



TO: IMMIGRANT VICTIMS' ADVOCATES AND ALLIES
FROM: JOANNE LIN AND LESLYE ORLOFF
DATE: JANUARY 5, 2006

VAWA 2005 IMMIGRATION PROVISIONS

FINAL AS SIGNED BY PRESIDENT BUSH ON JANUARY 5, 2006

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 deportation of immigrant victims of domestic violence, sexual assault, or 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 voluntary departure 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 filing deadline has passed. [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 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 died, 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. Enhances protection for crime victims by providing that certain family members accompanying or following to join can receive U visas without having to show that the visas are necessary to avoid extreme hardship or without having to obtain a government certification attesting that a criminal investigation or prosecution would be harmed without the assistance of those family members. [Section 801(b)].
- Law enforcement cooperation is not required for trafficking victims whose physical or psychological trauma impedes their ability to cooperate with law enforcement. [Section 801(a)(3)].
- Amends good moral character definition (INA 101(f)(3)) to clarify that a prior removal order [INA 212(a)(9)(A)] does not constitute a bar to establishing good moral character. Note: this amendment fixes a prior legislative drafting error and applies to all aliens, not just VAWA, T, or U-eligible aliens. [Section 822 (c)].

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

- Protects child abuse and incest victims by allowing them to self-petition up to age 25 so long as the child abuse was at least one central reason for the filing delay [Section 805(c)].
- Expands VAWA self-petitioning to elder abuse victims who have been battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter. [Section 816].
- 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. 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 alien 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 permanent residency for trafficking victims by providing them an exception to the penalties for being unlawfully present where the trafficking was at least one central reason for the unlawful presence. [Section 802]
- Allows change of status to T or U for aliens who entered the U.S. on C (transit), D (crewmen), K (fiancée, non-immigrant spouse, child), S (criminal informant), or J (exchange visitor) visas; as visitors under the visa waiver program; or as visitors from Guam. [Section 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 or another specified official 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 if in the opinion of the Attorney General the investigation or prosecution is complete. [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. Protects safety of victims of domestic abuse, stalking, sexual assault, trafficking

- **Strengthens VAWA Confidentiality Enforcement.** In 1996, Congress created special protections for victims of domestic violence against disclosure of information and the use of abuser-provided information 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 self-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 shall 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
 - Gives the specially trained United States Citizenship and Immigration Services' 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 removal proceedings are initiated based on immigration enforcement actions taken at a domestic violence shelter, a rape crisis center, or a courthouse (where 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 it did not violate the requirements of Section 384 of IIRIRA [Section 825(c)]
 - The Department of Homeland Security and the Department of Justice shall provide guidance to their officers and employees who have access to information protected by Section 384 of IIRIRA regarding Section 384, which will include the provisions 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.** In developing regulations and

guidance governing identification cards and drivers' licenses (under REAL ID), 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].

- Special immigrant juveniles shall not be compelled to contact the abusive family member at any stage of the SIJS application process. [Section 826].

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 LSC funding, to represent any victim of domestic violence, sexual assault, trafficking, or other crime, regardless of the victim's immigration status. [Section 104]
- Employment authorization for abused spouses of certain non-immigrant professionals. Derivative spouses admitted to the U.S. under the A, E(iii), G, or H non-immigrant visa programs who are accompanying or following to join the principal shall be granted work authorization if the derivative spouse demonstrates that during the marriage he or she (or a child) has been battered or subjected to extreme cruelty perpetrated by the principal. [Section 814(c)]
- Employment 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 1994, VAWA 2000 and VAWA 2005 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].
- Mandates promulgation of regulations implementing VAWA 2000 and VAWA 2005 within 180 days after enactment of VAWA 2005 [Section 828].

G. International Marriage Broker Regulation

- Requires U.S. citizen filing K petitions to disclose criminal background information. Mandates that U.S. citizens filing K visa petitions disclose criminal background information to international marriage brokers and to DHS/CIS. Relevant crimes include domestic abuse crimes, other violent crimes, and multiple convictions for substance and/or alcohol abuse. DHS will be required to transmit this criminal history information, along with results of any database search, the Department of State that will be responsible for communicating this information to the foreign fiancé or spouse [Section 832 (a)].
- Prevents abusive U.S. citizens from sponsoring multiple foreign fiancées and/or spouses. DOS cannot issue a K visa (unless DHS grants a waiver or the domestic violence victim exception applies) if the U.S. citizen has previously filed two K visa petitions, and less than two years have passed since the date of filing of the most recent K visa petition. DHS can waive this bar, but not when the U.S. citizen has a history of committing domestic violence or other violent crimes [Section 832].
- Government tracking of serial K visas. Creates government database to track serial K petitions filed by same U.S. citizen petitioner and to notify foreign fiancé or spouse of prior K petitions. Notification requirement triggered when petitioner has filed a third K petition within 10 years after petition. [Section 832].
- Domestic abuse pamphlet to be distributed to all foreign fiancées and spouses. DOS, DHS, and DOJ shall create pamphlet on domestic abuse laws and resources for immigrant victims in the U.S. The pamphlet must be sent to all foreign fiancés and spouses. DHS and DOS shall also send to the foreign fiancé or spouse the results from any criminal background checks conducted in the course of adjudicating the K visa petition and the petitioner's disclosure of any criminal history. U.S. consular officers shall orally inform foreign fiancées/spouses of the petitioner's criminal history and shall ask that petitioners disclose any international marriage brokers involved. The fact that a fiancé or spouse received information disclosed to her under IMBRA cannot be used against her to deny her application for immigration relief. DOS and DHS cannot disclose locational or personal information about prior victims of the U.S. citizen petitioner. [Sections 832, 833]
- International Marriage Broker (IMB) Duties. IMBs are prohibited from sharing any information on minors with any person or entity. IMBs cannot give U.S. clients information on a foreign national until the IMBs have searched sex offender registries, collected criminal and family background information, provided background information to the foreign national, given the domestic abuse pamphlet, and received written consent from the foreign national to

share her contact information. Violation of these requirements can result in civil penalty up to \$25,000.

For technical assistance and questions on VAWA Immigration 2005, please contact Joanne Lin, Senior Staff Attorney, Legal Momentum. jlin@legalmomentum.org. (202) 326-0040.