

# Assisting Immigrant Victims of Domestic Violence



## ADVOCATE'S GUIDE



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## Introduction

This guide for advocates and volunteers focuses on the needs of newly-arrived battered immigrant women whose immigration status is unsettled. It explores:

- how to more effectively respond to battered immigrant women;
- how immigration status is used as a weapon in domestic violence cases; and,
- the options open to immigrant victims, the documents they may need, and when a referral to an immigration attorney should be made.

## KEY DEFINITIONS AND CONCEPTS

### Key Definitions and Concepts

**BCIS:** Bureau of Citizenship and Immigration Services in the U.S. Department of Homeland Security (DHS). BCIS handles all immigration service and adjudication functions formerly performed by INS, including decisions on immigrant visa petitions, VAWA petitions, and other applications such as T and U visas, asylum and refugee applications.

**BICE:** Bureau of Immigration and Customs Enforcement is also under DHS. BICE focuses on the movement of goods and people and includes the enforcement and investigative functions previously undertaken by INS, such as immigration inspection and border patrol. It also includes the enforcement and investigative functions of the Customs Service.

**United States Citizen:** A U.S. Citizen is someone who is either born in the U.S., born abroad to a U.S. Citizen, naturalized as a U.S. Citizen, or automatically becomes a U.S. Citizen when a parent or both parents become naturalized.

**Lawful Permanent Resident:** An immigrant who has established a permanent right to live and work in the U.S. and to travel outside the country, also referred to as "LPR" status or "greencard" holder. LPR status lasts throughout life and the greencard holder is eligible to apply for U.S. Citizenship after they have held this status for 3 to 5 years. A Lawful Permanent Resident can be deported if convicted of certain crimes.

**Undocumented Persons:** An immigrant who has entered the U.S. without detection and without any documen-

tation, or an immigrant who has entered the U.S. with fraudulent documents or with appropriate documentation that has expired. These individuals are sometimes referred to as "illegal aliens."

**Non-Immigrant Visas:** A document that enables an individual to come to the U.S. for a temporary period and for a specific purpose, including the following visas: tourist, student, business visitor and diplomat.

**Deportation:** An action undertaken to remove an immigrant from the U.S., also known as "Removal." Deportation usually involves a hearing before an immigration judge, also known as a "Removal Proceeding." Once deported, an individual may not return to the U.S. for five years. However, an individual can decide to leave the U.S. voluntarily, without a hearing. This is considered a "voluntary deportation" and does not have the same five-year ban on returning.

**Immigrant Women:** This very diverse group includes women who have lived in the United States for as little as a day to many years. Immigrant women can be poor, wealthy, white, women of color, heterosexuals, lesbians or bisexuals. They may have entered the U.S. with appropriate documentation or could have entered with fraudulent documentation or no documentation at all. They may be legal permanent residents, conditional residents, here on visas, or undocumented.

# PREPARE

## Prepare to Work with Immigrant Victims

The issues of safety, poverty, housing and custody are difficult enough for domestic violence victims, but when working with battered immigrant women these issues are often complicated by language, culture and immigration status. To provide services effectively, organizations need to identify and develop partnerships with communities and organizations that can inform and address these issues.

## 1 Cultural Issues

To begin the work of initiating partnerships advocates should:

- Identify which population groups in their community are not being served.
- Locate agencies and organizations in the community that serve these population groups, and identify willing and committed individuals within these agencies with whom to collaborate.
- Find immigrant organizations in the area that battered immigrant women may contact. Research has found that the creation of ongoing working relationships between organizations with expertise in working with immigrants and domestic violence service providers is the key to successful interventions for immigrant victims.
  - They can help advocates better understand the immigrant victim's experience and challenges. They have the expertise on the services and resources available in their communities, cultural and religious differences and language issues.
  - They can assist in identifying interpreters and providing peer support for immigrant victims.
  - These groups are critical in providing support and combating feelings of isolation.

Programs that seek to serve immigrant victims without the input of immigrant and ethnic community agencies fall short of providing culturally competent assistance. Working with these organizations will help advocates establish a culturally appropriate environment. Having information in various languages, making accommodations for women who may not read or write, decorating with articles of various cultures are all steps that can help. Shelters have gone further by providing food familiar to immigrant women and developing policies that address the potential for racial tension between residents.

## 2 Language Issues

The absence of language accessibility is a major issue for immigrant victims. Organizations without multilingual staff should, as a first step, develop a referral list of interpreters. Again, this is best done in partnership with immigrant and community agencies. All interpreters identified should be trained on domestic violence issues and dynamics.

For advocates having difficulty locating an interpreter, there are some general guidelines to understand:

- Although it may feel as though there is no other choice, do not use the battered immigrant woman's children as interpreters. This places children in an unduly burdensome situation and may add to their risk as well as compound the impact of the domestic violence on them.
- Do not assume that the people who accompany victims are safe interpreters. Find out who they are, assess whether they pose any safety risk to the client, assess their relationship with the abuser and determine if they are charging any fee to the client.
- Assess volunteers from the community. Find out whether they have any connection to the abuser.
- Make sure the battered immigrant woman is comfortable with the interpreter. In some cases, immigrant victims will not want anyone from their community being involved. In those situations, volunteers from the community may not be a good option.
- Do not assume that because someone knows the language and the culture that he or she is not biased or is a good interpreter. Advocates should stay engaged and trust their instincts. If something does not feel right, look into it.

- In cases where no person who speaks a given language is available in your community, or the victim is not comfortable with those who do:
  - You may want to establish an arrangement with other organizations outside your area that have access to those languages and can assist you over the phone. Some organizations across the country have successfully established these types of agreements; for example, a program in Miami will call a program in Los Angeles to access an interpreter for various Asian languages; or,
  - You may want to establish a contract with a telephone language line service. However, be mindful that these interpreters are often not familiar with domestic violence.

### 3 Locate an Immigration Attorney.

While advocates need to understand how the immigration laws can assist their clients, the immigration system, laws and regulations are complex and change frequently. Advocates should identify which attorneys in their area are knowledgeable about domestic violence and immigration issues and reach out to them. Finding good attorneys with this expertise is not easy; the first step may be to contact local legal aid services. Many immigrant battered women and abused immigrant children are eligible for legal representation from programs that provide both free and low cost legal services. Legal services funded by the DOJ Legal Assistance for Victims grants, state government and private or faith-based funders can help all battered immigrants without restriction. Programs funded under the Legal Services Corporation Act (LSC) can also help many battered immigrants. Private attorneys may also be an option and some law firms take cases on a pro bono or sliding scale basis.

For assistance, advocates should contact the National Network to End Violence Against Immigrant Women at [www.immigrantwomennetwork.org](http://www.immigrantwomennetwork.org). They maintain a list of attorneys throughout the country who can assist immigrant victims. They are also aware of the various restrictions that lawyers working for Legal Services experience and can provide advocates with useful information.

### 4 Establish Relationships with Law Enforcement and Prosecutors.

Law enforcement officers and prosecutors come into contact with immigrant victims in the course of their work. They too face many of the same challenges around cultural and language issues. Once advocates are organized to provide services to immigrant battered women, they should establish relationships with local law enforcement agencies and prosecutors to inform them of these services so that victims are referred appropriately. Working with community and immigrant service programs, advocates may want to provide training for law enforcement and prosecutors in their community to help them understand some of the unique dynamics of working with immigrant victims. For example, it is important for law enforcement officers to know that asking about immigration status is not necessary in their role of assisting the victim, and could negatively impact the victim's willingness to participate in their investigation.



## ASSIST Assisting Battered Immigrant Women

Once advocates have developed partnerships with community and immigrant organizations, identified interpreters, addressed cultural issues, identified immigration attorneys and forged relationships with law enforcement officers and prosecutors, they are prepared to effectively address the unique needs of battered immigrant women.

When working with a battered immigrant woman, the advocate should:

- Determine whether the woman is safe
- Inquire as to the language in which she is most comfortable discussing her case
- Access an interpreter
- Determine if she wants police involvement
- Make a safety plan
- Determine whether she needs medical attention
- Assist her to access these needs or services

In working with immigrant victims, advocates need to understand the challenges immigrants face and learn what options are available to address their needs.

### 1 Identify Immigration Status.

Immigrant victims may be reluctant to discuss immigration status because they fear deportation for themselves, their children or their batterer. If she is deported, she may lose custody of her children, may not be allowed to enter the country to see her children, may return to poverty, famine or political persecution and may no longer be able to financially assist her family in her home country. She may be deported to a country whose laws do not protect her from domestic violence. Friends and family members may ostracize her because she got a divorce or sought a protection order against her abuser.

Many battered immigrant women who have legal immigration status do not understand that their batterer cannot take that status away. Advocates should know that if an immigrant woman becomes a naturalized citizen she cannot be deported. Immigrants who are lawful permanent residents or have valid visas cannot be deported unless they entered the United States on fraudulent documents, violated conditions of their visas or have been convicted of certain crimes.

Some victims may immediately reveal their immigration status. However, if they do not and an advocate believes it is important to know their status to better protect the victim, then the advocate may want to carefully discuss the issue, following these steps:

- Inform her whether you can keep the information she gives you confidential.
- Reassure the immigrant victim that you need to know her status so that you can best help her, as her status may contribute to her safety or assist you in determining if she needs an immediate legal referral.
- Reassure her that your services will not be denied, whatever her immigration status might be.
- Give her the option of not telling you if she is uncomfortable.
- Be sensitive in your approach. You may want to ask, “Do you know your immigration status?” or “Do you have any fear of being deported?”

Remember, a woman isn't always aware of her correct immigration status. The batterer may have lied about it. BICE or BCIS should **not** be called to verify her status.

### 2 Explain Her Options.

Explain to victims that services available to both documented and undocumented crime victims include:

- Emergency medical care
- Police assistance
- Criminal prosecution of perpetrators
- Community-based services necessary to protect life and safety
- Crime victim services
- Domestic violence services

- VOCA funds
- Emergency shelter
- Protection orders
- Child custody and support
- Public benefits for their U.S. citizen children

Awareness of the relevant immigration laws and how they might apply to an immigrant victim's case is critical to an advocate's ability to inform a woman of her options and in determining when to refer her to an attorney. The passage of the Violence Against Women Act (VAWA) in 1994 and its successors greatly expanded access to legal immigration relief and other services for immigrant victims of domestic violence and other crimes. The legal immigration options include:

### **VAWA Self-Petitioning**

- Applies to battered immigrant women who are married to U.S. citizens or lawful permanent residents.
- Allows immigrant victims of domestic violence to file their own petitions for lawful permanent residency without the cooperation of their abuser.
- Allows immigrant women to file petitions for themselves and their children if the children are abused.
- Victims must show the following:
  - Victim of domestic violence
  - Relationship with U.S. citizen or lawful permanent resident
  - Where they reside and where the abuse takes place
  - Good faith marriage
  - Good moral character

It is not necessary for a U.S. citizen or lawful permanent resident spouse or parent to have filed any paperwork previously. Immigrant parents of an abused child can also file for themselves and their children.



### **Battered Spouse Waivers**

- Available for immigrant victims who have conditional residency (a conditional temporary 2-year green card).
- Conditional residency was obtained through a case filed by her abusive citizen or legal resident spouse or parent.
- In this case, a battered spouse can petition to have the conditions removed and have her conditional residency changed to permanent residency without her abuser's knowledge or participation in the process.

### **Cancellation of Removal/Suspension of Deportation Under VAWA**

- Covers battered spouses or children of U.S. citizens or lawful permanent residents who are in deportation or removal proceedings.
- Allows battered immigrants and the immigrant parents of an abused child to close their deportation/removal proceedings and gain lawful permanent residency without participation of the abuser.

### **U Visa**

- Intended for immigrant victims of crime who have suffered physical or mental injury stemming from criminal activity.
- If granted, the immigrant victim receives a legal immigration visa and work authorization which may lead to lawful permanent residency.

- Covers victims of a wide range of crimes including victims of domestic violence currently not covered under the VAWA provisions and also victims of incest, sexual assault, rape, female genital mutilation and a number of other crimes.
- To be eligible, immigrant victim must:
  - Have information about the crime.
  - Be willing to cooperate with the investigation or prosecution.
  - Have suffered physical or psychological trauma.

### T Visa

- Applies to victims who have been trafficked into the U.S. for labor or commercial sex purposes. Victims must be willing to cooperate with the investigation or prosecution of the crime.
- If granted, the immigrant victim will receive a legal immigration visa, access to public benefits and work authorization, which may lead to lawful permanent residency.

## 3 Refer Her to an Attorney.

If the advocate believes that the immigrant victim may be eligible for one of the remedies outlined above, a referral should be made to an immigration attorney. Clients should see an attorney immediately if they are served with divorce or annulment papers, if they have conditional status or if they are planning to travel outside the U.S. These situations may significantly impact a client's ability to access some of the immigration remedies available to them.

In most cases, advocates should refer and accompany victims to an immigration attorney. However, the lawyer may need to request that you do not participate in the interview in order to protect the confidentiality of any information shared. The advocate can also support the client in preparing for the meeting; it can be a grueling experience to talk about the abuse. For some immigrant victims, this may be one of the only times that she will tell her story. Finally, advocates can also assist immigrant victims in gathering important documents that may be helpful for their immigration application.

## FOR FURTHER ASSISTANCE

### For Further Assistance

For technical assistance on working with battered immigrant women and immigrant victims of crime, sexual assault and trafficking or for referrals in your community to programs with this expertise, contact the National Network to End Violence Against Immigrant Women:

<http://www.immigrantwomennetwork.org>

## Addendum A - U Visa

VAWA 2000 created additional relief for immigrant victims of crime. One of the important innovations to come out of VAWA 2000 was the creation of the U visa. The U visa is a crime victim visa, given to immigrant victims of certain types of crime. The crimes covered under the U visa include:

Rape	Abduction
Torture	Unlawful criminal restraint
Trafficking	False imprisonment
Incest	Blackmail
Domestic violence	Extortion
Sexual assault	Manslaughter
Abusive sexual conduct	Witness tampering
Prostitution	Obstruction of justice
Sexual exploitation	Perjury
Female genital cutting	Attempt, conspiracy or
Being held hostage, peonage	solicitation to commit any of the above crimes
Involuntary servitude	Any similar activity in violation of federal,
Slave trade	state or local law
Kidnapping	

The U visa provides help for domestic violence victims without regard to the immigration or citizenship status of the abuser and even if the abuser is not the victim's spouse or parent. The U visa was designed to provide relief to undocumented immigrants who are victims of crime. An immigrant victim must have suffered substantial physical or emotional abuse stemming from criminal activity; must possess information about the criminal activity; criminal activity must have occurred in the U.S. or otherwise violate U.S. law; and the immigrant victim must have certification from police, prosecutor or other government official that victim has been, is being, or is likely to be helpful to the investigation or prosecution of criminal activity.

### Some examples of immigrant victims who could qualify for a U visa are:

- Abused intimate partners that are not married to U.S. citizens or lawful permanent residents
- Victims of rape or sexual assault
- Nannies who are abused by their employees
- Those held hostage by a spouse, family member or an employer

### How can you help an immigrant victim who may be a potential U visa applicant?

- Connect with local law enforcement and local prosecutors and immigration or legal service lawyers with expertise in VAWA relief.
- Become trained on the various forms of immigration relief under VAWA and educate others on the relief available under VAWA.
- Assist immigrant victims in advocating with local law enforcement and local prosecutors to obtain certifications.
- Assist immigrant victims in gathering important documents that may be useful in her immigration application.