

## **SPECIAL REPORT**

# **Domestic Violence-Related Immigration Fraud**



P.O. Box 1221  
Rockville, MD 20849  
[www.saveservices.org](http://www.saveservices.org)



America is a country of immigrants. Our nation prides itself on being a refuge for persons who immigrated to this country in search of a better life. Indeed, the story of immigration is the story of America.

The United States currently has an estimated 38 million foreign-born residents, representing 13% of the total U.S. population.<sup>1</sup> Most of these foreign-born persons are in the country legally. But about one-third of these persons are in this country illegally, either by entering with no documentation at all or by providing false information on a visa application.

Visa fraud is a widespread problem. A Department of Labor study concluded that 54% of foreign visa applications contain false and possibly fraudulent information.<sup>2</sup> Each year, the United States Citizenship and Immigration Service (CIS) disapproves some 20,000 applications for fraud. According to a Government Accountability Office report, immigration fraud may also involve criminal activity such as money laundering schemes, income tax evasion, or terrorist activity.<sup>3</sup>

Many of these cases involve marriage fraud. According to Tom Depenbrock, special agent at the U.S. Department of State:

Marriage and visa fraud potentially threaten the national security of the United States ... The U.S. visa is one of the most coveted items in the world... These foreign nationals who enter the country illegally via marriage fraud or any other type of fraud are defrauding the United States of immigration benefits to which they are not entitled.<sup>4</sup>

Marriage scams traditionally involved American citizens who were enticed to marry foreign nationals. In a California case, U.S. citizens were paid to enter into sham marriages with Chinese citizens and were encouraged to fabricate love letters, pose for wedding pictures, and even file joint tax returns.<sup>5</sup>

In recent years, a new form of immigration fraud has come to public awareness. This Special Report discusses how the immigration process is designed to work, details the ways in which federal domestic violence laws, particularly the Violence Against Women Act (VAWA), encourages immigration fraud, documents other VAWA-related problems, and calculates the taxpayer burden caused by immigration fraud.

### **How the Immigration Process is Designed to Work**

The Citizenship and Immigration Service (CIS) is the federal agency that processes applications for visas, work permits, and citizenship. Immigration law allows an American citizen or permanent legal resident to sponsor a fiancé or spouse to obtain a Green Card (work authorization), permanent residency, and eventual citizenship. The “alien” goes through the following steps:

1. The person obtains a fiancé visa (K-1) or spouse visa (K-3) that allows the person to enter the United States.
2. Once the couple is married and residing in the U.S., the American citizen can “sponsor” the spouse to obtain a “conditional green card,” based on the stability of the marriage.
3. After two years, the American citizen and immigrant spouse file a joint petition with the Citizenship and Immigration Service (CIS<sup>\*</sup>) to remove the conditions on the green card, thus granting permanent residency and opening the door to eventual citizenship.

Once approved, the immigrant is entitled to receive the range of government services and benefits that American citizens take for granted.

To counter immigration fraud, the CIS has established a variety of policies and procedures. For example, Fraud Detection Units seek to identify false statements in immigration application forms. Persons who have engaged in immigration fraud are referred to Immigration and Customs Enforcement (ICE). This agency ensures the departure from the United States of removable aliens through enforcement of the nation’s immigration laws.

### **How VAWA Encourages Immigration Fraud**

Immigration law has long included humanitarian provisions that allow foreign nationals subjected to persecution or extreme cruelty to seek refuge in the U.S. As the following discussion explains, this is the provision that the Violence Against Women Act has steadily expanded.

The original 1994 VAWA allowed immigrants who could demonstrate “extreme hardship” to bypass usual sponsorship requirements and “self-petition” to remove the conditions on the green card. The self-petition procedure allows the immigrant to apply on his or her own behalf rather than being required to be sponsored by his or her spouse.

The 2000 renewal of VAWA expanded this concept and incorporated several new provisions:

- Eliminated the extreme hardship requirement
- Removed the U.S. residency requirement
- Strengthened confidentiality provisions
- Guaranteed legal representation
- Eliminated deportation hearings (referred to as “cancellation of removal”)

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\* After the 9/11 attacks, the Immigration and Naturalization Service (INS) was transferred to the Department of Homeland Security and renamed the Citizenship and Immigration Service.

The Violence Against Women Act has been documented to facilitate immigration fraud in eight ways:

*1. Provides Free Legal Services to Persons who Claim to be Victims*

The Violence Against Women Act authorizes up to \$65 million per year for legal assistance under civil and criminal law. In addition, VAWA guarantees immigrants access to legal services by authorizing the Legal Services Corporation to represent a person who claims to be an abuse victim.

VAWA monies can be used to assist persons who claim to be victims of abuse, but not those accused of the offense—an imbalance that undermines the even-handed administration of justice.

*2. Broadens the Definition of Extreme Cruelty*

For years, immigration groups and attorneys have sought to expand the definition of domestic violence to include actions that do not involve actual violence. Five examples are given below:

A. Legal Momentum (formerly the National Organization for Women Legal Defense Fund) cites the following as examples of extreme cruelty:<sup>6</sup>

- Emotional abuse
- Possessiveness
- Minimizing, denying, and blaming

B. A Catholic Legal Immigration Network manual states that extreme cruelty and battery include psychological abuse, accusations of infidelity, and “acts that may not appear violent but are part of an overall pattern of violence.”<sup>7</sup> The publication does not explain what is meant by an act that “may not appear violent.”

C. Attorney Sally Kinoshita is a staff member of the VAWA-funded ASISTA project. In one article, Kinoshita provides examples of what she considers to be extreme cruelty: “a need for apologies,” “possessiveness,” and “what tone of voice was used.”<sup>8</sup>

D. The Legal Assistance Foundation of Chicago claims that indicators of extreme cruelty include:<sup>9</sup>

- Trying to get legal custody of children
- Using gestures that create fear
- Needing to “walk on eggshells”
- Being possessive or jealous

E. The Immigrant Legal Resource Center in San Francisco publishes a Spanish-language flyer that cites “emotional abuse” as a form of domestic violence, and highlights the benefits that await persons who make such allegations:

“If you answered ‘yes’ to any of these questions, you and your children could qualify for:

- work authorization
- permission to live in the United States while your application is being processed
- obtaining permanent residence without help from your husband
- medical care and government benefits such as money and food stamps”<sup>10</sup>

### 3. *Eliminates the Need for Hard Evidence*

Citizenship and Immigration Service examiners are now instructed to evaluate VAWA petitions on what is referred to as the “any credible evidence” standard.<sup>†</sup> According to an internal CIS memo, any credible evidence includes court documents, medical reports, police reports, or sworn statements (affidavits).<sup>11</sup>

The instructions for Form I-360, the application form used by persons who file VAWA self-petitions, further explains that evidence of abuse includes “reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers,” or “an order of protection.”<sup>12</sup>

It is well known that civil definitions of domestic violence are broad,<sup>13</sup> and that orders of protection are often issued with no hard evidence of abuse.<sup>14</sup> Such orders are widely available, even to persons who entered the country illegally. As the Arizona Domestic Violence Benchbook states, “A denial of a protective order would be considered discrimination based on national origin which is specifically prohibited by law.”<sup>15</sup>

Sally Kinoshita of the ASISTA project takes the case further. Arguing for what she calls the “subjective test,” she indicates that not even a restraining order should be necessary:<sup>16</sup>

“A finding of extreme cruelty involves the examination of the dynamics of the relationship, the victim’s sense of well-being before the abuse, the specific acts during the period of abuse, and the victim’s quality of life and ability to function after the abuse. *The self-petitioner’s own declaration should cover these factors.*”  
[emphasis added]

By definition, a “test” is an objectively determined legal criterion. So a “subjective test” could be considered an oxymoron.

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<sup>†</sup> Immigration and Naturalization Act, Section 240(A)(b)(2)(D)

*4. Removes the “Substantial Connection” Requirement*

In CIS parlance, a person who enters the country without permission is referred to as an “undocumented” immigrant. By law, such persons cannot later apply for legal immigration status, because that would be an obvious incentive for persons to attempt to enter the country illegally.

In the past, an exception to this rule was allowed if a person could demonstrate a “substantial connection” showing that extreme cruelty had forced the victim to escape to the United States.<sup>17</sup>

But under VAWA, the substantial connection requirement has been eliminated.<sup>18</sup> As a result, the CIS revised its Adjudicator’s Field Manual to read,

The VAWA self-petitioner is *not* required to show a “substantial connection” between the qualifying battery or extreme cruelty and the VAWA self-petitioner’s unlawful entry.

This means that anyone who enters the country illegally and can produce a restraining order or affidavit, even with no hard evidence of abuse, is likely to be approved for a work permit and permanent residency.

*5. Bans Evidence by the Alleged Abuser Showing that the Petitioner is Illegal*

By law, the CIS classifies a person accused of being an abuser as a “prohibited source.”<sup>‡</sup> This means that the CIS is not allowed to accept any evidence from that person, even if it shows that the petitioner has engaged in illegal behavior. The alleged abuser is often the person who is most knowledgeable about the petitioner’s actions.

As a result, the CIS will not deport a VAWA petitioner, even if presented with credible evidence that the petitioner is illegal. As one CIS employee stated, “If an abuser reports that the victim is undocumented, they will not pursue the person.”<sup>19</sup>

*6. Educates Foreign Nationals How to Work the System*

The Violence Against Women Act funds efforts to educate attorneys and others how to take advantage of VAWA’s immigration provisions.

In 2006, the DoJ Office on Violence Against Women awarded \$363,160 to the Legal Assistance Foundation of Chicago. The group provides the following advice to attorneys on how to prepare a client for an interview with the CIS adjudicator:

Some officers may try to trick your client into admitting information that could make her inadmissible and ineligible to adjust, e.g., “When was the last time you

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<sup>‡</sup> Immigration and Naturalization Act, Section 1367(a)

voted in the U.S.? This is relevant because only U.S. citizens can vote; voting illegally is a ground of inadmissibility.”<sup>20</sup>

Such questions are not “tricks.” They are legitimate tools to determine whether a potential American citizen is of good moral character.

The following year, the Office on Violence Against Women (OVW) awarded a \$1.35 million grant to the ASISTA project, which maintains an immigration Information Clearinghouse and publishes the *ASISTA News*. The Fall 2006 issue of the newsletter features an article that encourages women to file a VAWA self-petition if they are in a relationship marked by “possessiveness” or a “need for apologies.”<sup>21</sup>

Ironically, the next article in the newsletter discusses the ABA ethical requirements to “bring only meritorious claims and contentions” and to “disclose misrepresentations or falsehoods.”<sup>22</sup>

#### *7. Affords a Loophole for Illegal Aliens Undergoing Deportation Hearings*

If an immigrant is discovered without proper documentation, the CIS refers the person to Immigration and Customs Enforcement (ICE) to initiate removal proceedings. But under VAWA, a claim of abuse can cancel the deportation proceedings.

At one conference session, a CIS official was asked how many VAWA cases have been referred to ICE for removal. The categorical answer was: “Currently, cases are not being specifically referred for removal.” Even if the immigrant had been previously ordered to leave the country and re-entered illegally, the CIS official explained, “No, VSC is not passing them on to ICE.”<sup>23</sup>

#### *8. Removes Penalties for Illegal Aliens Who Fail to Leave*

The Immigration and Naturalization Act allows for a variety of financial and administration sanctions to be imposed on illegal aliens who are ordered to leave the country but fail to do so. The Government Accountability Office has criticized the CIS for its leniency in applying these sanctions.<sup>24</sup>

According to the Violence Against Women Act, such sanctions cannot be applied “if the extreme cruelty or battery was at least one central reason for the illegal alien’s overstaying the grant of voluntary departure.”<sup>\*\*</sup> Since extreme cruelty is viewed broadly, almost any illegal alien who claims abuse can escape sanctions.

In sum, VAWA condones and promotes immigration fraud through a variety of legal and administrative strategies, even for persons who entered the country illegally.

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<sup>§</sup> “VSC” refers to the Vermont Service Center, the CIS facility where VAWA self-petitions are processed.

<sup>\*\*</sup> VAWA Title VIII, Section 812.



## SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

*Elizabeth Howard of Arizona reveals how her father's wife had threatened to kill him. When he called for help, the police arrested both of them. As soon as she got out of jail, she went to the local domestic violence shelter to have him removed from his home. Then she held yard sales to rid herself of his personal possessions.*

*"A friend at work whose family migrated here from Mexico told me it's common knowledge that if a woman marries a U.S. citizen and it doesn't work out, she can claim abuse and get the resources she needs," Howard sadly notes.<sup>25</sup>*

### Other Problems

Immigration-related provisions in the Violence Against Women Act give rise to other problems, including extortion, sex discrimination, and the inability of those falsely accused to prove their innocence.

#### *Falsely Accused are Unable to Establish their Innocence*

The most fundamental principle of a criminal justice system is that the accused must be afforded the opportunity to refute an allegation of wrongdoing. But under VAWA immigration provisions, a person accused of partner abuse has no legal standing to refute the claim. Indeed, as a result of VAWA confidentiality provisions,<sup>††</sup> the alleged abuser often is not informed that the allegations were made.

There are many reported examples of persons falsely accused.<sup>26</sup> In one case, Dr. Michael Wnuk, professor at the University of Wisconsin-Milwaukee, became romantically involved with a Polish woman, Lidiia Kolisnichenko.

*Wnuk had been diagnosed with cancer. While on a trip to Poland, he met Kolisnichenko, who promised that she could cure his disease if he would agree to marry her. A month later they returned to the United States and married.*

*While he was away on another business trip, Kolisnichenko filed a self-petition with the immigration service claiming "mental abuse." Three days later, she staged a confrontation in which she ran from the house, claiming that she was being chased by Wnuk. The police report stated that there were "no injuries in the spot where she reported she was hit." Later she would claim she had been "frequently raped."*

*On the basis of these unproven allegations, Kolisnichenko was able to obtain assistance from three attorneys from federally-funded legal aid programs. She eventually procured her Green Card. Wnuk sadly wrote, "Lidiia followed the script shown on the Internet site 'Green Card Girls – A Dangerous Breed.'" <sup>27</sup>*

Michael Wnuk was victimized twice, first by the person who filed the false allegation, and then by a series of legal maneuvers that made it impossible for him to prove his innocence.

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<sup>††</sup> VAWA Title VIII, Section 817.

*Extortion may Result*

Under Indian law, dowry payments are banned, and the mere allegation of dowry demands is viewed with the presumption of guilt. So what happens if a legal immigrant from India later marries an Indian woman and then declines to file an immigration petition on her behalf? Under Indian law she has a legal recourse—to allege that her husband and his family are demanding a dowry payment.

The lack of credibility of some of these claims is revealed in this case:

*In 2002, an engineer living in California traveled to his native India to marry. Following the ceremony, the couple returned to the United States. But she did not like California and began to drink heavily. After she bit him during an argument, they decided to divorce. But that was likely to complicate her Green Card application.*

*In early 2004, she returned to India, where she was soon served with divorce papers. In retaliation, she filed a claim against the man's parents, brothers, sister, and sister-in-law, who were living in India, alleging that they had demanded a wedding dowry payment, even though two years had now passed since the wedding.*

*The police inspector eventually concluded, "On investigation it is found that there is absolutely no truth regarding the facts mentioned in this complaint," and the woman was later found guilty of immigration fraud. Nonetheless, the innocent man was still forced to pay more than \$60,000 plus attorney fees, which depleted his 401K plan and savings.<sup>28</sup>*

In response to numerous complaints, the U.S. State Department issued a travel advisory.<sup>29</sup> "Many of the charges stem from the U.S. citizen's inability to provide an immigrant visa for his prospective spouse to travel immediately to the United States," the advisory warns. John Peters, the State Department's Citizen Services Specialist for India, cautions, "The fact that we issued a warning should be an indication of how widespread the problem is."<sup>30</sup>

*Sex Discrimination is Fostered*

Women are at least as likely as men to engage in partner violence.<sup>31</sup> A recent 32-nation survey of dating couples found that among severely violent couples, in 55% of cases the violence was mutual, in 16% of cases the violence was male-only, and 29% of the time it was female-only.<sup>32</sup> In Mexico, the country of origin of many immigrants, partner violence follows a similar picture: 65% mutual, 16% male-only, and 19% female-only.

But organizations that advise immigrants on VAWA procedures generally fail to acknowledge the existence of male victims and make little attempt to be gender inclusive

in their terminology—abusers are routinely referred to as “he” and victims are depicted in the female gender.

### **Financial Impact of Immigration Fraud**

Persons who obtain legal status in the United States are entitled to free medical care, food stamps, and a broad range of other services and benefits. As knowledge of the VAWA immigration provisions have become more widespread, the number of VAWA self-petitions has grown:

- 2002: 5,922 self-petitions<sup>33</sup>
- 2006: 9,500 self-petitions<sup>34</sup>

In 2002, 84%<sup>‡‡</sup> of all VAWA applications were approved.<sup>35</sup> Thus, an estimated 7,980 VAWA applications were approved in 2006.<sup>§§</sup>

Further, we estimate that, on average, each VAWA applicant has one child. So, 7,980 approved VAWA petitions translates into 15,960 new residents.

Based on the information presented in this report and on a statewide analysis of civil domestic violence claims,<sup>36</sup> we estimate that at most only 10% of VAWA self-petitions represent battering or extreme cruelty, as these terms are commonly understood, between intimate partners. So, at least 90% of the 15,590 residents—14,364 persons—were admitted to the United States under fraudulent circumstances.

According to the Fiscal Impact of Immigration report, the annual federal financial impact of illegal immigration is \$9,139 per person.<sup>37</sup> So the financial burden of VAWA immigration fraud to U.S. taxpayers was estimated at \$131.3 million in 2006.<sup>\*\*\*</sup> At current rates of increase, that amount is projected to increase to \$210 million in 2010.<sup>†††</sup>

The following account reveals the psychological, physical, and financial toll that a false allegation can exact:

*Avi Charnis emigrated from Israel to the United States filled with the hope of living the American dream. He eventually became an American citizen. Later, he met a woman named Elena Mamedova, who he sponsored to come to the U.S. on a fiancée visa.*

*Within a few months after their marriage, she made the claim that Sharnis had*

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‡‡ 4,992 divided by 5,922 = 84.3%

§§ 9,500 applications x 84% approval rate = 7,980 approved applications

\*\*\* 14,364 persons x \$9,139/person = \$131.3 million

††† \$131.3 million x 60% increase = \$210.1 million

*battered her—with no evidence or proof. Charnis was handcuffed and taken to jail.*

*Devastated by the turn of events, Charnis could not eat or sleep. He lost weight and his hands began to shake. Soon he lost his job.*

*Tragedy followed tragedy as he lost his health insurance and was then diagnosed with cancer. During all of this, he had to defend himself against the baseless charges of battery and abuse.<sup>38</sup>*

*As soon as Mamedova received her Green Card, she dropped her abuse complaint. With his legal ordeal now over, Charnis left the country where he had worked for more than 20 years. “America turned out to be a wicked stepmother for me,” he lamented.*

Voice of American Immigration Fraud Victims, a victim advocacy group, notes that such stories are not uncommon.<sup>39</sup>

### **Fail-Safe Method to Achieve Legal Status**

The 2000 renewal of the Violence Against Women Act stated that one of its goals was “to *remove* immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships” [emphasis added].<sup>40</sup> In practice, this means VAWA provides no safeguards to prevent or deter an immigrant spouse from making false statements about spousal abuse.

The combined effect of the immigration provisions of VAWA, their broad interpretation by the Citizenship and Immigration Service, and their flexible implementation by VAWA grantees, can be summarized as follows:

- Educates immigrants how to take advantage of the VAWA domestic violence provisions
- Substantially weakens traditional standards of proof, requiring only a personal statement by the immigrant or an *ex parte* restraining order
- Allows immigrants, some with criminal backgrounds, to self-petition for a Green Card based on claims of domestic violence
- Provides free legal services to immigrants who claim abuse
- Substantially broadens the definition of “extreme cruelty”
- Classifies U.S. citizens accused of abuse as a “prohibited source,” thus prohibiting the submission of evidence that may reveal fraudulent or criminal behavior

## SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

These provisions create a veritable Sword of Damocles that hangs over the head of any American citizen who enters into a romantic relationship with an immigrant.

Immigrants who are true victims of domestic violence, and have proof to back up their claim, should have the ability to file a self-petition in order to escape an abusive relationship. But the humanitarian impulse that motivates that principle should not be allowed to infringe on the due process rights of law-abiding American citizens. It's time to remove the perverse incentives that promote false allegations of abuse, close the immigration loophole that the Violence Against Women Act has created, and restore the integrity of the American immigration system.

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<sup>36</sup> Foster BP. Analyzing the cost and effectiveness of governmental policies. *Cost Management*, Vol. 22, No. 3, 2008.

<sup>37</sup> Rubinstein E. The fiscal impact of immigration. *The Social Contract*, Vol. 18, No. 2, 2007–2008, p. 143. [http://www.thesocialcontract.com/pdf/eighteen-two/tsc\\_18\\_2\\_rubenstein\\_fiscal\\_impact\\_report.pdf](http://www.thesocialcontract.com/pdf/eighteen-two/tsc_18_2_rubenstein_fiscal_impact_report.pdf)

<sup>38</sup> Personal communication, Natasha Spivack, Voice of American Immigration Fraud Victims, August 30, 2008.

<sup>39</sup> Voice of American Immigration Fraud Victims. Accessed August 17, 2010. <http://www.immigrationfraudvictims.com/victims.html>

<sup>40</sup> Battered Immigrant Women Protection Act of 2000. P.L. 106-386. Section 1502(a). Findings and Purposes.