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When marriage is not enough: Facing deportation because of your spouse

Under U.S. immigration law, immigrants may obtain a green card ("U.S. permanent residence") by marrying a U.S. citizen. The U.S. citizen must, however under the normal course, petition [U.S. Citizenship & Immigration Services](#) (CIS, formerly known as "INS") for an immigrant visa and a green card application for his/her immigrant spouse based on the marriage. This process once completed leads to the immigrant's attainment of U.S. permanent residency – i.e., permission to work and live in the U.S. on a permanent basis.

But this process is not always beneficial to the immigrant – in many instances, it provides one of the most abusive ways a sponsoring spouse can exercise control over the immigrant, by holding the immigrant's tentative immigration status over her.

A commonality in almost all abusive marriages involving an immigrant spouse is the threat of deportation, often in the form of the abusive U.S. citizen or lawful permanent resident spouse threatening to withdraw his/her sponsorship of the immigrant's visa petition, not file at all, or contact CIS and lie about her in an attempt to have her deported.

Often, immigrants are given the ultimatum that they either tell no one about the abuse and thereby, let it continue, or else face deportation. This threat of deportation, a form of severe psychological abuse, can be more terrifying to an immigrant than even the worst physical abuse imaginable. Many immigrants have children and family members in the U.S. who rely on them and many fear returning to the country they escaped, for fear of societal reprisal, inescapable poverty, and/ or persecution.

[The Violence Against Women Act](#) (VAWA), passed into law in 1994 and amended in 2001, provides hope for immigrant abuse survivors. Abused immigrants who are married to a U.S. citizen or Lawful Permanent Resident or who divorced their abuser in the past two years may now petition on their own for an immigrant visa and green card application, without the abuser's knowledge or consent. In this confidential process, CIS agents are legally bound to refrain from contacting the abuser and telling him/her anything of the abused immigrant's attempts to obtain a green card under VAWA. The process can often be completed within a year for those married to U.S. citizens.

This process also provides temporary protection from deportation for immigrants not in deportation already (called "deferred action status") and renewed work

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authorization to lawful permanent residents who usually face a longer waiting period due to visa number backlogs.

Further, the immigrant spouse does not have to appear before a judge (the process is paper driven) and s/he may leave her abuser at any time, without harm to her immigration status.

Even an immigrant spouse who is not married to a lawful permanent resident or U. S. citizen but is instead married to an undocumented immigrant or an immigrant holding a temporary work or visiting visa has options under VAWA. Since VAWA was amended in 2001, now regardless of the immigrant or abuser's status, the immigrant may obtain legal immigration status through the new "U" visa, which allows the immigrant to eventually obtain a green card if s/he has proven helpful or likely to be helpful to a law enforcement investigation of a violent crime.

To be eligible for the "U" visa, the immigrant must have suffered substantial physical or mental abuse resulting from criminal activity that violated a U.S. or local state or municipal law. Examples of qualifying crimes include: rape, domestic violence, battery, forced servitude, and criminal threats. The immigrant must possess information concerning the crime and have a certificate or other affirmation signed by a designated law enforcement official that s/he has been helpful, is being helpful, or is likely to be helpful to an investigation or prosecution of the criminal activity.

CIS is now issuing interim relief in the form of work authorization and deferred action status for those who would squarely qualify for the "U" visa even though the "U" visa, itself, is not yet being issued because regulations have yet to be published.

The "T" visa may also offer a solution to those who do not want to risk exposing their lack of immigration status to CIS but who would otherwise qualify for immigration relief as a victim of crime. The "T" visa, which is currently available and being issued, is specifically designed for certain human trafficking victims who cooperate with law enforcement against those responsible for their enslavement. This could clearly apply to mail-order bride schemes where the young bride is taken to the U.S. against her will. The statute allows victims to remain in the United States if it is determined that such victims could suffer, "extreme hardship involving unusual and severe harm" if returned to their home countries.

After three years in "T" status, victims of human trafficking may apply for permanent residency (green cards). In addition, subject to some limitations, the regulation allows survivors to apply for valid nonimmigrant status for their spouses and children and victims under the age of 21 may apply for non-immigrant status for their parents.

The above shows that abused immigrants often do have options. An abused immigrant does not have to continue to live with the threat of physical, financial or psychological harm from an intimate partner because of fear of being deported.

This article just skims the surface of the expanded relief available to abused immigrants.

Options now even exist for those divorced from their abuser and those misled into

bigamous marriages. Further, even if VAWA doesn't provide an answer for the particulars of an abused immigrant's circumstances, other long-existing provisions of U.S. immigration law may.

Immigrants are urged to seek advice of an immigration lawyer, not a notario or paralegal. If you would like to learn more about VAWA relief for abused immigrants, the National Immigration Project, run by the National Lawyers Guild and offers free information on VAWA on their Web site, www.nationalimmigrationproject.org/.

About The Author: Attorney Heather L. Poole practices family-based U.S. immigration law in Pasadena, California. She is a published immigration author and supervises abuse-based immigration cases at the Los Angeles Commission on Assaults Against Women. She is an active resource to the "Violence Against Women experts" list of the National Lawyers Guild, the National Network to End Violence Against Immigrant Women, and the National Domestic Violence Hotline. She can be reached at 626.432.4550 or heather@humanrightsattorney.com. For more information on the options available to abused immigrants, access www.humanrightsattorney.com/ or e-mail: info@humanrightsattorney.com.

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