

Access to Publicly Funded Legal Services for Battered Immigrants By: Catherine Longville and Leslye E. Orloff¹

In the Violence Against Women Act (VAWA) of 2005² Congress for a third time³ expanded access to legal services for immigrant victims of domestic violence, sexual assault, human trafficking and many other crimes to provide crucial support for victims struggling to create safe and abuse free lives for themselves and their children and embark on lives full of social, emotional and economic wellbeing.⁴ In February of 2006⁵ Legal Service Corporation (LSC) issued a program letter implementing VAWA's immigrant victim access to legal services protections and in April, 2014 LSC regulations⁶ were amended confirming that all immigrant crime victims are legally eligible for LSC funded legal services under anti-abuse regulations. Under LSC's 2014 regulations⁷ there are **two classes** of immigrants eligible to receive legal services from entities which receive federal funds from the LSC⁸:

- Immigrant crime victims who receive representation under anti-abuse laws,⁹ and
- Immigrants with forms of immigration statuses listed in the LSC statute.¹⁰

Immigrants who are eligible based on their *immigration status* to access legal services which receive federal funds may receive *any legal assistance*. However immigrants who are eligible based on anti-abuse laws are only able to receive legal assistance that *is directly related to preventing, healing from, ameliorating the effect of, and preventing future abuse*. An immigrant, who receives representation under anti-abuse laws and files an immigration case that includes a path to lawful permanent residency, could qualify for full representation on all matters including those unrelated to abuse once they file their lawful permanent residency application.

Immigration Status Based Eligibility: To qualify for LSC representation on any legal matter handled by the LSC funded program, the immigrant applicant must have one of the following immigration statuses:

- Lawful and conditional permanent residents;
- Immigrants who filed for lawful permanent residency and are:
 - The spouse of a U.S. citizen;¹¹

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² § 816 Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (Jan. 5, 2006).

³ Victims of Trafficking and Violence Protection Act of 2000 § 107(b)(1)(B), 114 Stat. 1464, 1475 (codified at 42 U.S.C. § 7105(b)(1) (2000); Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208 § 504 (a)(11), 110 Stat. 3009 (1996).

⁴ Sen. Edward M. Kennedy, Address Before the Senate Committee on Appropriations (June 26, 1996).

⁵ Helaine M. Barnett, Program Letter 06-02, Violence Against Women Act of 2006 Amendments, (Feb. 26, 2006).

⁶ Final Rule, Restrictions on Legal Assistance to Aliens, 79 Fed. Reg. 21861 (Apr. 18, 2014), codified at 45 C.F.R. 1626 [hereinafter 45 C.F.R. 1626].

⁷ *Id.*

⁸ Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Access to Programs and Services that Can Help Battered Immigrants*, NIWAP (2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/april-3-2014-webinar/ch-4.1-access-to-programs-and-services-that-can-help-battered-immigrant-women-2013/>.

⁹ 45 C.F.R. 1626, sec. 1626.4

¹⁰ 45 C.F.R. 1626, sec. 1626.5.

¹¹ *Id.*

- The parent of an over 21-year-old U.S. citizen son or daughter;¹²
- An IRCA agricultural worker.
- Refugees or asylees;
- Conditional entrants admitted prior to 04/01/1980;¹³
- Granted withholding of deportation or removal;¹⁴
- Citizens of Palau, Micronesia, and the Marshall Islands, who reside in the U.S.;¹⁵
- Canadian-born American Indians who are at least of 50% Indian by blood;¹⁶
- Members of the Texas Band of Kickapoo;¹⁷
- Indigent foreign nationals in a Hague Convention case;¹⁸
- H-2A Agricultural workers;¹⁹ and
- H-2B Forestry workers.²⁰

Eligibility Under Anti-Abuse Laws: Immigrants who are eligible to access legal assistance from LSC funded agencies based on *anti-abuse laws* (without regard to their immigration status) can receive any form of legal assistance directly related to the abuse. There are a wide range of legal services that may be provided because they are related to the abuse. Immigrant victims who are qualified to receive legal assistance from LSC funded agencies under the LSC anti-abuse regulations are immigrants who either they and/or their children have experienced at least one of the following forms of victimization:²¹

- Battering or subjected to extreme cruelty;²²
- Sexual assault;
- Human trafficking;²³
- U visa criminal activity;²⁴ and/or

¹² 45 C.F.R. 1626, sec. 1626.5(b).

¹³ 45 C.F.R. 1626, sec. 1626.5(c)-(d).

¹⁴ 45 C.F.R. 1626, sec. 1626.5(e).

¹⁵ 45 C.F.R. 1626, sec. 1626.5(e); *see also* sec. 1626.10(a)(2).

¹⁶ 45 C.F.R. 1626, sec. 1626.5(e); *see also* sec. 1626.10(b).

¹⁷ 45 C.F.R. 1626, sec. 1626.5(e); *see also* sec. 1626.10(c).

¹⁸ 45 C.F.R. 1626, sec. 1626.5(e); sec. 1626.10(e); *see also* 42 U.S.C. 11607(b).

¹⁹ 45 C.F.R. 1626, sec. 1626.5(e); *see also* sec. 1626.11.

²⁰ *Id.*

²¹ 45 C.F.R. 1626, sec. 1626.4(a)(1)(i).

²² As defined in 45 C.F.R. 1626, sec. 1626.2. This definition is identical to the definition of battering or extreme cruelty in the immigration regulations. *See* 8 C.F.R. § 204.2(c)(1)(vi) (see definition *infra* note 14); *see also*, Leslye E. Orloff, Brittnay Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NIWAP (October 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Extreme-Cruelty-BIA-training-memo.pdf/view>.

²³ Refers to human trafficking that includes but is broader than “severe form of human trafficking” or “sex trafficking” since the crimes that constitute trafficking could be crimes that violated a state or federal law. To qualify for LSC representation the trafficking may have occurred inside the U.S. or abroad, but the victim must be in the U.S. at the time of the application for legal services. 45 C.F.R. 1626, sec. 1626.4(b)(2)(ii); Final Rule, Restrictions on Legal Assistance to Aliens, 79 Fed. Reg. 21861 at 21863 (Apr. 18, 2014).

²⁴ U visa listed crimes are any of the following: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, other related crimes (including attempt, conspiracy, or solicitation to commit any of the above and other related crimes). INA §101(a)(15)(U)(iii). It is important to note that all victims of U visa criminal activities (including trafficking) can receive LSC representation if there is evidence supporting their U visa eligibility 45 C.F.R. 1626, sec. 1626.3. They do not need to be present in the U.S. to apply for and receive representation under the LSC regulations and the criminal activity may have occurred in the U.S. or have violated U.S. law. 45 C.F.R. 1626, sec. 1626.4(c)(2)(i)

- Severe forms of human trafficking seeking HHS certification (continued presence and T visas).²⁵

Immigrants falling into one of those categories are eligible to receive legal assistance related to:²⁶

- Escaping abuse;
- Ameliorating the effects of abuse;
- Preventing future abuse;
- Preventing or obtaining relief from:
 - Battering;
 - Extreme cruelty;
 - Sexual assault;
 - Human trafficking; or
 - U visa criminal activity.
- Applying for a U or T visa

This legal representation may include assistance in any of the following matters:²⁷

- Immigration;
- Family (CPO, custody, divorce, support);
- Employment;
- Public Benefits;
- Housing;
- Abuse and neglect;
- Juvenile; or
- Other matters with a connection to the abuse.

The following are some of the specific types of legal assistance which federally funded agencies can provide to victims who qualify for services based on abuse suffered, rather than based on their immigration status:

Family Law:

- Divorce;
- Civil protection orders;
- Terminations of parental rights;
- Child custody;
- Adoption;

²⁵ 45 C.F.R. 1626, sec. 1626.4(a).

²⁶ 45 C.F.R. 1626, sec. 1626.4(b)(1).

²⁷ 45 C.F.R. 1626, sec. 1626.4(b)(2).

Although the representation may include assistance with immigration matters, immigration representation is not required. Victims and their children may receive legal assistance on that may include any matters related to the victimization.

- Child protective services cases;
- Unaccompanied minors;
- Delinquency proceedings;
- Child support;
- Spousal support; and/or
- Division of property.

Safety, privacy, and confidentiality:

- Violence Against Women Act;
- Maintaining health insurance while under the perpetrator's health insurance;
- Health Insurance Portability and Accountability Act;
- Family Violence Prevention and Services Act;
- Victims of crime act funding/assistance;
- Family Educational Rights and Privacy Act;
- Sexual assault protection orders;
- Privileged communications under state or federal laws;
- State landlord and tenant laws;
- State employment laws;
- State health care laws;
- Safety planning (include interpreter/safety issues);
- Civil protection orders for domestic violence, stalking, vulnerable adult;
- School, housing or landlord no contact orders;
- General no trespass order;
- State education laws; and/or
- Laws governing access to medical or forensic examinations and health care.

Workplace safety

- Practical safety accommodations;
- Title VII or state law remedies;
- Americans with Disabilities Act;
- Leave laws; and/or
- Safety & other issues for h-2 visa immigrants.

Income security and mitigating financial losses

- Public benefits laws including;
- TANF, SSI or state income maintenance;
- Health care (e.g. affordable care act, Medicaid, Medicare, emergency Medicaid, SCHIP, substance abuse and mental health programs);
- Housing (emergency shelter, transitional housing, public and assisted housing);
- Nutrition assistance (SNAP, WIC);

- Child care (TANF or child care development fund);
- Heating assistance (LIHEAP);
- Assistance to refugees;

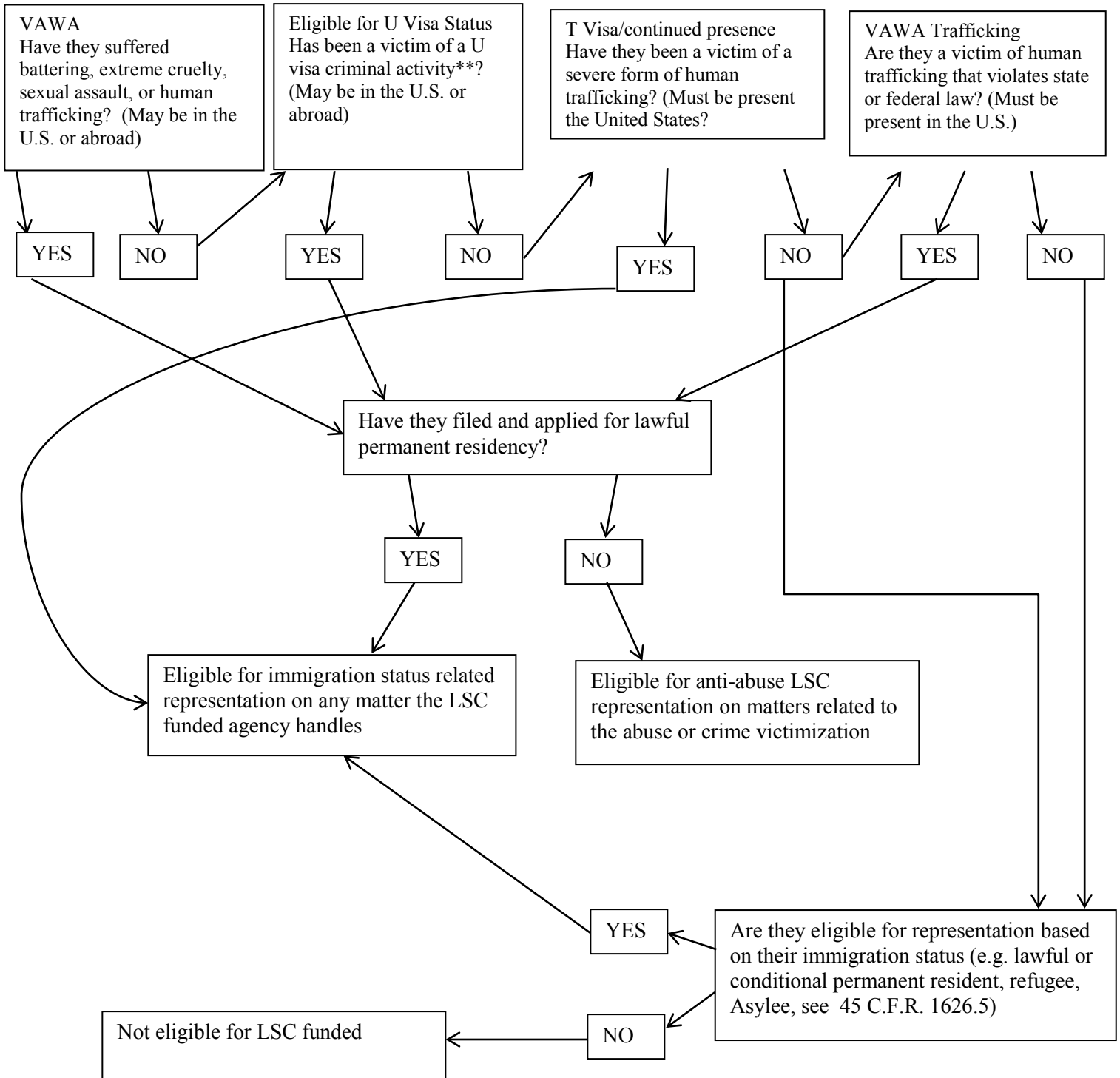
Education laws

- Title IX;
- No Child Left Behind Act;
- Individuals with Disabilities Education Act;
- Section 504: protecting students with disabilities; and/or
- Department of Education policy on post- secondary educational grants and loans for immigrant survivors and their children.

Employment laws

- Title VII/ state equivalent;
- EEOC complaint;
- EEOC's help for immigrant victims;
- Private cause of action;
- Family and Medical Leave Act/ state equivalent;
- Americans with Disabilities Act;
- Helping the victim seek a transfer of the perpetrator from shared employment;
- Having the perpetrator fired based on the workplace violence and/or address;
- Workplace retaliation, create safer work environment/ sexual harassment training.

MANY ROADS LEAD TO REPRESENTATION
How VAWA, U-visa, and trafficking victims become eligible for LSC representation



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