**VAWA 2013 and TVPRA: What Practitioners Need to Know**

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), combined with the Trafficking Victims Protection Reauthorization Act (TVPRA), was signed into law on March 7, 2013. Below is an overview of substantive changes and technical fixes both in VAWA and the TVPRA as well as practice pointers for attorneys and advocates on how to work with these new changes. You can access the full VAWA 2013 (which includes TVPRA) at: http://bit.ly/YX5D0T

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## SUBSTANTIVE CHANGES IN VAWA and TVPRA

### A. U visa Age-Out Fix

Section 805 of VAWA 2013 contains essential age-out fixes which parallel the language currently in the statute for T visa holders, covering two kinds of U visa applicants who may age out after filing or approval:

1 Derivative U visa applicants who were under 21 at the time of the principal's filing shall continue to be classified as children even if they turn 21 while the principal U-1's application (or their own application) is pending. **This provision applies *retroactively for derivatives back to the creation of the U visa in 2000 and should, therefore, cover anyone harmed by USCIS' change in policy towards aged-out derivatives.*[1]**

2 This section also provides that a principal U-1 applicant who was under 21 at the time of filing shall continue to be treated as a child applicant even if s/he turns 21 while the

[1] The actual language of VAWA 2013 states that the effective date of this provision should be as if it were included as part of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1464).

application is pending, and thus preserving her own derivatives' (parents and siblings under 18) ability to receive status.

**Practice Pointers for Derivatives in U.S.:** This age-out fix *should* apply to those derivatives who are currently in deferred action status pursuant to USCIS' recent memorandum, or who have no status because they turned 21 before USCIS adjudicated the principal's application. ASISTA will be advocating with USCIS to ensure that this fix applies to those individuals. This means U-3 derivatives age was determined on the date of principal filing; it does **not** mean that derivatives who aged out while the principal application is pending will get U-3 status backdated to the date of principal's grant. In the mean time, practitioners should continue filing requests for deferred action and **continue to request extensions for principals whose derivatives have not yet gotten status** until USCIS issues regulations or guidance.

**Practice Pointers for Derivatives Abroad:** This age-out fix should apply to those derivatives who turned 21 before they were able to consular process into the United States. We have heard from trafficking advocates that this language has worked successfully to bring in aged-out derivatives abroad, as long as they were under 21 when the principal filed. ASISTA will advocate with USCIS and the Department of State to ensure that this fix applies to those individuals.

Continue to include derivatives as you are filing U applications even if they are abroad and about to turn 21 and **continue to request extensions for U-1 principals whose derivatives have not yet gotten status** until USCIS issues regulations or guidance. Expect delay and include a copy of the new provisions when requesting interviews with the consulates abroad. Remember that it is likely FAM has nothing on this change yet and consulates will not know how to handle the cases yet so you should be prepared to educate them. If you encounter any problems with this new provision with the consulates, please notify ASISTA at questions@asistahelp.org or update the Consular Process Google Document managed by ICWC. For information how to sign up for the Google Document, visit: http://bit.ly/12LC7jN

**Practice Pointer for Derivatives of Principals who Adjusted:** USCIS' position is that derivatives are not eligible for status if the principal adjusts before USCIS approves the derivatives' applications.[2] Since the statute does not include this requirement, and many principals were unaware of the I-539 extension process that would have avoided this consequence, we will advocate with USCIS that the new law should apply to derivatives harmed by this position as well as to those whose principals have not yet adjusted. We expect resistance to this suggestion, so please respond promptly to requests for examples of sympathetic cases to

[2] This position appears to be based on policy guidance and not actually pursuant to regulation or statute, other than in reference 8 CFR 245.24(b)(2). See USCIS Memorandum on Extension of T and U Nonimmigrant Status, February 23, 2011, PM-602-0032.

illustrate why USCIS should apply the new law retroactively to all aged-out derivatives, including those whose principals have now adjusted status.

**Practice Pointer on Children Marrying:** This age-out fix does NOT change the fact that a derivative who marries is no longer considered a child under INA 101(b) and is unable to obtain derivative status. It is important to advise derivative U-3 visa holders NOT to get married for sure until after the U-3 visa is approved, and to be even more prudent, to wait until the U-3 derivative has adjusted status. Waiting until adjustment will allow more protection for the derivative since USCIS has stated they are permitted to revoke U-3 status of a derivative who marries under 8 CFR 214.14(h)(2) (although this is a regulatory and not statutorily-based position and may be done on a case-by-case basis).

**Practice Pointer for Derivatives Whose Principals Didn't File Timely:** The VAWA 2013 language preserves the child's age on date of *principal's* filing, not derivative's filing, so we will advocate with USCIS that derivatives who were under 21 at time of principal filing should now be allowed to file.

**B. Addition of Foreign Labor Contracting Fraud to List of Enumerated U visa Crimes**

Section 1222 of VAWA 2013 adds "fraud in foreign labor contracting" (as defined by 18 USC 1351) to the qualifying crime categories in INA Section 101(a)(15)(U)(iii).

Under 18 U.S.C. Sec. 1351, "fraud in foreign labor contracting" requires a showing that a contractor "knowingly" and "with intent to defraud" recruited, solicited, or hired a person outside the United States under "materially false or fraudulent" terms. This may include hiring for purposes in the United States, employment on a U.S. government contract outside the United States, or on U.S. military installations.

**Practice Pointer:** This is likely to be very helpful not only for trafficking cases, but also where employers have provided false representations on issues including the terms and conditions of employment, housing, fees to labor brokers, food and transportation, ability to work at other places of employment, and other material aspects of the work arrangement. It may cover cases where brokers have brought workers to the United States and violated the terms of agreement, even where labor was not obtained under coercive situations necessary for other trafficking offenses. The National Employment Law Project will also prepare a further analysis of these provisions.

**Practice Pointer:** For trafficking cases always consider applying for the T-visas first even if the investigated/charged crime is fraud and foreign labor contracting and LEA is willing to sign a U-Certification for this crime. Even if an LEA is not willing to sign a T-Certification, the T-visa

can still be approved and securing the T-visa will secure access to federal benefits and often is a quicker path to LPR status.

### C. Addition of Stalking to List of Enumerated U visa Crimes

Section 801 of VAWA 2013 adds stalking to the categories of qualifying crimes.

**Practice Pointer:** This principally addresses stalking cases that do not fall under the domestic violence category. Stalking behaviors are related to harassment and intimidation and may include following the victim in person or monitoring them. It *may* be possible to now argue that sexual harassment at the workplace can qualify as one of the enumerated crimes depending on the specifics of the case and the definition of stalking and harassment in your jurisdiction.

### D. Additional T-visa Derivative Eligibility

Section 1221 of VAWA 2013 amends the eligibility requirements for T-visa derivatives to include: "any adult or minor children of a derivative beneficiary." This means for example that minor principal T-applicants can apply for their siblings under 21 and parents and these derivative's children can also qualify for T-status. Or, for example, an adult T-visa applicant can bring her derivative child who is also now eligible to bring her own child.

### E. Application of Bigamy Exception to VAWA-based I-751 waivers

Section 806 of VAWA 2013 applies the bigamy exception at INA 204(a)(1)(A)(iii)(II)(aa)(BB) to VAWA-based I-751 waivers.

**Practice Pointer:** Note that this exception only applies to battery/extreme cruelty based I-751 waivers and not the other grounds (i.e. divorce, death, or extreme hardship).

### F. Expansion of Prison Rape Elimination Act

Section 1101 of VAWA 2013 expands the provisions of the Prison Rape Elimination Act to DHS operated detention facilities, hold rooms, and to detention centers operated under contract with DHS and to all HHS facilities that house Unaccompanied Alien Children (UACs), requiring both agencies to develop regulations within 180 days of when VAWA is signed into law.

**Practice Pointer:** Advocates should consider submitting comments to the HHS proposed regulations for PREA once they are published. ASISTA will notify the field once these become available.

## STRENGTHENING THE INTERNATIONAL MARRIAGE BROKER REGULATION ACT (IMBRA)

### G. Enhancing Protections for K-1 and K-3 visa holders

The International Marriage Broker Regulation Act of 2005 (IMBRA) regulated international marriage brokers ("IMBs," so-called "mail-order bride" agencies) among other ways by prohibiting them from marketing children (individuals under age 18); requiring them to search public sex offender registries and collect relevant criminal and marital history information on a US client, and to provide that background information to a foreign national client and obtaining her consent before putting the US client in touch with her.

IMBRA also changed the fiancé(e)/spouse visa process to provide all immigrating foreign fiancé(e)s/spouses of US citizens with information about whether their U.S. citizen petitioner has a violent history, and to advise them about their legal rights and resources available to them in the United States if they are abused. To prevent serial fiancé(e) visa petitions by abusive US citizens, IMBRA placed limits on how many and how often such petitions can be filed (no more than two, no less than two years apart); a waiver is available, but not to US citizen petitioners with violent criminal records.

Sections 807 and 808 of VAWA 2013 included amendments to strengthen IMBRA. In addition to amendments to clarify civil and criminal penalties and promote enforcement against IMBs that violate IMBRA, and to create a misdemeanor penalty for IMB's US clients who intentionally lie about or withhold certain safety-relevant, IMBRA-required background disclosures, VAWA 2013 amendments require disclosures of additional violent history information by US clients of IMBs and by US citizen petitioners during the fiancé(e)/spouse visa application process (e.g., "attempt" crimes related to certain domestic and sexual violence crimes that IMBRA already required to be disclosed; and permanent protection or restraining orders). VAWA 2013 amendments also will ensure that the US government's background check on US visa petitioners (required pre-IMBRA) includes a search of the FBI's NCIC Protection Order Database; and clarifies the way the US government under IMBRA must notify immigrating foreign fiancé(e)s/spouses about any criminal background or protection order information concerning their US citizen petitioner.

**Practice Pointer:** As noted above, VAWA 2013 contains important additional protections and enforcement-related provisions under the International Marriage Broker Regulation Act of 2005 (IMBRA). In the 7 years since IMBRA was enacted, however, no IMB has yet been prosecuted for violating the law. Help us identify IMBRA violators! If you have a client who was abused by a spouse she met through an International Marriage Broker – especially if that IMB provided her with none of the IMBRA-required disclosures and her spouse had a violent history about which

she would have been forewarned if the IMB had complied – please contact the Tahirih Justice Center at policy@tahirih.org or 571-282-6161. For more information about IMBRA, visit http://bit.ly/WFAMbI/; for a factsheet comparing IMBRA 2005 with VAWA 2013 amendments, please see http://bit.ly/ZwLlsB

## TVPRA PROVISIONS FOR UNACCOMPANIED MINORS

### H. Access to Federal Foster Care and Unaccompanied Refugee Minor Benefits for Certain U visa applicants

Section 1263 extends federal assistance for foster care and benefits for unaccompanied refugee minors (URM) to unaccompanied alien children (UACs) who obtain U visa relief.

**Practice Pointer:** UACs in Department of Children Services custody are eligible for the URM program, advocates should notify ORR about U visa eligible youth and ensure these children are not kicked out of federal foster care upon turning 18.

### I. Appropriate Custodial Settings for Unaccompanied Minors Who Reach the Age of Majority while in Federal Custody

Section 1261 of VAWA 2013 requires that DHS consider placing unaccompanied alien children (UACs) transferred from HHS to DHS custody upon reaching 18 in the least restrictive setting available, after taking into account the UACs danger to self, danger to community and risk of flight. Such UACs shall be eligible for Alternatives To Detention (ATDs) programs, utilizing a continuum of services, including placement with an individual or organizational sponsor or supervised group home.

**Practice Pointer:** This provision requires DHS to consider not detaining a UAC who ages out of ORR custody, but instead placing the child in alternatives to detention programs. Advocates should ask ICE to release UACs to sponsors for the duration of their immigration proceeding, or supervised independent living programs or other community support programs. Advocates should also contact ICE if by default they place the aging out UAC in secure alternative programs such as electronic monitoring. For more information, visit Women's Refugee Commission's webpage on Alternative to Detention programs at http://bit.ly/ZFMUWD

### J. Appointment of Child Advocates for Unaccompanied Minors

Section 1262 of VAWA expands the child advocate program for vulnerable and trafficked unaccompanied alien children (UACs). This provision aims to appoint child advocates to 3 additional sites within 2 years of the enactment date and 3 additional sites within 3 years of

enactment. In choosing locations for sites, priority will be given to sites with the largest UAC population and the most vulnerable populations.

**Practice Pointer:** The independent child advocate program advocates for the best interest of the child. They are appointed for unaccompanied alien children (UACs) who are in Office of Refugee Resettlement (ORR) custody. After ORR chooses locations, attorneys and legal orientation program (LOP) providers at those sites can contact ORR if they have identified a vulnerable youth who may be in need of a child advocate. For more information on the current child advocate program go to: http://www.theyoungcenter.org

## TECHNICAL FIXES

### K. Extends protections of INA 204(l) to children of VAWA self-petitioners

Section 803 of VAWA 2013 provides that children of VAWA self-petitioners are may continue to be eligible for derivative benefits if the abuser dies while the principal's VAWA application is pending or approved.

### L. Public Charge Exception

Section 804 of VAWA 2013 specifically exempts approved VAWA, U applicants, as well as those deemed "qualified aliens"[3] from the public charge grounds of inadmissibility.

**Practice Pointer:** This fix was in response to discrepancies within different jurisdictions on whether this ground applied to VAWA and U approved applicants as well as "qualified aliens."

### M. Confidentiality Provisions

SECTION 810 of VAWA 2013 adds a national security exception to the original VAWA Confidentiality provisions at 8 USC 1367(b). This section also amends 8 USC 1367(d) so that DOJ and DHS shall provide guidance to officers and employees who have access to information protected by these confidentiality provisions, including the provisions to protect victims of domestic violence, trafficking and U visa crimes from harm that could result from the inappropriate disclosure of covered information.

[3] As defined in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c))

**N. Continuous Presence in the Northern Mariana Islands**

Section 809 of VAWA 2013 clarifies eligibility requirements of U and T visa applicants in the Northern Mariana Island to Adjust Status to Legal Permanent Residence by indicating that an individual's presence before, on, or after November 28, 2009 shall be considered to be presence in the United States.

## NEW REPORTING REQUIREMENTS

O. **Annual T and U visa Program Reporting**

Section 802 of VAWA 2013 DHS must submit annual report to Congress with the number of T and U applications submitted to USCIS and their outcomes, including the number of individuals granted continuous presence pursuant to the TVPRA. In addition, DHS must report on processing times, including the average time to adjudicate applications and any actions taken to reduce processing times.

**P. GAO Study of the Effectiveness of Border Screenings**

Section 1264 requires a GAO study into the effectiveness of CBP screening of children from contiguous countries required by the TVPRA 2008 and for it to be reported to the House and Senate judiciary committees. Both the Women's Refugee Commission and Appleseed Network published reports on the failure of CBP to screen unaccompanied alien children from Mexico for trafficking and asylum prior to their repatriation.