



Via Electronic Submission

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

The National Immigration Law Center (NILC), ASISTA Immigration Assistance (ASISTA), the American Immigration Lawyers Association, and the Freedom Network (USA) are pleased to submit these comments in response to the Further Notice of Proposed Rulemaking (FNPRM or “proposed rule”) published at 79 FR 6859 (Feb. 5, 2014).

NILC is a national legal advocacy organization whose sole mission is to promote and defend the rights and opportunities of low-income immigrants and their families. Until 1996, when LSC funding for national support centers ended, NILC was funded as a national support center for immigration law issues. For over 30 years, NILC has worked to promote and ensure access to legal services for low-income immigrants and their family members. Over the years, we have responded to thousands of requests for technical assistance on immigration-related issues from LSC-funded programs across the country. NILC also drafted the chart providing examples of acceptable documents evidencing noncitizen eligibility for representation by LSC programs that was promulgated as the Appendix to Part 1626 of the current regulations.

ASISTA is a national nonprofit organization that worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault and other crimes, incorporated in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing these laws, most notably Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and DHS’ Office on Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials,

civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono and private attorneys working with immigrant crime survivors.

The American Immigration Lawyers Association (AILA) is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

The Freedom Network (USA) is a national coalition of anti-human trafficking service organizations and advocates. A fuller description and information about membership is available at www.freedomnetworkusa.org.

We submit these comments in response to LSC's request for further comment regarding the interpretation of the phrase "in the United States" as it applies to eligibility of victims of trafficking. Given the cross-border nature of human trafficking, and the broad remedial purposes of the statutes affording assistance to its victims, we now believe that this phrase should be interpreted to require a nexus to the United States. In other words, eligibility should be satisfied either if the victim's trafficking occurred in the United States, or the victim is at some point physically present in the United States.

The FNPRM proposes that aliens who "qualif[y] for immigration relief under section 101(a)(15)(U) of the of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(U))" need not be physically present in the United States to be eligible for assistance under this section of the VAWA. LSC correctly provides that a person may qualify for such relief as long as the criminal activity giving rise to eligibility "violated the laws of the United States or occurred in the United States...." See 79 Fed. Reg. 6859, 6861 (citing 8 U.S.C. § 1101(a)(15)(U)(i)(IV)). We support LSC's interpretation set forth at proposed 45 C.F.R. § 1626.4(c)(1), (2) finding that aliens, including victims of trafficking, are eligible under this section "if the activity giving rise to eligibility violated a law of the United States . . . or the territories and possessions of the United States" and that the alien "need not be present in the United States" to be eligible for assistance under this section.

We also agree with LSC's interpretation of the term "qualifies for immigration relief" as including, *inter alia*, persons who have been granted relief, who have applied for relief, or who have not filed for relief but who the recipient determines has evidentiary support for filing for such relief. Proposed 45 C.F.R. § 1626.2(h)(1)(i-iii).

LSC correctly interprets the term “in the United States” set forth at Public Law 109-162, § 104(a)(1)(B), 119 Stat. 2960, 2978-79 (2006) as applying only to “victims of trafficking.” As LSC noted in the Preamble to the original NPRM, the VAWA the term “in the United States” was struck from the provision regarding “battered and extreme cruelty.” *See* 78 Fed. Reg. 51696, 51699; *see also* Sec. 104(a)(1)(A), Public Law 109-162, 119 Stat. 2979-80.

However, we disagree with LSC’s proposal that the term “in the United States” as used in the TVPRA at 22 U.S.C. §7105(b)(1)(B) and in the VAWA, Public Law 109-162, § 104(a)(1)(B), 119 Stat. 2960, 2978-79 (2006), requires victims of trafficking to be physically present in the United States in order to be eligible for legal assistance. Rather, the term in the TVPRA and the VAWA should be read to require that victims of trafficking have a nexus to the United States in order to be eligible for legal assistance; i.e. that victims of trafficking either be physically present in the United States or have experienced trafficking within the United States.

Both the TVPRA and VAWA were enacted to benefit survivors of particular prohibited activity. Both acts specifically established LSC eligibility for these survivors, regardless of the provisions of the 1996 appropriations act. For LSC now to require survivors to be physically present in the United States to be eligible for legal representation is inconsistent with the intent and purposes behind the TVPRA and VAWA. The intent was to expand LSC eligibility for survivors, not limit eligibility.

This expansive view is consistent with the cross-border nature of trafficking, a grave violation of human rights which the United States seeks to deter through, *inter alia*, the provision of legal services to victims. It is also consistent with the ameliorative purposes of the anti-abuse statutes, which are intended to strengthen the ability of law enforcement agencies to investigate and prosecute crimes, thus improving public safety overall, while, at the same time, offering protection to victims of such crimes.

“The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern.” 22 U.S.C. § 7102 (23). Both the TVPRA and the VAWA have a broad remedial purpose. *See, e.g., Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1217 (9th Cir. 2011) (noting Congress’s “remedial purpose in enacting VAWA”); *Matter of Armendarez-Mendez*, 24 I&N Dec. 646 (BIA 2008) (interpreting VAWA provision broadly given the statute’s “overtly remedial purpose”); 22 U.S.C. § 7102 (18) (the TVPRA and seeks to ensure expansive services to all victims of trafficking because “adequate services and facilities do not exist to meet victims’ needs regarding health care, housing, education, and legal assistance).” Statutes with such a remedial purpose “must be liberally construed”. *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *see also Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 268 (1977) (reading civil rights statute expansively in light of its remedial purpose).

Human trafficking is “a transnational crime with national implications.” 22 U.S.C. § 7101(24); *see also Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674, 683 (S.D. Tex. 2009) (“[H]uman trafficking is by nature an ‘international’ crime; it is difficult clearly to delineate those trafficking acts which are truly ‘extraterritorial’ and those which sufficiently reach across U.S. borders.”). “To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.” 22 U.S.C. § 7102 (24).

The criminal acts that constitute trafficking frequently begin in one country and continue or culminate in one or more others or have effects in more than one country. *See Adhikari*, 697 F. Supp at 683 (noting that a trafficker may gain commercial advantage in the United States by engaging in human trafficking outside of American borders). In recognition of this fact, the TVPRA prohibitions against trafficking, which may serve as the basis for a criminal prosecution or a civil action, apply to trafficking that occurred outside the United States. *See* 18 U.S.C. § 1596. Thus, a victim whose trafficking occurred outside the United States could be a critical witness in a U.S. prosecution or could seek to hold their trafficker accountable in the U.S. courts through a private lawsuit. As the LSC’s Preamble to the NPRM and to the FNPRM acknowledge, such a victim might also be eligible for T-nonimmigrant status, which does not require that the trafficking take place in the United States. 78 Fed. Reg. 51696, 51699-700, 79 Fed. Reg. 6859, 6862. Under the interpretation that we propose, LSC-funded organizations could provide legal assistance to such a victim as long as he or she is present in the United States. And our interpretation would also permit LSC-funded programs to represent victims whose trafficking occurred within the United States who were forcibly removed from the country by their trafficker and now seek relief.

Under LSC’s current interpretation, victims of trafficking who leave the United States would not be eligible for legal services unless they also qualify for a U- visa or initiated representation while still in the United States. However, a victim may not learn about his or her legal rights or have the opportunity to reach out to a legal services provider until they have left the country.

We believe that LSC should not require that victims of severe forms of trafficking in persons be “in the country on account of the trafficking” in order to establish eligibility. Proposed § 1626.4(c)(2)(ii) would require that aliens eligible under the TVPRA be “present in the United States on account of such trafficking” to be eligible for LSC-funded services. A review of the underlying statute, 22 U.S.C. § 7105(b)(1)(B), demonstrates that the “on account of” requirement is overly broad and is not compelled by the statute. Under 22 U.S.C. § 7105(b)(1), the definition of a “victim of a severe form of trafficking in persons” for the purposes of eligibility means only a person who is a victim of a severe form of trafficking as defined at 22 U.S.C. § 7102(8) and who is under 18 or is the subject of a certification. An individual subject to certification under 22

U.S.C. § 7105(b)(1)(E) includes one who has made a bona fide application for T- nonimmigrant status (“T visa”) or for whom the government is ensuring continued presence. The authority to permit continued presence is found at 28 CFR § 1100.35. Of these three categories—youths under 18, a T-visa applicant, or an individual granted continued presence—only the T- visa requires that the individual be “present in the United States . . . on account of such trafficking.” 8 U.S.C. § 101(a)(15)(T)(i)(II). Thus the proposed rule improperly extends the “on account of” language to individuals under 18 and those granted continued presence, when the statutes and regulations contain no such requirement. An interpretation that 22 U.S.C. § 7105(b)(1) requires that services can be provided only to an individual who is present on account of such trafficking is incorrect and overly broad. Furthermore, defining “in the United States” differently under the TVPRA and the VAWA creates unnecessary confusion and complications for providers assessing eligibility requirements.

We strongly support LSC’s statement in the preamble to the proposed rule recognizing that once a program commences legal services, a victim of trafficking’s subsequent departure does not necessarily render the client ineligible for services. 79 Fed. Reg. 6859, 6863 (discussing Program Letter 2000-2). Such a situation may arise for a victim of trafficking under a variety of circumstances. For example, victims of trafficking who have obtained T- visas may return temporarily to their home country on advance parole for a variety of purposes, including the need to help their minor children obtain the proper documentation and complete the necessary steps at the American consulate that will allow them to reunite with their parent in the United States. Victims of trafficking should be eligible for continuing representation throughout such a temporary absence.

We also recommend that LSC clarify that noncitizens who are eligible under more than one provision be considered as eligible for the most expansive level of services. This clarification is needed because, for example, victims of trafficking who are eligible for legal services under the TVPRA are eligible for all services, while those rendered eligible under the aforementioned provisions of the VAWA are eligible for “related” services, and noncitizens under both provisions should be eligible for all services. This is in accordance with the specific language set forth in the VAWA provision stating that nothing in the VAWA 2005 amendments shall limit the existing right to LSC representation of trafficking victims. VAWA 2005, Pub. L. 109-162, Jan. 5, 2006 § 104(b).

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In conclusion, we greatly appreciate the work that LSC has put into updating Part 1626, and we support these changes, with the modifications suggested herein.

Sincerely,

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