

Minnesota Coalition for Battered Women

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Immigration Law Overview for Victims of Domestic Violence

PLEASE NOTE: This information is intended as a guideline and general overview for advocates working with victims of domestic abuse. As each victim's case differs and immigration law is subject to change, we strongly urge you to contact your local legal aid office or an immigration attorney to determine how these laws would apply to any particular woman with whom you are working.

INTRODUCTION

There are many different laws that protect victims of domestic violence. Some of these laws can help non-US citizen victims of domestic violence with immigration issues and allow them to stay in the United States without having to rely on their abusers for help. Different things (like the victim's relationship to her abuser and the victim's current immigration status) will determine whether or not these laws can help a victim stay in the United States.

Step 1: Find out the victim's immigration status

- Did the victim enter the US illegally?
- Did the victim enter the US with a visa?
 - a) What type of visa was it?
 - b) Has the visa expired, and if so, when did it expire?
- Is the victim a permanent resident of the United States? (Does she have a "green card?")
 - a) Is she a conditional permanent resident? To determine this, look at the date her card was issued and the date it expires. If the card is good for only two years, she is most likely a conditional permanent resident.

Step 2: Find out her abuser's immigration status

- Is the abuser a United States citizen or a lawful permanent resident?

Step 3: Find out the victim's relationship to her abuser

- Is the victim married to her abuser?

Step 4: Find out if the abuser filed any immigration papers on behalf of the victim

- Have they filed a marriage petition? (INS Form I-130 Immigrant Relative Petition or INS Form 1-485 Adjustment of Status Application)
- Has the couple had a marriage interview with an INS officer?
- Was the victim granted permanent residency? (If the victim has not yet received her "green card" there should be a stamp in her passport or she may have a temporary paper card stamped to indicate that she has been granted permanent residency.)

DETERMINING WHAT CAN BE DONE TO HELP THE VICTIM REMAIN IN THE UNITED STATES:

1. Permanent Residents who have a green card that is valid for at least ten years:

Permanent Residents who have a green card that is valid for at least ten years have already achieved permanent lawful status. The abuser will not be able to take this right away from her. Permanent Residents, however, can lose their green cards if they abandon their status or if they commit a deplorable offense.

2. Conditional Permanent Residents who have a green card that is valid for two years or less:

Conditional Permanent Residents must file an INS Form I-751 Application to Remove Conditional Status with their spouse during the 90-day period before their green card is set to expire. If the Conditional Permanent Resident has been the victim of domestic violence, she can file an I-751 waiver without her abusive spouse. To do this she must show evidence of the bona fides of her marriage and evidence of the abuse.

3. Other victims married to United States Citizens or Lawful Permanent Residents:

If the victim does not have permanent residency or conditional permanent residency, she may be eligible to file an INS Form I-360 Special Immigrant Petition for victims of domestic violence. To do this the victim must be able to prove that:

- a) The abuser is a US citizen or a Lawful Permanent Resident. (It is possible to still be eligible if a lawful permanent resident lost his status as a result of the abuse.)
- b) She is still married to her abuser OR they have been divorced for less than two years OR they are not legally married but the victim believed they were for a time after the marriage.
- c) She has been “battered” by her spouse or “the subject of extreme cruelty” during the marriage, though the abuse need not have occurred in the United States. (Evidence of abuse may include “any credible evidence.”)
- d) She married the abuser in “good faith.” (She must show that the marriage was not a “sham” marriage that was used to get the victim a green card.)
- e) She resided with the abuser. (This can occur either inside or outside the United States)
- f) She is a person of good moral character. (Some acts may not be a bar if it can be shown that they were committed as a result of the abuse.)

4. Victims who are not United States Citizens or Lawful Permanent Residents:

These victims may be able to file for asylum in the United States based on the abuse that occurred in their home country if they can show that the government in their home country is unable to protect them from the abuse if they meet other criteria for asylum.

5. Victims who are not married to their abusers (T and U Visas):

There are two new visas available that may help victims of abuse. The **T Visa** is a visa for victims of a severe form of trafficking (including sex trafficking, involuntary servitude, or slavery). In addition to proving you are a victim of a severe form of trafficking, the victim must also:

- a) Be present in the United States.
- b) Be under the age of 15 or have complied with a request to assist in the prosecution of traffick-

- ing.
- c) Would suffer extreme hardship if removed from the United States.

The **U Visa** is a visa for victims of certain types of criminal activity. Some of the eligible crimes include rape, torture, trafficking (not sever), incest, domestic violence, sexual assault or abusive sexual contact, prostitution or sexual exploitation, kidnapping, blackmail or extortion. A U Visa applicant will also need to show that.

- a) She suffered abuse because of a crime in the United States.
- b) She possesses information regarding the criminal activity.
- c) She would suffer extreme hardship if removed from the U.S.
- d) She is able to get certification from a law enforcement official that the victim has “been helpful, is being helpful, or is likely to be helpful” in the investigation of the criminal activity listed above.

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