March 4, 2014

Ms. Stefanie K. Davis
Assistant General Counsel
Legal Services Corporation
3333 K Street NW., Washington, DC 20007

RE: Commentary on Proposed Rule ID: LSC-2014-0002 [Restrictions on Legal Assistance to Aliens]

Dear Ms. Davis,

I am writing to comment on the LSC's proposed rule that implements statutory changes on aliens eligible for legal assistance through LSC funded organizations. As an immigrant myself and as an attorney committed to serving the immigrant community, I am greatly concerned about ensuring that local programs have the ability to reach and aid as many undocumented survivors of violence as possible.

Pursuant to the VAWA 2005 amendments, the proposed regulations clarify that LSC funded programs can use LSC funds and any other source of funding to represent victims who qualify for services under 45 CFR § 1626.4 ("Aliens Eligible for Assistance Under Anti-Abuse Laws"). A central tenet of the VAWA 2005 amendments was to ensure that LSC funded programs could represent immigrant crime victims and their children under the Anti-Abuse statute using any source of funding available to the program, including LSC funds. Unfortunately, this has been a significant area of confusion for programs and a major reason why programs have been turning away otherwise eligible immigrant crime victims.

Please consider this comment in an attempt to clarify the definition of "Aliens Eligible for Assistance Under Anti-Abuse Laws" under 45 CFR § 1626.4.

1. The distinction between the VAWA 2005 and TVPA definitions of "trafficking"

There is an important difference between the terms "trafficking," used in the U visa and VAWA 2005 LSC amendments, and "severe forms of human trafficking," which applies in the T visa and continued presence context. VAWA 2005 LSC amendments and U visa 2000 used the generic term trafficking to cover all forms even those that do not reach the level of severity described for the T visa or continued presence purposes. Congress wrote the U visa and the T visa at the same time in the same time. Both visas became law together, one in VAWA (the U visa) and the other in TVPA (the T visa). Congress intended to cover a broader array of behaviors and prosecutions of traffickers in the U visa than the persons who were covered in the TVPA.

2. Geographic considerations: location of the predicate activity and of the victim in determining eligibility

(a) VAWA Self-petitioners

VAWA self-petitioners – including victims of spousal abuse, child abuse, or elder abuse – perpetrated by U.S. citizen (USC) or Legal Permanent Resident (LPR) spouse, parent, or in elder abuse cases, over-21-year-old USC adult son/daughter or son-in-law/daughter-in-law have no geographic limitations on where the abuse occurred.[1]

In VAWA 2000, Congress removed the requirement that the battering or extreme cruelty must occur in the U.S. This was done because Congress recognized that domestic violence in families is a pattern of abuse that crosses boarders in some instances. The full range of and history of abuse could be considered as part of the VAWA self-petition by removing the requirement that DHS only consider abuse occurring in the U.S. VAWA 2000 also expanded self-petitioning to cover victims in cases in which all of the abuse occurred abroad and the perpetrator was the victim's USC or LPR spouse, parent or over 21 year old citizen child who is or was a member of the U.S. uniformed services or a U.S. government employee.[2]

Moreover, VAWA 2000 also allows VAWA victims to file their petitions from outside of the United States.[3] This was implemented in part because of findings that domestic violence perpetrators would often remove their victim from the U.S. either forcibly or by trickery, thereby cutting them off from VAWA self-petitioning eligibility. Many other victims, who returned home across the border to seek help, would get stuck abroad and not be able to enter the U.S. to pursue VAWA immigration relief. Eventually, this resulted in courts awarding custody to perpetrators and perpetrators not being able to be prosecuted. For these reasons, Congress amended VAWA self-petitioning in VAWA 2000, so that VAWA self-petitioners may file from outside the U.S.

(b) U Visa Applicants

It is important to note that the LSC amendment in §104 of VAWA 2005 applies to persons who *qualify* for U visa (emphasis added). Therefore, it is not necessary for immigrants who qualify for U visas to have actually filed for a U visa. It is also not necessary for U visa eligible immigrants to have obtained a law enforcement certification. Therefore, LSC agencies can represent victims who qualify for U visas without regard to whether and what kind of immigration case they file.

LSC agencies can also represent victims who qualify for U visas without regard to where the criminal activity happened. Under INA §101(a)(15)(U), the criminal activity needs to either

[1] See INA §204(a)(1)(A) and (B).
[2] See 3 INA 204(a)(1)(A) (v); INA 204(s)(I)(B)(iv). A member of the uniformed services is defined in 10 U.S.C. §101(a).
[3] In addition, VAWA self-petitioners are not barred from attaining LPR status if they left the country due to the battering or extreme cruelty, or if their removal from, departure or reentry/reentries into the U.S. were connected to the abuse. *See* INA §212(a)(9)(C)(iii).

happen in the U.S. or it must violate U.S. law. This anticipates that there is no requirement for the abuse to have happened in the U.S. The preamble for the U visa interim regulation states that a qualifying criminal activity for U visa purposes exists if it violates a federal statute, which specifically provides for extraterritorial jurisdiction.[4]

U visa victims can file for that U visa whether or not they are in the U.S. at the time of filing.[5] Moreover, INA § 245(m)(2) anticipates that there will be circumstances when U visa victims will have breaks in their presence in the U.S. In such situations, a U visa applicant cannot be absent from the U.S. for more than 90 days and the total days of absences cannot exceed 180, except if the applicant's absence is related to investigation or prosecution of the qualifying criminal activity.

(c) T Visa and Continued Presence Applicants

INA §101(a)(15)(T) requires victims of severe forms of trafficking, to be physically present in the United States "on account of such trafficking." Accordingly, the current version of the LSC rule is correct when it states that the trafficking could have happened outside of the U.S. so long as the victim is in the U.S. on account of the trafficking. This is consistent with the T visa statute's broad remedial purpose and the fact that trafficking is a transnational crime.

The Clinton administration in issuing the T visa regulation gave a very broad description when it defined "on account of such trafficking." The victim does not have to have been brought to the U.S. by the trafficker. The victim could have entered illegally, or even legally and then overstayed his/her visa. Physically present on account of trafficking means that the victim is currently being subjected to trafficking, recently liberated from their traffickers, or the immigrant is here because of past trafficking and their current presence is directly related to the original trafficking.[6] Victims who escape traffickers without law enforcement assistance must prove that they did not have a clear chance to leave the U.S. between their escape and contacting law enforcement.[7] If the trafficking did not occur recently, then the victim must demonstrate that they did not have the opportunity to depart through proof of "trauma, injury, lack of resources, or travel documents that have been seized by the traffickers."[8] Overall, the definition of on account of trafficking does not necessarily mean that all of the "trafficking" had to occur in the US.

Thank you for your time in reading this comment and I look forward to the decision LSC makes for the future.

Sincerely,

Krisztina E. Szabo

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[4] USCIS Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. No. 179, 53020 (Sep. 17, 2007).
[5] USCIS Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. No. 179, 53021 (Sep. 17, 2007).
[6] 8 C.F.R. §214.11(g) (2002).
[7] 8 C.F.R. §214.11(g)(2) (2002).
[8] 8 C.F.R. §214.11(g)(2) (2002).