

September 19, 2008

FILED VIA FEDERAL E-RULEMAKING PORTAL

Chief, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, Suite 3008
Washington, D.C. 20529

Re: Joint Comments of the Tahirih Justice Center and the Immigrant Women Program of Legal Momentum on the “Domestic Violence Guidance Pamphlet” Required by the International Marriage Broker Regulation Act, DHS Docket No. USCIS-2007-0061

Why We Are Commenting

We are submitting these comments in response to the draft information pamphlet prepared by the Department of Homeland Security (“DHS”) that was released on July 22nd, 2008 (“Pamphlet”). The Pamphlet was mandated by the International Marriage Broker Regulation Act of 2005 (“IMBRA”).

IMBRA was designed to provide foreign fiancé(e)s and spouses immigrating to the United States with early access to information about their legal rights and the criminal or domestic violence histories of their US citizen fiancé(e)s or spouses. One of IMBRA’s main goals was to ensure that immigrating fiancé(e)s and spouses would be empowered with reliable, accurate information, provided directly by the government, to enable them to understand the processes through which they may obtain or retain legal immigration status, and to know how to access help if their relationship should turn abusive (including the special protections that exist for immigrant survivors of violence under US law). The Pamphlet is the mechanism designed by IMBRA to provide this potentially life-saving knowledge.

By giving this knowledge, IMBRA intended that immigrating foreign fiancé(e)s and spouses would be able to protect themselves against violence from the partners who had sponsored their visas or others who might seek to abuse or exploit them. IMBRA recognized that such information could be a powerful self-help tool for immigrating foreign fiancé(e)s and spouses who are often unfamiliar with US laws and unsupported by family and friends to whom they can turn for help to escape a violent situation. IMBRA also recognized that such information could be a critical tool to “level the playing field” between these victims and the abusers/perpetrators, who often provide misinformation, or withhold information, as a means to solidify their control and ensure that their victims will not report them or seek help.

The Pamphlet thus forms a crucial part of the vital “caution” and “emergency exit” signs that IMBRA designed to help immigrating foreign fiancé(e)s and spouses avoid or escape abusive

situations. To ensure that the Pamphlet communicates effectively with its intended audience, IMBRA also mandated that the Pamphlet be prepared in consultation with “nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.”¹ The Tahirih Justice Center and Legal Momentum’s Immigrant Women Program have precisely that specialized expertise. We provide the following comments to assist DHS in ensuring that the Pamphlet complies with the both the express statutory requirements in IMBRA and the clear Congressional intent behind the law.

Organizational Backgrounds

The Tahirih Justice Center (“Tahirih”), a 501(c)(3) organization and community-based nonprofit offering free legal services, is one of the nation’s foremost pro bono legal advocacy organizations for immigrant women and girls fleeing human rights abuses. Since opening its doors in 1997, through direct services and referrals, Tahirih has assisted more than 8,500 women and girls fleeing abuses such as domestic violence, rape, sexual assault, child abuse and incest, human trafficking, and other crimes. Tahirih provides pro bono legal services both through on-staff attorneys with expertise in immigration law and family law and through a network of over 600 outside pro bono attorneys that Tahirih trains and mentors; to address clients’ needs holistically, Tahirih also has an on-staff social worker. In addition to local direct services, Tahirih engages in national public policy advocacy. Tahirih works to pass laws, develop regulations, transform policies, and establish precedent so that systemic change will ensure the long-term protection of women and girls from violence. All of Tahirih’s advocacy initiatives are inspired and informed by the experiences of its clients.

A substantial area of focus for Tahirih’s advocacy for several years has been ending the abuse and exploitation of women through the international marriage broker (“IMB”) industry. Tahirih spearheaded the drafting of IMBRA and led the national coalition of over 200 organizations and individuals that advocated for its passage. In 2001, Tahirih launched its multi-prong campaign to address the heightened risk of abuse and exploitation to which women using IMBs are exposed,² by engaging in public education and outreach, advocating for legislative protections and promoting agency accountability. In 2004, Tahirih won the first-ever lawsuit in the United States against an IMB for its role in the abuse of one of Tahirih’s clients, a woman from the Ukraine, resulting in the award of almost \$500,000 in damages.³ Tahirih staff are frequently consulted by national and state lawmakers, the media and others for technical expertise on IMBRA and on the abuses that occur through the IMB industry.⁴

¹ IMBRA § 833(a)(1).

² A national survey conducted by Tahirih in 2003 of legal service providers representing battered immigrant women found that over 50% of them had assisted women who met their abusers through IMBs. For additional information on Tahirih’s research and advocacy on this issue, please see “Frequently Asked Questions: the International Marriage Broker Regulation Act of 2005,” available at http://www.tahirih.org/tahirih/inaction/pubpol_advocacy.html#policy.

³ *Fox v. Encounters Int’l*, No. CIV WDQ-02-1563, 2004 WL 3509855 (D. Md. 2004), *aff’d*, 2006 WL 952317 (4th Cir. 2006).

⁴ See, e.g., *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp.2d 1355, 1381 (N. D. Ga. 2007)(court held IMBRA did not constitute an unconstitutional regulation of commercial speech or a content-based restriction of

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Legal Momentum, established in 1970, is the nation’s oldest legal advocacy organization dedicated solely to advancing the rights of women and girls. The Immigrant Women Program (“IWP”) has been an integral part of Legal Momentum since 1999 and is the lead agency nationally advocating for legislation and federal and state policies that improve the lives of immigrant women and their children. Legal Momentum has substantial knowledge and insight into issues of domestic violence, sexual assault, immigration law and women’s rights. IWP provides training, technical assistance, consultations on case and law reform strategies, materials, tool kits and legal research designed to help and support advocates, attorneys, police, judges, prosecutors, social service and health care professionals work more effectively to help immigrant women and immigrant victims of domestic violence, sexual assault, trafficking and other crimes. In addition, IWP participates in social science research that provides critical support for our law reform and training efforts.

Legal Momentum co-founded and co-directs the National Network to End Violence Against Immigrant Women which has over 3,000 member organizations who work in communities across the country helping immigrant victims and their children heal and attain protection from abuse. Our Immigrant Women Program crafted and stewarded passage of all Violence Against Women Act (“VAWA”) protections for immigrant victims of violence against women (1994, 2000, 2005), the Trafficking Victim’s Protection Act of 2000 (“TVPA”), IMBRA (2005) as well as access to benefits (1996) and legal services (1997, 2005) for immigrant victims and their children.

Summary of Comments

Tahirih and Legal Momentum commend DHS for preparing this initial draft of the Pamphlet, and appreciate the invitation to comment on the Pamphlet. Tahirih and Legal Momentum acknowledge that much of the content required by IMBRA is set forth in the Pamphlet. We respectfully submit these comments concerning the additional content and the revisions on the current content that are needed to make the Pamphlet accessible and helpful to its intended audience of non-citizens, in the hope that we may assist DHS in ensuring that the final Pamphlet is fully consistent with the letter and spirit of IMBRA.

Our comments focus on the following significant concerns, however, with the Pamphlet as it is currently drafted: the complex language, disjointed structure, and dense format of the Pamphlet do not make it accessible and understandable to the average non-citizen; the Pamphlet does not provide enough information about the legal rights and resources available to immigrant victims of violence; the Pamphlet also omits or insufficiently addresses other important information, including information that IMBRA specifically mandates that the Pamphlet must address; and

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protected speech , and recognized IMBRA as a preventative measure that is “highly likely to reduce domestic abuse – and may actually save lives”)(expert testimony provided by Tahirih).

finally, the tone and scope of the Pamphlet should be changed to more effectively and objectively provide information to all the audiences that IMBRA intended the Pamphlet to reach and help.

We ask that you give your serious consideration and careful attention to the following detailed comments. We have also prepared a proposed pamphlet (attached as Exhibit E) to complement and supplement the detailed comments below. Although the suggested language in both may not exactly mirror each other, the language in both is reflective of the direction we hope the revised Pamphlet will take.

Principal Concerns

A. The Complex Language, Disjointed Structure, and Dense Format of the Pamphlet Do Not Make It Accessible and Understandable to the Average Non-Citizen.

I. Complex Language.

- ***Problem - Highly Technical Legal Language that is Unexplained or Unclear.***

The Pamphlet is written in “legalese.” It refers to numerous immigration law terms (e.g., “adjustment of status,” “conditional permanent residency”); counterintuitive visa designations (e.g., “K-1 nonimmigrant status”); confusing form names and numbers (e.g., “Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360),” “Petition to Remove Conditions on Residence (Form I-751)”); and other undefined legal terms that would be difficult for attorneys not specializing in immigration law to follow, let alone the average non-citizen. To convey the information that Congress wanted immigrating fiancé(e)s and spouses to receive, it is important that the Pamphlet be accessible and understandable to a broad audience with a wide range of literacy levels. Using simple language will also better facilitate clear and comprehensible translations of the brochure into the multiple languages that are required by IMBRA.⁵

- ***Suggested Revisions.***

- The language should be simplified and the concepts modified to be accessible to any layperson, and still give fair notice of the key steps that must be taken in the marriage-based immigration process, and the extent to which an immigrating foreign fiancé(e) or spouse will be dependent on their American spouse to take these steps. See *also additional suggestions re: Structure and Format on pages 7-12.*
- Rather than including form numbers and names in the text, the Pamphlet should endnote these references to avoid cluttering the text of the Pamphlet.

⁵ IMBRA § 833(a)(4) requires translation of the Pamphlet into a minimum of 14 languages.

- **Problem – The Legal Definitions that Are Given, Are Too Long and Complex.** The one definition that the Pamphlet provides—of “domestic violence”—is lifted nearly verbatim from VAWA. While this legal definition may be appropriate for a court of law determining criminal liability, it is inappropriate for the average non-citizen simply trying to understand what types of abusive behavior are unacceptable in the United States. The Pamphlet then dedicates several paragraphs to explaining the concept of domestic violence further, including through examples, but these explanations and examples are too long.

- **Suggested Revisions.**

- The pamphlet should speak in simple, concrete terms, e.g. *“Domestic violence is a pattern of behavior in which a person (the abuser) tries to intimidate, isolate, and control their partner or other family member through threats or actual acts that cause to the victim. Abuse can be physical, sexual, psychological, emotional, economic-related, and/or immigration-related.”*
- Definitions by use of examples should be done more succinctly.

For example, the Pamphlet could include the following:

“Some examples that immigrants may experience include:

*(a) **coercion and threats**, including failing to file or withdrawing applications to give you legal immigration status, or threatening to get you in trouble with police or immigration authorities; (b) **isolation**, including controlling who you see and talk to, or 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.**”⁶*

- The description of the problem of domestic violence should conclude by transitioning the reader to solutions.

For example, the Pamphlet could include the following:

“If you are experiencing domestic violence in your home, you are not alone. Domestic violence is usually hidden, but it is also very common. Domestic violence gets worse over time. It does not go away on its own. It is important to remember that the violence is not your fault, and help is available to you. Although domestic violence occurs among all cultural, ethnic and social groups, immigrants may be particularly vulnerable to domestic violence because many do not speak English, are often separated from family and friends, and may not understand the laws of

⁶ Modified from “Do You Have Problems at Home?”, Information Pamphlet prepared by Legal Momentum.

the United States. This pamphlet is intended to help you understand US laws and know how to get help if you need it.”

- **Problem – Additional Jargon and Concepts Unfamiliar to a Non-Citizen.** The Pamphlet speaks in other types of jargon as well, for example, referring to the availability of “orders of protection, abuse prevention orders, or restraining orders.” It also lists “hotline” numbers without further definition or elaboration and without indicating how one goes about accessing these protections. These concepts and resources may be truly “foreign” and in need of explanation to a woman coming from a country where domestic violence is excused or overlooked, and where no such mechanisms for protection exist. The Pamphlet also repeatedly uses difficult to understand terms such as “jurisdiction,” “transgressions,” “allegedly,” “evading,” “adverse information,” and “law enforcement.”
 - **Suggested Revisions.**
 - Use simpler terms throughout the Pamphlet (e.g., “police rather than “law enforcement”).
 - The Pamphlet should indicate in concrete, practical steps how an individual may access the protections and resources described.

For example, the Pamphlet could include the following language:

“What is a “Protection Order” and who can get one?

Anyone, regardless of immigration or citizenship status, may obtain a protection order (sometimes called a restraining order or an abuse prevention order). Through a protection order, a court can tell your abuser not to call, contact, or hurt you, your children, or other family members. Through a protection order, the court can also grant you temporary custody of your children, temporary child support, and have the abuser removed from your home. If your abuser ignores or violates the protection order, you can call the police to report him. If you decide that it may be safer for you to leave your home, the police can help you and your children get out of the house and often they can drive you to a safe place.

Applications for protection orders are generally available at courthouses, women’s shelters, legal service offices and some police stations. It may be helpful to have a lawyer assist you in obtaining a protection order, but a lawyer is not required. Remember: a protection order is not a guarantee of your safety. You should work with a domestic violence advocate, social worker or a trusted friend to create a “safety plan,” and call the police for help by dialing 911 if you or your child are in danger.”

“What is a safety plan?

Every individual in an abusive relationship should create a safety plan (which should be reviewed monthly) by: (a) considering all possible escape routes, such as doors, windows, and basement exits; (b) choosing a place to go, such as the home of a friend or relative; and (c) packing a survival kit, including money, change of clothes, contact information of shelters (emergency housing) and legal service providers, and important documents, including passports, birth certificates, identification cards, and copies of any immigration papers related to yourself, your children, and your spouse.”⁷

2. Disjointed Structure.

- **Problem - The Pamphlet does not flow logically.** For example, it begins with a warning about violent criminals potentially sponsoring visas for foreign fiancé(e)s and spouses and includes a series of dense and confusing paragraphs that repeat themselves in order to describe—separately—the later stages of the marriage-based immigration process for K-1 and K-3 visa holders. This is particularly confusing because both K-1 and K-3 visa holders are treated the same at these later stages, as are all other marriage-based immigrants who are new spouses of US Citizens (i.e., all such spouses go through the same process of conditional permanent residency and applying to remove the conditions).

Overall, the Pamphlet is also unclear how the “normal” marriage-based immigration process relates to the special processes established under federal law for immigrant survivors of violence to obtain or retain legal immigration status by other means (battered spouse waiver, self-petition, U-visas and T-visas). Thus, it is difficult to get a clear picture of how the whole process unfolds. The current Pamphlet’s descriptions are challenging even for attorneys specializing in immigration law to follow, will be difficult for the average non-citizen to comprehend, and will be extremely challenging to translate into multiple languages.

As one other example of the structural problems with the Pamphlet, it also splits into two places (the very beginning and at the end) warnings that US citizen fiancé(e)s or spouses may have a history of violence that may not have been revealed to the immigrating foreign fiancé(e) or spouse. This issue can be more effectively addressed; see *suggestions re: discussion of IMBRA at pages 10-11 below.*

- **Suggested Revisions.**
 - The Pamphlet should begin by objectively describing the “normal” marriage-based immigration process, presuming no abuse. Descriptions of the process that are unique to K-1s or K-3s can be separately discussed, but where K-1s and K-3s, as well as all other new spouses of US Citizens, share the same process (i.e., through

⁷ Modified from “Breaking the Cycle of Domestic Violence - Know the Facts,” Information Pamphlet prepared by US Department Office of Housing and Urban Development and Orloff, L. & Sullivan K. (Eds.), Legal Momentum. *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2004)

conditional permanent residency and removal of conditions), the descriptions should be consolidated in one section. Only after the normal process has been explained should the Pamphlet set forth the special processes that permit immigrant survivors of violence alternative routes to obtain or retain legal status under VAWA , the TVPA and other federal laws (battered spouse waivers, self-petitions, U-visas and T-visas).

- For the description of the immigration process and forms for K-1 and K-3 nonimmigrants and other marriage-based immigrants, the Pamphlet should present or summarize the information by using graphics such as a timeline, a flow chart, or a table. These visual aids are helpful ways to break down complex processes and ensure that they are comprehended by non-native English speakers or those relying on translations. These visual aids also would help make clear who is responsible for taking what steps, and by when, as well as what the consequences are for neglecting or failing to take these steps. For any descriptive text, the Pamphlet should be in short, simple questions and answers with widespread application to a broad audience.

For example, the Pamphlet could substitute the following language:

“What will my legal status be when I arrive in the United States?”

If you are coming to the United States on a “fiancé(e)” visa (also called a K-1 visa) your legal status is temporary, and you must get married within 90 days after entering the United States to the US citizen who sponsored your visa. If you do not get married in 90 days, you must leave the United States. If you remain in the United States without marrying the US citizen who sponsored your visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to deportation or other penalties.

If you are coming to the United States on a “spouse” visa (also called a K-3 visa) to join a US citizen spouse who sponsored you, your legal status is also temporary. You have been allowed to enter the United States temporarily while you wait for a family-based visa application (called I-130) to be approved that establishes that you have a relationship (marriage) to a US citizen that entitles you to apply for permanent legal status. Once that application has been approved, you will need to file a second application (called I-485) to actually obtain permanent legal status in the United States.

If you are already in the United States and married and your spouse is a United States Citizen or Lawful Permanent Resident, your spouse needs to

file a family-based visa application (called I-130) to be approved that establishes that you have a relationship (marriage) to a US citizen that entitles you to apply for permanent legal status. Once that application has been approved, you will need to file a second application (called I-485) to actually obtain permanent legal status in the United States.

If you are coming to the United States on another marriage-based immigration status, please refer to the information you have been given from the US consulate or that is available on this website: <http://www.uscis.gov>, or consult with an immigration attorney. Other visas for immigrating foreign fiancé(e)s and spouses have their own special requirements, such as being dependant on the sponsor for legal immigration status, and limitations, such as not having the right to work.

If you have children who were born outside of the United States, the applications that your sponsoring spouse or fiancé(e) files for you can include your children.

“If a US citizen sponsored my visa, what will my legal status be after we get married?”

You have to file an application to get permanent legal status in the United States (endnote: Form I-485 and name of form).

If you have been married less than 2 years, after your application is approved you will initially receive only “conditional” permanent resident status. The permanent resident status is “conditional” because you must prove that the marriage is in “good faith” and valid, and that you did not get married only to obtain permanent resident status. The US government looks at the length of your marriage as one way to see this proof. To remove this “condition” on your residence in the United States, you and your spouse must apply together during the 90 days **before** your second anniversary as a conditional resident. Once you have removed the condition, you have permanent residence that is no longer dependent on your US citizen spouse.

If you have been married for more than 2 years, after your application is approved you will receive permanent residence. This legal status is no longer “conditional” and no longer dependent on your US citizen spouse.”

To explain the special processes for immigrant survivors of violence, the Pamphlet could include questions on:

“What can I do if I am abused by a US citizen spouse who refuses to help me apply for legal immigration status, or threatens to withdraw support for my application?”

“What can I do if I am abused and I am married to a Lawful Permanent Resident?”

“What can I do if I am abused and put into removal (deportation) proceedings?”

“What can I do if I am abused and my spouse is neither a US citizen nor a Lawful Permanent Resident? Or what if I am not married to my abuser?”

What if I am hurt by someone other than my fiancée or spouse?”

For suggested language for these explanations, please refer to the proposed pamphlet we attach as Exhibit E.

- Similar ideas should be condensed into one section. For example, warnings about sponsors who may have a violent history should be condensed into a single section that describes the safeguards that IMBRA puts into place (by regulating IMBs and by changing the consular visa process), and yet acknowledges the limitations of those safeguards.

For example, the Pamphlet could substitute the following language:

“What other ways does the US government try to prevent foreign fiancées and spouses, and their children, from being abused?”

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to try to help foreign fiancé(e)s and spouses avoid or escape abuse. IMBRA required that you be given the information contained in this Pamphlet to tell you about laws and services that can help you in the United States if you are abused, and required that the Pamphlet be made widely available in many government offices and websites. IMBRA prevents US citizens from sponsoring multiple visas for foreign fiancé(e)s if they have a history of violent crimes. IMBRA also requires the government to give foreign fiancé(e)s and spouses of US citizens a copy of the criminal background check that the US Department of Homeland Security (“DHS”) does on US citizen-sponsors, as well as a copy of the visa sponsorship application that the US citizen fills out.

It is important to note, however, that neither this background check nor the sponsorship application may be complete or accurate. That is because DHS does not have access to all criminal history databases in the United States, and because the US citizen-sponsor may not have told the truth on his sponsorship application. It is also possible that the US citizen

has a history of abusive behavior, but that he has not been arrested or convicted for this behavior. While IMBRA tries to provide the information that is available, ultimately, you are responsible for deciding whether you feel safe in the relationship.

IMBRA was the US government's response to growing concerns that many immigrating foreign fiancé(e)s and spouses did not have the ability to check out the backgrounds of their American fiancé(e)s and spouses on their own, and that some Americans who seek to sponsor foreign fiancé(e)s or spouses do have violent criminal histories that could put the foreign fiancé(e) or spouse at risk of harm. In 2005, for example, 420 family-based visa sponsorship applications were filed by convicted "sex offenders," 91 of which were to sponsor visas for foreign fiancé(e)s. "Sex offender" crimes include sexual assault and rape.⁸

These concerns were greater with respect to couples that use international matchmaking agencies to meet each other, because these courtships may take place over short periods or over long distances. While many happy marriages may still result, others may find themselves in abusive marriages. As a result, IMBRA also regulates some types of businesses that provide international matchmaking services, agencies which IMBRA calls "International Marriage Brokers."

How does the US government regulate "International Marriage Brokers"?

If an agency qualifies as an "international marriage broker," it is prohibited from doing business with you if you are under 18. The agency is also required to give you background information on the US client who wants to contact you, and get your written permission, before giving the US client your contact information. The agency is also required to give you a copy of this Pamphlet. It is important for you to know that the background information provided by the agency may not be complete or accurate, for many of the same reasons stated above. The US client may become your fiancé(e) or spouse. If you come to the United States and are abused, the information in this Pamphlet tells you about laws and services that can help you in the United States."

- The current description of the vulnerabilities of immigrants to domestic violence in the Pamphlet is helpful, but should be combined with language that lets the reader know this Pamphlet is intended to remove some of those vulnerabilities (such as not knowing US laws that can help them). With this revision, the

⁸See Government Accountability Office (GAO), *Immigration Benefits: Circumstances under Which Petitioners' Sex Offenses May Be Disclosed to Beneficiaries*. [GAO-06-735](#) (Washington, D.C.: June 14, 2006).

description of the problem can remind the reader of solutions. The Pamphlet should also indicate that immigrants may be vulnerable to other abusive behavior as well.

3. Dense Format.

- **Problem - Long and Difficult to Read Paragraphs.** Responses to the questions posed in the Pamphlet often extend across several lengthy paragraphs. Since the majority of non-citizens reading the Pamphlet will also be non-English-speakers, or individuals for whom English is not their first language, this barrier to comprehension compounds those identified above to pose still greater concerns.

- **Suggested Revisions.**

- The Pamphlet should be revised so the reader can more easily “digest” the information. For example, the Pamphlet should be reworked into a series of short, straightforward questions and answers, such as “What will my legal status be when I arrive in the United States?”, “What if I am hurt by someone other than my fianc(é)e or spouse?”, or “What about my children?” See *Exhibit E*.
- These questions should be framed in the first person to enable the reader at a glance to understand how the information is relevant and helpful to them.
- A few well-chosen visual images (small photos representative of a range of demographics) should also be used to break up the text and draw the reader into the Pamphlet.

(For examples of these more accessible formats, please see “know your rights” pamphlets prepared by Legal Momentum, the Family Violence Prevention Fund and the Tahirih Justice Center, as well as our proposed pamphlet, appended as Exhibits A-E to this letter).

B. The Pamphlet Does Not Provide Enough Information About the Legal Rights and Resources Available to Immigrant Victims of Violence.

- **Problem - Limited Information About Legal Rights.** The Pamphlet alludes in just a few lines to two processes that enable abused immigrant spouses of US citizens to obtain legal status independent of their abuser (battered spouse waivers and self-petitions). The Pamphlet does not explain that these processes are also available to abused immigrant spouses of Lawful Permanent Residents, nor explain that they extend to abused immigrant children, nor mention cancellation of removal as another option under VAWA. In addition, the Pamphlet does not make it clear that abusive behavior falling short of behavior that is criminal in a particular jurisdiction, or that does not get reported to police, prosecuted by the authorities, or result in a conviction, can still support an application for relief under VAWA. Moreover, the Pamphlet fails to mention that in addition to these protections provided under VAWA, immigrant victims may be eligible for other protections provided under the

TVPA (for victims of human trafficking and other serious crimes who assist police in investigations and prosecutions). Finally, as noted above, the Pamphlet only mentions the availability of “restraining orders” but does not advise the reader what such an order is or how to seek one. The Pamphlet also does not advise the reader to talk to an attorney if she has concerns about her immigration status or other legal questions (the Pamphlet only suggests consulting with an attorney with respect to seeking child support).

- **Suggested Revisions.**
 - The Pamphlet should explain all the options for immigration relief available to immigrant victims of domestic violence, sexual assault, child abuse and other crimes, including a very simplified overview of eligibility criteria (cf. summaries of relief set forth above and explained in the various “know your rights” pamphlets appended to this letter).
 - The Pamphlet should make clear that a woman who can show she has been subjected to emotional, physical, or sexual abuse may qualify for VAWA relief, whether or not she calls the police, presses criminal charges, or her partner is convicted.
 - In particular, the Pamphlet should describe the protections provided through T-visas and U-visas.
 - As described above, the Pamphlet should include questions that permit the reader to meaningfully understand the other rights of immigrant victims in the United States, such as, “*What is a protection order and who can get one?*”
 - The Pamphlet should encourage the reader to consult with an attorney for concerns about immigration status or other legal questions, and include language advising the reader that “*If you cannot afford to pay an attorney, you may qualify for free or low-cost legal aid available to immigrant crime victims. Contact the nearest legal services agency or a non-profit victim advocacy organization that works with immigrants.*”
- **Problem - Limited Information About Resources.** The Pamphlet includes contact information for only two “hotlines,” without advising the reader what a “hotline” is, that interpreters are available to facilitate communication with victims, or that hotlines can help connect callers to a range of vital support services available for domestic violence, sexual assault and other crime victims in their area (shelters and other housing assistance; medical care; counseling; free legal services, etc.) The pamphlet must provide more information about the range of supportive services available to an immigrant. As noted, for an immigrant with no support network, knowing that there may be shelters and other assistance available to domestic violence victims could make the critical difference between escaping and enduring a violent relationship.

- **Suggested Revisions.**
 - The Pamphlet should provide additional national hotline and referral resources—for example, the National Human Trafficking Hotlines, the National Resource Directory maintained by the Immigrant Women Program of Legal Momentum, and the extensive resources available at www.womenslaw.org (both “mainstream” and immigrant-specific referrals and information are available on this user-friendly website, nationally and by state)).
 - The Pamphlet should also advise the reader to call 911 and the local police for emergency assistance.

For example, the pamphlet could include the following:

“How can I get help if I am being abused?”

The national “hotlines” listed below have operators trained to help victims available 24-hours a day. Hotline services are free, interpreters are available and these hotlines can connect you with a wide range of other free services for victims in your local area, including emergency housing, medical care, counseling and legal assistance. For more information, please contact:

*National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.ndvh.org*

*National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN)
1-800-656-HOPE (1-800-656-4673)
www.rainn.org*

*National Center for Missing and Exploited Children Hotline
1-800-THE-LOST (1-800-843-5678)
www.missingkids.com*

National Human Trafficking Hotlines

1-888-3737-888

1-888-428-7581 (US Dept of Justice (Monday - Friday, 9 am – 5 pm))

If you are in immediate danger, however, do not call a hotline – call 911 to reach your local police quickly.

You can also access other non-hotline information and assistance through:

The National Center for Victims of Crime “HelpLine”
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.ncvc.org

Legal Momentum’s Immigrant Women Program
National Resource Directory
(202) 326-0040
www.legalmomentum.org

The National Network to End Violence Against Immigrant Women
www.immigrantwomennetwork.org

WomensLaw.Org”

C. The Pamphlet Also Omits or Insufficiently Addresses Other Important Information, Including Information that IMBRA Specifically Mandates that the Pamphlet Must Address:

- **Problem –The pamphlet provides little information on the illegality of child abuse and sexual assault and the specific rights of those victims.** The Pamphlet mentions child abuse and sexual assault only under the general discussion of domestic violence, but these crimes deserve separate treatment from domestic violence for several reasons. Both of these crimes may be perpetrated not only within families, but also by employers or strangers. In addition, immigrating foreign fiancé(e)s and spouses need to understand that child abuse, including corporal punishment of children within the family, and rape, even within marriage, are crimes in the United States.
- **Suggested Revisions.**
 - The Pamphlet should include separate questions containing definitions and examples for child abuse and sexual assault.

For example, the pamphlet could include the following:

“What is Child Abuse?

*Child abuse includes actions such as: (a) **physical abuse**, any physical injury that does not happen by accident, including bruises, cuts, burns, fractures or sprains; (b) **physical neglect**, such as failure to provide food, clothing, shelter, medical care or supervision; (c) **sexual abuse**, such as the penetration or touching of a child’s intimate parts, incest, rape, sodomy or indecent exposure or exploitation through prostitution; and (d) **emotional***

abuse, including criticism, threats, or rejection, as well as withholding love, support, or guidance.”⁹

AND

“What is Sexual Assault?”

*Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, including: (a) inappropriate touching (either directly or through your clothing) of your intimate parts (genitalia, anus, groin, breast, inner thigh, or buttocks); (b) vaginal, anal, or oral penetration; (c) sexual intercourse that you say “no” to; or (d) rape or attempted rape. It includes incest (sexual contact between family members) and can be committed by anyone (spouse, fianc(é)e, family member, friends, acquaintances, or strangers). Sexual assault is not the victim's fault, and help is available to victims”.*¹⁰

- The Pamphlet should include the specific rights of immigrants who are subjected to these abuses, i.e., an immigrant child’s rights under VAWA, (that a child can be included in a parent’s self-petition, or file his or her own self-petition for permanent residence), as well as the rights of sexual assault victims who would not otherwise qualify under VAWA, but who qualifies for a U-visa.
- **Problem -Limited explanation of the key dynamics of domestic violence involving immigrant victims and impacting their personal safety.** While the Pamphlet does point out that domestic violence often erodes the self-esteem of victims and increases their dependence on abusers, other vital insights into domestic violence dynamics are omitted.
- **Suggested Revisions.**
 - The Pamphlet should include additional information concerning how frequently and in how many ways abusers manipulate and exploit the immigration process as a tool of abuse and control.

For example, the pamphlet could include the following language:

“There are a number of ways in which a partner who is abusing you may try to use the immigration process to control or intimidate you:

- *Not marrying you;*
- *Not filing or withdrawing applications to give you or your child legal immigration status;*

⁹ Modified from *Definitions of Child Abuse and Neglect*, from the Child Welfare Information Gateway State Statutes Series, available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.cfm.

¹⁰ Modified from National Women’s Health Information Center, US Department of Health and Human Services, Frequently Asked Questions, available at <http://www.4woman.gov/FAQ/sexualassault.htm>.

- *Not giving you access to identification or other documents that you would need to apply for legal immigration status, or hiding from you notices that you receive from immigration authorities;*
 - *Threatening to call immigration authorities to get you deported if you report abuse, seek custody of your children or leave;*
 - *Threatening to raise your lack of legal immigration status to gain advantage in a dispute over the custody of your children.”*
- The Pamphlet should also include additional information about how taking steps to end an abusive relationship can often increase the risk to the victim because the abuser is angered by his loss of control over the victim.

For example, the pamphlet could include the following language, in the same part of the pamphlet discussing the need for a safety plan:

“Taking action to end an abusive relationship can often lead to greater danger. Preparing a safety plan can help improve safety during and after separation and while you are seeking legal protections.”

- **Problem –The pamphlet provides little information on the legal rights of immigrant victims under family law.** The Pamphlet only addresses the right to seek child support. IMBRA clearly requires that the Pamphlet cover the legal rights of immigrant victims under “family law”¹¹ as well as the obligation of parents to provide child support.¹²
 - **Suggested Revision.** The Pamphlet should include:
 - information about child custody laws, including presumptions against awarding custody to abusers;
 - that domestic violence victims can receive spousal support and favorable treatment in the division of marital assets;
 - the difference between divorce and legal separation;
 - that it is important to consult with an immigration attorney with experience with immigrant victims as well as a family law attorney, in order to understand how taking certain steps under family law could affect certain rights under immigration law.

¹¹ IMBRA § 833(a)(2)(D).

¹² IMBRA § 833(a)(2)(E).

- **Problem – The pamphlet does not provide information on the legal rights of immigrant victims under criminal law.** The Pamphlet is silent on these rights although IMBRA explicitly requires that information about the legal rights of victims in criminal justice matters be discussed¹³. Congress required that information about victim’s rights under US criminal laws be included in order to counter threats by abusers and crime perpetrators that if an immigrant victim seeks help it is the non-citizen victim, rather than the citizen abuser/perpetrator, who will be jailed and punished if they report abuse. Abusers even “trump up” criminal charges against victims to make these threats real. These threats and lies can be especially powerful in silencing immigrant victims who lack familiarity with the American legal system and traditions.
 - **Suggested Revision.** Because abusers/perpetrators manipulate immigrant victims’ lack of understanding of the US criminal justice system, the Pamphlet needs to explain the fundamentals of that system that are applicable both to victims and defendants.

For example, the pamphlet could include the following language:

“What are my rights under the “Criminal Law” of the United States?

Under US law any crime victim, regardless of immigration or citizenship status, can call the police for help, can receive a court order telling the abuser not to contact them, and can access other help for crime victims provided by the government or by non-governmental agencies, including victim advocacy organizations, which may include counseling, interpreters, shelter (emergency housing), and even monetary assistance, depending on where you live.”

AND

“ If your abuser accuses you of a crime, you also have certain basic rights, regardless of your immigration or citizenship status, including: the right to consult with an attorney or to have one appointed for you by the government if you cannot afford one; the right to remain silent (i.e., not to answer questions from the police or others, and to speak only with your attorney; and the .right to speak in your own defense if you wish. It is very important to consult with an immigration law attorney with experience with immigrant victims, as well as a criminal law attorney, to find out how a criminal conviction or plea could affect your rights under immigration law. As a non-citizen, certain kinds of criminal convictions or pleas may subject you to the risk of deportation.”¹⁴

¹³ IMBRA § 833(a)(2)(D).

¹⁴ Modified in part from *Overview of Criminal Justice System*, by the National Center for Victims of Crime, available at <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32345>.

D. The Tone and Scope of the Pamphlet Should be Changed To More Effectively and Objectively Provide Information to All the Audiences that IMBRA Intended the Pamphlet to Reach and Help:

- **Problem - Negative Tone.** The title of the Pamphlet indicates that it is for “immigrant victims of domestic violence,” and the opening paragraphs warn about how “brief courtships conducted over long distances” can disguise violent criminals seeking to sponsor foreign fiancé(e)s or spouses. As such, the Pamphlet actually risks being taken away from the foreign fiancé(e) or spouse by an abuser. It also risks being tossed aside by anyone who does not currently see herself in those terms (*i.e.*, is not now being abused, or feels confident that she knows her American fiancé/spouse well).
 - **Suggested Revisions.**
 - The Pamphlet should have a title with a broader appeal which could also set a more positive tone such as, “Thinking about Getting Married? Facts about Immigrating on a Marriage-Based Visa to the United States.” The Pamphlet should be careful not to imply that an immigrating fiancé(e) or spouse is to “blame” for or should expect abuse because of the manner in which he or she met a US fiancé(e) or spouse. Any such problematic text should be stricken. The Pamphlet will provide ample warning about the risks inherent in the immigration process for *all* foreign fiancé(e)s and spouses if it is rewritten and restructured as suggested further above, particularly in the suggested rewrite of the description of IMBRA at pages 10-11.
 - The Pamphlet should be restructured and reformatted (see suggestions above at pages 7-12) to ensure that the Pamphlet strikes a generally informative tone, and first describes the “normal” marriage-based immigration process before describing special processes in cases of abuse or exploitation.
- **Problem - Narrow Scope.** The Pamphlet also addresses itself only to K-1 and K-3 visa holders. In one place, in fact, the Pamphlet states narrowly that “[a]ll spouses of US citizens are entitled to protection from domestic violence” (emphasis added), rather than clarifying that *everyone* in the United States is entitled to such protection. While IMBRA did expressly require the Pamphlet to outline the “K nonimmigrant visa” process, the law also stated the Pamphlet must generally cover the “marriage-based immigration” process, and address the legal rights of “immigrant victims of abuse,” without limitation.¹⁵ Notably, too, IMBRA required that the Pamphlet be distributed to *all* applicants for family-based immigration petitions.¹⁶ IMBRA also required that this same brochure be posted on the DHS

¹⁵ IMBRA §833(a)(2)(A) & (D)

¹⁶ IMBRA §833(b)(2).

and Department of State websites and be made widely available to the public at all consular posts and to all foreign service officers, as well as to immigration officers, government agencies, and non-governmental victim advocacy organizations, and IMBs.¹⁷ Since this will be a pamphlet created and approved by the US government, it should be written so as to be relevant and helpful to immigrating spouses and children who receive visas at consular offices abroad as well as those who attain lawful permanent residency in the United States. This is consistent with the broad distribution scheme that IMBRA mandates and will obviate the need for future statutorily-mandated pamphlets.

- **Suggested Revisions.**
 - For the description of the immigration process and forms for K-1 and K-3 nonimmigrants, the Pamphlet should present or summarize the information by using graphics such as a timeline, a flow chart, or a table. See suggestions re: Structure above at pages 7-12.
 - To clarify that the Pamphlet is meant to assist more than K-1 and K-3 visa-holders alone, however, it should also:
 - Qualify the description of those processes, such as suggested above, to apply “if” you are on a particular visa status.
 - Separate the description of legal rights and resources for immigrant victims of violence from the description of the K visa process (as suggested above), to make clear that rights under VAWA, the TVPA, and other protective laws are available to a range of immigrants including—but not limited to—those applying for K-visas.

Miscellaneous Comments:

- ***Safe Distribution of the Pamphlet and other IMBRA-Mandated Disclosures.***

As noted above, IMBRA requires that the Pamphlet be given to all applicants for K nonimmigrant visas, as well as to all “applicants for family-based immigration petitions at all consular and adjustment interviews for such visas.”¹⁸ The sponsors of these visa petitions at times accompany the foreign beneficiary to consular and adjustment interviews. As noted above, if the sponsor is abusive, he may confiscate the Pamphlet or the other important disclosures that IMBRA mandates, may feel threatened and react angrily to the beneficiary who is receiving the information, or may afterwards attempt to undermine the Pamphlet’s effectiveness through

¹⁷ IMBRA §833(a)(5)(A)-(D) & §833(b)(2).

¹⁸ IMBRA §833(b).

misinformation. The beneficiary may also feel afraid or uncomfortable asking or answering questions freely.

- **Recommendation.** The Pamphlet and other IMBRA-mandated disclosures should be reviewed with the foreign beneficiary outside of the presence of the visa sponsor, the foreign beneficiary should be advised that the Pamphlet is also available on government websites and that he or she should keep the Pamphlet in a safe place to refer to if and when it is needed.

Conclusion

Tahirih and Legal Momentum are very grateful to DHS for its efforts to draft and release the Pamphlet, and we sincerely appreciate this opportunity to provide suggestions to improve the Pamphlet. We look forward to working with DHS further, including through the preparation ourselves of a proposed alternative pamphlet, to ensure that the final Pamphlet effectively fulfills its intended purpose. As such, it will realize its potential to be a tremendously powerful tool to combat the abuse of foreign fiancé(e)s and spouses immigrating to the United States.

Sincerely,

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Attachments: Exhibit A, "You Have a Right to be Free From Violence in Your Home," Information Pamphlet prepared by the Family Violence Prevention Fund
Exhibit B, "Do You Have Problems At Home?", Information Pamphlet prepared by Legal Momentum
Exhibit C, "Know Your Rights: Questions and Answers for Non-Citizen Survivors of Domestic Violence," Information Pamphlet prepared by the Tahirih Justice Center
Exhibit D, "Overview of Services Provided by the Tahirih Justice Center"
Exhibit E, proposed IMBRA information pamphlet prepared by Legal Momentum and the Tahirih Justice Center