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Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief

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BATTERED, BROKEN, BRUISED, OR ABANDONED: DOMESTIC STRIFE PRESENTS FOREIGN NATIONALS ACCESS TO IMMIGRATION RELIEF

Misty Wilson Borkowski[*]

This article is intended to raise general and family-law practitioners' awareness of a type of access to immigration relief that is available to foreign nationals who are victims of domestic violence or are abandoned, abused, or neglected juveniles.[1] While negotiating the domestic arena involving divorce or juvenile neglect, practitioners must be concerned as to the impact the domestic situation may have on a foreign national's immigration status. The information contained in this article is a rudimentary introduction to immigration relief available to foreign nationals who are subjected to unsavory domestic affairs. This article does not cover every facet of immigration law that may apply to the foreign national. For that reason, both the foreign national and family-law practitioner are well advised to consult with an attorney who focuses on immigration law for choreographing the domestic and immigration cases.[2]

I. VICTIMS OF DOMESTIC VIOLENCE

Undoubtedly, victims of domestic violence suffer profound untold drama. Such abuse is multiplied when the victim is a foreign national. All too often, the victim may be isolated by the abuser and further handicapped

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1. The terms "foreign national" or "alien" are used interchangeably to identify an individual who was born in a foreign country. In this article, the terms are used to imply that the individual is neither a United States citizen nor a lawful permanent resident.

2. In addition to seeking a private-practice attorney, there are countless non-profit organizations nationwide that are established solely to assist economically-disadvantaged individuals in need of immigration assistance. Some organizations, through grant funding or otherwise, have personnel specifically dedicated to assisting victims of domestic violence in traversing the immigration process.

by unfamiliarity with customs or language. The situation is intensified when the victim is unaware of the legal, social, and economic resources and means of protection that are available.[3]

Domestic abuse comes in many different forms—physical, emotional, economical, social, and mental. When representing a foreign national in domestic matters, practitioners should have a heightened sensitivity to clues that the individual is being abused in ways unique to a foreign national.

A general description of family-based immigration is necessary to shed light on how foreign nationals may suffer a unique form of abuse. A foreign national married to a United States citizen or lawful permanent resident (LPR) is eligible to have an immediate-relative petition filed.[4] The process begins by filing, with required documentation, information, and applicable filing fee, Form I-130 with United States Citizenship and Immigration Services (USCIS).[5] 8 U.S.C.A. § 1186a(d)(1) (2009); Form I-130, Petition for Alien Relative. U.S. Citizenship and Immigration Services OMB 1615-0012; Expires In the immediate-relative petition, the U.S. citizen spouse (or LPR) is the "petitioner" and the alien spouse is the "beneficiary."[6] The alien spouse of a U.S. citizen is entitled to immediately become a lawful permanent resident, as opposed to all other categories that must wait many years for a visa to become available.[7]

By virtue of the nature of the immigration process, the United States citizen or LPR spouse controls all access to immigrant status. The Power and Control Wheel, attached as Appendix A, sheds light on the unique expe-

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3. As a general matter, Arkansas statutes governing circuit court jurisdiction with regard to protective orders or divorce proceedings do not require lawful presence in the United States as defined by immigration laws. Arkansas Code Annotated section 9-12-307(a)(1)(A) (2008) requires that, to obtain a divorce, the plaintiff must prove "[a] residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce." The term "resident" used in the statute does not have the same immigrant-status significance as it does in immigration law where the term "resident" signifies a person who is a "lawful permanent resident" (LPR) in the United States.

4. The mere filing of the immediate-relative petition (Form I-130) does not result outright in obtaining immigrant status. This article does not address hurdles that a foreign national may otherwise face in completing the process to obtain immigrant status if he previously entered the country illegally, has barriers to admission, or is otherwise inadmissible. In certain instances, however, a victim of domestic violence may enjoy advantageous treatment from otherwise draconian immigration laws that would prevent her from completing the necessary steps to becoming a resident.

5. 8 U.S.C.A. § 1186a(d)(1) (2009); Form I-130, Petition for Alien Relative. U.S. Citizenship and Immigration Services OMB No. 1615-0012; Expires Jan. 31, 2011; Form I-130 Instructions (Rev. May 27, 2008).

6. *Id.*

7. Although the spouse of a LPR is in a preferential category, relatively speaking, because there are caps on the number of visas granted annually, it continues to take many years before a visa number is available to the alien spouse of an LPR.

rience of a foreign national who is the victim of domestic violence. The abuser may isolate the foreign national from friends, family, or anyone who speaks her native language.[8] He may not permit the victim to work, learn English, or attend school or social events. Another powerful tool used by abusers to control the victim is to hide or destroy the foreign national's important documents, such as passport, birth records, school documents, or health records. Emotional abuse may not leave physical scars, but threats–to report her to immigration services, to take away children,[9] repeatedly call her by demeaning or ethnic epithets–create an unstable environment. This chaos threatens the foreign national's sense of sanity and serves to inhibit her self-preservation instinct.

A. Evolution of Immigration Law Regarding Victims of Domestic Violence

Fortunately, over the years the Immigration and Nationality Act (INA)[10] has been amended to offer immigration options to victims of domestic violence—spouses, children, and in some cases, parents. The first enacted legislation providing protection to foreign nationals who were battered and abused was the Violence Against Women Act (VAWA), passed in 1994.[11] VAWA permitted alien battered spouses of U.S. citizens and legal permanent residents to petition USCIS on their own (i.e., self-petition).[12] Obstacles to self-petitioning, however, still remained. Therefore, in order to strengthen the original VAWA legislation Congress enacted the Battered Immigrant Women Protection Act of 2000 (BIWPA or VAWA 2000).[13]

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8. Victims of domestic violence are male and female, adult or child. The author's use of gender-based pronouns is purely for the sake of brevity.

9. Although unlawful presence is arguably prejudicial and not within the purview of the jury in other civil matters, in cases involving custody of a minor child the court may well consider the potential implications a parent's unlawful presence in the U.S. will have on the long-term stability of the child.

10. Immigration and Nationality Act (INA) of 1952, Pub. L. No. 82-414, 66 Stat. 163, § 101(a)(51), 8 U.S.C. § 1101(a)(51) (2006).

11. Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (codified in scattered sections of 16, 18, 42 U.S.C.); *see also* Immigration & Nationality Act (INA) of 1952, Pub. L. No. 82-414, 66 Stat. 163, §§ 204(a)(1)(A)(iii)–(iv), (B)(ii)–(iii), 8 U.S.C. §§ 1154 (a)(1)(A)(iii)–(iv), B(ii)–(iii) (2006). All victims of domestic violence, regardless of gender or age, may seek beneficial treatment under this Act and subsequent acts and amendments. *See id.* "VAWA" is defined at 8 U.S.C. § 1101(a)(51) (2006).

12. *Id.*

13. Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. No. 106–386, 114 Stat. 1464 at §§ 1501–1513 (2000). Under BIWPA, a battered alien who believed she was married, but later discovered that the marriage was not legitimate because of the bigamy of the abusive U.S. citizen or LPR is defined as an "intended spouse" and is eligible to self-petition. Memorandum from Johnny

Laws passed concerning immediate-relative petitions have been held in check with the need to detect and deter fraudulent marriages. Thus, Congress created the Immigration Marriage Fraud Amendments (IMFA), which required that in filed petitions involving a marriage of less than two years, the spouse is given conditional residency.[14] Thus, on the two-year anniversary of obtaining the status, a joint petition must be filed seeking to remove the "condition."[15] This provides USCIS with a second opportunity to assess the validity of the marriage.

The effort to thwart sham marriages has also had the unintended consequence of placing power over the alien spouse's future in the hands of the United States citizen or LPR spouse. Separation, divorce, and marital discord threaten the alien spouse's stability and ability to protect her immigrant status if the U.S. citizen spouse refused to participate in the joint petition for the removal of the condition. Most recently, Congress passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)[16] to expand immigration benefits to alien battered spouses.[17]

Now, when a United States citizen or LPR abuses a family member, the victim is empowered to pursue immigrant status on her own.[18] Based upon these immigration laws there are four options available to a victim of domestic violence: (1) the VAWA self-petition on Form I-360, (2) the battered-spouse waiver on Form I-751, (3) the VAWA cancellation of removal on Form EOIR-42B, and (4) the "U" visa for victims of certain criminal activities who assist in the investigation or prosecution of the criminal activity.[19] The law protects the privacy of the alien spouse who files a VAWA

N. Williams, Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S. Citizen or Lawful Permanent Resident (Aug. 21, 2002).

14. Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. 99-639, 100 Stat. 3537.

15. 8 U.S.C. § 1186(a) (2006).

16. Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. V, Pub. L. No. 109-162, 119 Stat. 2960 (2006) [hereinafter *VAWA Reauthorization*], *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. No. 109-271, 120 Stat. 750 (2006).

17. A USCIS memorandum published in 2007 provided further guidance to field officers regarding application of the laws. Memorandum from John P. Torres & Marcy M. Forma, Interim Guidance Relating to Officer Procedures Following Enactment of VAWA 2005 (Jan. 22, 2007).

18. Not so when the abuser is not a United States citizen or LPR. *Id.* at fn. 16.

19. This article does not address the third option, VAWA cancellation of removal (Form EOIR-42B), nor the forth option, "U" visa (Form I-918). The statute and regulations regarding VAWA cancellation of removal are found at 8 U.S.C. § 1229 b(b)(2) (2006) and 8 C.F.R. § 1240.58 (2009). Laws and regulations regarding the "U" nonimmigrant status may be found at 8 U.S.C. § 1101(a)(15)(u) (2006) and 8 C.F.R. § 214.14 (2009). *See also* Memorandum from Michael L. Aytes, "New Classification for Victims of Criminal Activity—Eligibility for "U" Nonimmigrant Status," (Mar. 27, 2008).

self-petition under Form I-360 or a battered-spouse waiver under Form I-751.[20]

B. VAWA Self-Petitioning

VAWA self-petitioning is available to a parent, spouse, and the unmarried child under twenty-one of a U.S. citizen spouse, as well as a spouse and unmarried child under twenty-one of a LPR.[21] Children of an abused spouse, however, need not file separate VAWA petitions as they are derivative beneficiaries of the parent's petition.[22] The self-petition is appropriate where the foreign national has not already had an immediate-relative petition filed by the abuser.[23]

In order to self-petition, the noncitizen spouse must show that: (a) the alien entered into the marriage in good faith; (b) during the marriage, the citizen or LPR spouse physically battered or subjected the alien to extreme cruelty; (c) the alien had past or present residence with the spouse; (d) the alien is currently residing in the United States or, if living abroad, the abusive spouse is a United States government employee or member of uniformed services, or otherwise subjected to battery, assault, or extreme cruelty charges in the United States; (e) the alien is a person of good moral character; and (f) at the time of the self-petition and its approval, the abusive spouse is a United States citizen or LPR, or only lost such status as a result of domestic violence.[24]

The key issue in both instances is the validity of the marriage at its inception.[25] To make this determination, USCIS will look for evidence that the spouses intended to establish a life together at the time of their marriage.[26]

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20. 8 U.S.C. § 1367; *see also* Immigration and Naturalization Service (INS) Memorandum, P. Virture, "Non-Disclosure and Other Prohibitions Relating to Batter Aliens: IIRAIRA § 384" (May 5, 1997). USCIS sometimes makes a blunder, landing what should be protected information into the hands of the abusive family member.

21. 8 U.S.C. § 1154(a)(1) (2006); 8 C.F.R. § 204.2(c) and (e) (2009); VAWA Reauthorization, Pub. L. No. 109-162, § 805 amended INA to permit abused children to file a VAWA self-petition until their twenty-fifth birthday if there was a connection between the abuse suffered and the failure to file before turning twenty-one years old. 8 U.S.C. § 1154(A)(1)(D)(v) (2009).

22. 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I) (2006) (spouse and intended spouse of USC), (iv) (child of USC), (B)(ii)(I) (spouse and intended spouse of LPR), (iii) (child of LPR); 8 CFR § 204.2(c)(4) (2009) states that "[a] child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition."

23. 8 U.S.C. §§ 1154(a)(2)(B)(c) (2006).

24. 8 U.S.C. §§ 1154(a)(1)(iii)(I)(aa)–(bb), (II)(CC)(cc), (iv)(I), (II)(aa)(AA)–(CC) (2006).

25. *In re* Riero, 24 I. & N. Dec. 267 (B.I.A. 2007).

26. Lutwak v. U.S., 344 U.S. 604 (1954).

The intent to establish a life together may be demonstrated through evidence of joint financial accounts, jointly titled property, creating beneficiary rights, sharing health and automobile insurance, and creating children together.[27] In considering the VAWA self-petition, USCIS must consider "any credible evidence" and the petitioner must establish each and every required element.[28] Additionally, a VAWA self-petitioner may apply on Form I-360 for an Employment Authorization Document (EAD).[29]

C. Battered-Spouse Waiver

Where a family-based petition has been filed for a foreign national and is granted before the couple has been married for two years, the alien spouse is a "conditional" lawful permanent resident.[30] Thus, the conditional resident may be conflicted with whether to pursue a divorce because of uncertainty of the impact a divorce will have on the immigration process.[31] A conditional resident spouse who is a United States citizen, however, is permitted, at any time, to file a battered-spouse waiver on Form I-751.[32]

The battered spouse must demonstrate that: (a) she is currently, or previously has been, a conditional resident; (b) she entered into the marriage in good faith; (c) she was abused by the sponsoring United States citizen spouse; and (d) during the marriage, the citizen spouse physically battered or subjected the alien to extreme cruelty.[33]

Practitioners should be aware that, in these situations, it is not uncommon for the LPR or United States spouse to suddenly accuse the foreign alien of entering into the marriage merely to obtain immigrant status. A scorned spouse may write letters or call USCIS, United States Immigration and Customs Enforcement (ICE), or the FBI. Such threats and activities will certainly frighten the foreign national. Nonetheless, these types of activities often lead to a treasure trove of evidence to sustain the abusive nature of the relationship and the vindictive nature of the abusive United States spouse.

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27. *In re* Soriano, 19 I. & N. Dec. 764, 766 (B.I.A. 1988).

28. 8 U.S.C. § 1154(a)(III)(iii)(J) (2006). Unlike any other family-based and employment-based immigrant petitions, the VAWA self-petitioner need not submit the Affidavit of Support. *See id.*

29. 8 U.S.C. § 1105a (2006). Also, EADs are available to spouses (but not children) of abusive spouses in other United States visa categories (A, E-3, G, and H).

30. *Id.* at fn. 15.

31. 8 U.S.C. §§ 1154(A)(1)(A)(vi) (spouses and children of USCs), (B)(v)(I) (spouses and children of LPRs) (2006) ("Divorce . . . after filing of the petition shall not adversely affect the approval of the petition . . . [nor] affect the alien's ability to adjust status.").

32. 8 U.S.C. § 1186(a) (2006); 8 C.F.R. § 204.2(c) and (e) (2009).

33. 8 U.S.C. §§ 1154 (a)(1)(i)–(iii)(I) (2006).

Physical abuse is not required by the statute. Extreme cruelty can provide the basis for the approval of the VAWA petition.[34] Thus, the foreign national should save e-mails, voice mails, letters, police reports, and prepare family members and friends for writing, in their own words, an affidavit about the validity of the relationship, as well as the abuse that the foreign alien suffered at the hands of the abusive United States citizen spouse.

D. Immigration Law Hurdles

Although there are special VAWA exceptions to individuals who would otherwise be inadmissible, there are some hurdles that a victim of domestic abuse will not be able to overcome.[35] A foreign national that previously has been the beneficiary of an immediate relative petition based upon a marriage that immigration officials determined was of actual or attempted marriage fraud will not be eligible for immigrant status by filing a VAWA self-petition.[36] Additionally, activity in a victim's past that is unrelated to the domestic abuse may preclude a finding of good moral character under INA §101(f).[37]

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34. In a landmark case, Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003), the Ninth Circuit noted that "Congress clearly intended extreme cruelty to indicate nonphysical aspects of domestic violence. Defining extreme cruelty in the context of domestic violence to include acts that 'may not initially appear violent but that are part of an overall pattern of violence' is a reasonable construction of the statutory text . . . ." *Id.* at 839. VAWA self-petitions or battered-spouse waivers do not require court records or police records. The nonphysical aspect of domestic violence may be demonstrated through mental health professionals, or statements from shelter workers and domestic violence advocates, employment or school records, and statements of co-workers.

35. Other common barriers, however, to adjustment of status under 8 U.S.C. § 1255(a) and § 245(c) (2006)—entry without inspection (EWI), unlawful work, visa overstay, or other immigration violations—do not apply to VAWA petitioners. *See* Memorandum from Michael L. Aytes, "Adjustment of Status for VAWA Self-Petitioner Who is Present without Inspection," (April 11, 2008).

36. *See, e.g., Cruz v. Attorney General of the United States*, 134 Fed. Appx. 600, 601 (3d Cir. 2005) (holding that "when...in a formal sense the[] marriage was valid, the government had the burden of proof to demonstrate that the marriage, in fact, was fraudulent"): *Bangura vs. Hansen*, 434 F. 3d 487, 502-03 (6th Cir. 2006) (holding that "a determination of marriage fraud made pursuant to §204(c) must be supported by substantial and probative evidence"); *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990) (holding that "reasonable inference does not rise to the level of substantial and probative evidence requisite to the preclusion of approval of a visa petition in accordance with section 204(c) of the Act"). 8 U.S.C. § 1154 (a)(1)(A) (2006).

37. 8 U.S.C. § 1154 (a)(1)(A) (2006).

II. IMMIGRANT RELIEF FOR ABUSED, ABANDONED, OR NEGLECTED CHILDREN

Alien children who are abused, abandoned, or neglected are incapable of navigating alone through the juvenile system or foster care, much less be aware that based on their dire domestic situation, they are eligible for special immigration relief as a Special Immigrant Juvenile (SIJ).[38] Therefore, it is critical that state social workers, foster-care agencies and providers, school counselors, juvenile judges, child-welfare and *ad litem* attorneys, and other children's advocacy agencies or entities work to identify children who potentially qualify for SIJ status. Implementing a system for prompt early identification and then working with an attorney who focuses on immigration law is critical to securing immigrant status for these alien children.

A. Evolution of Immigration Law Regarding Special Immigrant Juveniles

In 1990, Congress created a Special Immigrant Juvenile (SIJ) category, which grants lawful permanent resident status for the protection of unaccompanied immigrant children who have been declared dependent by a state court (juvenile, family, or probate).[39] In 1997, Congress added the requirement that the juvenile court find the child a dependent of the court "on account of abuse, neglect or abandonment."[40] One of the main challenges in obtaining SIJ status is not the Department of Homeland Security (DHS) obstacles but improving awareness of this immigration relief by those who come in contact with the alien juvenile, such as the juvenile court system, foster care agencies, and other shelter programs.[41] The government and social entities that process the juvenile cases play a critical role in identifying youth who potentially could obtain and benefit from the SIJ status. Without prompt intervention by juvenile court judges, attorneys, and others, many immigrant children who might otherwise qualify will "age out" and forever lose access to the special immigrant remedy.[42]

Obtaining SIJ status immediately makes the child eligible for legal permanent residency.[43] Generally, the petition for SIJ status (Form I-360) and adjustment to legal permanent resident (Form I-485) are filed simulta-

38. "Special Immigrant Juvenile" is defined in 8 U.S.C. § 1101(a)(27)(J) (2006).

39. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. *See* Memorandum from William R. Yates, "Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions," (May 27, 2004).

40. 8 U.S.C. § 1101(a)(27)(J)(i) (2006). *See also* H.R. Rep. No. 105-405, at 130 (1997).

41. This article does not address implications on the immigration process when the juvenile has a criminal history, is inadmissible, or is deportable.

42. *See* 8 C.F.R. § 204.11(c)(1), (5) (2009).

43. *See* 8 U.S.C. § 1225(h) (2006).

neously. Along with legal status, the child obtains additional benefits such as the ability to attend college, work legally, get a driver's license, and open doors that offer hope and stability for his future.[44]

B. Maneuvering Through the Immigration Process

An SIJ petition, along with proof of identity and age of the child,[45] must contain evidence that a state "juvenile court"[46] has declared the juvenile dependent and "deemed [him] eligible . . . for long-term foster care due to abuse, neglect, or abandonment."[47] Included in the order should be a statement of the factual basis for the abuse, abandonment, and neglect finding.[48] This may require educating the court regarding the necessity of particular findings or specific language in the state court order, as it will be the basis for eligibility of SIJ status. Additionally, in order to be "[e]ligible for long-term foster care" the juvenile court must determine that "family reunification is no longer a viable option."[49] This still allows a juvenile to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be a dependent by the juvenile court.[50] The juvenile court must further find that it is not in the child's best interest to be returned to his home country, but it is in his best interest to remain in the United States.[51] The court order sought is often referred to as a "Best Interest Order" or "Special Interest Order." A juvenile alien seeking SIJ status based upon a juvenile court's dependency order must have the "express consent" of the Secretary of DHS.[52]

Although a juvenile may be living with a foster family or temporarily with family members or friends while seeking SIJ status, they may be al-

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44. This is not to suggest that the childhood trauma experienced does not substantially complicate the individual's ability to have a productive and content future.

45. 8 C.F.R. § 204.11(d)(1) (2009).

46. 8 U.S.C. § 1101(a)(27)(J)(i) (2006). A "juvenile court" is a state court "having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a) (2009).

47. 8 U.S.C. § 1101(a)(27)(J)(i) (2006).

48. State law definitions for "abandoned infant," "abandoned," "abuse," "dependent juvenile," "dependent-neglect juvenile," and "neglect" may be found at Ark. Code Ann. § 9-27-303 (2008).

49. 8 C.F.R. § 204.11(a) (2009).

50. Rules and Regulations, Departments of Justice, Immigration, and Naturalization Service, 58 Fed. Reg. 42843 (Aug. 12, 1993).

51. 8 U.S.C. § 1101(a)(27)(J) (2006).

52. "Express consent" means that the Secretary of DHS has "determine[d] that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect [or abandonment.]" *See* Yates, *supra* n.31.

ready in immigration custody or even living on the streets. Children who are already in immigration court proceedings or have an outstanding order of removal present even more complicated cases. An unaccompanied foreign national child apprehended by the Department of Homeland Security (DHS) must be turned over to the Department of Health and Human Services (HHS).[53] When a child is in "actual" or "constructive" immigration custody, the child must obtain "specific consent" from DHS for the state court to have jurisdiction.[54] Without first obtaining DHS's specific consent, a child cannot seek a dependency order in state court and cannot apply for SIJ status.[55]

One important component is that the juvenile court must maintain jurisdiction of the child's dependency status, ideally entering an order to that effect, while the SIJ status petition and adjustment application is pending.[56] The issue becomes that in some states, juvenile court jurisdiction ends at age eighteen. Arkansas law defines juveniles as persons under eighteen (18) years of age, whether married or single, or are "[a]djudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction."[57] In Arkansas, circuit courts shall have original jurisdiction and in certain instances can extend jurisdiction until twenty-one (21) years of age.[58] The ability of the circuit court to retain jurisdiction over the juvenile is crucial because although SIJ status and adjustment of status can be granted up to age twenty-one, the child must still be under the jurisdiction of the state court at the time of the adjudication.[59]

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53. Homeland Security Act of 2002 (HSA); See ORR's unaccompanied alien children program objectives, www.acf.hhs.gov/programs/orr/programs/uac.htm. Release of unaccompanied minors is governed by the settlement agreement in Reno vs. Flores, 507 U.S. 292 (1993). A copy of the settlement agreement is available at www.centerforhumanrights.org. Congress did so in recognition that DHS, the agency charged with enforcing immigration laws, should not also be tasked with acting in the best interest of the child.

54. 8 U.S.C. § 1101(a)(27)(J)(iii)(I). Requests for specific consent are handled within a division of Immigration and Customs Enforcement (ICE).

55. *See* 8 U.S.C. § 1101(A)(27)(J)(iii)(I) (2006).

56. 8 C.F.R. § 204.11(c)(5) (2009).

57. ARK. CODE ANN. § 9-27-303(32) (2008); *but see* 8 C.F. R. § 204.11 (2009), according to federal regulations for Special Immigrant Juveniles, married individuals are not eligible for SIJ status.

58. ARK. CODE ANN. § 9-27-306(a)(1)(B) (2008); *cf.* ARK. CODE ANN. § 9-27-306(a)(2) (2008), ("[i]n no event shall a juvenile remain under the court's jurisdiction past twenty-one (21) years of age.").

59. *See* 8 C.F.R. § 204.11(c)(1), 8 C.F.R. § 204.11(c)(5), and 8 C.F.R. § 205.1(a)(3)(iv)(A) (2009).

C. Immigration Law Hurdles

SIJ beneficiaries are excused from many requirements that might otherwise render them inadmissible such as provisions prohibiting entry of those likely to become a public charge,[60] those without proper labor certification,[61] and those without a proper immigrant visa.[62] There are, however, some grounds of inadmissibility that are not waiveable for an SIJ applicant and are listed in 8 U.S.C. § 1182 (a)(2)(A), (B), and (C)[63] and (3)(A), (B), (C), and (E) (2006).

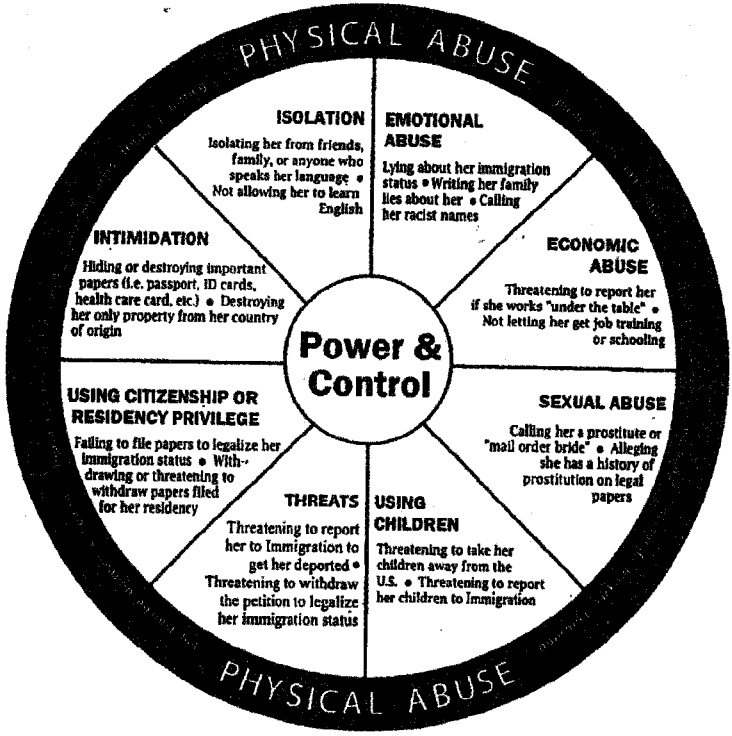
III. CONCLUSION

Although the average person is ill-equipped to navigate the civil court system, all the more ill-equipped is the foreign national caught in a domestic violence situation. Practitioners must not only assist them in obtaining orders of protection and divorce orders, but must be concerned for the long-term immigration consequences for the foreign national. Even more disadvantaged are alien children who are abused, neglected, and/or abandoned. Here, the practitioner and immigration lawyer must work together to obtain the necessary results at the juvenile court level in order to successfully navigate and obtain the immigration relief that is available under the circumstances. Both victims of domestic violence and juveniles must have advocates that are willing to assist them in a quest for long-term stability.

60. 8 U.S.C. § 1182(a)(4) (2006).
61. 8 U.S.C. § 1182(a)(5)(A) (2006).
62. 8 U.S.C. § 1182(a)(7)(A) (2006).
63. Except for a single instance of simple possession of 30 grams or less of marijuana. 8 U.S.C. § 1182(h) (2006).

APPENDIX A

Power and Control Wheel for Immigrant Women



This version of the Power and Control wheel, adapted with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota, focuses on some of the many ways battered women can be abused.