

**Understanding VAWA  
Immigration Remedies for  
Survivors and Access to  
Public Benefits**

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Services are Provided Under Grant Number  
2004-WT-AX-K057 – Office on Violence  
Against Women (OVW), United States  
Department of Justice

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**Objectives of the Presentation**

- Promote a Human Rights perspective in addressing domestic violence
- Provide information about immigration remedies under VAWA for undocumented immigrant survivors
- Review general information about access to services and federal public benefits for immigrant survivors
- Dialogue about how to improve our advocacy efforts in these areas
- Provide additional resources

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### Creating a Comprehensive Framework

- Fundamental guidelines:
  - DV violates the human rights of survivors & their children by creating unsafe & fearful environments
  - Their safety must be central to any work we do
  - Safety is unattainable unless we practice cultural and linguistic competency consistently at the organizational and individual level

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### Immigration Status

- Five general categories of immigrants:
  - 1) Naturalized Citizens (formerly LPRs)  
= 11.3 million (32%)
  - 2) Lawful Permanent Residents (LPRs)  
= 10.4 million (29%)
  - 3) Unauthorized Immigrants (Undocumented)  
= 10.3 million (29%)
  - 4) Refugee Arrivals/Asylum (fled persecution)  
= 2.5 million (7%)
  - 5) Temporary Legal Residents  
= 1.2 million (3%)
- Total= 35.7 million foreign-born (2005)

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### Barriers to Seeking Help

- Lack of knowledge and misinformation about the U.S. legal system
- Fears of the Police and Judicial System, of Deportation, of social services and child welfare agencies, etc..
- Linguistic and Cultural barriers
- Economic and Employment challenges
- Fear of losing custody of children
- Isolation from family and community
- Others....

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### Identifying Immigration Status

- Understand victim's fear or reluctance in discussing immigration status
- Inform her that the information is confidential
- Reassure her that your services are available regardless of her immigration status
- Reassure her that the info will assist you in helping her to make a safety plan and determine what legal relief might be available
- Be sensitive in asking questions (e.g. Do you know your immigration status?; Do you have any fear of being deported?)
- Always give her the option of not telling you her status if she is uncomfortable doing so

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### VAWA Confidentiality and Victim Safety Provisions

Provide **3 types of protection** to immigrant victims of violence (including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed crimes):

1. Protects the **confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim** from disclosure in order to prevent abusers, traffickers and crime perpetrators from using the information to harm the victim or locate her;
2. **Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.**
3. **Requires that enforcement actions not be taken at any of the following locations:** domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse or in connection with the appearance at a courthouse in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking stalking.

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### Violence Against Women Act (VAWA)

- Violence Against Women Act was first passed in 1994
- Remedies for Immigrants were included since the beginning since Congress found that "[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave."
- A victim's immigration status may be used as a tool of abuse
- VAWA 1994, 2000 and 2005 sought to address these issues through different forms of immigration relief

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**Potential Forms of Immigration Relief for Battered Immigrants**

- Applications filed with Dept. Homeland Security (DHS)
  - VAWA self petition
  - Battered spouse waivers
  - U visa (if cooperate with criminal case)
  - T visa (for trafficking victims)
- Defenses before immigration judge
  - Cancellation of Removal under VAWA
  - Asylum/Gender Asylum

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**1. VAWA Self-Petition**

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**General VAWA Self-Petitioning Requirements**

1. Subjected to Battery or Extreme Cruelty
2. By a U.S. Citizen or Lawful Permanent Resident Spouse or Parent
  - Can file within 2 years of divorce
3. With Whom You Resided
4. Good Moral Character of Petitioner
5. Good Faith Marriage

*Prima Facie Determination = Public Benefits*  
*Approved Petition = Eligible to apply for employment authorization (sooner if abuser was a U.S. citizen)*

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### Proof of Legal Marriage

- Good faith marriage
  - Not solely to gain immigration status
- Common law marriages are valid if valid under family laws of that state
- Proof of any prior divorces of both parties
- Bigamy by abuser will not prohibit filing if
  - Good faith intent by applicant AND
  - Legal ceremony

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### Who is covered as a "child"?

- Abused biological child
- Abused step-children
- Abused mother can include children from other relationships in her self-petition
- Termination of parental rights no effect
- Under 21 years of age
- **New Exception:** Over 21 but under 25 if shows connection between not filing on time and abuse

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### Battery/Extreme Cruelty

- To spouse, or to child
- If abusive of spouse, during marriage
- If abusive of child, when abuser is/was parent (to children or step-children)
- Abuse does not have to have occurred in the United States as long as now residing in U.S. (post VAWA 2000)

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### Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion & Threats
- Using Citizenship or Residency Privilege
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Minimizing, Denying & Blaming

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### Types of Evidence of Battery & Extreme Cruelty

- Police Records
- Protection Orders
- Medical Records
- Photographs & Letters
- Material Evidence
- Witness Affidavits
- School Records
- Expert Testimony
- Civil Court Records
- Criminal Court Records
- Statements from Shelter Workers and Other Counselors

Standard of Proof = Any credible evidence

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### Good moral character

- Criminal records check
  - Every place victim lived for at least 6 months during past 3 years
- Domestic violence convictions and protection order violations can bar good moral character
- VAWA 2000: even if barred, may be overcome for victims if “waivable” AND connected to domestic violence

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### Preparing VAWA Self-Petition Case

- Self-Petitioner’s detailed Affidavit
- Supporting Documents
- Forms I-360 & G-28 (if represented)
- No Fee
- Cover Letter
- Good Moral Conduct Certificate
- Application is filed w/ the Vermont Service Center, an office of U.S. Citizenship and Immigration Services (USCIS) of DHS

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### After the Self Petition has been filed:

- **Notice of Prima Facie Determination**  
This means the applicant is a “qualified” alien for the purpose of obtaining public assistance.
- **Approval and Deferred Action**  
DHS has assigned a low priority to the removal of this person from the United States.
- **Employment Authorization Document**  
A card which grants permission to work in the United States after petition approved if establish economic necessity (need to work)
- **Adjustment of Status**  
After approval, can later adjust to Lawful Permanent Residency (Green Card) without having to leave country

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### 2. Battered Spouse Waiver

- This is for abused immigrants who already have LPR status (a “green card”) as a result of marriage, but the green card is still conditional because it was granted less than two years ago.
- Usually, the procedure for removing the condition on LPR statutes is to file a joint petition with one’s spouse 90 days prior to the second anniversary of the day you were given the status.
- Under a battered spouse or child waiver, a conditional resident may file form I-751 and needs to establish:
  - **Good-faith marriage**
  - **Qualifying abuse (physical battery or extreme cruelty)**

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### Victims of Trafficking and Violence Protection Act of 2000

- VTPA created two new visas for noncitizen victims of crimes: the U visa and the T visa.
- Both visas are designed to provide immigration status to noncitizens who are assisting or are willing to assist authorities investigating crimes.
- Victim does not have to be married to abuser and abuser does not have to be U.S. Citizen or Legal Permanent Resident

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### 3. U-VISA

- Immigrant victim must have suffered substantial physical or mental abuse
- Must have cooperated or be willing to cooperate with a government official in investigation or prosecution of this abuse (Requires certification of cooperation from govt official)
- Qualify for employment authorization
- Visa good for 4 years; After 3 years can apply for lawful permanent residency (LPR) status
- Limited number of U-Visas granted annually (10,000)

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### 4. T-Visa for Victims of Trafficking

- A T-visa gives temporary non-immigrant status to victims of "severe forms of human trafficking" on the condition that they help law enforcement officials investigate and prosecute crimes related to human trafficking
- However, if the victim is **under 18** years of age, the law does **not** require cooperation with police to obtain a T-visa
- If a T-visa is granted, an employment authorization document (EAD) is also granted automatically. Also treated similarly to refugees/asylees for purposes of public benefits eligibility

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### 5. Suspension/Cancellation

- Must have an immigration attorney
- Similar to VAWA self-petitioning, available in removal (deportation) proceedings:
  - to some persons who cannot self-petition
  - With some additional proof requirements
    - Three years presence in the U.S.
    - Extreme Hardship
    - Must be deportable or inadmissible

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### 6. Asylum

- Asylum may be granted to someone who is already here in the U.S. and is unable or unwilling to return to his or her country of nationality because of a well-founded fear of persecution (mistreatment/abuse) based on one or more of the following: race, religion, nationality, membership in a particular social group, or political opinion
- Foreign-born women who were victims of severe domestic violence and sexual abuse in their home country may qualify for asylum status as part of the "membership in a particular social group" category
- Is very complicated and requires expert legal representation

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### TIPS FOR ADVOCATES

- NEVER send your client to USCIS alone
- NEVER advise your client to fill out and file for relief or file a CIS form unless you are sure of the applicable remedy
- **ALWAYS talk to an immigration expert and/or shelter advocate who knows about VAWA immigration remedies**
- Tell them their rights if picked up by ICE and provide them with written information/your card/etc.

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Part II: Access to Services and Federal Public Benefits

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Maintaining Access to Services Critical for Life and Safety

- The welfare reform law passed in 1996 created new requirements affecting access to federal public benefits for immigrants
- The federal law created exceptions that maintain access to services critical for life and safety
- The Attorney General issued guidance on access to these services

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Criteria to qualify for AG exemption:

3-prong test set forth by Congress:

- 1) Deliver **in-kind** services at the **community level**, including through non-profit agencies;
- 2) Do **not condition** the provision, amount, or cost of the assistance provided on the individual recipient's **income** or resources: and
- 3) The Services are necessary for the **protection of life and safety** of the individual

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**AG's list of Required Services for Life and Safety for which all immigrants remain eligible**

- Crisis Counseling and Intervention Programs
- Child and Adult Protection Services
- Violence and Abuse Prevention
- Victim Assistance for Victims of Domestic Violence and other Criminal Activity
- Treatment of Mental Illness or Substance Abuse
- Short-term shelter or housing assistance for the homeless, for victims of DV, or for runaway, abused or abandoned children:
- Programs or Assistance to help individuals during adverse weather conditions

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**AG's List Cont'd**

- Soup kitchens and community food banks
- Senior nutrition programs and other community nutritional services for persons requiring special assistance
- Medical and public health services necessary to protect life or safety
- And any other programs, services, or assistance necessary for the protection of life and safety [that meet the 3-pronged test]

AG Order No. 2353-2001, 66 Fed. Reg. 3613-3616 (1/16/01)

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**Access to Services for Undocumented Immigrants**

- As a matter of law, immigrant women who are victims of violence have full access to domestic violence shelters and services, regardless of their immigration status
- DV programs that turn away undocumented immigrants because of their status risk being charged with discrimination in violation of Federal laws

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**What are “Federal Public Benefits”?**

- Benefits programs which contain eligibility criteria, such as income (“means tested”), or that provide cash assistance, are considered “Federal public benefits”
- Examples include Temporary Assistance for Needy Families” (TANF), Food Stamps (SNAP), SCHIP, Medicaid (with the exception of emergency Medicaid)
- As a general rule, “Federal public benefits” are only available to “Qualified Aliens”

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**What “Federal Public Benefits” can Immigrants Access?**

Depends on:

- Whether applicant meets definition of “Qualified Alien” under the welfare reform law,
- Whether the state has elected to provide these benefits to “qualified aliens” and
- Whether the immigrant entered the country prior to 8/22/96 or has been in “qualified alien status” for 5 years

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**Who qualifies as a “Qualified Alien” or Qualified Immigrant?**

- Lawful Permanent Residents (LPR)
- Refugees and Asylees
- **Trafficking victims with T-visa**
- Persons granted withholding of removal (deportation)
- Persons paroled for at least a year
- Those granted conditional entry prior to 4/1/80
- Cuban and Haitian entrants
- Veterans
- **Certain Battered Immigrants**

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**Which battered immigrants considered “qualified immigrants”?**

- Persons who have been:
  - battered or subject to extreme cruelty or whose children have been battered or subjected to extreme cruelty
  - by a U.S. citizen or LPR spouse or parent (or family member of the spouse/parent residing in same household)
  - with pending or approved VAWA self-petitions, or family-based petitions before DHS

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**Additional requirements for a battered immigrant to be a “qualified alien”:**

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “*substantial connection*” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser

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**Federal Means-Tested Public Benefits Open to Certain Qualified Immigrants**

- **TANF** (Temporary Assistance to Needy Families, a.k.a. “welfare”)
  - Persons who first entered U.S. after 8/22/96 is barred for 5 years after they become qualified immigrants unless exempt
- **Medicaid** and SCHIP –
  - Person who first entered U.S. after 8/22/96 is barred from non-emergency Medicaid and SCHIP for 5 years after they become qualified immigrants unless exempt

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**Federal Means-Tested Benefits Open for Qualified Immigrants**

- Food Stamps (SNAP)
  - Qualified Immigrants Who've Lived In the United States Over Five Years (Effective April 1, 2003)
  - All Qualified Immigrant Children Eligible Regardless of Date of Entry (Eff. Oct 1, 2003)
  - Disabled Immigrants Eligible Regardless of Date of Entry (Eff. Oct 1, 2002)

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**Immigrants Who Entered after 1996 Who Are Exempt From Five Year Bar**

- Refugees and Asylees
- Trafficking victims with T visas
- Amerasians
- Cuban/Haitian entrants
- Immigrants granted withholding of deportation
- Veterans and Active Duty Military (including spouse and children)
- Immigrants who can be credited with 40 quarters for social security purposes

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**Some of the Federal Housing Benefits Accessible to "Qualified Immigrants"**

- Subsidized Housing Programs
- Public and Assisted Housing
- Qualified immigrants are eligible for all HUD-funded housing REGARDLESS of date of entry
- For mixed families, if at least one family member has eligible status, the family can receive prorated federal housing assistance. (Only a portion of their rent will be subsidized based on the number of eligible family members.)

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**Mixed Families: Children may Qualify for Benefits**

- If a child qualifies for benefits as a citizen or qualified immigrant (even if parent does not) the benefits agency may only ask questions about the child's eligibility
- If the parent is not applying for benefits for themselves, no questions may be asked about the immigration status of the child's parent

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**State Benefits**

- Some states use state funds, as opposed to federal funds, to provide additional benefits for those who may not qualify for "federal public benefits"
- Make sure to obtain updated information about the benefits available for immigrants in your particular state

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**Importance of Partnerships**

- The immigration system, its laws, and its regulations are complicated and change frequently
- You should develop a working relationship with a local immigration expert and/or legal services organization that has a good understanding of immigration and domestic violence issues
- Also, there are national resources available to help with immigration/DV questions (See handout)

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**Note**

- This presentation provides only a general overview for issue spotting purposes and does not constitute legal advice
- Thanks to ASISTA for providing information used in some of the slides

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