

# Facilitating Access to TANF for Battered Immigrants

A Pilot Training Manual for TANF Eligibility Workers

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## Preface

Although the Personal Responsibility and Work Opportunity Act of 1996 dramatically reduced access to public benefits for most immigrants, the Illegal Immigration Reform and Immigrant Responsibility Act passed in that same year actually expanded access to the welfare safety net for many battered immigrant women and their children. Battered immigrants who can prove that they are “qualified aliens” were granted access to federal public benefits and certain federal means tested public benefits. Qualified alien battered immigrants were also exempted from deeming requirements. Another significant change was that many of the battered immigrants who were granted access to public benefits as qualified aliens are undocumented. They were granted public benefits access despite the fact that they have not legal immigration status in the United States because they are the abused spouses and children of U.S. citizens and lawful permanent residents.

This legislation granted access to an array of federal and state funded public benefits, including federal means tested public benefits to qualified alien battered immigrants. The federal means tested public benefits that qualified alien battered immigrants can access include for example: Temporary Aid to Needy Families (TANF), Medicaid, State Child Health Insurance Program (SCHIP), and Public Housing. Food Stamps and SSI will be less accessible to many qualified alien battered immigrants as these programs have additional immigrant eligibility requirements that go beyond those required to prove that an applicant is a qualified alien. In addition, the array of federal public benefits available to serve an individual battered immigrant woman and/or her children is generally supplemented by an array of state-funded public benefits. To help eligibility workers identify which state funded programs may be available to help battered immigrants we are including in the addendum to this manual a chart of the benefits available in various states that immigrants can access.

The goal of this training manual is to provide a background for TANF eligibility workers on qualified alien battered immigrant access to TANF. It will also provide direction to TANF workers on how to assess battered immigrant eligibility for TANF following the Guidance issued by the Attorney General of the United States setting out a four step process for making eligibility determinations in cases of battered immigrants and other immigrants applying for public benefits.

This pilot training manual will focus only on TANF eligibility for battered immigrants. Addressing each of the major benefits programs (e.g. Medicaid, SCHIP, Food Stamps, Public Housing) is beyond the scope of this training manual, and is an endeavor that we hope to undertake in the future once this pilot TANF training manual has been field tested, updated, revised and published in its final form. However, because battered immigrant women and children who qualify for TANF will also likely qualify for other federal public benefits, including other federal means tested public benefits, we will discuss some of those programs basic requirements at appropriate points in this manual.

Legal Momentum received a grant from the U.S. Department of Health and Human Services to develop this pilot training manual. This manual is intended to be used by State public benefits department trainers, battered women’s advocates and others to train TANF

eligibility workers on the approach set out by the Attorney General of the United States for processing TANF applications submitted by battered immigrant women and/or their children who are qualified aliens eligible to receive TANF funding. To facilitate access to the information contained in each chapter, we have included as the first page of each chapter a one page summary outline of the material contained therein. Further, because we hope that this training manual will also serve as a reference to which workers can turn for more detailed answers as questions arise in cases, we have included a detailed index of topics covered.

We would like to specially thank the following people for taking the time to review drafts of this pilot training manual. Each provided us with direction, detailed comments, and assistance in editing this manual: David Neilson, Senior Policy Analyst at The Office of The Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services, Dan Lesser, Senior Staff Attorney at The National Center on Poverty Law and Dinah Wiley, Policy Analyst, at The National Immigration Law Center. Key issues identified by our reviewers were the need to expand this work to cover benefits access beyond TANF and the need to have this pilot manual tested in the field and edited or expanded based on field testing. We would also like to thank Katherine Grainger and Wayne Krause.

This is a pilot training manual that we hope you will use to train TANF workers in your state. We encourage both trainers and TANF workers using this manual to provide feedback to us about the manual's usefulness. We are particularly interested in your suggestions for improvements, corrections of errors and identification of omissions that we should address when we publish the final version. Please forward your comments to Leslye Orloff, Immigrant Women Program, Legal Momentum, 1101 14<sup>th</sup> Street, Suite 300, N.W., Washington, D.C., 20005 or e-mail us at: [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).

# CHAPTER 1 – OVERVIEW OF DOMESTIC VIOLENCE, IMMIGRATION, AND SOCIAL WELFARE DYNAMICS

## Chapter Summary

This chapter reviews the dynamics of domestic violence as experienced by immigrant women and their children. Understanding these dynamics will help TANF workers in several ways:

- Battered immigrant women’s experience with domestic violence and the obstacles they encounter seeking help to stop the violence will effect the type of access they have and evidence to prove their eligibility for welfare benefits.
- TANF workers may encounter battered immigrants who come seeking benefits for their children, however, because the TANF worker understands the dynamics of the domestic violence the battered immigrant is experiencing and battered immigrants legal rights, the worker can refer the battered immigrant to a local service provider who can help that battered immigrant apply for immigration and welfare benefits for which she personally qualifies.
- TANF workers can develop collaborative relationships with social service providers and lawyers working with immigrant communities and domestic violence issues that can help the worker better serve battered immigrant women and their children.

This chapter reviews:

- 1) The dynamics of domestic violence for immigrant women including patterns of:
  - Physical abuse
  - Sexual abuse
  - Psychological abuse
- 2) The definition of extreme cruelty which qualifies as domestic violence under immigration and welfare laws
- 3) The barriers faced by battered immigrant women seeking help that will effect how they will need to go about collecting evidence to establish their eligibility for benefits.
- 4) How collaboration with local community based organizations serving battered women and immigrants can help TANF eligibility workers.

# Chapter 1 – Overview of Domestic Violence, Immigration, and Social Welfare Dynamics

## Introduction

Battered immigrant women are susceptible to a unique set of social, cultural, and economic barriers that leave them caught in a complex web of three intersecting public policies-welfare, domestic violence and immigration.<sup>1</sup> First, battered immigrant women are victims of physical abuse and emotional abuse perpetrated by spouses, parents, intimate partners and other family members. Second, most battered immigrants are women of color and experience social and economic barriers brought on by prevalent class, ethnic and racial biases. Last, many battered immigrant women are new-immigrants and must overcome language, economic, and cultural barriers, as well as become accustomed to life in the United States and Americans' social and legal practices.<sup>2</sup>

In order to effectively provide safe, easily accessible services to battered immigrants, public assistance providers can be more effective if they understand the deep-rooted obstacles experienced daily by battered immigrant women. To provide effective services and support, welfare workers must become familiar with the laws, regulations, policies and options legally available to battered immigrants and their legal rights to access public benefits. This includes particularly the Attorney General's Guidance, which outlines specific policy procedures for interviewing battered immigrant women applying for TANF and other welfare programs.<sup>3</sup>

## Battered Immigrant Women's Experiences

Immigrant women arrive in this country alone or with their spouses with hopes of creating a better life for themselves and their children.<sup>4</sup> Many flee political repression, severe poverty, domestic violence, unemployment, or war.<sup>5</sup> In their home countries, they may have faced rape or torture for their political beliefs. They may have been forced into prostitution, state-sponsored sterilization programs, or may have been subjected to female

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<sup>1</sup> Emily Goldfarb. Caught at the Public Policy Crossroads: The Impact of Welfare Reform on Battered Immigrant Women. Family Violence Prevention Fund. San Francisco. 1999: 2.

<sup>2</sup> Sujata B. Barai. Negotiating the Intersection: How and Why Provisions for Battered Immigrant Women Have Become a Part of U.S. Immigration Policy. Senior Thesis, Princeton University. Princeton, NJ. 1998: 30.

<sup>3</sup> The Attorney General's Guidance and verification regulations provide a road map to help public benefits workers approach eligibility determinations in cases of immigrant applicants in a manner that ensures that each applicant can fully access the federal and states benefits they are legally entitled to receive. Many benefits remain open to immigrant applicants who not "qualified alien". Other benefits including TABF are only open to "qualified aliens". Further, questions about immigration status are only required to be asked for certain benefits programs and should only be asked once eligibility has been otherwise determined. The Attorney General's Guidance sets forth a four step procedure for determining immigrant eligibility. This manual, in Chapter 3 will walk TANF workers through that procedure in cases of battered immigrant applicants.

<sup>4</sup> Fix, Michael & Passel, Jeffrey S. Immigration and Immigrants: Setting the Record Straight. The Urban Institute. Washington, D.C. 1994.

<sup>5</sup> Hogeland, Chris & Rosen, Karen. Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity. Coalition for Immigrant and Refugee Rights and Services. 1991: 2-4.

genital mutilation or domestic violence. Consequently, they may bear physical and psychological scars from this abuse and may still be fighting the effects of post-traumatic stress disorder (PTSD).<sup>6</sup>

Crossing the U.S. border can be a harrowing experience as women and children risk being robbed, raped or detained. Once they are in the United States, they may experience discrimination,<sup>7</sup> unemployment, and isolation. Many may fear being caught by the Immigration and Naturalization Services (INS) or being turned into the INS by their abusers.<sup>8</sup> Immigrant women may also have difficulty obtaining employment in the United States because they lack basic job or language skills.<sup>9</sup> If they are able to find work, they may face low wages,<sup>10</sup> sexual harassment, dangerous working conditions, or long hours particularly if they are working “under the table.” For some, their immigration status prevents them from seeking the protection of U.S. labor laws. Despite these facts, immigrant women often work hard, juggling several jobs. In addition to supporting families here, many are under considerable pressure to work hard and send money to support their children and other family members back in their home countries.<sup>11</sup>

If immigrant women are married to military personnel or met and married their spouses through an international matchmaking organization, they may be extremely isolated from their communities and families, unable to access traditional sources of support and not have the linguistic access to shelter and other supportive services. They may be further

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<sup>6</sup> Dutton, Mary Ann. “Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome,” *Hofstra Law Review*. Vol. 21 1993: 1191-1241.

<sup>7</sup> The passage of Proposition 187 in California on November 8, 1994 by 59% (As reported in: Bradsher, Keith. “The 1994 Elections: State by State,” *New York Times*, November 10, 1994, B11) of voters serves as an example of the prominence of discriminatory laws directed at new-immigrants. This proposition required all public entities, including law enforcement officers, health care providers, and school officials, to deny public services, and notify the State Director of Social Services, the Attorney General of California and the IRS if an public service applicant was determined or suspected to be an undocumented immigrant. (Proposition 187 text).

<sup>8</sup> “71% of citizen or resident batterers have failed to file immigration petitions on behalf of their undocumented spouses.” Orloff, Leslye & Dave, Nomi. “Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area,” *Poverty & Race*. Vol. 6, No. 4. PRRAC. 1997: 9. Supported by PRRAC funded survey findings gathered from interviews of Latina immigrant women in the District of Columbia area, conducted by Leslye Orloff, in conjunction with Ayuda, Inc. in Washington D.C. between 1992 and 1995. Data from this survey is currently being analyzed and published by Dr. Mary Ann Dutton and Dr. Giselle Haas; Leslye Orloff, Jessica Cundari and Erika Esterbrook *New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i)*. National Network on Behalf of Battered Immigrant Women. Ayuda. 1998.

<sup>9</sup> “Inability to read or write in their native language coupled with limited English skills poses insurmountable barriers to their ability to access services or maintain employment.” Based on data collected by Equal Rights Advocates from survey findings of 75 Mexican-American women and 75 Vietnamese-American women of Santa Clara, CA who receive welfare benefits and participate in the CalWORKS welfare-to-work program. Ng, Doris Y. *From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women*. Equal Rights Advocates. San Fransisco. 1999: 7

<sup>10</sup> Dutton, Mary Ann, Orloff, Leslye E. & Aguilar Hass, Giselle. “Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications.” *Georgetown Journal on Poverty Law & Policy*. Vol. VII, No.2. August 2000.

<sup>11</sup> Hogeland, Chris & Rosen, Karen. *Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity*. Coalition for Immigrant and Refugee Rights and Services. 1991: 2-4.

stigmatized by the use of the term “mail order bride.”<sup>12</sup> Farm worker migrant women live a very transient lifestyle and are often even more isolated than other immigrant women. They are generally paid significantly less than their male counterparts, work very long hours in hazardous conditions, and are often forced to turn over their paychecks to their husbands or partners.<sup>13</sup> These pressures result in very difficult lives for immigrant women, particularly those who are undocumented. If an immigrant woman is trapped in an abusive relationship, these factors make the flight from violence even more problematic.<sup>14</sup> As a result, battered immigrant women are among the most marginalized victims of domestic violence in this country.

## Why Should Public Assistance Providers Learn About Domestic Violence?

Recent studies have found that the majority of welfare recipients are past or current victims of domestic violence.<sup>15</sup> Since battered women have special needs and are often at risk of ongoing danger, welfare workers who are uninformed about domestic violence issues may endanger the safety of victims and their children or unknowingly contribute to a society that has historically condoned the abuse of intimate partners.<sup>16</sup> Public benefits staff will feel more comfortable with screening for domestic violence and assisting those who are identified as battered immigrants if they increase their understanding about what domestic violence is, who perpetrates domestic violence, the special domestic violence dynamics when immigrants are domestic violence victims and the special protections available to battered immigrant women.<sup>17</sup> To provide thorough, accurate assistance to clients who are known or suspected to be victims of domestic violence, public assistance providers should be aware of the dynamics of domestic violence, as well as the legal protections and public services for which battered women, including battered immigrant women qualify.<sup>18</sup> By taking part in training and education on domestic violence and special

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<sup>12</sup> “Mail Order Brides” are immigrant women who met their fiancés through international matchmaking organizations.

<sup>13</sup> Orloff, Leslye E. & Rodriguez, Rachel. Barriers to Domestic Violence Relief and Full Faith and Credit for Immigrant and Migrant Battered Women. Migrant Clinicians Network. 1997: 3.

<sup>14</sup> Catherine F. Klein & Leslye E. Orloff, *Providing Protection for Battered Women: An Analysis of Statutes and Case Law* 21 Hofstra L.R. 801, 1018-19 (1993).

<sup>15</sup> 42 of the 75 Equal Rights Advocates 1998 study participants who are current welfare recipients reported experiencing domestic violence in the past or currently.

Ng, Doris Y. From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women. Equal Rights Advocates. San Francisco. 1999: 18

The JOBS NEW DIRECTION-Goodwill Industries Community Services of Colorado Springs, which provides welfare-to-work services, stated that approximately 50% of program participants each year are current domestic violence victims. The Chicago Commons West Humboldt Employment Training Center (ETC) which provides welfare-to-work and education services, reported that 56% of participants in 1994-1995 were current victims of domestic violence and 26% were past victims of domestic violence. Raphael, Jody. Prisoners of Abuse: Domestic Violence and Welfare Receipt. Taylor Institute. Chicago. 1996: 11-14.

<sup>16</sup> For example, in Maryland a victim was killed by her intimate partner after a judge refused to grant her a civil protection order. See Civil Protection Order Transcript, Petitioner Helen Jenkins, District Court of Maryland, Prince George’s County, Maryland, 1993.

<sup>17</sup> Forthcoming ABA Manual – Training Manual of Battered Immigrant Women Provisions Under the Violence Against Women Act (2000).

<sup>18</sup> “Recognizing that a woman may be battered requires an understanding of the range of violence and abuse to which she may have been exposed, the strategies she may have used to protect herself and her



issues for immigrant women, public assistance staff can learn why the many obstacles faced by battered immigrant women call for extensive legal protections and access to public benefits.

## What is Domestic Violence?

Domestic Violence is a pattern of behavior that one intimate partner or spouse exerts over another as a means of control.<sup>19</sup> Domestic violence may include physical violence, coercion, threats, intimidation, isolation, and emotional, sexual or economic abuse.<sup>20</sup> Domestic violence is not defined solely by specific physical acts, but by a combination of psychological, social and familial factors.<sup>21</sup> Dr. Mary Ann Dutton, a leading clinical psychologist, defines violence as a pattern of interaction in which one intimate partner is forced to change his or her behavior in response to the threats or abuse of the other partner.<sup>22</sup>

### Physical Violence

Aggressive behaviors such as:

- slapping<sup>23</sup>
- pushing
- shoving
- hit with car<sup>24</sup>
- injuring when pregnant<sup>25</sup>
- burning<sup>26</sup>
- choking<sup>27</sup>
- kidnapping<sup>28</sup>

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children, and the ways in which the violence may have impacted her psychologically, physically, economically, and socially.” See Dutton, Mary Ann. “The Dynamics of Domestic Violence: Understanding the Response from Battered Women,” *The Florida Bar Journal*. Vol.68, No.9. October 1994: 24.

<sup>19</sup> Ganley, Anne. “Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases.” *Domestic Violence in Civil Court Cases*. Family Violence Prevention Fund. 1992: 22.

<sup>20</sup> See Power and Control Wheel produced by the Domestic Abuse Intervention Project, Duluth, MN.  
<sup>21</sup> Protection order statutes or criminal codes most often domestic violence as the commission of one or more specific physical acts of violence or attempted violence including threats against intimate partners or spouses. Orloff, Leslye E. and Klein, Catherine F. “Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law.” *Hofstra Law Review*, Vol. 21, No. 4. Summer 1993: 801-1189.

<sup>22</sup> Dutton, Mary Ann. “The Dynamics of Domestic Violence: Understanding the Response from Battered Women,” *The Florida Bar Journal*, Vol. 68, No. 9. October 1994: 24.

<sup>23</sup> *Sielski v. Sielski*, 604 A.2d 206, 207 (N.J. Sup. Ct. Ch. Div. 1990).

<sup>24</sup> *Commonwealth v. Smith*, 552 A.2d 292 (Pa. Super. Ct. 1988) (issuing order where respondent hit petitioner with his car and struck petitioner on head and neck with an open and closed fist).

<sup>25</sup> *Id.*; See also *Gloria C. v. William C.*, 476 N.Y.S.2d 991 (Fam. Ct. 1984) (granting petition where respondent hit the petitioner in the head, punched her in the stomach while pregnant, and threw her on the floor).

<sup>26</sup> Browne, Angela. “Violence Against Women: Relevance for Medical Practitioners.” *JAMA*. 3184, 3186. 1992: 267. In a study of abusive men, one-third reported that their partners sustained broken bones or other substantial injuries as a result of their violence. James Ptacek, “Why Do Men Batter Their Wives?,” *Feminist Perspectives on Wife Abuse*. Ed. Kersti Yllo & Michelle Bogard. 1998: 135.

<sup>27</sup> *Colorado v. Brockelman*, 1993 Colo. App. LEXIS 270 (Colo. Ct. App. Oct. 21, 1993).

<sup>28</sup> *Del. Code Ann. Tit. 10, 945* (19930; *N.J. Stat. Ann. 2C:25-19* (1992); *N.M. Stat. Ann 40-13-2* (Michie

- kicking<sup>29</sup>
- beating
- pulling hair<sup>30</sup>
- stabbing<sup>31</sup>
- biting<sup>32</sup>
- strangling or smothering<sup>33</sup>
- use of a weapon on the victim<sup>34</sup>
- physical restraint by physically holding or tying up the victim<sup>35</sup>

Since even physical aggression that may seem relatively minor on the surface can be quite severe, a fuller understanding of the context in which the behavior occurred is necessary to determine its meaning to the victim.<sup>36</sup>

## Sexual Violence

Aggressive behaviors such as:

- sexually assaulting the victim<sup>37</sup>
- calling victim a prostitute
- informing the victim that she is required to have sex with the perpetrator whenever he wants
- sexually assaulting the victim after being beaten<sup>38</sup>
- forcing victim to engage in sexual activity with an object<sup>39</sup>
- sexually assaulting the victim in front of others<sup>40</sup>
- attempting an incestuous relationship with children<sup>41</sup>

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1992); Wash. Rev. Code Ann. 10.99.020 (1992).

<sup>29</sup> See *People v. Ballard*, 249 Cal. Rptr. 806 (Ct. App. 1988) (affirming issuance of order where respondent grabbed and hit petitioner); *Colorado v. Brockelman*, 1993 Colo. App. LEXIS 270 (Ct. App. Oct. 21, 1993) (affirming order where defendant hit victim in face several times and choked her).

<sup>30</sup> *Peirson v. Peirson*, 555 N.Y.S.2d 227 (Fam. Ct. 1990); *Sielski v. Sielski*, 604 A.2d 206 (N.J. Super. Ct. Ch Div. 1990) (granting a protection order where defendant yanked petitioner from her bed by her hair).

<sup>31</sup> *People v. Thompson*, 206 Cal. Rptr. 516, 517 (Ct. App. 1984).

<sup>32</sup> Klein, Catherine F. & Orloff, Leslye E. "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law." *Hofstra Law Review*, Vol. 21, No. 4. Summer 1993: 850.

<sup>33</sup> *Id.*

<sup>34</sup> *People v. Singleton*, 532 N.Y.S.2d 208 (Crim. Ct. 1988).

<sup>35</sup> *Synder v. Synder*, 629 A.2d 977 (Pa. Sup. Ct. 1993).

<sup>36</sup> Dutton, Mary Ann. "The Dynamics of Domestic Violence: Understanding the Response from Battered Women," *The Florida Bar Journal*. Vol.68, No.9. October 1994: 25.

<sup>37</sup> *State v. Schackert*, 737 P.2d 398 (Ariz. Ct. App. 187) (upholding conviction where defendant ordered estranged wife to remove her clothes and sexually assaulted her); *People v. Thompson*, 206 Cal. Rptr. 516 (Ct. App. 1984) (affirming defendant's conviction for spousal rape where wife reported at least two incidents).

<sup>38</sup> Browne *supra* note 26 at 2-5: Frieze, Irene H. & Browne, Angela. "Violence in Marriage." *Family Violence: Crime and Justice, A Review of Research*. Eds. Lloyd Ohlin & Michael Tonry. 1989: 163. Research by the State of Kentucky found 79% of domestic violence victims had experienced forced sexual relations with a spouse and 21% with a live-in partner. The majority of victims were assaulted more than once and many indicated several different types of sexual abuse: 75% forced vaginal intercourse, 57% forced sex after being beaten, 36% forced oral-genital sex, 30% forced anal intercourse, 30% forced intercourse, 16% forced sex with an object, and 8% forced sex in the presence of others.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

- \_ forcing victim to engage in sexual activity at gun point<sup>42</sup>
- \_ accusing victim of sleeping with other people
- \_ forcing victim to view pornography

Victims are often reluctant to disclose details regarding a history of sexual abuse, as society views sexual assault as a delicate subject. Sexual violence in a domestic violence relationship may include requiring the battered women to engage in a variety of unwanted sexual behaviors that may not be prosecuted as criminal behavior but often result in devastating psychological and physical consequences.<sup>43</sup>

## Psychological Abuse

While abusers often use physical and sexual violence as a means of exercising power and control over their intimate partner, psychologically abuse is often exercised over victims as well.<sup>44</sup> Perpetrator tactics in psychological abuse are designed to exert control over the victim's movements, emotions, thoughts, relationships with the outside world, and potentially, every aspect of the victim's life. As such, psychological abuse even if it is not accompanied by sexual and physical abuse can be just as destructive. Moreover, due to the lack of physical evidence in psychological abuse, it is often difficult to detect and prove.

It is known that the psychological realities of battered women are not limited to one particular "profile."<sup>45</sup>

Psychological abuse can include:

- \_ coercion and threats
- \_ intimidation
- \_ isolation
- \_ minimization, denial, and blaming
- \_ using children as tools of manipulation
- \_ economic abuse
- \_ using "male privilege"
- \_ infliction of emotional abuse and degradation
- \_ inducing altered states of consciousness
- \_ stalking
- \_ rulemaking

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<sup>41</sup> Rosenberg v. Rosenberg, 504 A.2d 350, 351 (Pa. Super. Ct. 1986) (granting protection order where respondent sexually abused his 10 year old daughter).

<sup>42</sup> State v. Ulen, 623 A.2d 70 (Conn. App. Ct. 1993) (upholding conviction for sexual assault where evidence showed defendant violated a protection order, forced wife to engage in sex at gunpoint, and inserted barrel of gun into her vagina).

<sup>43</sup> Id. 23.

<sup>44</sup> Psychological abuse is distinguishable from "negative" interactions found in nonviolent relationships; psychological abuse exists when there is a credible threat of violence predicated on the occurrence or knowledge of actual prior violence. See Ganley, Anne. "Integrating Feminist and Social Learning Analyses of Aggression: Creating Multiple Models for Intervention with Men Who Battered." *Treating Men Who Batter: Theory, Practice, and Programs*. Ed. P.L Ceasar & L. Kevin Hamberger. 1989: 196.

<sup>45</sup> Id. 23: 27.

## Psychological Abuse and Extreme Cruelty

Immigration laws and laws governing welfare access for battered immigrants define domestic violence as “bettering or extreme cruelty”. This definition is broader than the definition of domestic violence contained in most state protection order statutes. It includes forms of psychological abuse. Understanding the definition of extreme cruelty is important for TANF eligibility workers because battered immigrants who can prove that they have been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident spouse or parent can qualify to apply for immigration benefits without the cooperation of their abusive spouse and can also qualify to access TANF and other welfare benefits. Although extreme cruelty may be the only form of abuse, proof of extreme cruelty is sufficient for a battered immigrant to meet the battering or extreme cruelty requirement for purposes of immigration and welfare laws. Thus, it is important to understand the types of psychological abuse that can individually or taken together constitute extreme cruelty. Research into psychological abuse of immigrant spouses and children supports an extreme cruelty definition that includes facts which manifest the following behaviors:<sup>46</sup>

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<sup>46</sup> Mary Ann Dutton et al., Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications VII *Geo. J. Pov. L. & Pol’y* 1, 13.

**Table 2. Sample Demographic Characteristics of Abused Women (percentages)**

Demographic Variables	Help-Seeking Abused n = 59	General Population Abused n = 171	TOTAL n = 230
Age <sup>a</sup>			
14-23	13.0	12.4	12.6
24-29	18.5	30.8	27.8
30-41	50.0	50.9	50.7
42-56	18.5	5.9	9.0
Marital Status			
Partnered <sup>b</sup>	42.4	47.3	46.1
Unpartnered <sup>c</sup>	57.6	52.7	53.9
Employed			
Full or part time	43.1	46.5	45.7
Unemployed	56.9	53.5	54.3
Average Income			
Below \$9,000	59.3	61.6	61.1
\$9,001 to \$18,000	40.7	33.7	35.4
\$18,001 to \$27,000	0.0	4.7	3.5
English Speaking Ability			
None	44.1	40.6	41.5
Very little	27.1	36.5	34.1
Moderate	15.3	14.1	14.4
Very good	10.2	8.2	8.7
English Reading Ability			
None	49.2	53.3	52.2
Very little	23.7	26.0	25.4
Moderate	16.9	14.2	14.9
Very good	10.2	6.5	7.5
Spanish Reading Ability			
None	5.1	8.2	7.4
Very Little	13.6	12.9	13.0
Moderate	10.2	17.5	15.7
Very Good	71.2	61.4	63.9
Education			
0 to 4 years	18.6	24.0	22.6
5 to 12 years	62.7	64.3	63.9
High school grad	15.3	8.2	10.0
College or beyond	3.4	3.5	3.5
Immigration Status			
USC/LPR <sup>d</sup>	33.3	24.4	26.7
Temporary <sup>e</sup>	29.8	28.1	28.6
Undocumented	36.8	47.5	44.7
Time in US (years) (S.D.)	6.1 (5.32)	5.3 (3.98)	5.5 (4.37)
Country of Origin			
El Salvador	40.4	47.0	45.3
Guatemala	1.8	5.4	4.4
Dominican Rep	8.8	10.1	9.8
Other Latin	17.5	7.7	10.2
	31.6	29.8	30.2
Spouse Immigration Status			
USC/LPR <sup>d</sup>	55.9	48.8	50.8
Temporary <sup>e</sup>	5.9	11.9	10.2
Undocumented	38.2	39.3	39.0
Father of Child Immigration Status			
USC/LPR <sup>d</sup>	41.2	43.8	42.0
Temporary <sup>e</sup>	5.9	6.3	6.0
Undocumented	52.9	50.0	52.0

<sup>a</sup> 2-group comparison for age:  $\chi^2 = 9.47$ ,  $p \leq .02$ . There are more women over 30 years in the Help-Seeking Group than in the General Population Abused Group.

<sup>b</sup> "Partnered" includes married, living together, living with same sex partner.

<sup>c</sup> "Unpartnered" includes single, separated, divorced, widowed.

<sup>d</sup> USC/LPR = U.S. citizen or lawful permanent resident

<sup>e</sup> "Temporary" includes temporary conditional resident, provisional permanent resident, temporary resident, seasonal agricultural worker, legal refugee, student visa, tourist visa, business visa, temporary protected status.

## Who are the Victims and Perpetrators of Domestic Violence?

Domestic Violence is a societal problem experienced across the United States, not to mention the world, by members of families and intimate relationships representing all socioeconomic, racial, cultural, and ethnic groups.<sup>47</sup> The American Medical Association now estimates that as many as 4 million women a year are victims of severe assaults by boyfriends and husbands each year, and about one in four women is likely to be abused by a partner in her lifetime.<sup>48</sup> In addition, between 3.3 and 10 million children witness violence in their homes.<sup>49</sup> Not only does domestic violence cause great personal injury, but also costs the general public \$67 billion a year in property damage, medical costs, mental health care, police and fire services, victim services, and lost worker productivity.<sup>50</sup> The broad range of those affected by domestic violence highlight the extent to which this problem affects our society.

Victims and perpetrators do not fit a specific profile. Abusers may be charming and articulate in court or seething with rage; similarly, victims are just as likely to seem angry or aggressive as frightened or passive.<sup>51</sup> Studies have shown that the only common trait between victims is that they are being abused by their intimate partners or spouses and that the vast majority of heterosexual victims are female.<sup>52</sup> Victims may be doctors, business professionals, scientists, or judges, among others. Perpetrators may be police officers, sports heroes, CEOs, or college professors. Unlike victims, perpetrators do have at least one common trait – the majority is men who witnessed or experienced domestic violence in their families when they were growing up.<sup>53</sup>

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<sup>47</sup> Koss, Mary P. No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community. 1994: 49-51.

<sup>48</sup> Glazer, Sarah. CQ Researcher, Congressional Quarterly Inc., Vol. 3, No. 8. February 1993: 171.

<sup>49</sup> Davidson, Howard A. The Impact of Domestic Violence on Children; A Report to the President of the American Bar Association. ABA. 1994: 1.

<sup>50</sup> Miller, Ted. Victim Costs and Consequences: A New Look. National Institute of Justice. Department of Justice. 1996: 18-19.

<sup>51</sup> Adams, David. "Identifying the Assaultive Husband in Court: You be the Judge." Boston Bar Journal. July-August 1989: 23; Ganley, Anne. "The Impact of Domestic Violence on the Defendant and the Victim in the Courtroom." Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases. Family Violence Prevention Fund. 37

<sup>52</sup> Finding that 85% of the victims of intimate violence were women. See Greenfeld, Lawrence A. Violence by Intimates 1, 3. Bureau of Statistics, U.S. Department of Justice. March 1998.

<sup>53</sup> Hotaling, Gerald T. & Sugarman, David B. "An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge," Violence and Victims. 1994: 101, 106. Cazenave, Noel A. & Strauss, Murray A. "Race, Class, Network – Embeddedness, and Family Violence: A Search for Potent Support Systems." Physical Violence in American Families. Ed. Murray A. Strauss and Richard J. Gelles. 1995: 322-323.

Although domestic violence affects persons from all backgrounds, battered immigrant women face even greater obstacles in their efforts to escape violent relationships. Language, culture and immigration status exacerbate the level of violence, block victims from access to services and information about legal remedies, and complicate their efforts to obtain the relief they need to end the violence.<sup>54</sup> Culture, religion, socioeconomic, and immigration status do not determine whether or not domestic violence will occur, but rather influence what barriers a battered immigrant must confront, her specific needs from the legal system or other sources, what should be included in her safety plan, what threats the abuser will use against her, and what excuses the abuser will use in an attempt to justify his violence.<sup>55</sup>

## Abusers of Immigrant Women Use of Power and Control Tactics

As is the case with all battered women, abusers of battered immigrant women resort to a number of tactics to solidify their control their partner. Along with the physical violence, coercion, threats, intimidation, isolation, destruction of important documents or possessions, and emotional, sexual or economic abuse, abusers frequently also use, as will be describes below in greater detail, the children, cultural factors, economic factors and immigration factors to manipulate immigrant women.

Social and psychological studies have shown that stressors related to immigration, immigration status and environmental pressures have been linked to domestic violence for immigrant women.<sup>56</sup> Battered immigrants facing these difficulties may be realistically hesitant to abandon their partners or spouses due to economic and social dependence. This dependence is accentuated when the abuser also controls the halted immigrant's access to lawful immigrant status. Domestic violence is not only extremely stressful for victims but it also makes it more difficult for battered immigrants to deal with other environmental stressors.<sup>57</sup>

### Abusers Use Cultural Factors as Manipulation Tool<sup>58</sup>

Abusers of immigrant women use culture and cultural taboos to enhance their control by:

- \_ writing or telling the victim's family lies about her
- \_ embarrassing her in front of family and friends
- \_ divulging family secrets

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<sup>54</sup> Dutton, Mary Ann, Orloff, Leslye E. & Aguilar Hass, Giselle. "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications." *Georgetown Journal on Poverty Law & Policy*. Vol. VII, No.2. Forthcoming 2000.

<sup>55</sup> Orloff, Leslye. "National Conference on Family Violence: Health and Justice." *AMA*. 1994: 67.

<sup>56</sup> Perilla, Bakerman & Norris. "The Ecology of Abused Latinas." *Violence & Victims*, Vol. 9. 1994: 325-39.

<sup>57</sup> One study of Mexican battered wives found that spousal support – such as open communication and intimacy – was the major type of support that ameliorated depressive symptoms associated with the migration experience. Salgado de Snyder, 1987. Battered immigrants lack access to much needed support.

<sup>58</sup> Adapted from *The Immigrant Power and Control Tactics* Chapter I. Orloff, Leslye E. and Little, Rachel. "Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women." A "How To" Manual for Battered Women's Advocates and Service Providers. AYUDA, INC., Washington, D.C. May 1999: 1.

- \_ causing her or her family to lose face in the community
- \_ preventing her from meeting with people from her country who speak her native language
- \_ calling her racist names
- \_ accusing her of abandoning her culture
- \_ isolating her from supportive individuals within her cultural community

Language access may be used as a controlling device by:

- \_ controlling access to English-speaking community
- \_ forcing her to sign papers in English that she does not understand
- \_ screening phone calls and correspondence
- \_ misleading police officers who respond to domestic violence calls who ask for perpetrators explanation of events since he has a better grasp of English

#### Abusers Use Economic Factors as Manipulation Tool<sup>60</sup>

Economic control may be exerted by:

- \_ Preventing access to employment authorization
- \_ forcing her to work illegally
- \_ harassing her at work so that she is fired from the only job at which she can legally work
- \_ preventing her from working or taking her paychecks
- \_ stealing the money she is sending to her home country to support her family
- \_ taking control of the family finances
- \_ withholding basic needs, such as food, clothing, medical care, and proper housing
- \_ preventing her from learning English and attaining other skills that she needs to secure a job which pays a living wage.

#### Abusers Use Immigration Factors as Manipulation Tool

Abusers use their role in filing for immigration status on their partner's behalf as a tool of power and control.<sup>61</sup> One of the most powerful threats abusers use against battered immigrants is that of deportation. Prior to 1994, abusers had total control over their spouses' or child's immigration status and battered immigrants could not self-petition for immigration relief. As a result, many battered immigrants remained without legal immigration status in the U.S. because their abusers used their control over immigration status as a tool to further the abuse.<sup>62</sup>

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<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Orloff, Lesye and Dave, Nomi. "Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area." *Poverty and Race*. Vol. 6, No. 4. 1997: 9-10. (25% of battered immigrants stated that immigration issues prevented them from leaving their abusers.); Mary Ann Dutton, et. al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*. Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, Summer 2000.

<sup>62</sup> Leslye Orloff, Jessica Cundari, and Erika Esterbrook. *New Dangers for Battered Immigrants: The*



Fear of deportation has dire consequences for battered immigrants, as it may prevent them from getting help to stop the violence. In a survey conducted in San Francisco, 64% of undocumented battered women said that the fear of deportation was the primary reason why they did not seek social services.<sup>63</sup> Additionally, battered women also abstain from seeking social services or self-petitioned immigration relief through self-petitions because their batterers often hide from her information about his immigration status or whether he has filed immigration papers for her. Many immigrant victims refrain from calling the police or obtaining protection orders, medical assistance, and legal assistance, since they fear retaliation from their abusers. As a result, victims may have poor documentation of abuse. To compensate for this fact, public benefits workers and INS officers need training to help them identify battered immigrants and recognize the credibility of their stories of abuse; this is necessary so that battered immigrants can obtain immigration relief or access to needed public services.

Battered immigrant women fear reporting domestic violence for very legitimate reasons relating to the abuse. They may be ostracized by the abuser's relatives, their own relatives, or community members for cooperating with the prosecution of their batterer.<sup>64</sup> She may face the shame of losing her job and the ability to send money home. She may fear, legitimately in some cases, that reporting the violence and seeking help could lead to her deportation. Moreover, if deported, she may be sent to a country that the abuser can freely travel to and that may not have protective domestic violence laws that are truly enforced. She may also fear that if she reports the abuse, her abuser will be deported and she will lose child support or other economic assistance that he provides.

#### Abusers Use Children as Manipulation Tool

Abusers of immigrant women use children to manipulate immigrant victims by:

- \_ threatening to harm or abduct the children
- \_ actually harming or abducting the children to a foreign country
- \_ taking money that the immigrant victim was planning to send to support her children and other family members in her home country
- \_ forcing the children to participate in the abuse of the victim
- \_ using visitation as an occasion to harass or monitor the victim
- \_ fighting protracted custody battles to punish the victim

Fears surrounding deportation are often aggravated because abusers convince immigrant victims that they will lose custody and be permanently severed from any relationship with their children through deportation. Abusers often raise immigration issues in a custody case to shift the focus of the courts attention away from his abuse and the best interests of the child and towards her lack of legal immigration status. This position is

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Untold Effects of the Demise of 245(i). Ayuda. 1999: 1.

<sup>63</sup> Hogeland, Chris and Rosen, Karen. "Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity." Coalition for Immigrant and Refugee Rights and Services. 1991: 63.

<sup>64</sup> Orloff, Leslye E. and Chung, Minty Siu. "Overcoming Cultural Barriers." Ayuda, Inc. 1996: 4-5. See: NOW LDEF Judicial Curriculum.

contrary to recommendations from experts on domestic violence and children.<sup>65</sup> Abusers believe and often try to prove in custody cases that the victim's lack of lawful immigration status outweighs the abuser's violence.

### Abusers Interference With Battered Immigrants Ability to Work

In many cases, abusers interfere with battered immigrant women's ability to work, access benefits and services and thus, frequently sabotage their efforts to become self-sufficient—often with violence. Abusive partners who, because they are threatened by educational and self-help programs, resort to violence and emotional coercion to prevent their woman from gaining educational and employment opportunities. Batters employ a variety of techniques to sabotage women's efforts to become educated or employed. For example, the night before a key test, entrance exam, or job interview, abusive partners often engage women in night-long quarrels, leaving them sleep-deprived and unable to perform well. At the extreme, abusers will inflict black eyes or other injuries the night before their partners are to start a new job, or visit a job or benefits cite.<sup>66</sup> As a result, battered immigrant women are faced with economic barriers as well as physical and psychological barriers to escaping abusive relationships.<sup>67</sup>

### Challenges Immigrant Women Must Overcome When Seeking Help

Immigrant victims of domestic violence face unique and very real obstacles when seeking help from domestic violence service providers, protection from the legal system, and public benefits agencies. Some suffer from significant limitations that contribute to a low-socio-economic status<sup>68</sup> including lower income levels and limited employment skills, related to having foreign or limited formal education, ethnocentrism, discrimination and their lack of mastery of the English language. Lack of social support related to being new arrivals is also a problem because they have been uprooted from their home country and are often socially alienated in their new country. Battered immigrant women also often experience discrimination and decreased social opportunities due to their minority racial or ethnic status, in addition to the acculturation difficulties and social disruption resulting from their immigrant status.<sup>69</sup>

Many battered immigrants come from countries in which seeking government assistance and protection to help stop domestic violence would be unthinkable. In their

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<sup>65</sup> Davidson, Howard A. *The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association*. ABA. 1994: 19.

<sup>66</sup> Rapheal, Jody. "Domestic Violence: Telling the Untold Welfare-To-Work Story." Taylor Institute: Chicago, Illinois. January 1995.

<sup>67</sup> Dutton, Mary Ann, Orloff, Leslye E. & Aguilar Hass, Giselle. "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications." *Georgetown Journal on Poverty Law & Policy*. Vol. VII, No.2. August 2000.

<sup>68</sup> McCloskey, 1992.

<sup>69</sup> Haas, Giselle A. *Analysis of Marital Violence in the Hispanic Population*. Unpublished clinical research project for NOVA University. 1992; Tran, C.G. *Domestic Violence Among Vietnamese Refugee Women: Prevalence, Abuse Characteristics, Psychiatric Symptoms, and Psychological Factors*. Unpublished Doctoral Dissertation. Boston University. 1997.

home countries police would never help a domestic violence victim and domestic violence may not be a crime. In many instances if the victim sought court protection, the perpetrator would win the case because he has political connections with the government officials or because he can pay off the judge or police.<sup>70</sup> These assumptions about the legal system coupled with immigration victims fears of being reported to INS and deported if they call the police for help or seek government assistance in escaping abuse provide legitimate reasons why battered immigrants may fear the government system and be reticent to access it for help without the assistance of a trained advocate.

When interviewing immigrant women who are suspected or known to be victims of domestic violence, it is crucial to take into account the many unique barriers battered immigrant women encounter when trying to seek help. Social, economic, and cultural barriers are often used by their abusers as tools for power and control. These barriers include, but are not limited to:

#### Language barriers

Immigrant women who do not have strong English skills experience inabilities to communicate with law enforcement officers and court officials, domestic violence shelter and crisis hotline service providers, health professionals, and public assistance service providers.

#### Economic Barriers

Battered immigrants may face severe economic barriers. One of the primary reasons immigrant women remain in abusive relationship, especially poor women, is due to economic dependency.<sup>71</sup> For example, battered immigrants may not be able to swiftly receive work authorization; even those who have work authorization may have difficulty finding well paying jobs because they often lack child care, transportation, or language capabilities. Recent studies indicate that the majority of all women who are homeless and/or receive public assistance are currently being abused by their partners or spouses.<sup>72</sup> The additional barriers which immigrant women face, make it particularly difficult for them to obtain high-paying employment. Job insecurity and low-income levels may require victims of abuse to seek public assistance needed to provide basic life needs for their families.

#### Fear of Law Enforcement, the Legal System, and Government Services

Battered immigrants may fear that the police or the courts will not help them because of experiences with repressive or non-responsive law enforcement and judicial systems both in their countries of origin and the United States.<sup>73</sup> They may hesitate to utilize the legal

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<sup>70</sup> Orloff, Leslye & Chung, Minty Siu. "Overcoming Cultural Barriers." Ayuda, Inc. 1996: 10.

<sup>71</sup> . " Orloff, Leslye & Dave, Nomi. "Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area," Poverty & Race. Vol. 6, No. 4. 1997: 10.

<sup>72</sup> Raphael, Jody and Tolman, Richard M. Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare. Taylor Institute and the University of Michigan Research Development Center on Poverty, Risk, and Mental Health. 1997: 5.

<sup>73</sup> 83% of battered immigrants did not contact the police for help despite lengthy histories of domestic

system because they come from countries with different legal procedures or standards for credibility, and may not have a full understanding of how the United States legal system differs.<sup>74</sup> They may also hesitate to utilize the legal system because law enforcement and government services in their community may inquire and report individuals based on their immigration status although they are not legally required to do so. Moreover, battered immigrants may have been told lies and misinformation about the legal system and government services from their abusers.<sup>75</sup> Victims may have been told that they will never be believed, will have no legal rights, or that the police will report them to the INS or take their children away.<sup>76</sup> Battered immigrant women, even those who qualify for public benefits, may not apply for welfare for herself or her U.S. citizen children because she is afraid to be asked immigration questions, does not understand the application process, or is not aware that public assistance is available to her. Following the Attorney General's Guidance discussed in Chapter 3 will ensure that TANF workers only ask immigration questions if required by law to do so and then only after the proper sequence of questions are asked. Any other approach can serve to cut off battered immigrants who are qualified aliens<sup>77</sup> and battered immigrants whose children qualify as citizens, qualified aliens or lawful permanent residents for the benefits safety net they need to escape abuse.

## Religious Issues

Victims who live in insular religious communities or find that their religious beliefs conflict with standard legal remedies, may be afraid to reveal domestic violence to service providers outside of their community. For example, victims or their family members may have religious beliefs that emphasize the sanctity of the family, which dissuade them from seeking assistance or divorce. Victims may fear that if they seek outside assistance, religious leaders will support their perpetrator, especially if the religion emphasizes male dominance in family life. When battered immigrants disclose the abuse to religious leaders, they may be unreceptive to the victims and could advise them to carry out their duty to make their marriage work. Religious principles may require wives to obtain their husband's permission to divorce him, giving perpetrators an additional means of control.<sup>78</sup>

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violence. See: Orloff, Leslye & Dave, Nomi. "Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area," *Poverty & Race*. Vol. 6, No. 4. Poverty and Race Research Action Council. 1997: 13; Orloff, Leslye E., National Conference on Family Violence: Health and Justice. American Medical Association. March 11-13, 1994: 70; Orloff, Leslye E., *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*, Vol. 1. United States Commission on Civil Rights. January 1993: 75.

<sup>74</sup> Klein, Catherine and Orloff, Leslye E. "Providing Legal Protection for Battered Women: An Analysis of State and Case Law." *Hofstra Law Review*, Vol. 21. 801. 1993: 1020-1022.

<sup>75</sup> Leslye Orloff, Jessica Cundari, and Erika Esterbrook. *New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i)*. Ayuda. 1999: 1.

<sup>76</sup> Orloff, Leslye E. and Rodriguez, Rachel. "Barriers to Domestic Violence Relief and Full Faith and Credit for Immigrant and Migrant Women." *Migrant Clinicians Network*. 1997: 15.

<sup>77</sup> While the term used in the law is "qualified aliens," we will use the term "qualified immigrants." Throughout this article except when quoting language contained in statutes we strongly encourage advocates and attorneys working with battered immigrants to use the term immigrants rather than aliens and "undocumented immigrants" rather than "illegal aliens."

<sup>78</sup> See: Horshburgh, Beverly. "Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community." *Women's Law Journal*, Vol. 18. 171. 1995: 193.

## Discrimination Issues

Battered immigrants from some racial or ethnic minority groups may face additional barriers in obtaining legal relief to end domestic violence. For example, victims may experience racism when they seek services from providers who characterize all men from African or Latin American countries as violent or women of color as more prone to victimization.<sup>79</sup> The history of institutional and individual racism against people of color may lead some victims to avoid the police and the courts because these entities are part of a system that has traditionally discriminated against them.<sup>80</sup> Battered immigrant women of color may also suffer from the combined effects of racism, gender-based discrimination, and anti-immigrant discrimination.<sup>81</sup>

## Cultural Issues

Battered immigrants may worry that if they seek help from outside of their community or speak out against their abusive husbands, they may be blamed for the violence, lose social respect, become ostracized from their community and cause uninvolved family members to be ridiculed.<sup>82</sup> Battered immigrants who choose to go to a shelter may feel alienated and alone without access to culturally familiar surroundings.<sup>83</sup> They may also hesitate to seek help from domestic violence programs or government agencies that do not provide culturally or linguistically appropriate services.<sup>84</sup>

## The Need for Collaboration

Collaboration with local programs that serve battered immigrants that are based in and familiar with issues in the immigrant community can help TANF workers in a variety of ways. Community based programs with expertise working in immigrant communities with battered women can help TANF workers by:

- \_ identifying persons who can serve as translators

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<sup>79</sup> See: Rivera, Jenny. "Domestic Violence Against Latinas by Latinos Males: An Analysis of Race, National Origin, and Gender Differentials." *Third World Law Journal*, Vol. 14. 1994: 231,234.

<sup>80</sup> Ammons, Linda. "Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and The Battered Woman Syndrome." *Wisconsin Law Review*. 1995: 1003; White, Evelyn C. Chain, Change: For Black Women in Abusive Relationships. 1994: 23-26.

<sup>81</sup> Ammons, *supra* note 47 at 1036; Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color." *Stanford Law Review*, Vol. 43. 1991: 1241.

<sup>82</sup> Orloff, Leslye E. and Chung, Minty Sui. "Overcoming Cultural Barriers." *Ayuda, Inc.* 1996: 3; Shalhoub-Kevorkian, Nadera. "Tolerating Battering: Invisible Methods of Social Control." *International Review of Victimology*. 1997: 11-12.

<sup>83</sup> Volpp, Leti. *Working With Battered Immigrant Women: A Handbook to Make Services Accessible*. Ed. Leni Marin. Family Violence Prevention Fund. 9; Browne, Angela. "Violence Against Women by Male Partners: Prevalence, Outcomes and Policy Implementations." *American Psychology*, Vol. 48. 1993: FIND PAGE NUMBER

<sup>84</sup> Maguigan, Holly. "Cultural Evidence and Male Violence: Are Feminists and Multiculturalist Reformers on a Collision Course in Criminal Courts?" *N.Y.U. Law Review*. Vol. 70. 1995: 36; Gallin, Alice J. "The Cultural Defense: Undermining the Policies Against Domestic Violence." *B.C. Law Review* Vol. 35. 1994: 73; Rimonte, Nilda. "A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense." *Stanford Law Review* Vol. 43. 1991: 1311.

- preparing applications for benefits
- accompanying immigrant applicants to eligibility interviews
- screening applicants to help ensure that only those who qualify for benefits
- providing training and technical assistance to TANF workers on cultural and domestic violence issues
- accepting referrals from TANF workers who encounter battered immigrants who may qualify for Violence Against Act immigration benefits, but who need help applying for these benefits before they can qualify for public assistance.

In addition to improving battered immigrant women’s accessibility to public benefits, it is crucial to understand that victims of domestic violence frequently have a range of interwoven needs. As such, collaboration between Public benefits providers, domestic violence advocates, domestic violence lawyers, immigration lawyers and advocates is crucial to successfully serving a battered immigrant client’s overall interests and needs. These may include the following:

- Safe Housing
- Financial relief including public benefits, child support, or victim compensation benefits
- An end to the violence
- Child care
- Employment
- Access to domestic violence services, including shelter, crisis counseling, safety planning, and legal advocacy
- Lawful immigration status
- A civil protection order, divorce, or custody order

Collaboration between public benefits workers, advocates and legal specialist is necessary because even the most committed, public benefits providers, domestic violence lawyer, battered women’s advocate, or immigration attorney cannot meet a client’s wide ranging legal needs alone.

## Challenges in Collaborating

Despite the needs for collaboration, public benefits workers, domestic violence, criminal and immigration law specialists may confront challenges when they attempt to work together. Public benefits workers, advocates and attorneys working on domestic violence and immigration issues in community organization may have little prior contact. Domestic violence, public benefits workers and attorneys may not be aware of immigrant rights organizations and vice versa. Staff working in these agencies should meet each other, exchange information, and offer to provide cross trainings. Conflicts can be resolved by working together to understand the varying perspectives of each group.

Ideological differences may also raise conflicts. For example, battered women’s advocates may emphasize victim empowerment—including a victims rights to refrain from pursuing criminal charges, while law enforcement personnel struggle to hold offenders

accountable for crimes. Similarly, immigration officials may want to deport non-citizen perpetrators if domestic violence. Victims may find it difficult to cooperate in criminal prosecution that could protect the family, but leave them without child support payments if abusers are convicted and deported

## How to Enhance Collaboration

Collaboration requires parties to exchange information about their underlying goals for advocacy and to educate each other about their areas of expertise. Advocates and attorneys may need to learn new legal terminology, so that battered women's advocates understand what a USC and LPR are, and immigration attorneys know about CPOs and VAWA. Public benefits providers, Immigration law representatives/attorneys, family law attorneys, and victim advocates may also need to adjust their practice skills to better serve battered immigrant clients. For instance, immigration lawyers should learn to conduct safety planning with clients, while domestic violence lawyers should seek civil protection orders which include immigration related provisions.

Public benefits providers, attorneys, and advocates will be better able to assist battered immigrants if they receive training in related fields of law. While joint trainings can be based on this manual, cross-trainings can also be held separately. For instance, a local domestic violence program or a state domestic violence coalition could develop a training for immigration attorneys or organizations on relevant domestic violence issues. An immigrant rights' organization or bar association could conduct trainings on basic immigration law, or those parts of immigration law which affect battered immigrants, for family law attorneys, public benefits workers or domestic violence program staff. Such trainings would improve the substantive knowledge of attorneys, public benefits providers and program staff who work with battered immigrants, and would also provide them with contact information for local community resources and individuals.

All local training should provide participants with an updated, comprehensive list of referrals for battered immigrant clients. Such a list should include:

- \_ National Domestic Violence Hotline (800-799-SAFE, TTY: 800-787-3224)
- \_ AYUDA, Inc. (202-387-0434)
- \_ National Immigration Project of the National Lawyer;s Guild (617-227-9727)
- \_ Family Violence Prevention Fund (415-252-8900)
- \_ Local domestic violence shelter
- \_ Local domestic violence crisis hotline
- \_ Local police
- \_ Local family law bar association
- \_ Local family immigrant rights' organization
- \_ Local immigrant law bar association
- \_ Local domestic violence counseling programs

The National Network on Behalf of Battered Immigrant Women can provide advocates and attorneys with technical assistance on family law, welfare, and immigration law cases.

The Network can also help identify immigration attorneys in a particular jurisdiction to assist battered immigrants. The National Network can be contacted through Leslye Orloff at Legal Momentum, Gail Pendleton at the National Immigration Project of the National Lawyer's Guild, or Leni Marin at the Family Violence Prevention Fund. Each of these phone numbers is listed above.

Domestic violence and immigration advocates, benefits providers and attorneys can work together on long term projects in their own communities. They convene multidisciplinary councils. Their goals should include developing local training and outreach on issues affecting immigrant victims of domestic violence. Additionally, these groups could develop state legislation which better serves battered immigrants, such as legislation that provides battered immigrant women with access to public benefits if they leave their abusers and need financial help to support their children.



## CHAPTER 2 – THE NEED OF BATTERED IMMIGRANT ACCESS TO THE WELFARE SAFETY NET

### Chapter Summary

This chapter provides TANF workers with background information that underscores why battered immigrant access to public benefits is key to enabling a battered immigrant woman to successfully leave an abusive relationship and create a safe, self-sufficient home apart from her abuser. Battered immigrants who cannot access benefits are often forced to return to abusers by hunger and homelessness. TANF workers who follow the Attorney General's guidance procedures for determining TANF eligibility help qualified alien battered immigrants and children of other abused immigrants safely access the safety net services to which they are legally entitled to help them successfully transition away from dependence on an abusive spouse.

An overview of research data on the connection between domestic violence and public benefits is presented discussing:

- 1) Why public benefits access is an important tool for battered women.
- 2) How public benefits access was designed to cover the delays that can occur before battered immigrant's with immigration cases pending before a battered immigrant can receive work authorization.
- 3) The barriers that battered immigrants experience when seeking employment that are related to immigration status, language ability and skills levels.
- 4) The impact of domestic violence on children living in violent homes; including data that proves why supporting the mother in her efforts to attain self-sufficiency so that she can protect her children is the right approach.
- 5) The close relationship between domestic violence and homelessness.

## Chapter 2 – The Need For Battered Immigrant Access To the Welfare Safety Net

### Why Public Benefits Are an Important Tool in Helping Battered Immigrant Women Leave Abusive Relationships

For both citizens and immigrant victims of domestic abuse, escaping a violent relationship is not easy. First, they face the danger of violent recrimination from the batterer when they attempt to flee.<sup>85</sup> Women attempting to leave violent spouses are twice as likely to become victims of homicide than are abused women who continue to cohabit with their abuser.<sup>86</sup> Second, they also have to find a way to survive economically apart from the abuser. Economic dependence of women upon their abusive partners is one of the primary reasons they remain in violent relationships.<sup>87</sup> Research among battered immigrant women has found that over 60 percent of the battered immigrant women who have stayed with their abusers report economic factors a significant barrier to their leaving. Lack of economic resources is the single most highly rated barrier expressed by battered immigrant women.<sup>88</sup> If battered immigrant women are to flee their United States citizen or lawful permanent resident abusers, they must be able to secure a means of economic survival.

Battered women in the U.S. typically make 2.4 to 5 attempts to leave their abusers before they ultimately succeed.<sup>89</sup> They are often forced to return to their abusers because the inability to work or the impairment of their employment opportunities as a direct consequence of domestic violence has undermined their ability to survive economically apart from their abusers. The level of economic resources available to an abused women is the best indicator of whether or not she will permanently separate from the abuser.<sup>90</sup> Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused.<sup>91</sup> In another survey, more than half of the women stated that they stayed with their abusers because they did not feel they could support themselves and their children if they left.<sup>92</sup>

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<sup>85</sup> Harlow, Caroline. U.S. Department of Justice Female Victims of Violent Crimes. 1991: 5; Ganley, Anne. "Domestic Violence: the What, Why and Who, as Relevant to Civil Court Cases." Domestic Violence in Civil Court Cases: A National Model for Judicial Education. J. Agtuca, et al. eds. 1992: 24.

<sup>86</sup> Wilson, Margo & Daly, Martin. "Spousal Homicide

<sup>87</sup> See: Strauss, Murray & Gelles, Richard. Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8145 Families. 1990.

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<sup>89</sup> Okun, Lewis. Termination or Resumption of Cohabitation of Women in Battering Relationships: A Statistical Study, in Coping With Family Violence; Research and Policy Perspectives. Ed. Gerard T. Hotaling et. al. 1988: 107, 113.

<sup>90</sup> Horn, Patricia. "Beating Back the Revolution: Domestic Violence's Economic Toll on Dollars and Sense." December 1992.

<sup>91</sup> Strube, Michael J. & Barbour, Linda S. "The Decision to Leave and Abusive Relationship: Economic Dependence and Psychological Commitment." Journal of Marriage and the Family. 1983: 837.

<sup>92</sup> Sullivan, Chris, et al. "After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter." Violence and Victims. 1992: 267.

Women need to acquire a level of stability when they attempt to begin a life separate from their abusive home. All abused women fleeing violent homes need to find a means of securing basic life necessities. They want to provide and care for their kids, but often juggling child-care and a job immediately after leaving an abuser is extremely difficult. For these women, public benefits provide a life-saving safety net that helps them negotiate the difficult transition to economic stability.

## Lack of Work Authorization

Without public benefits, most battered immigrant women may not have the economic resources needed to flee from an abusive relationship. This is especially true for battered immigrants eligible for immigration benefits under the Violence Against Women Act, since such immigrants are not able to work legally even though they could legally obtain immigration status based on their marriage to a U.S. citizen or lawful permanent resident. This process of filing a self-petition under the Violence Against Women Act (VAWA) without their abuser's cooperation takes time. Self-petitioners are only granted work authorization after their VAWA self-petition has been approved.

From the time their VAWA self-petition has been filed through approval, receipt of deferred action status, application and receipt of work authorization can take anywhere from four months to significantly longer. For battered immigrants applying for benefits based on a petition their lawful permanent resident spouse filed for them, the wait can be up to six years. During that time period, many self-petitioners' only option for economic survival may be reliance on the welfare safety net. It was for this reason that Congress explicitly authorized applicants for VAWA immigration benefits and other battered immigrants with pending family based visa petitions filed by their abusers to access welfare benefits despite the fact that they were in the country without legal documentation. In some situations, government services provide a critical bridge to abused women and children as they attempt to escape abuse and prepare to move on with their lives and become self-sufficient.

Battered immigrant women and children need to access critical social services and public benefits as part of a package that can support them during the difficult periods of transition. Such a package of support should include safe shelter/housing, food and clothes, medical care, work authorization, and the ability to obtain lawful immigration status. Some battered immigrants who work, may only be able to obtain part-time employment or low-wage employment and may need to rely partially on public benefits to support her U.S. citizen children, particularly in cases where the abuser is not paying court-ordered child support.

## Barriers to Employment

Battered immigrants face special barriers to attaining stable, well-paid employment. Many may not speak English proficiently and those that can speak some English may not be able to read and write English. Their abusers often limit their access to English language proficiency and job training programs. Battered immigrants often rely on their children, who usually have a greater understanding of English, to interpret and explain procedures. Further, their socio-economic status and preconceived notions about immigrants or women often can limit the types of jobs immigrant women are offered. They commonly hold jobs in low wage occupations such as food preparation, housecleaning, and childcare services. They are also most likely to be temporary workers and hold positions that do not give them access to medical benefits.<sup>93</sup>

Immigrant victims are interested in gaining job training and educational skills that would allow them to get a stable, high-paying job, yet they also express signs of hesitation since they do not have child care and do not want to leave their children unattended.<sup>94</sup> Lack of sufficient affordable child-care poses a significant problem for immigrant women. Balancing the tasks of caring for their children, gaining job skills, securing stable living arrangements, meeting basic material needs, and finding a job, is often a balancing act that can take time to achieve.

## Domestic Violence and Welfare Receipt

Recent studies have shown there is a strong correlation between welfare receipt and being a past or current victim of domestic violence.<sup>95</sup> The majority of victims of domestic violence are women, many of whom join the population of single-headed households when they leave their abusers. In the 1990 consensus, the poverty rate for female-headed families was reported to be six times that of married-couple families.<sup>96</sup> Welfare recipients are three-and-a-half times more likely to suffer from domestic violence than are non-recipients.<sup>97</sup> 50 to 60% of current welfare recipients attested to the fact that they were victims of abuse by a current or former intimate partner.<sup>98</sup> Additionally, battered women who receive welfare may go off and on welfare due to: ongoing violence, the need to escape violence, economic dependence on abusers and resulting unstable lifestyles often associated with efforts to end domestic violence in their lives and the lives of their children.

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<sup>93</sup> Ng, Doris at 7-16.

<sup>94</sup> Ng, Doris at 14.

<sup>95</sup> 50% to 60% of welfare recipients are past, or current victims of domestic violence. See: Raphael, Jody. *Prisoners of Abuse: Domestic Violence and Welfare Receipt*. Taylor Institute. 1996.

67% of poor single mothers below the poverty line reported some type of physical abuse in adult partner relationships. See: Goodman, Lisa A. "The Prevalence of Abuse Among Homeless and Housed Poor Mothers: A Comparison Study." *American Journal Orthopsychiatry*, Vol. 61. 1991: 489, 497.

<sup>96</sup> In the 1990 consensus, the poverty rate for female-headed families was 44.5% in comparison to 7.8% for married couples. See: U.S. Bureau of Consensus, 1990.

<sup>97</sup> The Commonwealth Fund: 1995

<sup>98</sup> Institute for Women's Policy Research. "Domestic Violence and Welfare Receipt." *IWPR Welfare Reform Network News*, Issue No. 4, April 1997.

## Domestic Violence Affects Employment Status

Domestic violence may depress victims' socioeconomic and job status attainment over time, compromising their ability to be consistent labor market participants.<sup>99</sup> Abusers may prevent victims from going to work in order to control their finances. Researchers have found that, over 50% of abused women reported they lost at least three days of work monthly due to abuse.<sup>100</sup> Another report found that at least 60% of abused women said that they were often late to work because of experiencing abuse.<sup>101</sup> Abusers also harass victims on the job with phone calls and unexpected visits.<sup>102</sup> A survey of employed shelter residents found that 96% had experienced harassment from their abusers at work.<sup>103</sup>

The psychological effects of domestic violence may lead to increased absenteeism and lower productivity. In a survey of Fortune 1,000 company executives, 49% of the respondents reported that domestic violence has a harmful effect on their company's productivity and 47% said it affects attendance.<sup>104</sup> Battered women spend twice as much time in bed due to illness as women who are not victims of domestic violence.<sup>105</sup> Women who suffer from violence may experience severe depression, exhaustion, weakness, fatigue, or emotional stress which hinder their work activity. Victims of domestic violence are three times as likely to suffer post traumatic stress disorder in comparison to women who are not victims of domestic violence.<sup>106</sup> The psychological response to an incident of abuse varies depending on the different forms of physical and sexual violence and emotional abuse the victim experiences.<sup>107</sup> Parents of children who are abused by an intimate partner or family member may also suffer from psychological injuries resulting from witnessing abuse and being unable to stop the violence.<sup>108</sup>

## Domestic Violence Acts as a Barrier for Acquiring Job Training and Education

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<sup>99</sup> Ancillary Services to Support Welfare to Work: Domestic Violence. Department of Health and Human Services: 1999?: 2. ([aspe.hhs.gov/hsp/isp/ancillary/DV.htm](http://aspe.hhs.gov/hsp/isp/ancillary/DV.htm))

<sup>100</sup> Stanley, Connie. Domestic Violence: An Occupational Impact Study. Tulsa, Oklahoma. 1992: 17; Laurence, Louise and Spalter-Roth, Roberta. Measuring the Costs of Domestic Violence Against Women and the Cost-Effectiveness of Interventions. IWPR, Victims' Services and the Domestic Violence Training Project. 1996: 25.

<sup>101</sup> Shepard, Melanie and Pence, Ellen. The Effect of Battering on the Employment Status of Women. *Affilia* Vol. 3. 1988: 55, 58.

<sup>102</sup> At least 70% of women who participated in survey reported abusers harassing them at the workplace. See, Strauss et al., *Supra* note 86 at 17.

<sup>103</sup> Data acquired from a study of shelter occupants in Tulsa, Oklahoma. See: Zorza, Joan. "Women Battering: High Costs and the State of the Law." *Clearinghouse Review*, Vol. 28, No. 4. Special Issue 1994: 384.

<sup>104</sup> See: Kaplan, April. "Domestic Violence and Welfare Reform." *Welfare Information Network*, Vol. 1, No. 8. September 1997. (<http://welfareinfo.org/domesticissue.htm>)

<sup>105</sup> Zorza, Joan. "Women Battering: High Costs and the State of the Law." *Clearinghouse Review*, Vol. 28, No. 4. Special Issue 1994: 383.

<sup>106</sup> Bassuk, Ellen, Browne, Angela, and Buckner, John. "Single Mothers and Welfare." *Scientific American*, Vol. 275, No. 4. 1996: 63.

<sup>107</sup> Dutton, Mary Ann. "Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome." *Hofstra Law Review*, Vol. 21. 1993: 1207.

<sup>108</sup> Browne, Angela & Bassuk, Shari. "Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Diverse Sample." *American Journal of Orthopsychiatry*, Vol. 67, No. 2. April 1997: 275.

Job training providers have reported that it is common for abusers to forbid their partners participation in job training and education programs because the abusers are threatened that the women's gain in job skills will decrease her financial dependency.<sup>109</sup> It is very difficult for victims to balance the stress of victimization due to abuse and learning new job skills. This being the case, women in job training programs who are currently being abused, are more likely to drop out than non-abused women.<sup>110</sup>

Immigrant women face additional barriers to gaining access to job training services due to their limited English proficiency. A study conducted by Equal Rights Advocates found that participants were discouraged from job training programs because the programs were often only conducted in English. Despite the fact that, the majority of immigrant women preferred work to welfare, many had experienced difficulty gaining stable employment because they did not have good English skills.<sup>111</sup>

## Domestic Violence and Children

Perpetrators of domestic violence do not limit which violence to their spouses or intimate partners. They often also abuse their children increases their power over or ability to coerce their wife.<sup>112</sup> Children of domestic violence victims are abused at a rate 1,500% higher than the national average.<sup>113</sup> 75% of women who are battered attest that their children are also victims of battery.<sup>114</sup> Risk to the children ranges from psychological injury from witnessing abuse, to accidental or intentional physical injury from being present during an incident of abuse.<sup>115</sup> Children who witness or experience abuse can suffer severe psychological and physical affects that require acute medical treatment and attentive parental support. Children suffer low-self esteem, depression, fear, and cold-like symptoms as a result of the stresses of observing domestic violence.<sup>116</sup> Further, the affect of growing up in an abusive family can have a profound affect on boys. Sons of violent families are 1000% more likely to abuse their own intimate partners as adults then sons who grow up in non-violent households.<sup>117</sup>

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<sup>109</sup> Kenney, Catherine T. and Brown, Karen R. Report from the Front Lines: The Impact of Violence on Poor Women. Legal Momentum. 1996: 8.

<sup>110</sup> See, Harlow, Supra note 84, at 8.

<sup>111</sup> Ng, Doris. From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women. Equal Rights Advocates. 1999.

<sup>112</sup> Planned Parenthood of Southeastern Pennsylvania v. Robert Casey, Supreme Court of the United States. No. 288.1992: 34.

<sup>113</sup> "Women and Violence," Hearings Before the U.S. Senate Judiciary Committee, August 29 and December 11, 1990. Senate Hearing 101-939, pt. 2, p. 142, p. 37.

<sup>114</sup> Walker, Lenore, Thyfault, Roberta, and Browne, Angela. "Beyond the Juror's Ken: Battered Women." Vermont Law Review, Vol. 7. 1982: 11.

<sup>115</sup> In a study of 146 children of abused mothers between the ages of 11 and 17, those over 14 attempted to intercept episodes of abuse and 62% of them were injured in the process. See: Roy, Maria. Children in the Crossfire. 1988: 89-90; Supra note 8: 1211.

<sup>116</sup> Jaffe, Peter. Wolfe, David, and Wilson, Susan Kaye. "Children of Battered Women." 1990: 26.

<sup>117</sup> Mary Kenning, Anita Merchant and Alan Tomkins. "Research on the Effects of Witnessing Parental Battering: Clinical and Legal Policy Implications" Women Battering: Policy Responses, ed. Michael Steinman (Cincinnati, OH: Anderson, 1991) p.238).

The safety and protection of children is one of the greatest concerns influencing a mother's decision to remain in an abusive relationship or attempt to flee abuse. Some women choose to live in abusive relationships to sustain the benefits that their children receive from having a home and basic material needs.<sup>118</sup> Such parents who are victims of domestic violence often make frequent attempts to leave an abusive relationship.<sup>119</sup> For the women who permanently leave abusive relationships, reaching a level of financial and social stability for themselves and their children is rarely an immediate achievement. Battered women need to rely on public benefits to carry them through to economic stability apart from their abusers. Benefits help battered women flee violence and protect their children from the additional psychological and physical harms that can occur without this much-needed safety net.

Providing critical financial assistance to help battered women attain economic stability also helps children. Women may move from shelter to shelter, and could even be forced to return to abusive homes to financially support their children. In a study of 146 children who were living in shelters with their mothers, two-thirds of the children had lived in at least two locations in a year.<sup>120</sup> Children of abuse victims also move from school to school, as perpetrators often track down the location of their children's school and use this information to harass the mother<sup>121</sup> or kidnap the children.<sup>122</sup> To further hamper battered women's efforts to achieve self-sufficiency, abusers withhold documents that would allow children to gain access to public education, housing assistance or welfare services. Accessing the public benefits safety net can help enhance stability as battered women transition toward self-sufficiency.

## Domestic Violence as Cause for Homelessness

The primary reason many victims of domestic violence choose to remain in an abusive relationship is the immediate fear of homelessness. 50% of all homeless women and children are fleeing domestic violence.<sup>123</sup> When a victim lacks economic resources needed to flee an abusive home, not having financial resources hinders their ability to provide a safe, secure shelter for themselves and their children. When a battered woman leaves her perpetrator, there is a 50% chance that she will drop below the poverty line.<sup>124</sup>

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<sup>118</sup> One of the ways that gender inequality in the society supports inequality and violence in the family is the economic dependence of women on men, which leads them to remain in violent marriages. See: Straus & Gelles, 1990.

<sup>119</sup> 30% to 50% of battered women return to their husbands once after they make their first attempt to leave. See: Schechter, Susan. *Women and Male Violence*. South End Press, Boston. 1982: 253.

<sup>120</sup> "Women and Violence," Hearings Before the U.S. Senate Judiciary Committee, August 29 and December 11, 1990. Senate Hearing 101-939, pt. 2, p. 142, p. 89-90.

<sup>121</sup> Violence continues to escalate after separation. In one study tracking participants of marital conflict mediation, 58.7% of women report a continuation of harassment by their ex-partners after separation. See: Ellis, Desmond, and Stuckless, Noreen. "Preseparation Abuse, Marital Conflict Mediation, and Postseparation Abuse," *Mediation Quarterly*, Vol. 9, No. 3. Spring 1992.

<sup>122</sup> Walker, Lenore. Thyfault, Roberta, and Browne, Angela. "Beyond the Juror's Ken: Battered Women." *Vermont Law Review*, Vol. 7. 1982: 29.

<sup>123</sup> The Violence Against Women Act of 1990: Hearings on S. 2754, Senate Committee on the Judiciary, Report 101-545, 101<sup>st</sup> Congress, 2<sup>nd</sup> Session 37. 1990.

<sup>124</sup> Ng, Doris. *From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women*. Equal Rights Advocates. 1999: 95.

Evidence suggests that one-half of all married women with children do not work outside the home and are dependent on their spouses for financial support.<sup>125</sup> Women who are employed make considerably less than their male counterparts and many need to depend on public assistance while maintaining some employment to assist in coverage child care and medical costs.<sup>126</sup> Without the economic resources to provide shelter and self-efficiency, women are susceptible to homelessness.

Homeless shelters are often over-crowded and do not have accommodations for families or women. A recent study found that more than 2,000 women seeking to obtain placement in homeless shelters were turned away.<sup>127</sup> Women who live in rural areas, with little or no shelter or social services available, find themselves especially vulnerable since they are isolated from resources that would aid their attempt to leave an abusive relationship.<sup>128</sup> Battered immigrant women suffer from greater obstacles in gaining entrance into shelters since language barriers often limit their access to English-based services.<sup>129</sup> Further, in some communities, providers of shelter and transitional housing programs are unaware of their legal obligations to be open to all persons without regard to immigration status and unlawfully turn away immigrant domestic violence victims who are undocumented.<sup>130</sup>

## Conclusion

Battered immigrant access to public benefits is key to enabling a battered immigrant woman to successfully leave an abusive relationship and create a safe, self-sufficient home apart from her abuser. Battered immigrants who cannot access benefits are often forced to return to abusers by hunger and homelessness. TANF workers who follow the Attorney General's guidance procedures for determining TANF eligibility help qualified alien battered immigrants and children of other abused immigrants safely access the safety net services to which they are legally entitled to help them successfully transition away from dependence on an abusive spouse.

Workers who do not follow these procedures and ask questions about immigration status when not legally required to do so, are by their actions cutting off battered immigrant

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<sup>125</sup> Strauss, Murray and Smith, Christine. "Family Patterns and Primary Prevention of Family Violence," Trends in Health Care, Law & Ethics, Vol. 8, No. 2. Spring 1993: 20.

<sup>126</sup> In a recent survey conducted by Equal Rights Advocates, many of the immigrant women participating had a job, yet they received low wages, little or no benefits, and temporary or unstable jobs. See: Supra 16 at 12; See also: Salomon, Amy, Bassuk, Shari, and Brooks, Margaret. "Patterns of Welfare Use Among Poor and Homeless Women." American Journal of Orthopsychiatry, Vol. 66, No. 4. American Orthopsychiatry Association. 1996: 521.

<sup>127</sup> Survey conducted by the Virginia Coalition for the Homeless, 1995 Shelter Provider Survey, 1995.

<sup>128</sup> In rural areas, such as in South Dakota, there may be no public housing available, very few jobs, and in-kind cash grants may be the only means for fleeing abuse. See: "Effects of Legal Services Cuts and Welfare Reform on Battered Women." Memo to Bonnie Campbell. July 10, 1996: 8.

<sup>129</sup> One out of four women said their lack of English skills was a barrier to receiving services that were administered in English. See: Becerra, Rosina. Immigrant Women and Welfare Reform: Survey Findings Final Report. Equal Rights Advocates. 1999: 31.

<sup>130</sup> See: Orloff, Leslye E. & Little, Rachel, "Somewhere To Turn: Making Domestic Violence Services Accessible To Battered Immigrant Women." A "How To" Manual For Battered Women's Advocates and Service Providers. AYUDA, INC, Washington, D.C. May 1999. p. 117.



women and their children from benefits to which they would otherwise be entitled. Further, they force battered immigrants to return to abusive households and escalation of abuse with will harm both the battered immigrant and her children. The following chapters outline the enlightened procedures developed by the Attorney General to be used by TANF eligibility workers in cases of immigrant and battered immigrant applications for benefits. By following these procedures TANF workers will be implementing the intent of Congress when they granted battered immigrants access to benefits and be ensuring that they are playing the role that they can within the law to help battered immigrant women and children attain safety.

## CHAPTER 3 – OVERVIEW OF BATTERED IMMIGRANT ACCESS TO WELFARE BENEFITS AND INTRODUCTION TO THE ATTORNEY GENERAL’S GUIDANCE ON PROCEDURE FOR DETERMINING IMMIGRANT ELIGIBILITY FOR BENEFITS

### Chapter Summary

This chapter provides TANF workers with an overview of why certain battered immigrant women were provided special access to public benefits despite the fact that many of the battered women and children who were granted access to benefits, including TANF, will be undocumented immigrants. Although each will have initiated a case with the Immigration and Naturalization Service, they are granted access to benefits while their case is pending. This access was provided to the spouses and children of U.S. citizen and lawful permanent resident abusers, to help battered immigrants and their children flee violent homes.

The following laws and their legislative histories and purposes will be summarized:

- 1) The Immigration Provisions of the Violence Against Women Act of 1994 (VAWA);**
- 2) The Personal Responsibility and Work Opportunity Act of 1996 (PRWORA);**
- 3) The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).**

This chapter also provides an overview of basic “qualified immigrant” eligibility for public benefits and battered immigrant eligibility.

The four-step application procedures contained in the U. S. Attorney General's Guidance is introduced:

- I) Determine if program provides a “federal public benefit” subject to verification requirements as defined in PRWORA (this includes income-based benefits such as TANF);
- II) Determine whether the applicant is otherwise eligible for benefits under general TANF program requirements;
- III) Verify the applicant’s status as U.S. citizen, U.S. non-citizen national, or qualified immigrant;
- IV) Verify the applicant’s eligibility for benefits under PRWORA.

Finally, this chapter the discussed rules governing the special exemption from verification and reporting requirements guaranteed charitable non-profit organizations, even those providing federal public benefits. Staff at non-profit charitable organizations

cannot be required by state, federal or local governments to inquire into the immigration status of the persons they serve.

## Chapter 3 -- History and Purpose of Battered Immigrant Welfare Access And Overview of The Attorney General's Guidance Four-Step Procedure For Eligibility Determination

### History of the Battered Immigrant Spouse Provisions of the Violence Against Women Act

When VAWA was enacted in 1994, Congress viewed it as “an essential step in forging a national consensus that our society will not tolerate violence against women”<sup>131</sup> and the terror it spawns.<sup>132</sup> Domestic violence threatens the lives, safety and welfare of millions of women and children in the U.S. every year. An estimated 16 to 26% of women are physically abused by a male partner at some point in their lives<sup>133</sup> and battering is the single largest cause of injury for women, causing more injuries than auto accidents, muggings and rapes combined.<sup>134</sup>

Congressional reports note that in 1991 at least 21,000 domestic crimes against women were reported every week,<sup>135</sup> and the unreported domestic crimes were estimated to constitute more than three times the level of reported crimes.<sup>136</sup> According to a U.S. Department of Justice Report, one-third of domestic attacks are felony rapes, robberies, or aggravated assault. Of the remaining two-thirds, which were simple assaults, almost one-half involved serious bodily injury.<sup>137</sup> Between 20 and 35% of women seeking medical care in emergency rooms in America are there because of domestic violence. Finally, family violence accounts for a significant number of murders: one-third of all women who are murdered each year die at the hands of husbands or boyfriends.<sup>138</sup>

Congress noted that prior to VAWA the immigration laws were one part of a larger societal and legal system failure to confront the domestic violence issue. The House of Representatives Committee on the Judiciary found that domestic battery problems are “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizens’ legal status depends on his or her marriage to the abuser,”<sup>139</sup> because it placed full and complete control of the alien spouse’s ability to gain permanent legal status in the hands of the citizen or legal permanent resident.<sup>140</sup> The citizen or resident spouse could assure that the victims remained forever undocumented and could have them deported if they turned

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<sup>131</sup> S.Rep. No. 138, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess., at 41042. (1993)

<sup>132</sup> Staff on the Senate Comm. On the Judiciary, 102<sup>nd</sup> Cong., 2d Sess., Violence Against Women: A Week in the Life of America. Comm. Print. 1992: 26.

<sup>133</sup> Avis, Judith. “Where Are All the Family Therapists? Abuse and Violence Within Families and Family Therapy’s Response.” *Journal of Marital and Family Therapy*. July 1992.

<sup>134</sup> Horn, Patricia. “Beating Back the Revolution: Domestic Violence’s Economic Toll on Women.” *Dollars and Sense*. December 1992.

<sup>135</sup> S. Rep. No. 138, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess., at 37 (1993). Every 15 seconds a women is battered by her boyfriend, husband, or spouse in this country. “Five Issues in American Health/” AMA. Chicago. 1991.

<sup>136</sup> *Id.*

<sup>137</sup> S.Rep. No. 138. 103d Cong., 1<sup>st</sup> Sess., at 41 (1993).

<sup>138</sup> S.Rep. No. 138. 103d Cong., 1<sup>st</sup> Sess., at 41 (1993).

<sup>139</sup> H.R. Rep. No. 395, 103d Cong., 1<sup>st</sup> Sess., at 26-27 (1993).

<sup>140</sup> *Id.*

to the justice system for help. A battered spouse may have been deterred from taking action to protect herself, such as filing criminal charges or calling the police because of the threat of deportation.<sup>141</sup> As a result, many immigrant women lived trapped and isolated in violent homes, afraid to turn to anyone for help. They feared continued abuse if they stay and deportation if they attempt to leave.<sup>142</sup>

Moreover, when battered immigrant women were locked by immigration laws in abusive marriages to U.S. citizens and lawful permanent residents they were forced to raise their children in an environment where they learned that perpetrating violence is an appropriate means of addressing anger and frustration.<sup>143</sup> The impact of domestic abuse on children was a major concern to Congress. Children are the victims of both direct and indirect violence.<sup>144</sup> For example, a child may suffer the harm of being an indirect victim of violence between parents or if the child is present when one spouse abuses the other,<sup>145</sup> or when the child views a rape or beating of their mother by their father.<sup>146</sup> These children are more likely to grow up to be abusers or victims of abuse themselves.<sup>147</sup> Additionally, Congress was concerned about the impact of the immigration laws on child abuse. It recognized that an abuser's control of the immigration status of the parent of the abused child would inhibit the reporting of child abuse and the removal of the child from the abuser.<sup>148</sup>

By adopting the VAWA immigration provisions, Congress provided battered immigrant women abused by their U.S. citizen and lawful permanent resident spouses with a way to attain lawful immigrant status without their abuser's cooperation. Congress thereby provided immigrant battered women and children with a means of escape. VAWA was also designed to enhance the ability of battered immigrants to help in the prosecution of their abusers. VAWA's immigration provisions undermine abusers ability to use their control over immigration status and threats of deportation to make themselves immune from any risk of punishment for the crimes they commit against family members.

#### **Access to Public Benefits for Battered Immigrant Women as Granted in PRWORA of 1996 and IIRIRA of 1996.**

Two years after the VAWA offered protection to battered immigrants, two new laws passed that significantly altered immigrant access to public benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of August 22, 1996 (PRWORA, or Welfare Reform Act) and the Illegal Immigration Reform and Immigration Responsibility Act

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<sup>141</sup> Id.

<sup>142</sup> Id.

<sup>143</sup> In 60% of domestic violence homes where women are abuse so are the children. Children were involved or present during 53% of all domestic violence offenses in 1990. Reports by battered mothers show 87% of children witness abuse of mothers. Children from violent homes have higher rates of alcohol and drug abuse. As violence against mother becomes more severe and more frequent, children experience 300% increase in physical violence by male batterer. (New Jersey Division on Women Report 1990).

<sup>144</sup> Staff on the Senate Comm. On the Judiciary, 102<sup>nd</sup> Cong., 2d Sess., Violence Against Women: A Week in the Life of America. Comm. Print. 1992: 6.

<sup>145</sup> Id. at 7.

<sup>146</sup> Id. at 5.

<sup>147</sup> N.J. Division on Women Report, 1990.

<sup>148</sup> H.R. Rep. No. 395, 103d Cong., 1<sup>st</sup> Sess., at 38 (1993).

of September 30, 1996 (IIRIRA) widely reduced access to benefits for many immigrants.<sup>149</sup> These laws deny Supplemental Security Income and federal food stamps to most immigrants and give states the discretion to determine whether immigrants can qualify for federal, state, and local public benefits programs.<sup>150</sup>

Although these laws substantially alter immigrants' ability to receive benefits, in the end battered immigrants were granted expanded access to certain public benefits including TANF and Medicaid. Members of Congress and the Administration recognized the unique set of economic, cultural, and social barriers that enhance the vulnerability of immigrant women who are victims of domestic violence. To address the issue, though PRWORA and IIRIRA negatively affected the immigrant population, the laws expanded access to public benefits for some battered immigrants who had previously been ineligible for assistance. For example, undocumented immigrants who are battered by their U.S. citizen or lawful permanent resident spouses or parents were authorized to apply for some public benefits if they have filed a VAWA immigration case or a family-based visa petition with the Immigration and Naturalization Service (INS).<sup>151</sup>

## PRWORA of 1996

PRWORA replaced Aid to Families with Dependent Children (ADFC) with Temporary Assistance for Needy Families (TANF) programs, which are state designed and administered. Under PRWORA, reforms were also made to immigrants ability to access public benefits. These changes included:

- states have the discretion to provide or deny qualified aliens' access to TANF, Medicaid, state public benefits, and social services funded under the Title XX block grants to "qualified immigrants" who entered the United States before August 22, 1996.
- but do not have that same option for "qualified immigrants" who entered the United States on or after August 22, 1996.<sup>152</sup>
- "Qualified immigrants" who enter the United States on or after August 22, 1996, are barred from receiving federal means-tested benefits during the first five years after obtaining qualified status.<sup>153</sup>

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<sup>149</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter PRWORA]. Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 8 U.S.C. 1001 et seq. (Supp. II. 1996) [hereinafter IIRAIRA].

<sup>150</sup> Orloff, Leslye E. "Access to Public Benefits for Battered Immigrant Women and Children." Clearinghouse Review: Journal of Poverty Law and Policy, Sept.-Oct. 1999 at 237-56

<sup>151</sup> The Violence Against Women Act (VAWA) case may be a self-petition for permanent residency, a cancellation of removal application, or a suspension of deportation application. See: Ibid 37 at 1.

<sup>152</sup> Broder, Tanya. "State and Local Policies on Immigrants and Public Benefits-Responses to the 1996 Welfare Law." Immigrants & the 1996 Welfare Law-State Responses. National Immigration Law Center. 1996: 1.

<sup>153</sup> Orloff, Leslye E. "Access to Public Benefits for Battered Immigrant Women and Children." Clearinghouse Review: Journal of Poverty Law and Policy, Sept.-Oct. 1999 at 237-56

- PRWORA creates a distinction between immigrant groups, establishing a classification system which distinguishes some immigrants as “qualified immigrants,” (hereafter referred to as qualified immigrants) and some as “unqualified immigrants.” However, despite being identified as “qualified immigrants,” the law made many of those immigrants ineligible for certain federal benefits.
- The Family Violence Option, another provision included within the PRWORA allows states to grant waivers for TANF requirements to battered women welfare recipients. See Chapter 9 for a full discussion of the Family Violence Option.

PRWORA also directed the Attorney General to define the kinds of government-funded community programs providing in-kind services necessary for the protection of life and safety, which are to be available to those residing in the United States, regardless of immigration status.<sup>154</sup> One must be a qualified immigrant to receive “federal public benefits.” Despite this fact certain non-public benefits (including benefits funded with federal or state money that do not fit within the legal definition of federal public benefits) remain open to all with no restrictions based on the immigration status of the applicant. The Attorney General issued guidance to states, which outlined a four-step procedure, which public assistance providers should follow when interviewing all potential public benefits applicants to determine eligibility.<sup>155</sup>

The Attorney General’s Guidance was designed to ensure that all applicants are treated equally and that questions about immigration status are asked only when required and about those persons who will actually be receiving the benefits. Thus, if a non-qualified battered immigrant is seeking benefits for her U.S. citizen children, only the status of the children would be permissible to inquire. This procedure was created as a method of verifying the eligibility of “qualified immigrants” who apply for benefits in a non-discriminatory manner.<sup>156</sup> This four-step procedure will be further evaluated in the manual chapters that follow. The guidance issued by the Attorney General also stated that “nonprofit charitable” organizations are not required to determine, verify, or require proof of immigration status of applicants of services before providing benefits.<sup>157</sup> Thus, in discussing the Attorney General’s guidance we will first cover charitable non-profit exemption from verification and will then discuss four-step procedure for determining benefits eligibility designed by the Attorney General. Finally PRWORA created the legal terms “federal means-tested public benefits” programs that fall within these definitions have greater immigrant access restrictions. The definition of “Federal means tested public benefits” and Federal public benefits defined in regulations by the Department of Health and Human Services, the Social Security Administration and the U.S. Department of

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<sup>154</sup> Specification of Community Programs Necessary for the Protection of Life and Safety Under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45985 (August 30, 1996). [hereinafter AG Order 2049-96].

<sup>155</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, AG Order 2129-97. 62 Fed. Reg. 61344. (Nov. 17, 1997). [hereinafter Interim Guidance].

<sup>156</sup> Interim Guidance at 61346, Section E.

<sup>157</sup> Interim Guidance at 61345, Section D.

Agriculture for their programs, have narrowly construed the PRWORA thereby ensuring that some public benefits and public services remain available to battered immigrants and other immigrants without regard to immigration status.<sup>158</sup>

## IIRAIRA of 1996

The Immigration Reform Act of 1996 broadened access to public benefits to battered immigrants that were not included in PRWORA. IIRAIRA extended the definition of “qualified immigrants” to include battered immigrant spouses and children who have suffered battery or extreme cruelty and who had filed an application for relief under VAWA or a family-based petition with the Immigration and Naturalization Service (INS).<sup>159</sup> IIRAIRA also exempted battered immigrants from sponsor deeming rules for the first year benefits are received.<sup>160</sup> Deeming previously rendered some battered immigrants ineligible for public benefits since an abuser’s salary was considered an asset of the immigrant abuse victim, which usually made immigrant applicants ineligible because their income exceeded the income guidelines of state and welfare agencies.<sup>161</sup> IIRAIRA preserved battered immigrant access to immigration relief and added confidentiality provisions that ensure that batterers cannot track their victims through the INS and cannot provide negative evidence to undermine a victim’s application.

## Meeting the “Qualified Immigrants” Definition

In order to qualify for means-tested public benefits programs such as TANF, battered immigrant women must fall into one of the categories of “qualified immigrants,” as defined by PRWORA and IIRAIRA. TANF eligibility is determined by income-based criteria, and applicants are subject to financial evaluation, as well as individual case assessment by welfare agencies. The authors of IIRAIRA recognized the unique problem which immigrant victims of domestic violence face when applying for public assistance, and therefore included protections for certain battered immigrant women by determining them “qualified immigrants,” without regards to their immigration status. In subsequent chapters 4,5,6 and 7 the four-step process that public service providers must use to determine if an immigrant applicant is a victim of domestic violence who is a “qualified immigrant” will be discussed in detail.

## Who are “Qualified Immigrants”?

As mentioned earlier, “qualified immigrants” may or may not be eligible for benefits,

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<sup>158</sup> Personal Responsibility and Work Opportunity Act of 1996; Interpretation of “Federal Means-Tested Public Benefit.” 62 Fed. Reg. 45256. (August 26, 1997). [hereinafter HHS definition].

<sup>159</sup> The VAWA case may be a self-petition, a cancellation of removal application or a suspension of deportation application.

<sup>160</sup> After a one-year exemption from sponsor deeming, the exemption may continue if the battered immigrant has obtained a factual finding in a judicial or administrative proceeding confirming the fact that they have been a victim of domestic violence.

<sup>161</sup> Previous law assumed that victims of domestic violence would have full access to their perpetrators financial resources and discounted the fact that abusers use economic dependency as a power and control tactic. See: Supra 36 at 238.



depending on several factors. The law distinguishes between three kinds of immigrants in determining whether they can access welfare benefits:

- **“Qualified immigrants” who entered the United States before August 22, 1996:** eligible for TANF, Medicaid, Title XX, SCHIP at state’s option but generally ineligible for SSI and Food Stamps unless receiving SSI on August 22, 1996.
- **“Qualified immigrants” who entered the United States on or after August 22, 1996:** ineligible for TANF, Medicaid/SCHIP for the first 5 years after which they are subject to deeming unless they are battered immigrants; ineligible for SSI and Food Stamps until citizenship and;
- **Immigrants who are not “qualified immigrants:”** ineligible for “Federal Public Benefits” and for Federal means-tested Public Benefits,” but can access “non-public benefits” even when programs providing these services receive federal funding.

“Qualified Immigrants” are:<sup>162</sup>

- Lawful permanent residents;
- Refugees;
- Asylees;
- Persons granted withholding of deportation or cancellation of removal;
- Cuban/Haitian entrants;
- Veterans;
- Person granted conditional entry;
- Amerasians;
- Persons paroled into the United States for a year or more;
- Persons who have been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before INS; who meet other requirements
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident other parent, with pending or approved VAWA cases or family-based petitions before INS.
- Children whose parents have been battered or subject to extreme cruelty by a U.S. citizens or lawful permanent resident spouse or parent, and who have pending or approved VAWA cases or family-based petitions before INS.
- Hmong/Lao who fought in the Vietnam War; who meet other requirements.

## U.S. Attorney General Order No. 2129-97 IIRAIRA Define Battered Immigrant Eligibility

Under IIRIRA, immigrant spouses and children who have been battered or subject to extreme cruelty can be considered “qualified immigrants.” The interim guidance issued by the Attorney General in AG Order No. 2197-97 on November 3, 1997<sup>163</sup> clarifies the

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<sup>162</sup> PRWORA 431(b), 8 U.S.C. 1641(b).

<sup>163</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of

verification process benefits-granting agencies should follow to determine eligibility of “qualified immigrant” status under PRWORA. As defined in IIRIRA amending PRWORA, immigrant spouses or children can be granted “qualified immigrant” status when they meet the following evidentiary requirements.

- 1) The Immigration and Naturalization Service (INS) or the Executive Office for Immigration Review (EOIR – an immigration judge):
  - a. Has found that the applicant’s pending VAWA petition or family-based visa application sets forth a *prima facie* case;<sup>164</sup> OR
  - b. Has approved a self-petition or family-based visa for the applicant; OR
  - c. Has made a prima facie determination or granted suspension of deportation; OR
  - d. Has made a prima facie determination or granted cancellation of removal; And
- 2) The immigrant or the immigrant’s child has been battered or subject to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household (if the spouse or the parent consents to or acquiesces in such battery or cruelty and, in case of a battered child, the immigrant did not actively participate in the battery or cruelty); AND
- 3) There is a substantial connection between the battery and extreme cruelty and the need for public benefit sought; AND
- 4) The battered immigrant or child no longer resides in the same household as the abuser.

Only benefits program administered by state and federal government agencies are subject to immigrant status verification requirements. Charitable non-profit organizations that administer federal public benefits programs are not required to ask about, report or verify immigration status. The rules governing charitable non-profit programs administering public benefits will be discussed more fully in chapter 4.

It is important for public benefits providers to understand that there are two important verification processes they must follow in assessing TANF eligibility.

- Screen applicants for eligibility for the Family Violence Option, by assessing if the applicant is a victim of domestic violence.
- Follow the four step Attorney General process for determining eligibility and determining qualified immigrant status.

The Family Violence Options, FVO will be discussed in detail in Chapter 9 and will be

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the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (1997).

<sup>164</sup> A *prima facie* case is one where the INS or an immigration judge has made initial determination that a VAWA case contains all of the necessary elements of proof.

<sup>165</sup> Provided your state has adopted the Family Violence Option. Even if the state has not, screening for domestic violence is recommended practice as it will ensure that battered women obtain the services they need in a manner that will not enhance the danger to them and their children from their abusers. When the state has not adopted the Family Violence Option, battered women identified through screening may qualify for hardship waivers.

referred to in Step III of the process laid out in the Attorney General's Guidance when it is most appropriate to do the FVO screening. It is important to not that currently, not all states have adopted the FVO. The Attorney General issued this guidance to assure that public benefits officials would establish a fair and non-discriminatory process resulting in the granting of benefits to qualified immigrants and assuring that citizen and qualified immigrant children could receive benefits without regard to their parent's immigration status.

## What is the Attorney General's Four-Step Procedure for Determining Benefit Eligibility?<sup>166</sup>

Benefits providers should first determine whether they work for a charitable non-profit organization that is exempt from verification requirements. If the program providers benefits is subject to verification requirements, eligibility workers should follow the 4-step procedures set forth by the Attorney General of the United States.

- 1) Determine if program provides a "federal public benefit" subject to verification requirements as defined in PRWORA (this includes income-based benefits such as TANF);<sup>167</sup>
- 2) Determine whether the applicant is otherwise eligible for benefits under general TANF program requirements;
- 3) Verify the applicant's status as U.S. citizen, U.S. non-citizen national, or qualified immigrant;
- 4) Verify the applicant's eligibility for benefits under PRWORA.

Public assistance providers are directed to follow this step-by-step procedure in determining all welfare applicant's eligibility for benefits. If a provider determines that the assistance the applicant is seeking is a "federal public benefit", or a "federal means-tested public benefits" then the public assistance provider can proceed to the next step in the process. If in the initial step the benefits provider determines that the benefit sought is not a "federal public benefit", or a "federal means-tested public benefit" then the applicant may receive the assistance if the applicant qualifies for that benefit and no inquiries into immigration status are to be made. Once the benefits provider has determined that the benefits sought are "federal public benefits" or "federal means-tested public benefits", the provider must then determine whether the applicant (immigration issues aside) otherwise qualifies for the benefit. If yes, the provider then proceeds to step three to determine immigrant status eligibility. If no, then the benefits provider informs the applicant that they do not qualify and does not ask any immigration questions.

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<sup>166</sup> As outlined in: Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,345 (1997).

<sup>167</sup> See later chapters for further explanation concerning classification differences of federal public benefits, means-tested federal public benefits, 'non-public benefits', and public services available to persons at a community level.

## Non-Profit Charitable Organizations Are Exempt From Immigrant Verification Requirements: The First Inquiry

If payments of federal funds are being made either directly to a local program or to a state for re-granting to a shelter, to a hospital, a battered women's program or to other social services organizations, these are not considered "federal public benefits" and are not subject to restrictions on immigrant access.<sup>168</sup> The primary reason that this is true is that the program receiving the payments is not an individual, household or family unit. The goal is to ensure that non-profit charitable organizations who often need and receive federal funds to help them better serve their communities will not be subject to immigrant restrictions because they receive federal funds to help them run a needed community program.

The U.S. Attorney General's Guidance clarifies this by stating:

*"Although the Act prohibits certain aliens from receiving non-exempted federal public benefits,' it does not prohibit governmental or private entities from receiving federal public benefits that they might then use to provide assistance to aliens, so long as the benefits ultimately provided to the non-qualified alien does not itself constitute a , "federal public benefit."*<sup>169</sup>

Non-profit charitable organizations were offered additional protection to ensure that they could effectively serve community needs. They were exempted from immigration verification requirements. Before contemplating any verification of immigration status, the first question that the benefits provider must ask is whether they work for a charitable non-profit organization. If so, charitable non-profit organizations are exempt from verification requirements and can provide Federal public benefits and federal means tested public benefits to individuals without verifying immigration status.

The guidance issued by the Attorney General also stated that "nonprofit charitable" organizations are explicitly not required to determine, verify, or require proof of immigration status of applicants of services.<sup>170</sup> Such organizations may provide all services to any person without regard to the immigration status of the person whom they are serving. Charitable non-profit organizations may provide non-public benefits, federal public benefits and federal means tested public benefits and are not required to verify the immigration status of any person they serve.<sup>171</sup>

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<sup>168</sup> Alien Eligibility of Federal Benefits *in* Immigrants and Welfare Resource Manual: 1998 Edition Tab 1-9, 17-18 (National Immigration Law Center ed., 1998).

<sup>169</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,361, (1997).

<sup>170</sup> Interim Guidance at 61345, Section D.

<sup>171</sup> If they or another agency sends a non-qualified immigrant to a government benefits granting agency for assistance and that agency conducts a verification that demonstrates that the immigrant is not qualified to receive federal public benefits or federal means tested public benefits, once the charitable non-profit organization can no longer provide that immigrant with services that meet the definition of federal public benefits. However, if the charitable non-profit organization has been providing federal TANF funds to that individual , they may continue to serve that individual used state maintenance of effort TANF funds.

To be a non-profit charitable organization exempt from verification requirements an organization must be organized and operated:<sup>172</sup>

- 1) For purposes other than making gains or profits for the organization, its members or shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and
- 2) For charitable purposes, including relief of the poor and distressed or of the underprivileged, advancement of religion or advancement of education.

Thus, if workers at charitable non-profit organizations voluntarily ask questions or request information and documentation regarding immigration status that they are not required by law to request, they run the risk of violating civil rights laws related to nondiscrimination and privacy.<sup>173</sup> Service providers need to be aware that asking verification questions when not required could subject their organizations to avoidable legal liability. Additionally, a state may not require that non-profit charitable organizations verify the citizenship or immigration status of any individuals applying for or receiving public benefits, non-public benefits or any other services, even if the provision of those services are federally or state funded.<sup>174</sup>

The next four chapters will provide a detailed break down of the specific interview questions and procedures which should be used to determine a battered immigrant women's eligibility for benefits. The information contained in these chapters should be followed by all public benefits providers except those providers who work for charitable non-profit organizations. Workers at charitable non-profit organizations serving immigrants and battered immigrants will find the following chapters useful as well, for they inform advocates for battered immigrant women working in those organizations how government benefits providers are supposed to proceed in cases of benefits applications for battered immigrants.

A chapter will be devoted to each of the four steps individually. After the four-step verification process explanation, there will be a chapter addressing reporting procedures and a look at the implementation of the Family Violence Option.

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<sup>172</sup> Verification and Eligibility for Public Benefits 63 Fed. Reg. At 41,667

<sup>173</sup> Interim Guidance 61, 346.

<sup>174</sup> Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, "Summary of Immigrant Eligibility Restrictions Under Current Law. (April 15, 1999) at 5.

## CHAPTER 4 – STEP I: IS THE BENEFIT SOUGHT A FEDERAL PUBLIC BENEFIT?

### Chapter Summary

This chapter familiarizes TANF eligibility workers with the following terms and provides lists of specific programs that have been deemed by the Department of Health and Human Services, the Department of Agriculture and the Social Security Administration to be:

- **Federal Public Benefits**
- **Federal Means-Tested Public Benefits**

Programs that have not been specifically listed as federal public benefits are non-public benefits, even if federally funded, and can be received by applicants who are immigrants without regard to immigration status. Thus, the first step in the Attorney General's Guidance on the procedures of handling applications for benefits from all individuals is to determine whether the program from which the applicant will be receiving services is a Federal Public Benefit or as Federal Means-Tested Public Benefit. If the program is not, no questions about the immigration status of the recipient should be asked.

This chapter will also discuss those federally funded programs that were explicitly exempted or excepted from the definition of federal public benefits. This include:

- **Programs designated by the Attorney General that provide services necessary to protect life and safety; and**
- **Other federally-funded programs specifically exempted from being considered federal public benefits**

Finally, this chapter will list that programs states can exercise an option to choose to offer to immigrants who are not “qualified immigrants” or who do not meet the test to qualify for “federal means tested public benefits.”

## Chapter 4 – Step I: Determine if the Benefits Program provides a “Federal Public Benefit”

### Introduction

In evaluating with a particular immigrant or battered immigrant may be eligible to receive federally funded assistance there are several concepts and terms that play a key role in those determinations. It is important for benefits providers to understand that many benefits are fully available to immigrants who fall within the categories of individuals who are “qualified immigrants.” Generally qualified immigrants are granted access to programs deemed to be “federal public benefits.” The definition of which programs fall within the definition of “federal public benefits” is set by each federal administrative agency responsible for administering the programs in question.

Some “federal public benefits” are deemed by law to be “federal means-tested public benefits” and have more restrictive eligibility requirements than other “federal public benefits.” One such restriction imposes a 5 year bar on access to “federal means tested public benefits” for immigrants who first entered the United States after August 22, 1996. In evaluating TANF applications, special attention must be paid to the date on which the applicant first entered the United States. Thus, since for example, TANF is a “federal means tested public benefit”, a battered immigrant who first entered the United States in 1997 would not be able to access TANF benefits despite the fact that she is a qualified alien and could access other federal public benefits.

Finally, it is important to understand that while qualified immigrants can access programs defined as federal public benefits, including in many cases federal means tested public benefits, non-qualified immigrants can freely access federally funded programs that are not within the federal public benefits or federal means-tested public benefits definitions. Congress provided an explicit definition of the types of programs that were to be considered federal public benefits and federal means-tested public benefits. Programs that are funded with federal dollars that are not included in these definitions are non-public benefits. Non-public benefits have no immigration restrictions and are fully open to all persons including qualified immigrants, non-qualified immigrants and even undocumented immigrants. If a program is not a federal public benefit all person may receive the program’s assistance and no immigration questions need be asked.

The following section discussion of Step 1 of the Attorney General’s guidance procedures directs benefits providers to first determine whether the program for which the immigrant is seeking assistance is a federal public benefit. TANF eligibility workers need to be aware that there are a broad range of public benefits that battered immigrants and their children may qualify for without regard to their immigration status. Battered immigrants should not be discouraged from applying for these benefits as they can provide essential safety net services that will help them leave abusive relationships, whether or not, the applicant will be seeking TANF benefits. If federally funded services being sought are not included within the definition of federal public benefits or if they are exempt from that definition the benefit should be provided without any inquiry about immigration status.

Step I: Determine if the Benefits Program provides a “Federal Public Benefit” Subject of PRWORA’s Verification Requirement.

## Federal Public Benefits

The benefits provider should first determine whether the benefit being sought is a “federal public benefit” that requires verification of immigration status.<sup>175</sup> The federal agency administering the benefits program is responsible for determining which of its programs are federal public benefits. To make this determination, the federal agency must first decide whether the benefit sought falls within the statutory definition of a “federal public benefit.”

### **A “Federal Public Benefit” is defined as:**

*Any grant, contract, loan, or professional/commercial license provided by an agency or by appropriated federal funds of the U.S.; or*

*Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefits, or any other similar benefits for which payments or assistance are provided to an individual, household, or family eligibility unit by a federal agency or be appropriated federal funds of the U.S.<sup>176</sup>*

A benefit will only be deemed a federal public benefit under this definition if payments are made to an individual, household, or family unit. HHS and other federal agency funded programs listed below are federal public benefits, provided that they payments from those programs in any individual instance are made to an individual, household or family unit:<sup>177</sup>

- Administration on Developmental Disabilities
- Adoption Assistance
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Programs
- Child Nutrition Programs
- Clinical Training Grant for Faculty Development in Alcohol and Drug Abuse
- Elementary and Secondary School Education
- Foster Care
- Head Start
- Health Profession Education and Training Assistance
- Immunizations, Testing, and Treatment of Communicable Diseases
- Independent Living Program
- Job Opportunities for Low-Income Individuals
- Low-Income Home Energy Assistance program
- Medicaid

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<sup>175</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,346, (1997).

<sup>176</sup> Verification and Eligibility for Public Benefits 63 Fed. Reg. At 41,664.



- Medicare
- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventative Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option
- Postsecondary Education Loans and Grants
- School Lunch and Breakfast Programs
- Short-term Non-cash Disaster Relief
- Social Security
- Social Services Block Grants
- State Child Health Insurance Program
- Subsidized Housing Programs
- Temporary Assistance for Needy Families (TANF)
- Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”)
- Title XX Block Grant Funds

## Federal Means-Tested Public Benefits

In PRWORA Congress identified a subset of Federal Public Benefits for which further restrictions on immigrant eligibility were imposed. These were “federal means- tested public benefits” programs. The Department of Health and Human Services, the Social Security Administration and the Department of Agriculture have each issues regulations setting out which of their programs are defined as “federal means-tested public benefits.” The regulations issues by each of these agencies limits the benefits to be included within the definition of “federal means tested public benefits” to those that are mandatory spending programs.<sup>178</sup> Eligibility for Federal Means-Tested Public Benefit programs varies depending on program. The requirements for TANF will be discussed at length in subsequent chapters. Only an overview of non-TANF federal means-tested public benefits will be provided in this manual as a detailed discussion of each program is beyond the scope of this training manual.

Federal Means-Tested Benefit Programs identified by DHHS are:<sup>179</sup>

- Medicaid
- TANF

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<sup>178</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256, 45,257 (1997).

<sup>179</sup> Id. At 45,256, 42,257.

Federal Means-Tested Public Benefit identified by the United States Department of Agriculture (USDA):

- \_ Food Stamps

Federal Means-Tested Public Benefit identified by the Social Security Administration:

- \_ Social Security Income (SSI)

Any federal program funded by the U.S. Department of Health and Human Services, the Department of Agriculture or the Social Security Administration that are not listed in the definition of either Federal Public Benefits or Federal Means-Tested Public Benefits are not Federal Public Benefits and therefore are open to all persons without regard to immigration status. If an applicant is seeking an HHS, Agriculture or SSA-funded benefit that is not listed above then no inquiry into immigration status is to be made in order for the applicant to receive the benefit.

## Programs Explicitly Excepted or Exempted From the Federal Public Benefits Definition

In creating the statutory definition of Federal Public Benefits, Congress excluded from that statutory definition certain programs. These programs fall into two broad categories of government funded programs that will be discussed in more detail below. Certain programs necessary to protect life and safety were deemed “exceptions” from the federal public benefits definitions. Other programs were defined as “exempt public benefits.”

### Attorney General’s List of Programs Necessary to the Protection of Life and Safety

PRWORA specifically created an exception to verification requirements for community based programs providing services that are necessary for the protection of life and safety. PRWORA delegated responsibility to the Attorney General to clarify what types of programs would be considered necessary for the protection of life and safety and would therefore be open to all individuals regardless of immigration status. The Attorney General designated these programs in AG Order 2049-97. These programs include, but are not limited to:

- 1) Government-funded programs such as fire, police, ambulance, transportation, sanitation, and other widely available services.
- 2) Government-funded programs that deliver in-kind services, provide services necessary for the protection of life and safety, and such services are not provided based on a recipient’s personal income or resources.
- 3) The Attorney General’s Order than provided a non-exclusive list of some of the types of programs that meet these three criteria:
  - Crisis counseling and intervention services
  - Short-term shelter and housing assistance for the homeless, victims of

domestic violence, runaways and abused or abandoned children

- Child protection
- Adult protective services
- Domestic violence and crime victim services
- Violence and abuse prevention
- Treatment of mental illness or substance abuse
- Assistance for individuals during adverse weather conditions
- Soup kitchens, community food banks, senior nutrition programs, and nutritional assistance to persons requiring special assistance
- Medical and public health services (including treatment and prevention of diseases, injury, mental health disability, or substance abuse necessary to protect life or safety)
- Activities meant to protect life and safety of workers, children, youth, or community residents.<sup>180</sup>

#### Federally-Funded Programs Specifically Exempted From Being Considered Federal Public Benefits

**Other services which are “exempted public benefits” not subject to immigration verification requirements include:**

- 1) Any wages, pensions, annuities, or other earned payments to which an immigrant is entitled as a result of federal, state, or local government employment, provided that the immigrant is not residing or present in the United States and provided that the employment was not prohibited under the immigration laws.<sup>181</sup>**
- 2) Any veterans’ benefits to which an alien is entitled, provided that the immigrant is not residing or present in the United States.<sup>182</sup>**

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<sup>180</sup> “Assisting Immigrant Survivors of Domestic Abuse: VAWA Immigration Relief, Public Assistance, and Other Important Concepts.” Centro Legal. Spring 1998: 9; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,676.

<sup>181</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,679.

<sup>182</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362

- 3) Any contract or professional/commercial license for a nonimmigrant whose visa entry is related to employment in the United States.<sup>183</sup>
- 4) Any contract or professional/commercial license for a citizen of a freely associated state (Palau, the Federated States of Micronesia, and the Marshall Islands), if section 141 of the applicable compact of free association is in effect.<sup>184</sup>
- 5) Any benefit that the United States is required to pay under the reciprocal treaty agreements listed in the forthcoming AG Order to a work authorized nonimmigrant or immigrant lawfully admitted for permanent residence.<sup>185</sup>
- 6) Medical assistance under Title XIX of the Social Security Act (SSA) (1903(v)(3)) for services necessary to the treatment of an emergency medical situation and are not related to organ transplant procedures.<sup>186</sup>
- 7) Short-term, non-cash, in-kind emergency disaster relief.<sup>187</sup>
- 8) Public health assistance for immunizations and for testing/treatment of symptoms of communicable diseases.<sup>188</sup>
- 9) Programs for housing or community development assistance, or assistance administered by Housing and Urban Development, or any assistance provided under section 306c of the Consolidated Farm and Rural Development Act as long as the benefit is being received as of August 22, 1996.<sup>189</sup>
- 10) Any benefit payable under Title II of the SSA to which entitlement is based on an application filed on or before August 31, 1996; including Social Security retirement checks and disability insurance benefits.<sup>190</sup>
- 11) Any benefit the nonpayment of which would contravene an international agreement described in section 233 of the SSA.<sup>191</sup>

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<sup>183</sup> Id.

<sup>184</sup> Id.

<sup>185</sup> Id.

<sup>186</sup> Id.; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,676.

<sup>187</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,677.

<sup>188</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,676.

<sup>189</sup> Id.

<sup>190</sup> Id.

<sup>191</sup> Section 233 allows immigrants who have worked legally in the U.S. to receive Social Security payments while residing in their home country if there is an international agreement between the U.S. and that country. See the Social Security Act for more information at <http://www.ssa.gov/>; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,676.

- 12) Any benefit the nonpayment of which would be contrary to section 202(t) of the SSA.<sup>192</sup>**
- 13) Any benefit under the school lunch program under the National School Lunch Act or the school breakfast program under section 4 of the Child Nutrition Act.<sup>193</sup>**
- 14) Any Medicare benefit payable under Title XVIII of the SSA to a STET immigrant who is lawfully present in the United States.<sup>194</sup>**
- 15) Any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an immigrant who is lawfully present in the United States or residing outside the United States.<sup>195</sup>**

### Federally-Funded Programs States May Elect to Provide Immigrants

Each state may elect to provide benefits under certain programs to any individual, regardless of their immigration status.<sup>196</sup> With regard to cases of battered immigrants, for example, some states have chosen to provide TANF using state TANF dollars to battered immigrants who would not otherwise qualify for TANF. A benefits provider should become familiar with the approach their state has taken to providing immigrant access to benefits using state funds. This will help the benefits provider determine whether they can provide TANF assistance to a battered immigrant who may not qualify for federal assistance using state dollars. For an overview of the approach each state has taken with regard to immigrant access to benefits, see chart prepared by Tanya Broder of National Immigration Law Center included as an attachment.

The following programs are those which states can elect to provide to any person without regard to immigration status:

- 1) State-funded TANF.**
- 2) State-funded medical insurance and assistance.**

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<sup>192</sup> Section 202(t) states that the Social Security Administration cannot pay monthly benefits to individuals who are outside of the U.S. for six consecutive months. See the Social Security Act for more information at <http://www.ssa.gov/>; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,677.

<sup>193</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,679.

<sup>194</sup> Id.

<sup>195</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362.

<sup>196</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,362.

- 3) **Programs under the National School Lunch Act and the Child Nutrition Act other than the school lunch and breakfast program.**<sup>197</sup>
- 4) **Food assistance programs under Section 4 of the Agriculture and Consumer Protection Act of 1973.**<sup>198</sup>
- 5) **The Emergency Food Assistance Act of 1983.**<sup>199</sup>
- 6) **The Food Distribution program on Indian reservations established under Section 4(b) of the Food Stamp Act of 1977.**<sup>200</sup>
- 7) **The Women, Infants, Children Nutrition Program.**<sup>201</sup>

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<sup>197</sup> 42 U.S.C. 1751; the Child Nutrition Act of 1966, 42 U.S.C. 1771.

<sup>198</sup> Section 4 of the Agriculture and Consumer Protection Act of 1973, 7 U.S.C. 612c.

<sup>199</sup> The Emergency Food Assistance Act of 1983, 7 U.S.C. 7501.

<sup>200</sup> Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,677; The food distribution program under on Indian Reservations established under section 4(b) of the Food Stamp Act of 1977 U.S.C. 2013(b).

<sup>201</sup> Letter from Dan Lesser, National Center On Poverty Law. June 18, 2000

## CHAPTER 5 – STEP II: DETERMINING WHETHER THE APPLICANT IS OTHERWISE ELIGIBLE FOR BENEFITS UNDER GENERAL PROGRAM REQUIREMENTS

### Chapter Summary

The second step in the procedures recommended by the Attorney General, once it has been determined that the benefit that the applicant seeks to receive is a federal public benefit or a federal-means tested public benefits, is to determine whether the applicant meets all other applications requirements. For the purposes of this test all applicants should be treated as if they are U.S. citizens.

This chapter lists the TANF eligibility requirements that would have to be examined to determine whether absent any immigration issues, the applicant would otherwise qualify. Those requirements include:

- 1) Residency in the state**
- 2) Time limits**
- 3) Commitment to work or job training within 24 months**
- 4) Child support assignment and collection rights**
- 5) Income eligibility**

The chapter also discusses the special issues that arise when the recipient of benefits is a child. TANF eligibility workers are directed by the Attorney General to only inquire into the eligibility of the individual who will actually be receiving benefits. For example, when a child is a U.S. citizen and their parent does not qualify to receive federal public benefits, eligibility to receive benefits of the applicant child. This can include income information about parents who may not themselves be applying to be included in the TANF grant for a variety of reasons which may include the fact that the parent does not themselves qualify.

This chapter confirms that if the adult or child applicant for benefits otherwise qualifies to receive TANF or another federal public benefit, only then should the eligibility worker proceed to Step 3 - immigrant status verification. TANF workers are required to perform the verification procedures discussed in Step 3 only for the person who will be receiving public benefits. In cases of a child only the child's status is relevant to this inquiry. No questions regarding the status of a parent who will not be receiving benefits themselves should be asked.

## CHAPTER 5 – Step II: Determining Whether the Applicant is Otherwise Eligible for Benefits Under General Program Requirements

If public benefits providers find that the program for which the applicant is applying is a federal public benefit that is not exempt from verification requirements, the benefits providers must then determine whether applicants meet all other criteria before verifying immigration status. This involves determining that the applicant is who she/he claims to be, documenting that the applicant meets any state or local residency requirements, determining income eligibility and determining whether or not the applicant meets any other required guidelines. Before verifying immigration status, the agency should treat the applicant in all respects as though she is a U.S. citizen and determine whether the applicant is eligible for the benefit. The agency may only move on to verification of immigration status after determining that the applicant is otherwise eligible for the benefit.<sup>202</sup> If the battered immigrant applicant does not otherwise qualify for benefits, then benefits providers are to deny benefits on that basis and are not to proceed to the next step of verifying immigration status since that step is not needed.

### TANF

Public benefits providers administering TANF should first examine whether an applicant meets all other eligibility guidelines for the TANF program. These federal TANF requirements include:

- 1) Residency in the state**
- 2) Time limits<sup>203</sup>**
- 3) Commitment to work or job training within 24 months<sup>204</sup>**
- 4) Child support assignment and collection rights<sup>205</sup>**

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<sup>202</sup> Interim Guidance on Verification Citizenship, Qualified Alien Statuses and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,346-47. Only in the relatively rare instances in which verification of program eligibility would be considerably more complex and time consuming than verification of immigration status the order can be reversed. If an agency is routinely reversing the order of the inquiry they risk violating anti-discrimination laws.

<sup>203</sup> Federal TANF guidelines require states to limit TANF receipt to a maximum of 60 months, or five years. This requirement is waivable for many domestic violence victims under the Family Violence Option. In addition, states are given the discretion to allow 20% of their welfare caseload to extend past the five year limit, if they can document the clients need for continued assistance. See: PRWORA, tit. I 402(a)(7), Pub. L. No. 104-193, 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C. 602(a)(7)).

<sup>204</sup> Federal TANF guidelines hold states accountable for ensuring a percentage of TANF recipients participate in work or work-related, educational activities. State TANF plan service providers must require that all recipients who are parents work within 24 months of receiving TANF funds. The federal work requirement is waivable for most battered immigrants under the Family Violence Option. See: PRWORA, tit. I 402(a)(7), Pub. L. No. 104-193, 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C. 602(a)(7)).

<sup>205</sup> Upon receipt of TANF funds, a recipient must be willing to sign over their child support rights to the state. While applicants must assign child support collected to the state, the requirements of cooperation may be the state is required to send the child support collections to the federal government waivable for victims of domestic violence under the Family Violence Option or by filing a Child Support Good Cause Waiver. See: PRWORA, tit. I 402(a)(7), Pub. L. No. 104-193, 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C.



## 5) Income eligibility

TANF provides cash payments, vouchers, social services, and other types of assistance to families in need. Program funds are distributed to individual states in the form of TANF Block Grants. States establish their own rules, including immigrant eligibility rules, for their state-funded TANF programs. The federal government has established national guidelines to which states must adhere, but the block grant distribution format gives states the authority to develop individualized welfare programs. States generally choose between three options in deciding how to run their TANF programs. They can:

- **Lump all federal and state TANF funds together;**<sup>206</sup>
- **Have one TANF program but with certain recipients paid solely out of state funds;**<sup>207</sup> or
- **Create a separate state program for some recipients who thus are not subject to federal restrictions.**<sup>208</sup>

All TANF recipients, immigrants and citizens alike, have a five-year lifetime limit on federal TANF welfare funding. Under the Family Violence Option, in states which have adopted this option, state welfare officials must screen for domestic violence and can offer waivers that stop the clock on time benefits limitations when it will enhance protection for battered women receiving TANF benefits. The months during which the battered woman has been granted the waiver do not count toward the 5-year time limit. For a more complete discussion of the family violence option, see Chapter 9.

If a battered women or any other TANF recipient reaches the 5 year time limit she may have two other options. First, she may qualify for a hardship waiver. These waivers are limited to 20% of the TANF caseload and are available in all states whether or not they have adopted the Family Violence Option. Hardship waivers are available to a variety of TANF recipients, not just to battered women. Further, the 5-year time limit can be avoided for a TANF funds, not to state funds. The 5-year time limited can be avoided for a particular applicant, including a battered immigrant, by paying their benefits solely out of state funds that are a part of the state's TANF program or out of funds that have been placed in a separate state TANF program.

## General TANF Requirements for Child Applicants

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602(a)(7).

<sup>206</sup> Under these circumstances they are generally governed by federal rules for the TANF program including immigrant restrictions.

<sup>207</sup> This allows states to avoid federal restrictions for applicants whose TANF benefits are paid out of state TANF dollars. This approach allows states to grant state TANF benefits to immigrants and battered immigrants who would not qualify for federal TANF funds. Some states have decided to offer state TANF to any battered immigrant or immigrant who is a qualified immigrant but subject to the 5 year bar. Other states have decided to offer state TANF to any battered immigrant who would but for their immigration status otherwise qualify for assistance, offering state TANF to undocumented battered women. This approach also allows states to offer assistance to welfare recipients who would otherwise be cut off from federal TANF due to time limitations.

<sup>208</sup> This approach helps recipients who may not be able to meet federal work requirements. It can also be used to help immigrants in the same manner as discussed in the footnote above.

Children may be eligible for TANF, even if their parents are not. A vast majority of children in immigrant families are U.S. citizens, and therefore eligible for, or entitled to, assistance on the same basis as other citizens. Past studies have found that it is quite common for public benefits providers to incorrectly examine a parent's immigration status when the recipient of benefits will be his/her children.<sup>209</sup> These incorrect procedures are contrary to the Attorney General's guidance hinders the child's ability to receive public benefits that can provide vital material resources for the child.

If the recipient is a child, then the eligibility requirements listed above should only be determined for that child. Parents should not be asked about their own immigration status if they are applying for benefits for their child and not for themselves. Parents may apply for public benefits on behalf of their recipient U.S. citizen, lawful permanent resident, or "qualified immigrant" children<sup>210</sup>. Like other TANF recipients, general TANF requirements are applicable to the child recipient only. Children must meet general income and residency requirements to receive TANF, including the income of their parents.

TANF providers are required to perform verification procedures ONLY for the individual who will receive public benefits. If the child does not meet general TANF program guidelines, than the public assistance provider should not proceed to the immigration verification process. Doing so could jeopardize the health and safety of the child and could be in violation of civil rights laws.

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<sup>209</sup> L. Marin, E. Goldfarb and A. Wadhvani. *Caught at The Public Policy Crossroads: The Impact OF Welfare Reform On Battered Immigrant Women*. National Network on Behalf of Battered Immigrant Women, (1999).

<sup>210</sup> It is important to note that the largest group of qualified immigrant children will be children who are lawful permanent residents. In the cases of domestic violence, however, qualified immigrant children could be undocumented child abuse victims whose abusers are a citizen or lawful permanent resident parent.

## CHAPTER 6 – STEP III: VERIFICATION OF CITIZEN, NON CITIZEN, OR QUALIFIED IMMIGRANT STATUS

### Chapter Summary

This chapter explains the third step in the determination of an applicant's TANF eligibility. In this step, TANF workers must determine the citizen or immigration status of the applicant in a non-discriminatory manner. The third step also requires that benefits providers screen for domestic violence, verify citizenship or qualified immigrant status, and determine whether sponsor deeming is an issue.

This chapter also reviews the Attorney General's Guidance outline for determining the immigration status classification of the applicant. This outline includes:

- Documents which would provide proof of citizenship or non-citizen national status.
- The definition of a "qualified immigrant"
- The protocol necessary for determining if applicants are "qualified immigrants"
- The conditions in which battered immigrants can achieve "qualified immigrant" status.

The chapter also offers an overview of the current relief available to battered immigrants. The chapter discusses family-based visa petitions, VAWA self-petitions, VAWA cancellation applications, and prima facie determinations.

Not only does the chapter detail the steps necessary for determining if battered immigrants are "qualified immigrants", it also offers several scenarios which would indicate that the applicant was a battered immigrant. The chapter concludes by encouraging TANF workers to document the abuse and to help the applicant receive immigration benefits in order to help her achieve a steady and safe future.

## CHAPTER 6 – Step III: Verification of Citizen, Non Citizen, or Qualified Immigrant Status

### Relationship Between Verification Regulations and the Attorney General's Guidance

Both the Attorney General's Guidance<sup>211</sup> issued on November 17, 1997 and Verification of Eligibility for Public Benefits regulations<sup>212</sup> issued by the INS on August 4, 1998, share the essential purpose of assisting benefits granting agencies in complying with the statutory mandates of PRWORA.<sup>213</sup> The two are to be read in tandem with the rule governing the process of verification immigrant status and the Guidance serving as a guide on the appropriate handling of applications for benefits submitted by immigrants.<sup>214</sup>

The Verification Rule governs how benefits granting agencies are to obtain the information they require for verification purposes from the INS when they are reviewing applications submitted by applicants for federal public benefits, once it has been determined that the applicant otherwise qualifies to receive the benefit.<sup>215</sup> The Guidance in contrast provides benefits granting agencies with a broader range of information, including appropriate treatment of immigrant victims of domestic violence and civil rights requirements.<sup>216</sup> Additionally, since the Guidance contained interim verification rules that were to be followed pending issuance of the Verification Rule and during the 2 years states had to bring their programs in full compliance with the rule, to the extent that the Guidance and the Rule differ in verification requirements, the provisions of the Verification Rule controls.<sup>217</sup>

Thus, once the benefits provider determines that the benefit sought is a Federal Public Benefit (Step I), and determines that the immigrant is otherwise eligible to receive the benefit (Step II), the provider must move to Step III, verification of citizenship or qualified immigrant status. The third step in the verification process is by far the most complicated step in determining TANF eligibility, as it requires determining the citizen or immigration status of the applicant in a non-discriminatory manner. Following the procedures set forth in the Verification Rule and the Guidance offers benefits providers the best protection to ensure that they will not run into problems with civil rights violations. These requirements are discussed in full below.

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<sup>211</sup> Interim Guidance, at 61344 et. seq.

<sup>212</sup> Immigration and Naturalization Service, "Verification of Eligibility for Public Benefits, AG Order No. 2170-98, 63 Fed. Reg. 149 (Aug. 4, 1998) (herein after Verification Rule).

<sup>213</sup> Verification Rule at 41633.

<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> Id.

<sup>217</sup> Id.

## What are the eligibility requirements for “qualified immigrants” under the TANF program?

TANF is a Federal Means-Tested Public Benefit.<sup>218</sup> The Personal Responsibility and Work Reconciliation Act of 1996<sup>219</sup> and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 restricted immigrant access to TANF and other federal public benefits.<sup>220</sup> As a result in determining immigrant eligibility for benefits, TANF providers will need to understand the distinctions between benefits eligibility for the following categories of individuals:

### **Under PRWORA, eligibility for Federal Means-Tested Public Benefits, such as TANF, are divided into four classifications:**

- \_ U.S. citizens
  - \_ “qualified immigrants” who entered the United States before August 22, 1996;
  - \_ “qualified immigrants” who entered the United States on or after August 22, 1996; and
  - \_ immigrants who are not “qualified immigrants.”
- \_ In Step III, benefits providers will be required to:<sup>221</sup>
- \_ Screen for Domestic Violence
  - \_ Verify Citizenship or Qualified Immigrant status
  - \_ Determine Whether sponsor Deeming is an Issue

As cautioned previously, no verification of an applicant’s citizenship or status as a U.S. citizen, U.S. non-citizen national, or “qualified immigrant” should be undertaken where receipt of benefits are not contingent upon such status.<sup>222</sup> The U.S. Attorney General’s Guidance outlines the specific verification procedures public benefits providers should adhere to that vary depending on the type of immigration status classification of the applicant. This chapter summarizes the Attorney General guidelines.

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<sup>218</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Interpretation of ‘Federal Means-Tested Public Benefit.’ 62 Fed. Reg. August 26, 1997. 45256.

<sup>219</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.)

<sup>220</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009; 8 U.S.C. 1001 et seq. (Supp. II. 96).

<sup>221</sup> If the immigrant is battered, is a qualified immigrant and is not subject to deeming then the final step in determining TANF eligibility is discussed in Step IV, determining whether the immigrant is subject to the 5 year bar to TANF benefits. It is also at this stage that pre and post- 8/22/96 entrants are treated differently.

<sup>222</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,347.

**Prior to asking any immigration questions, public benefits providers should complete a general domestic violence screening, as required under the Family Violence Option (FVO) of PRWORA.** For further discussion about FVO see chapter 9. Upon determining if an immigrant applicant has been subjected domestic violence, which is defined under immigration law as battery or extreme cruelty, the TANF worker should whether the applicant meets the qualification guidelines for receiving public benefits under the “battered immigrant category.”

It is important for TANF workers to understand that they must only undergo verification procedures for the individual who will be receiving benefits. **If a person is, submitting an application on behalf of child who is to be the recipient of the benefits citizenship or immigration status verification must only by undertaken for the child who will actually be receiving the benefits.**<sup>223</sup>

The Attorney General emphasized the importance of carrying out verification procedures in a non-discriminatory manner. She stated, “a benefit provider’s decision must be made in a non-discriminatory fashion; for example, whether or not to verify cannot turn on the fact that the applicant looks or sounds foreign or has an ethnic surname.”<sup>224</sup> The Steps I-IV set out by the Attorney General must be followed for all applicants in the same way. **TANF workers should conduct citizen and immigration verification procedures in a neutral manner that applies equally to all applicants regardless of their ethnicity, appearance, or language capabilities.**<sup>225</sup>

In verifying the status of an applicant for assistance, the U.S. Attorney General’s Guidance directs states agencies to ask for a written declaration, under penalty of perjury, that the applicant is a U.S. citizen, national, or “qualified immigrant.” The Guidance then instructs providers to review documentary proof of status. If the documents reviewed appear genuine on their face (samples of documents are included in the appendix of the guidance), providers may make an interim or temporary decision granting benefits to the applicant and must then contact the federal system for Alien Verification of Eligibility on program SAVE.<sup>226</sup> During the period of time it takes to complete the verification of immigration status, the public benefits provider should not terminate or stall the applicant’s ability to receive benefits under the program for which they are otherwise eligible.<sup>227</sup>

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<sup>223</sup> Id.

<sup>224</sup> Id.

<sup>225</sup> Id.

<sup>226</sup> Verification and Eligibility for Public Benefits, 63 Federal Register at 41,682, Section 104.41.

<sup>227</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,348.

Documents which would provide proof of citizenship or non-citizen national status include:

- 1) Primary documents verifying citizenship:<sup>228</sup>
  - A birth certificate showing birth in one of the 50 states, D.C., Puerto Rico, Guam, U.S. Virgin Islands, NMI, American Samoa, or Swain's Island;
  - a valid U.S. passport; report of birth abroad issued by Department of State;
  - certificate of birth issued by the INS;
  - certificate of citizenship issued by the INS;
  - U.S. citizen identification card issued by the INS;
  - Northern Mariana Identification Card issued by the INS;
  - statement provided by U.S. consular officer; or American Indian card with a classification code "KIC".
  
- 2) Secondary document verifying citizenship:<sup>229</sup>
  - A religious record dating birth from one of the 50 states, D.C., Puerto Rico, Guam, U.S. Virgin Islands, NMI, American Samoa, or Swain's Island;
  - evidence of civil service employment by the U.S. government before June 1, 1976;
  - early school records showing the date of admission to school, date and place of birth, and name(s) of birth parent(s);
  - census records showing name, date of birth and age of applicant, Adoption Finalization Papers showing name and place of birth;
  - or any other document that establishes a U.S. place of birth.
  
- 3) Collective Naturalization:<sup>230</sup>
  - Evidence of birth in Puerto Rico on or after April 11, 1889 and applicant's statement that they were residing in the United States or a U.S. possession of Puerto Rico on January 13, 1941;
  - evidence of a Puerto Rican citizen who was residing in Puerto Rico on March 1, 1917 and did not take an oath of allegiance to Spain;
  - evidence of birth in the U.S. Virgin Islands and applicant's statement that they were residing in the United States or a U.S. possession of the Virgin Islands as a Danish citizen on January 17, 1817 and residing in U.S. possession on February 25, 1927 and did not take an allegiance to Denmark;
  - evidence of birth in U.S. Virgin Islands and residing in Canal Zone on June 28, 1932; evidence of birth, 1986;
  - evidence of the Trust Territory of the Pacific Islands citizenship, continuous residence in the Northern Mariana Islands since before November 3, 1981, voter registration prior to January 1, 1975 and the November 4, 1986;
  - or evidence of continuous domicile in Northern Mariana Islands since before January 1, 1974 and no allegiance was pledged to a foreign state on

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<sup>228</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,363; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,680.

<sup>229</sup> Id.

<sup>230</sup> Id.

November 4, 1986 (does not apply to non-immigrants who entered the Northern Mariana Islands).

4) Derivative Citizenship:<sup>231</sup>

- Evidence of U.S. citizenship and/or status of the parents, relationship of the applicant to the parents, and evidence that the U.S. resident resided in the United States or an outlying possession prior to the applicant's birth (applies to applicants born abroad to two U.S. citizen parents, applicants born abroad to a U.S. citizen and a non-citizen national parent, applicant born out of wedlock abroad to a U.S. citizen mother, applicants born in the Canal Zone or the Republic of Panama).

NOTE: If an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality, the Attorney General Guidance requires that the benefits-granting agency personnel assist the disabled applicant in every way possible to obtain the required evidence.

Once a TANF provider verifies that the benefits applicant is a U.S. citizen or non-citizen national, then the provider has gathered the information needed to complete the verification procedure. At this time, the benefits provider can grant the applicant TANF benefits if they otherwise meet all other program requirements.<sup>232</sup>

If the applicant is not a U.S. citizen or non-citizen national, the public benefits provider must determine if an applicant is a "qualified immigrant" in a non-discriminatory manner. If it appears that an applicant is a "qualified immigrant" then the benefits provider must verify immigration status with INS using the SAVE system. If the immigrant applicant cannot provide evidence of "qualified immigrant" status, then the verification process should be terminated and no contact with INS's SAVE system should be made.<sup>233</sup> When TANF benefits are denied because of an applicant's inability to verify immigration status or for any other reason, public benefits providers must also let applicants know that they have the right to appeal the benefits denial that the TANF worker issued.<sup>234</sup>

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<sup>231</sup> Interim Guidance on Verification and Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,364.

<sup>232</sup> Id.

<sup>233</sup> Id.

<sup>234</sup> Interim Guidance on Verification and Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,364.



## Determining if Applicants Are “Qualified Immigrants.”

Applicants, who are not U.S. citizens or non-citizen nationals, may be eligible to receive benefits as “qualified immigrants.”<sup>235</sup> Certain groups of nonqualified battered immigrants are “qualified immigrants” for purposes of TANF eligibility. Determining if an applicant is a “qualified immigrant” can be an intricate process that requires careful consideration. Public benefits providers have a legal and professional responsibility to conduct eligibility determinations in a manner that is not discriminatory and does not invade the privacy of an individual applying for benefits. For this reason the Attorney General issued guidance that, if followed, protects the provider against claims of discrimination and protects the privacy of individuals applying for benefits either on their own behalf or on behalf of their children.

### A “Qualified Immigrant” is defined as:

- 1) An immigrant lawfully admitted for permanent residency under the Immigration and Nationality Act (INA).<sup>236</sup>
- 2) An immigrant granted asylum under Section 208 of the INA.<sup>237</sup>
- 3) A refugee admitted to the United States under Section 207 of the INA.<sup>238</sup>
- 4) An immigrant paroled into the United States under Section 212(d)(5) of the INA for at least one year.<sup>239</sup>
- 5) An immigrant whose deportation is being withheld under Section 243(h) of the INA as in effect to April 1, 1997, or whose removal is being withheld under Section 241(b)(3) of the INA.<sup>240</sup>
- 6) An immigrant granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980.<sup>241</sup>
- 7) An immigrant who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980.<sup>242</sup>

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<sup>235</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.)

<sup>236</sup> Interim Guidance on Verification and Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,348; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,677; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.)

<sup>237</sup> Id.

<sup>238</sup> Id.

<sup>239</sup> Id.

<sup>240</sup> Id.

<sup>241</sup> Id.

<sup>242</sup> Id.

- 8) Hmong/Highland Lao immigrants who lawfully reside in the United States.<sup>243</sup>
- 9) An immigrant who has been battered or subjected to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent who satisfies the requirements of Section 431(c) of PRWORA.<sup>244</sup> An immigrant whose child has been abused by the child's U.S. citizen or lawful permanent resident other parent who satisfies the requirements<sup>245</sup> of immigrant children whose parent has been abused by the parent's U.S. citizen or lawful permanent resident spouse.

To prove that an immigrant is a “qualified immigrant,” s/he must present a “green card” or other form of immigration documentation for inspection by the benefits-granting agency.<sup>246</sup> Public benefits providers can ask the applicant to provide valid documentation of immigration status, but must do so in a non-discriminatory manner. Documentation and verification requirements do not apply to Hmong/Highland Lao applicants. Because of the complexities and confusion surrounding the benefit eligibility of battered immigrants, battered immigrants who meet specific qualifications can be “qualified immigrants” although they are undocumented. The remainder of this chapter will focus on how benefits providers should approach review of documentation and verification with INS in cases of qualified battered immigrants.

#### When Immigration Status Must be Verified With the INS Under Step IV

If an applicant cannot show that s/he is a U.S. citizen or non-citizen national, his or her eligibility as a “qualified immigrant” must be verified under the SAVE system. SAVE may also be used to verify lawful permanent residence before an immigrant can qualify for certain public benefits. (Qualified Immigrant status of battered immigrants cannot be verified through the SAVE system and must be verified by contacting INS's Regional Office in Vermont directly.

If a benefits provider is considering denying an immigrant benefits because the provider believes that the immigrant is not a “qualified immigrant,” there are specific procedures that the benefits provider must follow before s/he can deny benefits.

The benefits-granting agency must examine the documents provided by the immigrant applicant before using SAVE.<sup>247</sup>

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<sup>243</sup> Note that no verification of qualified alien status needs to be done for this particular class of individuals. The U.S. Attorney General's Order simply requires that the benefits-granting agency determine the existence of a qualifying family relationship between the applicant and a living or deceased Hmong/Highland Lao person.

<sup>244</sup> As amended by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and Section 5571-72 and 5581 of the Balanced Budget Act of 1997(BBA). Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,344 (1997); Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,677.

<sup>245</sup> Section 451(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.)

<sup>246</sup> Verification and Eligibility for Public Benefits, 53 Fed. Reg. at 41,668.

<sup>247</sup> Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,671.

If based on the documentation provided to show citizenship, immigration, or qualified immigrant status the benefits provider can conclude that the applicant is not a “qualified immigrant” (i.e. the applicant presents documents such as a tourist visa or other documents that do not make them eligible for public benefits), the benefits provider does not need to verify the applicant’s status through SAVE.<sup>248</sup>

If the documentation provided does not appear on its face to be genuine or does not appear to relate to the person presenting it, this should not serve as a basis to conclusively deny benefits without first checking with the INS through SAVE.<sup>249</sup>

If the applicant is a battered immigrant and the documentation provided does not appear on its face to be genuine or does not appear to relate to the person presenting it, the benefits-granting agency, instead of running an inquiry through SAVE, should contact the Immigration Court that is handling the case or the INS Vermont Service Center via fax.<sup>250</sup>

The benefits provider may be able to provide benefits to the applicant benefits pending verification of status. The legal requirements of the benefits program and/or any applicable guidance provided by the federal agency or department overseeing the benefits program should be used to determine whether benefits should be granted or withheld during the period of time during which the applicant’s citizenship or immigration status is being verified.<sup>251</sup> Agencies may make an interim or temporary determination on benefits eligibility pending a response from SAVE, the immigration judge, or the INS in Vermont.<sup>252</sup>

If the INS notifies the benefits provider that the applicant has an immigration status that makes him a qualified immigrant within the meaning of PRWORA, the benefits provider should accept the INS verification and proceed to determine whether the applicant satisfies the remaining PRWORA requirements.<sup>253</sup> If the INS notifies the benefits provider that the applicant does not have an immigration status that makes her a qualified immigrant within the meaning of PRWORA, the benefits provider should notify the applicant of her appeal rights.<sup>254</sup> Upon request from the agency handling the appeal, the INS will conduct a thorough review of its initial verification response.<sup>255</sup>

For TANF and other means-tested Benefits, persons whom the benefits providers verifies are qualified immigrants can still be ineligible for benefits because the qualified

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<sup>248</sup> Id.

<sup>249</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,349; Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,684.

<sup>250</sup> Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,864.

<sup>251</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,349.

<sup>252</sup> Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,671.

<sup>253</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,349.

<sup>254</sup> Id.

<sup>255</sup> Id.

immigrant may not meet other program eligibility requirements addressed in Step 4. One significant fact that will prevent more recently arrived battered immigrants from being able to obtain benefits under federal TANF programs is the fact that the immigrant first arrived in the United States after August 22, 1996. Post August 22, 1996 immigrant arrivals will be barred from accessing TANF although they qualify as qualified aliens for the first 5 years following their attaining qualified immigrant status.

## Qualified Battered Immigrants

Under IIRIRA, certain battered immigrants meet the criteria for the “qualified immigrant” classification. Battered immigrants are “qualified immigrants” eligible to receive TANF and other public benefits if they prove all of the following four factors:

- 1) They have received a prima facie determination or approval of their immigration case from either the Immigration and Naturalization Services or an immigration judge;
- 2) They have been battered or subjected to extreme cruelty by family members specifically listed in the statute (e.g. a spouse, a parent or a member of the spouse or parent’s family residing in the same household as the victim);
- 3) There is a substantial connection between the need for public benefits and the abuse; and
- 4) They no longer live in the same residence as their abuser.

This chapter will summarize the guidance issued by the Attorney General of the United States, establishing how public benefits providers should handle of applicants for benefits under the “qualified battered immigrant” category.<sup>256</sup> How to determine whether a “substantial connection” exists will also be discussed.<sup>257</sup>

Before offering detailed explanation regarding the four-part document verification process unique to battered immigrants, we will provide an overview of the relief available to battered immigrants. We will briefly discuss: family-based visa petitions, VAWA self-petitions, VAWA cancellation applications, and prima facie determinations.

### Family Based Visa Petitions (I-130):

U.S. citizens and lawful permanent residents are able to sponsor or petition for certain family members. These family members may immigrate to the United States and obtain lawful permanent resident status through their U.S. citizen or lawful permanent resident family member. The U.S. citizen or lawful permanent resident who files the petition with

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<sup>256</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,366 (1997)

<sup>257</sup> Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits. 62 Fed. Reg. at 65,285 (1997).

INS is the Petitioner and emigrating family member is the Beneficiary.<sup>258</sup> The petitioner has full discretion as to when and if he/she files the family-based visa petition (I-130) on behalf of his/her family member.<sup>259</sup> Battered immigrants applying for TANF may be qualified immigrants because they are beneficiaries of family-based petitions filed by the TANF applicant's spouse or parent.

### VAWA Self-Petition (I-360):

The VAWA battered immigrant provisions allow an immigrant woman or child who has been subjected to battery or extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent, to self-petition for permanent residence. Prior to VAWA, battered immigrants often faced deportation if they chose to flee their abusers, since the abusers were often also their immigration sponsors and they could withdraw their petition for visas. VAWA's immigration protections ensure that battered immigrant women and children can self-petition for legal immigrant status on their own behalf, without having to depend on the cooperation of their U.S. citizen or lawful permanent resident abusers.

To qualify to receive public benefits a battered immigrant must have an application pending before, or approved by the INS or an immigration judge. Public benefits providers must accept evidence from battered immigrants who are self-petitioners and who have filed a case with INS that has been approved or in which INS has issued a prima facie determination. The specific evidence that may be accepted by public benefits providers that demonstrate that the applicant has an approved petition filed with INS or has received a prima facie determination is discussed in more detail below (Part A).

To obtain approval of a VAWA self-petition from INS VAWA self-petitioners present evidence that must meet each of the following eight requirements:

- 1) A self-petitioner must provide documentation that demonstrates that s/he is the legal spouse or child of a U.S. citizen or lawful permanent resident at the time of filing the petition.
- 2) The battered immigrant must provide documentation that proves that she was battered or subject to extreme cruelty during her/his marriage or childhood.

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<sup>258</sup> In order to gain legal immigration status through a family visa petition, a spouse must: file an I-130 petition with the Immigration and Naturalization Service, provide a birth certificate, alien registration receipt card if the spouse of parent is a lawful permanent resident, biographic data sheets for both the husband and wife or parent and child, color photos of both individuals, a copy of the marriage certificate, and any divorce decrees, death certificates, or annulment decrees from previous marriages. Once the family-based petition has been approved the undocumented spouse must present and application to register for permanent Residence or adjustment of status, a medical examination record, an affidavit of support (from the financial sponsor), and evidence of authorization for employment, and evidence of inspection upon entrance to the United States. See: Application Procedures: Bringing a Spouse to Live in the United States, Immigration and Naturalization Services, Department of Justice, <http://www.ins.gov/graphics/howdoi/appproc.htm>

<sup>259</sup> Unfortunately, some U.S. citizen and lawful permanent resident spouses have used their control over the immigration status of their undocumented spouses as a power and control tactic to keep their spouses in dependent, abusive situations.

- 3) The self-petitioner must prove that the abuser is a U.S. citizen or lawful permanent resident of the United States.
- 4) The petitioner must prove that she currently resides in the United States, although she does not have to reside with the abuser at the time of filing a self-petition.
- 5) The applicant must prove that she previously resided with the abuser within the United States.
- 6) An applicant who is 14 years or older must provide evidence of her “good moral character” for the past three years; this determination establishes that s/he has no criminal convictions and that she has maintained the “standards of the average citizen in the community.”
- 7) The applicant must show that if she is removed from the United States it will cause extreme hardship to herself or her child.<sup>260</sup>
- 8) The applicant should prove that s/he entered the marriage, in which abuse occurred, in good faith.

To obtain approval of a self-petition or VAWA cancellation case, applicants or self-petitioners must provide thorough documentation exhibiting a history of battery or extreme cruelty to the INS official or immigration judge deciding their case. This documentation includes: the battered woman’s affidavit, restraining orders or civil protection orders, police reports, photographs of the injuries or destruction of shared property, corroborating witness affidavits, medical records, criminal court records, domestic violence shelter records, and counseling and mental health records.

For battered immigrants, obtaining lawful permanent residency, or a “green card,” is a two-step process. First, the applicant must have her/his self-petition approved by the INS. Second, s/he must apply for permanent residence through adjustment of status process or consular processing. The second step in obtaining a green card is often a lengthy process, particularly for spouses and children of lawful permanent residents and for all applicants who may have to leave the country to obtain their green cards. These battered immigrants will, upon approval of their self-petition, receive “deferred action status” from INS. This status is an agreement by INS not to remove the battered immigrant from the United States. During this waiting period that can last as long as 6 years, these battered immigrants are technically “non-qualified” or undocumented immigrants. However, they are specifically authorized to receive public benefits and have legal work authorization while under deferred action status. Self-petitioners who receive an initial prima facie determination from INS while their self-petition is pending approval can only receive public benefits and must await legal work authorization until after their self-petition has been approved.

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<sup>260</sup> Evidence of extreme country conditions, economic hardship or health and safety related hardships would constitute appropriate documentation that could prove extreme hardship.

## Cancellation of Removal or Suspension of Deportation:

Cancellation of removal is a form of immigration relief in which an immigration judge sitting in immigration court waives the grounds for removal (new term for deportation). VAWA extends eligibility for cancellation of removal to an immigrant spouse, child, or parent of a child who is subjected to battery or extreme cruelty by a U.S. citizen or lawful permanent resident parent or spouse if they meet the following five requirements.

- 1) The applicant has lived continuously in the United States for three years preceding filing for cancellation of removal and prior to INS initiating a removal proceeding against them.
- 2) The applicant has evidence that proves s/he was subjected to battery or extreme cruelty while in the United States by their U.S. citizen or lawful permanent resident spouse or parent.
- 3) The applicant is determined to be an individual that exhibits, “good moral character.”
- 4) The applicant can provide evidence that they would suffer “extreme cruelty” if they were deported.
- 5) The applicant is currently deportable since they are undocumented or out of status.

A judge in an immigration case can issue a *prima facie* determination granting the cancellation applicant access to benefits pending the outcome of the VAWA cancellation proceeding. The specific INS documents indicating such a determination are discussed below (Part A).

## Prima Facie Determinations:

Prior to approval of a VAWA self-petition or qualifying family-based visa petition, the immigration judge or INS may rule that the pending petition or application filed sets forth a *prima facie* case.<sup>261</sup> To prove a *prima facie* case, the applicant must have presented at least some credible evidence that supports each required element of her VAWA case. This must include at a minimum an affidavit, usually accompanied by supporting documentation that state facts that if substantiated would lead to a favorable decision.

If the INS or immigration judge determines that a petitioner has demonstrated *prima facie* eligibility, a Notice of Prima Facie Case will be issued, and will remain valid until the INS or immigration has adjudicated the cancellation application or self-petition. Once the *prima facie* case determination is granted, the applicant will be eligible for benefits as a “qualified immigrant.” The specific documentation required to prove a *prima facie* case are parallel to those outlined in the explanation of the self-petition documentation.

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<sup>261</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,366-71 (providing guidance for establishing a *prima facie* case).

## Determining Whether Battered Immigrants are “Qualified Immigrants” Eligible for Public Benefits

If the benefit the battered immigrant is seeking is a Federal Public Benefit (Step I) and if the battered immigrant is otherwise qualified to receive that benefit (Step II), the public benefits provider must proceed to Step III, verification of citizen, non-citizen national, or qualified immigrant status. Carrying out Step III, verification for battered immigrants is a four-part procedure that is outlined by the Attorney General Guidance.<sup>262</sup> This process includes:

- 1) Obtaining evidence of a prima facie determination or approval of an immigration case issued by the INS or an immigration judge;
- 2) In the case of family-based petitioners only, determining if the applicant has evidence of a history of battery or extreme cruelty (This determination will already have been made by INS or the immigration judge in self-petition or cancellation cases and must not be re-decided by the benefits provider;
- 3) Determining whether a substantial connection exists between the abuse and the need for public benefits;
- 4) Concluding that the applicant no longer resides in the same household as the abuser.<sup>263</sup>

### Part A

Public benefits providers should determine if the immigrant applicant has a VAWA self-petition, family-based visa petition or VAWA cancellation application filed with INS or the Executive Office for Immigration Review (EOIR – an immigration judge). Public benefits providers must then determine whether the INS or EOIR has granted a VAWA or family-based petition or application filed on behalf of the immigrant, the immigrant’s child, or the immigrant child’s parent; or has found that a pending petition or application sets forth a prima facie case.<sup>264</sup> Battered immigrants may present the following forms of evidence to

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<sup>262</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,366. (1997).

<sup>263</sup> This criterion can be satisfied in a number of ways. One recommended approach is that adopted by Illinois which finds that this requirement is satisfied as long as the applicant has separated from her abuser within 30 days of her first receipt of benefits. She is not required to present evidence of separation before receiving her first payment of benefits. Letter from Dan Lesser, National Center on Poverty Law, June 18, 2000

<sup>264</sup> The applicant must have a pending or an approved application by the INS or the EOIR under INA Provisions 204(a)(1)(A)(i) (eligibility as a spouse or child of a US citizen); 204(a)(1)(A)(ii) (eligibility as a widow or widower of a US citizen); 204(a)(1)(A)(iii) and 204(a)(1)(B)(ii) (eligibility as a spouse of a US citizen or lawful permanent resident who has been subjected to battery or extreme cruelty in the US); 204(a)(1)(A)(iv) and 204(a)(1)(B)(iii) (eligibility as an alien child of a US citizen or lawful permanent resident who has been subjected to battery or extreme cruelty in the US); 240 A(b)(2) or 244(a)(3) as in effect prior to April 1, 1997 or 204A(b)(2) (governing ability of an immigration judge to suspend cancel the removal or deportation and adjust



prove that they have received a prima facie determination or have an approved immigration case filed with INS<sup>265</sup>:

- 1) a prima facie determination letter issued by INS in a self-petition case;
- 2) an approval notice in a self-petition case;
- 3) a prima facie determination issued by an immigration judge in a VAWA suspension of deportation or cancellation of removal case;
- 4) an approved I-130 family-based visa petition filed by a spouse or parent;
- 5) a decision of an immigration judge approving a VAWA suspension of deportation or VAWA cancellation of removal case;
- 6) any of the above documents plus evidence of parent-child relationship when an applicant is the child of a battered immigrant with any of the above.<sup>266</sup>

## Part B

If the applicant has taken measures to secure immigration status through methods specific to battered immigrants (i.e. self-petitioning, VAWA cancellation of removal or suspension of deportation, or an approved family-based visa petition) the INS or immigration judge will already have determined that the applicant has been battered or subjected to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident parent or spouse of the immigrant.<sup>267</sup> For these cases the benefits provider should not re-decide the issue of battering or extreme cruelty, and should skip to Part C.

In the case of immigrants with approved family-based visa petitions however, the benefits provider will have to determine whether the immigrant has been battered or subjected to extreme cruelty by a family member covered in the statute. The public benefits provider should be aware that in these cases, the INS or an immigration judge requires evidence of abuse and grants immigration relief dependent on their judgment of that documentation. Since a history of abuse has been predetermined, no further inquiries of battery or extreme cruelty need to be undertaken by the TANF worker.<sup>268</sup> Instead, public assistance providers can contact the INS or immigration judge to verify that the battered immigrant has received a prima facie determination.<sup>269</sup> If a case is pending and no prima facie determination has been made the benefits provider may help the battered

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the status of an alien who has been subjected to battery or extreme cruelty in the US by a spouse or parent who is a US citizen or a lawful permanent resident).

<sup>265</sup> Examples of the forms used by INS or the Executive Office of Immigration Review providing documentary proof of each of these facts are included in the Interim Guidance. Please see appendix for sample copies of those documents.

<sup>266</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,367.

<sup>267</sup> Id.

<sup>268</sup> Id. at 61, 369.

<sup>269</sup> Id. at 61, 377.

immigrant seek a prima facie determination from INS or refer her to local social or legal services providers for assistance. The following list will help benefits providers decide who may qualify for VAWA immigration relief so that they can refer these battered immigrants to organizations in their state with experience representing battered immigrants in immigration cases<sup>270</sup>. If the immigrant has experienced any of the following they qualify to receive benefits if they also meet the requirements in Steps 3 and 4.

- (A) The immigrant spouse or child applicant must have been subjected to battery or extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent of the immigrant, or by a member of the spouse or parent's family residing in the same household as the immigrant if the spouse or parent consents to or acquiesces in such a battery or cruelty.<sup>271</sup> OR
- (B) The immigrant's child has been battered or subjected to extreme cruelty in the United States by a U.S. citizen spouse of the immigrant or the child's other parent, or by a member of the spouse or parent's family residing in the same household as the immigrant if the U.S. citizen or lawful permanent resident spouse or parent consents to or acquiesces in such battery or extreme cruelty, and the immigrant did not actively participate in the battery or extreme cruelty.<sup>272</sup> OR
- (C) The immigrant child's parent has been abused or subjected to extreme cruelty in the United States by the parent's U.S. citizen or lawful permanent resident spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or extreme cruelty.<sup>273</sup>

**“Battery or extreme cruelty”** is defined by the U.S. Attorney General as, “acts or threatened acts that, in and of themselves, may not initially appear violent [but] may be part of an overall pattern of violence.”<sup>274</sup> The Attorney General provides a definition that is meant to be broad and flexible including but not being exclusive to:

*being a victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury; or psychological or sexual abuse or exploitation, including rape, molestation, incest or forced prostitution.*<sup>275</sup>

“Members of the spouse or parent's family” are considered to be:

*any person related by blood, marriage, or adoption to the spouse or parent of the immigrant, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country.*<sup>276</sup>

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<sup>270</sup> For a list of programs and lawyers serving battered immigrants in each state contact Legal Momentum 202-326-0040 and request a copy of the state by state directory of programs serving battered immigrants.

<sup>271</sup> Id at 61,366.

<sup>272</sup> Id.

<sup>273</sup> Id.

<sup>274</sup> Id. at 61,369.

<sup>275</sup> Id.

<sup>276</sup> Id.

In the case of immigrants with approved family-based visas, it is the responsibility of the TANF worker to make the client aware of her rights to public benefits access if she can provide evidence of her battery or extreme cruelty.<sup>277</sup> The public benefits provider should request the applicant to present evidence of the abuse. Documentation could include, but is not limited to:

- **reports or affidavits from the victim, police, or battered women’s advocates,**
- **medical personnel,**
- **school officials,**
- **clergy,**
- **social workers,**
- **counseling or mental health personnel**
- **proof of domestic violence conviction**
- **proof of seeking haven in a battered women’s shelter.**

Note: It is important to note that the battered immigrant’s own statement or allegation of having experienced abuse can be sufficient documentation of abuse as well. Although verification regulations do suggest that the specific documents mentioned above are required, the clients own words and statements may be sufficient proof. Particularly, when a battered immigrant has been isolated, her credible, internally consistent affidavit may be sufficient documentation.

TANF workers should communicate with other professionals that have contact with the client to encourage their assistance to the applicant in gathering evidence of abuse. If an applicant has an approved VAWA self-petition, VAWA cancellation or VAWA suspension application, then further proof of abuse if both unnecessary and inappropriate. The public service provider should only verify the remaining criteria (the last two of the four requirements) needed to qualify for the “battered immigrant category.”

Public benefits providers may encounter an applicant for public benefits who does not have a prima facie case determination or VAWA case filed, but is suspected or known to have experienced battery or extreme cruelty. In this case, the public benefits provider should screen the applicant regarding the abuse and should refer the victim to appropriate legal and social service programs that could help her flee the abuse, gain legal protections and apply for any immigration benefits for which she may qualify.

## Part C

Once the benefits provider has determined that an immigrant applicant has a prima facie determination or approved petition and that the immigrant has been battered or subjected to extreme cruelty, they must then determine whether there is a substantial connection between the abuse and the need for benefits. Under PRWORA, the Attorney General was required to develop a definition of when there is a substantial connection

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<sup>277</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,379.

between the battery or extreme cruelty to which an immigrant, immigrant's child, or immigrant's parents has been subjected and the need for public benefits. The Attorney General Order No. 2131-97 sets forth some possible circumstances in which there is a substantial connection between the abuse and the need for public benefits.<sup>278</sup>

Battered immigrants, even those who are undocumented immigrants, were granted access to public benefits as a result of legislators understanding that welfare is a vital safety net for women who have fled abusive households. In developing the definition of substantial connection, the Attorney General recognized the multitude of economic barriers that victims of domestic violence face upon leaving an abusive household. In the Attorney General Order 2131-97, she outlined specific instances that serve as examples for when there is a substantial connection between domestic violence and the need for public benefits. The Attorney General created an illustrative list of standard scenarios to assist public benefits providers in their determination of substantial connection, in specific cases and to support benefits-granting agencies in their efforts to assist victims of battery.

The nine conditions which the Attorney General determined establish "substantial connection" are only examples of when a substantial connection exists. Other similar scenarios can also meet the substantial connection test. The instances in which there is a substantial connection between the need for benefits and the battery or extreme cruelty include but are not limited to when:<sup>279</sup>

- the benefits are needed to enable the immigrant, immigrant's child, or an immigrant child's parent to become self-sufficient following separation from the abuser;<sup>280</sup>
- the benefits are needed to enable the immigrant, immigrant's child, or an immigrant child's parent to escape the abuser and/or community in which the abuser lives and ensure safety;<sup>281</sup>

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<sup>278</sup> Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits. 62 Fed. Reg. 65,285. (1997).

<sup>279</sup> These guidelines are meant to assist benefit providers in determining what conditions would qualify for establishing substantial connection, and are not binding.?????? 65,286 of the Order.

<sup>280</sup> Job insecurity and low-income levels, as well as lack of transportation, childcare, language or educational skills, may hinder a battered immigrant women's ability to provide basic material and service needs for herself and her children. These factors create a need for battered immigrant women to have access to public benefits following separation from the abuser. See: Supra 46. Raphael, Jody. Prisoners of Abuse: Domestic Violence and Welfare Receipt. Taylor Institute. 1996; Amy Salomon, Shari Bassuk and Margaret Brooks. "Patterns of Welfare Use Among Poor and Homeless Women." American Journal of Orthopsychiatry, Vol. 66, No. 4. American Orthopsychiatry Association. 1996: 521; Kenney, Catherine T. and Brown, Karen R. Report From the Front Lines: The Impact of Violence on Poor Women. NOW Legal Defense and Education Fund. 1996: 8; Orloff, Leslye and Dave, Nomi. "Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area." Poverty & Race, Vol. 6, No. 4. 1997; Ng, Doris. From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women. Equal Rights Advocates. 1999.

<sup>281</sup> Battered immigrant women could have a well-founded fear that they will be ostracized from their family and friends, the abuser's family and friends, and their surrounding community. Due to cultural norms, the immigrant community may not recognize domestic violence as a social problem and may feel that women should put their family obligations before their own personal safety. Abused women may also fear their safety if they remain in a community where their abuser lives, since abuse often escalates after victims leave their perpetrators. Because of these factors, victims of abuse often depend on access to public benefits to supply

- the benefits are needed due to a loss of financial support resulting from the immigrant’s separation from the abuser;<sup>282</sup>
- the benefits are needed because the battery or extreme cruelty, separation from the abuser, work absences, or lower job performance resulting from the abuse or court-related proceeding cause the immigrant, the immigrant’s child, or immigrant child’s parent to leave or lose employment;<sup>283</sup>
- the benefits are needed because the abuse or extreme cruelty has caused the immigrant, immigrant’s child, or immigrant child’s parent to require medical attention/counseling or become disabled;<sup>284</sup>

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the financial means to relocate from the community in which abuse occurred. See: Orloff, Leslye E. and Chung, Minty Sui. “Overcoming Cultural Barriers.” *Ayuda, Inc.* 1996: 3; Maher, Heather. Forthcoming publication from the American Bar Association. “The Use of Testimony Concerning Battering and its Effects on Immigrant Women.” *ABA*. P. 21; Zorza, Joan. “Women Battering: High Costs and the State of the Law.” *Clearinghouse Review*, Vol. 28, No. 4. Special Issue 1994: 384.

<sup>282</sup> Women who were supported by their husbands since they stayed home to raise children and/or carry out domestic activities, or whose part-time or full-time job did not equip them with enough income to be self-sufficient, could lose their source of income when separating from their abuser. Since these women do not have access to an adequate source on income after leaving an their abuser, they need to rely on public benefits to ensure a safe transition from abuse to safety; additionally, welfare will act as a stabilizer providing an economic safety net which allows victims of domestic violence to acquire job training and education, childcare funding, and the ability to carry out an employment search. See: Raphael, Jody. *Prisoners of Abuse: Domestic Violence and Welfare Receipt*. Taylor Institute. 1996; Amy Salomon, Shari Bassuk and Margaret Brooks. “Patterns of Welfare Use Among Poor and Homeless Women.” *American Journal of Orthopsychiatry*, Vol. 66, No. 4. American Orthopsychiatry Association. 1996: 521; Kenney, Catherine T. and Brown, Karen R. *Report From the Front Lines: The Impact of Violence on Poor Women*. NOW Legal Defense and Education Fund. 1996: 8; Orloff, Leslye and Dave, Nomi. “Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area.” *Poverty & Race*, Vol. 6, No. 4. 1997; Ng, Doris. *From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women*. Equal Rights Advocates. 1999.

<sup>283</sup> Abuse can cause a victim to experience physical injury, depression, post-traumatic stress disorder, and loss of interest or direction in work activity. 60% of abused women report being late to work due to experiencing abuse. Battered women are also reported to spend twice as much time in bed due to injury or illness than women who are not abused. Parents of children who are abused are also prone to absenteeism and lateness since they miss work to care for their children. See: Dutton, Mary Ann. “Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Women’s Syndrome.” *Hofstra Law Review*, Vol. 21. 1993: 1207; Shepard, Melanie and Pence, Ellen. “The Effect of Battering on the Employment Status of Women. *Affilia*, Vol. 3. 1998: 55, 58; Zorza, Joan. “Women Battering: High Costs and the State of the Law.” *Clearinghouse Review*, Vol. 28, No. 4. Special Issue 1994: 384; Browne, Angela and Bassuk, Shari S. “Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Divers Sample.” *American Journal of Orthopsychiatry*, Vol. 67, No. 2. American Orthopsychiatry Association. April 1997; 275.

<sup>284</sup> Domestic violence is the leading cause of injuries to women between 15-44 years old, and the second most common cause of injury for women of all age groups. The U.S. Department of Justice reported that 37% of women who sought care in hospital’s emergency departments suffered extensive injuries by a current or former partner. Extensive injury and emotional trauma hinder battered immigrants from being able to maintain stable job and financial obligations. Public benefits gives women the financial resources needed to gain medical and counseling attention, as well as economic stability which could allow victims to recover at their own pace without financial strains. See: Sweiton, Christina. *Domestic Violence*. Osborn Schools. 1999: 2, 8. Battered women are also reported to spend twice as much time in bed due to injury or illness than women who are not abused. See: Zorza, Joan. “Women Battering: High Costs and the State of the Law.”

- the benefits are needed because of the loss of a dwelling or source of income or because fear of the abuse after separation diminishes the immigrant’s, or immigrant child’s parent’s ability to care for the children;<sup>285</sup>
- the benefits are needed to alleviate nutritional risks and needs following abuse and/or after separation;<sup>286</sup>
- the benefits are needed to provide medical care during pregnancy resulting from sexual assault or the relationship with the abuser;<sup>287</sup> and
- where medical coverage or health care services for the immigrant, the immigrant’s child, or the immigrant child’s parent are needed to replace the services provided while living with the abuser.<sup>288</sup>

Public benefits providers must decide if a client meets the “substantial connection” requirement. TANF workers should make this determination on a case-by-case basis

Clearinghouse Review, Vol. 28, No. 4. Special Issue 1994: 384; Dutton, Mary Ann. “Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Women’s Syndrome.” Hofstra Law Review, Vol. 21. 1993.

<sup>285</sup> It is known that abuse often escalates after victims leave their perpetrators. Knowing this, women may fear that their abuser will harass them at work, or will attempt to kidnap their children at school. Exhibiting a well-founded fear, women may not want to leave their children for extended periods of time, and may move frequently, to prevent future contact with the perpetrator. As a result, many women find themselves homeless and unemployed, which makes welfare a vital safety net during the transient time experienced when attempting to move from abusive situations to safety. See: Zorza, Joan. “Women Battering: High Costs and the State of the Law.” Clearinghouse Review, Vol. 28, No. 4. Special Issue 1994: 384; Ellis, Desmond and Stuckless, Noreen. “Pre-separation Abuse, Marital Conflict Mediation, and Post-separation Abuse.” Mediation Quarterly, Vol. 9, No. 3. Spring 1992; 50% of all homeless women were fleeing abuse. The Violence Against Women Act of 1990: Hearings on S. 2754, Senate Committee on the Judiciary, Report 101-545, 101<sup>st</sup> Congress, Session 37. 1990; *Also see: Supra 51.*

<sup>286</sup> 50% of women are dependent on their spouses for sole financial support. If women leave an abusive household, they may not have a source of income to provide food and other basic life needs for themselves and their children. Public benefits provide the means to gain basic nutritional needs. See: Strauss, Murray and Smith, Christine. “Family Patterns and Primary Prevention of Family Violence,” Trends in Health Care, Law & Ethics, Vol. 8, No. 2. Spring 1993: 20.

<sup>287</sup> Women are more likely to be raped or physically assaulted by an intimate partner than other men. Forced sexual assault by the perpetrator may result in pregnancy. Violence is also known to increase during pregnancy. Since the pregnancy may be unwanted and cause for emotional and physical distress, women may need extensive medical attention. As women are often dependent on their abusers for financial means, victims of domestic violence who are pregnant may not have the income to access medical services upon fleeing abuse. Public benefits give women the money needed to gain medical attention required to properly attend to medical concerns resulting from pregnancy. See: “Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey.” National Institute of Justice Centers for Disease Control and Prevention. Research in Brief. Department of Justice. November 1998; Sweiton, Christina. Domestic Violence. Osburn Schools. 1999-10.

<sup>288</sup> 50% of women who experience domestic violence do not work outside the home and are financially dependent on their spouses. Women who do not work may not have their own benefits package. Upon leaving abuse, welfare may provide the only means for women and their children to pay for medical services. See: Strauss, Murray and Smith, Christine. “Family Patterns and Primary Prevention of Family Violence,” Trends in Health Care, Law & Ethics, Vol. 8, No. 2. Spring 1993: 20.

since the circumstances of each battered immigrant's experience with domestic violence will differ. When circumstances exist that are described in the Attorney General's Order, the benefits provider must find that a substantial connection exists. In other cases the benefits provider should use the list as guidance for determining whether or not similar connection exists.

#### Part D

After determining that a substantial connection exists between the battery and need for public benefits, the final step in determining benefits eligibility is verification of the applicant's residency apart from their abuser. The applicant must provide documentation that proves that she will not be residing with the abuser upon receipt of public benefits. Public benefits providers should be aware that some benefits applicants may live with the abuser during the application process. This is understandable because the battered immigrant may not have the resources to escape the abuse without the public benefits funds and therefore, may not have the means to live outside the abusive household at the time of the application. In this instance, the Attorney General Guidelines allows public benefits providers to approve the applicant for receipt of benefits pending the immigrant's separation from the batterer.<sup>289</sup> This enables a battered immigrant to be sure that she will receive public benefits once she separates from her abuser. Following separation she only needs to bring to the benefits provider evidence of separation and she can begin receiving benefits.

The following examples serve as credible evidence to support the claim of non-residency with the batterer and include, but are not limited to:<sup>290</sup>

- a civil protection order requiring the batterer to stay away from the battered immigrant, immigrant child, or immigrant child's parent;
- a civil protection order removing the abuser from the family home;
- an eviction notice removing the batterer from the immigrant applicant's residence;
- employment records establishing separate residence;
- utility receipts;
- school records;
- hospital or medical bills;
- rental records from a building or property manager;
- affidavit from a staff member at a battered women's or homeless shelter;
- affidavits from witnesses, including landlords and neighbors;
- any other records establishing that the immigrant, immigrant's child, or immigrant child's parent no longer resides with the abusive spouse.

#### Possible Scenarios Public Benefits Providers Face When Determining if an Assistance Applicant is a Battered Immigrant

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<sup>289</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 63 Fed. Reg. 61,367 (1997).

<sup>290</sup> Id. at 61,370.

Since experiences of domestic violence vary, public benefits providers will interact with clients that have unique circumstances that require different actions. TANF providers should screen the client to determine under which scenario an applicant fits, and take the actions in the best interest of the battered immigrant applying for benefits. To ensure that a benefits-granting agency does not ask unnecessary immigration questions, the public benefits provider should be sure to complete verification Step I (that verifies if the benefit sought a Federal Public Benefit) and Step II (that asks if the applicant is otherwise qualified for general benefit program requirements), before seeking verification of immigration status. The following are eight illustrative, discussed in the Attorney General's Guidelines under which battered immigrants may be applying for public benefits:<sup>291</sup>

- 1) With documentation of an approved VAWA self-petition, VAWA cancellation of removal, or VAWA suspension of deportation application.<sup>292</sup>

If an applicant has an approved VAWA self-petition, VAWA cancellation of removal, or VAWA suspension of deportation then the public benefits provider does not need to ask for documentation proving battery or extreme cruelty because the INS or immigration judge has already made that determination. The proof of an approved petition provides evidence of battery and INS immigration relief, making further inquiries about immigration status unnecessary. In this case, the benefits provider only needs to determine substantial connection and verify that the applicant will not be living with the abuser upon receipt of welfare.

**a. With documentation of an approved family-based visa petition.**

If an applicant has an approved family-based visa petition, the public benefits provider will first need to determine if the applicant was subjected to battering or extreme cruelty as discussed in part B above. If so, the benefits provider will need to determine if the battered immigrant was abused by their U.S. citizen or lawful permanent resident spouse or parent or a member of the spouse or parent's family. They will then need to determine whether a substantial connection exists and verify the separation from the abuser as discussed in steps 3 and 4 above. Public benefits providers must be aware of the types of documentation that are sufficient to determine evidence of battery or extreme cruelty. Evidence which applicants can provide for TANF workers documenting battery or extreme cruelty include, but are not limited to: reports or affidavits from the police, medical professionals, school officials, clergy, friends, an applicant's personal testimony, pictures documenting the abuse, proof of domestic violence conviction and proof of seeking haven in a battered women's shelter.

**b. With documentation demonstrating that the applicant has established a prima facie case (in which an INS or immigration judge has made an initial determination that a VAWA case contains all necessary elements**

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<sup>291</sup> Id. at 61,267

<sup>292</sup> Id. at 61,370



**of proof including proof of abuse).**<sup>293</sup>

In determining a prima facie case, a judge has concluded that the petitioner has presented sufficient evidence that if credited would support a successful claim for granting a self-petition under VAWA, a cancellation of removal or VAWA suspension of deportation. Since an immigration judge or INS has already determined that there is a history of battery or extreme cruelty, the public benefits provider does not need to make any further inquiries to this regard. Instead, the TANF worker only needs to determine substantial connection and verify that the applicant will not reside with the perpetrator when they receive benefits.

**2) With documentation indicating that the applicant has filed a self-petition, but cannot provide evidence that the case has been approved or prima facie has been determined.**<sup>294</sup>

When an applicant has filed a self-petition or has had a family-based visa filed on her behalf, but a prima facie case has yet to be determined, the public benefits should provider help the battered immigrant by verifying when the application was filed with INS and requesting that INS expedite review of the petition or issuance of a prima facie determination. Particularly when the battered immigrant is unrepresented assistance with these inquiries can be helpful. Further, particularly in cases for family based visa petitions filed by the abusive spouse where INS has to date not established a procedure for making prima facie determinations, when a benefits provider assists in urging the INS to make a prima facie determination there is a greater likelihood INS will act on the request. While awaiting the a prima facie determination or approval of the petition filed by the abused immigrant, TANF workers should determine if the applicant meets all other general guidelines for “battered immigrant category” qualifications so that benefits can be granted as soon as possible once verification can be completed.

**3) With documentation indicating that a spouse or parent has filed a family-based visa petition on her behalf or documentation indicating that the applicant is a widow/widower of a U.S. citizen.**<sup>295</sup>

In both the family-based visa and widow/widower cases a prima facie determination will not have been made. Although, the widow/widower or the spouse or parent may have begun the family-based visa filing process. An applicant’s spouse or parent may also be stalling the process of filing for immigration status on the battered immigrant’s behalf as a power and control tactic. The abusers may have been the individuals filing on behalf of the victims, and may not have completed the filing process.

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<sup>293</sup> Id. at 61,368.

<sup>294</sup> Id.

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A prima facie determination may not have been made since the abuser is controlling the petitioning process. This being the case, public benefits providers should contact INS to request for prima facie determination.<sup>296</sup> Abuser may control the most up to date information regarding the applicant's immigration status, so public benefits providers should only refer to INS when determining eligibility.

Applicants who are beneficiaries of a family-based petition may be eligible for VAWA self-petitioning, which would ensure that they would receive work authorization and a "green card." Public benefits providers should make their clients aware of this immigration relief option<sup>297</sup> and refer the client to domestic violence and immigration services who can assist the applicant with gathering evidentiary documents that will allow s/he to become eligible for TANF. Assistance providers should also continue to determine if the client meets substantial connection and residence requirements while awaiting immigration status verification so that once those determination are made, the application can be easily the moment that the prima facie determination or approval is received.

**4) Documentation indicating that the INS has initiated deportation or removal proceedings and the applicant may be eligible to file a VAWA suspension of deportation or VAWA cancellation of removal.<sup>298</sup>**

Battered immigrant is or has been married to her U.S. citizen or lawful permanent resident abuser. Under the Family Violence Option, public benefits providers are required to screen applicants to determine if they are victims of domestic violence. During this determination process, a TANF worker may find that an immigrant applicant has been subjected to battery or extreme cruelty. A public assistance provider who suspects that a welfare applicant who INS has initiated deportation proceedings against is a victim of domestic violence should inform the applicant that she could be eligible for immigration relief under VAWA, advise the applicant to seek legal services and other social services assistance and refer the battered immigrant applicant to a program that can assist her.

Public assistance providers can assist applicants by referring them to legal services providers in the community who can represent the battered immigrant in the deportation or removal case and/or to battered women's advocates who can assist her legal representatives in gathering documentation needed both in the immigration case and to obtain public benefits. TANF workers should also note that it is important to carry on with any other benefits verification steps that can be made regardless of immigration status, such as substantial connection and residence requirements.

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<sup>296</sup> Id. at 61,368.

<sup>297</sup> Id.

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5) **When the applicant has minimal or no documentation regarding the immigration case.**<sup>299</sup>

Due to the nature of domestic violence, benefit applicants who suffer battery or extreme cruelty may not have thorough documentation about the existence or non-existence of an immigration case on their behalf. Because of the nature of abusive relationships, applicants may not be in possession of immigration documents that may have been filed on their behalf.<sup>300</sup> If the applicant has some documentation that could be used to establish a prima facie case or approval of a petition, then the applicant should be informed that they may qualify for immigration relief and should be referred to an immigration expert for assistance.

If the applicant does not have any documentation but knows that an application has been filed, public benefits providers can request INS to send the benefits provider a copy of the documents. If the applicant does not have documentation or any knowledge that a petition or application has been filed on her or her child's behalf, then assistance providers should refer the applicant to domestic violence service providers, immigration lawyers or the national domestic violence hotline.<sup>301</sup> This should be particularly true when the battered immigrant is or has been married to her U.S. citizen or lawful permanent resident abuser.

6) **If a public assistance provider suspects an applicant to be a victim of domestic violence, and the victim has not previously filed for immigration relief or has not gathered evidence of the history of abuse, then the applicant should be referred to a domestic violence advocate or immigration attorney.**<sup>302</sup>

During the domestic violence screening process, as required under the Family Violence Option, the public assistance provider may find that an immigrant is a victim of domestic violence and has not taken any previous immigration relief action of any kind. At this point, the TANF worker should not direct any further inquiries, and should provide the battered immigrant with information about the possible immigration relief options under VAWA.<sup>303</sup> In this instance the benefits provider may award benefits to the U.S. citizen child of the battered immigrant and hold the battered immigrant mother's application in abeyance until they can file for relief under VAWA. The public benefits provider should advise the applicant to contact a domestic violence or legal services agency that has experience working with immigrants who experience domestic violence, and should encourage the applicant to explore the possibility of filing a self-petition. It is not advisable to continue the verification process as the applicant will need to initiate filing for immigration relief before they qualify for benefits.

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<sup>299</sup> Id. at 61,369.

<sup>300</sup> Id.

<sup>301</sup> Id.

<sup>302</sup> Id.

<sup>303</sup> See brochure included in the appendix of the manual.

## Verification of Immigrant Status for Child TANF and Medicaid/ SCHIP Applicants

Parents of child applicants may not be aware that they do not have to provide proof of their own immigration status. It is the public benefits provider's responsibility to inform parents seeking benefits that their children qualify to receive that the benefits provider is only required by law to verify only those individuals that will be receiving federal public benefits or federal means tested public benefits. Parents of child applicants who are not also applying for benefits themselves cannot be asked questions about their own immigration status. This will ensure that eligibility determinations are made properly in the cases of a child applicant.

The Attorney General's Interim Guidance specifically instructed that a "non-qualified" battered immigrant could obtain benefits for her qualified children without subjecting herself to verification and detection by the INS of her own immigration status. The same verification process applies to child applicants in determining qualification for benefits under the "battered immigrants category."

### Sponsor Deeming

In order for any person to qualify to receive public benefits, the state benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. Sponsored immigrants may have their sponsor's income and resources "deemed" available to them when having their income eligibility determined. This is only an issue for immigrants whose sponsors have signed affidavits of support. According to the current law, when an immigrant's family member (and in limited cases, employer) sponsors her to receive lawful permanent residency in the United States, the sponsoring family member or employer must sign and file an affidavit of support with the INS.

An affidavit of support states that they are willing to be financially responsible for the new-immigrant as the immigrant's financial sponsor.<sup>304</sup> When an immigrant with a sponsor affidavit filed on her behalf applies for public benefits, sponsor deeming rules usually require that the benefits granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. However, battered qualified immigrants are exempt from sponsor deeming.

### "Qualified Immigrants" Exempt From Sponsor Deeming Requirements

Certain categories of "qualified immigrants, are exempt from sponsor deeming in all federal means-tested programs, including TANF:<sup>305</sup>

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<sup>304</sup> INA Section 212 (a)(4)(C) and (D)); INA S.213A(a)(1)(8 U.S.C. 1183a(a)(1)).

<sup>305</sup> In addition, immigrants who have become U.S. citizens or have worked 40 quarters under the Social Security Act, are exempt from deeming requirements. A detailed explanation of counting 40 quarters is

- Those who have become U.S. citizens
- Persons with 40 quarters of work history
- Persons married to U.S. citizen or lawful permanent residents with 40 quarters of work history
- Battered immigrants who did not file affidavits of support because they are self-petitioners, and battered immigrants with new I-864 affidavits of support are exempt from deeming requirements. (for up to 12 months or longer if there has been a judicial finding regarding domestic violence)
- Immigrants facing hunger or homelessness (for up to 12 months)
- Immigrants whose sponsor is dead

### Battered Immigrants are Exempt From Sponsor Deeming Qualifications for 12 Months

When evaluating a battered immigrant's application for public benefits, TANF providers should be aware that immigration law now exempts most battered immigrants from sponsor deeming requirements for 12 months.<sup>306</sup> The creators of PRWORA recognized that it was highly possible that the sponsor of a battered immigrant could also be the perpetrator of domestic violence. One power and control tactic used by abusers is withholding money, as well as ceasing to provide basic material needs. Additionally, when victims of domestic violence flee from an abusive home, they are often cut off from their primary source of income supplied by their abusers. For these reasons, assuming that a battered immigrant had access, and will continue to have access, to their sponsor's income, is not a viable conclusion.

By exempting battered immigrants from sponsor deeming requirements for 12 months, current immigration law allows victims of domestic violence to acquire the financial assistance needed for transitioning from an abusive home to a location of safety. Battered immigrants are exempt for 12 months, if the battery or extreme cruelty took place in the United States; if the abuser was the spouse, parent, or member of spouse's or parent's family; if there is a "substantial connection" between the battery or extreme cruelty and the need for the public benefit; and if the victim no longer resides with the abuser.

The following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:

- 1) VAWA self-petitioners (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- 2) VAWA cancellation of removal or suspension of deportation applicants (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);

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included in the chapter which evaluates Step IV.

<sup>306</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Reconciliation Act of 1996, 62 Fed. Reg. at 61,371.

- 3) Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
- 4) Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition;
- 5) Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before and/or after obtaining lawful permanent residency; and
- 6) Certain indigent immigrants who the benefits providers determines unable to obtain food and shelter in the absence of assistance.

### Battered Immigrants Who Filed I-864 Forms Can be Exempt From Deeming

IIRIRA created a new type of affidavit of support, the I-864. Although the I-864 has income deeming rules, battered immigrants are explicitly exempted from the I-864 deeming rules for 12 months.<sup>307</sup> Battered immigrants with I-864 affidavits of support submitted after December 5, 1997 are exempt from deeming for one year. In addition, battered immigrants may continue to be exempt from deeming requirements with regard to income and resources of the batterer if they can prove:

- that the battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS; AND
- in the opinion of the benefits provider there is a substantial connection between the abuse and battery suffered and the need for benefits sought.<sup>308</sup>

Judicial determinations of abuse that would be sufficient to meet this requirement might be made in, for example:

- a protection order case,
- a criminal case, a custody case,
- a divorce and property division case,
- self-petitioning or battered spouse waiver immigration case, or
- a cancellation of removal case.<sup>309</sup>

Subsequent immigration legislation aimed at preserving access to greater benefits for persons who received lawful permanent residency before IIRIRA may have undermined the deeming exemption for some battered immigrant women.<sup>310</sup> Battered

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<sup>307</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,371.

<sup>308</sup> Id.; IIRAIRA 552, amending PRWORA 421 (f)(1)(B).

<sup>309</sup> 8 U.S.C. 1631(f); see also Alien Eligibility of Federal Benefits in Immigrants and Welfare Resource Manual: 1998 Edition. Tab 1-9. National Immigration Law Center. 1998.

<sup>310</sup> Balanced Budget Act of 1997, Section 5595(e) 111 STAT.603, Public Law 105-33 August 5, 1997. 42 U.S.C. 608(f).

lawful permanent residents with old I-134 affidavits of support should be exempt from sponsor deeming in light of the clear Congressional intent that led to the creation of the deeming exception. Battered immigrants with old I-135 affidavits of support and those with new I-864 affidavits of support should receive the same treatment. Generally, the battered immigrant exemption to deeming requirements applies to all battered immigrants who qualify for benefits. If the benefits worker is at all concerned by this technical discrepancy, battered immigrants with old affidavits of support (I-130) should be granted waivers of the deeming requirement under the Family Violence Option. (The Family Violence Option will be discussed in chapter 9).

## **TANF Workers Can Assist Battered Immigrant Women in Providing Evidence of Domestic Violence**

TANF disbursement should be evaluated on a case-by-case basis. It is the benefit provider's role to examine the individual needs of each applicant and assess if the experience of domestic violence hinders the client's ability to provide a stable amount of financial support for herself and/or her children. By guiding battered immigrants in gathering evidence needed to document the abuse and in filling out an application for immigration benefits that demonstrates a substantial connection between their experience with domestic violence and the need for benefits. Collaborations with local legal and social services that work with battered immigrants will help battered immigrant clients present more fully documented cases to the benefits worker. Referring battered immigrants applying for benefits to trained community expert both the battered immigrant and the TANF eligibility worker benefit. Cases that are well documented are easier to adjudicate and well documented cases give battered immigrants swifter access to the much needed benefits safety net.

CHAPTER 7 – STEP IV:  
VERIFY THE APPLICANT’S ELIGIBILITY  
FOR BENEFITS UNDER PRWORA

### Chapter Summary

This chapter reviews the final guidelines specific to federal means-tested programs that the TANF applicant must meet in order to receive aid. This chapter makes the marked distinction between federal TANF programs and State TANF programs. For example, immigrants who have entered the U.S. on or after August 22, 1996 are ineligible for the federal TANF program. However, the a State TANF program may provide benefits to all qualified immigrants regardless of their entry date.

The chapter also discusses the difference to benefits access between an immigrant who has entered the United States before August 22, 1996 to an immigrant who has entered the United States on or after August 22, 1996. Another issue of importance discussed in this chapter is the notion of quarters. If an immigrant has worked for 40 quarters under the Social Security Act they are exempt from sponsor deeming requirements for TANF. These immigrants are also eligible for other means-tested programs such as food stamps.

In conclusion, the chapter programs an overview on the qualifications for other federal means-tested public benefit programs such as Medicaid, food stamps, and SSI.



## CHAPTER 7 – Step IV: Verify The Applicant’s Eligibility For Benefits Under PRWORA

If an applicant meets all other eligibility requirements, as outlined in Step 1-3, then they qualify generally for federal public benefits. However, if the public benefits that the applicant is seeking are federal means-tested public benefits (e.g. TANF) the benefits provider must proceed to Step 4 to make a final determination that the applicant meets all other guidelines specific to federal means-tested programs. If the battered applicant has applied for a public benefit that is not dependent on income level for eligibility, no further eligibility requirements apply.<sup>311</sup> No further verification of citizenship or immigration status should be undertaken.<sup>312</sup> Making greater inquiries is an infringement on the immigrant applicant’s right to privacy and may violate non-discrimination requirements.<sup>313</sup>

The Federal TANF Block Grant program requires applicants to provide additional information including:

- \_ the date of entry into the United States
- \_ the amount of quarters worked in the United States

The Federal government issues federal TANF funds to be used in a state developed TANF welfare program. States are given full discretion regarding how to implement the program, but states are required to adhere to the minimal Federal guidelines. Since states have a good deal of leeway with how to construct programs, TANF eligibility guidelines vary among states. Virtually every state has decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996 and many are also providing access to TANF for those who entered after August 22, 1996 following the expiration of the five year bar.<sup>314</sup> Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits regardless of immigration status.<sup>315</sup> These categories of battered immigrants often include: battered qualified immigrants who first entered the United States after August 22, 1996 and battered immigrants in general with state TANF funds whether or not they are qualified immigrants.

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<sup>311</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,349.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> Temporary Assistance for Needy Families: Welfare Reform and Immigrants *in* Immigration & Welfare Resource Manual: 1998 Edition Tab 3E-1 (National Immigration Law Center ed., 1998).

<sup>315</sup> Permanently Residing Under Color of Law” –Prior to the passage of PRWORA, those who were permanently residing in the United States under color of law (PRUCOL’s) were eligible to receive federal public benefits. This group consisted of immigrants whom INS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state funded TANF for PRUCOL’s. See States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws – State Responses *in* Immigration & Welfare Resource Manual: 1998 EDITION Tab 2-1, 14 (National Immigration Law Center ed., 1998).

## Immigrants Who Entered the United States Prior to August 22, 1996

In the absence of a State decision to restrict immigrant eligibility for TANF, PRWORA does not restrict the availability of these benefits to qualified immigrants who entered prior to August 22, 1996 and were continuously present in the United States until receiving permanent resident status despite the fact they received qualified immigrant status after August 22, 1996. No state has opted to restrict immigrant eligibility for TANF with regard to qualified immigrants who entered the United States before August 22, 1996.

## Immigrants Who Entered the United States On or After August 22, 1996

However, the Department of Health and Human Services has determined that TANF is a Federal means-tested public benefit. As a result, immigrants who entered the U.S. on or after August 22, 1996 are ineligible for the federal TANF program for five years from the date that they attain qualified immigrant status. However, a State TANF program may provide benefits to all qualified immigrants regardless of their entry date.<sup>316</sup>

## The Five-Year Bar to Benefits Access

Battered immigrants who first entered the United States after 8/22/96 and become “qualified immigrants” are not eligible to receive means- tested public benefits until five years after they have entered they attained qualified immigrant status. This places a heightened barrier upon recently arrived immigrants. For this reason, some states have chosen to extend state benefits to qualified immigrants who are barred from access to federal means-tested benefits the first five years after entry. Some states have chosen to grant access to state-funded public benefits for any battered immigrant whether or not she is or could become a qualified immigrant.

If an immigrant enters the United States prior to August 22, 1996 and was continuously present in the United States until attaining qualified immigrant status, s/he is eligible for all federal means-tested public benefits and is NOT subject to a five year bar on immigrant access to benefits. Public benefits providers should encourage benefit applicants to gather the documentary evidence that would prove that the battered immigrant entered the United States before 8/22/96. This includes documentation of the immigrant’s current immigration status or evidence of prima facie determination or approved VAWA self-petition. Applicants should also demonstrate that they attained qualified immigrant status prior to applying for benefits.<sup>317</sup>

If the battered immigrant applicant entered the United States and attained qualified immigrant status prior to August 22, 1996, she is qualified for all federal means-tested public benefits.<sup>318</sup>

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<sup>316</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,34950.

<sup>317</sup> Id. at 61,415.

<sup>318</sup> Id.

States have option to deny these immigrants Medicaid and TANF. If the battered immigrant applicant entered the United States but did not attain qualified immigrant status until after that date, she must present evidence to the public benefits agency verifying that she was continuously present in the United States from the latest date of entry prior to August 22, 1996 until the date that she attained qualified immigrant status. In these cases, the applicant must verify her residence by stating that she was present in the United States on or before 8/22/96 and show her proof of residence.<sup>319</sup> Any absence from the United States for more than 30 days, or total of aggregated absences of more than 90 days, would interrupt the continuous presence requirement.<sup>320</sup> (Exceptions are made for refugees, asylees, aliens whose deportation or removal has been withheld, Cuban/Haitian entrants, Hmong/Lao immigrants, certain Amerasian immigrants, and aliens who are veterans honorably discharged or on non-training active duty and their families).

## Counting 40 Quarters

Those applicants, who have become U.S. citizens or have worked for 40 quarters under the Social Security Act, are exempt from sponsor deeming requirements for TANF, other means-tested programs and are exempt from any state imposed restrictions to public benefits access..

If a person has worked for ten years or more, for each year worked the immigrant must have four “qualifying quarters.” Up to four quarters of credit may be earned yearly. A qualifying quarter calculates how much a person earns in a calendar year. Each year the required amount that must be earned for a quarter to be counted is determined by the Social Security Administration (SSA). All work done in the U.S. will be counted toward qualifying quarter credits.<sup>321</sup>

One does not necessarily have to work during all four calendar quarters. Instead, the SSA counts qualifying quarters solely based on the total amount earned. For example, in 1997 a qualifying quarter was credited for every \$670 earned. This amount changes yearly based on inflation. Additionally, any work done by a parent, prior to the applicant’s eighteenth birthday, may be counted. Similarly, if the immigrant is married or widowed any work done by the spouse during the marriage may be counted toward establishing a qualifying quarter. However, after divorce immigrant spouses lose the ability to count quarters earned by their spouses during the marriage.

An immigrant who can prove 40 quarters of work credit may be eligible to receive public benefits. For example, persons with 40 quarters of work credit can receive food stamps and SSI that they would not otherwise qualify for. Similarly, persons with 40 quarters can avoid state restrictions on benefits to immigrants. If the lawful permanent resident first entered the United States after August 22, 1996 and is subject to the five year bar on receipt of benefits, after five years, the lawful permanent resident may count work done in

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<sup>319</sup> Verification and Eligibility for Public Benefits, 63 Fed. Reg. at 41,674.

<sup>320</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Act of 1996, 62 Fed. Reg. at 61,415.

<sup>321</sup> For quarters subsequent to January 1, 1997, no quarter can be counted toward the 40 quarter requirement when the immigrant received any federal means tested public benefit during that quarter.

the United States without authorization. However, when an immigrant wishes to count quarters in which they worked illegally, they may have to share information with both the INS and the Internal Revenue Service that could result in tax and immigration consequences.

Battered immigrants who first entered the United States prior to 8/22/96 may receive public benefits without being subject to the five year bar and are exempt for one year from deeming requirements. However, if they are required to satisfy deeming requirements after the expiration of the one year period, they, like other lawful permanent residents, may count the qualifying quarters earned by their spouse or parent in order to qualify despite deeming.

- The law provides that the worker's own quarters and quarters worked by a parent while the immigrant was under age 18, by a spouse during the marriage if the immigrant remains married to the spouse, or the marriage ended by the death of the spouse, may also be credited to the individual in determining the number of qualifying quarters.
- Determine how many years the battered immigrant, the battered immigrant's spouse (during their marriage if still married, or if spouse is deceased), or the battered immigrant's parents (while the alien was under 18 years of age) lived and/or worked in this country. If the answer is a total of less than 10 years, the alien cannot meet the 40 quarters requirement.<sup>322</sup>
- The term "quarter" means the three calendar month period ending on March 31, June 30, September 30, or December 31 of any year.<sup>323</sup>
- Social Security credits called "quarters of coverage" are earned by working at a job or as a self-employed individual. Each earner can be credited with a maximum of four quarters each year.<sup>324</sup>
- Credits are based solely on the total yearly amount of earnings. (For example, in 1997 a qualifying quarter totaled \$670 dollars).<sup>325</sup> Thus an immigrant would qualify for four quarters in 1997 if at any time during 1997 the immigrant earned \$2880.00.
- The current quarter may be included in the 40 quarter computation.<sup>326</sup>
- Qualifying quarters must be verified by the benefits-granting agency through the Social Security Administration.
- Battered immigrants who rely on their husbands' forty quarters of work credit may

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<sup>322</sup> Interim Guidance and Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,412.

<sup>323</sup> Id. at 61,413.

<sup>324</sup> Id.

<sup>325</sup> Id.

<sup>326</sup> Id.

only use these quarters if they are still married when they apply for benefits.

- If they divorce after qualifying for benefits, they will be able to continue receiving benefits only until they are required to recertify their ongoing qualification for benefits. At recertification, they can no longer count their husband's 40 quarters.

## Federal Means-Tested Public Benefits Program Qualifications

Although, this manual focuses on TANF program eligibility requirements, it is important for public benefits providers to have a basic understanding of the requirements for other means-tested public benefits. Battered immigrants may apply for additional means-tested benefits programs, such as Medicaid, Food Stamps, and SSI. Some states ask public assistance officers to handle the application verification process for all of the benefits programs for which a battered immigrant applies. The following are general descriptions of specific program qualifications concerning the five year bar and 40 quarters.

### Medicaid<sup>327</sup>

Like TANF, persons who first entered the U.S. on or after August 22, 1996 are barred for the first five years after they become "qualified immigrants," from all non-emergency Medicaid including parental care, and children's health, unless "exempt."

### Food Stamps

Only those qualified immigrants who entered the U.S. before August 22, 1996 who are "exempt" can receive Food Stamps. However, any children who entered the U.S. before August 22, 1996 who are or become qualified aliens are eligible to receive food stamps.<sup>328</sup> Persons who first entered the U.S. on or after August 22, 1996 are barred for the first five years after they become "qualified immigrants," unless "exempt." Battered immigrants who can prove that they have worked 40 quarters in the U.S. can qualify for Food Stamps.

### SSI

SSI is open to only those qualified immigrants who entered the U.S. before August 22, 1996 who are "exempt." However, persons receiving SSI on August 22, 1996 are grand

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<sup>327</sup> Exempt groups include: veterans and active duty military personnel and their spouses, unremarried surviving spouses or children; refugee categories: persons who have one of the following immigration statuses: refugee, asylee, withholding or removal/deportation, Amerasian immigrants, and Cuban or Haitian Entrants; individuals who meet the 40 quarters exemption and who are now lawfully admitted for permanent residence or are qualified aliens who entered the United States before August 22, 1996 (qualified immigrants who entered the U.S. after August 22, 1996 and became a qualified immigrant after that date are barred from access to benefits for five years after becoming a qualified alien); and Native Americans born outside of the United States. National Immigration Law Center, Immigrant Eligibility for Public Benefits – Chart (December, 1998)."

<sup>328</sup> Agriculture Research, Extension, and Education Reform Act of 1998. Title V. Pub. L. No. 105-185 (June 23, 1998). Under this amendment when battered immigrants and their children are both qualified aliens eligible to receive federal public benefits only qualified alien children may receive food stamps.

fathered regardless of their current immigration status and may continue receiving these benefits that they qualified for under prior law.<sup>329</sup> Persons who first entered the U.S. on or after August 22, 1996 are barred for the first five years after they become “qualified immigrants,” unless “exempt.” Battered immigrant who can prove that they have worked 40 quarters in the U.S. can qualify for SSI.

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<sup>329</sup> Non-citizen Benefit Clarification and Other Technical Amendments Act of 1998 PI 105-3006, 112 STAT 2926 Section 2.

## CHAPTER 8 – REPORTING UNDER THE IMMIGRATION AND WELFARE LAWS OF 1996

### Chapter Summary

This chapter reviews the 1996 welfare and immigration laws as they relate to reporting requirements to the INS. This is an area that has been greatly misunderstood by immigrants and advocates. These laws are particularly confusing because the provisions have not been concretely defined. As a result, state agencies have introduced legislation based on broad interpretations that unjustly harm immigrants. Understanding these dynamics will help TANF workers in several ways:

- **Assistance in interpreting the changes added to three sections specifically dealing with reporting: §404 and §434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996(PRWORA) and §634 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996(IIRIRA).**
- Understanding which reporting requirements and specific public assistance programs must be reported.
- **Understanding the verification process as it applies to reporting.**
- **Rules that must be followed before reporting and immigrant to the INS.**

## CHAPTER 8 – Effects of 1996 Legislation On Reporting

The 1996 welfare and immigration laws created significant changes in reporting immigration status to the Immigration and Naturalization Service (INS). The changes added three sections specifically dealing with reporting: §404 and §434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and §634 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). These changes have created uncertainty among immigrants about safely participating in government services. While these fears are strongly justified, they are causing immigrants not to apply for benefits they are legally entitled to receive. Furthermore, advocates are not able to efficiently eradicate these fears, because the rules are new and the interpretation of particular sections are broad and undefined.<sup>330</sup> There is a great uncertainty about how these will be implemented at the local level.

Section 404 of PRWORA contains the most stringent requirement addressing reporting.<sup>331</sup> This section mandates “government agencies to report immigration status for any person known to be unlawfully present”. However mandatory reporting to the INS only applies with regard to applicants for four specific public assistance programs: Temporary Assistance for Needy Families (TANF); Supplemental Social Security Income (SSI); Public Housing and the Food Stamp Program.<sup>332</sup> All of these reporting requirements were introduced by PRWORA, except the Food Stamp Program, which for over a decade has called for immediate reporting to the INS for the certification or re-certification of anyone known to be “unlawfully present” and applying for food stamps.<sup>333</sup>

The other two sections addressing reporting are found in PRWORA §434 and IIRIRA §642. Both sections were written to prohibit “sanctuary ordinances” that prevented government workers and officials from communicating immigration status information to the INS.<sup>334</sup> Referred to as communication provisions, §434 and §642 forbid government agencies from restricting communication between government employers and the INS.<sup>335</sup> Unfortunately, the original legislative intent has been convoluted and workers and managers at state and local benefit agencies are using §434 and §642 to impose new broad reporting requirements that were not included in federal legislation. These state and local reporting initiatives put fear in immigrants and invade privacy provisions.<sup>336</sup>

While, the exact interpretation of the communication provisions have not been entirely defined, the Department of Justice has issued interim guidance<sup>337</sup> and proposed

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<sup>330</sup> National Immigration Law Center, Immigration Privacy Concerns Under Welfare Reform: The Need for Federal Guidance on “The Communication Provisions”, July, 2000 (unpublished manuscript on file with National Immigration Law Center).

<sup>331</sup> PRWORA §404

<sup>332</sup> Id.

<sup>333</sup> 7 U.S.C § 2020(e)(16)

<sup>334</sup> Cite *H.R. Conf. Rep. No. 725, 105<sup>th</sup> Cong., 2d Sess. 391 (1996)*.

<sup>335</sup> PRWORA §434 and IIRIRA §642

<sup>336</sup> National Immigration Law Center, Immigration Privacy Concerns Under Welfare Reform: The Need for Federal Guidance on “The Communication Provisions”, July, 2000 (unpublished manuscript on file with National Immigration Law Center).

<sup>337</sup> 62 Fed. Reg. 61344 (November 17, 1997)



regulations<sup>338</sup> addressing the procedures for verification of immigration status.<sup>339</sup> Essentially these justice department directives interpret PRWORA in a matter that creates a sphere of privacy, setting high standards that immigrants are entitled to under welfare law.<sup>340</sup> The next section of this chapter specifically addresses the effects of this legislation when benefit providers are working directly with clients.

## Reporting

Verification is a prerequisite to any reporting. One of the primary reasons the Department of Justice issued the verification rule and the Attorney General's Guidance was to limit instances in which benefits providers ask questions regarding immigrant status. It is important that a benefit provider follow the proper order.

When a benefits worker is considering verifying status and reporting an individual to the INS, the worker should make sure that the individual is actually the person who will be receiving benefits. For example, it is not uncommon for the undocumented immigrant parent of a U.S. citizen child to apply for benefits for that child. Under the Attorney General's Ordinance the benefits provider should not attempt to report other family members who are not seeking benefits for themselves. Such an action could deter deserving individuals from receiving benefits to which they are entitled, damage family unity and interdependence, and put the provider in a position to make an arbitrary decision based on prohibited discriminatory reasoning.<sup>341</sup> In addition, the reporting requirement for a similar benefit has been found in a court of law not to apply to a family member who is not actually seeking benefits.<sup>342</sup>

Also when dealing with applicants, benefits workers should limit their questioning to the issues at hand. This promotes efficiency and adheres to the letter of the law. For example, a worker should not ask potentially incriminating questions about an applicant's family members—nothing in the law requires such a line of questioning, and an agency may prohibit it.

Additionally the circumstances under which an immigrant can be reported were explicitly set out by Congress. Benefits providers are strictly limited to reporting individuals who are known to be unlawfully in the United States.<sup>343</sup> In determining who is "known to be unlawfully in the United States", benefits providers should follow the example of allied providers who have had to make the same decision.<sup>344</sup> Benefits providers should only

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<sup>338</sup> 62 Fed. Reg. 41662 (August 4, 1998)

<sup>339</sup> National Immigration Law Center, Immigration Privacy Concerns Under Welfare Reform: The Need for Federal Guidance on "The Communication Provisions", July, 2000 (unpublished manuscript on file with National Immigration Law Center).

<sup>340</sup> Id.

<sup>341</sup> See 71 Wash. L. Rev. 1095, 1125.

<sup>342</sup> See *Doe v. Miller*, 573 F.Supp. 461 (N.D.Ill. 1983) (finding that requirement that state agency report to INS persons who are ineligible for food stamps because they are unlawfully present only required reporting of persons fraudulently seeking benefits).

<sup>343</sup> 42 USC 611a.

<sup>344</sup> See Memorandum of Legal Services Corporation General Counsel to Legal Services Corporation

report an immigrant to the INS against whom a final order of deportation is outstanding.

Limiting reporting to these clear instances makes sense for several reasons. First, a final order of deportation is probably the only way a benefits provider can obtain a reliable level of certainty for such a weighty decision. U.S. immigration law is very complex and contains many possibilities for lawful immigration that may not be apparent to those not trained in analyzing technical immigration statutes. For instance, a battered immigrant who believes she is undocumented may actually qualify for VAWA immigration relief. If she is reported to INS she may be removed from the United States without ever learning that there could be legal immigration relief available to her.

Second, reporting immigrants, especially where inappropriate, takes time away from the benefits providers primary focus: helping the needy. Without reliable verification, a benefits worker could be burdened with the writing of tangential reports that may or may not be helpful to those who are responsible for the undocumented. Finally, reporting opens a benefits provider to engage in the potentially discriminatory activity prohibited by the Attorney General. Without an established benchmark, it would be easy to accidentally rely on criteria that could lead to a lawsuit. By using only a final unappealable order of deportation, the decision-maker has a tangible and objective anchor to rely upon and can almost surely avoid legal liability.

Significant drawbacks can result from overzealous reporting. Administrative burdens increase for agency workers and those workers will be making assessments for which they are not trained. The INS can become inundated with information it cannot properly process. Furthermore, fear will deter many eligible immigrants from applying for needed benefits.

Note that even if an immigrant is not qualified or ineligible for a particular benefit, this does not mean that the immigrant is not lawfully in the United States. An immigrant may be legally present in the United States, yet still not qualify for a benefit or service.<sup>345</sup> It is vital that the benefits worker only consider reporting those who are clearly found to be unlawfully present.

If an immigrant is found to have a final order of deportation outstanding, then a benefits provider can submit a report to the INS regarding the individual. For example, the Director of HHS has made it clear that information may be reported in a limited fashion to the INS about an applicant's immigration status, confidentiality provisions do not allow the release of information concerning a noncitizen's receipt of public benefits.<sup>346</sup> In fact, it seems that only information about the person's immigration status may be reported. Even state laws cannot require the reporting of more information than is required to implement

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Project Directors.

<sup>345</sup> See 7 CFR § 273.4(e). For example, parolees, asylum applicants, and immigrants with work authorization may not be "qualified" immigrants. See also 7 USC § 2020(e)(16) (for food stamps).

<sup>346</sup> See HHS letter from Lavinia Limon to TANF Directors (12/17/97).

the federal law.<sup>347</sup>

Confidentiality, privacy, and anti-discrimination laws also limit the scope of what information may be gathered and reported to the INS. When reporting information about an applicant to INS, the benefits provider may be treading on thin constitutional ice.<sup>348</sup> The benefits provider must always be aware of the Attorney General's guidance against discrimination in such instances.<sup>349</sup> A provider cannot single out individuals who look or sound foreign or who have ethnic surnames. All applicants to receive benefits must be treated equally and asked the same questions by the eligibility worker. A failure to comply with the Attorney General's order not only can result in violation of the law, but many consequences for the wronged applicant, as well. Fear of authorities has caused some immigrants to avoid reporting crimes, cooperating with health workers, working with authorities in life or death situations, or seeking assistance of authorities to stop domestic violence.

## Conclusion

Benefit providers are put in a difficult position when reporting information to the INS. While §404 requires mandatory reporting, it is important to remember that the statute applies only to four programs and applies to benefit applicants and not their family members.<sup>350</sup> Furthermore, §404 just applies to immigrants that the agency “knows are not lawfully present” in the U.S.<sup>351</sup> It is important to realize that an immigrant’s ineligibility for a program or benefit does not mean that they are not lawfully present.

In addition, while the communication provisions were implemented to allow communication between employers and the INS these provisions were not intended to undermine privacy rights or create a new form of mandatory reporting. This legislation should not be interpreted as *carte blanche* to report anyone undocumented to the INS. It is vital that agencies set up procedures to regulate reporting, which uses a narrower scope.

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<sup>347</sup> See LULAC v. Wilson, #CV94-7569 MRP (CA 11/14/97), Yvette Doe v. Belshe, #785153-7(Alameda Sup. Ct. 12/19/77).

<sup>348</sup> See NY v. United States, 1999 WL 357395 (2d Cir. 5/27/99)

<sup>349</sup> See 62 FR 61344 (11/17/97).

<sup>350</sup> National Immigration Law Center, Immigration Privacy Concerns Under Welfare Reform: The Need for Federal Guidance on “The Communication Provisions”, July, 2000 (unpublished manuscript on file with National Immigration Law Center).

<sup>351</sup> *Id.*

Suggestions include implementing structures for how to report, under what circumstances to report and who should be responsible for the actual reporting.

That verification only occurs following the verification rule and the Attorney General's guidance. No questions about status should be asked except about persons who will be receiving federal public benefits. Finally, reporting should only occur of persons who are truly "known to be unlawfully" in the United States.

## CHAPTER 9 – THE FAMILY VIOLENCE OPTION: IMPLEMENTATION AND CULTURAL COMPETENCY ISSUES

### Chapter Summary:

This chapter reviews the Family Violence Option of the 1996 Welfare Reform Bill. The Family Violence Option of PRWORA allows TANF recipients to opt out of time limits and/or welfare to work requirements if they meet certain federal guidelines. This Option can be an integral part of a battered immigrant woman's life, giving her time to look for safe housing, flee violent abusers, and pursue legal cases against their abusers. In order to best implement the Option, this chapter discusses how TANF funding is distributed and how to identify the immigrant applicants that would best benefit from the Family Violence Option.

The qualifications in order to receive **TANF** funding varies from State to State. Because of the differences in State **TANF** programs, only 41 states have included the Family Violence Option. This chapter elaborates on the difference in the Family Violence Option programs between states.

The chapter further elaborates on the role of cultural competency in determining the recipients of the Family Violence Option. This elaboration comes in the form of protocol for TANF staff training. The training includes learning the dynamics of domestic violence in immigrant communities, developing communication skills, and making effective referrals. The chapter also sets the guidelines for universal screening of immigrant applicants and offers strategies in interviewing potential Family Violence Option recipients. The chapter concludes with a discussion on the proper handling of immigrant domestic violence cases.

## CHAPTER 9 – The Family Violence Option: Implementation And Cultural Competency Issues<sup>352</sup>

### Introduction<sup>353</sup>

During passage of the PRWORA in 1996 Congress recognized that the abuse experienced by domestic violence victims often serves as a barrier to their ability to move up and out of poverty and that some of the requirements included in PRWORA may exacerbate this problem. As a result, Senators Wellstone (D-MN) and Murray (D-WA) successfully attached the Family Violence Option. The Family Violence Option of PRWORA gives states the discretion to grant “good cause waivers” to TANF recipients which allow them to opt out of time limits, welfare-to-work requirements and other federal requirements that are deemed to cause harm to an individual battered woman. Waivers are granted for a finite time period and can be renewed once the TANF worker has assessed the ongoing need for the waiver.

FVO is a tool TANF workers should use to ensure that TANF program requirements are not enhancing the danger of ongoing about for battered women. For battered immigrant women there are specific ways in which FVO can be used to help battered immigrant women successfully access the welfare safety net as they flee their abusers. FVO urges TANF workers to screen TANF applicants and recipients for eligibility under the Option. If properly implemented, the Family Violence Option offers battered immigrants the flexibility and time to safely leave violent relationships, to address immigration status issues which may include delays in receipt of lawful work authorization and to ensure that they receive the exemption from deeming requirements included granted them in IIRAIRA without regard to whether they have a new or old affidavit of support.

This chapter will explain how TANF block grants are disbursed. It will then discuss the federal language and proper implementation of the Family Violence Option. Since eligibility determinations under the Family Violence Option require TANF workers to screen and assess battered immigrant applicants and recipients, this chapter will also offer culturally competent interviewing strategies.

### TANF Welfare Block Grants

Under the TANF program, states are required to decide how to distribute TANF funds block granted to them by the Department of Health and Human Services. States decide which families will receive assistance, the length of funding, and what services will be created to assist TANF recipients.<sup>354</sup> TANF offices are given the discretion to assess the

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<sup>352</sup> This chapter was drafted with the assistance of Rachel Little.

<sup>353</sup> The Family Violence Option is in addition to and separate from the hardship exemption that States could already grant under federal TANF program guidelines to allow 20% of their caseloads extend past the five year maximum without the State being charged with a financial penalty from the federal government.

<sup>354</sup> Davies, Jill. “The New Welfare Law Implications for Battered Women- Introduction to the Law.” Welfare and Domestic Violence Series: Paper #1. Developed for Battered Women’s Advocates by the National Resource Center on Domestic Violence and the National Network to End Domestic Violence. 1996:

needs of their population and decide the specific programming efforts, which will be most affective in serving needy families.

States can use federal TANF funds for:<sup>355</sup>

- \_ Cash assistance
- \_ Non-cash assistance
- \_ Vouchers
- \_ Public service programs
- \_ Job training
- \_ English as a second language courses
- \_ Child care
- \_ Administrative costs required to provide services for needy families
  - A specified percentage of TANF funds can be transferred to the Child Care and Development Block Grant and the Title XX Social Services Block Grant programs.

States cannot use federal TANF funds for:<sup>356</sup>

- \_ Families who have received assistance for 60 months (five years) in their lifetime.

Exceptions to this federal restriction can be granted to up to 20% of the state welfare caseload for individuals who and prove hardship<sup>357</sup>. A welfare recipient does not become eligible for the hardship exemption until they reach the end of the 5 year time limit. The Family Violence Option, is better for battered recipients who qualify because a recipient can get months of assistance exempted from the time-clock at an earlier stage and they do not have to wait to gamble on being granted the hardship exemption once when their time is up.<sup>358</sup> Exemptions from the five-year limit may be granted to battered immigrant recipients in the same manner as any other battered welfare recipient. It is important to note that hardship exemptions are available in all states, however, the Family Violence Option is only available in states that have formally elected to exercise the option.

Family Violence Option waivers can be particularly useful in cases of battered immigrants who experience delays in having their VAWA immigration case finally adjudicated. Battered immigrant applying for immigration relief under VAWA cannot receive lawful work authorization until after their case has been approved.

Further, battered immigrants who are eligible for benefits based on a family visa petition

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2-3. [hereafter Paper #1].

<sup>355</sup> Adapted from Paper #1, Ibid 46 at 3.

<sup>356</sup> Adopted from Paper #1, Ibid 46 at 3.

<sup>357</sup> States can designate the categories of recipients who qualify for the hardship exemption.

<sup>358</sup> FVO allows states to grant temporary exemptions from program requirements such as time limits, child support cooperation, work requirements and in the case of battered immigrants deeming rules for those affected by domestic violence. If a state has not exercised the FVO and hardship exemptions are the only federal option, the state may be required to set up a separate state funded TANF program to help domestic violence victims. FVO avoids this necessity.

filed by their spouse who is an abusive lawful permanent resident cannot receive work authorization until they become eligible to adjust their status to that of a lawful permanent resident. The wait between approval of their family based visa petition and adjustment can be up to 5 years. During this waiting period IIRAIRA explicitly granted them access to benefits to help them address survival needs while they wait for their immigration case to wend its way through the system. In most instances battered immigrants who are the beneficiaries of visa petitions filed on their behalf will be significantly along in the 5 year waiting period before they learn about and apply for benefits. These battered immigrants may also be able to expedite the process of receiving work authorization by filing a VAWA immigration case. For this reason battered immigrants with approved family based visa applications should be referred to immigration experts for assistance in moving their case more swiftly.

- Families without children or pregnant individuals
- Parents that are minors, unless they are still dependents
- Certain legal immigrants (as will addressed in the remaining chapters)
- Fugitive felons or certain probation violators
- Individuals convicted of certain drug felons
- Individuals who fail to cooperate with child support enforcement (States must reduce or eliminate assistance unless they can prove good cause for not cooperating the Family Violence Option was designed to provide waivers for this requirement as well.)

## TANF Guidelines Create Protections for Victims of Domestic Violence

The Family Violence Option was created in recognition of the extent to which domestic violence hinders a victim's ability to reach a level of financial stability in a given period of time. It was further intended to lessen hurdles battered women face when transitioning from welfare to work.<sup>359</sup> The Family Violence Options offers help and flexibility to battered immigrant women welfare recipients in the same manner that is does other battered women receiving welfare. The Family Violence Option allows states to grant temporarily "good cause waivers" of TANF program requirements (such as work requirements, time limits, child support cooperation requirements, and family cap provisions) for new TANF applicants and current recipients who have suffered or continue to suffer from battery or extreme cruelty.<sup>360</sup> States may allow individuals to submit "good-cause waivers" of all

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<sup>359</sup> Pollack, Wendy and Davis, Martha. "Family Violence Option of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Interpretation and Implementation." Clearinghouse Review, March-April 1997: 1083.

<sup>360</sup> The definition of "battery or extreme cruelty" is defined in the Family Violence Option language as "physical acts that resulted in, or threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; or



TANF program requirements “for as long as necessary”<sup>361</sup> and in instances where compliance with such requirements would make it more difficult for individuals receiving assistance to escape domestic violence and unfairly penalize individuals who have been victimized by violence or are at risk of further domestic violence.<sup>362</sup> For example, spending up to 35 hours in a welfare-to-work placement could take time away from a battered immigrant’s efforts to escape a violent relationship. In some cases, her time may need to be spent at court hearings, doctors appointments, or finding safe housing.

Time limits may also unfairly penalize battered women who have used the benefits for five years to become trying to flee their abuser instead of working and becoming financially independent.<sup>363</sup> The Family Violence Option additionally allows states to waive child support cooperation requirements for domestic violence victims. Battered women may claim good cause for failing to cooperate with child support enforcement if they or their children could be put in danger as a result. Without a waiver or good cause finding, a recipient has to identify the father of her children and supply other information required by the states in order to qualify for TANF benefits. This can be dangerous for battered women since violence may increase when legal or administrative action is taken against the abuser.<sup>364</sup> Abusers may be able to find a victim who is in hiding, they may threaten to kidnap the children or fight for custody, and if the battered woman has children by a different man than her abuser, this may trigger additional violence.<sup>365</sup>

To identify persons eligible for waivers, the option directs TANF agencies to confidentially screen and identify applicants and recipients for domestic violence, conduct individual assessments, and develop temporary safety and service plans (including referrals to domestic violence services) in order to protect battered women from: “. . . immediate dangers, stabilize their living situations and explore avenues for overcoming dependency.”<sup>366</sup> The option gives welfare administrators the discretion to determine the period the waiver will apply and renew the waiver on a case-by-case basis for an indefinite period of time.<sup>367</sup>

The Family Violence Option is an option granted to states, but states are not required to implement the option in their welfare plans. As of 2000, 41 states have included the Family Violence Option in their state plans.<sup>368</sup> Moreover, interpretation of which provisions

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neglect or deprivation of medical care.” Get cite from regs.

<sup>361</sup> 42 U.S.C. 607 (a)(7).

<sup>362</sup> Jill Davies, “The New Welfare Law: State Implementation and Use of the Family Violence Option, 12/96, 23.

<sup>363</sup> Marcellene Hearn, “Dangerous Indifference: New York City’s Failure to Implement the Family Violence Option.” 2000, 4.

<sup>364</sup> “Q & A on Women and Welfare: Violence Against Women” – State Implementation of the Family Violence Option: What Advocates Can Do, 1998, 1.

<sup>365</sup> Jill Davies, “Building Opportunities for Battered Women’s Safety and Self-Sufficiency,” no date, 16.

<sup>366</sup> Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62, 124, 62, 128, (1997) (to be codified at 40 C.F.R. pts. 270-5) (proposed Nov. 20, 1997).

<sup>367</sup> Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. At 62, 131 (to be codified at 45 C.F.R. 270.30).

<sup>368</sup> Marcellene Hearn, “Dangerous Indifference: New York City’s Failure to Implement the Family Violence Option,” 2000, 4.

and requirements of the TANF program can be waived is left to the individual states. States are granted the choice and flexibility to specify in their welfare plans the measures they will take to provide access to TANF for victims of domestic violence.<sup>369</sup> Since states are given full discretion when creating individual TANF plans, domestic violence victims will not necessarily have additional protections within TANF plans and their public assistance eligibility may be regulated by the base federal guidelines. There has been some confusion in the states as to the proper implementation of the Family Violence Option (i.e. some states screen for domestic violence but do not provide referrals, some agencies differ in evidence requirement to prove domestic violence.)<sup>370</sup> States also vary in terms of waivers that they allow. Ideally any TANF program requirement that would hurt a battered woman or a battered immigrant should be waivable and nonpermanent waivers should be subject to unlimited renewal.<sup>371</sup>

Final regulations were issued by the Department of Health and Human Services on April 12, 1999 which clarify the meaning of the Family Violence Option, as well as implementation guidelines (69. Fed. Reg. 17720, April 12, 1999 – need to find this and do cites from it.) First, states will not be penalized for failing to achieve work participation rates due to waivers that it has granted under the Family Violence Option. To avoid these penalties, Family Violence Option waivers must be “federally recognized good cause waivers.” To be considered “federally recognized,” waivers must be granted based on need by a TANF worker trained on domestic violence issues, waivers must be reevaluated every six months, program requirements that are waived must be specified, and the waiver must be accompanied by an appropriate service plan. Service plans must be developed by a person trained in domestic violence, reflect individualize assessment, and be designed to lead to work only to the extent that is consistent with safety. States can postpone work activities if safety dictates that a battered woman cannot take on a work assignment.

Second, the final regulations note that time limit waivers are available for domestic violence victims even if the violence occurred earlier in their welfare **dependency** or occurs after their time limit has run out. Time limits may be extended based on the need for continued assistance due to current or past domestic violence, or risk of future violence. Women can receive assistance for as long as they need it, extensions will be available, women will not be cut off when they reach the federal time limit if they still need assistance, and they will be able to return for assistance if the need occurs.

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<sup>369</sup> PRWORA, tit. I 402(a)(7), Pub. L. No. 104-193, 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C. 602(a)(7)).

<sup>370</sup> NOW LDEF, “State Implementation of the Family Violence Option: What Advocates Need to Know,” 1998, 1. Some states have adopted practices that are not beneficial to battered women and tied them to the granting of waivers. In some instances participation in a domestic violence counseling programs have been made mandatory. This can pose problems particularly for battered immigrant women who may not be able to access the programs because of lack of access to qualified interpreters. Rural battered women may have transportation problems and safety issues traveling to distant domestic violence programs for services.

<sup>371</sup> Ibid. 2.

## Family Violence Option Implementation & Cultural Competency Protocols

When implementing agency procedures concerning the Family Violence Option, it is important that agencies develop a protocol for screening applicants and existing TANF recipients for eligibility under the Family Violence Option. Staff should first receive comprehensive training that covers the following topics:

- 1) the dynamics of domestic violence in immigrant communities (see Chapter 1 of this manual)
- 2) laws concerning immigrant eligibility for public benefits and information about state programs that can help battered immigrant women (see Chapters 4,5, 6, and 7 of this manual)
- 3) communication skills, sensitivity to the needs of battered immigrant women, and cultural competency (see below)
- 4) procedures for granting Family Violence Option waivers, exemptions, or extensions for battered women (see below)
- 5) State privacy laws and procedures for maintaining applicant/recipient confidentiality (as well as instances where confidentiality must be breached – some states have mandatory reporting requirements for child abuse and neglect cases and all state TANF agencies are required to report applicants who are in the U.S. illegally (see below)
- 6) Referral sources, making effective referrals, and case management techniques (see below)<sup>372</sup>

Training strategies for TANF programs will depend on the needs and resources of each individual agency. Agencies may opt to provide specialized training to all workers, which would ensure that all staff have the capacity to respond to the needs of battered immigrants and TANF agency staff have pre-established collaborative working relationships with community agencies that specialize in serving the needs of battered immigrants.<sup>373</sup> These programs can serve as useful referrals for battered immigrants.

However, this training option on battered immigrant issues for the entire TANF worker staff could require considerable time and resources, especially if staff turnover is high. Staff may feel overloaded by the additional responsibility and battered immigrants may not get the attention that they need. Additionally, if training all staff, some staff may have violence issues in their personal lives and may feel uncomfortable working with domestic

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<sup>372</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 1996, 14.

<sup>373</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 11.

violence victims.<sup>374</sup>

TANF programs may prefer to train a specialized core of domestic violence staff who could handle Family Violence Option cases after an intake staff determines that an applicant/recipient is in need of such assistance. This FVO staff could receive special training on working with battered immigrant women. Battered immigrants could benefit from this approach because they could receive more personalized interaction and information from TANF staff, specialized staff would have more time to work with immigrant clients, and this core of staff could have increased opportunities to develop strong working relationships with community domestic violence and immigration services.<sup>375</sup> If programs decide to pursue this option, this reduces training costs. However, it is important that specialized staff have flexible assignments so that they can meet the demand for services and that these staff be accessible for potential applicants.<sup>376</sup>

It is particularly important translation service be incorporated into the job description of bilingual staff and their case load requirement be adjusted to reflect their translation work, otherwise staff become overburdened and frustrated because they are asked to translate and handle the same caseload as other staff who do not have the additional burden of translation. Cases of battered immigrants who speak a particular language must be assigned to case-workers who speak that language when there are such case workers on staff. Some state TANF programs have made the mistake of hiring bilingual staff and then assigning them English speaking clients, while assigning for example Spanish speaking clients to English speaking case workers.<sup>377</sup> The arrangement is frustrating for all involved.

Finally, TANF programs may wish to integrate their family violence screening work with local domestic violence community resources. Choosing this option offers comprehensive services battered and battered immigrant applicants/recipients, allows recipients to interact with persons who have strong skills and experience with domestic violence, immigration, and cultural competency issues. Having this linkage between TANF staff and community also provides additional and ongoing opportunities for training and the development of collaborative strategies to help battered immigrant women.<sup>378</sup> However, outsourcing of domestic violence specialists should only be undertaken by a TANF agency if such services exist, are accessible to battered immigrants, and have the capacity to serve increased numbers of battered immigrants. TANF agencies and community programs will additionally need to clearly define their roles in service delivery to ensure the best quality of assistance to battered immigrants.<sup>379</sup> Regardless of the training strategy adopted, staff should be trained to act in a compassionate, nonjudgmental, trustful, and confidential manner, to recognize signs and symptoms of both victims and abusers, to use screening and assessment tools, to uphold confidentiality, and to be knowledgeable of programmatic waivers and exemptions. TANF agencies are encouraged to hire or contract with a

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<sup>374</sup> Ibid. 11.

<sup>375</sup> Ibid. 10.

<sup>376</sup> Ibid 10.

<sup>377</sup> This occurred for example in the District of Columbia.

<sup>378</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 11.

<sup>379</sup> Ibid. 12.

domestic violence/immigration advocate to provide ongoing training and support services to the agency.<sup>380</sup>

## Universal Screening

In order to determine eligibility for relief under the Family Violence Option, staff must identify battered immigrants who qualify for waivers. Asking applicants/recipients to reveal whether or not they or their children are being abused can raise a multitude of complex issues that TANF workers must be cognizant of. Battered women may be ashamed and embarrassed about the abuse. They may fear that they will be punished by their abuser or the TANF office for revealing the abuse. They may be concerned that their children will be taken away from them. They may not know that the Family Violence Option exists. They may fear that they will be deported or lose their pending immigration status. They may be concerned that the TANF worker will tell everyone about the abuse, especially if the TANF office is located in a small community. They may not speak English fluently, feel embarrassed about needing an interpreter, and may not understand what their options are or how the “system” works. Training staff to be aware of these issues will enable them respond appropriately to the needs of battered immigrants and avoid putting them in danger.

It is critical that battered immigrants be able to voluntarily self-disclose that they are suffering from battery or mental cruelty. In order to do so, they must be presented with clear and consistent information that will dispel their fears and allow them to make an informed decision about whether disclosing violence is in their best interest or is safe option for them. By presenting information to every applicant, battered immigrants are not put under pressure to disclose and can learn about benefits without as much risk to their personal safety. Since many battered immigrants must prove that they are victims of domestic violence before they can qualify to receive benefits battered immigrant welfare recipients will already have disclosed the domestic violence in the application process. For these battered immigrants it is important that workers provide them the services available in their state for all other battered women identified through screening. Additionally, because being a victim of domestic violence may offer battered non-citizens more access to TANF and other federal public benefits than they would have had if they were not abused, screening can help identify battered immigrants who may have options they have not yet explored who can be referred to immigration experts and battered immigrant women’s advocates in the community for additional specialized assistance.

A universal screening protocol should utilize the following guidelines:

- 1) Information must be provided to all applicants and recipients on the Family Violence Option before the intake interview, during the interview itself, and in ongoing meetings that caseworkers may have with recipients. Battered immigrants who receive TANF are eligible at any time to apply for waivers and may not be prepared at an intake interview to disclose the abuse. As a result,

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<sup>380</sup> DHHS, “Ancillary Services to Support Welfare to Work” 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.7.

information should be given repeatedly and at each point where temporary relief might be needed, such as when an applicant proceeds with a child support case, when work activities are required or when time limits are about to expire.<sup>381</sup>

Flyers and brochures on the Family Violence Option waivers should be translated and posted in TANF agency waiting rooms, in bathrooms at TANF offices, and through written notices mailed with other attachments on public benefits so that the abusive partner does not think that his wife or partner specifically requested this information.<sup>382</sup> Information should also be distributed to domestic violence service providers, immigration legal programs, other public benefits groups, and places where battered immigrants frequent (such as community centers, grocery stores, schools, places of worship, hair salons, or doctor's offices.)

- 2) Information provided should include an accurate description of an applicant/recipient's rights and options, how to apply for waivers, time extensions or exemptions, how domestic violence disclosure information will be used by the TANF agency, where to get help or ask additional questions, privacy rights, rights to notices of program changes or appeals hearings of adverse decisions, and notification of potential penalties for disclosing abuse.<sup>383</sup> Flyers and brochures should also include information on local domestic violence services and shelters, such as emergency hotline numbers and special services for battered immigrants.<sup>384</sup>

This information should be given in verbal and written form, and should be available in multiple languages. It is critical that TANF agencies ensure that translators are available to assist battered immigrants with limited English-language capabilities or that agencies consider hiring multilingual or bilingual staff. Federal law requires welfare centers to provide professional interpretation services to welfare applicants and recipients or risk violating federal anti-discrimination laws. Failure to comply with this provision puts battered immigrants in extreme danger and raises confidentiality problems which will be further discussed below.<sup>385</sup>

- 3) Information should be provided prior to any questions about paternity or child support.<sup>386</sup> As a result of Welfare Reform provisions, states are required to proceed with child support collections cases if the non-custodial parent of a child is not contributing the financial well-being of his/her child. To be in compliance,

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<sup>381</sup> DHHS, "Ancillary Services to Support Welfare to Work" 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.5.

<sup>382</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 5.

<sup>383</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 14-15.

<sup>384</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 5.

<sup>385</sup> Marcellene Hearn, "Dangerous Indifference: New York City's Failure to Implement the Family Violence Option," 2000, 4.

<sup>386</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 27.

TANF agencies must now screen applicants/recipients for child support needs and work with Child Support Enforcement agencies on these cases. Battered immigrants typically enter the welfare system by first meeting with TANF workers and child support eligibility is determined as a result of the interview. It is important that battered immigrants be given sufficient information to evaluate the safety of revealing the father of their children to the TANF worker and be informed of safety precautions and waivers that can be utilized by the TANF agency and Child Support Enforcement Office to protect her and her children. This is particularly important in cases of battered immigrant women married to U.S. citizens and lawful permanent residents who have better access to the legal system than battered immigrants who do not speak English. Spurring an abuser of an immigrant woman to begin using the legal system against her can ultimately result if she does not receive the assistance of trained counsel in the loss of access to legal immigration status or the loss of custody of her children.

## Interviewing Strategies

Once information has been presented to an applicant or current TANF recipient, the case worker will need to identify whether the applicant/recipient is a victim of domestic violence and offer her the opportunity to voluntarily and confidentially disclose the abuse. In soliciting information from immigrant applicants/recipients, consider using the following techniques:

- 1) Before any questions are asked, the TANF worker should inform the applicant/recipient that she will be asking her some questions relating to domestic violence. The worker should explain that these questions are only being asked to determine whether the applicant/recipient is eligible for relief from program requirements under the Family Violence Option and that the applicant/recipient can choose whether or not to answer the questions without any penalties.<sup>387</sup> Applicants/Recipients should be informed that they can disclose domestic violence at any time while they are receiving benefits and that their responses will be kept confidential (see section on this issue below.)<sup>388</sup> Presenting this information in this fashion builds trust and makes the interview process less intimidating for the applicant/recipient.

Applicants should not be pressured into admitting that they are domestic violence victims nor should they be required to sign a statement under oath that they are not victims of domestic violence just because they choose to not disclose.<sup>389</sup> This could put the applicant in danger of a criminal perjury charge for making an incomplete statement.<sup>390</sup> Applicants should also not be punished for denying or failing to disclose domestic violence information at an initial intake

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<sup>387</sup> Ibid. 27.

<sup>388</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 9.

<sup>389</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 6.

<sup>390</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option,"

interview and then disclosing such information at a later date.<sup>391</sup> If an applicant/recipient must fill out screening paperwork on domestic violence prior to an interview, she should be able to answer all questions as yes, no or no comment.<sup>392</sup>

2) Once this initial information has been presented, the TANF worker will need to ask the applicant/recipient a number of domestic violence-related questions. The applicant/recipient should then choose whether or not she wants to answer them. Suggested questions could include, but are not limited to:<sup>393</sup>

- Are you afraid of your partner or ex-partner?
- Has your partner ever done anything to hurt or scare you?
- What are you worried about right now? What is your biggest concern for yourself?
- Are you concerned about your safety and/or are you in immediate danger?
- What kinds of services would be most helpful for you at this point (i.e. legal assistance, child care, work)?
- How do you want me to help you?
- Under what conditions do you think it would be most safe for you to leave?
- What are your safety needs if you plan to leave your partner?
- Do you want to try to leave your abuser?
- If you were to leave, are there things that would make it difficult for you to leave?
- Does your abuser try to stop you from going to work or leaving the house?
- Has your abuser ever threatened to report you to INS?

Staff should not expect women to immediately disclose the abuse and need to be prepared for a variety of responses from applicants/recipients to these questions. Some women may be grateful that someone cares enough to inquire about the abuse. For some, the TANF worker may be the first person that they disclose the abuse to and they may feel frightened. Some may find it extremely difficult to disclose in spite of the steps that the TANF agency takes to create a comfortable environment for the victim. Some may never feel comfortable disclosing.<sup>394</sup> This variety of responses requires flexibility, empathy, and patience from the TANF worker. The worker should use the applicant's/recipient's response to protect her safety and develop a case plan in conjunction with her (see below.)

3) If the applicant/recipient does not speak English, a trained interpreter should be available for all interviews or the applicant/recipient should be assigned to a bilingual case worker. This will ensure that the battered immigrant receives the

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<sup>391</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 13.

<sup>392</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 13.

<sup>393</sup> We encourage TANF programs to develop screening questions in conjunction with local domestic violence and immigration service providers. Note other resources....

<sup>394</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 9.



information that she needs and that her right to make an informed choice is protected.

- 4) A battered immigrant woman may have well-founded fears about the potential consequences of disclosing the abuse. TANF workers should take all necessary steps to ensure that the abuser does not find out about the disclosure and retaliate (see confidentiality section below.) She may also be concerned that she will be placed in less desirable programs or discriminated against by the TANF program.<sup>395</sup> TANF workers should ensure that Family Violence Option protocols do not discriminate against battered immigrants or put them in danger for disclosing the abuse. Implementing proper confidentiality measures can address many of these concerns.

## Confidentiality

Screening and identifying applicants/recipients as domestic violence victims will not necessarily ensure their safety, particularly if there is a danger of the abuser finding out that the violence has been disclosed. TANF agencies must therefore ensure that confidentiality rules are put in place to protect battered immigrants. Agency procedures should be created for staff that state the particular purposes for which family violence information can be collected and used so as to prevent improper disclosures of this information. A confidentiality protocol should include the following elements.

- 1) Private interview spaces should be made available so that persons waiting in the halls or waiting room cannot overhear any conversations between battered immigrants and TANF workers.<sup>396</sup> If possible, the battered immigrant and case worker should meet alone so that she can speak freely. This protects children from having to hear about the abuse, prevents friends who may accompany the battered immigrant from sharing the information with others, and keeps the abuser from participating in the interview and intimidating the battered immigrant.
- 2) Protocols should be developed to prevent disclosure of information from files and databases, particularly if a battered immigrant is in hiding. Staff should be trained to not leave files open on desks where other staff or recipients could read them.<sup>397</sup> Guidelines should prohibit the release of information on the whereabouts of one party to another party against who a protection order has been entered, as well as information on the whereabouts of this party to the abuser if this could harm the former party.<sup>398</sup> Batterers can use a variety of information to locate their partners. As a result, such information as the recipient's address, phone number, post office box, training site, job placement

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<sup>395</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 12.

<sup>396</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 7.

<sup>397</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 16.

<sup>398</sup> Ibid. 29.

site, and children's school must be protected.<sup>399</sup> Confidentiality provisions are all the more important if multiple staff have access to computerized records or if the agency is in a rural area where the TANF worker may know the recipient and/or her abusive partner. Many child support enforcement databases are now automated and integrated to make it easier to locate noncustodial parents.<sup>400</sup> Creative strategies should be considered to protect these records, such as keeping a battered immigrant's address out of certain child support records, flag her address in records as protected, making sure she gives paternity samples on a separate day from the abuser, and allowing her to appear at the child support court hearing on a different day so that the abuser cannot follow her home.<sup>401</sup>

- 3) The TANF agency should not contact the abuser for the purposes of corroborating a battered immigrant's statement unless the applicant gives the agency written permission to do so. If the TANF agency must contact the abuser, information should only be disclosed that is necessary for accomplishing the task at hand and no information should be disclosed that would endanger the applicant.<sup>402</sup>
- 4) Applicants/recipients should be informed how the TANF confidentiality provisions interact with state and federal confidentiality laws. For example, many states require TANF workers to report disclosures about child abuse and neglect.<sup>403</sup> The federal government also requires TANF workers to report persons who are present in the U.S. illegally. TANF agencies should determine what their state confidentiality laws are and ensure that written materials contain this information. Potential breaches of confidentiality provisions should also be discussed during screening interviews.
- 5) Special confidentiality provisions exist as well when working with interpreters. The TANF agency should ensure that interpreters are professionally trained, are sensitive to domestic violence issues, and are bound by agency confidentiality regulations. Family members or friends should never serve as interpreters during interviews because they may reveal confidential information to the battered immigrant's abuser or to her community. Because of the shame that is often associated with domestic violence in many cultures, the battered immigrant may not disclose the abuse while someone she knows is present and may miss an opportunity to qualify for a waiver.

## Establishing Eligibility for Waivers and Case Management Issues

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<sup>399</sup> Ibid. 29.

<sup>400</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 15.

<sup>401</sup> Ibid. 17.

<sup>402</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 30.

<sup>403</sup> NOW LDEF, "State Implementation of the Family Violence Option: What Advocates Need to Know," 1998, 2.

In addition to screening and identifying applicants or recipients who have been abused, DHHS regulations require TANF agencies to establish case plans to respond to the needs of all battered women including battered immigrants. Staff need to be trained how to properly grant waivers and connect battered immigrants with helpful services and referrals. There is no single framework for case plans – every plan will be different and will be determined by the particular needs of a battered immigrant. Furthermore, case plans will often need to be adapted as the circumstances of the battered immigrant change. During screening, TANF workers should listen carefully to the needs of the battered immigrant and avoid making assumptions about her needs. For example, she may not need temporary relief from program requirements. She may just need job training, ESL classes, counseling classes in her own language, childcare, or transportation.<sup>404</sup>

## Eligibility Considerations

Once a battered immigrant self-discloses, the TANF worker will need to conduct an assessment of her eligibility for waivers under the Family Violence Option. The worker will need to determine that the applicant/recipient is indeed a victim of battery or mental cruelty (see definition above) and that compliance with work requirements, time limits, or child support enforcement would make it more difficult for her to escape a violent relationship or that compliance with TANF requirements would unfairly penalize her because is, was or continues to be at further risk of domestic violence.<sup>405</sup> This is particularly the case if compliance would increase the risk of harm for the battered immigrant or her children, force her to take actions that would jeopardize her safety or privacy, impede her safety plan or hold her responsible for meeting a requirement that is not within the individual's control.<sup>406</sup> For example, an abuser could prevent a battered immigrant from fulfilling her work requirements or retaliate against her for filing for benefits in the first place by beating her, detaining her against her will, failing to provide child care when she is required to be at her job site, or threatening to report her to the INS (even if she is legally present in the United States.)

To prove that battered immigrants qualify for waivers, TANF programs should have reasonable, clear, and flexible eligibility standards and documentation requirements.<sup>407</sup> An individual's statement alone should serve as valid proof of eligibility unless there is an independent, reasonable basis to doubt the truth of the statement. If programs must require corroborating evidence, a variety of forms should be accepted, including protection orders, police or court records, and/or statements from shelter workers, attorneys, clergy, medical professionals, or counselors. Batterers should never be contacted for verification.<sup>408</sup>

It is important to note that all of these pieces of evidence may not be available to every

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<sup>404</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 8.

<sup>405</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 32.

<sup>406</sup> Ibid. 33.

<sup>407</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 11.

<sup>408</sup> Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 33.

applicant. Immigrant women may have difficulty producing specific evidence. For example, she may have called the police to report a domestic violence incident and the responding officer may have never filed a report. If a report exists, she may not be able to pay for the copying costs, may not have transportation to the police station, may not be able to get records in time, may not speak enough English to successfully obtain the papers, or may not be able to take time away from work. She may face the same dilemmas with obtaining court or medical records.

It is important that TANF workers carefully evaluate the applications of battered immigrants and not dismiss their cases because of immigration status issues. If a battered immigrant is proven to be eligible for public benefits under the U.S. Attorney General's Guidance, there is no reason for her to be treated differently from a U.S. citizen applicant.

Throughout the waiver determination process, applicants/recipients must be informed of the circumstances under which a request for temporary relief will be granted. Immigrant women should also be made aware of their appeal rights, statutory or other presumptions regarding credibility of any application statements that allege domestic violence and under what circumstances "additional" evidence will be required. TANF offices should further ensure that applications for temporary relief immediately stop program actions until the application is granted or denied.<sup>409</sup> TANF workers are encouraged to grant eligible persons full as opposed to partial waivers as these more effectively protect battered immigrants. For example, some states grant partial employment waivers which may direct women to work assignments in a neighborhood where the batterer does not live. This can be problematic in smaller cities, does not address the issue of where the batterer works, and may not give a battered immigrant the time that she needs to obtain legal assistance or other remedies for herself and her children. Moreover, there is no authority in state or federal law for partial waivers.<sup>410</sup>

## Case Management

In addition to the granting waivers, the Family Violence Option regulations require TANF workers to develop case plans with recipients and provide referrals to domestic violence services. Case plans will vary greatly depending on the needs of the recipient and should be developed on an individualized basis with the full cooperation and involvement of the recipient. These plans must account for the particular risks that the battered immigrant faces, the nature of the abuse, and the options available to address these risks. Applicants/recipients should be informed of the resources that the TANF agency will provide to help them with their case plans, their rights and responsibilities, sanctions or consequences for failure to meet requirements, and how to establish that she has met requirements.<sup>411</sup>

Since the circumstances of battered immigrants may constantly change while they are

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<sup>409</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 11.

<sup>410</sup> Marcellene Hearn, "Dangerous Indifference: New York City's Failure to Implement the Family Violence Option," 2000, 13.

<sup>411</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 12.

receiving public benefits, case plans must be flexible. For example, a battered immigrant may need multiple waivers for work requirements, time limits, or child support/paternity cooperation agreements and these waivers may need to be extended. Additionally, the needs of battered immigrants will be in constant flux and case plans will need to respond to changes as they take place. For example, when an immigrant woman initially applies for benefits, she may be in hiding in a shelter and have specific fears and needs. A year later she could be living independently and may be more concerned about getting job training or counseling for her children. Case plans must first and foremost preserve the safety of a battered immigrant and her children.

It is important when developing a case plan that TANF workers listen to the needs that battered immigrants self-identify and avoid making assumptions about what these needs should be. Women should not necessarily be excluded from job training programs if they feel that they can safely work. However, they may at the same time fear that complying with a child support enforcement case will trigger reprisals from their abusers or lengthy custody disputes.

In helping the battered immigrant determine her needs, TANF workers will often need to provide referrals as many of the services that battered immigrants will need will not necessarily be provided by the TANF office. Referrals should match the need expressed by the battered immigrant, should provide information necessary for an applicant/recipient to access the service (phone number, location, eligibility requirements), should be culturally and linguistically accessible, and should explain what services the referral can provide and how it might help.<sup>412</sup>

Referrals and assistance should be provided wherever possible. This assistance could include helping the battered immigrant relocate to safe affordable housing and job training programs; having access to child care and health care; participating in substance abuse treatment programs that will not require the battered immigrant to give the children to abuser; transportation to work, court, or service providers; or temporary relief from program requirements or time limits to allow time to identify and pursue safety options or because her abuser sabotaged her safety plan.<sup>413</sup> If a battered immigrant arrives at a TANF office and is in immediate danger (i.e. her abuser threatens her in the office or is stalking her), the TANF worker follow office safety procedures and provide the battered immigrant with emergency referrals to shelter or legal assistance if these are requested.<sup>414</sup>

In the process of developing and maintaining referral lists, TANF staff will find it beneficial to form collaborative relationships with community service providers. These relationships have numerous benefits for battered immigrants and TANF workers. Specialized services can be provided by providers in the community who may have more expertise than TANF workers and battered immigrants will receive improved and better coordinated services. In forming these partnerships, TANF agencies will need to assess the extent to which current local domestic violence services exist and work creatively with

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<sup>412</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 10.

<sup>413</sup> Ibid. 9.

<sup>414</sup> Ibid. 9.

service providers to fill gaps in services to ensure that battered immigrants can fulfill their case plans.<sup>415</sup>

TANF agencies may wish to have community domestic violence advocates or counselors on staff, including in communities with large immigrant populations, battered immigrant women's advocates to provide enhanced services in conjunction with referrals.<sup>416</sup> Safe child support enforcement should also be included in case plans and coordination between TANF and Child Support Enforcement programs is critical to protect confidentiality, ensure that enforcement does not proceed if waivers are put in place, and allow the battered immigrant to develop a safety plan to protect herself and her children from potential violence that could result.<sup>417</sup>

TANF workers should take caution to avoid developing safety plans that do not enhance safety or put the battered immigrant at increased risk of future violence. A battered immigrant should not be held responsible for her abuser's behavior. For example, a battered immigrant should not be required by her safety plan to keep her partner from interfering in her work activities.<sup>418</sup> To do so would be both inappropriate and dangerous.

Furthermore, battered immigrants should not be required to pursue options that are unavailable or beyond their control to access. Shelters may not exist, transportation to services may be unavailable, expensive, or require the battered immigrant to take too much time away from her other responsibilities. She may not meet the eligibility requirements of a program (i.e. income limits, geographic requirements, sobriety requirements). Finally, some safety options have specific legal requirements that must be met before a court will order them. Civil Protection Orders require a specific relationship between the batterer and victim that may not exist for the battered immigrant, protection orders may not recognize emotional or mental abuse, and abusers may try to avoid being served with the Order.<sup>419</sup>

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<sup>415</sup> DHHS, "Ancillary Services to Support Welfare to Work" 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.7-8.

<sup>416</sup> Ibid. 5.

<sup>417</sup> Jill Davies, "Family Violence Protocol Development: Part I," no date, 12.

<sup>418</sup> Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 12.

<sup>419</sup> Ibid. 13.

# APPENDIX

**Table 1: NILC STATE FUNDED TANF PROGRAMS – JANUARY 2000**

STATE/NAME OF PROGRAM	IMMIGRANTS ELIGIBLE FOR STATE FUNDED CASH ASSISTANCE FOR FAMILIES WITH CHILDREN
CALIFORNIA: California Work Opportunity and Responsibility to Kids Program (Cal Works)	Qualified immigrants and PRUCOLs <sup>1</sup> who are ineligible for federal TANF.
CONNECTICUT: Jobs First/Temporary Family Assistance	(1) Qualified immigrants who are ineligible for federal TANF. Post 8/22/96 entrants must meet six-month durational residency requirement. Assistance authorized until 7/1/01. (2) PRUCOLs who are victims of domestic violence or have mental retardation.
GEORGIA: Temporary Assistance to Needy Families	Qualified immigrants who are ineligible for federal TANF. Expires 7/1/01 unless extended.
HAWAII: Temporary Assistance to Needy Families, Pursuit of New Opportunities (PONO). State Program entitled: Temporary Assistance to Other Needy Families (TAONF)	Qualified immigrants who are ineligible for federal TANF.
ILLINOIS: Temporary Assistance to Needy Families (TANF)	Battered immigrants and their parents and children, regardless of their date of entry to the United States.
MAINE: Temporary Assistance for Needy Families and Parents as Scholars	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
MARYLAND: Family Investment Program (FIP). Cash assistance component of FIP is called Temporary Cash Assistance (TCA).	Qualified immigrants who are ineligible for federal TANF.
MASSACHUSETTS: Transitional Aid to Families with Dependent Children (TAFDC)	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
MINNESOTA: Minnesota Family Investment Program	Lawfully present immigrants who are not eligible for federal TANF.
MISSOURI: Temporary Assistance	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
NEBRASKA: Aid to Dependent Children (ADC)	Qualified immigrants who are ineligible for federal TANF.
NEW MEXICO: New Mexico Works	Qualified immigrants who are ineligible for federal TANF. This program, referred to as General Assistance, provides benefits comparable to TANF.
NEW YORK: Family Assistance Program (FAP). Child Assistance Program (CAP) in some counties	Qualified immigrants who enter the U.S. on or after 8/22/96 are eligible for the same level of benefits through the "Safety Net" program during the five-year bar, but most assistance is in the form of vouchers.
OREGON: Aid to Dependent Children (ADC)	Qualified immigrants and PRUCOLs who are ineligible for federal TANF. Victims of domestic violence are also eligible, regardless of immigration status.
PENNSYLVANIA: Temporary Assistance to Needy Families (TANF)	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
RHODE ISLAND: Family Independence Program (FIP)	Qualified immigrants who are ineligible for federal TANF; Lawfully residing immigrants who were residents of Rhode Island prior to 7/1/97.
TENNESSEE: Families First	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
VERMONT: Aid to Needy Families with Children (ANFC)	Qualified immigrants and PRUCOLs who are ineligible for federal TANF.
WASHINGTON: WorkFirst	Lawfully present immigrants who are ineligible for federal TANF.
WISCONSIN: Wisconsin Works (W-2)	Qualified immigrants who are ineligible for federal TANF. (Note: citizen and qualified immigrant children whose parents are "not qualified" are ineligible for assistance).
WYOMING: Personal Opportunities with Employment Responsibilities (POWER)	Lawful permanent residents and persons paroled into the U.S. for less than one year, who are ineligible for federal TANF.

Source: This information was collected primarily by the Center on Budget and Policy Priorities. The National Immigration Law Center updated the chart based on reports from advocates in these states.

In several states, General Assistance or similar programs may fill in some of the gaps for immigrants who are ineligible for federally funded TANF services. The benefit levels, however, may be lower, and other restrictions and time limits may apply. For details on the General Assistance programs available in each state, see Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform" (Urban Institute, May 1999).

NOTE: The information in these charts is subject to change. Please check with your state or local social services agency or legal assistance office regarding the current rules.

Table 2  
DHS Documents



## Table 3

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<sup>1</sup>“PRUCOL” or Permanently Residing in the U.S. under Color of Law is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport him or her, has been interpreted differently depending on the benefit program and jurisdiction.