



# BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

**Via Electronic Submission**

October 21, 2013

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**Re: Notice of Proposed Rulemaking as to 45 CFR 1626**

Bay Area Legal Aid is pleased to submit these comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM). Bay Area Legal Aid is the LSC funded agency serving the San Francisco Bay Area. We have a robust immigration practice utilizing both staff and pro bono attorneys serving victims of domestic violence and sexual assault in their applications for immigration status in the areas of VAWA self petitions, U Nonimmigrant Status applications, and I-751 Waiver petitions. We also have a youth justice program that could be expanded to provide immigration and public benefits services to undocumented youth who have been abused if these proposed regulations are adopted.

We commend LSC for acting to update Part 1626 to reflect more recent changes in the law and to formally incorporate the program letters into the regulations.

In the comments below we will address some specific aspects of the proposed rule by eligibility category.

Clients whose eligibility is based on the anti-abuse provisions:

For clients qualifying under the anti-abuse sections, we applaud the proposed regulations for eliminating the requirement that the abuse have occurred in the United States. This would allow LSC funded agencies to provide a wider variety of services to abuse victims including asylum and special immigrant juvenile status applications in addition to the VAWA, U, and I-751 applications that many already provide. It would also allow for public benefits related services to be provided to these same clients to help with their economic stability. The provision of immigration services and public benefits assistance would enable the clients to become self sufficient in order to prevent them being forced to return to the abusive situation due to financial necessity. Currently we find that we cannot assist many abused youth because the abuse occurred in their home country rather than in the United States. This revision would also open the door to the provision of VAWA self petitioning services to applicants who otherwise qualify for VAWA self-petitioning but for the fact that the abuse they suffered was committed abroad. We also applaud the revision allowing for provision of services to these clients regardless of whether they are in the United States or not.

Clients whose eligibility is based on the sexual assault and trafficking provisions:

As stated above, we agree with and strongly support LSC's conclusion that programs may represent victims of battery and extreme cruelty under VAWA and victims of criminal activity sufficient for U visa eligibility regardless of whether the abuse or criminal activity took place in or outside of the United States. However, we do not agree with the distinction made by the proposed rule that would require victims of sexual assault or severe forms of sexual trafficking to have suffered this abuse in the United States in order to establish eligibility. We understand the qualifying phrase "in the United States" in 22 U.S.C. § 7105(b)(1)(B) to refer 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 misconduct and should be limited to sexual assault and trafficking victim categories and not categories of clients under the anti-abuse or U visa categories. This would allow for provision of legal services to victims of trafficking or sexual assault who may be eligible for asylum based on their treatment abroad.

Clients whose eligibility is based on the U visa eligibility provisions:

In this category, we applaud the revised interpretation finding that U visa clients can be served regardless of their location. As discussed in the proposed rule, U visa applicants, unlike T visa applicants, can apply from outside the United States. The codification of the interpretation that a U visa applicant is eligible for services from an LSC funded agency

even if they are outside the United States would be very helpful to those clients who were in the United States when they were victimized and cooperative, but who now find themselves outside the U.S. LSC funded agencies are particularly important to this client population in that they provide services free of charge and clients who find themselves abroad are particularly likely to the financial resources to pay for legal services. Those clients are also likely to be particularly vulnerable to continued victimization if their abusers follow them abroad.

#### Section 1626.5 – Aliens eligible for assistance based on immigration status.

We agree with the addition of persons granted withholding of removal to the categories of eligible noncitizens listed in Section 1626.5. However, persons granted withholding of deportation under former section 243(h) of the INA should not be removed from the regulation. There are today many people in the country who have withholding of deportation – they cannot obtain withholding of removal. Moreover, there are still today people who are currently in deportation proceedings rather than removal proceedings. This is because of the prospective and gradual manner in which removal proceedings were implemented under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Under IIRIRA, persons whose deportation proceedings were initiated prior to April 1, 1996, were not put into removal proceedings, but rather continued in deportation proceedings. Their cases may be appealed to the courts of appeals and subsequently remanded, they may be reopened to apply for other relief, but they continue to be deportation rather than removal proceedings.

In addition, we 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, this 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 extremely similar to withholding of removal under the INA, and they all require the individual to establish that his or 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. Indeed, the employment authorization documents issued by USCIS for individuals granted withholding of deportation, withholding of removal under the INA, and withholding of removal under the CAT, all use the same code, A10.

Accordingly, we recommend that paragraph (e) of this section be revised to read as follows:

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)), withholding of removal or deferral of removal under the Convention Against Torture, or withholding of deportation pursuant to former section 243(h) of the INA (8 U.S.C. 1259, as in effect on Sept. 29, 1996).

Replacement of the appendix to Part 1626 with program letters

We support the proposal to replace the appendix to Part 1626, listing documents establishing immigrant eligibility for representation, with program letters. We agree that immigration forms and documents frequently change, and LSC will be better able to provide this information to programs in a timely manner by means of program letters, rather than the formal rulemaking process.

In conclusion, we appreciate the work that LSC has put into updating Part 1626, and we support these changes, with the modifications suggested herein. Again, we strongly urge that LSC extend the comment period in order to receive comments from a greater number of interested organizations.

Sincerely,

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