

Clearinghouse REVIEW

January–February 2007
Volume 40, Numbers 9–10

Journal of
Poverty Law
and Policy

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The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims

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Sonia, an undocumented immigrant from Honduras, lived in the United States with her extended family members. She met Jose, another immigrant from Honduras, through family friends. She saw Jose occasionally at church or community functions but did not think much of him. Jose was a friend of Sonia's cousin-in-law. Sometimes Jose would comment and say that Sonia was pretty, but Sonia was not interested in Jose because she had a boyfriend back in her home country. One day Sonia was alone in her apartment. Her cousin-in-law had mentioned that Jose would be stopping by to pick up some compact discs. When Jose came over, he again complimented Sonia and made her feel very uncomfortable. Jose then tried to touch Sonia and kiss her. When Sonia refused, Jose grabbed her and raped her. Sonia was devastated and ashamed. She did not know what to do. Her cousin Beatrice later came home and Sonia told her what happened. Beatrice took Sonia to the hospital, and the hospital referred her to the local sexual assault center.¹

With support from sexual assault victim advocates, Sonia cooperated with prosecutors and police in Jose's prosecution for rape. Based on her cooperation and the substantial harm caused to her by the rape, Sonia qualified for protection from deportation under the "U visa" crime victim visa provisions included in the 2000 reauthorization of the Violence Against Women Act (VAWA).² However, when Sonia sought help from a legal aid program funded by the Legal Services Corporation (LSC), she was turned away because of LSC restrictions on representation of immigrants.

Before the 2005 reauthorization of VAWA took effect in January 2006, victims such as Sonia were too often left without any access to legal representation and without recourse or protection against their abusers. The reauthorized law now removes restrictions and ensures that legal services may be provided to all domestic violence, sexual assault, trafficking, and other crime victims regardless of their immigration or marital status.

What Is VAWA?

The Violence Against Women Act passed by Congress in 1994 included specific provisions to help battered immigrants escape their abusive U.S. citizen or lawful permanent resident spouses by allowing them to "self-petition" for immigration

¹This story and the others in this article are taken from LEGAL MOMENTUM, ACCESS TO LEGAL SERVICES FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND TRAFFICKING (2005).

²The U visa is an immigration remedy available to victims of certain types of violent crime. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533 (2000); see also 8 U.S.C. § 1101(a)(15)(U) (2000).

status. Understanding that the category of immigrant victims helped by VAWA was too limited, Congress expanded this relief in the reauthorization of VAWA in 2000 to help an additional class of immigrant victims of domestic violence not married to U.S. citizen or lawful permanent residents and to trafficking, rape, sexual assault, child abuse, and other violent crime victims who seek to help investigations or prosecutions of criminal activity.³

The Act's unequivocal intent was to provide immigrant victims access to safety and assistance. However, Congress in 1996 severely restricted the ability LSC-funded programs to serve immigrants, including many victims of domestic violence, sexual assault, child abuse, trafficking, and other crimes.⁴ Such programs were not permitted to use any of their funds, whether from LSC or other sources, to serve certain categories of immigrants.⁵

In response, Sen. Edward M. Kennedy secured passage of an amendment allowing some immigrant domestic violence victims an exception to the prohibition on serving anyone not a citizen or lawful permanent resident.⁶ Under the "Kennedy Amendment," LSC-funded organizations were able to use non-LSC funds to represent domestic vio-

lence victims regardless of immigration status if the abuse was perpetrated by a spouse, parent, or member of the spouse's or parent's family residing in the same household.⁷ While this amendment was beneficial to some domestic violence victims, it carved out a very narrow exception to the LSC restrictions and left many victims of violence trapped in horrifyingly abusive situations. Until 2006 these restrictions meant that LSC-funded programs were turning away battery, extreme cruelty, domestic violence, sexual assault, or other crime victims eligible for U visa immigration relief when they were undocumented or not married to an abuser.

Who Is Eligible Now?

The 2005 reauthorization expands the category of immigrant victims eligible for LSC-funded services and lifts all funding restrictions limiting representation for many immigrant crime victims.⁸ Furthering VAWA's original intent, the reauthorization opens up the categories of immigrants that LSC-funded programs may serve by including, regardless of marital status, all victims of battery, extreme cruelty, domestic violence, sexual assault, or crimes listed under the U visa.⁹ More important, the new law removes restrictions and allows programs

³See Victims of Trafficking and Violence Protection Act of 2000 § 1201, 114 Stat. at 1504 (codified at 42 U.S.C. § 3796gg-6 (2000)).

⁴See 45 C.F.R. §§ 1626.1–12 (2005).

⁵See Section 1626.5 for aliens eligible for Legal Services Corporation (LSC) services. All categories of immigrants not listed under this section were excluded from LSC services. These categories include, but are not limited to, individuals granted temporary protected status; asylum applicants; H-2B temporary nonagricultural workers, brought here by their employers; aliens who had not filed for permanent residence but who were the spouses, parents, or unmarried children under 21 of U.S. citizens; individuals on temporary visas; undocumented persons; and aliens in exclusion or deportation proceedings. H-2A temporary workers, many of whom are essential laborers in orchards and vegetable farms and are brought here by their employers were limited to receiving federally funded legal assistance only on matters related to their employment contracts.

⁶Sen. Edward M. Kennedy, Address Before the Senate Committee on Appropriations (June 26, 1996) (transcript on file with Leslye E. Orloff); see also Leslye E. Orloff et al., *Opening a Door to Help: Legal Services Programs' Key Role in Representing Battered Immigrant Women and Children*, 37 CLEARINGHOUSE REVIEW 36–37 (May–June 2003).

⁷45 C.F.R. § 1626.4.

⁸See Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 104, 119 Stat. 2960, 2978 (2006).

⁹See 8 U.S.C. § 1101(a)(15)(U)(iii). The enumerated crimes include rape, kidnapping, torture, abduction, trafficking, unlawful criminal restraint, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, and slave trade, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes or any similar violation of federal, state, or local criminal law. Also, U visa relief is available to victims even if the criminal case is ultimately not prosecuted or if a conviction is not obtained. *Id.* § 1101(a)(15)(U)(i)(III).

to use either LSC or non-LSC funds to serve immigrant victims who were ineligible under the old restrictions.¹⁰

Besides serving victims who fall within the definition set forth in the Kennedy Amendment, LSC-funded programs may now offer assistance to the following categories of immigrants:

- all victims of domestic violence, including those in nonmarital relationships;
- victims of same-sex partner violence;
- victims of sexual violence in nonintimate relationships;
- child victims of sexual violence whether perpetrated by a family member or by a stranger;
- victims of female genital mutilation;
- victims of trafficking ineligible for T visa protection;
- parents of victims of battery, extreme cruelty, sexual assault, trafficking, or crimes listed under the U visa descriptions; and
- all U visa qualified immigrants and many of their family members.¹¹

Case Studies. Miguel and Maria, both undocumented immigrants from Ecuador, lived together for almost five years but never married. They had one child, Beatrice. Over the course of their life together, Miguel severely abused Maria. After many years, Maria decided to leave Miguel when he injured her in a violent attack that included punching her in the eye and twisting her arm. Maria testified at Miguel’s criminal prosecution trial. Aside from receiving representation in her protection order hearing, Maria is now eligible to apply for U visa interim relief with assistance from an

LSC-funded program in her community because she is a cooperating witness in Miguel’s criminal domestic violence case even though she is undocumented.¹²

Farida is an undocumented elderly woman who moved to Maryland from Pakistan. One day Farida was on her way to the grocery store when a stranger approached her, dragged her into the woods, and brutally raped her. Farida’s injuries from the rape were so severe that she required three days’ hospitalization. The police continue to investigate the incident, but to date they have not been able to locate Farida’s rapist. Farida continues to cooperate with the police by giving information crucial to the rape investigation and apprehension of the rape perpetrator. Because of the changes in VAWA, an LSC-funded organization may now represent Farida in her U visa immigration case, notwithstanding that she is an undocumented immigrant.

What Is the Scope of the Representation?

Any immigrant who has faced or is facing violence in the United States, regardless of one’s own or one’s abuser’s status, may receive legal aid from LSC-funded programs as long as the services are *directly related* to relief from or prevention of abuse.¹³ This means that, although programs may assist victims in applying for immigration relief, they are not limited to such representation. In fact, these programs should assist immigrant crime victims with a variety of legal services that can help them overcome the effects of the crime and move on with their lives. “Directly related” can be a confusing term that many programs may interpret narrowly, but LSC regulations state that “directly related” means any legal assistance that will assist victims

¹⁰Violence Against Women and Department of Justice Reauthorization Act of 2005 § 104(a)(1)(A), 119 Stat. at 2979.

¹¹This list is nonexhaustive and meant only as examples. For a full analysis of eligibility under the reauthorized Violence Against Women Act, see Letter from Helaine M. Barnett, President, Legal Services Corporation, to All LSC Program Directors (Feb. 26, 2006), available at www.lsc.gov/pdfs/progltr06-2.pdf. For information on eligibility under the Kennedy Amendment, see Orloff et al., *supra* note 6.

¹²For more information on immigration relief available to victims of domestic violence, sexual assault, trafficking, or other violent crimes, contact Legal Momentum’s Immigrant Women Program at iwp@legalmomentum.org or 202.326.0040.

¹³See Barnett, *supra* note 11.

in escaping from abusive relationships, ameliorate the effects of the abuse, or protect against future abuse.¹⁴

The preamble to the LSC regulations explicitly states that “directly related” should be read broadly and may include representation on the following:

- obtaining protection orders;
- divorce;
- child custody;
- termination of parental rights;
- child and spousal support;
- housing;
- maintaining health insurance under the abuser’s policy;
- accessing public benefits;
- small claims;
- employment issues;
- abuse and neglect proceedings;
- juvenile proceedings; and
- contempt actions.¹⁵

Hence LSC programs may provide victims with a wide variety of legal services as long as the program can explain how the services are needed to escape, address the effects of, or prevent abuse.¹⁶ Furthermore, programs can use both LSC and non-LSC funding to provide a full range of assistance to such victims.¹⁷ Understanding the breadth of allowable services can help LSC-funded program staff provide victims with all the necessary legal assistance to which they are entitled.

For example, if an immigrant woman comes to an LSC program because of domestic violence that has her boyfriend showing up at her place of employment resulting in threats of job termination, VAWA now allows an LSC-funded ser-

vice provider to undertake employment-related legal work to help the victim retain her employment, obtain a transfer or reinstatement, or obtain back pay. LSC-funded lawyers may also defend a contempt charge arising from a failure to comply with a small claims judgment that the abuser obtained against her. Victims may receive representation in eviction actions when abusers fail to pay rent and may receive assistance in finding housing or fighting denial of housing needed for victims escaping abuse.

Case Studies. After Miguel was convicted of the domestic abuse charge, Maria told Miguel that she did not want his family to see Beatrice. Miguel was enraged. He hired an expensive lawyer to fight for custody of Beatrice through his mother and sister. Miguel’s lawyer is trying to convince the court that Maria is an unfit mother and that Beatrice’s best interests are served by being with Miguel’s sister and mother. Maria is distraught at the thought of her child being with her abuser’s family and turns for assistance on her custody case to the same LSC program that helped her get her U visa. Although Miguel is in jail, his emotional abuse of Maria continues through his family. Because obtaining custody of Beatrice will help Maria sever ties with Miguel and further her escape of the abusive situation, an LSC program may represent her in her custody case.

After Farida cooperated with the police in the investigation of the crime perpetrated against her, she started trying to put her life back together. One day Farida received a bill from the hospital where she recuperated. The bill stated that the hospital was charging Farida with the cost of her three-day recuperation. Farida has very little money and cannot afford to pay the bill. The stress of figuring out how to pay the bill has taken a huge toll on Farida and is complicating her recovery from the rape. Farida

¹⁴45 C.F.R. § 1626.2(g).

¹⁵Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409–11 (April 21, 1997) (to be codified at 45 C.F.R. § 1626).

¹⁶See Barnett, *supra* note 11.

¹⁷*Id.*

returns to the LSC program assisting her in filing her U visa and asks for help. The LSC program may represent Farida in fighting the hospital charge because the representation would help further ameliorate the effects of the rape.

Are Programs Required to Ask About Immigration Status?

The Kennedy Amendment, LSC regulations, and LSC program letter make clear that programs are not allowed to ask immigrant crime victims about immigration status. In fact, the preamble to the LSC regulations states that “the immigration status of Kennedy Amendment clients is essentially irrelevant, because they may be served with non-LSC funds regardless of citizenship or alien status.”¹⁸ Further, the LSC program letter published in February 2006 states that the reauthorization of VAWA is an extension of prior legal authority and that programs serving clients eligible for legal assistance related to domestic violence, sexual assault, trafficking, or any crimes listed under the U visa are not required to ask about or record the immigration status of such clients.¹⁹

As a practical consideration, intake procedures at LSC-funded programs should be changed so that intake workers first determine whether applicants are victims of domestic violence, sexual assault, trafficking, or any other violent crime. In order to establish a modicum of trust, intake interviewers must let potential clients know that their stories are confidential. If the applicant is a crime victim, no questions about immigration status are to be asked. Because victims are scared away, asking questions about immigration status undermines victims’ access to the legal services that VAWA sought to open up.

The Victims of Trafficking and Violence Protection Act passed in 2000 allows LSC-funded programs to offer legal assistance to victims of trafficking without regard to their immigration status.²⁰ An LSC program letter published and disseminated to LSC programs in 2005 instructs programs that they may represent victims of trafficking and their families in a variety of legal scenarios.²¹ The 2005 reauthorization of VAWA does not affect LSC funding for trafficking victims, and all funds that were available for trafficking victims are still available.²²



LSC-funded programs may now use both LSC and non-LSC dollars to represent immigrant victims of domestic violence, sexual assault, trafficking, and other violent crimes in a broad range of legal cases that will help victims escape, survive, and recover from the effects of abuse. Assistance is permissible in civil as well as immigration cases. LSC programs should inform women and victims in immigrant communities about the new law. LSC programs should interrelate with immigrant community-based programs that have proven track records of trust with immigrant women. Immigrant community-based organizations and LSC programs should collaborate on culturally competent services, reach needy victims in immigrant communities, and include legal assistance beyond protection orders and immigration matters. Many more such providers will enhance the safety of immigrant victims and their children and communities.

Author’s Acknowledgments

I would like to thank Lacy Carra of the University of Michigan Law School and Angela Eastman of the Vermont Law School for their contributions to this article.

¹⁸62 Fed. Reg. at 19411.

¹⁹Barnett, *supra* note 11.

²⁰Victims of Trafficking and Violence Protection Act of 2000 § 107(b)(1)(B), 114 Stat. 1464, 1475 (codified at 42 U.S.C. § 7105(b)(1) (2000)).

²¹Letter from Helaine M. Barnett, President, Legal Services Corporation, to All LSC Program Directors (Oct. 6, 2005), available at www.lsc.gov/program/pl/pl2005-2.pdf.

²²Violence Against Women and Department of Justice Reauthorization Act of 2005 § 104(b), 119 Stat. 2960, 2979.

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