CREATING A HELPFUL RECORD FOR IMMIGRATION STATUS

Findings
Findings about domestic violence, and protection orders themselves, are helpful. Even if you cannot issue an order, it is helpful to explain why the law may not allow this and, if possible, to describe the abuse you believe is occurring, even though it does not legally suffice for an order. Some examples:

U Visa for Victims of Domestic Violence, Sexual Assault, & Other Crimes
If you are empowered under state law to “detect, investigate or prosecute” domestic violence crimes, you may sign a certificate for a U visa applicant. The certificate must state, among other things, that the applicant “has been, is being, or is likely to be” helpful in an investigation or prosecution of the crime. This document is essential to obtaining a U visa for victims of crimes.

VAWA Immigration Provisions
The following measures will help noncitizens who must show “battery or extreme cruelty” to achieve immigration status (self-petitioning, waivers of conditional residence, VAWA cancellation of removal, abused spouses and children of nonimmigrants seeking work authorization):

- Ask the victim questions on the record about the abuse, including abuse noted in police reports, and note any criminal convictions of the abuser;
- Ensure both oral and written witness testimony is in the record;
- Enter as part of the record any physical evidence, such as photos, letters, weapons, clothing, medical records, and subpoenaing these, if necessary;
- Incorporate expert affidavits into the record, including those of domestic violence, sexual assault, and mental health counselors (DHS considers them experts on these issues);
- Subpoena documents or proof that the abuser or system are loath to provide; and
- Describe on the record any threats made by the abuser or other relevant behavior while the abuser is in court.

Findings about the abuse noncitizens have suffered, using descriptive, detailed terms that cover not only physical abuse, but psychological and other forms of non-physical power and control, will help DHS make a finding of “extreme cruelty” such as:
- immigration status manipulation;
- economic control;
- isolation;
- belittling & degradation;
• using children, family members, pets as weapons of abuse, etc.
• stalking or intent to stalk the victim or her children;
• threats to follow the victim or the children back to the home country or findings that the abuser has done so in the past;

**Effects on Children**

VAWA applicants may base their applications, at least in part, on domestic violence suffered by their children, whether the children have immigration status or not. If there are children involved

• Include evidence such as that above concerning abuse of the children; and
• If children were not directly abused, but lived in the household while abuse was occurring, include evidence of the effects on children, such as teacher’s and counselor’s affidavits, school records, and statements by the children (if they are willing and it is safe for them to do so).

**Evidence about the abuser**

Self-petitioners and applicants for VAWA cancellation of removal must show several things about their abusers, or their relationship to their abusers, that may be difficult for them to document because the abuser controls the information. This includes such information as:

• The abuser is or was a legal spouse or parent;
• The abuser is or was a U.S. citizen or lawful permanent resident;
• The abuser resided with the applicant (not necessarily in the United States); and
• The marriage was legal, unless the abuser committed bigamy and the victim did not know about it; and
• the marriage was not solely for the purpose of conferring immigration status on the noncitizen (good faith marriage).

Because manipulation of immigration status is part of the pattern of abuse, judges should sanction this manipulation by requiring the abuser to provide documentation of these proof requirements. This can be done in several ways, depending on the posture of the case, and may include:

• Asking police to help noncitizens retrieve needed documents when helping battered immigrants collect possessions in the home;
• If the victim is obtaining an emergency protection order, encouraging her to bring any documents about her children, her marriage, her life with her spouse, and his status in the U.S. with her to court;
• Requiring the abuser to provide information or to cooperate in an ongoing immigration petition as part of discovery or sanctions against abuse; and
If a judge has direct knowledge of information the applicant lacks, making findings providing the basis and content of that knowledge.

Examples of helpful evidence include:

- **Legal Marriage**
  - Copies of the abuser’s prior divorce agreements and the couple’s marriage certificate and marriage license (legal marriage);
  - Findings that show common law marriage, if a judge’s state recognizes such marriages (DHS recognizes common law marriages from any jurisdiction where they are legal);
  - Findings or documents in the record that a divorce between the abuser and the noncitizen applicant for status is connected to domestic violence (self-petitioners must show this if they file for status within two years of a divorce from their abuser); and
  - If it turns out the abuser is a bigamist, the judge should make findings, or include documents in the record that support this. Self-petitioners whose abusers are bigamists are still eligible for status, even though their marriages are not legal. If a judge believes the noncitizen married the abuser in good faith, not realizing he was a bigamist, he or she should make such findings on the record.

- **His Status**
  - Copies of the abuser’s immigration documents (lawful permanent residence card or naturalization certificate), U.S. passport, or birth certificate (proving he was born in the U.S.);
  - Copies of documents relating to children that might indicate his status, such as children’s birth certificates, baptismal certificates, registration for school, etc; and
  - Anything relating to military service (only U.S. citizens and lawful permanent residents may serve in the U.S. military).

- **Residence and Good Faith Marriage** (often the same kind of documents)
  - Copies or evidence of bills, mortgages, tax forms, bank accounts, leases/rent payments, mail to both parties, school records, work records, any documents that show the couple resided together (shows co-residence and good faith marriage);
  - Children’s documents that show co-residence, such as birth certificates;
  - Affidavits or statements from neighbors, landlords, family or others who know the couple’s living situation and marriage;
  - Wedding and vacation pictures, insurance policies listing victim as beneficiary; and
− Letters from the abuser to the noncitizen or her family demonstrating they had a real marriage.

- Noncitizen’s Documents
  - Documents belonging to the noncitizen controlled by the abuser, including any immigration papers filed for her, her and the children’s identification documents, wedding pictures, invitations, etc.

**Victim’s Behavior**

Findings about why victims may have engaged in criminal behavior may help overcome legal barriers to gaining immigration status based on that behavior. DHS may forgive that behavior if it flowed from or was related to domestic violence or, generally, was coerced

**Extreme Hardship**

For VAWA cancellation and the T visa, applicants must show they or their children will suffer extreme hardship in the homeland if they are removed from the United States. Similarly, special immigrant juveniles need a finding by a civil court judge that it is not in their best interests to be removed. If it appears that an abuser has succeeded in bringing DHS into the picture, and DHS is going to try to remove the victim, these findings will be particularly helpful.

Much of the evidence noted in the section concerning battery and extreme cruelty will help prove these factors. In addition, judges can help by including in the record evidence that:

- The abuser stalks or intends to stalk the victim or her children;
- The abuser has threatened to follow the victim or the children back to the home country or has done so in the past;
- The applicant is receiving and needs social, medical, or mental services and support in this country, or that the judge has referred or recommended such services for her;
- The applicant needs ongoing access to the court for future custody determinations or redeterminations, further orders or actions if the abuser violates court orders, child support, maintenance, visitation, etc.;
- The long-term nature of the abuse or its high level of violence (e.g., rape, aggravated assault, etc.);
- The noncitizen parent is and should be primary caretaker of the children;
- The children will suffer if forced to choose between staying with the abuser in this country or returning to the home country with their mother (where they may not speak the language, will not have access to counseling or adequate schooling, will be ostracized, etc.); and
• The effect of the abuse on the children and their need for support and services here.

T Visa Extreme Hardship Findings

• The age and personal circumstances of the applicant;
• Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the home country;
• The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
• The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
• The reasonable expectation that the existence of laws, social practices, or customs in the home country to which the applicant could be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
• The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the home country would severely harm the applicant; and
• The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under Section 244 of the Act, or the granting of other relevant protections.

Asylum: Domestic Violence as Gender-Based Persecution

Judges may make helpful findings about, or include in the record documents and oral testimony concerning:

• The abuse suffered by the victim at the hands of her abuser;
• The history of abuse, especially that which occurred in the home country;
• The abuser’s reasons for choosing the victim (believes he has right to control his family members, any threats, etc. he makes in court or otherwise);
• The abuser’s history of traveling to the home country;
• The abuser’s threats to follow the victim and her children back to the home country; and
• The lack of protection in the home country for the victim, including her past attempts to access safety and the consequences, or her reasons for believing accessing the system was pointless or dangerous.