

Immigrant abuse victims often face new threats due to status

Spouse's manipulation of system, misguided police enforcement sometimes cause additional troubles, fear of deportation

By Shahid Haque-Hausrath

Every immigration case implicates matters of family unity or separation, and can dramatically impact a client's livelihood and quality of life. Immigration matters involving domestic violence and abuse are often the most challenging — but also the most important — types of cases for immigration practitioners. In my practice, I have assisted dozens of immigrant victims of domestic abuse, including both male and female victims. In this article, I will discuss some of the common characteristics of these abusive relationships and the difficulties these victims can experience — particularly when law enforcement works against the victim instead of providing support.

How Our Immigration System Provides Opportunities for Abusive Spouses

Immigrant victims of domestic abuse may enter the country on a marriage or fiancé(e) visa, enter the country illegally, or "overstay" a visa. The victim may be married to a U.S. citizen, a permanent resident, or another person who is undocumented. All of these factors play into the type of relief that may be available to the victim.

Abusive U.S. citizens often use their spouse's immigration status as a way to exert undue control. Often the immigrant spouse is isolated from society, unable to easily leave home because he or she lacks a driver's license, prevented from using a phone or computer to connect to friends and family, and prohibited from forming friendships with others. The abuse may manifest as physical violence or extreme emotional cruelty. The abuse is often furthered by threats of deportation if the immigrant spouse ever reports the abuse. Often, there are children in the household, and the abused spouse doesn't dare report the abuse to police because of the risk of being deported and leaving the children in the hands of the abuser.

There are many ways that an abusive spouse can use someone's immigration status as a constant threat. This type of control is possible because our immigration system provides unfortunate opportunities for U.S. citizens to manipulate their partners' ability to obtain legal immigration status. For instance, when a U.S. citizen applies for a fiancé(e) visa, the partner enters on a visa that expires unless they get married within 90 days. Sometimes the U.S. citizen deliberately refuses to get married, leaving the immigrant partner undocumented and unprotected by our immigration laws, but dependent on the abuser.

Even when a couple gets married, the U.S. citizen spouse can still wield control over the immigrant spouse. When a couple has been married for less than two years, the immigrant spouse only gets a two-year "conditional" green card. During that time, immigrant spouses could lose their status if they get divorced or separated, giving the abuser undue control during that time period. Just before the "conditional" green card expires, the couple is expected to jointly file a petition to prove that the marriage is ongoing and is genuine. If an abusive spouse intentionally misses that deadline, the immigrant spouse can be at risk of being removed (i.e. deported) from the U.S. An immigrant can request a "waiver" of the requirement to file a joint petition after the two-year period, but faces a high burden of proof to show the marriage was genuine, and many abused spouses are either unaware of this or afraid to do so.

I have seen many instances in which a U.S. citizen spouse has forced the immigrant spouse to work despite simultaneously refusing to fix the spouse's immigration status, which puts the immigrant spouse in the position of working without government authorization — often at low wages and without proper workplace protections. It also places the immigrant spouse at higher risk of being detected and arrested by immigration authorities.

Police Need to Be Vigilant and Understanding About Immigrant Victims of Abuse

It is critically important that police be aware of these dynamics and work to protect immigrant victims of domestic abuse. However, sometimes police and immigration officials have worked against abuse victims and helped the abusers. This is due, in part, to the manner in which immigration violations have been "criminalized" in our culture. Despite the fact that most immigration violations are civil in nature, local police have incorrectly viewed them as being serious crimes, and have

overlooked the more serious issues of abuse that should be their focus.

A few years back, a female client of mine was strangled in public and police were called to the scene. The male abuser was convicted of partner/family member assault. Although they had been married for many years, and she had no impediment to getting a green card through marriage, the husband refused to follow through with a petition. He had not held a job for years, and he had forced his spouse to purchase a fake green card to obtain employment to support both him and their children. But, after his conviction, he "tipped" immigration authorities that she was undocumented and had a fake green card.

Immigration authorities took the bait. They launched an investigation and a few months after the abusive spouse's tip, they had arrested my client, taken her into custody, and issued a final order of deportation against her. They apparently did not take note of the fact that at the time the abusive ex-spouse "tipped" them, he had already pleaded guilty to Partner/Family Member Assault, had a permanent restraining order against him, and the Missoula County Attorney's office had just brought misdemeanor and felony charges against him for violations of the order of protection. To make matters worse, the U.S. Attorney's Office brought charges against her in federal court for possession of a fake green card, and she pleaded guilty. Now, that conviction is posing an obstacle to getting immigration relief as an abuse victim.

Types of Relief Available

The options available to immigrant victims of domestic abuse vary considerably depending on the circumstances, and have detailed requirements. Without delving into the minutiae of each type of relief, the following are some of the possibilities.

The Violence Against Women Act provides opportunities for the spouse of a U.S. citizen or permanent resident to "self petition" for lawful immigration status when he or she is the victim of physical abuse of extreme emotional cruelty. The petition must be filed while still married or within a year of divorce. "Good moral character" is a requirement, and is sometimes a real obstacle. In the example referenced above, U.S. Citizenship and Immigration Services agrees that my client was the victim of abuse, but is asserting that her criminal conviction for possession of a fake green card shows bad moral character. We continue to fight her case and argue that they have their priorities wrong.

When the victim of abuse cooperates with law enforcement in the prosecution of an abusive spouse, he or she may also pursue a "U" visa. This application must be certified by a Judge, prosecutor, or law enforcement officer. While many law enforcement officers are reluctant to certify due to unfamiliarity with the U visa, this visa provides a pathway to permanent residency and citizenship, and should be seriously considered.

Victims of human trafficking, whose situations may differ considerably from abused immigrant spouses of U.S. citizens, may pursue a "T visa" under the Victims of Trafficking and Violence Protection Act.

In some rare instances, an immigrant victim of domestic abuse can pursue asylum. Refugees who flee from their home countries to escape persecution on account of race, religion, political beliefs or particular social group can ask for asylum in the

U.S. It is a difficult form of relief to win due to its high burden of proof. However, we recently won asylum for a woman from Mexico who fled the country to escape her husband's severe violence and cruelty. We were able to demonstrate that she was viewed as the property of her husband, that she had reported the abuse to police and been ignored, and that she had fled multiple times only to be captured and returned to her husband. Under these rare circumstances, the immigration judge agreed that the abuse amounted to persecution on account of her "particular social group" and that she had a reasonable fear of returning to Mexico.

'Mail Order Brides'?

Sometimes, we hear of immigrant victims of domestic violence referred to as "mail order brides." Except in the rarest instances, the term is really a misnomer, as it is not representative of most relationships or the manner in which most immigrant spouses came to the United States. In addition, it has some offensive and sexist undertones. First, it implies that the legal burden to get a visa for a spouse is easy. That is certainly not true, as one who goes through normal immigration channels to obtain entry on a fiancé(e) or marriage visa has to prove a genuine relationship, and this can often be difficult. In our practice, we have often dealt with legitimate marriage petitions that get wrongly denied because they don't fit into traditional stereotypes.

The term also implies that the women who enter the U.S. as immigrants are complicit in wanting to enter into fake marriages just for the visa. In my experience, the immigrant spouse has typically wanted to enter into a genuine and legitimate relationship, but the relationship ends because of abuse or misconduct by the U.S. citizen.

While there are instances in which women have literally posed in magazines, been trafficked into the country, and ultimately sold into marriage, the broad usage of the term goes much farther than this limited scenario. Language is important because it shapes perspective and policy. The term is currently being used to malign legitimate relationships that may appear "suspicious" to someone based on their own preconceived ideas, but is actually just a form of stereotyping. Therefore, I encourage readers to either limit the term to the small instances where it would be correct, or simply stop using the term.

Concluding Thoughts

If you are interested in helping immigrant victims of domestic abuse, opportunities are often available to assist. Please feel free to contact me (Shahid@bordercrossinglaw.com) or any number of excellent advocates for victims of abuse, including Brandi Ries (office@rubinrieslaw.com) or Hilly McGahan (hilly@safeharbormt.org). We hope to create a list of volunteer attorneys we can turn to for assistance with these important cases.

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