



# **WEBINAR SERIES ON ROUTES TO IMMIGRATION STATUS FOR NON-CITIZEN CRIME SURVIVORS**

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# **WEBINAR SERIES**

## **WEBINAR I**

### **VAWA SELF PETITION AND SELECTED ISSUES**

Presented by:

Cecelia Friedman Levin, Maria  
Lazzarino & Sonia Parras

# GOAL

- Identify basic remedies for survivors and the general requirements for self petitioning under VAWA
- Analyze selective issues
  - Good faith marriage
  - Good moral character
  - Introduction to waivers under VAWA

# YOUR TEAM BEFORE YOU START



# **DOMESTIC VIOLENCE**

THE KEY TO YOUR CLIENT'S CASE

# ASIAN PACIFIC ISLANDER INSTITUTE “THE SPIRAL OF VIOLENCE”



**Potential Immigration  
Legal Remedies for Survivors  
of Domestic Violence**

# Applications filed with DHS

- VAWA Self petition
- Battered spouse waivers
- U visa
- T visa
- Deferred Action for Childhood Arrivals (DACA)
- Special Immigration Juvenile Status (SIJS)



# Defenses before immigration judge

- Cancellation of Removal under VAWA
- Asylum/Gender Asylum
- Motions:
  - To administratively close removal proceedings
  - To continue until adjudication of affirmative application

# SURVEY

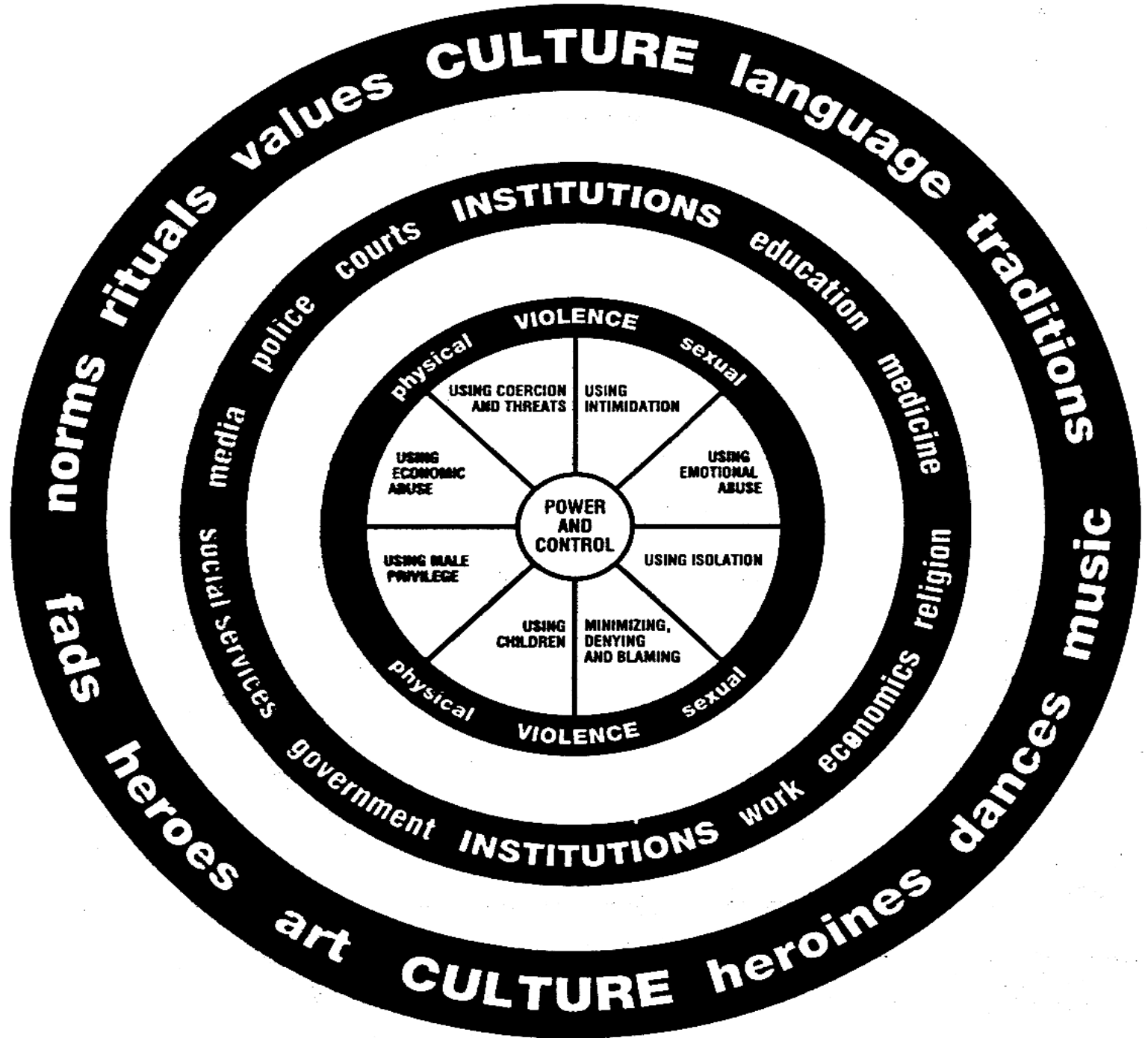
- Hilda complains about her husband drinking and cheating. Is this enough to show battery or extreme hardship?
- YES
- NO
- Need more information

# SURVEY

- Hilda was isolated, all the abuse happened behind doors and she has no physical documentation or evidence of the battery or extreme cruelty.
- Does she have a VAWA Self Petition case?
- YES
- NO
- Need more information

# **“Battery & Extreme Cruelty”**

“being the victim of any act of a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence”



# Battered Spouse Waivers (I-751)

- A pre-VAWA attempt to help battered immigrants
- The battered spouse waiver allows the removing conditions on residency without:
  - Relying on the batterer
  - Having to remain in abusive relationship for 2 years

**SELF PETITIONING  
REQUIREMENTS**  
Selected Issues

# General VAWA Self-Petitioning Requirements (INA Sec. 204)

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Lawful Permanent Resident Spouse or **Parent, or by your USC Child**
  - File within 2 years of divorce
- With Whom You Resided
- Good Moral Character
- Good Faith Marriage

*Prima Facie Determination = Public Benefits*



# Who is covered as a “child”?

- Abused biological child
- Abused step-children
- Abused mother can include children from other relationships in her self-petition
- Termination of parental rights no effect
- **Unmarried** and **under** 21 years of age

# Who is covered as a “child”?

- **EXCEPTION**

- **Unmarried** and **Over** 21 and under 25 years of age if shows connection between not filing on time and abuse

# **PROVING YOUR CASE**

## **STANDARD OF PROOF**

- ANY CREDIBLE EVIDENCE**

# EVIDENCE

Any credible evidence

- Critical evidence
  - Applicant's declaration
  - Corroborative evidence
  - Systems documentation: Protection order, medical records, police reports

# EVIDENCE

- More on Critical evidence
  - Protection order, medical records, police reports
  - Expert declarations: shelter workers, battered women' advocates, persons providing mental health treatment (not just assessment)
  - Family court findings re: domestic violence, legal marriage, abuser's immigration status

# **PROVING YOUR CASE SELECTED ISSUES**

**REQUIREMENT**

**GOOD FAITH MARRIAGE**

# SURVEY- GFM

- Hilda suspected that Peter was married and got married nevertheless.

Does she qualify?

- YES
- NO
- Need more information



# SURVEY- GFM

- Does it make a difference whether the marriage takes place before or after being placed in removal proceedings?
- YES
- NO
- Need more information

# SURVEY- GFM

Hilda started to work at the local hotel where he met Peter, the son of the owner. Peter was born in the USA and was 30 years old. Peter traveled to the USA to take care of business quite a bit. He was nice to her and gave her some extra money to help raising her baby in exchange for some favors. Hilda got pregnant right away and Peter decided that they had to get married. He told Hilda that no child of his will be a “bastard” and they got married in her town.

**Can Hilda show that she married in good faith?**

- YES
- NO
- Not sure/Need more information

# Evidence - Proof of Legal Marriage

- Proof of prior divorces of both parties
- Common law marriages are valid if valid under family laws
- Bigamy by abuser will not bar filing if
  - Good faith intent by applicant AND
  - Legal ceremony
- Good faith marriage
  - Not solely to gain immigration status
  - If in removal proceedings higher burden of proof

**REQUIREMENT**

**GOOD MORAL CHARACTER**

# SURVEY – GMC

- The neighbors heard noises and children crying and called the police. When the police came, they found the two children unattended and malnourished and they called DHS. They also found Hilda bruised and hurt and took her to the hospital. Will this be a problem for Hilda?
- YES
- NO
- NOT SURE

# SURVEY – GMC

- What if DHS made a finding of child abuse, Is Hilda disqualified?
- YES
- NO
- NOT SURE

# SURVEY – GMC

- Would your answer be different if the police arrested her and charged her with child endangerment?
- YES
- NO
- NOT SURE

# Evidence - Good Moral Character

- Criminal records check
  - Every place victim lived for 6 months in past 3 years
- Domestic violence convictions and protection order violations can bar good moral character
- VAWA 2000: even if barred, may be overcome for victims if “waivable” AND connected to domestic violence



# What to do about kids?

- What should you do about derivatives here?
- Abroad?

# RESOURCES

Website: [www.asistahelp.org](http://www.asistahelp.org)

Questions or technical assistance?

Questions@asistahelp.org

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