



Immigrant Victims of Domestic Violence: Cultural Challenges and Available Legal Protections

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Immigrants to the United States constitute a complex and diverse population of ethnic and national groups with varied backgrounds. Some immigrants have fled difficult situations in their home countries while others have been drawn by economic opportunities. In the decade between 1990 and 2000 there was dramatic growth in immigration among specific populations. For example, in 1990 there were 7.3 million Americans of Asian origin but by the 2000 Census there were 10.2 million citizens and residents who identified themselves as of Asian descent. Even more dramatic was the growth in the Hispanic or Latino population in the United States, growing from 22.3 million in 1990 to 35.3 million in 2000 (Grieco & Cassidy, 2000; U.S. Census, 1990).

Little attention has been paid to immigrant women who are battered. While no specific estimates exist on their numbers, the issues they face are not only those that affect battered women who are citizens, but also a number of cultural and legal barriers to seeking safety (Narayan, 1995). The focus of this document is to raise awareness of both the challenges faced by battered immigrant women and some of the legal protections now available to them. The challenges include cultural beliefs and practices that provide rationalizations used to excuse and deny the existence of domestic violence in immigrant and refugee communities and barriers that confront battered immigrant and refugee women when accessing the services provided by public and private social service programs. This document also provides a broad outline of the legislative protections for battered immigrant women in the United States,

which began as a situation of absolute control by the citizen or permanent resident spouse over the battered immigrant's legal status, and has evolved to an understanding and passage of critical legal protections for immigrant victims of domestic violence.

The Experiences of Immigrant Women

The process of immigration for both men and women from developing countries is more often than not a very difficult and traumatic experience, which involves leaving behind familial support and moving great distances to unknown foreign lands. Here they face an unfamiliar new life and frequently prejudice and discrimination (Narayan, 1995). Further, many types of woman abuse are not defined as a crime in many communities from which migrants have come (The British Council, 1999). Despite their diversity, immigrant communities have one thing in common with each other and with the U.S. societies: the patriarchal social order supporting violence against women. This social order often silences victims, tolerates and minimizes the violence and provides protection to perpetrators (Erez, 2000). While immigrants to the United States arrive from across the globe, this document will primarily focus on Asian and Pacific Islander as well as Latina immigrants.

Domestic Violence and Immigrant Women

There are many social and economic factors that create barriers for immigrant battered women. For example, for most immigrant women their only

means of support is an abusive husband and they may lack alternative support networks, such as extended families, in their new country. Leaving her husband for a safer environment may alternately mean losing not only his financial support and her possessions, but also the extended family or community that can provide her with the support needed to obtain work (Erez, 2000).

Economic barriers are not the only ones that immigrant women face. Immigrant women, unlike citizens, often may not legally work and face a constant threat of deportation by their abuser (Narayan, 1995; Abraham, 2000; Dasgupta, 1998). Abusers of immigrant women often use immigration-related threats to assert power and control over their spouse or intimate partner. The abuser, if he is a U.S. citizen or a permanent resident, typically uses this power to threaten to have the victim deported by reporting her undocumented status to the Immigration and Naturalization Service (INS), threatens to revoke residency sponsorship, or refuses to file necessary immigration petitions that would provide the victim with lawful status in the U.S. Dutton, Orloff and Aguilar Hass (2000) found that 72.3% of the battered Latinas surveyed in their study reported that their spouses never filed immigration petitions for their wives even though 50.8% of the victims qualified to have petitions filed on their behalf. In addition, those abusers who did eventually file petitions for their spouses took almost four years to do so. Fear of deportation is a very powerful tool used by abusers to prevent battered immigrant women from seeking help and to keep them in violent relationships.

Immigrant Women in the Context of Family and Community

Family is often the one stabilizing force that enables immigrants to weather the turbulent process of migration. In this context, traditional societies' frequent reliance on patrilineal family structures, with males having the most authority and females expected to obey that authority, plays an important role (Okamura, Heras & Kerberg, 1995). In many Asian cultures, according to Okamura et al. (1995),

“the wife became part of the husband's family and had limited rights” (p. 72). Perilla and her colleagues (Perilla, Bakeman & Norris, 1994) also argue that the family is a central focus for Latinos, and strong feelings of loyalty, reciprocity, and solidarity are often shared by family members. The concepts of *marianismo* and *machismo* play an important role in Latino communities. According to Perilla et al. (1994), *marianismo* prescribes submission, self-sacrifice and stoicism for women while *machismo* contains positive and negative characteristics for men. Positive aspects include honor, pride, courage, responsibility and obligation to the family. Perilla et al. (1994) suggest that “along with these positive traits, however, ‘machismo’ ideals also imply sexual prowess, heavy alcohol consumption, and aggressive behavior, as well as the belief that men are physically and morally superior to women” (p. 326).

Maintaining family harmony through cooperation and self-sacrifice within these traditional roles are the foundations of many immigrant families (Okamura et al., 1995). Women in particular find their identities in their roles as daughters, wives and mothers and live with the expectation that they will sacrifice themselves for their families (Okamura et al., 1995). For example, Asian battered women may recant stories of abuse when interviewed by police in order to support a strong family system, but then use different strategies to maintain their safety and that of their children.

Barriers to Leaving and Seeking Help

Many battered immigrant women then seek help within the constraints of these traditional family and community contexts. A variety of barriers present themselves as immigrant victims seek assistance, including family and community resistance, fear of official institutions, inability to communicate in a common language, and program design features that inhibit help seeking. Each of these will be discussed in more detail below.

Erez (2000) has aptly pointed out that “attempts to raise the issue of violence against women in immigrant communities are often deflected by community leadership as an imposition of irrelevant

'Western' agendas, and with an insistence that 'our tradition' or 'our families' do not suffer from those problems which are endemic to 'Western' marriages" (p. 30-31). Communities respond to some women's efforts to seek safety by shunning them or by putting pressure on them to remain in the marriage. Divorce is such a stigma in some communities that a woman may never be able to remarry within her community once she has left her abuser. If she does leave she is often held responsible for the end of the marriage, even if she was the victim of violence. Her family of origin may or may not accept her back, because such an act may bring disgrace to the entire family (Supriya, 1996; Dasgupta & Warriar, 1996). In addition, the presence of relatives who witness the violence may not deter the batterer, as family members may ignore or condone the violence.

Immigrant women may also be wary of requesting help from official institutions based on real or imagined experiences with similar institutions in their home country (Erez, 2000). Involvement with such institutions presents the real possibility of their perpetrator or themselves being deported. For example, one study of Latina immigrants in the Washington D.C. metropolitan area found that 21.7% of the battered immigrant women surveyed stated their fear of being reported to immigration authorities as their primary reason for remaining in an abusive relationship (Dutton, Orloff & Aguilar Hass, 2000).

According to Erez (2000), "The overriding rationale for many immigrant women staying in abusive relationships is, however, the prospect of losing their children. Many immigrant women fear that deportation or loss of residency status could mean losing custody of their children" (p. 31). Erez (2000) continues by pointing out that divorce proceedings in a battered woman's country of origin may well mean loss of custody of her children to the perpetrator.

Fears and assumptions about the response of American systems are only a few of the barriers to battered immigrant women's help seeking. Language barriers make gaining access to information,

resources and services difficult. For example, Erez (2000) suggests that some immigrant women do not know or understand the provisions of protection orders. She states that if women leave home they "are also often unaware that they may be eligible for child support and financial assistance from the state" (Erez, 2000, p. 31).

Overcoming language barriers through dependence on official interpreting services may resolve only a small part of the problem. As Erez (2000) points out, "Interpreters are still not routinely available, and their professionalism may be problematic" (p. 32). For example, information needed by police officers in a domestic abuse case is sometimes gathered from the abusive partner, his extended family or the victim's children when other interpreters are not readily available. This may lead to distortions in information and uncooperative interpreters who disagree with the woman's actions. Similar caution needs to be applied when using community members as interpreters due to their attitude about domestic violence, lack of interpreting skills, and limited familiarity with the dialect being spoken.

Intervention services may not be able to meet immigrant women's needs once they overcome the obstacles in making appropriate contact. Institutional barriers include location, professional background of board or staff, and both the ethnicity and language skills of staff (see Keefe & Casas, 1980). Many of these programs have also failed to adequately integrate race and ethnicity into an understanding of and response to domestic violence (Kanuha, 1996). According to Erez (2000), "Shelters are often perceived by the women as being the 'point of no return', or as a refuge following an irreconcilable breakdown of the marriage, rather than a resource for assistance in a marital crisis" (p. 32).

As discussed above, there are numerous cultural, economic, legal and practical factors combine to prevent immigrant women who are battered from seeking or receiving the help they need. There is, however, increasing awareness across the United States of the unique plight faced by immigrant

women who are battered. This awareness has led to numerous changes, especially in federal immigration laws as discussed below.

Legal Protections for Battered Immigrants

The early 1990s reflected a growing recognition of the devastating impact immigration law and procedure had on an immigrant victim of domestic violence. The first piece of legislation that recognized domestic violence as a problem experienced by immigrants dependent on their abusive citizen and lawful permanent resident spouses for legal immigration status was the “battered spouse waiver” (INA §216(c)(4), 8 U.S.C. §1186a(c)(4) (2001)). Under immigration laws, if an immigrant spouse was married to a citizen for less than two years, she was granted “conditional lawful permanent residence,” instead of full permanent residence (INA § 216(a)(1), 8 U.S.C. § 1186a (2001)). In order to obtain full lawful permanent residence, the immigrant spouse must remain in the marriage to the citizen for at least two years. This two-year requirement placed a heavy burden on many immigrant women, forcing them to remain in abusive relationships to satisfy immigration law requirements. The battered spouse waiver enabled immigrant women to escape their abusive marriages and obtain legal immigration status without the cooperation of their abusive spouses. While this was an important step towards protecting battered immigrants, the waiver was limited and only available to certain applicants.

Congress recognized that immigrant women and children were still trapped in violent relationships and deterred from taking action to protect themselves by filing protection orders or criminal charges or calling the police because of the threat or fear of deportation despite the enactment of the battered spouse waiver (House Reports, 1993). There was further bi-partisan recognition that immigration laws were part of a larger failure to address the issue of domestic violence. The House of Representatives Committee on the Judiciary found that domestic battery problems are “terribly exacerbated in marriages where one spouse is not a citizen and the

non-citizens’ legal status depends on his or her marriage to the abuser,” because it places control entirely in the hands of the citizen or lawful permanent resident.

To combat this problem, Congress enacted other special immigration protections for immigrants abused by their citizen or lawful permanent resident spouses or parents in the Violence Against Women Act (VAWA, 1994). VAWA contained provisions that limit the ability of the abuser to use immigration laws to threaten and control his immigrant spouse or child.

The sections below describe several of the provisions available to immigrant women. Specifically, VAWA provides relief by enabling battered immigrants to attain lawful permanent residence (green cards). VAWA created two forms of relief for battered immigrants: VAWA self-petitions and VAWA cancellation of removal (formerly called “suspension of deportation”). These provisions ensure that immigrant victims of domestic violence have access to lawful immigration status without having to depend on the cooperation or participation of their batterers. Other forms of immigration relief available to battered immigrants include U-visas and gender-based asylum, which are briefly discussed below. The forms of immigration relief described below are by no means an exhaustive list of the types of relief available to abused immigrants. It is important to remember that the information provided in this section is intended to act as an *introduction to immigration remedies for victims of domestic violence*. It is essential for advocates working with battered immigrants to consult with an immigration expert to fully explore the range of immigration relief available to that particular individual and to determine whether certain civil or criminal actions, such as divorce or criminal conviction, could possibly affect the immigration status of a battered immigrant.

VAWA Self-Petitions

Under current immigration laws, a citizen or permanent resident spouse or parent may file an immigration petition known as a “relative petition”

for certain family members so they may obtain permanent resident status in the United States (INA § 204, 8 U.S.C. § 1154(a) (2001)). The citizen or permanent resident is the Petitioner and the immigrating family member is the Beneficiary. The Petitioner solely controls this process, deciding when or whether to file this relative petition. The relative petition may be withdrawn at any moment, subject to the whims of the Petitioner. It is within this framework that VAWA self-petitions evolved. Under VAWA (1994), rather than rely on an abusive partner or parent, the victim family member can file a VAWA self-petition and obtain permanent resident status without the knowledge, cooperation or participation of the abusive partner or parent.

In order to be eligible for this form of immigration relief, the battered immigrant must generally show she is a person of good moral character (e.g. no criminal record), that she married or was formerly married to the citizen or permanent resident spouse or former spouse in good faith, and that the citizen or permanent resident subjected her to battery or extreme cruelty (INA § 204(a), 8 U.S.C. § 1154(a) (2001)). The definition of battery or extreme cruelty is an immigration definition that includes physical or mental abuse (8 C.F.R. § 204.2(c)(vi) (2002)). Many victims of psychological abuse are eligible to apply for VAWA self-petitions. Further, under subsequent enactments to VAWA, certain battered immigrants who are divorced from their abusers, living abroad, or who married bigamist abusers who never divorced their first wife may be eligible to file VAWA self-petitions (VTVP, 2000). While this immigration provision does not provide all immigrants with access to legal immigration status, it does provide relief to those victims whom, but for the abuse, would have lawful immigration status through their spouse.

VAWA Cancellation of Removal (formerly Suspension of Deportation)

The VAWA cancellation of removal (INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (2001)) relief applies to victims who are presently in removal (deportation) proceedings before an immigration

judge. In some cases, abusers have reported their undocumented spouses to the INS and subsequently the battered immigrant is arrested and placed under removal proceedings for having unlawful status in the United States.

A person seeking VAWA cancellation of removal while under removal proceedings must demonstrate that she has resided continuously in the country for three years, she is a person of good moral character (e.g. no criminal record), she or her child would suffer extreme hardship if returned to her country, and she was subjected to battery or extreme cruelty by a citizen or lawful permanent resident. A grant of VAWA cancellation of removal by an immigration judge suspends deportation proceedings and affords a battered immigrant woman lawful permanent residence in the United States.

Crime Victim Visas (U Visas)

Battered immigrants who do not qualify for either VAWA self-petitions or VAWA cancellation of removal may be eligible under the Victims of Trafficking and Violence Protection Act of 2000 (VTPA, 2000) for the newly created nonimmigrant crime victim visa, also known as the "U visa" (INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (2001)). This U visa is offered to a limited group of immigrant crime victims who have suffered substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the United States. Battered immigrants who can benefit include those abused by their boyfriends, wives and children of diplomats, work-visa holders, and students. These visas will also help victims of trafficking, rape, sexual assault in the workplace, and nannies who are held hostage.

To obtain the visa, a law enforcement official must certify that the U visa applicant has been helpful, is being helpful or is likely to be helpful to an investigation or prosecution of criminal activity (INA § 101(a)(15)(U)(i)(III), 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2001)). The maximum number of U visas available in any one-year is 10,000. Crimes covered include: 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 the above mentioned crimes (INA § 101(a)(15)(U)(iii), 8 U.S.C. § 1101(a)(15)(U)(iii) (2001)).

Under the Attorney General's discretion, a U visa holder who has been physically present in the country for three years may apply to be a permanent resident when justified on humanitarian grounds, to ensure family unity or when it is otherwise in the public interest unless they have unreasonably refused to cooperate in an investigation or prosecution of criminal activity (INA § 245(l), 8 U.S.C. § 1255(l) (2001)).

Gender-Based Asylum

Another form of relief that is available to battered immigrants is asylum (INA §§ 101(a)(42), 208; 8 U.S.C. §§ 1101(a)(42), 1158 (2001)). A person applying for asylum in the United States must establish that she fears returning to her country based on a well-founded fear of persecution in her country on account of her race, religion, nationality, political opinion or membership in a particular social group. The applicant must establish a clear connection between her fear of persecution and one of the five enumerated grounds: race, religion, nationality, political opinion, or membership in a particular social group. Women in certain situations may be eligible for asylum based on political opinion or membership in gender-based social groups. Types of gender-based claims have included rape and sexual violence, female genital mutilation, coercive family planning practices, and domestic violence.

Conclusion

Battered immigrant women face many barriers to seeking and receiving assistance. The barriers are

cultural, economic, practical as well as legal. The Violence Against Women Act of 1994 and its 2000 amendments have provided immigrant battered women with new tools to achieve safety and effectively brought awareness of domestic violence in immigrant communities to the public. These legislative protections have also helped bring their abusers to justice while reducing domestic violence in their communities. Moreover, these critical pieces of legislation ensure that the citizen children of immigrant parents have the opportunity to live lives free of domestic violence.

Increased numbers of abused immigrants are coming forward acknowledging that domestic violence is a crime and that it shall no longer be tolerated. Since March of 1996, the INS has received more than 11,000 VAWA self-petitions, and has approved over 6,500 (Strack, 2000). While advocates continue spreading the word, policy makers and national domestic violence organizations are making sure that addressing the needs of battered immigrants is an important part of their national agenda. A great deal of education is required within both immigrant communities about the problem and potential solutions and immigrant serving programs about the needs of immigrant women and their families and the barriers that keep them from seeking or receiving help.

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In Brief:

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- There are many social and economic factors that create barriers for immigrant battered women. These include dependence on an abusive husband for economic and social support. Even when an extended family network exists, it may explicitly or implicitly support the abusive male's actions toward his victim.
- The abuser, if he is a U.S. citizen or a permanent resident, typically uses his power to threaten to have the victim deported by reporting her undocumented status to authorities, threatens to revoke residency sponsorship, or refuses to file necessary immigration petitions that would provide the victim with lawful status in the U.S.
- Immigrant women may also be wary of requesting help from official institutions based on real or imagined experiences with similar institutions in their home country (Erez, 2000). Involvement with such institutions presents the real possibility of their perpetrator or themselves being deported.
- Intervention services may not be able to meet immigrant women's needs once they overcome the obstacles in making appropriate contact. Institutional barriers include location, professional background of board or staff, and both the ethnicity and language skills of staff (see Keefe & Casas, 1980).

To combat these problems, Congress has enacted special immigration protections for abused immigrants in the Violence Against Women Act (VAWA, 1994). VAWA contains provisions that permit self-petitions for permanent residency and cancellation of removal (deportation). Other recent provisions helpful to immigrant battered women include the new "U visas" for immigrant crime victims and asylum based on membership in gender-based social groups.

Advocates, policy makers and national domestic violence organizations are making sure that addressing the needs of battered immigrants is an important part of their national agenda. A great deal of education is required within both immigrant communities about the problem and potential solutions and immigrant serving programs about the needs of immigrant women and their families and the barriers that keep them from seeking or receiving help.