

## **Background on Laws Affecting Battered Immigrant Women**

### **Immigration Marriage Fraud Amendment of 1986**

The Immigration Marriage Fraud Amendment of 1986 created a dangerous situation for all battered immigrant women in the United States. Under this law, immigrant women who are married to U.S. citizens or lawful permanent residents for less than twenty-four months at the time of residency are granted a "conditional residency" for two years. Within ninety days before this two-year waiting period ends, the couple must file a joint application to have the condition removed, so they can obtain permanent residency status for the woman. Because of this policy, battered immigrant women may be forced to endure the abuse and remain trapped in the relationship for two years to remove the condition on her papers so she can stay permanently. As a result of these problems, two laws were passed to allow battered women to file for a waiver of the joint filing requirement, and to allow battered immigrant women married to U.S. citizens or resident spouses to file their own immigration papers – The Immigration Act of 1990 and the Violence Against Women Act of 1994.

### **Immigration Act of 1990**

The Immigration Act of 1990 created what is commonly known as the "battered spouse waiver." This waiver was designed to remedy problems created by the Immigration Marriage Fraud Amendment of 1986, which created the conditional residency requirement. The battered spouse waiver helps the conditional permanent resident married to a U.S. citizen or permanent resident, whose spouse already filed an application for her to become a permanent resident, and has assisted her in obtaining her conditional residency, but has failed to take any further steps to remove the conditions. If an immigrant woman fits these criteria, she can receive a waiver, meaning she can still obtain her permanent resident status without the assistance of her spouse. Though the Immigration Act of 1990 was a step in the right direction for battered immigrant women, the law did not provide for those women whose spouses refused to file for conditional residency in the first place. This problem was remedied by the Violence Against Women Act of 1990.

### **Violence Against Women Act of 1994 (VAWA)**

This legislation provided a remedy to battered immigrant women whose spouses refuse to file a petition for residency on her behalf. Before this legislation was enacted, a battered immigrant woman had no recourse or option to remove herself from domestic violence when an abusive spouse who is a citizen or permanent resident withdraws or refuses to file a petition to sponsor his wife for legal status. But with the enactment of VAWA in 1994, battered immigrant women can now self-petition on their own behalf to become legal permanent residents without relying on their abusive spouses. She also can apply to become a permanent resident if her spouse had begun the process of applying for her residency papers and then later withdrew the petition, or if the petition is still pending. Battered immigrant women who self-petition may include their undocumented children in

their application. Children who are abused by citizen or resident parents also may apply for this remedy. Finally, a woman who has not been abused herself also can self-petition to become a permanent resident if she is a parent of a battered child abused by the woman's citizen or permanent resident husband.

### **Violence Against Women Act of 2000 (VAWA II)**

The first reauthorization of VAWA built upon the immigration provisions included in the 1994 bill by improving access to cancellation of removal, suspension of deportation and other immigration protections for victims of domestic violence. VAWA II also allowed funding in VAWA grant programs to be used for immigration assistance. VAWA II removed the U.S. residency requirement and "extreme hardship" requirements for immigrant women to receive VAWA protections; allows battered immigrant women to obtain lawful permanent residence without leaving the country; restores access to VAWA protections for immigrants regardless of how they entered the country and creates a new type of visa, the U-visa, for victims of serious crimes that will allow some to attain lawful permanent residence.

Immigrants who are victims of certain serious crimes, including domestic violence, sexual assault, stalking, and trafficking are eligible for the U-Visa created in VAWA II providing that the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim is or is likely to be helpful in investigating or prosecuting the crime.

#### *Setbacks:*

In the late 1990s, a combination of legislative reforms targeting poor people and immigrants produced dangerous results that threaten crucial legal and financial remedies previously available to battered immigrant women. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") were passed within months of each other in 1996.

These laws cut off access to the public benefits safety net for many immigrants and imposed significant new legal and procedural barriers upon immigrants seeking lawful immigration status. Although these laws were not specifically written to address cases of battered immigrants, and although IIRIRA explicitly contains provisions that offer battered immigrants some protections, other provisions of these laws erode the progress gained in protecting the rights of battered immigrant women just two years earlier with the passage of the Violence Against Women Act (VAWA) of 1994.

## **Violence Against Women Act of 2005 (VAWA III)**

While VAWA 1994 and 2000 made significant progress in reducing violence against immigrant women, there are still many women and children whose lives are in danger today. VAWA 2005 eliminates some of the major obstacles immigrant crime survivors face in achieving safety and legal immigration status. The VAWA 2005 immigration provisions include:

- Implements VAWA's original intent by stopping deportation of immigrant victims of domestic violence, sexual assault, or trafficking;
- Extends immigration relief to larger group of family violence victims;
- Provides economic stability and security for trafficking victims;
- Protects safety of victims of domestic abuse, stalking, sexual assault, trafficking;
- Guaranties economic security for immigrant victims and their children;
- Improvements in processing VAWA cases and technical amendments; and
- International marriage broker regulations.

## **Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), also known as welfare reform, was a sweeping overhaul of the nation's welfare law enacted in 1996. PRWORA created the Temporary Assistance for Needy Families (TANF) program, which ended the federal entitlement to assistance for poor families with children and replaced it with a "work first" approach. TANF requires recipients to work in exchange for assistance and seeks to, among many things, reduce caseloads and limit the time during which a person can receive aid.

In general, TANF narrowed immigrant eligibility for federal and state benefits, such as Food Stamps, Supplemental Security Income (SSI), Medicaid, public housing, and Temporary Assistance to Needy Families (formerly called Aid to Families with Dependent Children, AFDC). It also made it much more complicated to understand what assistance is available, which immigrants qualify, and how these immigrants can access the benefits for which they are eligible.

While the widespread, erroneous impression among providers, community members and even governmental agencies is that "immigrants aren't entitled to any benefits anymore," this is not the case, thanks to significant gains and improvements won by advocates nationwide. The regulations and procedures for implementing public benefits policy are extremely complicated - particularly when they intersect with immigration policy. Applicants require the assistance of advocates who have been trained in the dynamics of domestic violence in immigrant families, who understand VAWA's immigration provisions, and who are knowledgeable about immigrants' rights to access benefits under welfare reform.

### **Illegal Immigration Reform and Immigration Responsibility Act of 1996**

Another piece of legislation, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), severely restricted the legal rights of most immigrants, with particularly harsh provisions affecting undocumented immigrants. IIRIRA contains several provisions aimed at protecting battered immigrants. IIRIRA partially preserved access to VAWA immigration relief for battered immigrants; expanded public benefits access to certain undocumented battered immigrants; and created "deeming" exceptions for battered immigrants. IIRIRA recognized that many VAWA eligible battered immigrant women are undocumented as a direct result of domestic abuse. IIRIRA exempts some battered immigrant women from many of the harsh penalties that it directs at other undocumented immigrants.

The overlapping nature of these two welfare and immigration reform policies has exacerbated the complex intersection of domestic violence and immigration status. The reforms ushered in by these legislative changes are vast and represent a radical departure from the past, affecting nearly every arena of public and private social service delivery, in which some immigrants are afforded greater access to benefits and services, and others are cut off altogether. Clearly, new collaboration and alliance building have to be forged to respond to the very intricate problems of abused immigrants seeking ways to create violence-free homes.