

VAWA: A First Step to Safety for Battered Immigrants

by Megan Sprecher

Family violence is a problem that affects many in our society. Below is a story of how the immigration relief set forth in the Violence Against Women Act is an important piece in a battered immigrant's search for safety.

A TEARFUL MARIA COMES TO your office for an initial consultation. At first, it seems to be a fairly typical domestic relations case—man and woman meet, get married, have a child, grow apart, and eventually decide to split up. As Maria grows more comfortable, she discloses details to you about her relationship with her husband. You soon realize that her situation is more complicated than you first thought.

Maria tells you about meeting her husband, John, while he was vacationing in her home country of Costa Rica.

John, a U.S. citizen, returns to his home in Ohio, but the two keep in touch through phone and email. Over the next several months, the couple realizes they have much in common—both come from large families, love movies, and enjoy spending time with friends. John travels to Costa Rica a few more times and meets Maria's family. John proposes, Maria accepts, and the couple applies for a K ("fiancé") visa.

Maria pauses, sighs, and says "If I only knew what he was really like back then..." Maria's fiancé visa was approved several years ago, before the passage of the 2005 provisions of the Violence Against Women Act ("VAWA"). Section 823 of VAWA 2005 includes protections for people like Maria, immigrants who come to the United States on fiancé visas to marry U.S. citizens.

If VAWA 2005 had been in effect when Maria and John applied for a fiancé visa, John would have been required to disclose his criminal back-

ground, if any. In turn, U.S. Citizenship and Immigration Services ("USCIS") must release any pertinent information (including convictions for domestic violence or other violent crimes, multiple convictions for substance abuse) to the foreign fiancé.

Section 832 creates a government database which tracks petitions for fiancé visas, and requires USCIS to notify the immigrant fiancé if the U.S. Citizen petitioner has filed three fiancé visa petitions within the past 10 years. Section 833 further requires that USCIS distribute to all foreign fiancés a pamphlet describing U.S. domestic abuse laws and resources for immigrant victims.

Listening to Maria's story, you start to remember the basics about family-based immigration from a semester-long course you took in law school. You ask Maria whether she and John got married within 90 days of her arrival, a requirement of the fiancé visa.

Maria tells you that once she arrived in Ohio with her fiancé visa, "things were perfect, like a fairytale."

Maria and John have a small civil wedding at the courthouse a few weeks after her arrival. John's family and friends are present to welcome Maria into the family. Maria is sad her family and friends could not be present, but plans on having another ceremony in the church in Costa Rica in the future. The couple is eager to start their life together.

Maria starts noticing a change in John a few months later, after she tells him she is pregnant. His behavior grows increasingly erratic. John does not let Maria leave the house without him accompanying her. He grows angry if she speaks Spanish in front of him, even when she is talking to family members over the phone. He starts

calling her offensive names, like "mail-order bride" and "tramp."

Maria, understandably upset, tells herself that "John is just having trouble adjusting to the idea of being a father. Things will calm down once he sees our baby."

During your consultation with her, you ask Maria whether she filed Form I-485 with USCIS, an Application to Adjust Status, which would grant her conditional permanent residence (a "green card"). Maria knows that since she and John married within 90 days of her arrival in the U.S. and intended for her to live in the country permanently, she was required to file the I-485.

Maria tells you that she filled out all the necessary paperwork and gathered the required documents.

After giving her the runaround for several weeks, John finally tells Maria he refuses to sign the I-864 Affidavit of Support, a requirement for her to receive her green card. John says he wants to wait until the baby is born, to see if he is really the father.

Maria is devastated that John would doubt her fi-

MARGARET W. WONG & ASSOC. CO., L.P.A. Tending to All Your **Immigration Needs**



Family Immigration
Employment Immigration
Non-Immigration Visa
Asylum & Refugee
Deportation and Criminal

Margaret W. Wong
• AV-rated by Martindale-Hubbell
• Recipient of Ellis Island Metal of Honor
• Named Best Lawyers in America for 10 years

Cleveland Office
3150 Chester Avenue
MWV Center
Cleveland, Ohio 44114
Phone: 216.566.9908
Fax: 216.566.1125

Atlanta Office
5425 Peachtree Pkwy
Norcross, GA 30092
Phone: 678.906.4061
Fax: 678.906.4062

BY APPE. ONLY
Detroit Office
Phone: 313.527.9969
Columbus Office
Phone: 212.226.7011

New York Office
401 Broadway, Suite 1620
Phone: 212.226.7011

www.imwong.com

John Zoller and Mary Biacsi are pleased to congratulate our paralegal

JANICE CACKOWSKI

On passing the Certified Financial Planner exam

Our firm's capacity to effectively serve Family Law clients continues to grow.



Zoller | Biacsi Co., LPA
216.241.2200
WWW.ZBLAW.NET

delity to him, but knows that once the baby arrives, he will know he is the father and sign the Affidavit of Support.

Junior, a healthy baby boy, arrives. Maria and John are overjoyed. Junior is the spitting image of his father. John is completely enamored with Junior and apologizes to Maria for doubting her. Maria, relieved at John's change in attitude, is so busy with her new responsibilities of motherhood that she doesn't think about her immigration situation again until Junior is a few months old.

The addition of Junior to the family makes money a little tight. Maria sees that John is stressed about their finances and offers to look for a part-time job. "Once I apply for my green card and request a work permit, I can work part-time. Your mother already offered to watch Junior for free two days a week."

John gets angry at the mention of Maria working and accuses her of marrying him just to get a green card. Later that day John apologizes to Maria saying, "I'm sorry. It's just that I'm old-fashioned. I want to provide for our family while you stay home with Junior."

Several months go by. Junior starts walking and saying a few words. Maria and John even talk about having another child. Maria notes how quickly Junior is growing up and longs to take Junior to Costa Rica for a visit so he can meet his maternal grandparents. Maria knows that without a green card, she will be unable to re-enter the U.S. after traveling abroad. She approaches John, suggesting that the three of them fly to Costa Rica for a week-long visit with her family.

"Are you stupid? We don't have money to take a vacation, let alone pay the \$1,010 application fee for your green card! I work hard at my job, and I don't need to come home to you criticizing me and telling me I don't make enough money."

John leaves the room, shoving Maria to the side on his way out.

Maria's mind is reeling. She is not physically hurt, but can not believe that John laid a hand on her. For the first time, Maria thinks about leaving John. Thoughts are racing through her head.

She does not have any identification, since John took away her passport. She is not able to get a driver's license or state identification card because without a green card, she cannot meet the Real ID Act's requirement that she show lawful presence in the United States.

Since she has access to neither money nor identification, Maria feels trapped. She resigns herself to remaining with John.

Over the next few years, the physical abuse gradually escalates. At first, John pushes and slaps Maria once every few months. He says, "If you ever even think about leaving me, I'll have you deported. You will never see Junior again." After every incident, he apologizes and promises to change. Maria no longer believes him, but thinks she has no options. The increased frequency and severity of the violence culminates in John punching Maria in the face, breaking her nose, and throwing her down the stairs. Junior sees everything and starts crying.

Maria, afraid to call the police or go to the doctor because of her precarious immigration status, goes to the bathroom to clean herself up. The upstairs neighbor, who heard John shouting, Junior crying, and Maria tumbling down the stairs, calls 911.

The police arrive a few minutes later. Maria, terrified of being deported and separated from her child, tells the officers that nothing happened. The officers see her bloody nose and separate the couple for questioning. After getting the story straight, the officers arrest John and take him

away. Before leaving, one of the officers gives Maria a pamphlet for the Domestic Violence Center (<http://www.domesticviolencecenter.org>).

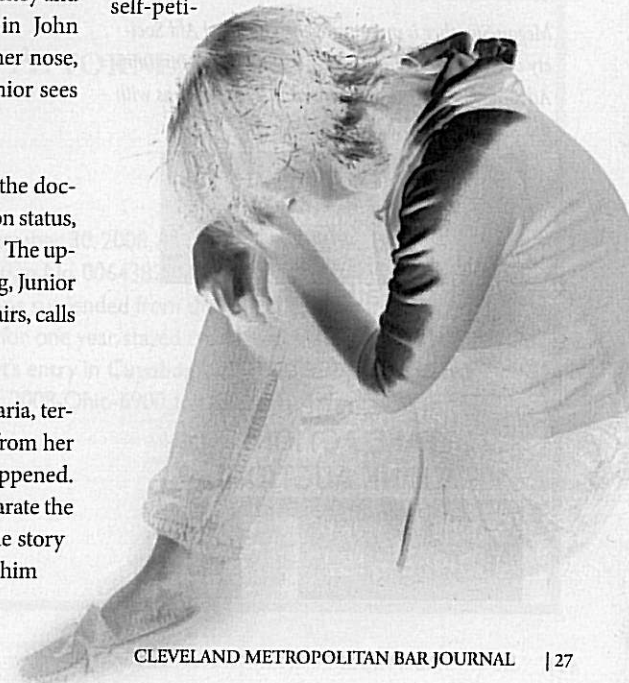
Alone in the house with Junior, Maria contemplates the pamphlet. She decides that for Junior's sake, things cannot go on as they are. She calls the 24-hour hotline and set up a time to meet with an advocate.

At that meeting, the advocate tells Maria about her right to be safe. She also tells Maria about VAWA, an immigration option for battered immigrants.

With VAWA, Congress recognized that in some cases abusers used the immigrant's lack of immigration status as a means of control. VAWA takes that power and control away from the abuser by giving the battered spouse or child of a U.S. Citizen or Lawful Permanent Resident ("green card" holder) or parent of an abusive U.S. Citizen adult child the right to self-petition for documented immigration status.

Under VAWA, these battered immigrants are able to petition on their own behalf, without the abuser's assistance or even their knowledge. The self-petitioner must prove 1) his or her relationship with the abuser, 2) that the abuser is a U.S. Citizen or Lawful Permanent Resident, 3) good faith marriage (if immigrant is married to abuser), 4) cohabitation with the abuser, 5) that immigrant was battered or subjected to extreme cruelty by the abuser, and 6) that the immigrant is a person of good moral character.

A VAWA self-petitioner who is the spouse, child, or parent of a U.S. Citizen is eligible to apply for a green card at the same time as the VAWA self-petition. All others must wait until their VAWA self-peti-



tion is approved and their priority date is current (http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html). In either case, the self-petitioner may do so without the assistance or knowledge of the abuser.

The domestic violence advocate encouraged Maria to speak with an attorney, which is how she ended up in your office. A little overwhelmed, you carefully document the facts that Maria has disclosed with you, and set up a second appointment so that you have the opportunity to consult with another attorney.

At that second meeting with Maria, your colleague, an immigration attorney, joins you. He explains to Maria that in her case, since she is the spouse of a U.S. Citizen, she may apply for VAWA and a green card simultaneously. They make an appointment to begin filling out the paperwork.

It is a long road ahead for Maria and Junior, but she leaves your office with a renewed sense of hope and empowerment, knowing that although there will still be obstacles in her path, leaving John will be a possibility thanks to the tools and protections VAWA provides.

Low-income individuals seeking assistance in the Cleveland metro area may contact The Legal Aid Society of Cleveland at 216-687-1900.

This Legal Aid intake number also serves to facilitate referrals to the Cleveland Metropolitan Bar Association's C. Lyonel Jones Pro Bono Immigration Program. If you are interested in being part of this or any other Pro Bono Program, please contact Ann McGowan Porath, of Legal Aid's Volunteer Lawyers Program at 216-861-5332. ■

Megan Sprecher is an attorney at The Legal Aid Society of Cleveland. She is part of Legal Aid's Community Advocacy Program - a partnership Legal Aid has with the MetroHealth Medical System.

Realty Corp Auction Services

RealtyCorpAuctions.com

Let our auction team quickly turn your client's assets into cash!

TAKE ACTION!
THINK AUCTION!

Sarah Brewer
330-958-6182



Navigating the Ever-Changing Immigration Law Landscape

ROSNER
PARTNERS

COUNSEL FOR CORPORATE IMMIGRATION

THE CAXTON BUILDING
812 HURON ROAD, SUITE 601
CLEVELAND, OHIO 44115

T 216 771 5588
EMAIL:IMMIGRATION@ROSNERLAW.COM
WWW.ROSNERLAW.COM

ywca women's leadership conference

eliminating racism
empowering women

ywca

New Central Location!
Crowne Plaza,
Cleveland-City Centre
Wednesday, March 11, 2009

Keynote Speakers

The Third Face of Leadership:
Why Men & Women Should Join Forces

Molly D. Shepard
President & CEO, The Leader's Edge™

Peter J. Dean, Ph.D.
President, Leaders By Design™

Mars & Venus in the Workplace:
Secrets of Success and
Career Advancement

Dr. Robert Schwarz
Consultant, Coach & Psychologist

The YWCA Women's Leadership Conference is designed to help women gain valuable knowledge and skills on topics important to career growth and success. This year, the YWCA will host national speakers who will examine the topic of gender differences in the workplace from various angles.

For more information call
216-881-6878
or visit www.ywca.org/cleveland to register.

