

October 21, 2013

Mark Freedman, Senior
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Legal Services Corporation
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Via Electronic Mail

RE: LSC REGULATION 1626.4 - ALIENS ELIGIBLE FOR ASSISTANCE UNDER ANTI -ABUSE LAWS

Dear Mr. Freedman;

Legal Services NYC (LSNYC) respectfully submits the following comments regarding changes to the Legal Services Corporation Regulation 1626.4 on providing legal representation to eligible noncitizens under federal anti-abuse laws.

LSNYC is a Legal Services Corporation funded organization located in New York City. Given that New York City is the gateway for immigrants coming to the United States (U.S.), LSNYC frequently encounters immigrants, including survivors of domestic assault and trafficking, seeking legal help.

As a preliminary matter, the proposed rule mistakenly refers to the USCIS as the United States “Customs” and Immigration Service. USCIS actually stands for “United States Citizenship and Immigration Services.” The customs branch of the Department of Homeland Security (DHS) is the United States Customs and Border Protection, more commonly known as “CBP.”

The proposed rule requests comments on how the term “trafficking” differs from the terminology “severe forms of trafficking” outlined in the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), the Trafficking Victims Protection Reauthorization Act of 2005 (TVRA) and the Immigration and Nationality Act (INA). “Trafficking,” as used in the Violence Against Women’s Act (VAWA), embraces state and local trafficking laws, which often do not incorporate the “severity” qualification delineated in federal law, and includes the category of sex trafficking where force, fraud or coercion are not present. Further, many state trafficking laws enumerate other trafficking activity as crimes that are not included in the federal definition. To the extent that the VAWA amendments appear to narrow the basis of trafficking cases for eligibility to severe forms of trafficking alone, they restrict the ability of LSC recipients from providing assistance to vulnerable persons with limited access to justice and basic needs, who are victimized by sex trafficking where force, fraud, or coercion are not present. We encourage LSC to apply the broader interpretation of the word “trafficking” as used in VAWA and include in its regulations violations of state and local laws, in addition to federal law, and sexual trafficking without force, fraud or coercion.

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We agree with LSC's determination that programs may represent victims of battery and extreme cruelty under VAWA and victims of criminal activity pursuant to the U visa statute regardless of whether the abuse or criminal activity took place in or outside of the United States. However, we object to any reading of the statutes that applies geographic restrictions requiring victims of sexual assault or severe forms of sexual trafficking to have suffered this abuse in the United States in order to establish eligibility. The phrase "in the United States (U.S.)" in 22 U.S.C. § 7105(b)(1)(B), which applies only to trafficking victims, not victims of sexual assault, refers to the location of the victim, rather than the location of the abuse. This interpretation is supported by the heading of § 7105(b), "Victims in the United States." The VAWA amendment to section 502 of the appropriations legislation simply adopts the same language, and "in the United States" should be interpreted to qualify the location of the victim rather than the crime.

Further, the broader provision permitting related legal services to U visa-eligible clients whether the relevant crime took place within or outside the U.S. should be the determining factor for these cases, not the narrower restriction of the trafficking provisions. This reading (that in order to confer eligibility the sexual assault and trafficking may occur outside of the United States, but the victims themselves must be present within the United States) does not apply, however, to individuals eligible for services because of their U-visa eligibility or because they are victims of extreme cruelty or battery. As the proposed regulations express these individuals are eligible regardless of their current location and regardless of the location of the crime.

We support LSC's understanding of "evidentiary support" for determining eligibility for representation under the anti-abuse statutes, including written statements from clients. We propose though, that paragraphs (e) and (f) of § 1626.4 clearly state that where programs may represent individuals without regard to their citizenship or immigration status, as in assisting victims of human trafficking or domestic violence, programs are not required to inquire into the citizenship or immigration status of these clients.

Finally, in addition to persons granted withholding of removal to the categories of eligible noncitizens listed in Section 1626.5, LSC must not remove persons granted withholding of deportation under former section 243(h) of the INA from the regulation. There are still many individuals who were granted withholding of deportation prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 and many who are currently in deportation proceedings rather than removal proceedings because under IIRIRA, persons who were in deportation proceedings prior to April 1, 1996, were not put into removal proceedings, but rather continued in deportation proceedings. For these individuals in deportation proceedings, they may appeal their cases to the courts of appeals, or their cases may be remanded or reopened and should thus still be eligible for representation by LSC funded programs.

We also recommend that LSC include withholding of removal and deferral of removal under the Convention Against Torture (CAT) in this category of eligibility. As with withholding of removal under the INA, CAT relief was created after the last revision of Part 1626. It implements the United States' adoption of an international treaty prohibiting the involuntary return of persons in danger of subjection to torture. See Act Oct. 21, 1998, P.L. 105-277, Div. G, Subdiv. B., Title XXII, Ch. 3, Subch B, § 2242, 112 Stat. 2681-822. These forms of relief are akin to withholding of removal under the INA because they require that an individual establish that his or her life or freedom would be endangered by removal – either because of the threat of persecution, in the case of Section 241(b)(3), or because the threat of torture, in the case of CAT.

Moreover, individuals granted withholding may not have documentation indicating whether the grant was based on the INA or CAT except for the employment authorization documents issued by USCIS with the code A10, which is used for individuals, granted withholding of deportation, withholding of removal under the INA, and withholding of removal under the CAT.

Sincerely,

/s/ M. AUDREY CARR, ESQ.
Director of Immigration and Special Programs