



National Immigrant Justice Center

# Representing Immigrant Survivors of Domestic Violence and Sexual Assault

## Violence Against Women Act (VAWA)

May 24, 2012

Mayer Brown LLP

# About the National Immigrant Justice Center

The National Immigrant Justice Center (NIJC), a program of Heartland Alliance for Human Needs & Human Rights, promotes human rights and access to justice for immigrants, refugees, and asylum seekers through legal services, policy reform, impact litigation, and public education. Throughout its 30-year history, NIJC has been unique in blending individual client advocacy with broad-based systemic change.

- NIJC serves more than 8,000 immigrants annually with the support of a professional legal staff and a network of over 1,000 pro bono attorneys.
- NIJC maintains a 90 percent success rate in representing asylum seekers and immigrant survivors of domestic violence.
- NIJC represents individuals from over 95 different countries.
- All NIJC clients are at or below 200% of the Federal Poverty Guidelines

# Agenda

- NIJC's *Pro Bono* Projects
- Domestic Violence: Tips for Working with Clients
- Overview of Family-Based Immigration
- Violence Against Women Act (VAWA)
- Preparing a VAWA case
- VAWA Case Processing
- Reference Sources and Contact Information

# NIJC's *Pro Bono* Projects

# Pro Bono Opportunities with NIJC

- Asylum
- Detention
- Special Immigrant Juvenile Status
- VAWA
- U visas
- Citizenship
- I-730s & Asylee Adjustments

# NIJC's Pro Bono Projects

## NIJC's Role:

- Provide outreach to domestic violence shelters and organizations
- Case screening, assessment and acceptance
- Provide *pro bono* training and materials
- Placement with *pro bono* attorneys
- Case management
- Attorney support and technical assistance
- Provide malpractice insurance coverage

# *Pro Bono* Attorney's Role:

Attend VAWA training and review training manual

Conflicts Check

Schedule initial interview with client within 2 weeks of case assignment

Prepare and file applications as soon as possible (recommend 8-12 weeks preparation and filing time)

Represent client for duration of process or obtain substitute counsel within firm

Provide for translators for interviews and foreign documents as needed

Keep NIJC informed of filing dates, requests for evidence, and case decisions

Contact NIJC with any questions or concerns about case

Provide NIJC with copy of filing and all approval notices

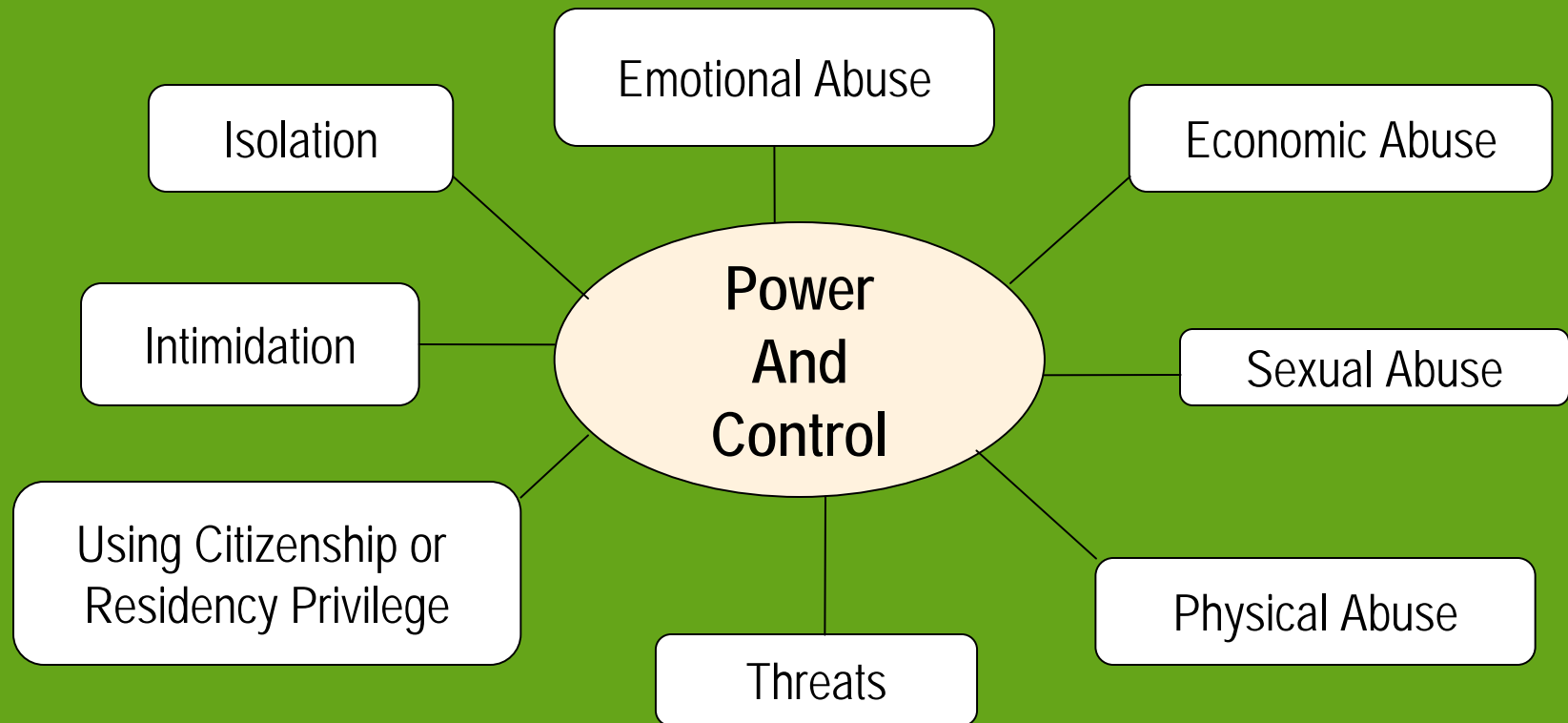
# Domestic Violence: Tips for Working with Clients



# Cultural Barriers Facing Immigrants

- Language limitations
- Extreme Isolation
- Cultural ideas of family shame and honor
- Close-knit communities
- Role of religion

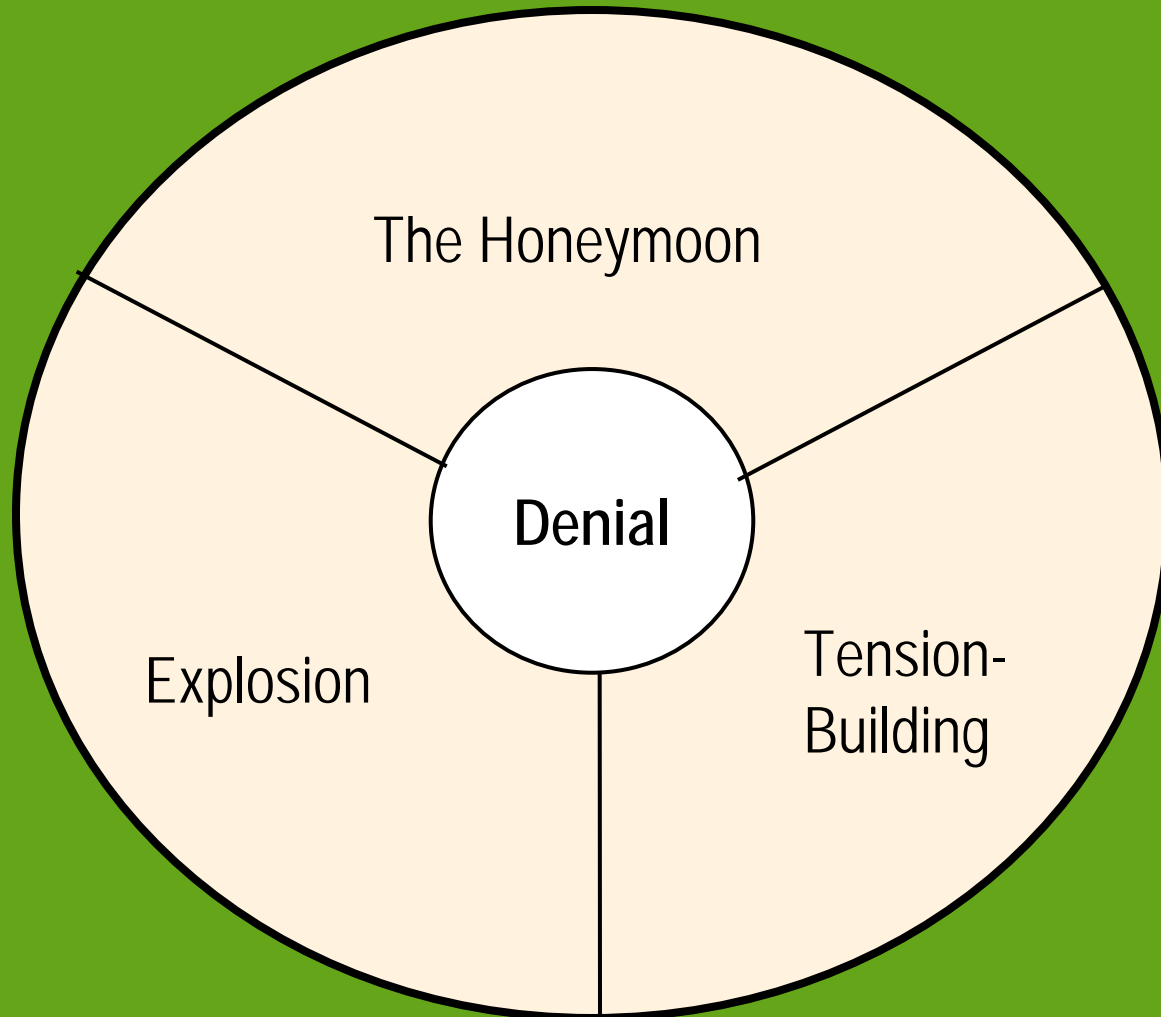
# Domestic Violence Tactics Used by Abusers to Exert Power and Control



# How Abusers Can Misuse Immigration Privilege

- Failing to file immigration papers on behalf of family member
- Filing an I-130 family-based petition (or other application) and later withdrawing it
- Threatening to contact immigration officials
- Contacting immigration officials for the purpose of reporting family members
- Providing immigration officials with false information about family members

# The Cycle of Abuse



# Overview of Family-Based Immigration

# Types of Immigration Status

- U.S. Citizen (USC)
- Lawful Permanent Resident (LPR) (green card holder)
- Immigrant (asylees, refugees, etc.)
- Nonimmigrant (temporary status in the United States, including tourists, students, U visa, deferred action, etc.)
- Undocumented immigrant

# Basic Overview of Family-Based Immigration

- U.S. citizens (USC) and lawful permanent residents (LPRs) can petition for certain family members
- Two Step Process
  - USC or LPR files family-based petition
  - Immigrant applies for lawful permanent residence

# Step 1: Family-Based Petition (Form I-130)

- U.S. citizens (generally age 21 or older) can petition for:
  - Parents = Immediate Relatives
  - Spouse = Immediate Relatives
  - Children (under 21, unmarried) = Immediate Relatives
  - Sons and Daughters (married or unmarried, 21 or older)
  - Brothers and Sisters
- LPRs can petition for:
  - Spouse
  - Children (unmarried)

**USC or LPR must file petition!!!**



# Immediate Relative vs. Preference System

Immediate Relatives do not have a waiting period between filing a family-based petition and applying for LPR status.

All other family members must wait for their priority date before applying for LPR status:

The priority date is the date of receipt of the petition.

Depending on the preference category, some family members may wait 10 years or more before being eligible to apply for LPR status

# Visa Bulletin

## Family Preference Categories

- 1<sup>st</sup>: Unmarried Sons and Daughters (21 or older) of USC
- 2A: Spouses and Minor Unmarried Children (under 21) of LPR
- 2B: Unmarried Sons and Daughters (21 or older) of LPR
- 3<sup>rd</sup>: Married Sons and Daughters of USC
- 4<sup>th</sup>: Brothers and Sisters of USC

# Excerpt from Visa Bulletin, June 2012

[www.travel.state.gov](http://www.travel.state.gov)

<b>Family</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>China-mainland born</b>	<b>India</b>	<b>Mexico</b>	<b>Philippines</b>
1st	22JUN05	22JUN05	22JUN05	15MAY93	01JUL97
2A	01JAN10	01JAN10	01JAN10	08DEC09	01JAN10
2B	15APR04	15APR04	15APR04	01JAN92	08DEC01
3rd	01APR02	01APR02	01APR02	15JAN93	22JUL92
4th	08JAN01	15DEC00	08JAN01	01JUN96	22JAN89

# Step 2: Filing Application for Adjustment of Status (Form I-485)

- Once an individual has an approved visa petition and a current priority date, she may qualify to adjust status (apply for LPR) in the United States.
- If the individual does not qualify to apply for LPR in the United States, she would need to consular process in her home country

# Violence Against Women Act (VAWA)

# The Violence Against Women Act (VAWA)

- The Violence Against Women Act was signed into law by President Clinton in 1994 as part of a larger crime bill to address domestic violence, sexual assault and stalking
- VAWA was amended in 2000 and 2005. VAWA includes special provisions for battered immigrants that allows them to gain legal immigration status without relying on their abusive USC or LPR spouses, parents, or children

*INA § 204; 8 C.F.R. § 204*

# Who Is Eligible to Self-Petition Under VAWA?

- Abused spouses of USC's and LPR's;
- Non-abused spouses of USC's or LPR's whose children are abused (need not be children of abuser);
- Abused children (must meet the definition of a "child" under INA § 101(b)) of USC's or LPR's;
- Abused children of USC's and LPR's may file until age 25 if central reason for delay is abuse (VAWA 2005);
- Abused *intended spouses*, meaning a spouse who entered into a bigamous marriage in good faith. See INA § 204(a);
- Abused parents of USC children (VAWA 2005)

# Self-Petitioners Must Prove

- Status of Abuser (USC or LPR)
- Marriage Requirements
  - Legal Marriage
  - Good Faith Marriage
- Battery *or* extreme cruelty
- Residency Requirements
  - Self-petitioner lived with abuser
  - Self-petitioner's current residence
- Good Moral Character (3 years prior)

*See INA § 204*



# Legal and Good Faith Marriage

- Legal Marriage
  - Validity determined by jurisdiction where marriage is performed or celebrated
    - Exception: violates public policy
  - Intended spouse
- *Primary purpose* for marriage cannot be to circumvent immigration laws. 8 C.F.R. § 204.2(c)(1)(ix).
  - KEY FACTOR is whether *intended* to establish a life together *at the time of marriage*.

# Special Considerations

- An applicant remains eligible to file a VAWA self-petition within 2 years of the following events:
  - Death of USC abuser
    - Does not apply to LPR abuser
  - Divorce
    - VAWA self-petitioner CANNOT remarry before filing VAWA self-petition
  - Deportation of LPR abuser where there is a connection between the deportation and the domestic violence

# Battery or Extreme Cruelty

- Broadly defined as including “any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.” 8 C.F.R. § 204.2(c)(2)(vi).
- “Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.” 8 C.F.R. § 204.2(c)(2)(vi).
- *See Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) for thorough legal analysis of what constitutes “extreme cruelty.”

# Good Moral Character

- Must establish good moral character for the three years preceding the filing of the self-petition.
- No bars to good moral character. See INA § 101(f) .
- Exception to good moral character bars. See INA § 204(a)(1)(c).
  - Waivable for purposes of admissibility or deportability; and
  - Act or conviction is connected to abuse.

# Standard of Proof

“Any credible evidence” standard applies to VAWA self-petitions. *8 C.F.R. § 204.2(c)(2)(i)*.

# Confidentiality Provisions

- **Section 384** of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 prohibits all DHS and DOJ employees from providing information about a self-petitioner to 3rd parties.
- **Section 384** similarly prohibits DHS from making any decisions about removability based solely on information provided by the abuser.

8 C.F.R. § 1367

# VAWA Benefits

- Deferred Action
- Employment Authorization
- Can include derivative, unmarried children (under 21 years)
  - Includes children outside the United States
- May be eligible to apply for adjustment of status (LPR status)

# VAWA Adjustment of Status (Form I-485)

## INA § 245(a)

- Approved VAWA self-petition
  - In some cases, can file simultaneously
- Current priority date or immediate relative of abuser
- Admissible
- Discretionary form of relief



# Grounds of Inadmissibility INA § 212(a)

- Health-related grounds
- Criminal and related grounds
- Security and related grounds
- Public charge
- Illegal entrants and immigration violators
- False claim to U.S. citizenship
- Persons previously removed
- Aliens unlawfully present

# Waivers for Grounds of Inadmissibility

- There are waivers available for several grounds of inadmissibility
- Most waivers require a showing of extreme hardship to a USC or LPR parent or spouse (in some cases, child)
- There are distinct waivers only available to VAWA self-petitions, some of which allow a self-petitioner to show hardship to herself and/or her child(ren)

# Preparing a VAWA Case

# Interviewing Your Client

- Find volunteer interpreter, if necessary
- Safety check
- Stress confidentiality
- Refer to counseling or other services, as needed
- Sign Release of Information and Retainer Agreement
- Build a relationship of trust
  - Physical and emotional space
  - Avoid legalese
- Explain domestic violence using Power and Control wheel
- Explain application process, fees/fee waivers and processing times
  - Review list of documents that will be needed for filing
- Initial meeting: learn client story, begin filling out application forms, make copies of documents
- Subsequent meetings: prepare affidavit, supplement documentary evidence, finalize forms

# Gathering Information

- Immigration history (A number, prior deportation, all entries, exits)
- Prior applications with USCIS
- Criminal history, including arrests or detentions by police or immigration officials
- Use of false immigration documents? If so, when and for what reason?
- How does the client know that the abuser is a USC or LPR?
- Did the client ever call the police or obtain an order of protection against the abuser?
- Was the abuser ever convicted for domestic violence or another similar offense?
- Is the client in counseling for domestic violence?
- Does client have any qualifying derivatives? (children in the United States or in home country)
- *Make no assumptions – ask questions!*

# Evidence: Affidavit

- **Should be in applicant's own voice**
  - It is acceptable for the client to write the affidavit in their own native language and have it translated
- **Client's domestic violence counselor can be a good resource for help in drafting affidavit**
- **Must address key issues**
  - Applicant's name, date of birth, and place of birth
  - Entry to the United States and any exits
  - Marriage to abuser (if spousal case), explaining how they met and why they married
  - Names, dates of birth, and places of birth for all children
  - Joint residence with abuser
  - Battery and/or extreme cruelty, providing specific examples in chronological order
  - Good moral character, explaining any and all arrests
- **Must be signed and notarized**

# Evidence – Cont'd

- **Identity of Self-Petitioner (and qualifying derivatives: children)**
  - Birth certificates
  - Marriage certificate to show any name change
- **Abuser's Immigration Status (USC or LPR)**
  - U.S. birth certificate
  - U.S. passport
  - LPR card (green card)
  - Application for Marriage License
  - Child's birth certificate, showing place of birth of abuser
  - Affidavit of client explaining how she knows that the abuser was LPR or USC
  - Notarized letters from family and friends
  - If abuser obtained status through USCIS (LPR or naturalized USC), submit request for USCIS to search its records

# Evidence – Cont'd

- **Good Faith Marriage (for abused spouses)**
  - Client Affidavit explaining how they met and why they married
  - Marriage Certificate
  - Divorce Certificates or Death Certificates for all prior marriages
  - Birth Certificates for children
  - Leases in both names
  - U.S. Income Taxes jointly filed in both names
  - Bills in both names
  - Bank account statements in both names
  - Photographs of the wedding
  - Notarized letters of family and friends
- **Joint Residence**
  - *See above*
  - Any correspondence addressed to both names at same address
  - Notarized letters from landlord, family, friends



# Evidence – Cont'd

- **Current Residence in the United States**
  - Utility Bill or other correspondence in client's name with U.S. address
  - Rent receipts
  - Photo identification with address
  - Notarized letters of family and friends
- **Good Moral Character**
  - Client Affidavit
  - Local police clearance letter or state-issued criminal background check for all places where the client has lived for six months or more during the three year period before filing the VAWA self-petition
  - If the client has been convicted of any crimes, certified criminal disposition for all arrests
  - Notarized letters of family and friends
  - School records for children

# Evidence – Cont'd

- **Battery and/or Extreme Cruelty**
  - Client Affidavit
  - Police Report(s)
  - Certified Disposition for all criminal cases of abuser
  - Order(s) of Protection
  - Medical Records
  - Letter from domestic violence counselor
  - Notarized letters of family and friends

# Filing Procedures for VAWA Self-Petitioners

## VAWA Self-Petition:

- Detailed, argumentative cover letter & index of documents
- G-28, Notice of Representation
- Form I-360 (self-petition) with evidence supporting all requirements

## Adjustment of Status Application (if applicable):

- Detailed, argumentative cover letter & index of documents
- G-28, Notice of Representation
- Form I-485 (adjustment application) – ONLY if eligible
  - Two passport photos if filing I-485
  - G-325A, Biographic Information
  - I-693, Medical Exam
  - I-864W, Affidavit of Support Exemption
  - I-912, Fee Waiver Request, if applicable
- Form I-765 (employment authorization based on pending adjustment application, otherwise, must wait until VAWA is approved)
  - Two passport photos if filing I-765

# Filing Fees

- Form I-360 (\$0)
- Form I-485 (\$1070, \$985 if under 14, and \$635 if under 14 and filing with parent)
- Form I-765 without adjustment (\$380) – this would ONLY be filed separate from an adjustment application AFTER the I-360 is approved
- All fees should be in form of money order and payable to “Department of Homeland Security”
- A fee waiver request can be included in the application using the Form I-912

# Filing Tips ...

- All foreign documents must be translated by a translator who certifies that he/she is competent in both languages.
- Two-hole punch at top of application packet and bind with metal prong fasteners or binder clip
  - DO NOT use spiral binding
- Do not use tabs or other exhibit markers. Use page numbers instead.
- Confirm that you are using the most recent version of USCIS forms; USCIS regularly updates their forms.
- Prepare VAWA and Adjustment applications (I-360, I-485/I-765) as separate packets.
- Write in large letters 1) the type of application, 2) VAWA, and 3) “with fee waiver request” (if applicable).
- Place all filing packages into one mailing envelope.
- Send via certified mail or overnight delivery.

# Where to File

Mail VAWA self-petition and  
all accompanying  
applications to:

USCIS

Vermont Service Center

**Attn: VAWA Unit**

75 Lower Welden Street

St. Albans, VT 05479-0001

# VAWA Case Processing

# After Filing the Self-Petition

- You will receive Form I-797, Notice of Action, indicating Receipt of your filing in approximately 2 weeks.
- You will receive Form I-797, Notice of Action, indicating establishment of a *prima facie* case.
- Pursuant to current processing times, you should receive a decision within one year. Processing times are regularly updated at [www.uscis.gov](http://www.uscis.gov).



# Prima Facie Notice

- It is NOT an approval notice
- It may be used to obtain public benefits

**U.S. Department of Justice**  
**Bureau of Citizenship and Immigration Services**

<b>RECEIPT NUMBER</b> EAC-99-000-99999	<b>NOTICE DATE</b> February 21, 1999	<b>PAGE</b> 1 of 1
<b>CASE TYPE</b> I-360 Petition for Amerasian, Widow(er), or Special Immigrant	<b>RECEIPT DATE</b> March 2, 1998	
<b>Petitioner</b> Ochoa, Graciela	<b>FILE NUMBER</b> A76 000 999	

Ochoa, Graciela Attn: Sherizaan Minwalla ESQ National Immigrant Justice Center 200 S. LaSalle, Suite 1818	Self-Petitioning Spouse of U.S.C. or L.P.R. <b>ESTABLISHMENT OF PRIMA FACE CASE</b>
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# Outcomes of Self-Petition

- Request for Evidence (RFE)
- Approval
- Notice of Intent to Deny (NOID)
- Denial

*Please contact NIJC when receiving any of the above notices.*

# I-360 Approval and Deferred Action

- Deferred Action issued with I-360 approval
  - Derivatives must separately request Deferred Action after I-360 approval
- Deferred Action initially valid for 15 months and renewable in 12-month increments
- Low priority for removal from the United States
- Legal basis for employment authorization
- *If I-485 was concurrently filed with I-360, application will be transferred to local district office for scheduling of interview and adjudication*

# Employment Authorization (EAD)

- VAWA self-petitioners are eligible for an EAD once the I-360 is approved OR upon filing an I-485.
- 8 C.F.R. § 274a.12:
  - (c)(9) – pending application for adjustment of status (Form I-485)
  - (c)(14) - approved deferred action status
  - (c)(31) – approved VAWA self-petition
- With an EAD, foreign national can apply for a social security number to work lawfully.
- With a social security number, the foreign national may qualify for an Illinois state identification document.

# Adjustment of Status Interview

- Purpose – To adjudicate I-485 and determine admissibility
  - Officer does not have authority to re-adjudicate VAWA self-petition or question validity of decision
- What to bring
  - Original documents with translations (birth certificates, marriage certificates)
  - Passport or Form I-94 (only if client has these)
  - Government issued form of photo identification
  - All prior work permits
  - Translator (non-relative, age 18 or older, photo ID)

# Sample VAWA Case #1

Maria is a 32-year-old Mexican citizen who entered the United States without inspection in 1997 with her then 7-year old son, who was born in Mexico. She has not left the United States since entering. In 2002, Maria married Alberto who is an LPR, and together they have two U.S. citizen children. Maria's husband physically and verbally abused her throughout their marriage. She frequently had bruises from the violence, but never received medical treatment. Alberto threatened to call immigration on Maria and never filed any applications for her. Maria never called the police because she was scared. In December of 2009, Alberto hit her son and Maria fled with her children to a domestic violence shelter. She now has an order of protection and is seeking a divorce.

# Sample VAWA Case #1

## Considerations

- Legal Marriage to abusive LPR
  - Previous relationship in Mexico – married?
- Battery and/or Extreme Cruelty
  - Threatened to call immigration
  - Never filed any immigration applications
  - Order of Protection
  - Fled to domestic violence shelter
  - Maria has never called the police
  - Physical abuse: Maria and son
- Divorce – Must file VAWA self-petition within 2 years of divorce and cannot remarry until VAWA is approved
- Derivative child – as a derivative, must be under 21 when VAWA self-petition is filed
  - Eligible for his own VAWA self-petition?
- Not immediately eligible for adjustment of status

# Sample VAWA Case #2

Miguel met his U.S. citizen wife, Julie, at work. Miguel and Julie dated for two years and then married when Julie became pregnant with their son. After their marriage, Julie began drinking and abusing drugs. She calls Miguel names, makes fun of his English, and controls all their finances. Miguel has to ask Julie for money whenever he needs it. He has a conviction for shoplifting because Julie would not give him any money for Christmas gifts for their son and he stole a small gift for their son. On one occasion, Julie became very violent toward Miguel hitting him and then locking him out of the house. Miguel is very ashamed and has never called the police. Julie, however, has called the police against Miguel and made false accusations that he hit her. She did not press charges. Miguel still lives with Julie because she threatened to take their son if he leaves her. Miguel recently learned that Julie was married previously and did not divorce her first husband.



# Sample VAWA Case #2

## Considerations

- Legal Marriage
  - Intended Spouse
- Battery and/or Extreme Cruelty
  - Calls him names
  - Makes fun of his English
  - Controls money; makes him ask her for money
  - Physical abuse
  - Threats to take son
  - Locked him out of the house
  - Julie called the police against Miguel
- Concurrent application for adjustment of status
- Safety concerns and confidentiality

# Reference Sources and Contact Information

# Laws and Reference Sources

- Immigration & Nationality Act (Title 8 of U.S. Code)
- Title 8 of Code of Federal Regulations
- USCIS Policy Memoranda and Guidance
- Board of Immigration Appeals and Federal Circuit Case Law
- Kurzban's Immigration Law Sourcebook
- USCIS website ([www.uscis.gov](http://www.uscis.gov))
- American Immigration Lawyers Association (AILA), [www.aila.org](http://www.aila.org)
- Immigrant Legal Resource Center, [www.ilrc.org](http://www.ilrc.org)
- National Immigration Project, [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)
- Asista, [www.asistahelp.org](http://www.asistahelp.org)
- NIJC Online Pro Bono Manuals and Webcasts ([www.immigrantlegaldefense.org](http://www.immigrantlegaldefense.org)) under "Attorney Resources"

# Other Resources

- Vermont Service Center (for representatives only):
  - (802) 527-4888
  - [hotlinefollowup1360.vsc@dhs.gov](mailto:hotlinefollowup1360.vsc@dhs.gov)
  
- Chicago Domestic Violence Helpline (for counseling referrals): (877) 863-6338
- Chicago Abused Women Coalition (for counseling referrals): 773-278-4566
- National Domestic Violence Helpline: (800) 799-7233 or [www.ndvh.org](http://www.ndvh.org)
  
- Immigration Court: (800) 898-7180

# NIJC Staff Contacts

**Natalie Maust, VAWA/U Visa Pro Bono Project Accredited Representative  
(case assignment requests and case questions)  
nmaust@heartlandalliance.org or 312-660-1318**

**Trisha Teofilo, Legal Supervisor (filing review)  
tteofilo@heartlandalliance.org or 312-660-1304**

# Contact NIJC

National Immigrant Justice Center  
208 South La Salle Street, Suite 1818  
Chicago, Illinois 60604  
(312) 660-1370

[www.immigrantjustice.org](http://www.immigrantjustice.org)

Thank you to Mayer Brown LLP for hosting this training and providing the materials.

