
Remedies for Immigrant Victims of Domestic Violence

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Immigrant victims of domestic violence face all of the same fundamental issues as those of their American-born counterparts, but often far more intensely. Feelings of powerlessness, isolation, and fear of both the abuser and the authorities increase exponentially when the victim has journeyed to the United States from another country. Immigrant victims may also fear the struggle to gain secure status in this country. With its contradictory or overlapping forms of relief, the American immigration system may not seem navigable—but legal practitioners should take heart. Despite the declining availability of relief for most other categories of immigrants, there are now more avenues to assist immigrant victims of domestic violence than have ever existed in this country’s history. Help from multiple sources will be necessary, but absent extenuating factors such as criminal convictions or fraud (and even in those cases, waivers may be available), a domestic violence victim’s carefully executed application for immigration relief stands an excellent prospect for success. This chapter will help practitioners understand the complicated remedies and potential pitfalls specific to immigration law so that effective help can be offered.

Barriers to Protection Faced by Immigrant Women

Foreign-born victims of domestic violence—with or without immigration status—face many barriers to seeking help from police, advocates, shelters and others. Yet armed with knowledge of the obstacles these victims face, attorneys can effectively assist battered immigrants.

Fear of Deportation

Fear of deportation is a primary and powerful deterrent that prevents immigrant victims of domestic violence from receiving help. For a battered immigrant, particularly one who lacks lawful immigration status, fear of being deported may cause her to avoid interaction with law enforcement and social service providers. This fear is compounded when a batterer threatens to have the victim deported if she calls the police or seeks professional help. In recent years, federal immigration enforcement authorities have enlisted the support of local law enforcement in identifying immigrants for possible deportation.² This entanglement of local policing and federal immigration law has intensified pre-existing fears within immigrant communities that any contact with law enforcement could lead an immigrant down a path to deportation.

In most cases, immigrant victims can safely avail themselves of the protection of law enforcement without fear of negative immigration consequences.³ However, complications can arise when police wrongly arrest the victim. Victims of domestic violence are at particular risk of dual arrest, where police arrest both parties involved in an incident, and retaliatory arrest, where a victim is arrested as a result of a false or exaggerated allegation maliciously made by the batterer. (For further discussion, see Chapter 4, *Mandatory Arrest*.) When an undocumented victim is arrested, she may be at risk of

apprehension by federal immigration enforcement agents.⁴ In such cases, attorneys should consult with a local immigration legal service provider.

Unfamiliarity with United States Law

Protections available to battered women in New York State and federal remedies for immigrant victims of domestic violence are well-established yet women emigrating from countries that explicitly or tacitly condone domestic abuse may have little or no awareness that such measures exist. For example, the concept of an “order of protection” may be entirely foreign to a victim. Even in countries where legislation criminalizing spousal abuse exists, it may not be enforced or may be enforced inconsistently, because of prevailing social norms or corrupt law enforcement. As a result, immigrant women in the United States may not view the law as an ally in their quest for protection.

Language

Immigrant victims who lack English proficiency may be further discouraged from seeking help. While some immigrant victims of domestic violence speak English, many do not, even if they have lived in the United States for a number of years. Women raised in poverty or in regions where the formal education of girls is discouraged or prohibited may be illiterate in their native language as well, compounding the difficulties in studying English. In some cases, the abuser may use his command of English to further isolate the victim, forbidding her to study or telling her that she is “too stupid” to learn a new language. A woman who cannot leave home to study, work, shop or even associate with neighbors has little chance of gaining a command of English. To perpetuate control, the abuser may even rely on his victim’s inability to communicate with the authorities in English. In the rare event that police are called, the abuser may explain that the call was a mistake or that the victim was the aggressor, while the victim remains powerless to ask for aid. State and local executive orders guarantee the availability of translation and interpretation services to people with limited English proficiency,⁵ and New York State and New York City Domestic Violence hotlines offer multilingual accessibility,⁶ but it remains a challenge to share this information with isolated victims.

Lack of Family Support

In addition to the isolation created by language barriers, many immigrant women are physically separated from their families, who may live thousands of miles away. If sympathetic to the victim, her family can provide crucial emotional and financial support, as well as a safe escape from an abusive relationship. Without family members, the victim may feel that she has nowhere to turn for help and may remain with her batterer. Unfortunately for some abused immigrant women, even when family members are physically present in the United States they may side with the abuser. Physical abuse of wives is openly accepted in some countries as a husband’s right, treated as a private domestic matter. A woman raised in an environment in which her female relatives are routinely abused is not likely to be encouraged to leave her abuser. Even when the victim suffers broken bones or requires stitches, her relatives may scold her for angering her husband.

Isolation from the Victim’s Ethnic and Religious Community

Just as the victim may be isolated from her blood relatives, so too may she be cut off from her larger “family” in the form of her ethnic or religious community. Ethnic-based community organizations have made important inroads by educating their constituencies that domestic violence is not only socially unacceptable and illegal in the United States, but also at odds with their own cultural and religious traditions.⁷ Consequently, an immigrant domestic violence victim seeking assistance can turn to a variety of organizations in the metropolitan New York area where caseworkers share her ethnic background, speak her language, and understand her cultural concerns. To offset this support, however, a batterer may move her to a neighborhood where no one shares her cultural background.

Additionally, despite ethnic-specific support groups, religious authorities within that community may serve as countervailing forces. While some religious leaders have been vocal in criticizing domestic violence, others reject the American “rush” to divorce, urging instead that victims respect their religious vows. Immigrant women commonly report being counseled by a spiritual leader to remain in a marriage despite evidence of severe physical abuse, and of being chastised for failing to accept their husbands’ authority.

Concern for the Children

The presence of children, often a complicating factor in the victim’s decision to seek help, gains particular urgency when she is an immigrant. If the abuser is a United States citizen (“USC”) or lawful permanent resident (“LPR”) and the victim is undocumented, the abuser may tell the victim that only someone who is “legal” could win a custody battle.⁹ Alternatively, he may threaten to “turn her in” to the immigration authorities and have her deported, while the children, who may be U.S. citizens, remain behind with him. In other cases, if the husband also holds foreign citizenship, he may kidnap the children to his country of birth, abandoning his battered wife and preventing her from ever seeing them again.⁹ Should the victim possess sufficient resources for travel to the abuser’s home country to reclaim the children, custody laws may favor the father nevertheless.

Preliminary Notes on Representing Immigrant Domestic Violence Victims

Establishing the Attorney-Client Relationship

As explained in the above section, foreign-born victims of domestic violence face a multitude of barriers and threats, in addition to the abuse and betrayal of trust by their abusive partner. These factors may create fear and distrust of the victim’s surrounding social and legal systems, specifically of the lawyers working with her—individuals who appear to be in a position of relative authority and belong these systems. Owing to their lack of knowledge about immigration laws and procedures, especially for those in deportation proceedings, immigrant victims may be confused about the role of the immigration lawyer. For example, an immigrant victim might be unsure as to whether her lawyer is actually an agent for the immigration officials who might share her information with the government or, worse, “turn her in” the client to the authorities.

Many immigration clients have heard about or encountered dishonest immigration consultants who prey on immigrants. These are sometimes known as “notarios” in the Spanish speaking community but are prevalent among a variety of ethnic communities. A battered immigrant, unfamiliar with the notion of “pro bono,” or “nonprofit,” may also worry that an attorney not asking for money in return for her services may not be a “real lawyer.”

Immigration attorneys must be attentive to these client concerns, and cautious in establishing the attorney-client relationship. It is therefore essential for an immigration attorney to explain the lawyer’s role and responsibilities, including the concept of confidentiality, to the client at the outset to help establish a foundation of trust. A retainer agreement is advisable as a means to set forth and clarify the conditions of representation of the immigrant victim. Additionally, an immigration lawyer must make efforts to understand the foreign-born client and her cultural background, and guard against stereotyping based upon the client’s country of origin, style of dress, religion, educational background, or manner of entry.

Confidentiality of the Application Process

A victim of domestic violence will understandably be worried that any information she discloses on an immigration application may be shared with her abuser, putting her at risk for further abuse. In addition to explaining the attorney-client privilege that protects communications between attorneys and their clients, an immigration lawyer must also advise an immigrant victim regarding the implication of sharing private, identifying information in her immigration applications. Specifically, U.S. Citizenship and Immigration Services (USCIS) is mandated to keep confidential all information provided by the victim.¹⁰ As part of that effort to ensure confidentiality, applications pertaining to domestic violence relief contain provisions for a “safe” mailing address so that correspondence will not be forwarded to the abuser. Lawyers still must exercise extra care where the victim and her abuser share a common address, phone number, or electronic mailing address, as mistakes can happen.

Working with an Interpreter

Representing a battered immigrant may be more complicated where the client and attorney do not speak the same language and require the assistance of an interpreter. Working with interpreters poses several challenges, including achieving clear and accurate communication and establishing confidence and trust via an intermediary. However, adopting certain practices can help overcome some of these difficulties. Attorneys must always explain to the client the role of the interpreter and that the interpreter is bound to maintain confidentiality. It is also important to speak directly to the client and to look at the client when speaking, even when the attorney does not understand the client. This engagement communicates to the client that the attorney is interested in what she has to say, and enables the attorney to gain insight into the client’s frame of mind by observing body language and non-verbal cues. Short, concise sentences further allow for a more accurate and complete interpretation. The interpreter, on the other end, should function as the voice of the client or the attorney, and should simply repeat questions, responses, and statements in a way that maintains the client’s or the attorney’s original meaning and tone, without embellishment.

In the case where the interpreter can only meet with the victim a limited number of times, it may be necessary for the victim to write the details of her abuse and have her statement translated. Immigrant victims occasionally prefer to write about the abuse than to discuss it. The document not only will serve as the basis for her “personal statement” to be included in the majority of applications for immigration relief, but also can form a foundation for dialogue with the client.

Note that in some cases, the client may wish to rely upon a family member or close friend to interpret. While a relative may help the client feel more at ease, family members can make poor interpreters. Regardless of the admonition to translate accurately, some relatives may try to “help” the victim by embellishing her story. Embellishments are not only unnecessary, but they can undermine a legal claim if they do not accurately represent the client’s story. Perhaps even more common is the opposite problem—a relative may be so uncomfortable with the abuse that he or she may soften or omit it entirely. The victim may also be uncomfortable describing any sexual abuse in a relative’s presence. Family members also experience difficulty observing the rules of confidentiality and, even if they believe they have the victim’s best interests in mind, may take it upon themselves to share the translated confidences with other relatives or with the abuser. Relying upon friends of the victim to translate carries similar risks.

Seeking interpretation assistance from a local notary public or a “notario,” discussed above, is similarly discouraged, as many immigrants might mistakenly accept conflicting and erroneous legal advice from the notary public while seeking translation services. The notary public might even share the immigrant client’s information with the batterer, a devastating and dangerous betrayal of confidence.

For these reasons, attorneys working with immigrant victims should ideally find a professional interpreter, or, some other equally disinterested and qualified third party who is not otherwise interested in the facts or the outcome of the case. If the client is staying in a battered women's shelter or working with an immigrant outreach organization, a bilingual caseworker may be available. Other possible sources for interpreters may be the local bar association, or bilingual students, who are often eager to use their language skills and gain practical experience.

Inability to Pay for Filing Fees

In many, if not most cases, an individual fleeing from an abusive relationship will not have the financial means to pay the specified filing fees on the applications for immigration relief. Although many immigration applications available to victims of domestic violence do not require a filing fee, several related applications may require a fee. For certain applications that do require fees, fee waivers are available upon a demonstration of inability to pay.¹¹ Applicants seeking fee waivers should mark correspondence with red ink indicating "FEE WAIVER REQUESTED."

Note, however, that not all application fees for remedies available to victims of domestic violence can be waived.¹² Accordingly it is always important to confirm the fee requirements for individual applications.

Immigration Status of the Victim's Children

If a victim has children, her concern that they remain with her in the United States may eclipse any fears about her own safety. If her children were born in the United States, the fear may be assuaged by explaining that they are citizens and not subject to deportation. Under certain circumstances, even children born abroad to a U.S. citizen parent may also be citizens.¹³ Where the immigrant victim's children are not citizens by birth, however, certain remedies may be available to the children, either as derivatives on their mother's applications, or as principal applicants, described below in more detail.

Factors in Determining Eligibility for Relief

The type of immigration relief for which a domestic violence victim may be eligible depends upon a number of variables, including marital status, current immigration status, immigration history, and the immigration status of her abuser.

Brief Overview of Family-Based Immigration Law

Family-based immigration is the most common way for foreign-born individuals to gain permanent legal status in the United States. Approximately three-fifths of all immigrants to the United States each year obtain permanent resident status (commonly called a "green card") based upon a qualifying family relationship.¹⁴ Permanent residence allows an individual to work in the United States, to travel abroad, and, after either three or five years, to naturalize. To initiate the immigrant visa process, a U.S. citizen or lawful permanent resident (the "petitioner") files a document known as a "Petition for Alien Relative" with USCIS and submits documentation in support of the qualifying family relationship (such as marriage or birth certificates).¹⁵ Certain categories of family members (the "beneficiaries") are assigned a "priority date" based upon the date of the application, and wait until an immigrant visa is available. The beneficiaries then become eligible to obtain "adjustment of status" to that of lawful permanent resident. Because of annual caps on visas based upon familial relationships and countries of origin, the current wait ranges from 2 (e.g., British-born spouse of a permanent resident) to 24 years (e.g., a Philippine-born sibling of a U.S. citizen).¹⁶

Individuals who are married to a United States citizen and minor, unmarried children (under 21) are not subject to annual caps and so avoid the waiting period for an immigrant visa. These individuals,

known as “immediate relatives,” can obtain lawful permanent residence within months of filing the Alien Relative petition, although disparities exist in processing times throughout the country because of case backlogs and security clearances.¹⁷ While the application is pending, an immediate relative may be eligible for employment authorization.

Until recently, the relative petition process was predicated on the assumption that a permanent resident or U.S. citizen sought legalization of a spouse’s status to attain family unity. While the assumption held true if the couple was happily married, it functioned as a weapon in the abuser’s arsenal against the domestic violence victim. As the sole holder of lawful immigration status, the abuser could refuse to file on behalf of his family members or withdraw a pending application, and the intended beneficiaries would have little recourse. Moreover, all possibilities for the victim to obtain relief would terminate in the event of divorce or the abuser’s death, even if the couple had been married for years. A victim could remain imprisoned in an abusive marriage forever, fearful of deportation if she left.

In recognition of the immigrant victim’s dilemma, and thanks largely to the efforts of domestic violence and immigration activists, Congress passed the 1994 Violence Against Women Act (VAWA), which included unprecedented protections for immigrant victims of domestic violence.¹⁸ The VAWA immigration provisions allow spouses of abusive U.S. citizens or permanent residents and their children to self-petition, as well as to receive public assistance benefits. Congress has continued to refine the VAWA provisions to correct initial flaws, and has expanded the categories of aliens eligible for VAWA relief.

Evaluating the Client’s Immigration Status

To assist a foreign-born victim who may be in need of immigration representation, it is essential to understand her current status. In some cases, this may be a straightforward task; other times, as described below, it may be a more complicated endeavor. In every case, the practitioner should consult with the victim to explore the particulars of her immigration history.

What Documents Does the Victim Have Access to?

The immigration laws of the United States are complex and individuals often do not have an accurate understanding of their own status. Accordingly, it is a good idea to begin with a review of any immigration documents to which the victim has access, mindful that a batterer may confiscate his victim’s identity documents and immigration-related paperwork as a way of exerting control. Immigration documents could include a “green card” evidencing lawful permanent residence; a “work permit” indicative of employment authorization; a passport with a visa and/or entry stamp inside; and notices from the U.S. Citizenship and Immigration Services (USCIS).¹⁹

Under What Circumstances Did the Victim Enter the United States?

The manner in which an immigrant entered the United States may shed light on her current status as well as her future options. For example, an individual bearing a K-1 or “fiancée” visa is essentially “pre-approved” for a family-based petition if she marries her petitioning fiancé within 90 days of entry to the United States.²⁰ Conversely, if the client entered without inspection, that is to say, crossed the border without official permission, she will generally be precluded from deriving benefits from a family-based petition filed on her behalf. Additionally, the period of time lapsing between date of entry into the United States and eligibility for certain applications, such as asylum, can be very important.

Has the Victim Previously Applied for Any Immigration Benefits?

A prior application or petition submitted on behalf of the immigrant may have bearing on her future eligibility for immigration benefits. An immigrant with a pending application may be in line to receive

an immigration benefit and should ensure that her current mailing address is on file with USCIS.²¹ Depending on the type of application and its processing status, she may be required to appear at an immigration interview. A prior denial of any immigration application or petition should be carefully examined. Consequences vary depending on the basis for the denial but may include placement in removal proceedings.

Has the Victim Had Prior Contact with Immigration Enforcement Authorities?

An immigrant who has had prior contact with United States immigration enforcement authorities may be subject to various consequences. For example, an immigrant who was issued a “Notice to Appear”²² is required to appear in immigration court at a specified date and time; failure to appear will result in issuance of a removal order.²³ An immigrant who was apprehended by immigration authorities at or near a United States border, and sent away from the United States without a formal hearing, may have been subject to an expedited removal;²⁴ if she subsequently entered the United States without authorization, she is likely at risk of “reinstatement of removal”²⁵ and could be again removed from the country without hearing. To best protect an immigrant victim who may have had contact with immigration authorities in the United States, attorneys should gather all available immigration records from federal authorities.

Requesting Immigration Records from the Federal Government

If an immigrant has had any contact with the immigration authorities in the United States—whether in applying for benefits or during an enforcement-related encounter—she may be the subject of a file at USCIS, called an “Alien file” or “A file.”²⁶ The A file may provide valuable information, including any immigration documents filed on her behalf and any record of immigration proceedings initiated against her. To obtain a copy of an A file, one can submit a Freedom of Information Act (FOIA) Request to USCIS.²⁷ It is often also necessary to submit FOIA requests to United States Customs and Border Protection, Immigration and Customs Enforcement, and the Executive Office for Immigration Review in order to obtain a complete and clear picture of a noncitizen’s immigration history.

What is the Abuser’s Immigration Status?

In addition to examining the status of the victim, the practitioner should attempt to verify the immigration status of the abuser. This can be a surprisingly difficult task— withholding legal documents such as a birth certificate or a green card constitutes one manner in which the abuser exerts control over his victim. Still, in some cases, the victim can discover the abuser’s birth or naturalization certificate, green card, or passport in her home. If the victim is married to a native-born U.S. citizen, she may be able to obtain a copy of the abuser’s birth certificate from a government office.²⁸ If the abuser is either a naturalized citizen or a permanent resident, USCIS should be able to verify his status through its own records.²⁹

Categories of Immigration Relief for Domestic Violence Victims

The immigration laws of the United States are generally quite strict and for the vast majority of persons in the United States who lack immigration status, there is no relief available. However, our laws offer special protection to foreign-born victims of domestic violence for whom a variety of family-based and humanitarian options exist.

A Preliminary Note about Inadmissibility

The following includes a discussion of various forms of immigration relief commonly available to victims of domestic violence. It is important to keep in mind, however, that eligibility for a particular

remedy will not be enough to allow a victim to obtain lawful permanent residence in the United States. Rather, she may still be denied an immigration benefit if any of a number of grounds of “inadmissibility” apply to her. The Immigration and Nationality Act delineates categories of inadmissibility grounds including health-related grounds, criminal and security-related grounds, and grounds related to violations of our immigration laws.³⁰ Many of the grounds of inadmissibility can be waived though the availability of waivers varies with the form of relief sought. Thus, when weighing which forms of relief an individual might pursue, inadmissibility must be considered.

Family-Based Options: The VAWA Self-Petition and Battered Spouse Waiver

For victims who have been married to their U.S. citizen or lawful permanent resident spouses, two distinct but related forms of relief exist: the VAWA Self-Petition and the Battered Spouse Waiver. Both remedies allow battered immigrants to seek legal status without relying upon their abusive USC or LPR spouses to sponsor them. Congress created these remedies mindful of the fact that our immigration laws enabled abusive USCs and LPRs to withhold immigration sponsorship from their immigrant spouses.

A VAWA self-petition allows current or former spouses of U.S. citizens or permanent residents and their children to seek permanent residence, regardless of whether the abusive spouse has ever initiated an immigration petition.³¹ To qualify for a VAWA Self-Petition, victims must establish that:

- They are lawfully married³² to a current or former³³ U.S. citizen or LPR or that such marriage was terminated by divorce within the last two years;³⁴
- Their marriage was entered into “in good faith,” not solely for immigration benefits;³⁵
- They resided with their spouse;
- During the marriage, the USC or LPR spouse subjected them to battery or extreme cruelty;³⁶ and,
- They are a person of good moral character.³⁷

Approval of a VAWA Self-Petition on its own does not afford an immigrant victim with legal status. Under current practice, USCIS provides all approved VAWA Self-Petitioners with Deferred Action, a type of temporary protection from removal. Though Deferred Action does not confer lawful status upon a recipient, it does enable her to apply for employment authorization. Additionally, approval of a VAWA Self-Petition provides a foundation to allow the immigrant victim to apply for lawful permanent residency. Where the Self-Petition was founded on a relationship with the abusive USC, the victim will be immediately eligible to apply for lawful permanent residency upon approval of the VAWA Self-Petition.³⁸ Where, however, the Self-Petition was founded on a relationship with an abusive LPR, the victim will be assigned a “priority date” (essentially a marker of her place in line)³⁹ and will be subject to an elaborate quota-based waiting system.⁴⁰

The Battered Spouse Waiver is similar to the VAWA Self-Petition but is designed to assist victims who already hold or have held “conditional residence” based on having been petitioned for by their abusive USC or LPR spouse. A victim who holds conditional residence will have been granted permission to live and work lawfully in the United States for a two-year period. In a standard family-based case, near the end of this two year period, the USC or LPR spouse and the immigrant spouse would jointly petition immigration authorities to remove the conditions on the immigrant spouse’s status, allowing the applicant to obtain lawful permanent residency. However, the Battered Spouse Waiver empowers an abused immigrant spouse to independently petition USCIS to remove the conditions on her residency, with no involvement on the part of the batterer.

To qualify for a Battered Spouse Waiver, applicants must show that:

- They are currently or previously have been a conditional resident;
- They are currently or previously have been married to a USC or LPR;
- They entered the marriage in good faith, not solely for immigration benefits;
- They suffered, or their children suffered, physical battery or extreme cruelty perpetrated by the USC or LPR spouse.⁴¹

Upon approval of a VAWA Self-Petition, the victim will be granted lawful permanent residence and will receive a “green card” valid for 10 years.

VAWA Cancellation of Removal

Among common immigration relief options for victims of domestic violence, VAWA Cancellation is unique in that it can only be granted by an immigration judge to a victim facing removal or deportation proceedings. Victims who are in removal or deportation proceedings and are either married to or have a child in common with an abusive USC or LPR may be eligible for VAWA Cancellation.

To prevail in an application for VAWA Cancellation, individuals must show that they have been battered or subjected to extreme cruelty by their spouse who is or was a USC or LPR or that they are the non-abusive parent of a child who has been battered or subjected to extreme cruelty by a USC or LPR parent.⁴² It is notable that VAWA Cancellation affords relief to victims who have a child in common with but are not and have not been married to an abusive USC or LPR. In addition, VAWA Cancellation applicants must show that:

- They have been physically present in the United States for a continuous period of at least three years prior to the date of application;
- They have been a person of good moral character;
- Removal would result in extreme hardship to themselves, their child or parent.⁴³

Where VAWA Cancellation is granted, removal proceedings are terminated and the victim may adjust her status to that of a lawful permanent resident.

U Nonimmigrant Status

The VAWA remedies described above offer critical protection and benefits to qualifying relatives of current and former US citizens or permanent residents. These forms of relief, however, do not assist victims who lack a qualifying family relationship or those whose batterers lack legal status in the United States. Fortunately, alternate options exist. Among these, arguably the most prominent is U nonimmigrant status, also known as the “U visa”, which affords lawful status to victims of domestic violence and other qualifying crimes. Congress created U nonimmigrant status, in part, to encourage immigrant victims of crimes, who might otherwise fear contact with authorities, to provide assistance to law enforcement.

To establish eligibility for U nonimmigrant status, applicants must show that:

- They have been a victim of domestic violence or other qualifying criminal activity;⁴⁴
- They have suffered substantial physical or mental abuse as a result of having been a victim;
- They possess information about the qualifying criminal activity; and,
- They have been helpful, are being helpful, or are likely to be helpful in an investigation and/or prosecution of the qualifying criminal activity.⁴⁵

It is not enough for a U nonimmigrant status applicant to assert that she has been, is being, or will be helpful to law enforcement. Rather, she is required to include with her application a certification of helpfulness signed by a law enforcement agency.⁴⁶ For a victim who has reported her batterer to police, prosecutors, child welfare officials, a family court judge, or others in law enforcement, U nonimmigrant status may be a readily attainable option. However, for a victim who has not reported her batterer's actions to authorities of any kind, U nonimmigrant status is likely out of reach.

Upon approval of an application for U nonimmigrant status, a victim will receive four years of lawful status in the United States and will become eligible for employment authorization. After three years in U nonimmigrant status, victims may apply for lawful permanent residency.⁴⁷

USCIS only began granting U nonimmigrant status in 2008, but since that time awareness of this form of relief has spread rapidly and applications have surged. By statute, USCIS is only permitted to issue 10,000 grants of U nonimmigrant status per fiscal year ("the U cap")⁴⁸ and every year since 2009, USCIS has reached this statutory cap.⁴⁹ Where an immigrant's application is approvable but for the U cap, USCIS will send her a letter notifying her of placement on a waitlist (the U cap waitlist).⁵⁰ At the time of writing, it is fair to expect that a victim applying for U nonimmigrant status today will wait at least seven years, possibly longer, before her U nonimmigrant status application will be approved.⁵¹ The lengthy wait for status may be disheartening but eligible victims should still be encouraged to apply. Under current practice, at the time of placement on the U cap waitlist, USCIS provides the applicant with a grant of Deferred Action, a form of temporary protection from removal. Once granted Deferred Action, a victim may apply for employment authorization.

T Nonimmigrant Status

Like U nonimmigrant status, T nonimmigrant status is a remedy designed to encourage immigrant victims of crime to assist law enforcement. While U nonimmigrant status is available to victims of various forms of criminal activity, T nonimmigrant status, often referred to as the "T visa," provides relief only to victims of the crime of human trafficking. To qualify for T nonimmigrant status, applicants must establish not only that they are victims of human trafficking but that they are victims of a severe form of human trafficking.⁵² Severe forms of trafficking are defined to include:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or,
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁵³

Because domestic violence and human trafficking often overlap, T nonimmigrant status should not be overlooked as a possible remedy for an immigrant victim of domestic violence. In fact, sex trafficking often manifests as an extreme form of intimate partner violence in which the trafficker and batterer are one and the same. Similarly, where a batterer compels his victim to perform household or other labor, the circumstances should be explored as this may qualify as labor trafficking.

Applicants seeking T nonimmigrant status must show that:

- They have been a victim of a severe form of trafficking in persons;
- They are physically present in the United States on account of trafficking;
- They have complied with any reasonable request for assistance from law enforcement into the acts of trafficking or related crimes committed against them, are unable to assist law enforcement due to physical or psychological trauma, or are under 18; and,

- They would suffer extreme hardship upon removal from the United States.⁵⁴

Whereas an applicant for U nonimmigrant status must present a signed certification confirming her helpfulness to law enforcement, applicants for T nonimmigrant status have flexibility in establishing cooperation with authorities. An applicant who is unable to present a signed certification from law enforcement may rely solely on secondary evidence to demonstrate that she has complied with reasonable requests for assistance from law enforcement.⁵⁵ Additionally, by statute, an applicant need not provide evidence of cooperation if she can show that trauma prevents her from assisting law enforcement or that she is under 18.⁵⁶

Those granted T status receive four years of lawful status in the United States and eligibility for employment authorization. A victim granted T nonimmigrant status will generally become eligible to apply for lawful permanent residency upon accrual of three years of continuous presence in the United States.⁵⁷ However, where the victim can present documentation from an official within the Department of Justice that the investigation or prosecution of the acts of trafficking has been completed, the victim will be immediately eligible for make an application for residency.⁵⁸

Just as with U nonimmigrant status, there is a statutory cap on the number of grants of T nonimmigrant status that USCIS may issue in a fiscal year. While the U cap, which is set at 10,000, has consistently been reached, the T cap, set at 5,000, has never been reached.⁵⁹

Asylum and Related Remedies

Domestic violence survivors, as victims of gender-based persecution, also may seek immigration relief in the United States by filing an application for asylum. An asylum applicant must show that she is unable or unwilling to return to her home country because she suffered persecution or has a “well-founded fear” of future persecution on account of her race, religion, nationality, political opinion, or membership in a particular social group. A “well-founded fear” of persecution does not require absolute certainty of persecution, and the Supreme Court has found that an individual who has a 10% chance of being persecuted may meet the standard.⁶⁰

Asylum applications based upon gender-related persecution are typically categorized as “social group” claims. Members of a “particular social group” share an immutable characteristic that they cannot change or should not be required to change, such as gender, family membership, or marital status.⁶¹ While initially resistant to gender-based social group claims, U.S. immigration law has evolved to offer protection to women fleeing severe domestic violence, female genital mutilation (also referred to as “female genital cutting”), forced arranged marriage, honor killing, and prostitution.⁶² Gender-based claims often overlap with other protected grounds such as political opinion and religion, however, and the asylum applicant should include as many of them as possible in her application.⁶³

Although the current legal landscape is still in flux, asylum or its related remedies, withholding of removal and Convention Against Torture (CAT) relief, may be the only route for some women who fear domestic violence or other forms of gender-based persecution abroad and now seek shelter in the United States.

Case Law Recognizing Domestic Violence as a Basis for Asylum

In the first significant case to create the possibility of asylum eligibility for domestic violence survivors, *Matter of R-A-*,⁶⁴ a Guatemalan woman named Rodi Alvarado sought asylum after suffering substantial violence at the hands of her husband, a former soldier. After the Guatemalan authorities rejected her plea for help, Ms. Alvarado fled to the United States and was placed in deportation proceedings. An initial decision by the BIA in 1999 concluded domestic violence did not constitute a “particular social group” for asylum purposes.⁶⁵ However, in 2003, the Attorney General certified

Matter of R-A- to himself to decide, pending the issuance of final regulations on gender-based asylum claims, and ordered briefing on Rodi Alvarado's eligibility for relief. The Department of Homeland Security ("DHS") prepared a brief which essentially adopted many of the points long articulated by domestic violence advocates, including the formulation of Rodi Alvarado's membership in a particular social group.⁶⁶ The Immigration Court ultimately granted the applicant asylum based on a stipulation between the parties, but the Immigration Judge's one sentence ruling did not address the issue of the particular social group and has no precedential value. The government's brief on Rodi Alvarado's eligibility, however, made a profound impact on the adjudication of domestic violence-based asylum claims, and enabled women fleeing domestic violence to seek and prevail in their asylum claims.

Similarly, in *Matter of L-R-*,⁶⁷ an asylum claim of a Mexican woman based on severe domestic violence led to an important Department of Homeland Security brief stating that, in certain cases, domestic violence can be grounds for asylum. As in *Matter of R-A-*, an immigration court granted asylum based on a stipulation between the applicant and DHS, which has no binding precedential value. But in its brief, DHS proposed two particular social group formations "which outline a framework under which victims of domestic violence might be able to advance cognizable asylum claims": "Mexican women in domestic relationships who are unable to leave" or "Mexican women who are viewed as property by virtue of their positions within a domestic relationship." Asylum litigants may seek guidance from the DHS brief on the issue of particular social group in asylum claims based on domestic violence as it represents the position of the agency and is binding on asylum officers and DHS trial attorneys.

In a more recent and groundbreaking precedential decision, issued on August 26, 2014, the Board of Immigration Appeals (the nation's highest immigration tribunal) *Matter of A-R-C-G-*,⁶⁸ formally recognized domestic violence as a basis for asylum. Specifically the court held that "Married women in Guatemala who are unable to leave their relationship" is a cognizable social group. The court further indicated that particular social groups defined by gender, nationality, and status in a domestic relationship may meet the immutability, particularity, and social distinction requirements.

Procedural Elements for Asylum Seekers

Asylum claims may be brought either affirmatively or in removal proceedings, and involve the filing of an asylum application,⁶⁹ the asylum applicant's personal statement, research on conditions in the applicant's home country, and any other supporting documentation, such as witness affidavits, photographs, news reports, and medical evaluations that corroborate physical and psychological trauma. Children living in the United States should be included in the principal application. An affirmative asylum application should be mailed to the USCIS Service Center for the applicant's region.⁷⁰

The Affirmative Interview

The affirmative asylum process is non-adversarial and conducted by specially trained interviewers (a female interviewer may be requested) at a USCIS Asylum Office.⁷¹ While attorneys should attend the asylum interview to observe, make a closing statement, and point out relevant supporting material, they are discouraged from otherwise participating in the process. Typically, applicants return to the Asylum Office two weeks after the interview to personally receive their decision. The regulations mandate that an applicant be interviewed and receive a decision within 150 days of filing her application or she will become eligible to apply for employment authorization.⁷²

If the application is granted, the applicant will be designated an asylee, along with any immediate family members included in her application, receive employment authorization, and become eligible to apply for adjustment of status to permanent resident after one year.⁷³ In addition, she may petition for children living abroad who were not included in the original asylum application.⁷⁴

Asylum In Removal Proceedings

If the application is not approved and the applicant does not have valid immigration status, she will receive a “Notice of Referral” and be placed in removal proceedings, where an immigration judge will hear testimony on the filed application, and a trial attorney representing the government will cross-examine her. If the client had not filed for asylum affirmatively, but only raised the claim after being placed in removal proceedings, she may file the application directly with the immigration court. If the court grants the application, the asylee has the same status as if she had been granted asylum affirmatively. If the application is denied, the applicant may appeal the decision to the Board of Immigration Appeals,⁷⁵ and, subsequently, to the U.S. Court of Appeals.⁷⁶

The One-Year Filing Deadline and Withholding of Removal

A grant of asylum offers the promise of sanctuary and stability to the woman fleeing from gender-based persecution. Congress modified the law in 1996 to require that the asylum application be filed within one year of her arrival to the United States.⁷⁷ Limited exceptions exist to the one-year bar, and an applicant may file late if she experienced either “changed circumstances” or “extraordinary circumstances.”⁷⁸ In some cases, a victim may successfully assert that the abuse suffered constituted such an extraordinary circumstance as to prevent a timely filing. Others victims, unable to overcome the strictures of the filing deadline, have sought relief in the form of “withholding of removal.”

Withholding of Removal

Like asylum, withholding of removal provides protection to individuals fleeing persecution based upon one of the five enumerated categories.⁷⁹ However, while an asylum applicant need only demonstrate a “well-founded fear,” an applicant seeking withholding must demonstrate that she faces a “clear probability of persecution,” which courts have interpreted as “more likely than not.”⁸⁰

Individuals granted withholding are denied many of the benefits available to asylees. While they may work and obtain public assistance, they may not petition for their children or obtain permanent residence.⁸¹ In addition, a grant of withholding of removal only assures that the victim will not be returned to her home country —should the United States find an alternate country that is willing to accept the victim, it may remove her to that country,⁸² although this rarely occurs.

Although withholding of removal is seen as a less desirable option compared to asylum, it offers certain protections unavailable in asylum. First, while asylum is a discretionary form of relief, an immigration judge must grant withholding if the applicant meets the standard and is not subject to certain criminal or other statutory bars.⁸³ Second, the statute and regulations do not preclude applications for withholding of removal that have been filed past the one-year deadline.⁸⁴ Consequently, withholding has become an increasingly significant tool for individuals fleeing gender-based persecution who were unable to qualify as an exception to the filing deadline.

Applying for Withholding of Removal

An application for asylum automatically includes a request for withholding of removal.⁸⁵ As a practice pointer, it is nonetheless advisable to indicate that the applicant is seeking both forms of relief. While asylum can be granted by either an asylum officer or an immigration judge, withholding can only be granted by an immigration judge.⁸⁶

Convention Against Torture (CAT) Relief

In some circumstances, an applicant for asylum or withholding of removal may not qualify for relief, either because she does not fall within one of the protected grounds or because of statutory bars.⁸⁷ In that case, she may seek protection in removal proceedings under the Convention Against Torture

(CAT), which prohibits the return of a person to a country where it is more likely than not that she will be tortured.⁸⁸ While the definition of “torture” under CAT differs from “persecution” under asylum law, rape and female genital mutilation have been held to be forms of torture for purposes of a CAT claim.⁸⁹ There is no separate application for CAT relief, but the asylum application contains a box to be checked if the applicant seeks CAT relief, and also asks if the applicant has been tortured or fears torture in her home country. If an applicant indicates that she fears torture in her asylum application, the immigration judge is required to consider eligibility for CAT relief.⁹⁰ When preparing a request for CAT relief, consult with an experienced mentor.

Special Immigrant Juvenile Status

Immigrant victims under the age of 21 and unmarried who have been abused, abandoned, neglected or otherwise mistreated by one or both parents may be eligible for Special Immigrant Juvenile Status (“SIJS”). Although SIJS was traditionally created as a form of immigration relief for children in the foster care and public child welfare system, since 2009, SIJS’ legal definition was expanded to cover children in various forms of state court proceedings, which can include guardianship, custody, juvenile delinquency, and order of protection proceedings.⁹¹ For a young person who has experienced domestic violence at the hands of a parent, or witnessed domestic violence perpetrated by a parent, SIJS may be a viable pathway to lawful immigration status.

To establish eligibility for SIJS, a foreign-born victim present in the United States must demonstrate the following:

- He or she is a child, unmarried and under the age of 21;
- He or she has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States;
- He or she cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis under state law; and
- It would not be in his or her best interest to be returned to his or her country of origin, as determined in a judicial proceeding.⁹²

In creating SIJS, Congress delegated to state juvenile courts the task of making these requisite findings of abuse, abandonment, neglect and the best interests of children, thereby recognizing juvenile courts’ unique expertise in these matters. SIJS is thus distinct among immigration remedies in that it depends on a predicate order by a state juvenile court judge prior to filing an application with the immigration authorities. To obtain SIJS, a state court must first assume jurisdiction over the child⁹³ and make requisite findings describing the child’s eligibility for SIJS. Typically these findings are set forth in the form of a state court order, referred to in many jurisdictions as a “Special Findings Order.”

In addition to the other factual findings regarding the child’s age and marital status, the order must clearly state that reunification is not viable with one or both parents and the basis for this finding.⁹⁴ The findings of non-viability of reunification due to abuse, neglect, or abandonment depend solely on the applicable law of the state in which the order is being sought. Note that in certain jurisdictions, a parent who perpetrates domestic violence in the presence of a child may be found to have neglected the child.⁹⁵ Additionally, the order must state that it is not in the child’s best interest to return to her country of origin.⁹⁶

Once these findings are issued by the state court, a child victim can then petition United States Citizenship and Immigration Service (USCIS) for Special Immigrant Juvenile Status and, generally at

the same time, for adjustment of status, commonly referred to as legal permanent residence. While the child's application for permanent residency is pending, the child may also seek work authorization. For child victims in removal proceedings before the Executive Office for Immigration Review (EOIR), the Immigration Court has jurisdiction over the child's application for adjustment of status instead of USCIS.

The benefits for a child with an approved SIJS petition are significant and numerous. The child victim can relatively quickly become a lawful permanent resident, avoid the threat of deportation, work lawfully in the United States, apply for federal financial aid, and ultimately become a United States citizen. The stability to the youth incident to the approval of a SIJS petition may be critical to ensuring her protection from ongoing and future harms including as domestic violence and trafficking.

It should be noted that a child victim who later becomes a United States citizen after having obtained SIJS is not ever able to petition for immigration status on behalf of their parents—even a “non-offending” parent who did not abuse, neglect or abandon the child.⁹⁷ A child in a similar situation may, however, submit immigration petitions on behalf of other siblings.

Deferred Action for Childhood Arrivals

While not a form of relief specific to foreign-born victims of domestic violence, Deferred Action for Childhood Arrivals or “DACA” can offer a much-needed avenue to obtain work authorization for certain immigrant victims who might not otherwise be eligible for an immigration remedy. A discretionary administrative relief program announced by President Barack Obama on June 15, 2012, DACA offers individuals who came to the United States at a young age an opportunity to live in the United States without fear of deportation and work lawfully.⁹⁸ A subsequent memorandum issued by DHS Secretary, Janet Napolitano, issued on June 15, 2012, sets forth the criteria an immigrant seeking DACA must satisfy:⁹⁹

- He or she must have come to the U.S. before his or her 16th birthday;
- He or she has continuously resided in the U.S. since June 15, 2007 up to the present time;
- He or she was present in the U.S. on June 15, 2012;
- He or she under the age of 31 on June 15, 2012;
- He or she did not have valid immigration status on June 15, 2012;
- He or she is currently in school, has graduated from high school, is working towards a GED, or has obtained a GED certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S., and
- He or she has not been convicted of a felony offense, a significant misdemeanor offense, three or more misdemeanor offenses, or doesn't otherwise pose a threat to national security or public safety.

If eligible for this program, a foreign-born individual may obtain an employment authorization document, valid for two years, and subject to renewal. A grant of DACA may also enable an individual in removal proceedings to argue for administrative closure or termination of the removal case.

Crucially, however, the benefits of DACA are limited. It is not and was not intended to be a pathway to lawful immigration status, permanent residence, or citizenship. An individual who obtains DACA approval, moreover, may not include other family members as beneficiaries in their application.

As a practical matter, an applicant for DACA must submit extensive documentation proving his or her eligibility for the program, particularly for the requirements of physical presence in the country on June 15, 2012, and of continuous residence from June 15, 2007 to the present. Documents that

may be used to satisfy these requirements can be varied and may include employment records, IRS tax transcripts, letters from employers, lease contracts, rent receipts, bills, bank statements, letters from service providers, medical records, birth certificates and other miscellaneous documents indicating a presence in the United States. Note also that the application for DACA requires a considerable fee, which unlike fees for other humanitarian remedies, cannot be waived.

Notes

1. While the remedies discussed are available for domestic violence victims of either gender, this article assumes that the victim is female and the abuser is male.
2. See Dep't of Homeland Sec. (DHS), *SecureCommunities*, U.S. Immigration and Customs Enforcement (ICE). www.ice.gov/secure-communities.
3. Of particular note, New York City's Executive Order 41 forbids city agencies, including NYPD, from inquiring about or disclosing the immigration status of a victim who seeks to report a crime. NYC Executive Order [Bloomberg] No. 41 (Sept. 17, 2003), www.nyc.gov/html/imm/downloads/pdf/eo-41.pdf.
4. Pursuant to modified immigration enforcement policy announced by President Obama, Nov. 20, 2014, immigration authorities will focus their enforcement efforts on those who have prior criminal convictions or who pose "a danger to national security." The highest priority levels for apprehension includes individuals who have been convicted of one "significant misdemeanor," three or more misdemeanors, any felony or "aggravated felony," and any person who poses a risk to national security. Memorandum from Jeh Charles Johnson, Secretary, U.S. Dep't of Homeland Security, to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodrigues, Directors, U.S. Citizenship and Immigration Services, Aland D. Berson, Acting Assistant Secretary for Policy, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014) www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
5. At the State level, on Oct. 6, 2011, Governor Andrew M. Cuomo signed Executive Order 26, which directs certain state agencies including the New York State Police to offer translation and interpretation to people with limited English proficiency. See Executive Order [Cuomo] No. 26 [9 NYCRR 8.26]. Similarly, in New York City, Executive Order 120, signed into law by Mayor Michael Bloomberg in July 2008, requires the New York Police Department (NYPD) and other city agencies to provide translation and interpretation services to all New Yorkers. See NYC Executive Order [Bloomberg] No. 120 (July 22, 2008) www.nyc.gov/html/om/pdf/2008/pr282-08_eo_120.pdf; see also Press Release, NYC Office of the Mayor, *Mayor Bloomberg Signs Executive Order 120 Requiring Citywide Language Access* (July 22, 2008) www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pagelD=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2008b%2Fpr282-08.html&cc=unused1978&rc=1194&ndi=1.
6. See New York State Office for the Prevention of Domestic Violence, *New York State Domestic Violence Hotlines* (2014) www.opdv.ny.gov/help/dvhotlines.html; see also NYC Mayor's Office to Combat Domestic Violence, *Domestic Violence Hotline* (2015), www.nyc.gov/html/ocdv/html/help/311.shtml.
7. For example, SAKHI for South Asian Women offers outreach, education and social assistance to domestic violence victims from Bangladesh, India, Nepal, Pakistan, Sri Lanka, and the South Asian Diaspora. See SAKHI for South Asian Women Services (2015), www.sakhi.org/programs.
8. New York courts award custody and visitation based on what is best for the child. See Domestic Relations Law § 240. This is known as the "best interests" standard. In making a best interests determination judges weigh a variety of factors. See *Friederwitzwer v Friederwitzwer*, 55 NY2d 89 (1982). However, no legal impediment prevents an undocumented parent from prevailing in a custody suit against a parent with immigration status.
9. U.S. law requires that both parents appear in person to apply for the passport of a child under the age of 16, or the non-applying parent must execute an affidavit giving her consent. 22 USC § 213; 22 CFR § 51.28(a). While intended to safeguard minors from being kidnapped abroad, it does not protect children

- over the age of 16 or children who carry a foreign passport. Nor are there safeguards to ensure that an abused spouse will not be coerced into executing the requisite affidavit.
10. Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) Div C of Departments of Commerce, Justice, and State, and the Judiciary Appropriations Act of 1997, Pub L 104-208, 110 Stat 3009 (Sept. 30, 1996), 8 USC § 1367; Memorandum from Paul Virtue, Acting Exec Assoc Comm’r, to all INS Employees, INS File No. 96, act. 036, *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA* § 324 (May 5, 1997) www.asistaonline.org/legalresources/policymemos/384_memo_-_clean_copy.pdf (last accessed July 6, 2015). Separate provisions guard confidentiality of asylum applications. 8 CFR § 208.6; § 1208.6. USCIS is one of three bureaus that replaced the Immigration and Naturalization Service (“INS”) as a result of reorganization under the Homeland Security Act of 2002, Pub L 107-296, 116 Stat 2135 (Nov. 25, 2002).
 11. 8 CFR § 103.7(c). For guidance on fee waivers, see USCIS Policy Memorandum, *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions To Adjudicator’s Field Manual (AFM) Chapter 10.9*, (Mar. 13, 2011) www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.
 12. For example, the application fees for Deferred Action for Childhood Arrivals, discussed below, cannot be waived.
 13. INA § 301 (generally); § 309 (children born out of wedlock).
 14. U.S. Department of Homeland Security, Office of Immigration Statistics, U.S. Legal Permanent Residents: 2012 (July 2013), www.dhs.gov/sites/default/files/publications/ois_yb_2012.pdf.
 15. Form I-130. The Petition for Alien Relative, as well as other forms discussed in this article, can be found at the USCIS website, www.uscis.gov/i-130.
 16. Visa eligibility based upon “priority dates” can be checked monthly on the US State Department’s website, travel.state.gov/content/visas/english/law-and-policy/bulletin.html.
 17. For example, an immediate relative seeking permanent residence in New York City can currently expect to wait about one year before obtaining a green card, while her neighbor in Albany faces approximately a three-month wait. Information on application processing dates can be found at egov.uscis.gov/cris/processTimesDisplayInit.do.
 18. The Violence Against Women Act (“VAWA”) is part of the Violent Crime Control and Law Enforcement Act of 1994, Pub L 103-322, § 40701-03, 108 Stat 1796, 1902-55 (Sept. 13, 1994).
 19. The U.S. government has issued a myriad of types of immigration-related documents. For assistance in understanding the significance of any particular document, see The Forensic Document Library, U.S. Immigrations and Customs Enforcement, *Guide to Selected U.S. Travel and Identity Documents*, Form M-396 (2008), available at e-verify.uscis.gov/esp/media/resourcescontents/traveldocguide2.pdf.
 20. INA § 101(a)(15)(K), 8 USC § 1101(a)(15)(K).
 21. See INA § 265(a), 8 USC § 1305(a); 8 CFR § 265.1. A change of address may be reported to USCIS either by sending Form AR-11 by mail or through online submission. Dep’t of Homeland Security, *AR-11, Change of Address*, U.S. Citizenship and Immigration Services (Dec. 18, 2014), www.uscis.gov/ar-11.
 22. See 8 USC § 1229(a); see also 8 CFR § 1003.15(b)-(d).
 23. INA § 212(a)(6)(B); 8 USC § 1182(a)(6)(B); 8 USC § 1229a (b)(5).
 24. INA § 235(b)(1)(A)(i), 8 USC § 1225 (b)(1)(A)(i).
 25. INA § 241(a)(5), 8 USC § 1231(a)(5); 8 CFR § 241.8.
 26. The Immigration and Naturalization Service (INS) began issuing Alien Registration numbers and creating individual case files, called Alien Files or A-Files, in the 1940s. A-Files contain “all records of any active case of an alien not yet naturalized as they passed through the United States immigration and inspection process. An A-File might also be created without any action taken by the alien, for example if INS initiated a law enforcement action against or involving the alien.” National Archives, *Alien Files (A-Files) at the National Archives*, The U.S. National Archives and Records Administration, www.archives.gov/research/immigration/aliens/.

27. FOIA requests must be in writing. Form G-639 may be used, but is not required. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *How to File a FOIA/PA Request* (Dec. 19, 2014), www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request. See also 28 CFR § 16.3; U.S. Citizenship and Immigration Services, *FOIA Request Guide* (May 6, 2013) www.uscis.gov/sites/default/files/USCIS/About%20Us/FOIA/How%20to%20File%20a%20FOIA%20Privact%20Act%20Request/USCIS%20FOIA%20Request%20Guide.pdf.
28. For a state-by-state listing of where to direct requests for vital records see Centers for Disease Control and Prevention, *Where to Write for Vital Records* (June 30, 2014) www.cdc.gov/nchs/w2w/w2w.pdf.
29. Pursuant to 8 CFR § 204.1(g)(3), if a VAWA self-petitioner is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in USCIS records.
30. See INA § 212(a), 8 USC § 1182(a).
31. INA § 204(a)(1)(A)(iii), 8 USC § 1154 (a)(1)(A)(iii); INA § 204(a)(1)(B)(ii), 8 USC § 1154 (a)(1)(B)(ii). Children of an abusive USC or LPR parent may self-petition independently. INA § 204(a)(1)(A)(iv), 8 USC § 1154 (a)(1)(A)(iv); § 204(a)(1)(B)(iii), 8 USC § 1154 (a)(1)(B)(iii). In addition, parents of abusive U.S. citizen sons or daughters may self-petition. INA § 204(a)(1)(A)(vii), 8 USC § 1154(a)(1)(A)(vii).
32. The marriage need not have occurred in the United States.
33. The fact that a batterer lost or renounced U.S. citizenship or lawful permanent residence within the prior two years in connection with an incident of domestic violence will not preclude a victim from establishing eligibility. See INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 USC § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb); see also INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 USC § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa).
34. INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc), 8 USC § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb), 8 USC § 1154 (a)(1)(B)(ii)(II)(aa)(CC)(bbb). Relief is also available to individuals who believed they were legally married to their abusive U.S. citizen or LPR spouse but the marriage was not legitimate solely because of the bigamy of the abusive spouse and to an individual whose abusive U.S. citizen spouse who died within the past two years. See INA § 204(a)(1)(A)(iii)(II)(aa)(BB)-(CC)(aaa), 8 USC § 1154(a)(1)(A)(iii)(II)(aa)(BB)-(CC)(aaa); see also INA § 204(a)(1)(B)(ii)(II)(aa)(BB), 8 USC § 1154 (a)(1)(B)(ii)(II)(aa)(BB).
35. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *Battered Spouse, Children & Parents* (June 18, 2015), www.uscis.gov/humanitarian/battered-spouse-children-parents. See INA § 204(a)(1)(A)(iii)(II)(aa), 8 USC § 1154(a)(1)(A)(iii)(II)(aa).
36. See INA § 204(a)(1)(A)(iii)(I)(bb), 8 USC § 1154(a)(1)(A)(iii)(I)(bb).
37. INA § 204(a)(1)(A)(iii)(II)(bb), 8 USC § 1154(a)(1)(A)(iii)(II)(bb). The inquiry into good moral character focuses on the three years immediately preceding the filing of the Self-Petition though adjudicators have discretion to look beyond this time period if there is reason to believe that the self-petitioner may not have been a person of good moral character in the past. See Preamble to Interim Regulations, 61 Fed Reg 13065-66 (Mar. 26, 1996). Under INA §101(f), certain classes of people are precluded from establishing good moral character including but not limited to habitual drunkards; those whose income is derived principally from illegal gambling; and those convicted of aggravated felonies. INA §101(f), 8 USC § 1101 (f).
38. It is common practice for immigrant spouses of abusive USCs to file the VAWA Self-Petition and application for an adjustment of status (lawful permanent residency) concurrently. Once USCIS has approved the Self-Petition, it will consider the adjustment of status application.
39. Note, however, that if the victim is the beneficiary of an approved family-based petition (Form I-130) filed by her abusive US citizen [USC] or lawful permanent resident [LPR] spouse, she will retain the Priority Date originally assigned to her.
40. See U.S. Dep't of State, *Visa Availability & Priority Dates* (Dec. 18, 2014), www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates; see also U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin* (2015), travel.state.gov/content/visas/english/law-and-policy/bulletin.html.
41. INA § 216(c)(4)(C), 8 USC § 1186a(c)(4)(C); 8 CFR. § 216.5(a)(1)(iii) (2015).

42. INA §240A(b)(2)(A), 8 USC § 1229b(b)(2)(A).
43. *Id.*
44. Other qualifying crimes include but are not limited to rape, torture, trafficking, incest, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, involuntary servitude, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion and felony assault. INA 101(a)(15)(U)(iii), 8 USC § 1101(a)(15)(U)(iii).
45. INA §101(a)(15)(U)(i)(III), 8 USC § 1101(a)(15)(U)(i)(III).
46. See 8 CFR § 214.14(b)(3) (2015); see also 8 CFR § 214.14(c)(2)(i) (2015). This may be done with Form I-918 Supplement B.
47. INA §245(m), 8 USC § 1255(m).
48. INA §214(p)(2)(A); 8 USC § 1184 (p)(2)(A).
49. Note that this cap only applies to principal applicants seeking U-1 nonimmigrant status. There is no cap for family members, such as spouses or children, who derive eligibility from the principal.
50. See Press Release, Dep't of Homeland Security, U.S. Citizenship and Immigration, *USCIS Approves 10,000 U Visas for 6th Straight Fiscal Year* (Dec. 11, 2014), www.uscis.gov/news/uscis-approves-10000-u-visas-6th-straight-fiscal-year.
51. See Dep't of Homeland Security, U.S. Citizenship and Immigration Services, Performance Analysis System, *Number of I-914 Applications for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status 2008-2015* (Jan. 2015), www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2015_qtr1.pdf.
52. INA §101(a)(15)(T)(i)(I), 8 USC § 1101(a)(15)(T)(i)(I).
53. Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub L 106-386, § 103, 114 Stat. 1464, 1469-71 (codified as amended at 22 USC § 7102 (2010)).
54. INA § 101(a)(15)(T)(i), 8 USC § 1101(a)(15)(T)(i).
55. 8 CFR § 214.11(h) (2015).
56. *Id.* A signed certification from law enforcement confirming the assistance provided by the applicant will serve as primary evidence of cooperation.
57. INA § 245(l); 8 USC 1255(l).
58. *Id.*
59. See Dep't of Homeland Security, U.S. Citizenship and Immigration Services, Performance Analysis System, *Number of I-914 Applications for T-Nonimmigrant Status by Fiscal Year, Quarter, and Case Status 2008-2015* (Jan. 2015), www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2015_qtr1.pdf.
60. *Abebe v Ashcroft*, 379 F3d 755 (9th Cir 2004); *rehearing en banc*, 432 F3d 1037 (9th Cir 2005).
61. *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985), *modified on other grounds*, *Matter of Mogharabi*, 19 I&N Dec. 439 (BIA 1987); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006) (social visibility of group an important consideration).
62. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (female genital mutilation); *Gao v Gonzales*, 440 F3d 62, 66-70 (2d Cir 2006) (forced marriage in China). For asylum case outcomes in various gender-based cases, see Center for Gender and Refugee Studies, cgrs.uchastings.edu/search-cases (accessed July 6, 2015). Unpublished grants, while persuasive in some instances, do not have precedential value. At least one court has rejected classifying “young, attractive women” at risk for prostitution as a social group for asylum purposes, *Rreshpja v Gonzales*, 420 F3d 551 (6th Cir 2005), and a practitioner submitting an application on these grounds should consult a mentor experienced in gender-based asylum law.
63. *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2002) (woman with liberal Muslim beliefs who suffered abuse at the hands of her father); *Ali v Ashcroft*, 394 F3d 780 (9th Cir 2005) (rape on account of social group membership in a clan and political opinion), *Safaie v INS*, 25 F3d 636 (8th Cir 1994) (opposition to the Iranian government may be both political opinion and particular social group).
64. *Matter of R-A-*, 22 I&N Dec. 906 (AG 2001; BIA 1999), remanded by AG, 23 I&N Dec. 694 (AG 2005).

65. *Id.* at 917.
66. For a summary of the procedural history of *Matter of R-A-*, see Joe Whitley, General Counsel, US Dep't Homeland Security, File No. A73 753 922, Dep't of Homeland Security's Position on Respondent's Eligibility for Relief, 7-8 (Feb. 19, 2004) (hereinafter "DHS 2/19/04 Brief") cgrs.uchastings.edu/our-work/matter-r.
67. *Matter of L-R-*, summary order issued by Immigration Judge, Aug. 4, 2010; Dep't of Homeland Security's Supplemental Brief, Apr. 13, 2009.
68. *Matter of A-R-C-G*, 26 I. & N. Dec. 388 (BIA 2014).
69. Form I-589, www.uscis.gov/sites/default/files/files/form/i-589.pdf.
70. *Id.*
71. Affirmative Asylum Procedures Manual, AAPM], Asylum Division, RAIO, USCIS (Nov. 2013), www.uscis.gov/sites/default/files/files/natedocuments/Asylum_Procedures_Manual_2013.pdf (accessed July 6, 2015).
72. 8 CFR § 208.7(a)(1).
73. INA § 209; 8 CFR § 209.2.
74. Form I-730, Petition for Refugee/Asylee, www.uscis.gov/sites/default/files/files/form/i-730.pdf.
75. 8 CFR § 1003.1(b).
76. INA § 242(a)(1).
77. INA § 208(a)(2)(B). For the government's analysis of the one-year filing provisions, see USCIS, *Asylum Officer Basic Training Course, One-Year Filing Deadline* (2009) www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTCLesson%20Plans/One-Year-Filing-Deadline-31aug10.pdf.
78. INA § 208(a)(2)(D); 8 CFR § 208.4(a)(4), (5).
79. INA § 241(b)(3).
80. *INS v Cardoza-Fonseca*, 480 US 421, 423 (1987); *INS v Stevic*, 467 US 407 (1984).
81. *Camara v Holder*, 705 F3d 219, 224 (6th Cir 2013); *Cendrawasih v Holder*, 571 F3d 128, 133 (1st Cir 2009).
82. *Cardoza-Fonseca*, *supra* 480 US at 428-29.
83. INA § 241(b)(3)(B); 9 USC § 1231(b)(3)(b) (sets forth grounds for disqualification for withholding); see also *Matter of Lam*, 18 I&N Dec. 15 (BIA 1981); *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987); *Osorio v INS*, 18 F3d 1017, 1021-1022 (2nd Cir 1994); *INS v Aguirre-Aguirre*, 526 US 415, 419-20 (1999).
84. INA § 208(a)(2)(B); 8 CFR §§ 208.4(a), 1208.4(a).
85. 8 CFR §§ 208.3, 1208.3.
86. 8 CFR § 208.16(a); § 1208.16(a) (Asylum officer may not decide withholding claim); see also *Matter of I-S- & C-C-*, 24 I&N Dec. 432 (BIA 2008).
87. INA § 241(b)(3)(B).
88. 8 CFR §§ 208.16, 208.17; §§ 1208.16, 1208.17; United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Feb. 4, 1985, G.A. Res. 29/46, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/Res/39/708 (1984), reprinted in 23 I.L.M. 1027 (1984), modified in 24 I.L.M. 535 (1985) (entered into force June 26, 1987). The CAT was enacted into U.S. law on Oct. 21, 1998 by Fiscal Year 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, PL 105-277, Div. G, Sub. B., Tit. XXI § 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, 112 Stat. 2681-822, 105th Cong. 2d Sess. (1993) [FARRA]; 144 Cong. Rec. H110444-03; 136 Cong. Rec. S17486, 36198 (1990); Committee on Foreign Relations, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, S. Ex. Rept. 101-30, 101st Cong. 2d Sess. (Aug. 30, 1990).
89. 8 CFR § 208.18(a), § 1208.18(a) (definition of "torture" under CAT); see *Tunis v Gonzales*, 447 F3d 547, 550 (7th Cir 2006) (affirming that FGM may be considered torture); *Kone v Holder*, 620 F3d 760, 765-66 (7th Cir 2010) (where child may be subject to FGM if returned to country, parent may suffer direct psy-

chological harm cognizable under CAT); *Zubeda v Ashcroft*, 333 F3d 463, 472-73(3d Cir 2003) (finding that rape can constitute torture).

90. See *Eduard v Ashcroft*, 379 F3d 182, 195-96 (5th Cir 2004); 8 CFR § 208.18(b), § 1208.18(b).
91. See 8 USC § 1232(d)(2).
92. See INA § 101(a)(27)(J).
93. Federal law requires that a “juvenile court” issue an order with factual findings establishing SIJS eligibility. See INA § 101(a)(27)(J). A juvenile court is defined as any “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 CFR § 204.11(a). Depending on state law, an attorney may seek SIJS findings before local courts that exercise jurisdiction over children in a wide variety of settings, including dependency, family, probate, and delinquency courts. The specific court to which an attorney petitions on behalf of the child will vary in each jurisdiction.
94. See 8 CFR § 204.11(d)(2).
95. See e.g. *In re Ezekiel C.*, 12 AD3d 333 (1st Dep’t 2004).
96. 8 CFR § 204.11(d)(2).
97. INA § 101(a)(27)(J)(iii)(II).
98. Note that although President Obama announced a more expansive version of DACA on November 20, 2014, sometimes referred to as “DACA-E”, this new program is currently and indefinitely unavailable as an immigration remedy. A related program announced by President Obama for parents of United States citizens, and known as Deferred Action for Parental Accountability (“DAPA”) is similarly unavailable due to recent judicial intervention. On Feb. 17, 2015, a Federal District Court in Texas issued a preliminary injunction preventing USCIS from accepting requests for DAPA and the expansion of DACA, a decision affirmed by the Fifth Circuit Appellate Court on May 26, 2015.
99. USCIS Memorandum, Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 14, 2012) www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.