

Immigration Relief for Victims of Domestic and Sexual Violence

BY GABRIELLE JONES, ESQ.

Blanca fled her home country seeking a better life. She begins building a new life for herself in the U.S. She meets a guy who appears to be loving and supportive. The relationship seems perfect in the beginning. One day her partner comes home and insults her. He tells her that she is worthless and calls her names. Blanca tries harder to make him happy. The parties have a child together. Things become worse in the relationship. The emotional and verbal abuse becomes physical. It starts with a push and continues to escalate. Blanca fears her partner, but is unable to leave the relationship. He has told her that she has no rights because she is undocumented. She believes that if she contacts the police, her child will be taken from her and she will be deported. She continues to endure the abuse. The abuse culminates with her partner trying to kill her. He beats her with a baseball bat until she passes out from the pain. Her toddler witnesses this and begins crying hysterically. A neighbor hears the child crying and finds Blanca lying on the floor unconscious. She calls the police and paramedics.



Unfortunately, stories like this are all too common in Nevada. The domestic violence statistics are staggering. 48.1 percent of women and 30.9 percent of men living in Nevada have experienced rape, physical violence and/or stalking by an intimate partner.¹ Domestic violence can consist of physical abuse, sexual abuse, emotional or verbal abuse, financial abuse and holding the individual's immigration status over his or her head. Undocumented individuals are vulnerable to domestic violence for several reasons. First, they are afraid to call the police or interact with the police and court system due to their immigration status. Second, they often have a language barrier and are unable to communicate with law enforcement effectively. Third, they erroneously believe that they don't have any rights



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because of their immigration status.

It is important that attorneys working with undocumented individuals who have been victims of domestic violence are aware of the forms of immigration relief that might be available to an individual. The passage of the Violence Against Women Act in 1994 and its successors expanded the access to legal remedies to undocumented individuals who have been the victim of domestic violence and other crimes. Some of the legal remedies are as follows:

U VISA

The U Visa is a form of relief available to undocumented individuals who have been the victim of a specified crime.² The crime must be one of the designated crimes or one consisting of similar activity. Domestic violence, sexual assault and stalking are all U

Visa specific crimes. The purpose of the U Visa is to encourage undocumented individuals to cooperate with law enforcement and bring the perpetrators of the crime to justice. The cooperation element can consist of reporting the crime to law enforcement, writing a voluntary statement, answering questions posed by law enforcement, allowing photos of injuries to be taken, cooperating throughout the investigation and testifying against the perpetrator in court. Law enforcement must complete a certification that the undocumented individual has cooperated in the investigation. If the individual stops cooperating, law enforcement may withdraw the certification. New legislation was passed this legislative session that helps eliminate some of the

barriers to obtaining a certification.³

The undocumented individual must demonstrate that he or she has suffered substantial mental or physical harm. This harm can be evidenced through a personal declaration, medical records, statement from a therapist, photos or

statement from a third party.

The recipient of an approved U Visa has the ability to live in the U.S. legally for four years and work in the U.S. legally for four years. After three years of continuous presence, the individual can apply for lawful permanent residence status. After five years of lawful permanent residence status, an individual can apply for citizenship.

The U Visa allows individuals to petition for certain family members. If the victim is under 21 years old, he or she can petition for his or her spouse, parents, children and unmarried siblings under 18 years of age. If the victim is 21 years or older, he or she can petition for his or her spouse and unmarried children under 21.

Pursuant to legislation limits, only 10,000 U Visas are granted each year.

Due to the large number of applications and limited number of visas available, applicants are waiting more than four years for their applications to be adjudicated. Unfortunately, the waiting time grows each day.

T VISA

A T Visa is similar to a U Visa; however, it is specific to victims of a severe form of human trafficking.⁴ The individual must have been brought to the U.S. for the specific purpose of sex trafficking or labor trafficking. Although it is not required that the individual seek certification from law enforcement, it is strongly recommended. However, the individual must comply with reasonable requests from law enforcement during the investigation.

The undocumented individual must demonstrate that he or she will suffer extreme hardship if he or she is removed from the U.S. This hardship can be evidenced through a personal declaration, police report, statement from a therapist or statement from a third party.

The recipient of an approved T Visa has the ability to live in the U.S. legally for four years and work in the U.S. legally for four years. After three years of continuous presence, the individual can apply for lawful permanent residence status. After five years of lawful permanent residence status, an individual can apply for citizenship.

The T Visa allows individuals to petition for certain family members. If the victim is under 21 years old, he or she can petition for his or her spouse, parents, children and unmarried siblings under 18 years of age. If the victim is 21 years or older, he or she can petition for his or her spouse and unmarried children under 21.

Pursuant to legislation, 5,000 T Visas are granted each year. The cap on these applications is never reached. Therefore, it is important to screen all potential U Visa applicants to determine whether they can also qualify as a T Visa applicant.

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VAWA Self-Petition

The spouse of a lawful permanent resident or U.S. citizen, the parent of a U.S. citizen child, or the child of a lawful permanent resident or U.S. citizen who has been the victim of battery or extreme cruelty can file a VAWA Self-Petition.⁵ It is a confidential petition, and no cooperation from the abuser is needed.

The petitioner must be able to demonstrate the status of his or her abuser. Proof of the abuser's status can consist

of the biographic page of a U.S. passport, copy of a U.S. birth certificate, copy of a certificate of naturalization or copy of a lawful permanent resident card.

The petitioner must also show that he or she has been a victim of battery or extreme cruelty. It is very common for there to be no police report in these situations. The victim is living with the abuser and afraid of the ramifications of calling the police. The most common evidence consists of the victim's declaration.

Pictures or statements from third parties may also be available.

Another requirement is that the petitioner show that he or she entered into the marriage in good faith. The marriage certificate, birth certificates of children, joint purchases and debts, statements regarding the courtship and statements from third parties regarding their observations of the couple can fulfill this requirement.

Similarly, the petitioner must demonstrate that the parties resided together at some time during the marriage. A joint lease or mortgage is the best evidence of this requirement. The petitioner can also show that the parties received mail addressed to both parties.

Finally, the petitioner must show that he or she is a person of good moral character. The petitioner must complete a background check in each jurisdiction where he or she has lived for at least six months. It is important that the petitioner not have committed certain crimes that will make him or her inadmissible.

A self-petitioner who is abused by a U.S. citizen can file concurrently for VAWA, a work permit and lawful permanent residence status. If the abuser is a lawful permanent resident, the petitioner must wait until his or her priority date is current prior to applying for lawful permanent resident status.

No one should have to live afraid in an abusive situation due to their immigration status.



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No one should have to live afraid in an abusive situation due to their immigration status. Helping someone gain their immigration status is a life-changing event for that individual and a rewarding opportunity for an attorney to help an individual desperately in need of help. **NL**

1. <https://www.cdc.gov/violence-prevention/nisvs/summary-reports.html> accessed September 9, 2016
2. Immigration and Nationality Act §101 (a)(15)(U)(iii)
3. Assembly Bill No. 336 (2019 Legislative Session). The certifying agency can no longer consider the period of time between when the crime occurred and when the certification is requested. Additionally, there is no a rebuttable presumption of helpfulness.
4. Immigration and Nationality Act 101 (a)(15)(T)(i)
5. Immigration and Nationality Act 204 (a), 8 USC 1154 (a)

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