

ASISTA News

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VAWA 2005 (HR 3402)

President Bush signed VAWA 2005 into law. All new immigration provisions went into effect as of January 5, 2006. The next edition of ASISTA News will be dedicated to a discussion of the new provisions and the practical effect it will have on our work.

DETERMINING YOUR CLIENT'S IMMIGRATION HISTORY

Starting at the very beginning...

By: Christine Kellogg

The New Year brings with it resolutions, fresh starts, and first steps towards our goals. One of the first steps to effectively serving immigrant survivors of domestic violence is to determine what prior encounters they have had with the immigration system. It is important that we find out our client's immigration history so that we can fully assess our client's immigration options. For example, if our client has a previous order of removal, we must discuss with them the risks of filing a self-petition or U-Visa application. Our client's immigration history is also a factor when it comes time for adjustment. The most effective way to serve our clients is to know their history, so that we can be prepared for the legal hurdles that we may encounter.

STEP ONE: Questions to ask your client:

- *Do you know your immigration status?*
- *Have you ever been stopped and/or turned around at the border?*
- *Have you ever had a hearing or met with an immigration judge or a person with a*

black robe?

- *Have you ever been detained or arrested?*
- *Have you ever signed any CIS/ICE papers?*
- *Have you ever refused to sign any CIS/ICE papers?*
- *Have you been served with notice (a paper) about a hearing?*
- *Have you ever been fingerprinted?*
- *Have you ever received any mailings/ CIS/ICE letters?*
- *Did you move? Did you notify CIS/ICE of change of address?*
- *Do you know your family members' status?*

For more questions to ask your client see our sample immigration intake form located on our website <www.asistaonline.org>. The intake form can be found by going to *Legal Resources*, and going to "Determining your client's immigration status."

STEP TWO: File a Freedom of Information Act Request (FOIA). Due to privacy concerns, you may request only your client's information and not the abuser's. (Note: If you are having difficulty determining the abuser's status please submit a TA request to

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questions@asistaonline.org).

To submit a FOIA you must take the following steps:

- Go to <http://uscis.gov/graphics/formsfee/forms/g-639.htm>. There you will find the G-639 (FOIA request form). Follow the instructions listed on the form. There is no fee to file the FOIA and it does not have to be notarized.

Under No. 1 check the box marked FOIA.

Under No. 2 “Requester Information” list your information. If your client is undocumented put your name and address as the requester and then sign under the requester information in Part 2.

Under No. 3 “Consent” your client should print and sign his or her name.

Under No. 4 “Information needed to search for records,” give a brief description of what documents you are requesting. For example, “all immigration records, INS records and Department of Homeland Security records.” If you have already sent in your client’s I-360 application and do not wish to receive a copy of it in your FOIA request add “Not I-360” to Part 4. The more information that you can add in this section (i.e. the locations where the files are likely to be), the more likely it is that a FOIA request will return the information that you are seeking.

Under No. 5 “Data needed on subject of record” fill in as much information as possible, including information about her husband.

Under No. 6 “Verification of Subject’s Identity,” check the last box and write in “signed declaration below.”

Under No. 7 “Signature of Subject of Record,” have your client sign.

Under No. 8 “Notary,” have your client sign the line in the bottom right hand corner. Then she does not need to have it notarized.

Then send the FOIA request to:

USCIS National Record Center
FOIA Division
P.O. Box 648010
Lee Summit, MO 64064-5570
Clearly mark the envelope with the words “Freedom of Information.”

It can take several months to get the file back. Within a couple of weeks you should get a notice from CIS letting you know they received the request and/or that CIS

needs additional information regarding your client. If your FOIA request is denied or CIS does not respond to your request there is a process for filing a FOIA appeal.

STEP THREE: Another way to receive information on your client is through an FBI fingerprint check. An FBI fingerprint check is a more thorough background check, and very important if your client believes they may have an expedited removal order, which is unlikely to come up in a general FOIA check. It takes about 6-8 weeks for processing. You will receive a “No record” response if there is nothing on file, or you will receive your client’s FBI Identification Record. The FBI Identification Record consists of “information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances federal employment, naturalization, or military service.”

To request a FBI fingerprint check you need to submit the following:

- A complete cover letter. The FBI website and the ASISTA website provide sample cover letters <http://www.asistaonline.org/legalresources/DeterminingYourClientsImm.html>
- A set of your client’s fingerprints on a standard fingerprint form (also provided at the FBI website). It is preferred that the fingerprints are taken by a fingerprinting technician, usually found at your local law enforcement agency, but if you cannot find a fingerprinting technician you can take the fingerprints yourself.
- \$18 in the form of a money order or certified check made payable to “Treasury of the United States.” Cash and personal checks will not be accepted.

Mail these items to:

FBI CJIS Division – Records Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

If you receive information from the FBI request that you believe to be incorrect, there are steps you can take to challenge the Criminal History Report. Go to <http://www.fbi.gov/hq/cjisd/fprequest.htm> for more details.

The most important step is to closely question your client about possible encounters with immigration because there is always a risk that the FOIA and the FBI check will not return all of the information on your client. If you continue to have problems determining your client’s immigration history, please contact ASISTA at questions@asistaonline.org. Happy New Year and best of luck.

PRACTICE TIP: VAWA MOTIONS TO REOPEN and RECONSIDER SELF-PETITION DENIALS

By: Ellen Kemp, National Immigration Project of the National Lawyers Guild, working collaboratively with ASISTA

If you have received a VAWA self-petition denial, the regulations at 8 C.F.R. 103.3(a)(2)(iii) allow you to treat an appeal as a Motion to Reopen or Reconsider and render a new, favorable decision, rather than forwarding the case to the Administrative Appeals Office (“AAO”).

A recent change in the regulations at 8 C.F.R. 103 requires that motions to reopen/reconsider be filed on Form I-290B, the same form as is used for an appeal to the AAO. Confusingly, Form I-290B is only titled Appeal, not Motion To Reopen/Reconsider, despite its multi-purpose use.

We are suggesting to VSC that it develop a protocol for motions to reopen and reconsider, but during the interim we suggest you follow the procedures listed below:

First: On Form I-290B - write in large red letters at the top MOTION TO REOPEN/RECONSIDER

- Do a motion to reopen if you are supplying new documentation;
- Do a motion to reconsider if you think you've satisfied the law's requirements and VSC is misapplying the law and/or evidentiary standards.
- The fee has also increased as of 9/28/05 to \$385. You may wish to ask for a fee waiver, especially if you are filing a motion to reconsider, since the denial flowed from their mistake. Remember, however, that if your fee waiver is eventually denied, your motion will not be considered properly filed.

Second: Sample Language

MOTION TO RECONSIDER/REOPEN

Decision Dated XXX

In the Alternative Appeal to AAO

Self-petitioner XYZ, by and through her undersigned attorney of record, hereby files this Motion to Reconsider and Reopen the U.S. Citizenship and Immigration Services' decision dated XXX, denying her self-petition filed on Form I-360. If the VAWA unit supervisor will not reconsider the decision to deny the petition, self-

petitioner asks that her Motion be treated as an appeal to the Administrative Appeals Office (AAO).

As you know, the regulations at 8 C.F.R. 103.3(a)(2)(iii) allow you to treat this appeal as a Motion to Reopen or Reconsider and render a new, favorable decision, rather than forwarding the case to the AAO. I am asking that you review the materials included and render such a new decision.

If you do not change your original decision, please ensure that the VAWA unit supervisor sees the record before it is forwarded to the AAO within the 45-day timeframe required by 8 C.F.R. 103.3(a)(2)(iv). Please let me know when the record is forwarded and please be sure that my Notice of Appearance on Form G-28 (enclosed) is forwarded along with the record.

Third: Read the Regulations

Read the regulations before filing a motion to reopen or reconsider, especially 8 CFR 103.3 and 8 CFR 103.5. You can find the regulations on the uscis.gov website, under the links to Immigration Laws, 8 CFR. The first section deals with appeals and explains how an appeal may first be treated as a motion. The second section deals strictly with motions. You may still appeal an I-360 denial even if your motion to reopen or reconsider is denied.

When you are planning to file a motion to reopen/reconsider to VSC, ASISTA would like to know so we can track trends, recurring problems and provide technical assistance as problems arise. Please notify ASISTA by sending an email to christine@asistaonline.org.

ASISTA and its partners will be working closely with VSC supervisors to ensure quality adjudications; flagging cases that need reopening is one of the things they can do for you. In addition to increasing the likelihood that your individual cases will be reopened and considered correctly, this process helps the VSC supervisors identify and rectify systemic training issues in their adjudications staff.

YOU CAN NOW ACCESS BACK ISSUES OF ASISTA'S NEWSLETTER THROUGH OUR WEBSITE

<http://www.asistaonline.org>

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TROUBLESHOOTING CASES AND RESOLVING SYSTEM PROBLEMS

By: Gail Pendleton, ASISTA co-director

One of ASISTA's objectives is to troubleshoot problem cases and resolve problems that arise in the system. As an OVW grantee you can make a request to ASISTA to act as a liaison to contact VSC directly to help track down lost cases, expedite individual cases and, most importantly, identify and resolve emerging immigration system problems before they become widespread. We also will help try to resolve problems with local CIS and ICE offices, through liaison with CIS headquarters.

Generally an intervention is not needed unless a case has actually been denied (or there is some clear indication that it will be denied) or had some other adjudications problem, AND the advocate has already tried to go up the chain of command to resolve the issue.

We recommend contacting us as soon as you receive a Notice of Intent to Deny ("NOID") or a Denial letter. We also want to hear about particularly egregious Requests for Evidence ("RFE"). Also, contact us as soon as you realize local CIS or ICE officers a mishandling your client's case. We will solicit from you more information about your case, help you frame your arguments, and ask you to use the existing CIS or ICE structure to try to resolve the problem first. For example, if you encounter problems working with the VSC problem you should first call VSC at (802) 527-4888 and file the appropriate motion. With a local office, you should first make oral and written complaints up the chain of command. When you encounter an issue with a local office, we also encourage you to work with the local chapter of the American Immigration Lawyers Association ("AILA"), which has liaison committees that regularly submit questions and problems to your office. If you need help contacting your local AILA chapter you can send an email to christine@asistaonline.org.

There are several reasons we ask you to pursue the existing processes before we contact DHS on your behalf. First, the decision-makers at the agency have asked us to do it. When there is a problem at the local office, they want to know that the head of the appropriate unit is aware of the problem and has been given the opportunity to rectify it. Similarly, the VSC VAWA unit supervisors are extremely busy and should only spend time pulling and examining individual files if your attempts to make they internal system work have failed.

Second, your efforts will help educate line officers and their supervisors so others will not experience the same problem. On ASISTA's end, we try to do this by flagging cases that we think indicate adjudicators or officers need more training. We send emails, and sometimes mini-briefs, on why the adjudicator is mistaken, and suggest a better approach to the issue. If we see a pattern of problems, we may develop policy or protocol suggestions, such as the proposed motions protocol noted in the article on page 2.

INFO WE NEED FROM YOU WHEN YOU REQUEST THAT WE FOLLOW UP ON A PROBLEMATIC CASE

- Name(s) of self-petitioner
- Your client's #A number and date of birth
- Brief summary of case, including date and case numbers for all filings and where applications were filed
- Brief history of all interactions with VSC to date on this case (including RFEs, phone calls, letters, etc. with dates and EAC numbers) -attorney of record's contact information (you must have a G-28 on file) including name, address, phone, and email

EXAMPLE:

Summary of case: This is a request for help in the issuance of an EAD based on (c)(9). There is no decision on I-360 yet. This self-petitioner falls into the category of spouse of LPR abuser deported within two years of filing I-360. The abuser was criminally convicted of domestic violence and drug possession and his particular circumstances made him eligible to be charged with removability on either or both grounds, though immigration's charging document listed only the controlled substance offense.

- *Self-Petitioner: Jane Doe A12 345 678*
- *I-130 filed by the abuser on 10/31/1994 (WAC-95-000-00001)*
- *I-360 filed 04/10/2001 (EAC-01-000-00001) Self-petitioner eligible to recapture priority date from I-130.*
- *Recaptured priority date is current.*
- *I-485 filed at VSC 09/20/2004 (EAC-05-000-00003)*
- *I-765 filed at VSC 09/20/2004 (EAC-05-000-00004) Biometrics and fingerprints taken on 03/22/2005*

History of interaction with VSC and/or local office on this case,

- *5/15/2005 - Left several messages on VAWA unit line. No responses.*
- *5/27/2005- 11:32AM - Called the VSC VAWA phone number (802-527-4888) and left a message explaining case and asking that pending I-765 be adjudicated. No response.*
- *6/1/2005 - Wrote a letter to VSC asking that pending I-765 be adjudicated. No response.*

Attorney-of-record:

Firstname Lastname

Example & Associates

1 Main St.

Anytown, CA 00000

Telephone: 123-456-7890

Fax: 123-456-7890

E-mail: example@example.com

END OF EXAMPLE

Send the information to

questions@asistaonline.org. We can also work with you to determine if yours is a case where ASISTA should step in as a liaison. Feel free to call (515) 244-2469 with any questions.

HELP US, HELP YOU

As an OVW grantee, accessing ASISTA's free technical assistance is a great resource you can use to help better serve your client.

In order for ASISTA to better answer your TA requests please utilize the resource materials provided on our website and gather as much information as possible before submitting your request.

See our September 2005 newsletter for recommended materials for your immigration library.

We want to hear about your success stories.

Not only does ASISTA want to assist you in solving problems or answering questions that arise while serving your clients, we would also like to share in your success.

ASISTA is always looking for feedback to determine how we can best serve immigrant survivors of domestic violence.

Please send your success stories to christinek@asistaonline.org



Training for OVW Grantees

It may be possible to bring ASISTA to you

ASISTA may be able to come to your community to provide on-site technical assistance and tailor a training that fits your organization's needs.

Your OVW grant may permit you to spend your travel or training funds for such a purpose. Check with your OVW grant manager if you are interested in finding out more about ways you can spend your mandatory grant funds for on-site ASISTA technical assistance and/or trainings.



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