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Through direct legal services and public policy advocacy, the Tahirih Justice Center works to protect immigrant women and girls seeking justice in the United States from gender-based violence.

Adapted primarily from the Family Violence Prevention Fund website (www.endabuse.org), WomensLaw.org, and the National Immigration Project website (www.nationalimmigrationproject.org).

This project was supported by Grant No. 2004WLAX0083 awarded by the Office on Violence Against Women, US Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the department of Justice, Office of Violence Against Women.



TAHIRIH
JUSTICE
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Promoting Justice for Women & Girls Worldwide

Know The Facts:

**Questions and Answers for Social Service
Providers Assisting Non-Citizen Survivors of
Domestic Violence**

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Know the Facts:

Questions and Answers for Social Service Providers Assisting Non-Citizen Survivors of Domestic Violence

What is domestic violence?

“Domestic Violence” is violence that typically occurs at home between people who:

- (a) are currently, or have been, married;
- (b) are currently in, or have been in, a significant relationship; or
- (c) currently live, or have lived, together or are related by blood.

Domestic violence often takes the form of physical injury, but the violence may also be in the form of:

- (a) threats, including threats to report you to “immigration,” to have you deported, and to take your children;
- (b) isolation, including discouraging you from speaking to friends or family and preventing you from getting a job or learning English;
- (c) emotional mistreatment and verbal abuse, including calling you names that are hurtful or shameful to you and making you feel like the abuse is your fault or that you are “crazy;” and,
- (d) forced sex or sexual relations.

Should the service seeker call the police if she is currently being abused or if she wants to report a past incident of abuse?

Domestic violence is against the law. If the service seeker is in danger and cannot get out of the house, she should call 9-1-1. The police will escort her and her children to a safe place if she wants to leave. The police will also arrest the abuser if they conclude he committed a crime. If the abuser is arrested, he may be released in *as little as two hours*. The service seeker should use this time to find a safe place to stay.

Tell the service seeker that she should *always* ask the police to complete a report about the incident. She should write down the

incident report number so she can get a copy of the report.

- (2) The service seeker may not be able to find a job because she lacks work authorization.
 - (3) Even if the service seeker has work authorization, she may only be able to find low-paying jobs without childcare.
- (d) Distrust of the Legal System:
- (1) The service seeker may have difficulty understanding the US system.
 - (2) The services seeker may have distrust of the US system because of prior experiences with the law in her home country. For example, the legal system in the service seeker’s home country may not have or enforce laws against domestic violence.
 - (3) The service seeker may be afraid to use the US legal system because of her undocumented immigration status.
- (e) Fear of Deportation:
- (1) Abusers often threaten to have service seekers deported. The service seeker may be reluctant to access the legal system out of fear that immigration will act on tips by the abuser and deport her.
 - (2) The service seeker may fear that her US citizen children will be taken from her.
 - (3) The service seeker may fear that the abuser may follow her to her home country where there may not be any protection for her.
 - (4) The service seeker may fear that her abused will be deported, leaving her and her children without financial support.

4. Encourage non-citizens to talk to an immigration expert **before** traveling outside the United States.
5. Explain that non-citizens may only apply for public benefits under limited circumstances. Encourage non-citizens to consult either a licensed attorney or social worker before applying for public benefits.

What are the unique barriers faced by non-citizen victims of domestic violence?

Non-citizen victims of domestic violence face a number of barriers when they try to access the legal system. These barriers can cause immigrant service seekers to refrain from seeking legal help. Examples of such barriers include:

- (a) Cultural Barriers:
 - (1) A service seeker's family or community may ostracize her if she leaves her marriage or if she publicly reveals the domestic violence.
 - (2) The service seeker may want to protect her spouse's standing in the community.
 - (3) The service seeker's beliefs concerning a woman's place and her role in the marriage may inhibit her from reporting domestic violence or leaving her spouse.
- (b) Language Barriers:
 - (1) The service seeker may not feel comfortable seeking or using shelter, police, court, or legal services because personnel do not speak her language.
 - (2) The service seeker may have limited access to services and/or limited knowledge of the existence of such services.
 - (3) The service seeker's attempts to access these services may be frustrated by the fact that an inappropriate translator is used, such as a family member or an individual with political, cultural, or gender differences.
- (c) Economic Barriers:
 - (1) The service seeker may be economically dependent upon her husband to support her, her children, and her family abroad.

Generally, there is no requirement for the police to report someone to immigration who calls for protection from domestic violence. Police are not required to inform immigration if an undocumented non-citizen calls to report domestic violence. All service seekers have the right to police protection regardless of their immigration status.

Should the service seeker leave her home if she is in danger?

If it is possible, the service seeker and her children should leave the home if they are in danger. Encourage service seekers to go to a safe place like a friend's house or to a women's shelter. Shelters are usually free and will have information about community services.

What should the service seeker take with her when she leaves the home?

It will be helpful if she can bring certain important documents with her, but she should not worry if she does not have time to collect them safely. Documents to bring include:

- (a) Driver's license;
- (b) Marriage license and/or certificate;
- (c) Birth certificates for her and her children;
- (4) Social security cards, visas, green cards or immigration papers, and passports for the service seeker and her children;
- (5) Copies of your abuser's social security card, visa, green card or immigration papers, passport, and birth certificate;
- (6) Public assistance documents;
- (7) Banking information, including checks and credit cards;
- (8) Paycheck stubs for the service seeker and the abuser;
- (9) Medical and police reports; and,
- (10) Photos of any injuries or property damage caused by the abuser.

*This list is not exhaustive. Also, service seekers do not need everything on this list to get immigration relief. Most importantly, service seekers should **never** endanger themselves or their children in an effort to obtain these documents.*

What about protection orders? Can a service seeker get a protection order even if she is not a US citizen?

A protection order can prohibit an abuser from calling, contacting, or assaulting the protective order applicant, her children, or other family members. In addition, the service seeker may obtain temporary custody of the children, temporary child support, and the right for the abuser to be removed from the home. If the abuser confiscated the service seeker's immigration documents and/or passport, the protective order may also mandate their prompt return.

You do **not** need to be a US citizen or Lawful Permanent Resident (i.e. green card holder) to get a protection order. It may be helpful to have a lawyer assist the service seeker in obtaining a protection order, but lawyers are not required.

The service seeker has been abused and she does not have immigration papers. Is she eligible to apply for relief under the Violence Against Women Act (VAWA)?

The abused *spouse* of a US citizen or green card holder, an abused child or step-child of a US citizen or green card holder, the parent of a child abused by a US citizen or green card holder, or the abused parent of a US citizen or green card holder are all potentially eligible under VAWA.

The abused service seeker and her children are undocumented. Can they get work authorization and green cards without relying on the abuser?

The Violence Against Women Act permits approved self-petitioners to apply for a green card and work authorization without any help from their abusive spouses. The process is confidential. The abusive spouse will not be allowed to influence the application in any way.

How does the VAWA self-petition process work?

Typically, VAWA self-petitions require three to four months to prepare for filing with the US Citizenship and Immigration Service (USCIS). As of September 2007, USCIS is taking approximately six months to adjudicate VAWA self-petitions ("I-360 applications"). After the I-360 is adjudicated, the green card application is processed. The timeframe for the green card application depends on the region in which the applicant lives and on whether she was married to a US

citizen or a lawful permanent resident.

Will the service seeker's husband or intimate partner be deported if she takes action?

If the service seeker seeks the assistance of a shelter or an attorney, it is very unlikely to result in the deportation of her partner. Similarly, if she obtains a protection order against her partner, it is very unlikely to result in the deportation of her partner. However, if she contacts the police and her partner is convicted of a crime, he may be deported, depending upon the seriousness of the crime and his own immigration status.

Does the service seeker need to see an immigration attorney even if she cannot afford one?

If possible, a service seeker should always consult with an immigration lawyer before going to the immigration office or applying for an immigration benefit. Her conversation with the lawyer will be confidential, and the lawyer cannot report her to immigration authorities.

If the service seeker cannot afford to pay an attorney, remember that she may qualify for free or low-cost legal aid. She should contact the nearest legal services office or an immigration organization for assistance in finding an attorney who can help. She may also contact us, the Tahiri Justice Center, and we will try to find someone to help her.

Please discourage your service seekers from using immigration consultants ("notarios"). They are not licensed attorneys and are not bound by the same rules about confidentiality. We recommend that service seekers only get services from a licensed immigration attorney or an accredited immigration nonprofit.

What are some basic immigration rules for advocates working with victims of domestic violence?

1. Refer non-citizens to immigration law experts, **not** immigration authorities.
 2. Tell non-citizens with questions about their immigration status to talk to a licensed immigration attorney or an accredited immigration nonprofit with expertise in domestic violence.
 3. Notify non-citizens of their rights when encountering immigration authorities.
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The service seeker is a refugee. Is she eligible to receive welfare and Medicaid?

If the service seeker is a battered woman whose husband has applied for her green card, or if she has applied for a green card under VAWA and received a prima facie notification, she may be eligible for some types of public benefits.

If she is not eligible to apply for lawful permanent residency, she will not be eligible for most forms of public assistance. However, she is still eligible for emergency Medicaid. Remember that she is also eligible for assistance from community groups, such as church food banks, and assistance from domestic violence shelters.

Are the service seeker's US citizen children eligible for public benefits just like other citizen children?

Yes. Even if the service seeker is undocumented, her US citizen children are eligible for public benefits just like other citizen children.

Remember that the welfare office does not need to know the service seeker's immigration status in order to give benefits to her children. If she is undocumented, she does **not** have to reveal her immigration status to welfare officers when applying for benefits on behalf of her children, even if she is asked.

On what grounds can the service seeker face deportation?

If the service seeker is now a US citizen, or she is a lawful permanent resident, or she possesses a valid visa, she cannot be deported unless she entered the United States on fraudulent documents, violated the conditions of her visa, or has committed certain crimes.

If the service seeker is undocumented or is unsure about her immigration status, she should contact an immigration attorney or an accredited immigration nonprofit to see if she can legalize her status.

Remind the service seeker that even if her partner reports her to immigration, deportation may not follow, would not be immediate, and, in most cases, she would have the opportunity to explain her situation to an immigration judge.

In a VAWA self-petition, the service seeker must show several things:

- (a) Good faith marriage to a US citizen or lawful permanent resident;
- (b) Battery or extreme cruelty;
- (c) Cohabitation with the spouse; and,
- (d) Good moral character.

Service seekers who are divorced, widowed, or remarried may still be eligible to self-petition, but time limits (usually of two years) may apply.

What does an approved I-360 application mean for the service seeker?

Approved VAWA self-petitioners may receive:

- (a) Employment authorization; and,
- (b) Limited public benefits.

The service seeker was trapped by her employers and forced to work without compensation. What type of immigration relief is she eligible for?

Individuals trafficked into the United States and forced to work for little or no compensation or to engage in sex work may be eligible for a T visa. The service seeker must be willing to cooperate with law enforcement to investigate the crimes committed against her. After three years, T visa holders are eligible to apply for a green card.

The service seeker expressed a fear of returning to her home country because of domestic violence she experienced or might experience in her home country. What type of immigration relief is she eligible for?

If the service seekers fear returning to her country of origin because she faces severe abuse from a husband or family member upon her return, she *may* be eligible for asylum. Please contact a licensed immigration attorney or an accredited immigration nonprofit immediately to determine if the service seeker is eligible. Asylum is a time-sensitive process so it is vital that someone who may be eligible for asylum contact an immigration attorney as soon as possible.

The service seeker is an undocumented non-citizen and the abuser is not her spouse. Is there any immigration relief available to her?

A non-citizen can obtain a U visa if she has suffered significant physical

or mental injury as a result of a qualifying crime and she has been, is being, or will be helpful in the investigation or prosecution of that crime. Domestic violence is included as a qualifying crime for which U visas are available. In order to apply for a U visa the service seeker must fill out the form I-918 and include information showing that she is a victim of a qualifying crime, cooperated with law enforcement in the investigation of the crime, and that she suffered significant physical or mental injury from the crime. Currently, the process to receive a U visa takes approximately 7 months—approximately 3 months for an immigration provider to prepare the application and approximately 4 months for USCIS to process the application. Consequently, it is recommended that service seekers consult a licensed immigration attorney or an accredited immigration nonprofit to see if she qualifies for a U visa. If the service seeker is approved for a U visa she will be granted temporary legal status and work authorization for four years. After three years, she may be eligible for lawful permanent resident status.

What can a service seeker do if her husband threatens to take her children away if she leaves him?

If the service seeker's partner threatens to take her children away or take them to his home country, she can apply for a custody order to prohibit her partner from taking the children out of the country or out of the state where she lives. Advise the service seeker to contact a family lawyer or a domestic violence advocate to assist her in filing for a custody order.

Once she has obtained a custody order, she should take the following steps:

- (1) If her children are US citizens, send a copy of the custody order to the embassy of her partner's home country and to the US Department of State to prevent the issuance of passports and/or visas for the children.
- (2) Give a copy of the order to her children's schools or daycare facility, and tell them not to allow the children to leave with anyone other than her or someone else she designates.
- (3) Make sure she has recent photos, passports and birth certificates for the children. Keep a list of addresses and phone numbers of her partner's friends and relatives in his home country.

How can a service seeker support herself and her children if she leaves her husband?

The law requires the children's father to support them, even if you are living apart, even if the parents were never married, and without regard to the service seeker's immigration status. The service seeker should contact a family lawyer or domestic violence advocate to find out how to obtain child support in her state. If the service seeker is married, she also may qualify for spousal support or alimony.

If the service seeker is a lawful permanent resident ("green card holder"), she may use her green card to demonstrate her eligibility to work. Other immigrants must apply for work authorization. The service seeker should contact an immigration attorney to find out whether she is eligible for work authorization. *It is very important that she does not use false papers to work or make false claims of United States citizenship.*

The service seeker is a legal permanent resident. Is she eligible to receive welfare and Medicaid?

Some lawful permanent residents are eligible for Food Stamps, but most lawful permanent residents are not. Eligibility for Medicaid, Temporary Aid to Needy Families, and general assistance varies from state to state. The service seeker should contact an immigration or domestic violence advocate in her area for help in determining her eligibility for these services.

The service seeker is a refugee. Is she eligible to receive welfare and Medicaid?

During the first five years after arriving in the United States, refugees are eligible for Food Stamps, Temporary Aid to Needy Families, Medicaid, and other public benefit programs to the same extent and under the same conditions as US citizens.

Most refugees who have been in the United States for five years or more will no longer be eligible for Food Stamps. Eligibility for other public benefits by refugees who have been in the United States for five years or more varied from state to state. The service seeker should contact an immigration or domestic violence advocate in her area for help in determining her eligibility for these services.