

**Testimony by the Legal Aid Society before the Sub Committees on Immigration, Public Health, Safety and Women's Issues on How New York City Can Better Address Immigrant Survivors of Sexual and Domestic Violence**

**June 22, 2009**

**Interest and Expertise of the Legal Aid Society**

The Legal Aid Society is the oldest and largest provider of legal assistance to the poor in the United States. The Society's Civil Practice operates 14 neighborhood offices and City-wide units servicing residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance, immigration, family law and other civil areas of primary concern to the poor. The Society's City-wide Family Law Practice includes a Domestic Violence Project which provides legal representation regarding, custody, orders of protection, child support, divorce, economic justice and immigration remedies for undocumented survivors of domestic violence. Our Domestic Violence Project staff often works in close collaboration with other areas of the Society's Civil Practice to holistically address the myriad of legal issues faced by immigrant survivors of domestic violence, in particular access to housing, public assistance and health care. The Legal Aid Society's Domestic Violence Immigration Program Staff plays an active role in the New York City Violence Against Women Act (VAWA) Advocates group which is comprised of other legal service providers throughout the area providing representation and advocacy on immigration options for domestic violence survivors. This staff also participates in national advocacy efforts for immigrant victims of domestic violence and is active in the Lawyer's Committee Against Domestic Violence (LCADV), a coalition of over 100 lawyers from the greater New York City area whose work supports victims of domestic violence and their children.

We are grateful for the opportunity to testify before the Sub-Committees on Immigration, Public Health, Safety and Women's Issues regarding immigrant victims of domestic violence. We would like to focus your attention today on the obstacles faced by undocumented battered immigrant victims. Undocumented victims of domestic violence are among the most marginalized New Yorkers. They face physical battery and emotional abuse compounded by a constant fear of deportation.

**Brief Summary of Common Legal Options for Undocumented Survivors of Domestic Violence and Sexual Assault**

In 1994, Congress enacted the Violence Against Women Act<sup>1</sup> (VAWA) to prevent citizen and lawful permanent resident batterers from using their control over different stages of the family immigration process of their spouses as part of the cycle of abuse. It is quite common for batterers to refuse to file a family visa petition for their spouses, threaten to withdraw a petition that has already been filed or threaten to have their spouses deported if they take any steps to report the abuse or leave the relationship. Without legal status, undocumented survivors of domestic violence can be deported at any time and cannot work lawfully. The fear of deportation and separation from family members causes many immigrant domestic violence

victims to remain in abusive relationships and keep silent about the violence in their homes. VAWA legislation permits spouses of U.S. citizens and lawful permanent residents to initiate or complete this family petition process without their abuser's cooperation.<sup>ii</sup> This process is referred to as self-petitioning.

Immigrants who are married to their abusive citizen or resident spouses for less than two years when their residency applications are approved receive a conditional "green" card valid for two years. They must file jointly with their spouses to remove this condition on their lawful permanent residence within the ninety day period prior to the expiration of their conditional residence.<sup>iii</sup> This requirement gives batterers yet another opportunity to use the immigration process to maintain control and domination over their spouses. A battered immigrant in this situation can apply for a battered spouse waiver to remove the conditions on her lawful residence by herself.<sup>iv</sup>

Unfortunately, these two remedies themselves do not address the legalization needs of all battered immigrants. Self-petitions and battered spouse waivers require marriage to a citizen or lawful permanent resident abuser. Yet, there are many undocumented immigrant women who are either not married to their abusers or whose abusers themselves are undocumented. For many years, there was nothing that could be done to legalize these victims' status. In 2000, as part of the Victims of Trafficking and Violence Protection Act (VTPRA),<sup>v</sup> Congress created a new non-immigrant category, the U visa, at least partially as a way to legalize battered immigrants in this situation. The U visa notably also helps victims of certain other crimes. Interim regulations governing the application process for a U visa were finally promulgated in September 2007.<sup>vi</sup> U visa applicants prior to the September 2007 regulations were granted interim relief and employment authorization. Unfortunately, new U visa applicants not granted interim relief must currently wait for their applications to be approved in order to receive employment authorization. The current U visa adjudication process by the United States Citizenship and Immigration Services (USCIS) is still in flux.

To qualify for a U visa, applicants must show that they are a victim of a qualifying crime, have suffered substantial physical or mental abuse as a result of that crime and that they are helping or were helping law enforcement in the investigation or prosecution. A law enforcement agency must sign a certification attesting to the victim's helpfulness or cooperation only. Certifying agencies are defined broadly and can include District Attorney's offices, police departments, child welfare agencies, the Equal Employment Opportunities Commission (EEOC), the Department of Labor (DOL) and Family Court judges to name a few.

U visas are numerically capped at 10,000 visas a year.<sup>vii</sup> They are intended to provide humanitarian relief to victims of crimes and to be used as a tool to assist law enforcement in the investigation or prosecution of crimes. Unlike many non-immigrant visas, the U visa provides a possible path to lawful permanent residency after three years in U non-immigrant status. Notably, the U visa also has a generous waiver standard that can "forgive" many acts that would otherwise make an immigrant inadmissible to the United States on humanitarian grounds. A U visa applicant can include certain non-citizen family members as derivative beneficiaries on his/her application.

## **Connection between VAWA Relief and Public Benefits Programs for Undocumented Survivors of Domestic Violence**

Lawful immigration status and economic assistance are two critical components on a battered immigrant's road to an independent, violence-free life. Mental and/or physical cruelty are often intertwined with economic control by the abuser. Undocumented immigrants are not able to work lawfully in the United States. They are often subjected to abuse, exploitation and unsafe conditions in the workplace. Public assistance and employment authorization go hand in hand to facilitate independence for abused undocumented immigrants.

Eligibility for Federal and New York State benefits programs for immigrant survivors of domestic violence are completely interdependent on the type of VAWA relief that a battered immigrant seeks. Battered immigrants who can self-petition as a result of abuse perpetrated by a U.S. citizen or lawful permanent resident abuser are currently in a better position to obtain certain types of public assistance programs than their U visa counterparts. Neither VAWA self-petitioners nor U visa applicants are eligible for Family Assistance. However, VAWA self-petitioners are eligible for Safety Net Assistance and Medicaid within a relatively short time frame after their applications are filed with the USCIS. Within the group of VAWA self-petitioners, those whose eligibility is based on marriage to a U.S. citizen are able to receive employment authorization within a few months of applying for VAWA relief while their applications are adjudicated. VAWA self-petitioners eligible based on domestic violence perpetrated by a lawful permanent resident must wait until their self-petitions are approved in order to receive employment authorization. Currently, a VAWA self-petition takes an average of a year to be approved.

Undocumented immigrant survivors of domestic violence who are U visa applicants fall into two categories of eligibility for Safety Net Assistance. Those that applied for interim relief prior to the promulgation of the U visa regulations in September 2007 are eligible for Safety Net Assistance under the Office of Temporary and Disability Assistance (OTDA) criteria. Interim U visa applicants are also Medicaid eligible. Current U visa applicants not previously granted interim relief are only eligible for Medicaid.

OTDA's current position is that non-interim relief U visa applicants must wait until their U visas are approved by the USCIS. It is currently unclear how long the USCIS will take to adjudicate a U visa application. We urge the City Council to advocate with OTDA to reverse its position concerning U visa applicants. As a matter of public policy, we trust that you agree it is particularly critical for New York to provide extremely vulnerable populations like crime victims with all of the economic support they need to move forward from such trauma. U visa applicants should not be penalized for any delays in the processing of their visa applications.

There is a similar division regarding employment authorization for both groups of U visa applicants. Interim relief U visa applicants were issued employment authorization and can renew this authorization annually until their cases are adjudicated. Unfortunately for new applicants, the USCIS is not currently providing non-interim relief U visa applicants with employment authorization while their cases are pending despite Congressional authority to do so as created by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.<sup>viii</sup>

Employment authorization is critical in assisting both VAWA self-petitioners and U visa applicants with economic independence. It is especially crucial to secure transitional and other housing options. Neither VAWA self-petitioners nor U visa applicants are eligible for federally-funded housing programs nor New York City Housing Authority (NYCHA) programs. In recent years, the Department of Homeless Services, in coordination with other City agencies, established the Advantage NY Programs to help people transition out of shelter into stable, safe housing. However, the Advantage Programs require that applicants receive federal disability benefits, which are not available to immigrants without status, or demonstrate a lawful ability to work. Many of our clients simply cannot do this in the timeframe they need to because they are not employment authorized while their cases are still pending with the USCIS. Even battered immigrants who have other qualifying members in the household such as U.S. citizen children find the unsubsidized portions of their rent cost prohibitive. These issues present an enormous hurdle for battered immigrants seeking to transition out of shelter and/or obtain more permanent housing.

### **Current Gaps in Services for Survivors of Domestic Violence**

#### Lack of access to transitional and permanent housing for immigrant survivors of domestic violence

Battered immigrants have extremely limited options for federally-funded housing programs, NYCHA and other transitional housing programs as a result of their immigration status.

#### Illustrative example:

Sonia G. endured four years in an abusive relationship. Her former brother-in-law, also undocumented, severely abused her. He forced her to have sexual relations with him in exchange for a place to stay after her arrival to the United States and physically assaulted her on a regular basis. At the time she had no other relatives in the country. She gave birth to their daughter less than a year after her unlawful entry. Her abuser routinely terrorized her about her immigration status and threatened to throw her and the baby out of the apartment. Sonia G. reported her batterer to the police several times. She was issued an order of protection from criminal court which he subsequently violated. Sonia G. says her fear about being homeless with a baby kept her in her abusive situation for so long.

Sonia G. entered a domestic violence shelter after a brutal incident where her abuser threatened to kill her with a knife. She stayed there for six months during which time the HRA reimbursed the shelter for her stay. During that time, she applied for a U visa under the 2007 regulations. When her time in shelter expired, she went to the Prevention Assistance and Temporary Housing (Path) and eventually transitioned to a Tier II shelter because she had a citizen child. She cannot transition out of a Tier II shelter as she is not currently eligible for other housing options.

Sonia G. cannot work lawfully. She makes \$6 dollars an hour as a part time receptionist whenever her employer offers her work. She cannot afford a Section 8 or a NYCHA apartment although her daughter is at least eligible for the subsidy. Nor does she qualify for the NY

Advantage programs because she has no employment authorization. Sonia G. gets overwhelmed by her housing situation. She sees other domestic violence survivors with legal status that are eligible for various housing programs transition to better living environments and this makes her extremely depressed about her future. Sonia G. has been unable to transition out of shelter. Her closest family support network is in California. Desperate and without hope, she even considered taking a bus to the West Coast in order to live with family because her housing options are so severely limited.

Remedy: Undocumented battered immigrants should not be forced to go to a homeless shelter and forego the ongoing support they receive from domestic violence shelters. Many of our clients who are undocumented report traumatic experiences on entering Path as they are often pressured to return back to their home countries as part of the housing plan when they have no other options available. The six month limit on domestic violence shelter reimbursement should be eliminated for undocumented battered immigrants without employment authorization or public assistance eligibility and more domestic violence shelters should be created. The City Council should also fund NYCHA and other transitional/permanent housing options for immigrant survivors of domestic violence who are ineligible for housing programs based on their immigration status.

#### Language Access Gap:

New York City agencies, including the Human Resources Administration (HRA), still often fail to provide appropriate translation for Limited English Proficient (LEP) Individuals as required under federal law and Local Law 73. Consequently, many battered immigrants face basic communication barriers at multiple points of entry into services that assist domestic violence victims.

Illustrative Example: Mercedes R. was forced to come to the United States by her abusive husband after she discovered that his brother sexually molested her son from a previous relationship. She endured her undocumented husband's physical and emotional abuse for ten years. Her abuser repeatedly raped her. They have three children together, only one of whom is a United States citizen.

Mercedes constantly struggled to break free from her abuser but found it difficult to do so with four children to feed. She finally reported her batterer to the police and he was arrested. At the precinct, the police officer used a cousin to translate for her. Mercedes was extremely humiliated as she had not previously shared the details of her abuse with any of her family members. She later received an order of protection but didn't know what it was. It was not translated for her.

Mercedes decided to send her three non-citizen children back to Mexico when she discovered that they were not eligible for public assistance. Her citizen child's public assistance helps supplement the sporadic income she earns as a domestic worker. After applying for a U visa with a certification from the District Attorney's office, Mercedes attempted to apply for Medicaid benefits. The staff at the application center refused to provide her with assistance based on her immigration status despite her eligibility as a U visa applicant. When Mercedes

returned to advocate on her behalf, they refused to provide her with a translator as she did not have an appointment, a clear violation of Local Law 73. Mercedes returned one more time where she was finally and successfully able to apply for Medicaid assistance after presenting her legal advocate's business card.

Remedy: The New York City Council should monitor compliance with Federal, State and City laws and directives regarding the provision of services for persons with limited English proficiency. Police officers and other agencies should make appropriate use of telelanguage lines where an adequate interpreter cannot be provided. City agencies should expand their capacity to provide on-site translation to anyone seeking their services. Special attention should be placed on translation of the rights of battered immigrants with regard to orders of protection and what to do if they are violated. When orders of protection are served, there should be a multi-lingual insert explaining it and what to do if it is violated.

#### Lack of access to basic information regarding immigration options for domestic violence victims

Battered immigrants are extremely isolated and too often their only source of information is what their batterers tell them. They tend to be particularly vulnerable as they are unfamiliar with the legal system and other services available to assist them.

Illustrative Example: Salma K. came to the United States on a tourist visa in 2002 from Pakistan to try to make her abusive marriage work. Her lawful permanent resident abuser lied to her by telling her that he needed to become a citizen before he could sponsor her and their son for a green card. She believed this to be true as she did not know anything about U.S. immigration laws.

When she arrived to the United States, her husband took her to a lawyer who advised her to overstay her visa as her husband could petition for her while he was a lawful permanent resident. By doing this, Salma was told that she could keep her family together while her application was pending with immigration. Salma's abuser promised he would sponsor her. She did not feel comfortable disclosing the abuse to the immigration lawyer her husband paid for a consultation.

After overstaying her visa, Salma's abuser told her she would be forced to live as an undocumented person. He used the possibility of filing for her green card as a tool to control her. Whenever they fought, Salma's husband refused to buy food for the family and he rarely gave her money to purchase basic necessities. Last year, Salma finally decided to disclose her abuse to a friend at her son's school. This friend referred her to a domestic violence organization. By this time, Salma had two more children with her abuser.

Salma finally applied for a self-petition earlier this year. It will take at least a year for her self-petition to be approved as it is based on marriage to a lawful permanent resident. With this approval, she can apply for employment authorization. Salma volunteers at her son's school. She is a teacher by training in Pakistan and has learned to speak English fluently. She cannot envision supporting herself and her children without employment authorization. So, she does not

even entertain the thought of leaving her batterer until she receives it. Had Salma known about her immigration options much sooner, she would have employment authorization by now.

Remedy: The New York City Council should post information and brochures in multiple languages regarding immigration options for survivors of domestic violence at police precincts, schools, hospitals, courts and other city agencies to increase opportunities to reach marginalized battered immigrants.

#### U Visa Certification Gap:

After the issuance of the September 2007 U Visa regulations, the District Attorney's Offices designated signatories of U visa certifications for domestic violence and other victims for each borough. The Administration for Children's Services has also delineated its process for obtaining U visa certifications. However, the NYPD has yet to publicize its U visa certification policy.

The NYPD should provide certifications in situations where they have been actively involved in the investigation of a qualifying crime. There are numerous circumstances where the NYPD is the only agency to certify including but not limited to situations where a perpetrator may have never been arrested because he absconded the state or country, where there is no prosecution because the perpetrator committed suicide after committing the crime, etc. It is important to note that in most boroughs the District Attorney's offices will not sign until a criminal case is completed. This procedure is often an enduring hardship for clients who cannot apply for a U visa without a certification, particularly as criminal matters are often pending for many months if not longer. In these circumstances, clients should also be able to obtain certifications from the NYPD.

Currently, advocates have submitted U visa certification requests directly to Commissioner Kelly. While there has been some initial response to these requests, the NYPD has not to our knowledge issued any certifications to date under the new regulations. We look forward to working with the NYPD as it develops its policy and encourage the department to consult with the USCIS as it can provide invaluable guidance.

Finally, timely issuance of a U visa certification is imperative for undocumented survivors of domestic violence.

Remedy: It is in New York City's best interest to ensure that all of its undocumented battered immigrant residents are legalized if eligible. The City Council can advocate for training for appropriate city agency personnel on U visas and other immigration remedies available to victims of domestic violence to identify potential undocumented applicants and refer them for services as appropriate. The Council can actively encourage city law enforcement agencies such as the NYPD to provide publicly available certification policies and can insist that these agencies provide certifications within reasonable time frames.

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<sup>1</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322 40701-03, 108 Stat. 1902, 1953.

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<sup>ii</sup> INA § 204(a)(1)(A)(iii) (spouse of USC). INA § 204 (a)(1)(b)(ii) (spouse of LPR). Note: Immigrant children can self-petition where they are abused by their USC or lawful permanent resident parent under INA § 204(a)(1)(a)(iv) and INA § 204(a)(1)(B)(iii) respectively.

<sup>iii</sup> INA §216(c).

<sup>iv</sup> INA §216(c)(4).

<sup>v</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No 106-386, div A, § 1513, 114 Stat. 1464 (Oct. 28, 2000) (“VTVPA”).

<sup>vi</sup> New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, Interim Rule, 72 Fed. Reg. 53,104 (Sept. 17, 2007) (codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, 299), *reprinted at* 12 Bender’s Immigr. Bull. 136, 1376 (App. A) (October 1, 2007) (“U regulations”).

<sup>vii</sup> INA §214(p)(2)(A); 8CFR §214.12(d)(1).

<sup>viii</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 [United States of America], Public Law 110–457.