

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

September 2010

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## Between a rock and a hard place? Domestic Violence and Immigration

Evelyn's American Dream has become a nightmare. It all started so well: she fell in love with that handsome guy from California at first sight. They shared their visions of living in the Golden State, having a cottage close to the beach, enjoying the surf, an evening stroll on the beach, a weekend in the Sierra. It was easy to give up everything back home, the grey rainy days, the boring life in the little village in the Westerwald.

Evelyn always had striven for more. And life seemed to be great, after they married and found their little piece of paradise on the California coast. They had married in a hurry, because this is the only way to get a green card. Life in America was a bit intimidating, but the friendliness of Evelyn's new neighbors made her feel welcome soon. She quickly found a job, not far from where Jim was working. He was a roofer, busy in all the new developments being created along the coast. All seemed well.

Even if she tried, she could not really say when things turned sour. It had to do with the tanking economy. Jim lost his job when one after the other developers went bankrupt and house prices fell into a bottomless pit. Nobody built any more new houses, nobody needed the roofer. At first they thought they would weather the storm. She had her job, and he surely would find something soon. He was so skilled with his hands.

But things did not get better. He had started to fight the boredom by inviting other out-of-work buddies for a day of games and fun. They always brought booze. When she came home from work, they would be sprawled out in the living room demanding dinner. When she didn't prepare it fast enough, hard words would be said. He had used to call her "honey," now the word more often than not started with a "b."

The first time he beat her was when she had gotten into a fender bender. Their credit cards had been stressed out before, and the body repair on their truck would cost \$ 3000. The truck was his pride. They had no money to remove the ugly dented and scratched fender. So he had dented her face.

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The next time she simply had forgotten to pick up the pizza after work. He was hungry. She was tired and overworked. The third time, she was too ashamed to go to work. Her black eye would have told the story. She spent the day at the beach, instead. Tears were flowing while she gazed at the waves. What had happened to her paradise?

She worked harder than ever before. That kept the pesky credit card companies at bay. But the truck had not been repaired yet. The savings for that had vanished when he had bought the new game station. He blamed her. This time he knocked out a tooth. The dentist charged \$ 1,000. She had hidden the bill, knowing he would go mad if he knew that. She had missed 3 days at work. The boss became irritated.

The beatings continued. She did not keep track. As long as they did not result in more medical bills, she just endured them, just like his daily rants about how useless she was. She kept on working, cooking, cleaning.

But still things got worse. He drank more and more. His beatings got worse. May be some day he would kill her. Should she move out? Get a divorce? Start a new life alone? But how?

She knew others in her situation would simply go home. Back to Germany. But she had given up everything there. Her parents had passed away years ago. Her friends had moved on. She would be as alone in her old country as she was now. No, she wanted to stay. On her own feet.

He must have sensed something. At dinner he dryly reminded her that her green card had not been approved yet. The petition had been filed a few months ago. When she wasn't fast enough serving him, he wondered aloud if he should simply send her packing. "I only need to call USCIS and revoke the papers," he had said. "Don't even think you could leave me and stay in America."

That was true, wasn't it? She had heard another girl at work having the same problem: Juanita regularly got beaten up by her husband. She was illegally in the country. "One phone call to USCIS and you are back in your Mexican village..." was his daily mantra. She believed him. She suffered silently.

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### **“One call to the USCIS and you are back at your little village?” NO!**

Many immigrants have suffered Evelyn's and Juanita's fate. They have been intimidated by their abusive spouses into silent suffering and servitude. The spouses effectively use USCIS as the boogeyman. They threaten their victims with deportation or jail for immigration violations. However: their threats are all empty and hot air.

Congress many years ago has passed the “Violence against Women Act.” This is a law protecting spouses and children from abusive domestic situations. It protects spouses and children who are experiencing domestic abuse or violence, physical or psychological threats or harm.

In the immigration context, the law offers a very important way out of the situation: Normally immigrants are dependent on their spouses as petitioners and sponsors. A fiancée, a wife or husband, their children, they all need an American citizen relative to petition for their green cards.

But the law says: victims of domestic abuse do not need their abusers' petitions and sponsorship. If you are being abused by an American citizen relative or a relative holding a green card, you may petition for your own green card without them. You don't need their permission to stay in the country, you don't need their approval to become legal. You can get divorced, you can move out of the abusive home, you can live your own life without fear of being deported.

Under VAWA you may petition for your permanent, legal status in the United States yourself if you or your children are being abused. Abuse is more than physical violence. Even if your spouse does not beat you, it is enough if he/she makes your life hell otherwise.

To self-petition you need:

- to have good moral character (for example, no criminal record)
- are presently the spouse of an American citizen or a permanent resident (green card holder) or unwittingly entered a bigamous marriage or have been married to such a spouse but within the last two years divorced because of the abuse

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- have resided with that spouse (also abroad if he/she was in the military)
- are presently in the United States (not necessarily with the spouse)
- entered the marriage in good faith
- you have been physically hurt by that spouse or been the subject of extreme cruelty by that spouse while married to him or to her or you are the parent of a child abused or battered by that spouse.

After such a self-petition is filed, it will not matter any more if you will become divorced. If you already have your green card, but are still within the two year mandatory conditions phase, you can apply for a waiver of the requirement that your spouse and you will sign the application to remove those conditions together.

There also are some special visa categories which might be applicable for victims of domestic violence and related crimes and who do not immediately qualify for a green card.

### **What should I do?**

VAWA cases are not easy to file. You will need some proof of the abuse and you will need some assistance to cope with the situation.

USCIS has established a separate office just for VAWA cases. One benefit of this is that they take your **privacy** very seriously. Only you and your designated representative (for example your lawyer) will be allowed to receive any information about your case. Your abusive spouse will not! Even if your application should be denied, nobody else will be informed about the denial!

You should consult an immigration attorney to handle your case. You also might want to contact one of the many non-profit organizations who assist victims of domestic violence. They will assist you to cope with the many issues of abuse.

**NOBODY has a right to hurt you. Not even if you are illegally in the country.**

Nobody can use your immigration status to keep you in an abusive relationship.

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