



TO: IMMIGRANT VICTIM'S ADVOCATES AND ALLIES
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VAWA 2005 IMMIGRATION PROVISIONS

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In 1994 and 2000 Congress included in the Violence Against Women Act immigration provisions designed to remove obstacles inadvertently interposed by immigration laws that prevent immigrant victims from safely fleeing domestic violence and prosecuting their abusers. VAWA 2000 extended immigration relief to immigrant victims of sexual assault, human trafficking, and other violent crimes who agree to cooperate in criminal investigations or prosecutions. A key goal of VAWA's immigration protections is to cut off the ability of abusers, traffickers, and perpetrators of sexual assault to blackmail their victims with threats of deportation, and thereby avoid prosecution. VAWA allows immigrant victims to obtain immigration relief without their abusers' cooperation or knowledge. Congress understood that in order to stop domestic violence, all victims need protection and assistance without regard to their immigration status.

While VAWA 1994 and 2000 made significant progress in reducing violence against immigrant women, there are still many women and children whose lives are in danger today. Many VAWA-eligible victims of domestic violence, sexual assault, child abuse, or trafficking are still being deported. Others remain economically trapped by abusers or traffickers in life-threatening situations. Some needy victims of family violence, including incest survivors and elder abuse victims, are totally cut off from VAWA's immigration protections. Finally, many trafficking victims are too afraid to cooperate with law enforcement for fear that traffickers will retaliate against their family members. VAWA 2005 eliminates some of the major obstacles immigrant crime survivors face in achieving safety and legal immigration status.

A. Implements VAWA's original intent by stopping the deportation of immigrant victims of domestic violence, sexual assault, and trafficking:

- **Gives VAWA-eligible applicants the opportunity to file one VAWA motion to reopen to pursue VAWA relief.** Exempts VAWA cancellation of removal or suspension of deportation applicants from the motion to reopen filing deadlines and numerical limits, provided that they are physically present in the U.S. at the time of filing. Also provides that the filing of such motion shall stay their removal pending final disposition of the motion including exhaustion of all appeals, if the motion establishes a prima facie case for the relief sought. [*Section 825*].

- **Adds battery or extreme cruelty to the list of exceptional circumstances in removal proceedings** for motions to reopen *in absentia* orders. [Section 813(a)].
- **Exempts victims of domestic abuse, sexual assault, or trafficking from sanctions for failing to voluntarily depart.** VAWA petitioners, VAWA cancellation of removal applicants, and VAWA suspension of deportation applicants are not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if the extreme cruelty or battery was at least one central reason for the overstay of voluntary departure. [Section 812].
- **Encourages the use of the I-212 process** that allows DHS to waive prior entry and removal problems for immigrant victims of domestic violence, sexual assault, or trafficking so that immigrant victims who qualify for VAWA, T, or U relief can overcome reinstatement of removal problems. [Section 813(b)].
- **Improves VAWA cancellation of removal through technical amendment so judges can grant VAWA 2000 domestic violence victim waivers.** [Section 813(c)].
- **Fixes the filing deadline problem for VAWA NACARA 202 applicants** by allowing abused spouses and children eligible for legal immigration status as a Nicaraguan or Cuban under the Nicaraguan Adjustment and Central American Relief Act of 1998 to apply even if the abuser did not apply for status and even through the deadline for filing has past. [Section 815].
- **Improves access to VAWA HRIFA.** Provides that if an alien abuser was eligible for status under the Haitian Refugee Immigration Fairness Act of 1998, but did not apply for status, the alien's abused spouse or children at the time may now apply for legal immigration status on their own. [Section 824].
- **Grants Cuban Adjustment to the spouse of a Cuban eligible for adjustment** under the Cuban Adjustment Act for two years after the date on which the Cuban spouse dies, or for two years after the date of termination of the marriage, if the abused spouse demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban. [Section 823].
- **Improves protection for children of U visa recipients.** Corrects a drafting error in VAWA 2000 and enhances protection for crime victims by providing that certain family members accompanying or following to join can receive U visas without having to first show that the visas are necessary to avoid "extreme hardship." [Section 801(b)].
- **Allows trafficking victims** whose physical or psychological trauma impedes their ability to cooperate with law enforcement to seek a waiver of this requirement. [Section 801(a)(3)].

B. Extends immigration relief to larger group of family violence victims

- **Protects child abuse and incest victims by granting them until the age of 25 to file their self-petition** as long as the child abuse was at least one central reason for the filing delay [Section 805(c)].

- **Protects elder abuse victims by granting self-petitioning to parents battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter.** [*Section 816*].
- **In special immigrant juveniles cases the government is barred from contacting the abusive parent.** [*Section 826*].
- **Removes 2-year custody and residency requirement for abused adopted children** by allowing adopted children to obtain permanent residency even if they have not been in the legal custody of, and have not resided with, the adoptive parent for at least two years, if the child has been battered or subject to extreme cruelty by the adoptive parent or by a family member of the adoptive parent. [*Section 805(d)*].
- **Protects abused immigrant children and children of battered immigrants from being cut off from VAWA immigration protection because they turn 21** before they become lawful permanent residents. Assures that child VAWA self-petitioners and derivative children have access to VAWA's aging out protections and can additionally access any Child Status Protection Act relief for which they qualify. [*Section 805(a) &(b)*]
- **No petitioning for abusers as family members.** An individual who was a VAWA petitioner, or granted a T or U visa, may not file an application on behalf of the person who committed the battery, extreme cruelty, or trafficking against the individual which established the individual's eligibility as a VAWA petitioner, or for T or U status. [*Section 814(e)*].

C. Provides economic stability and security for trafficking victims

- **Protects trafficking victims' family members living abroad and reunites family members** by allowing them to receive T visas without having to show extreme hardship. [*Section 801(a)(2)*]
- **Improves access to lawful permanent residency for trafficking victims** by providing them an exception to penalties for being unlawfully present in the United States where the trafficking was a central reason for their presence. [*Section 802*]
- **Allows victims to change to T or U visas who came in on K** (fiancée, spouse, child entering from abroad), S (criminal informants), or J (exchange visitors) visas. [*Senate 821(c)*].
- **Extends duration of U and T visas** for up to 4 years, with the option to extend year by year if law enforcement certifies that such extension is necessary to assist in the criminal investigation or prosecution. [*Section 821(a) and (b)*].
- **Allows some trafficking victims earlier access to permanent residency** by allowing continued presence to count towards the three-year residence requirement and allowing DHS discretion to reduce three year wait upon receipt of certification that law enforcement officials do not object. [*Section 803(a)*].
- **For purposes of T visa certifications** clarifies that victims of trafficking are participating in investigations and prosecutions when they respond to and cooperate with requests for evidence and information. [*Section 804(b)*]

D. Promotes safety of VAWA-eligible immigrant victims

- **Strengthens VAWA Confidentiality Enforcement.** In 1996 Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000 and in this Act Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims. This section makes the following improvements to VAWA confidentiality: [Section 817].
- Extends VAWA confidentiality to trafficking victims
 - In addition to the Department of Justice, the Department of Homeland Security and the Department of State will be covered by VAWA confidentiality rules
 - Provides for Congressional oversight by permitting disclosure, in a manner that protects victim confidentiality and safety, to the chairs and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees
 - Allows the specially trained VAWA unit the discretion to refer victims to non-governmental organizations with expertise serving immigrant victims for victim and legal services
 - Establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. When any part of an enforcement action was taken leading to such proceedings against an alien at -- a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case, DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that such an enforcement action was taken but that DHS did not violate the requirements of Section 384 of IIRIRA [Section 825(c)]
 - The Department of Homeland Security and the Department of Justice provide guidance to their officers and employees who have access to information protected by Section 384 of IIRIRA including the purposes to protect victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information.
- **Protects driver's license information for limited group of crime victims whose confidential address is critical for their safety.** With respect to rules governing identification cards and drivers' licenses, DHS and the Social Security Administration shall give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking who are entitled to enroll in state address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law, VAWA confidentiality, or suppressed by a court order [Section 827].

E. Guarantees economic security for immigrant victims and their children

- **Guarantees Access to Legal Services for Immigrant Victims** by authorizing any Legal Services Corporation funded program to use any source of funding, including LCS funding, to represent any victim of domestic violence, sexual assault, trafficking and other violent crime. [*Section 104*]
- **Employment authorization for abused spouses of certain non-immigrant visa holders.** Foreign born spouses admitted to the United States under the A, E-3, G, or H visa programs accompanying or following to join a principal alien spouse shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to extreme cruelty perpetrated by the principal alien. [*Section 814(c)*]
- **Work Authorization for victims with approved VAWA petitions and T visas** [*Section 814(b)*].

F. Improvements in processing VAWA cases and technical amendments

- **Creates uniform definition of “VAWA petitioner”** which covers all forms of VAWA self petitions created in VAWA 2000 including all VAWA-self petitioners, VAWA Cuban adjustment, VAWA HRIFA, VAWA NACARA (202 & 203) applicants and battered spouse waivers. Includes both petitioners and their derivative children. [*Section 811*].
- **All VAWA cases related to victims of domestic violence, sexual assault, trafficking and U visa crime victims** are to be adjudicated at the specially trained VAWA unit at the Vermont service center. This includes employment authorizations, adjustments, and applications for parole related to these applications and the new work authorizations for abused spouses of H, G, A and E(iii) visa holders. [*Section 811, legislative history*].

G. International Marriage Broker Legislation

- **Changes in the K visa process for immigrant fiancés and spouses married abroad.** Requires that citizens petitioning for K visas provide information on criminal convictions for specified crimes. These include a list of violent crimes, and the attempt to commit these crimes, as well as crimes relating to multiple convictions for substance or alcohol abuse. DHS will be required to transmit this criminal history information, along with results of any database search they conducted on the U.S. citizen in the process of adjudicating the petition to the foreign national fiancé or spouse. Receiving information cannot be used against the victim in any immigration case.
- **Protections for Fiancés.** To prevent serial K visa petitions by abusive U.S. Citizens, the Department of State cannot approve a fiancé visa (unless they grant a waiver or the domestic violence exception applies) if the citizen petitioner has petitioned for two K visas in the past, and less than 2 years have passed since the citizen petitioner last filed for a K visa for a fiancé or spouse. DHS can waive this bar, not when the U.S. citizen is an abuser or has a violent criminal history.
- **Protections for Immigrant Spouses Married Abroad.** VAWA 2005 creates a database to track serial K applications and notify the citizen petitioner and foreign-born spouse after a

second K visa is approved and for all subsequent visa applications unless a 10 year period lapses since the last K visa petition was approved. All future K applications will trigger similar notice, with a domestic violence pamphlet being sent to K beneficiary immigrant spouse.

- **Government Duties.** Orders the Department of State, the Department of Homeland Security and the Department of Justice to create pamphlet on domestic violence victim legal rights and resources for immigrant victims in the United States. This pamphlet must be developed in consultation with experts on domestic violence experienced by immigrant women. The pamphlet must be sent to all foreign national K visa fiancés and spouses and family based visa petition (I-130) applicants in an appropriate language. The Department of State will send criminal information from any background check they have conducted in the course of adjudicating the K visa petition along with the citizen petitioner's admission of criminal history to foreign national spouse. Information about any criminal convictions of the U.S. citizen fiancé or spouse and a summary of the pamphlet will be orally transmitted by consular officers at the K visa applicant's consular interview. The Department of State and the Department of Homeland Security cannot give locational or personal information about prior victims of the U.S. citizen petitioner to the foreign national now applying to enter the United States.
- **International Marriage Broker (IMB) Duties.** IMBs cannot market children. They cannot share any information on people under the age of 18 with any person or entity. IMBs are required to collect criminal background information on each U.S. client, including arrest and conviction information, a sex offender registry search and information on where person has lived, prior marriages and children they have under the age of 21. An IMB cannot give a U.S. client information on a foreign national until they have searched sex offender registries, collected criminal and family background information, provided background information to the foreign national recruited women, given the domestic violence pamphlet developed by the U.S. government to foreign national and received signed written consent from foreign national to give her contact information to a specific U.S. client. The IMB can only share foreign national contact information with a US client - not with a recruit or potential client. Violation of these requirements can result in civil penalty of \$5000 to \$25000
- **GAO Study.** VAWA 2005 also requires a Government Accounting Office Study be conducted within 2 years that examines the results of changes by VAWA 2005 on K visa applications for spouses and fiancés and on family based spouse visa applications (I-130) applications.

For technical assistance and questions on this legislation please contact Joanne Lin, Immigrant Women Program of Legal Momentum. (202) 326-0040. iwp@legalmomentum.org