



IMMIGRATION AND DOMESTIC VIOLENCE

A Short Guide for New York State Judges

NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

This pamphlet was prepared by the New York State
Judicial Committee on Women in the Courts, a
committe appointed by the Chief Judge of New York.
Originally established in 1986 in response to a task
force report documenting pervasive gender bias
against women in New York State courts, the
Committee addresses concerns of women as litigants,
attorneys, and employees within the court system.

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Why Immigration Law Matters

When immigrant women turn to state courts for protection against violent men in their lives—and most often men are the perpetrators of intimate violence and women their victims—they face difficulties unknown to women born in the United States.

Some of these difficulties are practical. Immigrant women, like other abused women, may depend on their abusers for financial support, and breaking free of dependency is never easy. Women who cannot speak English or have no legal right to work in the United States face even tougher battles.

Other difficulties are cultural. For immigrant women, challenging the authority of their husbands—or any man—may mean violating religious or ethnic taboos within the tight-knit, highly interdependent community in which they live. Immigrant women who go to court also may provoke censure from those who view the legal system as foreign, hostile to people of their ethnicity, or inappropriate as a means of settling disputes within their community.

Coloring all responses, however, and often overriding other considerations, is concern about immigration status and fear of deportation. The danger is real, and abusers know it. When an abuser is a lawful permanent resident or United States citizen, threatening to have a victim who is undocumented or has conditional status deported becomes the perfect means of maintaining the power and control that are the defining characteristics of domestic violence.

Criminal proceedings, with their concomitant danger of deportation, are another obstacle for abused immigrant women, who have reason to fear not only their own forced removal from the United States but that of their abuser.

Immigration law is arcane, and much of it is irrelevant to the state court proceedings. However, state court judges should understand the dilemmas faced by immigrant abused women who appear before them and the implications of judicial actions for immigration status.

Permanent Lawful Residency and Victims of Abuse

The Pitfalls of Family Sponsorship

Abused immigrant women without secure immigration status rightly worry that their husbands or the men who brought them to the United States with a promise of marriage will prevent them from securing lawful permanent residency or, in common parlance, a green card. The most common path to lawful permanent residency in the United States—and thus to citizenship—is through family members. A citizen or a lawful permanent resident may file a petition for lawful permanent residency on behalf of a spouse. Other paths to lawful permanent residency are rarely available. In practical terms, family sponsorship is the best—and often the only—option for most immigrants.

But family sponsorship depends on the cooperation of a family member with legal immigrant status. When abused women seek protection from violence, their husbands may refuse to file the necessary documents or, if they have already filed, refuse to take the steps necessary to complete the process. If an immigrant woman divorces, she severs the familial relationship that ordinarily makes her eligible for family sponsorship, and she is left with even fewer options.

Battered immigrant women, however, may be able to use one of a number of special remedies created to assist them.

Violence Against Women Act (VAWA) Remedies and Battered Spouse Waivers

Among the most powerful ways out of the dilemma of either staying with an abusive husband or leaving him and forfeiting the opportunity to remain in the United States legally are the remedies in the federal Violence Against Women Act (also known as VAWA) along with Battered Spouse Waivers created by earlier legislation. Both carve out exceptions to the requirement that a woman's husband file papers for her so she may become a permanent lawful resident through family sponsorship without her batterer's cooperation.

Neither of these remedies requires judicial findings, orders of protection, or any contact at all with the state court system. Immigration law allows immigrants to present “any credible evidence” in support of their petitions, and hearsay is acceptable. However, women filing on their own do face formidable evidentiary hurdles—they must show, for example, that they have been “physically battered” or “the subject of extreme cruelty”—so a Family Court case or a criminal conviction, while never necessary, may be helpful.

U-Visas

Immigrant abused women also may be eligible for U-Visas, a special category of visas created by federal legislation in 2000 for the benefit of victims of serious crimes. Since no familial relation is necessary, U-Visas offer hope to domestic violence victims who were never married to their abusers, whose abusers have no legal right to residency in the United States, and lesbian and gay abused immigrants.

U-Visa allow immigrants to remain legally in the United States, to work, and, after three years (with a showing of hardship), to apply for lawful permanent residency. Federal authorities may issue up to 10,000 U-Visas yearly. U-Visa applicants only have to show that they have helped, are helping, or are likely to be helpful to either the investigation or the prosecution of one of a fairly inclusive list of enumerated crimes. Domestic violence as well as felonious assault and sexual assault are among those crimes.

Critical to the U-Visa application is certification of the applicant’s cooperation with law enforcement efforts. New York State judges, including criminal court and family court judges, are among the government officials authorized to sign U-Visa certifications. Judges may sign certifications while a case is pending or even before a case is initiated. Cooperating in an abuse and neglect proceeding or giving evidence in a family offense case in Family Court, for example, may qualify as assisting with the investigation of a crime as may cooperating with the police.

Criminal Proceedings

Encounters with the criminal justice system are fraught with danger for any defendant who is not a United States citizen, particularly with the recent revision of immigration laws and increasingly aggressive enforcement efforts. Noncitizens are simply more vulnerable than they ever have been. In 1984, only 1000 immigrants were deported because of criminal convictions. By 2000, this number had risen to 71,000. Deportation (or removal, as it is now called) is the most extreme consequence of criminal proceedings, but any criminal record may block paths to lawful permanent residency.

Danger lurks for abused immigrant women in the possibility of their own arrests as well as the arrest of their abusers. Victims of domestic violence often are subjected to retaliatory arrests by savvy abusers who have learned to manipulate the justice system. Abusers, who often have a better grasp of English and more experience with institutions and authorities in the United States, often are adept at using the justice system against their victims.

Abusers, too, may be subjected to deportation if criminal cases are pursued against them, and this is not necessarily a desirable outcome for abused immigrant women. If a victim depends on her abuser for support, the last thing she may want is to see him transported thousands of miles away, where he may be unable to earn a living and where support enforcement mechanisms may be meaningless. Immigrant victims also may need their abusers' presence in the United States to legalize their own status. VAWA self-petition remedies are often unavailable when abusers have been deported.

Beyond these considerations, victims may have family, even children, who remain in their home countries. An abuser returning to a victim's village or locale may take revenge on family members he finds there.

Criminal Records and Immigrant Status

Almost any criminal record acts as an impediment to immigrants at every step on the way to citizenship. A criminal record may block entry to the United States, serve as grounds for denying permanent lawful residency, or subject a noncitizen—even a permanent lawful resident—to forced removal from the United States.

Categories of Crimes with Immigration Consequences

A complicated set of overlapping statutes defines the kinds of crimes that place noncitizens in jeopardy. Even minor offenses may have dire consequences.

For example, convictions for “aggravated felonies” are usually fatal to a noncitizen’s efforts to remain legally in the United States, but a crime need not be aggravated in the commonly understood sense of the word or even a felony to qualify as an “aggravated felony” in immigration law. Murder, rape, and the sexual abuse of a minor are “aggravated felonies,” but so are crimes involving prostitution and almost any controlled substance. Similarly, not only murder and various kinds of assaults, but also petty theft, prostitution, and perjury are “crimes of moral turpitude” and may result in deportation. Jumping a turnstile is a “crime of moral turpitude;” so is shoplifting.

Case Dispositions with Immigration Consequences

The immigration consequences of encounters with the criminal justice system depend, for the most part, on convictions, but immigration law has its own peculiar definition of what constitutes a conviction. A number of New York dispositions, including programs designed to encourage rehabilitation and reform, inadvertently may create immigration difficulties for defendants.

Drug Treatment Courts and Other Special Courts. Case dispositions in these courts rely on admissions on the record along with restraints on liberty, such as mandatory drug testing and treatment. This is enough to qualify as a conviction in immigration law. Immigrants who successfully complete prescribed programs may avoid criminal records and jail, but may be deported nonetheless.

Expungements. Immigration law generally does not recognize expungements. Convictions are convictions, no matter when the crime was committed or how state law treats the crime.

Adjournments in Contemplation of Dismissal (ACD's). Adjournments in contemplation of dismissal are usually not convictions for purposes of immigration law. However, the allocation is critical. If the defendant admits all of the elements of the crime on the record, then it becomes a conviction for immigration purposes. Even without admissions on the record, an open ACD may block a person from becoming a lawful permanent resident or a citizen.

Sentencing in Immigration Law

The length of a sentence may be critical to an immigrant defendant—for example, whether a crime is an “aggravated felony” often depends on whether a sentence is more or less than a year—yet immigration law has its own method, often counterintuitive, of calculating sentences.

Sentence Imposed. A sentence is the sentence actually imposed by a judge, not the time served. Sentencing a person to a year may have drastic consequences that could have been avoided if that person had been sentenced to 364 rather than 365 days.

Suspended Sentences. The entire length of a suspended sentence is considered the sentence. The amount of time that actually will be served is irrelevant.

Probation. Dispositions of probation are not considered sentences.

Helping Protect Immigrant Abused Women

Immigration law is complicated—this brochure only skims the surface—but bearing in mind a few simple operating principles may be helpful:

- **Respect** the complexity of the implications of state court actions on the immigration status of litigants.

- **Recognize** that women may avail themselves of immigration remedies fashioned to help abused women without state court findings, orders of protection, or any contact with state court, and thus are unlikely to pursue cases in state court merely for an advantage in immigration proceedings.
- **Be prepared** to certify that a victim has helped—or is helping or is likely to help—in the investigation or prosecution of a crime for U-Visa purposes.
- **Assess** criminal cases for possible retaliatory arrests, cognizant of the reasons that an immigrant abused woman may be reluctant to accept a plea that seems to be an easy and harmless resolution of a case.
- **Be aware** that convictions or admissions of guilt by abusers that lead to deportation may endanger abused immigrant women or their families here or abroad and may create great hardships for victims.
- **Encourage** the appointment of competent counsel who understand immigration law and can help fashion appropriate dispositions that do not inadvertently harm abused immigrant women.

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April 2009



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