

Battered Spouses and Children

The majority of Immigrants come to the United States through the process of family sponsorship. These cases involve petitions filed by US Citizen or Lawful Permanent Resident spouses and parents. Many of the Immigrants come from cultures that are male dominated, patriarchal, or where family violence is customary and accepted though rarely if ever discussed in public, treated as a public health crisis, or legal epidemic. Some of the Immigrants going through the process of legalization are abused by their US citizen or Lawful Permanent Resident sponsors. The abuse can be verbal, physical, sexual or psychological. Sometimes victims of abuse stay with their abusers because they are dependent on them financially and to get their permanent resident status.

Some victims are not strangers to abuse and have endured for their entire relationship with the sponsor, while others may have been deceived and gradually, over a short period of time, the relationship has declined, the violence escalated, and their self esteem has been systematically eroded. Still others may be in the U.S. as dependents of other non-US citizen or non-Lawful Permanent Resident visitors with work visas or investor status. Victims can come from all walks of life with varying levels of education, economic and social status. It should be noted that while females are typical victims of abuse because they are objectified, viewed as property, and treated as subordinate to their male counterparts, victims of abuse can also be male.

Individuals who find themselves victims of family or marital violence in the United States and are going through the Immigration process do have options. Those who are married to or who are children of U.S. citizens or Lawful Permanent Residents can file petitions and obtain a Green Card without the permission, cooperation or participation of the abuser. An abused immigrant (male or female, child or adult) can file a self petition based on the Violence Against Women's Act. They must prove that they a) are the child/step-child, or spouse of a U.S. citizen or Lawful Permanent Resident; b) are persons of good moral character; and c) have been or are currently abused by the U.S. Citizen or Lawful Permanent Resident spouse or parent/step-parent. The self-petition process requires first obtaining status as a battered immigrant child or spouse of a U.S. citizen or Lawful Permanent Resident from the US CIS Vermont Service Center, and then applying for employment authorization and the Green Card at a local district office. Before a Green Card can be issued there must be an interview with an immigration officer and the self-petitioner must receive a criminal clearance.

During the initial process of establishing abuse, documentation must be provided for each requirement mentioned above. For those who are married to the abuser, they must prove that their marriage is a good faith or legitimate marriage. For example, a copy of the marriage certificate, or birth certificate in the case of an abused child, must be submitted with the application. Proof of marriage can be documented with statements from joint accounts, jointly filed tax returns, and affidavits from friends and neighbors. Proof of the abuse must be documented as well. Self-Petitioners, as these applicants are called, must provide hospital or medical reports of physical injuries or psychologist,

psychiatrist or mental health therapist reports or letters noting ongoing emotional or psychological abuse. The self petitioner must also provide their own statement of what has occurred in the relationship making sure to detail as many events or episodes of abuse and violence as possible. Proof of abuse can also include copies of court orders, police reports and photographs. Often a victim is so fearful of retribution the s/he has failed to obtain the items mentioned above because s/he is unaware of where to go or to whom to turn. US CIS looks favorably upon those who seek a way out of the situation. Thus, it is important to tell someone.

US CIS also looks for court orders to show that the victim has been proactive in either dissolving the relationship or pursuing self protective measures. US CIS will want to see that the applicant has obtained or tried to obtain an order of protection or injunction for protection. At the time of the interview, the US CIS agent may inquire as to whether the marriage has been dissolved or may request proof that the marriage is dissolved and looks favorably upon a certificate of divorce. Applicants need not be married to the abuser when filing the self petition. US CIS will allow an applicant to file as a battered spouse up to two (2) years after a divorce from the abuser, as long as the applicant has NOT re-married. US CIS will also make exceptions for applicants who discovered they were in bigamous marriages as this does occur although the sponsorship process tries to force the abusive petitioner to disclose all previous marriages. Once the self-petitioner has complied with the application requirements and the file is reviewed by a specially trained US CIS official at the Vermont Service Center, an approval notice allows the self-petitioner to apply for employment authorization and the Green Card.

To curtail the incidence of domestic abuse the US CIS has implemented certain provisions in the sponsorship process based on the International Marriage Brokers Regulation Act of 2005 (IMBRA). This law requires U.S. citizen or Lawful Permanent Resident sponsors filing fiancée petitions to disclose their criminal backgrounds to the intending immigrant. Incidents of abuse, US CIS finds, is most likely to occur where the sponsors have somewhat extensive criminal backgrounds. Some ex-convicts and troubled individuals prey on foreign women and fail to disclose their criminal pasts because they know that such information would affect the women's decision to marry and live with them in the United States.

Also, everyone should be aware that the U.S. courts are available to anyone within the physical jurisdiction of the country: citizen or non-citizen, who is a victim of repeat violence or domestic abuse, even if the domestic partner or relative has only threatened, intimidated or verbally assaulted the victim. The victim has the right to call the police and petition the court for an order of protection. This order of protection, although it is only a piece of paper, gives authority and notice to the police and the abuser that if it is violated, the abuser will be arrested and detained. If the victim of abuse fears staying at home or residing in the abuser's property, there are shelters or refuges available. The victim should know that no one has the right to violate the person of another, especially if it is a family member or spouse.