continue to renew their green cards every ten years, just as one would with a driver’s license. 8 CFR §264.5(a).

### **LXII. [§5.6] BENEFITS OF A CONDITIONAL GREEN CARD**

A conditional green card provides all the benefits of a permanent green card notwithstanding the expiration date. A conditional green card holder does not require an employment authorization document to be lawfully employed in the United States. 8 CFR §274a.12(a)(1). Someone with a conditional green card can travel in and out of the United States with no limitations.

### **LXIII. [§5.7] PROCEDURE FOR SELF-PETITIONERS**

An individual may self-petition according to the following procedure:

- A U.S. citizen sponsors his or her spouse. 8 CFR §204.2(a)(1).
- USCIS issues the beneficiary spouse a conditional green card

- A self-petitioner, if eligible, may file to remove the conditions at any point before expiration
- USCIS has the authority to interview the self-petitioner or waive the interview and issue a decision. 8 CFR §216.4(b).

These applications do not fall under the Violence Against Women Act. USCIS processes them as they would any other application. The applications are mailed to the appropriate service centers based on the self-petitioner's residence. Therefore, the petitions are not centralized at a facility specifically for domestic violence victims. The officers do not focus on adjudicating the applications of battered spouses. Consequently, the training regarding the challenges for domestic violence victims in obtaining evidence may vary among service centers. It may be argued that it is harder to have these applications approved for this reason.

#### **LXIV. [§5.8] POSSIBLE ELEMENTS OF AN I-751 WAIVER PETITION TO REMOVE CONDITIONS ON RESIDENCE**

There are several different methods for obtaining relief through an I-751 waiver petition. The following is a list of the potential elements, depending on the type of claim:

- Good faith marriage. This requirement is the same as the requirement listed in the previous chapter for VAWA petitions (see §4.7 for more details).
- Battery or extreme mental cruelty. This requirement is the same as the requirement listed in the previous chapter for VAWA petitions (see §4.6 for more details).
- Termination of marriage. USCIS requires that any person filing a self-petition based on good faith marriage and termination of the marriage must have terminated the marriage before filing the I-751 petition (Yates, William R., *Filing a Waiver of the Joint Filing Requirement Prior to Final Termination of the Marriage* (USCIS Memorandum, April 10, 2003)).
- Extreme hardship.
- Spouse is deceased.

#### **LXV. [§5.9] TERMINATION OF MARRIAGE**

Before the USCIS memorandum in 2003 (Yates, W., *Filing a Waiver* (April 10, 2003)), self-petitioners would file the I-751 before receiving a final termination of marriage and would submit it while the self-petition was pending. The memorandum modified this requirement. Immigrants may delay an imminent dissolution because they believe that it will harm

their immigration status. Potential self-petitioners may assume that by starting dissolution proceedings, they are jeopardizing their immigration status, so they try to remain married until they obtain lawful permanent residence. If their conditional green card is set to expire soon, this fear could prevent them from removing the conditions on their green card.

Furthermore, the dissolution process may be long and complicated. California dissolutions require a minimum of six months after service of the “Family Law Petition” on the respondent. Fam C §2339(a). For those who either put off or consider dissolution close to the expiration date on their conditional green card, they may no longer be eligible for obtaining relief through an I-751 waiver petition.

**For example:**

Jakub petitioned Anazka and she arrived in the U.S. with conditional residence. From the beginning, they struggled with their marriage. Things began to get violent in their second year of marriage when Jakub started hitting Anazka whenever he got upset. Anazka was very scared to leave him, especially given that she still had conditional residence. She thought that if she tried to stay away from Jakub, he would not be violent and she could still get her permanent residence. Ninety days before her conditional residence expired, Jakub refused to petition jointly with her. Although Anazka is eligible for a self-petition based on a good faith marriage and because she was battered, she is not eligible based on a good faith marriage and the marriage having terminated.

## **LXVI. [§5.10] EXTREME HARDSHIP**

Most immigrants face many basic hardships in returning to their home countries. Consequently, USCIS will not consider these typical factors on their own in order to approve the application. 8 CFR §216.5(e)(1). Some typical hardships include the following:

- U.S. citizen child who would be separated from his or her parent
- Less economic opportunity in home country
- Separation from family members in the U.S.

Most domestic violence victims would not apply under *extreme hardship* because it is probably much easier to meet another criteria for filing.

## **XI.[§5.11] CHILDREN**

Minor children, who are conditional residents, whose parents are also conditional residents, may either self-petition to remove the conditions or they may be included as a derivative. 8 CFR §216.4(a)(2) A child who

files separately does not have separate requirements to meet, but must provide an explanation for why his or her petition is being filed separately.

#### **LXVII. [§5.12] IMPACT OF CIVIL OR CRIMINAL RESTRAINING ORDER AND CRIMINAL CONVICTION**

A civil or criminal restraining order or conviction may provide evidence of abuse by the U.S. citizen spouse for a self-petition waiver. However this evidence is not determinative of any element requiring a show of abuse. Thus, as with VAWA, courts should not consider a domestic violence victim's immigration status when ruling on restraining orders.

Conditional green cards are only issued to spouses of U.S. citizens and not to spouses of green card holders, so criminal convictions do not affect an abusive spouse's immigration status. United States citizens cannot lose their citizenship status if they have been convicted of any crime, unless it is based on an act of treason or fraud in the process of naturalizing. 8 USC §§1451(e), 1481(a)(7).

If a self-petitioner is convicted of a crime, he or she may also face difficulty in becoming a lawful permanent resident. The I-751 petition does not require that a person prove good moral character. However, most immigration applications now include a check of criminal history that can prevent USCIS from conferring benefits if the self-petitioner is inadmissible.

## Part III. Alternative Remedies

### Chapter 6 ASYLUM

- I. [§6.1] Background of Asylum
- II. [§6.2] Asylees and Refugees
- III. [§6.3] Asylum Elements
  - A. [§6.4] Well-Founded Fear of Persecution (8 USC §1101(a)(42)(A))
  - B. [§6.5] Membership in a Protected Class (8 USC §1101(a)(42)(A))
  - C. [§6.6] One-Year Filing Deadline
- IV. [§6.7] Procedure
- V. [§6.8] Immediate Relatives
- VI. [§6.9] Gender Asylum
- VII. [§6.10] Asylum for Domestic Violence Victims
- VIII. [§6.11] Evaluating the Risks of an Asylum Application

#### LXVIII. [§6.1] BACKGROUND OF ASYLUM

Asylum is a mechanism through which individuals who face persecution in their home country have the opportunity to remain in the United States permanently in order to protect themselves. Asylum is an international concept (United Nations, *Universal Declaration of Human Rights* (General Assembly resolution 217(III), December 10, 1948)) that was incorporated into U.S. law in 1980 (The Refugee Act of 1980, codified in INA §208).

#### LXIX. [§6.2] ASYLEES AND REFUGEES

The main difference between applying for asylum or refugee status is that an asylee applicant must already be present in the United States. Refugees apply from abroad. However, refugee applications are typically based on specific standards of eligibility. Often, these are generally based on United Nations High Commissioner for Refugees or U.S. Embassy referral or U.S. government periodic assessment. Asylum applicants need not be identified as part of a group recommended for approval. They only must meet the requirements for asylum and apply as individuals.

**LXX. [§6.3] ASYLUM ELEMENTS**

In order to qualify for asylum, one must meet the following criteria:

- Well-founded fear of persecution. 8 USC §1101(a)(42)(A).
- Membership in an enumerated protected class. 8 USC §1101(a)(42)(A).
- Physically present in the United States. INA §208(a)(1).
- Application filed within one year of arrival in the U.S. or qualifies for an exception. 8 CFR §208.4.

**A. [§6.4] WELL-FOUNDED FEAR OF PERSECUTION (8 USC §1101(a)(42)(A))**

An asylum applicant must have a well-founded fear of persecution that may be demonstrated in two ways. The first way requires the applicant to have been a past victim of persecution and to have established that the conditions have not changed to prevent such persecution from reoccurring. Alternatively, the applicant may prove his or her fear of future persecution. Applicants may demonstrate their fear by including credible personal testimony as well as corroborating evidence in the form of experts, news articles, and other documentation of an unsafe situation.

**B. [§6.5] MEMBERSHIP IN A PROTECTED CLASS (8 USC §1101(a)(42)(A))**

An individual's well-founded fear of persecution must be based on membership in a particular protected category, and one cannot apply for asylum simply because one has been harmed or is in fear. This fear of being persecuted must relate to being a member of a particular protected class for which each government should provide certain protections. If these protections don't exist, then asylum is an appropriate remedy.

The following are protected classes under asylum law (8 USC §1101(a)(42)(A)):

- Race
- Religion
- Nationality
- Social group. (It is particularly difficult to define a social group. *Matter of Acosta* (BIA 1985) 19 I&N Dec. 211, defined social group as a group of people who have a set of immutable characteristics. Because gender is not listed as a class category, most gender asylum cases are brought as social group asylum claims. Please see extended discussion of domestic violence asylum in §6.9.)

**For example:**

Hamid was born and raised in Iran. Hamid spent most of his teenage and young adult years hiding his sexual orientation as a gay man, but he lived in fear. He traveled to the United States and immediately applied for asylum. He argued that sodomy was punishable by death and if his true identity were discovered, he could be sentenced to death. Hamid is eligible for asylum based on his membership in the social group of gay men in Iran.

- Political Opinion

These protected classes narrow the well-founded fear of the persecution element. The fear must be based on an applicant's membership in one of the above-listed groups, and this list fails to cover several other classes.

The term *political asylum* has become a part of the American vernacular. Those who use that term likely believe that asylum is only available to people who have or will face persecution based on their political opinion.

**C. [§6.6] ONE-YEAR FILING DEADLINE**

Asylum applicants must file within one year after arriving in the United States. 8 CFR §208.4(a)(2). However, an applicant may qualify for an exception to this requirement if extraordinary circumstances prevent the applicant from filing within one year of arriving in the United States. 8 CFR §208.4(a)(5). Among the possible circumstances are:

- Serious mental or physical illness or disability. 8 CFR §208.4(a)(5)(i).
- Legal disability (lack of capacity). 8 CFR §208.4(a)(5)(ii).
- Ineffective assistance of counsel. 8 CFR §208.4(a)(5)(iii).
- The applicant had some type of lawful immigration status until a reasonable period before filing. 8 CFR §208.4(a)(5)(iv).
- The application was filed but rejected for improper filing before the one-year deadline. 8 CFR §208.4(a)(5)(v).
- Death or serious incapacity of applicant's attorney or immediate family members. 8 CFR §208.4(a)(5)(vi).

**LXXI. [§6.7] PROCEDURE**

Asylum applications may either be affirmative or defensive. Applicants who are not already in removal proceedings file affirmative applications. They file these affirmative applications with the U.S.

Citizenship and Immigration Services (USCIS), and USCIS asylum officers evaluate these applications.

If a person is already in removal proceedings, then the applicant brings a defensive asylum application. This applicant must argue his or her case in front of an immigration judge in an adversarial court setting against a Department of Homeland Security attorney.

Once asylum is granted, either as a primary applicant or as a derivative, a person is eligible for work authorization. 8 CFR §208.7. After one year, asylees are eligible to apply for adjustment of status. 8 CFR §209.2(a)(1)(ii).

## **LXXII. [§6.8] IMMEDIATE RELATIVES**

A successful asylum applicant's spouse and children in the U.S. may also be granted asylum. 8 CFR §208.21. This allows them to have the same benefits. They can also be petitioned to the U.S. as asylees, once the primary applicant's petition is approved. 8 CFR §208.21(d).

## **LXXIII. [§6.9] GENDER ASYLUM**

The law does not recognize gender as a protected class. Nevertheless, advocates have successfully included gender through other protected classes. In the landmark case, *In re Kasinga* (BIA 1996) 21 I&N Dec. 357, 358, the INS granted asylum to a woman from Togo who feared persecution in the form of female genital mutilation. She argued that female genital mutilation is a normal occurrence for young girls in her tribe. 21 I&N Dec. at 358. In *Kasinga*, the Board of Immigration Appeals found that young women of Ms. Kasinga's tribe who had not undergone female genital mutilation constituted a social group. 21 I&N Dec. at 357, 365–366. The *Kasinga* case established a precedent for female genital mutilation cases. It also significantly reduced the barriers for gender-based asylum seekers.

## **LXXIV. [§6.10] ASYLUM FOR DOMESTIC VIOLENCE VICTIMS**

Advocates used a similar approach for domestic violence victims who have faced or fear the abuse of their batterers in their home countries. This issue remains fairly volatile and is not yet resolved. In 1996, Rodi Alvarado successfully applied for asylum. *In re R.A.* (BIA 2001) 22 I&N Dec. 906. Rodi Alvarado was afraid of returning to Guatemala where she felt that there would not be adequate protection against her batterer. An immigration judge approved her application and granted her asylum. *In re R.A., supra*.

The Board of Immigration Appeals, however, reversed the decision on appeal finding that “Guatemalan women who have been involved

intimately with Guatemalan male companions, who believe that women are to live under male domination” do not constitute a social group for asylum purposes. 22 I&N Dec. at 907. The decision reduced the chances for many gender-based asylum applicants and potential applicants. In 2001, Attorney General Janet Reno vacated the BIA decision. *In re R.A.*, (BIA 2001) 22 I&N Dec. 907. The Department of Justice has yet to issue a new decision or regulations to clarify the situation.

Although domestic violence victims from specific countries face immutable characteristics and are recognized as a social group, it is still unclear whether asylum will remain a viable form of relief. Even if the law allows people like Rodi Alvarado to obtain asylum relief, asylum is only viable for a limited number of domestic violence victims. Applicants must demonstrate a well-founded fear of persecution if they return to their home country. Therefore, if their abusive partner is in the U.S., their fear appears less credible. Furthermore, if the applicant comes from a country that provides protection equivalent to the U.S. protections, it would be similarly difficult to argue a successful asylum claim.

#### **LXXV. [§6.11] EVALUATING THE RISKS OF AN ASYLUM APPLICATION**

Given the uncertainty of gender asylum, potential applicants must carefully consider their odds before applying for asylum. They should probably have the eligibility assessed by several people before applying. Asylum applications are riskier than Violence Against Women Act (VAWA) self-petitions. If USCIS denies an affirmative asylum application, the applicant is ordered to appear in removal proceedings.

# Chapter 7

## U VISAS

### I. [§7.1] History of U Visa Legislation

### II. [§7.2] Elements of a U Visa

- A. [§7.3] Suffers Substantial Physical or Mental Abuse as Result of Being Victim of Crime (8 USC §1101(a)(15)(U)(i)(I))
- B. [§7.4] Possesses Information Regarding Criminal Activity (8 USC §1101(a)(15)(U)(i)(II))
- C. [§7.5] Victim of an Enumerated Crime That Violates Law of the U.S.
- D. [§7.6] Helpful or Likely to Be Helpful to Law Enforcement (8 USC §1101(a)(15)(U)(i)(III))

### III. [§7.7] Adjustment of Status

### IV. [§7.8] Immediate Relatives

## LXXVI. [§7.1] HISTORY OF U VISA LEGISLATION

In the Victims of Trafficking and Violence Prevention Act (VTVPA), Congress created the U visa as a new form of relief. This provision assists many immigrants who may not be eligible for Violence Against Women Act (VAWA) self-petitions. In particular, the broadest categories of domestic violence victims who are unable to file under VAWA include those not married to their abusive partners, same-sex partners, and those married to abusers who do not have lawful permanent resident or U.S. citizen status.

However, since the passage of the act, regulations have not been put forth. U visa implementation and administration remains unclear. United States Citizenship and Immigration Services (USCIS) issued several instructional memoranda that detail how interim relief may be granted for U visas (Yates, William R., *Centralization of Interim Relief for U nonimmigrant status applicants* (Memorandum for Regional Directors, October 8, 2003)).

In October 2003, the Vermont Service Center started granting interim relief for U visas based on USCIS guidance (Yates, W., *Centralization of Interim Relief* (October 8, 2003)). *Interim relief* is not an actual visa but an interim method to allow eligible applicants some form of relief. The memorandum instructs applicants who qualify under existing law to be granted deferred action and become eligible for work authorization. However, interim relief does not give them a lawful status and does not guarantee them a U visa or lawful permanent resident (LPR) status.

Regulations will presumably outline who qualifies for a U visa, the procedure for obtaining U visas, and the eligibility for adjustment of status.

## **LXXVII. [§7.2] ELEMENTS OF A U VISA**

According to the Victims of Trafficking and Violence Prevention Act (VTVPA), in order to be eligible for a U visa, the applicant must meet the following criteria:

- Suffers substantial physical or mental harm. 8 USC §1101(a)(15)(U)(i)(I).
- Possesses information concerning criminal activity. 8 USC §1101(a)(15)(U)(i)(II).
- Helpful or is likely to be helpful to the investigation or prosecution. 8 USC §1101(a)(15)(U)(i)(III).
- Possesses information about a crime that violates the laws of the U.S. or that occurs in the U.S. 8 USC §1101(a)(15)(U)(i)(IV).

Without regulations or case law, we have little instruction as to how to interpret these elements.

### **A. [§7.3] SUFFERS SUBSTANTIAL PHYSICAL OR MENTAL ABUSE AS RESULT OF BEING VICTIM OF CRIME (8 USC §1101(a)(15)(U)(i)(I))**

To prove physical abuse, applicants may provide evidence of medical or hospital reports. They can also include police reports or other corroborating evidence of physical abuse. To prove emotional abuse, applicants may submit evidence from mental health workers or social workers documenting the mental abuse as a result of the crime.

### **B. [§7.4] POSSESSES INFORMATION REGARDING CRIMINAL ACTIVITY (8 USC §1101(a)(15)(U)(i)(II))**

This element links the U visa remedy with criminal prosecution. Crime victims who have information about criminal activity can be valuable to an investigation, and therefore, their continued presence and status are useful to both themselves and law enforcement.

**TIP:** Criminal courts should disseminate information regarding U visas to both law enforcement and to victims. Crime victims are more likely to cooperate if they know that immigration relief is available, and that their participation in the investigation and prosecution will not bring them to the attention of immigration authorities for removal.

**C. [§7.5] VICTIM OF AN ENUMERATED CRIME THAT VIOLATES LAW OF THE U.S.**

An applicant must be a victim of one of the following enumerated crimes (8 USC §1101(a)(15)(U)(iii)):

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Abusive sexual contact
- Prostitution
- Sexual exploitation
- Female genital mutilation
- Being held hostage
- Peonage
- Involuntary servitude
- Slave trade
- Kidnapping
- Abduction
- Unlawful criminal restraint
- False imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes

This list is comprehensive enough that it covers most crimes against a person listed in the California Penal Code as well as other state penal

codes. If someone is a crime victim in California, the crime most likely falls within this broad list.

The law does not distinguish between misdemeanors and felonies. 8 USC §1101(a)(15)(U)(iii). Therefore law enforcement agents need not determine whether the applicant has been a victim of a crime severe enough to qualify. They must only state on the certification the crime for which the applicant is a victim.

**D. [§7.6] HELPFUL OR LIKELY TO BE HELPFUL TO LAW ENFORCEMENT (8 USC §1101(a)(15)(U)(i)(III))**

The applicant must submit a law enforcement certification, stating that he or she has been helpful or is likely to be helpful in the investigation or prosecution of a crime (Yates, William R., *Centralization of Interim Relief for U nonimmigrant status applicants* (Memorandum for Director, Vermont Service Center, October 8, 2003)). A sample certification is included in Appendix C. The Vermont Service Center does not require this specific certification, but this form has been successfully used and contains the necessary requirements for a certification.

Law enforcement must only attest that a crime victim has been helpful. Thus it does not matter whether:

- The case gets referred for prosecution,
- The defendant is convicted, or
- The victim testifies against the defendant.

Although *law enforcement* is not defined, USCIS has approved applications from police officers and prosecuting attorneys.

In considering the term *helpful*, USCIS will approve applications in which the applicant *has been helpful* in the past. There are no regulations to specify how long ago the applicant may have been helpful. Until regulations are promulgated, victims of crimes that occurred many years ago may still be eligible for interim relief. The law enforcement official must sign the certification if a victim has been helpful at any point in the past.

**For example:**

Seema came to the U.S. on a student visa. She married Raj who was also from India and held an H-1B visa. They had two children who were born in the U.S. Raj became very abusive, and on one occasion Seema called the police. Raj was arrested, convicted, and removed from the country based on her testimony. Seema lost her status as well but was afraid of returning to India. Over a year later, Seema found out about U visa interim relief. The district attorney who prosecuted Raj signed her certification. Seema is eligible for U visa interim relief.

**For example:**

Maria's fiancé Francisco petitioned for her to come to the U.S. from the Philippines. From the beginning, he was abusive to her, but she remained with him, even though he refused to marry her. One day, she called the police, but Francisco left before they showed up. The district attorney did not prosecute because there was a lack of evidence. The police lieutenant in charge signed the certification, however, because Maria had still given the police as much information as she could about the crime. Maria is eligible for U visa interim relief.

**LXXVIII. [§7.7] ADJUSTMENT OF STATUS**

There is also a provision for adjustment of status if the applicant meets the following requirements:

- Already has U visa status. 8 USC §1255(m)(1)(A).
- Has not engaged in Nazi persecution or genocide. 8 USC §1255(m)(1).
- Physically present in the U.S. for the three years since receiving his or her U visa. 8 USC §1255(m)(1)(A).
- Humanitarian reasons, family unity, or public interest justify his or her continued presence in U.S. 8 USC §1255(m)(1)(B).

According to the statute, U visa holders may adjust their status and receive lawful permanent residence after holding a U visa for three years. The Vermont Service Center began adjudicating interim relief applications in the fall of 2003. Previously, very few interim relief requests were granted. The few who were granted interim relief would not be eligible until the fall of 2006. Without regulations, it is unclear whether those with interim relief will be eligible to adjust their status or whether they will have to wait until they receive an actual U visa instead of interim relief.

**LXXIX. [§7.8] IMMEDIATE RELATIVES**

The spouse and children of U visa applicants are also eligible for interim relief but not as automatic derivatives. Traditionally, if a primary applicant is eligible for immigration relief, then his or her spouse and children are automatically eligible for a derivative form of that relief. For U visa relief, derivatives have a burden to prove the following in order to be approved:

- The investigation or prosecution would be harmed without them. 8 USC §1101(a)(15)(U)(ii).
- Without their presence, there would be an extreme hardship to the applicant. 8 USC §1101(a)(15)(U)(ii).

The statute also allows derivatives to adjust their status after three years if it is necessary to avoid extreme hardship. 8 USC §1255(m)(3).

# **Chapter 8**

## **SPECIAL IMMIGRANT JUVENILE STATUS**

- I. [§8.1] Background**
- II. [§8.2] Elements for Juvenile Court Order**
- III. [§8.3] What Courts Do “Juvenile Courts” Include**
- IV. [§8.4] How Do Juvenile Courts Know to Prepare Orders for Immigration Purposes**
- V. [§8.5] Declared a Dependent of the Court (8 USC §1101(a)(27)(J)(i))**
- VI. [§8.6] Parent Reunification Is Not Viable (8 CFR §204.11(a))**
- VII. [§8.7] Best Interests of the Child**
- VIII. [§8.8] Juvenile Delinquency**
- IX. [§8.9] SIJS Procedure**

### **LXXX.[§8.1] BACKGROUND**

Intimate partners are not the only victims of domestic violence. Children are often victims as well. Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to minors less than 21 years old. 8 CFR §204.11(c)(1). This form of relief is appropriate for minors who are not under their parents’ care. However, this form of relief is unique in that the child must seek relief through both juvenile dependency court and immigration services.

### **LXXXI. [§8.2] ELEMENTS FOR JUVENILE COURT ORDER**

A successful SIJS application requires the following findings to be issued in a juvenile court order:

- The minor child must be declared a dependent of the court. 8 USC §1101(a)(27)(J)(i).
- Parental reunification is not viable. 8 CFR §204.11(a).
- It is in the best interests of the child not to return to the home country. 8 USC §1101(a)(27)(J)(ii).

**LXXXII. [§8.3] WHAT COURTS DO “JUVENILE COURTS” INCLUDE**

According to federal regulations, juvenile courts include any court that has authorization to make decisions over a child. 8 CFR §204.11(a). In California, this would include family, juvenile dependency, and criminal courts. However, the orders required by SIJS are most likely made in California by juvenile dependency courts.

**LXXXIII. [§8.4] HOW DO JUVENILE COURTS KNOW TO PREPARE ORDERS FOR IMMIGRATION PURPOSES**

Attorneys appointed to a minor may not always be aware of SIJS. Courts must therefore address this issue when a minor in dependency court does not have status. California Assembly Bill 1895, pending at the time of publication in the California Assembly, would require the courts to appoint an immigration attorney to every undocumented child in juvenile court.

TIP: Juvenile dependency courts should make information on SIJS available and require training for all court-appointed attorneys for minors. It is improper to inquire about a person's immigration status. However, if a court suspects that a minor might be out of status, the court can make information and referrals about SIJS available to the parties.

**LXXXIV. [§8.5] DECLARED A DEPENDENT OF THE COURT (8 USC §1101(a)(27)(J)(i))**

A child is a dependent of the court if the court has authority to make placement and custody decisions. 8 CFR §204.11(a) The court must retain jurisdiction for the duration of the immigration process, until the child receives lawful permanent resident status. Because an SIJS applicant can be less than 21 years old, the court would have to retain jurisdiction even if the child is no longer under 18 years of age for the sole purpose of assisting the SIJS applicant.

TIP: Because obtaining immigration relief may take longer than the duration of a juvenile dependency case, the court should ensure that the child has obtained lawful permanent residence before terminating its jurisdiction. The child should also file the SIJS application as soon as possible to facilitate this process.

**LXXXV. [§8.6] PARENT REUNIFICATION IS NOT VIABLE**  
**(8 CFR**  
**§204.11(a))**

A child who has been declared dependent on a juvenile court should be “deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment.” 8 USC §1101(a)(27)(J)(i). It is not necessary for the court to make a finding using specific language of abuse, neglect, or abandonment, although this must be the factual basis for which there is no reunification. 8 CFR §204.11(a).

The court must find that “family reunification is no longer a viable option.” 8 CFR §204.11(a). This satisfies U.S. Citizenship and Immigration Services (USCIS) requirements in determining that the child was neglected, abused, or abandoned. This decision is more easily made in situations where the parent is not in contact with the child. If there is any chance of parental reunification, then the advocate for the child should proceed carefully before filing an SIJS application. If parental reunification occurs, a child no longer qualifies for SIJS. Practically, this means that the child will remain in foster care unless the child is adopted or involved in a guardianship. If an adoption or guardianship proceeding terminates before the SIJS application is approved, the court may have to defer final judgments in order to facilitate the child’s obtaining immigration relief.

**LXXXVI. [§8.7] BEST INTERESTS OF THE CHILD**

In a juvenile dependency case, the court is required to assess the best interests of the child. Welf & I C §360(a). For SIJS purposes, the court must also take into consideration the option of having the child return to his or her home country to be reunified with a parent. If it is not in the best interests of the child to return, then the court must make that finding in order for the child to have a basis to remain lawfully in the U.S. Typically, a child with no known or appropriate relatives to care for him or her is sufficient to make this finding.

**For example:**

Elena was widowed several years after her son Filippo was born. She came to the U.S. from Italy and stayed with her cousin. However, she became so desperate for money that she eventually left Filippo with a friend and did not return. Eventually, after one year, her friend called Child Protective Services because she could no longer care for Filippo. Filippo was placed in foster care. Filippo had no family in Italy. The court order declared him a dependent of the court. The order included language that family reunification was no longer viable and that it was in Filippo’s best interest to remain in the United States. Filippo is eligible for SIJS.

**LXXXVII. [§8.8] JUVENILE DELINQUENCY**

A delinquency judge may also make the same orders for the purpose of an SIJS application. If a child is in delinquency court, criminal convictions may trigger inadmissibility grounds when the child adjusts his or her status. This is a red flag and an expert should evaluate the inadmissibility grounds.

**LXXXVIII. [§8.9] SIJS PROCEDURE**

A child must file for SIJS as soon as possible in order for the juvenile dependency court to retain jurisdiction. The child files both an SIJS application (Form I-360) and an adjustment-of-status application (Form I-485 and accompanying forms) concurrently. If a child is already in removal proceedings, those proceedings may be continued until the SIJS application is approved. Once the SIJS application is filed, USCIS grants work authorization to the child. The application could take from a couple of months to several years to be adjudicated.

## **Chapter 9**

### **T VISAS**

- I. [§9.1] What Is Human Trafficking?**
- II. [§9.2] Why Are Human Trafficking Remedies Important to Domestic Violence Victims?**
- III. [§9.3] Legal Definition of Human Trafficking**
- IV. [§9.4] Who Are Traffickers?**
- V. [§9.5] Types of Work of Trafficked People**
- VI. [§9.6] Dispelling Myths**
- VII. [§9.7] Smuggling v. Trafficking**
- VIII. [§9.8] Red Flags in Identifying Trafficked People**
- IX. [§9.9] T Visa Elements**
  - A. [§9.10] Is or Has Been a Victim of a Severe Form of Trafficking in Persons (8 USC §1101(a)(15)(T)(i)(I))
  - B. [§9.11] Is Physically Present (8 USC §1101(a)(15)(T)(i)(II))
  - C. [§9.12] Has Complied With Any Reasonable Request (8 USC §1101(a)(15)(T)(i)(III) and 8 CFR §214.11(d)(2)(vi))
  - D. [§9.13] Would Suffer Extreme Hardship Involving Unusual and Severe Harm on Removal (8 USC §1101(a)(15)(T)(i)(IV))
- X. [§9.14] The Benefits of the T Visa**
- XI. [§9.15] T Visa Procedure**
- XII. [§9.16] Adjustment of Status**
- XIII. [§9.17] Nonlegal Benefits for Trafficked People**

#### **LXXXIX. [§9.1] WHAT IS HUMAN TRAFFICKING?**

Trafficking is a form of modern day slavery. It involves the control of people through force, fraud, or deceit for the purposes of exploitation. Human trafficking is a global epidemic. The State Department estimates that approximately 18,000 to 20,000 people are trafficked to the U.S. annually, although trafficking occurs to and within other countries. Recruiters prey on a variety of vulnerabilities of an individual (U.S. Department of State, *Fighting Human Trafficking within the United States* (Fact Sheet, May 12, 2004)). These may include poverty, the status of

women and children in society, and political and economic instability (U.S. Department of State, *Trafficking in Persons Report* (2003)).

### **XC. [§9.2] WHY ARE HUMAN TRAFFICKING REMEDIES IMPORTANT TO DOMESTIC VIOLENCE VICTIMS?**

Many trafficked people are also victims of domestic violence or sexual assault. They may seek remedies as a domestic violence victim, often with the assistance of a domestic violence community agency. Trafficked people may later encounter domestic violence after escaping a trafficking situation. Trafficking and domestic violence overlap in servile marriages. Servile marriages occur when a person petitions for his or her spouse, but once he or she arrives in the U.S., the petitioner exploits the spouse for labor purposes and physically abuses him or her as well.

Even if they do not qualify for a domestic violence remedy, they may instead qualify for immigration relief as a trafficked person. It is important for those who encounter immigrant domestic violence victims to be knowledgeable about remedies for trafficked people. It is also important to identify trafficked people, even if they do not pursue the T visa remedy (see §9.9), because they may still access services and benefits earmarked specifically for trafficked people.

### **XCI.[§9.3] LEGAL DEFINITION OF HUMAN TRAFFICKING**

The Trafficking Victims Protection Act (TVPA) defines a severe form of trafficking in persons as one of the following:

- “Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 USC §7102(8)(B).
- “Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of a commercial sex act” that is “induced by force, fraud, or coercion,” or in which the person is less than 18 years old. 22 USC §7102(8)(A), (9).

### **XCII. [§9.4] WHO ARE TRAFFICKERS?**

Traffickers are difficult to identify because they are often not who one would expect them to be (U.S. Department of State, *Trafficking in Persons Report* (2003)). They include the following:

- Members of organized global trafficking ring
- Freelance individuals

- Family
- Known community members

Traffickers prey on the vulnerabilities of the people they exploit. Therefore, they may play on the trust of a preexisting relationship. They could also prey on one's vulnerability by enticing individuals with lucrative work opportunities.

### **XCIII. [§9.5] TYPES OF WORK OF TRAFFICKED PEOPLE**

Trafficked people work in a variety of different areas beyond sex trafficking (Trafficking Victims Protection Act, Pub L 106-386). They include:

- Sweatshops
- Domestic servitude
- Begging
- Sex work
- Factory work
- Restaurant work
- Agricultural labor
- Servile marriage
- Construction

### **XCIV. [§9.6] DISPELLING MYTHS**

Human trafficking reaches far beyond the headlines. The following are less known truths about trafficking (U.S. Department of State, *Trafficking in Persons Report* (2003); (Trafficking Victims Protection Act, Pub L 106-386)):

- Men are trafficked as well as women and children.
- Sex trafficking is just one of many types of human trafficking.
- People are trafficked from all over the world to the United States. They are trafficking patterns originating from, as well as ending in, Africa, Latin America, Europe, Australia, and Asia.
- Trafficked people have varying degrees of education. They are not always uneducated, but likely face some other factor of vulnerability. Individuals with advanced degrees have sometimes been recruited because they are promised lucrative jobs.

**For example:**

When Malaika was 16, her father died. She and her mother lived in a very poor village in Ghana. Malaika's mother heard about a

family living in the U.S. and was told the family would hire Malaika as a housekeeper. When Malaika came to the U.S., she spoke no English, and conditions were not as she expected. She was not allowed to leave the house. The family made her work 15 hours a day, 7 days a week. She was not paid at all for her work and knew no one else. Malaika may be eligible for T visa relief.

### **XCV. [§9.7] SMUGGLING V. TRAFFICKING**

It is easy to confuse smuggling and trafficking. Both typically involve some illegal immigration. However, trafficked people are typically recruited and face force or coercion. Smuggled people hire a smuggler to facilitate their entry (U.S. Department of State, *Trafficking in Persons Report* (2003)). Once they arrive at their destination, trafficked people experience a situation of exploitation. Smuggled people are free from exploitation once they arrive at their destination. Consequently, the U.S. Government sees trafficked people as victims and not as criminals. In some situations, smuggling and trafficking overlap. A would-be trafficked person can actually be classified as a smuggled person because the coercion or forced labor never actually took place.

#### **For example:**

Kiri lived in Cambodia and was desperate to find a job, but nothing was available in her country when she graduated. She found out about a man named Rangsey whom she could pay to get her to America. Rangsey told her the trip would cost \$5,000, but she could pay him after she arrived in the U.S. Just as they were nearing shore, American federal agents intercepted the ship and everyone was placed in immigration detention. Kiri later found out that Rangsey was a known trafficker who was likely planning to force Kiri to work in a brothel. Because she was intercepted offshore, she was never forced into the situation and was not considered to be trafficked.

### **XCVI. [§9.8] RED FLAGS IN IDENTIFYING TRAFFICKED PEOPLE**

Trafficked people are very isolated. Therefore, the following clues can help to identify them (U.S. Department of State, *Trafficking in Persons Report* (2003)):

- Trafficker has possession of their passport.
- They owe a large debt for their travel and miscellaneous costs.
- They receive little or no wages.
- They have limited movement.

- Their employers know the recruiters in their home country.
- They are moved from city to city by their traffickers.
- Their employers are a network of people.
- They face threats to their safety and that of their families.

#### **XCVII. [§9.9] T VISA ELEMENTS**

The following are requirements for a T visa:

- Is or has been a victim of a severe form of trafficking in persons. 8 USC §1101(a)(15)(T)(i)(I).
- Is physically present on account of such trafficking. 8 USC §1101(a)(15)(T)(i)(II).
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or has not attained 15 years of age. 8 USC §1101(a)(15)(T)(i)(III); 8 CFR §214.11(d)(2)(vi).
- Would suffer extreme hardship involving unusual and severe harm upon removal. 8 USC §1101(a)(15)(T)(i)(IV).

#### **A. [§9.10] IS OR HAS BEEN A VICTIM OF A SEVERE FORM OF TRAFFICKING IN PERSONS (8 USC §1101(a)(15)(T)(i)(I))**

The TVPA definition is also one of the T visa requirements. If a trafficked person has already received continued presence (see §9.17) and receives Department of Health and Human Services certification, or he or she has a law enforcement certification, then he or she satisfies the requirement. 8 CFR §214.11(f). Otherwise, the applicant can prove through declarations and other evidence that he or she has met the requirement.

#### **B. [§9.11] IS PHYSICALLY PRESENT (8 USC §1101(a)(15)(T)(i)(II))**

An applicant must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, because of such trafficking. An applicant need not be recently liberated from the trafficking situation in order to be physical present because of the trafficking. A person can be physically present because a trafficking situation originally brought him or her to the U.S., and his or her continued presence is related to that original trafficking. 8 CFR §214.11(g). Applicants can also prove their physical presence if they have no access to travel documents or finances to return home, if their safety would be compromised, or if they are remaining in

the U.S. to cooperate with the investigation and prosecution of a trafficker. 8 CFR §214.11(g)(2).

**C. [§9.12] HAS COMPLIED WITH ANY REASONABLE REQUEST (8 USC §1101(a)(15)(T)(i)(III) AND 8 CFR §214.11(d)(2)(vi))**

An applicant may submit a certification that he or she has complied with reasonable requests for assistance in the investigation or prosecution of acts of trafficking, or has not attained 15 years of age. This certification must be signed by the law enforcement agent responsible for the investigation of the trafficking situation. In lieu of the certification, an applicant may submit evidence demonstrating that he or she reported the trafficking situation as well as made himself or herself available to comply with any type of subsequent investigation. 8 CFR §214.11(h). It is not necessary for the law enforcement agency to prosecute the trafficker. If the government prosecutes the trafficker, the charges need not include trafficking-specific violations. Finally, it is not necessary that the trafficker be convicted.

**D. [§9.13] WOULD SUFFER EXTREME HARDSHIP INVOLVING UNUSUAL AND SEVERE HARM ON REMOVAL (8 USC §1101(a)(15)(T)(i)(IV))**

USCIS will consider evidence involving personal experiences as well as conditions in the home country. The U.S. Department of State issues reports on how each country treats the issue of human trafficking. Among the factors considered in extreme hardship are (8 CFR §214.11(I)):

- Age and personal circumstances
- Physical or mental illness when treatment is unavailable in home country
- Physical and psychological consequences of trafficking
- Loss of access to the U.S. courts and criminal justice system
- Laws, customs, and practices of the home country that would penalize a trafficked person
- Likelihood of revictimization
- Likelihood of traffickers or their agents harming the individual
- Safety threatened by civil unrest or armed conflict

**XCVIII. [§9.14] THE BENEFITS OF THE T VISA**

The T visa allows approved applicants to receive several benefits:

- Three-year visa with work authorization. 8 CFR §214.11(l)(4), (p).

- Eligibility to apply for lawful permanent resident status after three years. 8 USC §1255(I)(1)(A).
- Visas available for spouse and children of the applicant if the applicant would suffer extreme hardship if his or her spouse and/or children were unable to join him or her. 8 USC §1101(a)(15)(T)(ii)(I).

### **XCIX. [§9.15] T VISA PROCEDURE**

Applying for the T visa is unlike any other process for immigration relief. The T visa requirements include complying with law enforcement. 8 CFR §214.11(h). The T visa application process may occur concurrently with a federal prosecution of the traffickers in which the applicant must act as a witness.

### **C. [§9.16] ADJUSTMENT OF STATUS**

The primary benefit of the T visa is that T visa holders and their derivatives may adjust their status. The following are the requirements for T visa holders to adjust their status:

- Continuous presence in the U.S. for three years. 8 USC §1255(I)(1)(A).
- Good moral character. 8 USC §1255(I)(1)(B).
- Complied with reasonable requests for assistance in investigation or prosecution or extreme hardship. 8 USC §1255(I)(1)(C).

### **CI. [§9.17] NONLEGAL BENEFITS FOR TRAFFICKED PEOPLE**

There are two ways to become certified as a trafficked person by the Department of Health and Human Services (DHHS):

- A federal agency representative requests *continued presence* for a trafficked person. This request is based on a victim's continued presence being necessary to pursue prosecution. 22 USC §7105(b)(1)(E)(i)(II)(bb).
- A T visa applicant receives a *bona fide* letter. This is the first level of adjudication in his or her application. It means that there appears to be no fraud in the application, and the application is complete, contains a certification or other secondary evidence, and meets *prima facie* eligibility. 8 CFR §214.11(a); 22 USC §7105(b)(1)(E)(i)(II)(aa).

Those certified by DHHS are automatically eligible for Office of Refugee and Resettlement (ORR) benefits. Domestic violence victims

who receive a prima facie determination under the Violence Against Women Act *do not* qualify for ORR benefits. They only qualify for state-designated public benefits, which can be significantly less if they do not have children.

## **Part IV. The Implications for Domestic Violence Victims**

### **Chapter 10**

## **WHEN THERE ARE NO AVAILABLE REMEDIES**

- I. [§10.1] Remain With Abusive Partner**
- II. [§10.2] Leave Abusive Partner and Remain Out of Status**
- III. [§10.3] Undocumented People in Family Court**
- IV. [§10.4] Criminal Convictions and Their Impact on Undocumented People**

### **CII. [§10.1] REMAIN WITH ABUSIVE PARTNER**

Most domestic violence victims have no opportunity to independently learn about immigration relief. They learn about their remedies only through interaction with domestic violence services or systems. For those who access these resources but learn that they are ineligible, they may stay in the marriage for many reasons. When trying to understand why someone stays in an abusive relationship, the common factors are only aggravated by factors pertaining specifically to immigrants with no alternative relief. These factors are:

- Lack of work authorization eliminates the ability to support self and children
- Ineligibility for public benefits (see chap 10 for more details)
- Only immigration relief available requires remaining with abuser
- Continued threat of deportation if a person leaves the relationship

### **CIII. [§10.2] LEAVE ABUSIVE PARTNER AND REMAIN OUT OF STATUS**

Undocumented immigrants often do not understand the difference between different systems. If they request a civil restraining order, they believe immigration authorities will discover them. This may prevent an out-of-status individual from seeking the appropriate remedies in civil or criminal court.

However, civil courts are under no state or federal mandate to report undocumented parties to immigration authorities. Even if a party's undocumented status becomes part of the public record, it is unlikely that Immigration and Customs Enforcement (ICE) has the resources to comprehensively read every public document and remove those whose

undocumented status has become an issue in a court of law. Therefore, a domestic violence victim still has the right to pursue remedies in both family law and criminal courts to make himself or herself safe and economically empowered. At the time of publication, a federal bill called the CLEAR (Clear Law Enforcement for Criminal Alien Removal) Act (HR 2671 and S 1906) in the House of Representatives and the Senate could mandate local police departments to enforce immigration laws and regulations. Though the scope is still unclear, the bill could potentially require police officers to document all crime victims and perpetrators and report undocumented persons to ICE. If local law enforcement do not comply, they could lose federal funding. The reality of this bill is that if it passes, immigrants will be afraid to ask for police protection from domestic violence (CLEAR Act (HR 2671 and S 1906)).

#### **CIV. [§10.3] UNDOCUMENTED PEOPLE IN FAMILY COURT**

Any individual bringing an action for dissolution must meet a statutory residence prerequisite of one party living in the state for six months and the county for three months before the petition is filed. Fam C §2320. *Residence* for the purposes of statutory requirement is satisfied if a person has established *domicile*, requiring current residence and intent to stay indefinitely. *Marriage of Dick* (1993) 15 CA4th 144, 153. However, a person can have dual intentions of remaining indefinitely unless they are compelled by the government to leave the country and still satisfy the domicile requirement. 15 CA4th at 154–156. Thus undocumented immigrants can still avail themselves of remedies in family court.

#### **CV. [§10.4] CRIMINAL CONVICTIONS AND THEIR IMPACT ON UNDOCUMENTED PEOPLE**

A criminal conviction is the only court decision that directly impacts immigration status by either creating a bar for adjusting status or placing the convicted person in removal proceedings (see §3.17). A California Law Enforcement Telecommunications System (CLETS) restraining order is not a criminal conviction and should not bar someone from applying for or maintaining his or her lawful status, unless the restraining order is violated.

# Chapter 11

## PUBLIC BENEFITS ELIGIBILITY FOR IMMIGRANT DOMESTIC VIOLENCE VICTIMS

- I. [§11.1] Background
- II. [§11.2] Qualified Immigrants
- III. [§11.3] Benefits Only Allowed for *Qualified Immigrants*, Including “Battered Immigrants”

### CVI.[§11.1] BACKGROUND

Most noncitizens are ineligible to receive public benefits. When an immigrant applies for adjustment of status, they are subject to the public charge grounds of inadmissibility. This means that if U.S. Citizenship and Immigration Services (USCIS) believes the individual is likely to become a public charge of the U.S. government by applying for public benefits in the future, he or she may be barred from adjusting his or her status. There are exceptions for domestic violence victims.

### CVII. [§11.2] QUALIFIED IMMIGRANTS

California statutes create an exception to qualified immigrants such that they can receive public benefits. The definition for qualified immigrants is set out according to federal law. It includes lawful permanent residents, conditional residents, and several other categories, including battered immigrants. 8 USC §1641(b). Battered immigrants are considered qualified immigrants if they meet certain eligibility requirements:

- Battered or subject to extreme mental cruelty. 8 USC §1641(c)(1)(A).
- Substantial connection between abuse and need for public benefits. 8 USC §1641(c)(1)(A).
- No longer lives with abusive party. 8 USC §1641(c).
- Has been approved or has filed and has pending one of the specific petitions with prima facie eligibility. 8 USC §1641(c)(1)(B).

The petition must be one of the following:

- Family petition as a child or spouse beneficiary. 8 USC §1641(c)(1)(B)(iv).
- Battered spouse petition (VAWA). 8 USC §1641(c)(1)(B)(i)–(ii).

- VAWA cancellation. 8 USC §1641(c)(1)(B)(v).

If the child resides in the same house as the abuse, and the parent meets the above eligibility, then the child is also a qualified immigrant. 8 USC §1641(c)(3).

In California, assessing that a person has been battered or subject to extreme mental cruelty requires a sworn statement from the immigrant and one of the following as evidence: (Welf & I C §§18930(b)(6), 11495.1–11495.12)

- Police, government, or court records
- Documentation from a program for which the immigrant has sought services as domestic violence victim
- Corroborating statement of another individual
- Physical evidence

### **CVIII. [§11.3] BENEFITS ONLY ALLOWED FOR QUALIFIED IMMIGRANTS, INCLUDING “BATTERED IMMIGRANTS”**

The following types of benefits may be available to *qualified immigrants*, including battered immigrants:

- CalWORKs is cash aid issued to needy families with children. In order to qualify, the family must meet low-income criteria. Welf & I C §11203(a).
- Food stamps are vouchers issued to people who are typically already receiving some other type of cash assistance. Welf & I C §18930(b)(2).
- Supplemental security income is available to people who are blind, disabled, or over 65. Welf & I C §12200.
- General assistance is cash aid available to people without families and administered by each county. It is typically a catchall for indigent adults who do not qualify for other support.
- Medi-cal is government-funded medical services available to the majority who qualify for other cash benefits due to low income. Welf & I C §14000(a).

## **APPENDIX A: LEGAL SERVICE REFERRALS**

[Note: Contact information for these entities is effective as of 10/1/04.]

Asian Law Alliance  
184 E. Jackson St.  
San Jose, CA 95112  
408-287-9710

Asian Pacific American Legal Center  
1145 Wilshire Blvd., 2nd Floor  
Los Angeles, CA 90017  
213-977-7500

Asian Pacific Islander Legal Outreach  
1188 Franklin St. Ste. 202  
San Francisco, CA 94109  
415-567-6255

Asian Pacific Islander Legal Outreach  
1212 Broadway St., Ste. 400  
Oakland, CA 94612  
510-251-2846

Bay Area Legal Aid  
(Covering Alameda, San Francisco, San Mateo, and Santa Clara  
Counties)  
800-551-5554 (centralized intake)

California Rural Legal Assistance Foundation  
2210 K Street, Suite 201  
Sacramento, CA 95816  
916-446-7901

Canal Community Alliance  
91 Larkspur St.  
San Rafael, CA 94901  
415-454-2640

Casa de Esperanza  
P.O. Box 56  
Yuba City, CA 95992-0056  
530-674-5400

Catholic Charities  
1705 Second Avenue  
Salinas, CA 93905  
831-422-0602

Catholic Charities Immigration Legal Services  
2625 Zanker Road, Suite 201  
San Jose, CA 95134  
408-944-0691

Catholic Charities of the East Bay  
433 Jefferson Street  
Oakland, CA 94607  
510-768-3100

Catholic Charities of San Diego, Refugee and Immigrant Services  
241 Third Avenue, Suite A  
Chula Vista, CA 91910  
619-498-0722

Catholic Charities of San Diego, Refugee and Immigrant Services  
328 Vista Village Drive  
Vista, CA 92083  
760-631-5890

Catholic Charities of San Diego, Refugee and Immigrant Services  
4575-A Mission Gorge Place  
San Diego, CA 92120  
619-287-9454

Catholic Charities of San Diego, Refugee and Immigrant Services  
349 Cedar Street  
San Diego, CA 92120  
619-231-2828

Central California Legal Services  
1999 Toulumne Street, Suite 700  
Fresno, CA 93721  
559-570-1200

Central California Legal Services  
208 West Main Street, #U-1  
Visalia, CA 93291  
559-733-8770

Community Legal Services in East Palo Alto  
2117-B University Ave.  
East Palo Alto, CA 94303  
650-326-6440

East Bay Community Law Center  
(HIV-positive clients only for immigration services)  
3130 Shattuck Ave.  
Berkeley, CA 94705  
510-548-4040

Immigration Center for Women and Children  
634 South Spring Street, Suite 615  
Los Angeles, CA 90014  
213-614-1165

International Institute of the East Bay  
297 Lee St.  
Oakland, CA 94610  
510-451-2846

Katherine and George Alexander Community Law Center  
1030 The Alameda  
San Jose, CA 95126  
408-288-7030

La Raza Centro Legal  
474 Valencia Street, Suite 295  
San Francisco, CA 94103  
415-575-3500

Lawyers Committee for Civil Rights  
(asylum only)  
131 Steuart Street, Suite 400  
San Francisco, CA 94105  
415-543-94444

Legal Aid Foundation of Los Angeles  
1550 W. 8th St.  
Los Angeles, CA 90017  
Centralized intake: 213-640-3913

Legal Aid Society of San Diego  
110 South Euclid Avenue  
San Diego, CA 92114  
619-262-0896

Legal Services for Children  
1254 Market St., 3rd floor  
San Francisco, CA 94102  
415-863-3762  
(SIJS)

Neighborhood Legal Services  
(Los Angeles County)  
Centralized intake: 800-433-6251

Next Door Solutions to Domestic Violence  
1181 N. Fourth Street, Suite A  
San Jose, CA 95112  
408-279-2962

Valley Catholic Charities  
149 N. Fulton Avenue  
Fresno, CA 93701  
559-264-6400

Volunteer Legal Services Program of the Bar Association of San  
Francisco  
465 California Street, Suite 1100  
San Francisco, CA 94104-1826  
415-782-8965

## **APPENDIX B: TECHNICAL ASSISTANCE REFERRALS**

Center for Gender and Refugee Studies  
U.C. Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102  
415-565-4791  
(gender asylum)

Immigrant Legal Resource Center  
1663 Mission Street, Suite 602  
San Francisco, CA 94103  
415-255-9499 x6263

Asian Pacific Islander Legal Outreach  
1188 Franklin St. Ste. 202  
San Francisco, CA 94109  
415-567-6255

**APPENDIX C: U VISA CERTIFICATION FORM**

I, \_\_\_\_\_, hereby affirm the following:  
(NAME)

1. I am a: (check one)

\_\_\_\_ Federal official \_\_\_\_ State official \_\_\_\_ Local official  
(municipal, district, county)  
\_\_\_\_ INS officer\* (see 2B below)

Specifically, I am a: (check one)

\_\_\_\_ Law Enforcement Officer \_\_\_\_ Prosecutor;  
\_\_\_\_ Judge \_\_\_\_ Other Investigating Authority.

\_\_\_\_\_  
(JOB TITLE)

\_\_\_\_\_  
(NAME OF EMPLOYER)

\_\_\_\_\_  
(STREET ADDRESS/LOCATION)

\_\_\_\_\_  
(CITY, STATE & ZIP CODE)

\_\_\_\_\_  
(TELEPHONE)

2A. I am responsible or the agency for which I work is responsible for investigating (or overseeing the investigation of) criminal activity involving or similar to violations of (some or all of) the following types of offenses under Federal, State or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy or solicitation to commit any of these crimes OR

\*2B. I am an INS officer with information not limited to immigration violations related to criminal activity described above or similar criminal activity.

3. The criminal activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws:  
(PROVIDE STATUTE OR CODE CITATION(S) AND OFFENSE NAME(S))

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and based on my expertise and understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Question #2 or is similar activity violating Federal, State or local criminal law.

4. It is suspected that this criminal activity occurred on or about:  
(SPECIFY AS MUCH AS POSSIBLE DATE(S) AND LOCATION(S) OF CRIMINAL ACTIVITY)

---

5. I affirm that \_\_\_\_\_: (CHECK ALL THAT APPLY)  
(NAME OF U VISA APPLICANT)\*\*

- has been helpful;
- is being helpful;
- is likely to be helpful

in an/the investigation and/or prosecution of this criminal activity.

6. I affirm that \_\_\_\_\_ possesses relevant  
(NAME OF U VISA APPLICANT)\*\* information relating to this criminal activity. This information includes (but is not limited to) the following: (PROVIDE BRIEF DESCRIPTION OF INFORMATION)

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\*\* If the U visa applicant is under the age of 16, please certify that the applicant's parent, guardian or "next friend" meets these requirements.

7. I affirm that this criminal activity occurred: (CHECK ALL THAT APPLY)

\_\_\_ in the United States (including Indian country and military installations);  
\_\_\_ in territories and possessions of the United States; OR  
\_\_\_ outside the United States, but violated United States' laws.

Certification for applicant's spouse, child or parent

8. This investigation and/or prosecution would be harmed without the assistance of

\_\_\_\_\_  
(NAME OF APPLICANT'S SPOUSE, CHILD OR PARENT)

who is the \_\_\_ spouse \_\_\_ child \_\_\_ parent of the applicant listed above.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

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## APPENDIX D: LIST OF ACRONYMS

BIA	Board of Immigration Appeals
CBP	United States Customs and Border Protection
CLEAR Act	Clear Law Enforcement for Criminal Alien Removal Act
CLETS	California Law Enforcement Telecommunications System
DHHS	Department of Health and Human Services
DVPA	Domestic Violence Prevention Act
EAD	employment authorization document
EWI	entry without inspection
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IMFA	International Marriage Fraud Amendments
INA	Immigration Nationality Act
INS	Immigration and Naturalization Service
LPR	lawful permanent resident
NACARA	Nicaraguan Adjustment and Central American Relief Act
ORR	Office of Refugee and Resettlement
SIJS	Special Immigrant Juvenile Status
TVPA	Trafficking Victims Protection Act
USC	United States citizen
USCIS	United States Citizenship and Immigration Services
VAWA	Violence Against Women Act
VTVPA	Victims of Trafficking and Violence Prevention Act

# TABLE OF STATUTES

## CALIFORNIA

### FAMILY CODE

2210: §1.4

2320: §10.3

2339(a): §5.9

3020: §1.4

4058(b): §1.4

5230: §1.4

6300: §4.27

### PENAL CODE

273.5: §4.29

### WELFARE AND

### INSTITUTIONS CODE

360: §1.4

360(a): §8.7

11203(a): §11.3

11495.1–11495.12: §11.2

12200: §11.3

14000(a): §11.3

18930(b)(2): §11.3

18930(b)(6): §11.2

### ACTS BY POPULAR NAME

Domestic Violence Prevention

Act (DVPA): §4.27

### UNITED STATES

### UNITED STATES CODE

#### Title 8

1101(a)(15): §3.12

1101(a)(15)(B): §3.12

1101(a)(15)(F): §3.12

1101(a)(15)(H): §3.12

1101(a)(15)(K)(i): §3.12

1101(a)(15)(T)(i)(I): §§9.9–9.10

1101(a)(15)(T)(i)(II): §§9.9, 9.11

1101(a)(15)(T)(i)(III): §§9.9,  
9.12

1101(a)(15)(T)(i)(IV): §9.9

1101(a)(15)(T)(ii)(I): §9.14

1101(a)(15)(U)(i)(I): §§7.2–7.3

1101(a)(15)(U)(i)(II): §§7.2, 7.4

1101(a)(15)(U)(i)(III): §§7.2, 7.6

1101(a)(15)(U)(i)(IV): §7.2

1101(a)(15)(U)(ii): §7.8

1101(a)(15)(U)(iii): §7.5

1101(a)(16): §3.11

1101(a)(27)(J)(i): §§8.2, 8.6

1101(a)(27)(J)(ii): §8.2

1101(a)(42)(A): §§6.3, 6.5

1101(a)(43): §3.17

1101(b)(1)(A): §4.12

1101(b)(1)(B): §4.12

1101(b)(1)(C): §4.12

1101(b)(1)(D): §4.12

1101(b)(1)(E): §4.12

1101(b)(1)(F): §4.12

1151(b)(2)(A)(i): §§2.2, 3.5–3.6,  
4.4

1153(a): §3.6

1153(a)(1): §3.5

1153(a)(2): §3.5

1153(a)(2)(A): §4.4

1153(a)(3)–(4): §3.5

1154(a)(1)(A)(iii): §4.11

1154(a)(1)(A)(iii)(I)(aa): §4.7

1154(a)(1)(A)(iii)(II)(aa)(AA):  
§4.3

1154(a)(1)(A)(iii)(II)(aa)(BB):  
§4.3

1154(a)(1)(A)(iii)(II)(aa)(CC):  
§4.3

1154(a)(1)(A)(iii)(II)(aa)(CC)  
(aaa): §§4.3, 4.29

1154(a)(1)(A)(iii)(II)(aa)(CC)  
(bbb): §§4.3, 4.29–4.30

1154(a)(1)(A)(iii)(II)(aa)(CC)  
(ccc): §§4.3, 4.30

1154(a)(1)(A)(iii)(II)(dd): §4.5

1154(a)(1)(A)(iv): §4.12

1154(a)(1)(A)(vi): §4.13

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**JUDGES GUIDE TO DOMESTIC VIOLENCE CASES**  
**Immigration and Domestic Violence**

**Evaluation/Questions**

Optional Information:

Name: \_\_\_\_\_

Court: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_

Full Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

We would appreciate your candid comments on the *Judges Guide to Domestic Violence Cases: Immigration and Domestic Violence*. We are especially interested in any errors or omissions you may have detected in the text.

1. The following pages or sections contain mistakes as follows (*please describe and provide page or section reference*):

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2. Further information about immigration and domestic violence is needed in a subsequent revision of the guide as follows (*please describe in detail*):

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3. I have the following questions regarding the material presented:

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4. Overall, I would rate this handbook as:

- Excellent
- Very Good
- Average
- Needs Improvement

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Thank you!