Legal Protections for Immigrant Stalking Victims
by Becky Hoey*

Immigrant victims of stalking face legal as well as cultural barriers when deciding to report their victimization. Victims have to consider that reporting the crime may jeopardize their legal status, particularly if they lose their husbands’ sponsorship. Yet recent federal laws—especially the Violence Against Women Act (VAWA)—allow immigrant women being stalked or battered by their husbands to petition for legal immigration status without their husbands’ sponsorship. Practitioners who work with immigrants need to understand the complex impact of immigration laws on their clients’ legal status and be able to help clients obtain the skilled legal help they need.

Violence Against Women Act of 1994
The 1994 Violence Against Women Act (VAWA I) allows the battered spouse of a U.S. citizen or legal permanent resident to apply for legal status on behalf of herself or himself in the U.S. This law takes away the power of a batterer or stalker to threaten his victim with deportation if she reports the abuse.

An immigrant woman seeking to apply for legal status under VAWA must prove that she is a “battered immigrant woman” who has been the victim of “battery or extreme cruelty,” a term recognizing that domestic violence encompasses more than physical and sexual abuse. Battery or extreme cruelty is defined as “any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.” The VAWA regulations, phrased in much broader language than that of most state statutes, define battery and extreme cruelty as abuse that includes, but is not limited to, causing or threatening to cause physical or mental injuries, psychological or sexual abuse, and actions that in and of themselves may not initially appear violent, but are part of an overall pattern of violence.

Battery or extreme cruelty includes acts that constitute the pattern of behavior found in stalking cases. Some behaviors that courts and researchers have found to constitute extreme cruelty include social isolation, possessiveness and harassment, threats, economic abuse, degradation, and sexual abuse. An individual who has been subjected to types of abuse other than physical violence can be successful in applying on her own (self-petition) for legal status if she can prove her case.

VAWA I was a dramatic victory for battered immigrant women. Yet the law specified a number of requirements (most of which still apply) that the self-petitioner must meet. The battered immigrant woman had to:

- Have suffered battery or extreme cruelty during the marriage.
- Be the current spouse of an abuser who is a U.S. citizen or legal permanent resident.
- Prove the legal immigration status of her abuser.
- Have entered into the marriage in good faith.
- Currently reside in the U.S.
- Have resided in the U.S. with the abuser at some time.
- Have good moral character (i.e., not have been convicted of a crime within the last several years).
- Prove that she would suffer extreme hardship if deported.

Some of these requirements made it particularly difficult for a battered immigrant woman to petition for legal status. If she divorced her husband, she could not file because VAWA required her to have been married to the abuser at the time of the petition. If she had been convicted of a crime—for example, as a result of a domestic violence incident—she might not have been able to prove her good character.

Cancellation of Removal
In addition to self-petition, VAWA I allows a battered immigrant woman to apply for “cancellation of removal” if her spouse has placed her in a removal proceeding (asking to remove her from the country). To apply, she must prove that she had been in continuous residence in the United States for three years immediately preceding filing, she has been subject to battery or extreme cruelty by her spouse while in the United States, her own moral character is good, she or her child would suffer extreme hardship if deported, and she is currently deportable/removable (undocumented or out of status).

VAWA II: Self-Petitioning
As legislators began to recognize the hardships imposed by some of the VAWA I requirements, they began to modify the law. VAWA II, passed in 2000, eliminated several of...
the barriers to battered immigrant women seeking to self-petition for legal status. First, if reporting the crime results in the batterer’s loss of legal status, the woman may still file a self-petition if she does so within two years of the batterer’s loss of status or citizenship.10 Another improvement is that under VAWA II, a battered immigrant woman who has divorced her batterer can still self-petition as long as she does so within two years of the divorce and the divorce is related to the domestic violence.11 VAWA II also eliminates the extreme hardship requirement for battered immigrant women self-petitioning for legal status.12

VAWA II broadens the categories of immigrants who can apply for self-petitions to include battered spouses who unwittingly married bigamists and battered spouses who filed VAWA self-petitions within two years of an abusive spouse’s death. Battered immigrants who are living abroad and married to U.S. government employees or members of the military can also apply.13

U-Visas

VAWA II also allows legal immigrant status under the new U-Visa, which offers new hope to immigrant victims who are not married to their stalkers or batterers (but who are in the United States on a work, student, or other visa). The U-Visa was designed for non-citizen crime victims who have suffered substantial physical or mental abuse flowing from criminal activity and who have agreed to cooperate with government officials investigating or prosecuting such criminal activity.

A petitioner for a U-Visa must meet five conditions. She must have suffered substantial physical or mental abuse as a result of having been a victim of one or more criminal activities listed in the act. She must possess information concerning the criminal activity that is being investigated. She must be helpful, have been helpful, or show that she is likely to be helpful in a federal, state, or local investigation or prosecution of a form of listed criminal activity. She must obtain certification from a law enforcement officer, prosecutor, judge, Bureau of Citizenship and Immigration Services official, or other federal or state authority investigating or prosecuting any of the criminal activities. Finally, the criminal activity described must have violated the laws of the United States or have occurred in the United States or territories and possessions of the United States. Applicants for U-Visas may submit “any credible evidence” to support their petitions. There is still some debate about who can apply for U-Visas and how much applicants need to prove. The guidelines are unclear, and there is discretion in applying them to individual cases.

Conclusion

The Violence Against Women Act allows immigrant women who are being battered or stalked to apply for legal immigration status without the sponsorship or cooperation of their batterers and stalkers. Immigrant victims may be unaware of these available protections and confused about how to apply for them. They may also not understand other immigration laws that affect their status. Professionals in victim services, law, and law enforcement who work with these victims must understand the complexity of these laws, the extensive proof they often require, and their impact on victims’ legal rights. Battered immigrant women need referrals to trained immigration attorneys or leaders in the immigrant community to help them navigate the legal procedures that determine their status. By working together, practitioners in stalking and immigration can help immigrant women assert their rights.

(Endnotes)

1 Cultural barriers faced by immigrant stalking victims were covered in the last issue of this newsletter, and the article “Immigrant Stalking Victims Face Complex Challenges” is available at www.ncvc.org/src.
4 Ibid.
5 Ibid.
6 American Bar Association at 19.
7 Ibid.
8 8 C.F.R. 204.2
9 American Bar Association at 13.
10 8 C.F.R. 204.2
11 Ibid.
12 Ibid.
13 Ibid.

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