

THE OVERLAP OF IMMIGRATION LAW AND STATE CIVIL LAW MATTERS

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I. INTRODUCTION

A. Why is Immigration Law Relevant to State Courts?

- 1. Courts are encountering increased numbers of non-citizen litigants, varying ethnic and racial backgrounds and life experiences.**
 - a. The U.S. population is becoming increasingly diverse.
 - i. According to the U.S. Census Bureau, 12.1 percent of Washington's population is foreign-born.¹
- 2. State court decisions can have a substantial, if not determinative impact on immigration law issues.**
 - a. In some situations, state court decisions will directly determine whether an individual is eligible to participate in the immigration process.
 - b. The foreign-born in the U.S. have a variety of immigration statuses: they may be naturalized U.S. citizens, lawful permanent residents ("green card" holders), temporary visa holders, undocumented, or in a number of less common categories.
 - c. Those who are the most significantly impacted by state court decisions often do not have lawful immigration status, but might qualify to apply for such status.
 - d. Others who have lawful status may also be impacted by state court orders when the orders affect an individual's ability to maintain her or his legal status.
 - e. Understanding the immigration consequences of state court decisions may assist the court in understanding many factors influencing litigants' choices and decision making.
- 3. In which types of civil cases might the issue of immigration status arise?**
 - a. In family law and domestic violence matters decisions may limit or expand a litigant's immigration options.
 - i. Timing of a dissolution and adoption decrees.
 - ii. Finding of the invalidity of a marriage.
 - iii. Findings of abuse, neglect, or dependency.
 - iv. Providing protection from abuse.
 - b. In civil cases parties may raise the issue as to whether immigration status of a party is relevant.
 - i. Impact on child support.
 - ii. Impact on residential schedules.
 - iii. Impact on damages (including wages).

¹ See, <http://quickfacts.census.gov/qfd/states/53000.html>

II. DOMESTIC RELATIONS ISSUES

A. Family-Based Immigration

1. How is family-based immigration relevant to state courts?

- a. Family-based immigration comprises the largest percentage of legal immigration to the U.S.²
 - i. Almost two-thirds of legal immigrants arrive through sponsorship by a spouse, parent, child, or sibling.
- b. History.
 - i. Early American immigration law gave male citizens and permanent residents control over the immigration status of their immigrant wives.
 - ii. U.S. citizen and permanent resident women could not file applications for their male immigrant spouses.³
 - iii. The Immigration and Nationality Act of 1952, Pub.L.No. 414, 66 Stat. 166 (1952)(INA) created the roots of today's visa quota system with the "gender neutral" family-based visa system, making it possible for either husband or wife to petition for a non-citizen spouse.
 - 1) These provisions only applied (and currently only apply) to heterosexual spouses.
 - iv. Conditional Permanent Residence (CPR).
 - 1) In 1986, as a result of Congressional concerns about marriage fraud, the spousal petitioning process was modified, and the status of CPR (a time-limited lawful-resident status) was created. See Immigration Marriage Fraud Amendments, Pub. L. No. 99-639, 100 Stat. 3537 (1986).
 - 2) Joint petition and CPR.
 - a) If a couple is married for less than two years at the time the immigrant spouse obtains permanent residence, s/he is granted conditional (CPR) status.
 - b) CPR's and their U.S. citizen spouses must file a *joint* petition to remove the conditional status two years after the immigrant spouse obtains permanent resident status.

² See, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf

³ Non-citizen women generally became U.S. citizens by marriage to a U.S. citizen or through a non-citizen husband's naturalization. The only women who did not derive citizenship by marriage under this law were those ineligible for naturalization because of their race. Act of Feb. 10, 1855 (§1994, *rev.* § 2172) ("[a]ny woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."); *In re Rionda*, 164 F. 368 (1908); See also, Expatriation Act of 1907, 34 Stat. 1228 (1907) (defines the citizenship of women married to foreigners by stating that women assume the citizenship of their husbands, and a woman with U.S. citizenship forfeits it if she marries a foreigner, unless he becomes naturalized) *partially repealed by* The Cable Act of 1922, 42 Stat. 1021 (1922) (allows American women who marry European men to retain their U.S. citizenship, but American women who marry Asians will still forfeit their American citizenship).

- c) Failing to file the joint petition could result in the denial of permanent residency and the initiation of removal proceedings against the non-citizen spouse. INA §216(c)(2); 8 U.S.C. §1186a(c)(2)
 - d) Effect of Joint Petition on cases involving spousal abuse.
 - i) The joint-petitioning requirement had the unfortunate effect of placing battered immigrants at the mercy of their abusers and at risk of continuing abuse.
 - v. Spousal abuse waivers.
 - 1) The Immigration Act of 1990 created important amendments to the family-based immigration laws, allowing “good faith” and “battered spouse/extreme cruelty” waivers to the joint petitioning requirement.
 - 2) The battered spouse waiver was included in the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 codified at 8 U.S.C. §1186a(c)(4)
 - vi. Violence Against Women Act (VAWA)
 - 1) Beginning with the Violence Against Women Act (VAWA) of 1994, Congress has amended the immigration statutes numerous times to expand protections for battered spouses and other victims of domestic violence and violent crimes (see Section V, *infra*, at p. ___).
 - 2) See, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-1955, 8 USC §§ 1151, 1154, 1186a, 1186a note, 1254, 1245 (1994) (hereinafter VAWA); Illegal Immigration Reform and Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009 (hereinafter IIRAIRA); Pub.L. No. 106-386, Division B of the Victims of Trafficking and Violence Protection Act of 2000 (H.R. 3244), Pub.L. No 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).

2. Marriage and termination of marriage.

Many applications for immigration status are based on a legal family relationship. If a court declares a marriage invalid, or orders dissolution of a marriage, the immigration status of a spouse and/or children may be jeopardized.

- a. Good faith marriage.
 - i. Why is “good faith marriage” important?
 - 1) For a non-citizen to obtain lawful permanent residence through his or her spouse, immigration law requires that the marriage not be entered into for the purpose of evading immigration law. INA §204(c); 8 U.S.C. §1154(c)
 - 2) To immigrate based on the marital relationship, the marriage must be valid under the law of the state or country, and then under the Immigration and Nationality Act.
 - a) Immigration law does not recognize same-sex marriage under the Defense of Marriage Act (DOMA), P.L. 104-199, 110 Stat. 2419 (1996), which defined marriage as a union between a man and a woman.
 - 3) Even some marriages that are not valid may still fulfill immigration requirements provided there is “good faith.”

- a) In certain instances involving abused spouses, if the marriage was not valid because a prior or concurrent marriage of the abusive U.S. citizen or permanent resident sponsor was not terminated, but the non-citizen applicant believed the marriage was valid, an application for status as an *intended spouse* may still be filed. INA §204(a)(1)(A)(iii)(II)(aa)(BB); INA §204(a)(1)(B)(ii)(II)(aa)(BB)
 - b) Marriage to a U.S. citizen sponsor results in conditional permanent residence (CPR), unless the marriage is more than two years old at the time of granting the immigrant status. INA §216(c)
- b. Termination of marriage-dissolutions and declarations of invalidity.
 - i. Spouses of U.S. citizens.
 - 1) Generally, if an individual is already a lawful permanent resident, the dissolution of his or her marriage will have no impact on his or her immigration status.
 - 2) However, if an individual obtained his or her lawful permanent status through marriage, and then subsequently divorces, he or she is barred from petitioning for a new spouse for five years.
 - 3) Exception would be if he or she can prove that the first marriage was bona fide by clear and convincing evidence. INA §204(a)(2)(A)(ii)
 - ii. Effect on conditional residence.
 - 1) In the case of a non-citizen who has conditional residence (CR), a dissolution of marriage *will* impact his or her immigration status.
 - a) This involves situations where a U.S. citizen spouse filed a petition for the immigrant spouse soon after the marriage.
 - 2) If permanent residence was obtained less than two years after the date of marriage, the permanent resident status is *conditional* for two years from the date of status and the spouse is referred to as a conditional permanent resident (CPR). 8 U.S.C. § 1186
 - a) Within the 90 days prior to the expiration of the two years, so long as the marriage has not legally terminated, the parties must file a joint petition to remove the condition, Form I-751.
 - b) If the petition is not filed, the permanent resident status terminates. 8 C.F.R. § 216.4
 - 3) Waiver of joint petition.
 - a) Alternatively, the immigrant spouse can file to waive the requirement of a joint petition. 8 U.S.C. § 1186(c)(4); 8 C.F.R. § 216.5
 - b) Grounds for waiver are as follows:
 - i) Extreme hardship if the non-citizen is removed, where the hardship arose during the conditional residence period.
 - ii) Marriage was entered into in good faith, but has terminated.
 - iii) Abuse of spouse or child: “battered by or was the subject of extreme cruelty perpetrated by his or her spouse and the beneficiary was not at fault in failing to meet the petitioning requirements.”

- (1) Immigration regulations define this to include psychological or sexual abuse or exploitation. 8 C.F.R. § 216.5(e)(3)(i)
- iii. Spouses of permanent residents and other family visa preference categories.
- 1) Dissolution of marriage.
 - a) Dissolution of marriage may also impact the immigration status of spouses and children of lawful permanent residents.
 - b) There is a long waiting period between the time a family visa petition is accepted and the time a visa becomes available.
 - c) If the marriage terminates before a visa is available and the immigrant spouse can get her/his permanent resident status, s/he is no longer eligible for the immigration status s/he applied for.
 - d) There is one major exception for those who are eligible to self-petition under the Violence Against Women Act (VAWA).
 - i) If the marriage is terminated for any reason after a VAWA self-petition is filed, the termination will not affect the application. INA § 204(a)(1)(A)(vi) and INA § 204(a)(1)(b)(v)(I)
 - ii) Even if the marriage is terminated prior to the filing of the VAWA self-petition, if the application is filed within two years of the termination and there is a showing of a “connection” between the dissolution of marriage and domestic violence, the individual may still be eligible for immigration benefits under VAWA. INA § 204(a)(1)(A)(iii)(II)(aa)(CC); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)
- iv. Spouses of non-immigrant visa holders
- 1) What is a non-immigrant visa?
 - a) A non-immigrant visa gives a non-citizen the right to enter and remain in the U.S. temporarily for a specific purpose.
 - i) Common non-immigrant visas are for visitors for business or pleasure (“B” visas); students or scholars (“F” or “J” visas); professional workers (“H” visas); and fiancées of U.S. citizens (“K” visas). 8 USC § 1101(a)(15), e.g. § 1101(a)(15)(B) for visitors’ visas.
 - b) Derivative beneficiaries of non-immigrant visas.
 - i) In some cases the spouse and children under the age of 21 of the principal visa-holder will be permitted to enter on the visa as well.
 - ii) They are not necessarily authorized to work or study, even if the principal visa-holder is.
 - iii) The derivative family member’s status is dependent on the qualifying relationship to the principal non-immigrant visa-holder, and the principal visa-holder’s ongoing valid visa.
 - 2) Effect of termination of marriage.
 - a) If the marriage terminates, the derivative spouse or dependent is no longer entitled to the visa status.
 - b) If the principal visa-holder becomes deportable or otherwise violates the provisions of the visa, he or she as well as the derivative beneficiaries will lose status.

- 3) Impact on naturalization.
 - a) As a general rule, a permanent resident who has resided in the U.S. for five years can apply to naturalize to become a U.S. citizen.
 - i) Unless they obtained legal permanent residence as the spouse of an abusive U.S. citizen. 8 U.S.C. §1430
 - b) Permanent residents who obtain their legal permanent residence through their marriage to a U.S. citizen can apply for citizenship after residency in the U.S. for three years, if s/he has been in “marital union” with the citizen spouse for three years.
 - c) Benefits of U.S. citizenship.
 - i) Some benefits may be impacted by the dissolution of marriage if an individual is unable to apply for naturalization in an expedited manner.
 - (1) The right to seek employment with the federal government.
 - (2) The right to apply for many forms of government benefits that may otherwise be unavailable to permanent residents or other non-citizens.
 - (3) The ability to petition to bring in parents without being consigned to a waiting list.
 - (4) No gift/estate tax marital deduction exists for non-citizen spouses.
 - (a) There are many long-term permanent resident spouses of citizens who are not aware of this significant tax consequence, though if naturalization is not an option, there is a trust device that may avoid these consequences.
 - 4) Effect of declarations of invalidity.
 - a) Petitions for declarations of invalidity generally have the same legal effect as dissolutions of marriage.
 - b) A finding of invalidity due to fraud might be problematic for a non-citizen who must prove a “good faith marriage.”
 - c) It is not unusual for individuals to petition for declarations of invalidity of marriage based on fraud, alleging that a non-citizen fraudulently induced them into marriage for immigration purposes.
 - d) Further judicial inquiry is warranted because the state court’s findings are binding on the Immigration Court. See, *Nakamoto v. Ashcroft*, 363 F. 3d 874, 883 (9th Cir. 2004) (Court held that the final judgment of the state family court finding that the immigrant made misrepresentations with the intent to induce the husband to marry her is entitled to full faith and credit).
- c. Economic issues.
- i. Affidavits of support and maintenance.
 - 1) Almost all immigrants who are applying to obtain lawful permanent residence through a family member must submit an Affidavit of Support.

- 2) In filing the Affidavit of Support, a U.S. citizen or legal permanent resident accepts responsibility for financially supporting the non-citizen relative.
 - a) The Affidavit of Support is used to show the U.S. citizenship and Immigration Status (USCIS) that the immigrant has adequate means of financial support throughout his or her status as a permanent resident and will not become a “public charge.”
 - b) “Public charge” is an immigration law term that describes someone who needs government assistance to survive, or will likely need government assistance to survive in the future.
 - c) The Affidavit of Support creates a contractual obligation and can be enforced by the sponsored immigrant, the local, state, or federal government, or any other agency providing a means-tested public benefit for the immigrant. 8 C.F.R. §213a.2(e)(2)(i)
 - i) The contract is only enforceable if the government agency seeking enforcement has published that the benefit is a means-tested public benefit before the benefit was first provided to the immigrant. 71 FR 35732,35742 (June 21, 2006)
 - ii) This responsibility lasts until the non-citizen either naturalizes, or is credited with forty (40) hours of work under the Social Security Administration. INA §213A(a)
 - iii) Some courts have found the Affidavit of Support enforceable and have ordered support payments to a former spouse. See, *Shumye v. Felleke*, 555 F.Supp.2d 1020(N.D. Cal.2008); *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005)
 - iv) As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support. 71 F.R. 35732, 35740 (June 21, 2006)
- ii. Child support.
 - 1) Courts may also be faced with determining and enforcing child support when the litigants or the child(ren) of the litigants are non-citizens.
 - 2) Enforcing child support may be a particular problem when the obligor parent does not reside in the U.S.
 - 3) Hague Convention.
 - a) On November 23, 2007, the U.S. signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.
 - b) Convention provides a cooperative system for the child support authorities of contracting nations to recognize and enforce foreign child support decisions.
 - i) For a current listing of reciprocating countries, go to <http://www.acf.hhs.gov/programs/cse/international/>.
 - 4) U.S. Passport Agency hold for failure to pay.
 - a) The U.S. State Department can also revoke the U.S. passport for delinquent child support owed over \$2,500 from U.S. citizens. 22 C.F.R. §51.60(a)(2)

- b) In order to reinstate the passport, the obligor must demonstrate to the State Child Support Enforcement Agency the obligation has been fulfilled, and the State will forward the relevant information to the Federal Child Support Enforcement Division, to then be forwarded to the U.S. Passport Agency.
- iii. Ability to work in the U.S.
 - 1) In determining ability of a non-citizen parent or spouse to pay or maintain child support or maintenance, the court will be faced with determining the party's income.
 - 2) In some cases, non-citizens may face economic barriers due to a lack of employment authorization from CIS, or an inability to obtain certain public benefits due to their immigration status. *See, e.g.*, Washington Administrative Code Sec. 388-424-001, et. al., 8 U.S.C. §§1601 et. al.
 - 3) In dividing property and awarding child support or maintenance, courts may consider the length of time a non-citizen immigrant may require financial support for her/himself and her/his child(ren); or the length of time it will take for the immigrant to be able to work.

B. Family Court

1. Parenting plans.

- a. Parenting plans where a non-citizen parent is in deportation (removal) proceedings and/or is going to be removed.
 - i. A non-citizen parent involved in a family court matter may simultaneously be in proceedings facing removal from the U.S.
 - ii. Lack of participation of a parent in the family court proceedings cannot be assumed to show that s/he has already been removed, or that there is a lack of interest in pursuing residential time or custody of the child(ren).
 - 1) Many parents have not been removed and may still be involved in removal proceedings, which can sometimes take years to resolve (often conflicting with the strict timelines of child custody proceedings).
 - 2) It is possible that the parent might have viable defenses against removal and may not be removed.
 - iii. Immigration detention.
 - 1) During removal proceedings, parents may be held in immigration detention centers far from their residence; and thus, have no way of meaningfully participating in the parenting plan case.
 - 2) Because their whereabouts are often unknown by the court when they are detained, parents may not receive notices about the parenting plan proceedings, may not have phone access, or know how to contact their legal representative.
 - 3) Even where a parent might have knowledge about a pending child custody case, immigration authorities may hinder their participation in the case.

- 4) Due to obstacles facing detained parents, local courts should ensure that they receive all notices, are in communication with their attorneys, and that court orders are issued and served upon immigration authorities to ensure that they participate in court hearings in person, or at the least, telephonically.⁴
- iv. Removal of non-citizen parents from the U.S.
 - 1) Though the person has a U.S. citizen child, it *does not* automatically *stop the removal*, although in some cases the existence of a citizen or permanent resident child may be a positive equity if the parent is eligible to apply for some defense to removal.
 - 2) If the parent is removed, in some cases, he or she may have an option to legally return to the U.S.
 - b. Undocumented parents not in removal proceedings.
 - i. A person who is undocumented does not always face imminent removal from the U.S.
 - 1) Millions of undocumented persons have lived for decades in the U.S., often acquiring lawful immigration status later in life.
 - 2) When a U.S. citizen child reaches the age of 21, he or she may be able to petition for the parent to become a permanent resident, whether the parent is living in the U.S. or abroad. INA §201(b)(2)(A)(i)
 - c. Parenting plans involving non-citizens and allegations of domestic violence.
 - i. Threatening deportation as a way to abuse and control.
 - 1) Abusers may threaten to obtain legal custody of the child(ren), telling immigrant victims that they will lose their child(ren) due to their lack of immigration status.
 - ii. Evidence relating to immigration status.
 - 1) Abusers may attempt to introduce evidence about the victim's immigration status frequently intended to control the battered immigrant victim. *See, e.g., Kim v. Kim*, 208 Cal. App. 3d 364 (1989)
 - a) Courts should weigh whether allowing testimony or evidence of a litigant's immigration status serves as reinforcement of the abuser's threats to have the victim deported if s/he does not comply with her/his demands.
 - iii. Immigration status and parenting functions.
 - 1) A parent's immigration status alone is irrelevant as to which parent is more likely to be able to perform the day-to-day parenting functions.
 - 2) Claims that this information is necessary related to the threat of flight with the child(ren) should be supported by evidence demonstrating that the

⁴ The location of detained non-citizen parents can be tracked at: <https://locator.ice.gov/odls/homePage.do>. (A person can be tracked by name and date of birth or by their immigration identification number (A#). The country of birth is required for either search.)

threat of flight is real, as any litigant would have to do in any other parenting plan matter, whether across state, or international borders.

- 3) The immigration status of the parent is not a determining factor as to whether an individual is likely to flee with the child(ren).
- 4) Upon separation, abusers may engage in protracted custody or visitation litigation as a means to control their former partners. *See*, L. Bancroft & J. Silverman, *The Batterer as Parent*, Sage Publications, 2002, Chapter 5
 - a) Abusers may harass victims during court proceedings by repeatedly filing motions to modify temporary parenting arrangements; by repeatedly requesting continuances to force victims to return to court, jeopardizing their employment; by stalking victims from court to home or to work; and by filing false complaints with Child Protective Services.
 - b) Explicit court orders can reduce abusers' use of court proceedings or the legal system as a method of control. *See* Section IV.C, *infra* for more information about protective orders.

iv. Judicial findings.

- 1) Findings of domestic abuse in judicial proceedings are relevant to the best interests of child(ren). R.C.W. §26.09.002; R.C.W. §26.09.187; R.C.W. §26.09.191
- 2) In addition, they may be highly relevant in future immigration cases to prove battery or extreme cruelty (see Section V. below).
- 3) Findings of abuse, restrictions in residential placement or visitation due to abuse, and restraint provisions in custody orders may also affect a litigant's ability to prove the requirement of "extreme hardship" in certain types of removal cases.
 - a) Findings that the abuser has threatened to harm the child(ren) might help establish that removing the battered parent or child(ren) from the legal protections provided by U.S. courts would cause "extreme hardship."
 - i) This is relevant in a removal case, or in the adjudication of a waiver allowing a non-citizen to obtain lawful status.
 - b) Findings with respect to a child(ren)'s best interest being primary residential placement with the non-abusive parent might be used to demonstrate extreme hardship to either the parent or the child(ren) due to their long-term separation.
- 4) Court findings may affect a battered immigrant's ability to meet the "good moral character" requirement for an immigration case.
 - a) If there has been a finding that a non-citizen "failed to protect" the child(ren) from abuse, or failed to provide support for his or her child(ren), the individual may face difficulty in establishing that s/he has good moral character for the purposes of the immigration matter.
 - b) Findings that a non-citizen committed domestic violence may also impose increased barriers in establishing good moral character or eligibility for immigration relief unless there is finding that the non-citizen was not the primary perpetrator of violence in a relationship.

- d. International parental kidnapping and custodial interference.
 - i. When children are abducted and taken to another country it may be extremely difficult to get them back to the U.S.
 - 1) Battered immigrants often remain with their abusers in order to prevent international abduction.
 - 2) Courts should consider kidnapping allegations seriously and issue orders to deter an abuser's kidnapping attempts.⁵
 - ii. *In re Marriage of Katare*, 175 Wash.2d 23 (2012).
 - 1) Case involved foreign travel restrictions imposed as part of a parenting plan under RCW 26.09.191(3), where trial court imposed restrictions based on evidence that the father made threats to abscond with his children to India.
 - a) The trial court imposed restrictions, while finding that that Mr. Katare did not pose a serious risk of abduction.
 - b) The Court of Appeals remanded, finding that restrictions in a parenting plan must be supported by express finding of parent's conduct adverse to the children's best interest. *In re Marriage of Katare*, 125 Wash.App. 813, 826, 105 P.3d 44 (2004) (Katare I).
 - c) On remand the trial court heard new testimony, including that of an attorney presented by Mrs. Katare, as an expert in international child abduction matters. The trial court found that Mr. Katare did not pose a serious risk of abduction, but the consequences of an abduction were irreversible so as to warrant limitations on his residential time.
 - d) The Court of Appeals again remanded for clarification as the trial court's finding that Mr. Karate did not pose a serious risk of abduction was deficient to support restriction. *In re Marriage of Katare*, 140 Wn. App 1041 (2007)(Katare II).
 - e) The trial court again held a two-day hearing to address whether the evidence supported foreign travel restrictions and passport controls. The court permitted expert testimony relating to risk factors for child abduction and consequences of abduction to India. The trial court eliminated its previous finding that Mr. Katare appeared to pose no serious threat of abducting the children and imposed travel restrictions.
 - f) Mr. Katare argued on appeal that the court committed prejudicial error by allowing improper expert testimony regarding "risk factors" for child abduction.
 - g) The Court of Appeals found the restrictions were supported by substantial evidence. *In Re Marriage of Katare*, 159 Wn. App 1017 (2011) (Katare III).
 - 2) Supreme Court Decision
 - a) Upon review, the Supreme Court upheld the travel restrictions because the trial court's findings were supported by substantial evidence and admission of the expert testimony was not an abuse of discretion.

⁵ Catherine F. Klein & Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 1027 (1993).

- b) Travel and passport restrictions in parenting plan do not violate a parent's constitutional right to parent children without state limitations where the court made findings that husband made credible threats against wife to abscond with the children and he had engaged in a pattern of abusive behavior. *In re Marriage of Katare*, 175 Wash.2d 23 (2012).
- c) Risk factors presented at trial through expert testimony that the *Katare* Court ruled as admissible included:
 - i) Whether there has been a prior threat of abduction.
 - ii) Whether the parent has engaged in planning activities that could facilitate removal of the child from the jurisdiction.
 - iii) Whether the parent has engaged in domestic violence or abuse.
 - iv) Whether the parent has refused to cooperate with the other parent or the court.
 - v) Whether the parent has strong familial, financial, or cultural ties to another country that is not a party to or compliant with the Hague Convention.
 - vi) Whether the parent lacks strong ties to the United States.
 - vii) Whether the parent is paranoid delusional or sociopathic.
 - viii) Whether the parent believes abuse has occurred.
 - ix) Whether the parent feels alienated from the legal system.
 - x) Whether the parent has a financial reason to stay in the area.
- iii. In considering the risk of abduction, a court should consider the litigant's particular behaviors that pose a risk to a child's best interests, taking care not to make decisions based on racial, ethnic, and other stereotypes.
 - 1) In weighing the list of articulated factors relating to risk of abduction, consideration of a party's immigration status may weigh as a negative factor
- iv. Blocking passport issuance to citizen children.
 - 1) To prevent taking U.S. citizen children out of the country in violation of custody orders, federal law provides for passports to be blocked by filing of court orders with the U.S. State Department. 22 C.F.R. §51.27, 61 Fed. Reg. 6505 (Feb. 21, 1996)
 - 2) There must be an order from a court of competent jurisdiction, i.e., a U.S. state court or foreign court having jurisdiction over child custody issues consistent with the principles of the Hague Convention on the Civil Aspects of International Child Abduction and the Uniform Child Custody Jurisdiction and Enforcement Act.
 - 3) The court must be the court in the state where the child(ren) resides or place of habitual residence.
 - 4) The order must:
 - a) Grant sole custody to the objecting parent, or
 - b) Establish joint legal custody, or
 - c) Prohibit the child(ren)'s travel without the permission of both parents or the court, or

- d) Require the permission of both parents or the court for important decisions unless permission is granted in writing.
- v. Penalties for violation of U.S. custody decrees.
 - 1) Non-citizens who interfere with child custody decrees may be excludable from entry to the U.S. and are not eligible for visa issuance, or adjustment of status to permanent residence, unless the child(ren) is located in a foreign country that is a signatory to the Hague Convention. INA §212(a)(9)

2. Special immigrant juvenile status.

Children under the jurisdiction of dependency, delinquency, or guardianship courts who will not be reunified with their parents due to abuse, neglect, or abandonment can apply for permanent residency with “Special Immigrant Juvenile Status” (SIJS). An undocumented child who is declared dependent upon a juvenile court or committed to the Department of Social and Health Services, or to court-appointed individuals or entities, whose “reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law” and whose return to their country of nationality or last habitual residence is not in his or her best interest, may be able to obtain SIJS. INA § 101(a)(27)(J)

- a. Dependency proceedings.
 - i. For immigration purposes, when a juvenile court accepts jurisdiction to make a decision about the care and custody of a child, the child is dependent on a juvenile court.
 - 1) A juvenile is dependent upon the court if s/he “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court. 8 CFR § 204.11(c)(6)
 - a) Establishing dependency in juvenile court does not require Child Protective Services (CPS) involvement or a decision to place the child in any particular form of care.
 - 2) Under Washington law, a dependency petition is made pursuant to RCW 13.34.030(5). Under that provision, a child may be declared a dependent of the State if:
 - a) The child has been abandoned, as defined under RCW § 13.34.030(1)....;
 - b) The child is abused or neglected as defined in RCW § 26.44 ...by a person legally responsible for the care of the child; or
 - c) The child has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.
 - 3) Dependency orders for special immigrant juvenile purposes.
 - a) Should cite to RCW § 13.34.030(5) and include the following findings:

- i) The child is declared dependent on a juvenile court, or the court has legally committed the child to or placed the child under the custody of a state department or agency;
 - ii) Reunification of the child with one or both of the parents is not viable;
 - iii) Return to the child's home country is not in the child's best interest (and it is in his/her best interest to remain in the U.S.); and
 - iv) These findings and determinations were made due to abuse, abandonment, neglect, or some other similar basis under state law, by the child's parent, guardian, or other custodian.
- b. Other juvenile court proceedings.
 - i. Children in guardianship or delinquency proceedings who have been appointed a guardian by the court, or who are under the custody of the State can also be considered dependent on juvenile court.
 - 1) Guardianship.
 - a) A child for whom a guardianship is established may qualify for SIJS even if s/he was never formally removed from a parent by the state or placed in foster care.
 - b) Children not formally placed in foster care can also be considered dependent on a juvenile court.
 - c) Qualifying guardianships may be established through any court empowered under state law to make decisions regarding the care and custody of children. INA § 101(a)(27)(J), as amended by the Trafficking Victims Protection Reauthorization Act of 2008 §235(d), Pub.L.No. 110-457, 122 Stat. 5044(2008), §235(d).

3. Juvenile court jurisdiction.

- a. State court jurisdiction over minor until legal status granted.
 - i. Immigration regulations predating the current statute state that the court must retain jurisdiction over the application until the CIS actually grants permanent residency.
 - ii. While this requirement, read in tandem with recent statutory changes, appears to eliminate the continuing jurisdiction requirement altogether, jurisdiction over the child should be retained by the court until there is clear guidance issued by CIS.
 - iii. While CIS must adjudicate the first part of the SIJS application within 180 days, the second part of the application may take longer to adjudicate, potentially over a year.
 - iv. This can result in courts retaining jurisdiction longer than they normally would, or having to re-impose jurisdiction.
- b. Case closure.
 - i. If continuing to retain court jurisdiction in a case is not feasible, where applicable, courts should enter specific language in the juvenile court order terminating jurisdiction of the case that states the case is being closed due to age.

4. Children held in immigration detention.

- a. Collaboration with the Office of Refugee Resettlement's (ORR) (within the Department of Health and Human Services).
 - i. An unaccompanied non-citizen child already in Immigration custody before proceedings have been initiated in juvenile court means that a juvenile court judge *cannot* make custody or care decisions about the child without the permission of ORR.
 - ii. The SIJS statute states, "no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction." INA § 101(a)(27)(J)(iii)(I), 8 USC § 1101(a)(27)(J)(iii)(I)
- b. Specific consent is only required where a juvenile court will deal with a child's custody or placement status.
 - i. Specific consent is not required for a juvenile court to take jurisdiction in order to enter SIJS findings or other aspects of a child's case that do not deal with custody or placement.
- c. Requests for consent for a juvenile court to order a change in custody or placement determination over a child in ORR custody must be made in writing to ORR.⁶

5. Adoption.

- a. Adoption can create a parent/child relationship for immigration purposes.
 - i. Immigration law definitions.
 - 1) The terms "parent" and "child" have specific legal meaning.
 - 2) Adopted children must meet certain requirements in order to be considered the "child" of the adoptive parent in order to share any immigration benefits through the relationship.
 - 3) To confer immigration status through a family immigration petition based on an adoption, the child:
 - a) Must have been adopted under the law of the child's residence or domicile while under the age of 16, and
 - b) Must have been in the legal custody of and has resided with the adoptive parent for at least two years while under the age of 21. 8 USC § 1101(b)(1)(E)(i)
 - 4) If the adoption does not occur timely, the child will lose all immigration benefits s/he might have gained through the family relationship.
 - 5) The requirement that the child reside and be in the legal custody of the adoptive parent for two years before reaching the age of 21 can be fulfilled either before or after the completion of the adoption.

⁶ For more information, go to, http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm; Neufeld Memorandum, US CIS Interpretation of TVPRA, page 4

- ii. Once an adopted child is the “child” of a permanent resident or U.S. citizen, the adoptive parent can file papers for the non-citizen child to become a permanent resident.
 - 1) Even if the parent is not yet a permanent resident, as long as the parent/child relationship is timely created, the child will be able to take advantage of any future immigration status the parent obtains, and vice versa.
- b. Sibling adoption and overseas orphan adoption.
 - i. Exceptions to timing and residency requirements.
 - 1) Siblings.
 - a) If biological siblings are adopted, only one sibling’s adoption must be completed before the age of 16.
 - b) The other siblings’ adoptions may be completed any time up to their 18th birthdays.
 - c) The two-year lawful custody requirement still applies. 8 USC § 1101(b)(1)(E)(ii)
 - d) The siblings do not have to be adopted at the same time, and the younger sibling does not have to have met the two-year requirement before the older sibling is adopted.⁷
 - 2) Overseas orphans.
 - a) Another exception concerns adopted children who are classed as “orphans” under the Immigration & Nationality Act (INA).
 - b) “Orphan” under immigration law has a different meaning from common usage.
 - i) To meet the definition of “orphan,” the child must be residing outside the U.S. when the petition is filed.
 - ii) The only children who come within this category are those who, with the help of prospective adoptive parents, entered the U.S. on a special orphan visa.
 - iii) A typical non-citizen child in foster care waiting to be adopted does not qualify as an “orphan” for this purpose even if both parents are deceased:
 - (1) Test is entry on an orphan visa. In addition, the adopting parent must obtain a valid home study before adopting and must meet many other requirements, including those of the Hague Convention (discussed below), if applicable. 8 CFR § 204.3

⁷ Interpreter Releases, Feb. 5, 2001 entitled “INS Updates Guidance on Minor Adopted Siblings Legislation,” discussing Memorandum from Michael Pearson, Exec. Assoc. Comm’r, INS, HQADN 70/8.3

- iv) Orphans are not subject to the two-year lawful custody requirement, although they do need to be adopted by age 16. 8 USC § 1101(b)(1)(F)
- c. The requirements of the Hague Convention⁸
 - i. Adoption and immigration laws are somewhat more complicated where the child is from a country that is a signatory to the Hague Convention.
 - 1) The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption establishes international standards for inter-country adoptions to prevent the abduction, sale, or trafficking of children.
 - 2) Additional requirements that must be met for a child to immigrate through adoption.
 - 3) U.S. became a signatory to this Convention on April 1, 2008.
 - 4) As of April 1, 2008, the rules for adoption under the INA depend upon whether or not the adoptee child is from a country that is also a signatory to the Hague Convention.⁹
 - ii. What does the Hague Convention say?
 - 1) Emphasizes the best interests of children and provides increased protections to children, birth families, and adoptive families.
 - 2) Recognizes inter-country adoption as a valid means of finding homes for children who cannot return to their country of origin.
 - 3) Under the Convention, both children abroad and those already in the U.S. can be adopted by persons located within and outside of the U.S. A child who is already in the U.S. as a parolee, non-immigrant, or even in unlawful status may be able to be adopted under the Convention.
 - iii. Stricter Hague Convention provisions apply to cases involving children that come from countries that are signatories to the Hague Convention¹⁰ or where the children are deemed habitual residents of those countries and the adoption process is initiated on or after April 1, 2008. Fed. Reg. Vol. 72, No. 192. at 56834, 56850.
 - 1) 8 USC §1101(b)(1)(G) and 8 CFR §204.301-.313 contain the basic requirements for an adoption under the Hague Convention.

⁸ For more information, see, “A Guide for Judges in Outgoing Cases Under the Hague Adoption Convention,” William J. Bistransky, Division Chief for Intercountry Adoption, Office of Children’s Issues, Bureau of Consular Affairs, US Department of State. Available at: http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5720885/k.4071/Hague_Convention_Requirements.htm; Online at adoption.state.gov; and Hague Adoption Convention Questions can be emailed to AdoptionUSCA@state.gov or directed to 1-888-407-4747 (for U.S. and Canada) and 202-501-4444 (outside the U.S. or Canada).

⁹ For a list of countries who have signed onto the Hague Convention go to: http://www.travel.state.gov/family/adoption/convention/convention_4197.html.

¹⁰ There are some Hague Convention countries that the United States is no longer processing adoptions from, such as Cambodia and Guatemala. See <http://adoption.state.gov/hague/overview/countries.html>.

- a) The child must be under 16 when the visa petition is filed.
- b) The child is a habitual resident of a Convention country (defined as the adoptee's country of citizenship unless the country of origin determines that the child is now habitually resident in the U.S.).
Inter-country Adoption Act (IAA) of 2000, PL 106-279
 - i) A child who has already been brought to the U.S. will generally be considered to be habitually resident in the Convention country. 8 CFR § 204.2(d)(2)(vii)
 - ii) If the child is deemed to be habitually resident of the U.S., the Convention rules do not apply. 8 CFR § 204.2(d)(2)(vii)(F)
- c) The child has no parents or both parents are unable to provide proper care, or sole or surviving parent or guardian is unable to provide care; and
- d) All parents or guardians give written irrevocable consent to termination of legal relationship to the child, and emigration and adoption.

iv. Immigration process.

1) Preliminary requirements.

- a) CIS must determine that the adoptive parents are suitable before authorities in other countries allow or place the child with the parents for adoption.
 - i) Generally includes a home study.
- b) The other country must also agree that the adoption is in the best interests of the child.

2) The U.S. must then decide, before the adoption takes place, that the Convention and the U.S. immigration requirements are met.

3) While children who are unlawfully present in the U.S. can be adopted under the Convention, they must return to the country of origin to obtain a visa after the visa petition (I-800) is approved.

- a) Without the visa, they cannot adjust their status.

d. The child citizenship act/automatic U.S. citizenship?

Even children who already have lawful permanent residence in the U.S. may need their adoption to be completed before their 16th birthday, so that they will qualify for automatic U.S. citizenship derived from a parent. United States citizenship confers many benefits beyond permanent residency.

i. Circumstances where a child automatically becomes a U.S. citizen where adoption is prior to their 16th birthday.

- 1) While under the age of 18, the following three events occur in any order:
 - a) The child becomes a permanent resident;
 - b) The child is legally adopted by a U.S. citizen before s/he reaches the age of 16, and has resided at any time in the legal custody of the citizen for two years; and

- c) The child currently resides in the legal and physical custody of the U.S. citizen parent. 8 U.S.C §1421
- 2) Where the Hague Convention rules of adoption apply, compliance is essential to meet the second prong requiring a legal adoption.
- e. SIJS and adoption.

Children who are in adoption proceedings and who have been placed under the custody of “an individual ... appointed by a state or juvenile court,” can qualify for SIJS. For more information, see Section II.B.2, above.

6. Vienna Convention on consular relations and family court.

- a. What is the Vienna Convention?
 - i. The Vienna Convention, which was ratified by Congress in 1969, was developed in an effort to establish friendly relationships between nations. 21 U.S.T. 77, 100-101
 - ii. It includes descriptions of the role of the Consulate, which include protecting the interests of foreign nationals, issuing passports and travel documents, safeguarding the interests of minors who are foreign nationals, and representing or preserving the rights or interests of foreign nationals.
 - iii. Of particular relevance to juvenile courts are the provisions relating to the Consulate performing the following diplomatic acts:
 - 1) Article 17 – Acting as a representative of foreign nationals.
 - 2) Article 36c – Visiting a foreign national who has been detained or who is custody.
 - 3) Article 37b – Receiving information and participating in deciding who is to be appointed as the guardian or trustee in the interest of a minor.
- b. How Vienna Convention provisions may impact a family court case.
 - i. Parent/family notified of right to contact their foreign consulate in a timely manner.
 - 1) When non-citizen child(ren) are placed in protective custody, the State should be notifying the foreign consulate of future court proceedings.
 - 2) The foreign consulate may be involved in cases, e.g. participating in reunification related activities at the request of the parents such as team decision making, etc.
 - 3) When placing child(ren) outside the U.S., state agency may contact the consulate to do relevant home studies, etc.
 - 4) Consulate may also help in obtaining relevant documents relating to identity and travel for children.
 - 5) The consular office obtaining placement home studies or locating specialized services in their home country.
 - c. Accordingly, family courts can inquire into whether litigants’ rights have been protected though dialogue in with counsel for parents, children, and for the State in family court proceedings.

III. EVIDENCE OF A LITIGANT'S IMMIGRATION STATUS IN CIVIL MATTERS

A. Admissibility of Evidence of Immigration Status

In a hotly contested legal matter, it is not unusual for parties to utilize the full range of tactics to gain an advantage. The issue of a litigant's immigration status may be raised for various reasons, ranging from determining a litigant's ability to pay, to introducing character evidence that a litigant is patently untruthful.

1. Court rules.

There are ethical and legal limits on the utilization of unfair litigation tactics or prejudicial or inadmissible evidence. Rule 403 of the Washington Rules of Evidence, as well as the Federal Rules of Evidence, require courts to balance the risk of unfair prejudice against the probative value of the evidence seeking to be admitted.

B. *Salas v. Hi-Tech Erectors*, 168 Wn. 2d 664 (2010)

1. Relevance of an injured worker's immigration status.

- a. Case involved determining the amount of damages potentially due
 - i. At trial, Mr. Salas had sought to exclude evidence of his immigration status. However, he also sought any future income lost due to his injury.
 - ii. The trial court admitted the evidence relating to his immigration status because it was relevant to whether Salas' future income would be in U.S. or Mexican currency.
- b. Court of Appeals decision.
 - i. The Court of Appeals concluded that while evidence of immigration status should generally be inadmissible because it is highly prejudicial, Salas' immigration status was discovered late and the court was not provided with sufficient relevant authority upon which to base a denial. *Salas v. Hi-Tech Erectors*, 143 Wn. App. 373 (2008).
- c. Supreme Court decision.
 - i. The Washington State Supreme Court ruled, "immigration status alone is not a reliable indicator of whether someone will be deported."
 - ii. When an undocumented immigrant is detained, he or she may be subject to removal proceedings, but removal is not always the end result.
 - iii. The Court found an abuse of discretion by admitting evidence of Salas' immigration status when Salas sought damages for lost future income.
 - iv. The Court found no evidence of pending removal proceedings which would call into question which country's currency to use.
 - 1) Salas had been living in the U.S. since 1989, without assistance since 1994, and had purchased a home and raised children in Washington State.
 - v. Although Salas' immigration status only marginally increased the likelihood he'd be deported, the Court found this reason enough to make his status relevant to the issue of lost wages.

- vi. The Court then analyzed whether the low probative value of Salas' immigration status was substantially outweighed by the risk of unfair prejudice.
- vii. The Supreme Court reversed and remanded the ruling, holding that the trial court abused its discretion by admitting evidence of Salas' immigration status:

“We recognize that immigration is a politically sensitive issue. Issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder’s duty to engage in reasoned deliberation. In light of the low probative value of the immigration status with regard to lost future earnings, the risk of unfair prejudice brought about by the admission of a plaintiff’s immigration status is too great. Consequently, we are convinced that the probative value of a plaintiff’s undocumented status, by itself, is substantially outweighed by the danger of unfair prejudice.” *Salas*, 168 Wn.2d at 673-74

C. Immigration Related Intimidation or Harassment

In the course of contested legal matters courts may also learn that litigants threaten to, or actually seek, immigration enforcement action as a method to intimidate or harass the other party.

1. Employment cases.

- a. Recognition of retaliation as litigation strategy.
- b. “Regrettably, many employers turn a blind eye to immigration status during the hiring process; their aim is to assemble a workforce that is both cheap to employ and that minimizes their risk of being reported for violations of statutory rights. Therefore, employers have a perverse incentive to ignore immigration laws at the time of hiring but insist upon their enforcement when their employees complain.” *Rivera v. Nibco*, 364 F.3d 1057 at 1072 (9th Cir. 2004)

2. Domestic violence matters.

- a. Violence Against Women Act¹¹ (VAWA)
 - i. Congress recognized that perpetrators of domestic violence often use *immigration status* as a tool of coercion and control. H.R. REP. NO. 103-395, at 25 (1993); S. REP. NO. 101-545, at 38-39 (1990)
 - ii. Congress recognized the connection between control over immigration status and domestic violence. The U.S. Citizen or Permanent Resident spouses can withdraw the petition filed with USCIS on the immigrant spouse’s behalf at any time.
 - iii. One of the purposes of enacting VAWA immigration provisions was to allow “battered immigrant women to leave their batterers without fearing deportation.” H.R. REP. NO. 103-395, at 26-7 (1993)
 - iv. “[T]he Battered Immigrant Women Protection Act of 2000. . . continues the work of the Violence Against Women Act of 1994 (VAWA) in removing

¹¹ Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified in scattered sections of 8 U.S.C.) [hereinafter VAWA]

obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident spouse to blackmail the abused spouse through threats related to the abused spouse's immigration status. . .”¹²

- b. Courts may face litigants seeking relief from immigration-related intimidation or harassment:
 - i. Motions for restraining, protective orders or injunctions;
 - ii. Requests for protective orders when a party seeks immigration status information through discovery that may not be relevant to the case;
 - iii. Motions in limine to prevent inquiry relating to immigration status at trial.

3. Immigration related restraints.

- a. Restraints related to immigration status.
 - i. Orders that do not unconstitutionally impinge on a litigant's free speech.
 - ii. To withstand constitutional scrutiny, a court must have made a specific determination that a particular course of conduct is unlawful, and provide injunctive relief that is narrowly crafted to prohibit repetition of the prohibited conduct. E.g, *Bering v. Share*, 106 Wn. 2d 212, 243 (1986), *cert dismissed*, 479 U.S. 1050(1987); *In re Marriage of Suggs*, 152 Wn. 2d 74 (2004); *In re Marriage of Meredith*, 148 Wn. App 887 (2009); *Madsen v. Women's Health Center, Inc.* 512 U.S. 753, 763 n. 2 (1994)
 - iii. Protection or restraining orders can offer crucial protection against continued harassment and domestic violence.¹³
- b. Orders that include findings of abuse, including immigration-related abuse or coercion provide critical evidence for battered immigrants who self-petition or file for cancellation of removal under VAWA.
 - i. Washington's protection order statute includes a “catch-all” provision that can be used creatively to obtain specific relief for battered immigrants. RCW 26.50.060(f)
 - ii. In family law matters, courts can “make provision for any necessary continuing restraining orders.” RCW 26.09.050(1)
 - iii. These provisions can be used to address potential areas of continuing conflict, and remove barriers that prevent victims from leaving their abusers.

4. Attorney ethical guidelines.

- a. RPC 4.4. The June 6, 2012 Washington Supreme Court En Banc Conference ordered the publication of proposed comments to RPC 4.4, with comments due April 30, 2013.

¹² Violence Against Women Act of 2000 Section by Section Summary, 146 CONG. REC., S10, 195 (daily ed. Oct. 11, 2000).

¹³ Victoria Holt, et.al, “Civil Protection Orders and Risk of Subsequent Police-Reported Violence, *Journal of the American Medical Association*, Vol. 288, No. 5, 589 (August 7, 2002).

- i. Suggested Comment [4] to RPC 4.4 seeks to clarify that, in representing a client, it is unethical under RPC 4.4(a) for a lawyer to make a statement or inquiry about immigration status for the purpose of intimidating or coercing a person, or obstructing that person from participating in a civil matter.
- ii. http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=281

IV. PROTECTIONS IN IMMIGRATION LAW FOR VICTIMS OF DOMESTIC VIOLENCE AND OTHER CRIMES

A. Immigration Status Under Violence Against Women Act (VAWA)

1. VAWA self-petition.

VAWA allows abused spouses, and children of lawful permanent residents or abused spouses, parents, and children of U.S. citizens to file petitions for lawful permanent residence without having to rely on their abusive spouse or parent to apply for them. INA §§ 204(a)(1)(B)(ii) and (iii); INA §§ 204(a)(1)(A)(iii), (iv), and (vii). Spouses also may file petitions based on abuse suffered by their children. In order to successfully self-petition under VAWA, an applicant must demonstrate under INA §§204(a)(1)(A)(iii), (iv), (vii), and (B)(ii) and(iii):

- a. Battering or extreme cruelty inflicted by a U.S. citizen or lawful permanent resident on a spouse or child (or parent by a U.S. citizen child);
- b. Good faith marriage and residence with the U.S. citizen or lawful permanent resident spouse (or residence if a child or parent); and
- c. Good moral character.

2. Cancellation of removal proceedings under VAWA.

VAWA also provides a defense for individuals placed in removal (deportation) proceedings. VAWA cancellation and self-petitioning are very similar, though an individual asserting a cancellation of removal defense has some additional elements to prove.

The most significant difference (aside from having to be in removal proceedings) is the requirement that the individual prove “extreme hardship” to herself, her child, or parent if she is removed from the U.S. INA § 240A(b)(2)(E) Extreme hardship may also serve as a basis for an individual filing an application for a waiver of the joint petition to remove conditions on residence. INA §216(c)(4)(A); 8 U.S.C. §1186a(c)(4)(A)

- a. Evidence relating to abuse that applicants may submit to show extreme hardship includes:
 - i. The nature and extent of physical abuse and the psychological consequences of battering or extreme cruelty;
 - ii. The need for access to U.S. courts, to the U.S. criminal justice system (including but not limited to the ability to obtain and enforce protection orders, criminal investigations and prosecutions), and to family law proceedings for child support, maintenance and custody;
 - iii. The need for social, medical, and mental health or other services for both self-petitioners and their children that are available here but are not “reasonably accessible” in self-petitioners’ homelands;
 - iv. Laws, social mores and customs in the home country that would ostracize or penalize the self-petitioner or her child for being the victim of abuse, for leaving the abusive situation, or for taking actions to stop the abuse, including divorce;
 - v. The abuser’s ability and inclination to follow his victims to the homeland and that country’s inability or unwillingness to protect victims of abuse; and
 - vi. The likelihood that the abuser’s family, friends or others would physically or psychologically harm the self-petitioner or her child. 8 C.F.R 240.58(c)
- b. State court findings.
 - i. Can be relevant to an individual’s immigration case by providing evidence to meet the statutory requirements under VAWA.
 - 1) Protective orders and child custody orders may provide evidence regarding a battered immigrant’s need to have ongoing access to the courts in the U.S.
 - a) A child custody order may be meaningless if the mother is deported, perhaps allowing the abuser the ability to reopen the custody decision without challenge.
 - b) The lack of enforcement of restraining or protection orders in the homeland is also something that immigration courts may consider in determining whether an individual would suffer extreme hardship if removed from the U.S.
 - c) A protection order acquired in the U.S. often cannot be enforced abroad.
 - d) The effect on children of domestic violence in the household is also relevant in determining whether or not an individual will suffer extreme hardship.
 - i) Extreme hardship to an applicant’s children may qualify an individual for status.
 - ii) Hardship to children can be documented through the domestic relations or criminal case, whether the children are included in the application or not.
 - iii) Testimony with respect to the children having witnessing domestic violence, and how this harms children may enhance the likelihood of the mother’s application being approved.

B. Visas for Certain Victims of Crime and Trafficking

The Victims of Trafficking and Violence Protection Act (VTVPA) created two new categories of visas for immigrant crime victims. Both types of visas are designed to provide immigration status for individuals who are assisting or willing to assist authorities investigating specifically delineated crimes.

The provisions in the VTVPA also provide a route to apply for lawful permanent residences for individuals who obtain “T” and “U” visas.

1. “U” visas for victims of crime.

- a. Eligibility Requirements – INA §101(a)(15)(U)(i)(II), added by VTVPA §1513(b)
 - i. Showing of substantial physical or mental abuse,
 - ii. Abuse as a result of criminal activity,
 - iii. Cooperation with government officials investigating or prosecuting such criminal activity,
 - iv. The individual possesses information concerning the criminal activity.
- b. Qualifying criminal activity – INA §101(a)(15)(U)(iii), added by VTVPA §1513(b).
 - i. Generally violent crimes, including: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or
 - ii. The attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.
- c. Certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating criminal activity designated in the statute; certification states that the “U” visa applicant is being, has been, or is likely to be helpful to the investigation or prosecution of designated criminal activity. INA §101(a)(15)(U)(i)(III) & INA §214(o)(1), added by VTVPA §1513(b) & (c)
 - i. No requirement in law that an investigation in which the immigrant victim cooperated result in prosecution, nor does it require that a prosecution result in a conviction,
 - ii. State court judges are included in the list of individuals who can provide certifications for individuals who have provided statements that serve as the basis for a criminal investigation (e.g, the basis for a warrant) or for individuals who have served as witnesses in a criminal prosecution. However, judges should consider the ethical implications of signing a certification and may refer the request to the prosecutor or law enforcement agency that conducted the criminal investigation.

2. “T” Trafficking Visas.

- a. Eligibility Requirements – INA §101(a)(15)(T), added by VTVPA §107(e)
 - i. Similar to the “U” visa, but designed specifically for those who have been subjected to sex trafficking or other “severe forms of trafficking.”

- ii. Sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” VTVPA §§ 103 (9)
- iii. “Severe” trafficking defined as: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. VTVPA §§ 103(8)
- iv. INA §101(a)(15)(T), added by VTVPA §107(e). Applicants for “T” visas must provide the CIS “any credible evidence” that they:
 - 1) Are or have been victims of severe trafficking;
 - 2) Are physically present in the U.S. or at a U.S. port of entry on account of such trafficking;
 - 3) Have “complied with any reasonable request for assistance in the investigation or prosecution” of an act of trafficking act or be under age fifteen; and
 - 4) Would “suffer extreme hardship involving unusual and severe harm” if removed.
- v. Some factors that might demonstrate “extreme hardship” include, but are not limited to:
 - 1) The age and personal circumstances of the applicant;
 - 2) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
 - 3) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
 - 4) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the severe forms of trafficking in persons or other crimes perpetrated against for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
 - 5) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
 - 6) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
 - 7) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
 - 8) The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as

demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections. 8 C.F.R. §214.11(i)(2) (2002)

- b. Cooperation with law enforcement.
 - i. Trafficking victims can qualify for “T” visas by working with state, local, or federal authorities, and by cooperating in the investigation of crimes ancillary to trafficking. Pub.L. No 109-162, Section 801(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).
- c. State court evidence.
 - i. Victims can establish that they would suffer extreme hardship in various ways, including but not limited to:
 - 1) Protection from their traffickers in the form of protective or restraining orders;
 - 2) By awarding damages for harm suffered at the hands of traffickers, by providing a means for enforcement of these order;
 - 3) Criminal punishment of traffickers for violations of the law which may not be available in victims’ home countries.

V. RESTRICTIONS ON IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

A. CIS or ICE Use of Information Provided by an Abuser

1. 8 U.S.C §1367.

- a. Prohibits immigration officers from making adverse determinations on admissibility or deportability “using information furnished solely by” the applicant’s abuser, an abusive member of the applicant’s household, or someone who has abused the applicant’s child. 8 U.S.C. §1367(a)(1)
- b. Prohibits the “use by or disclosure to anyone” except to other Department of Homeland Security officers “for legitimate . . . agency purposes,” of information relating to self—petitioners, conditional residents requesting battered spouse waivers, and applicants for cancellation of removal. 8 U.S.C. §1367 (a)(2)
- c. Anyone who “willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action *and subject to a civil money penalty of not more than \$5,000 for each such violation.*” 8 U.S.C. §1367 (c) emphasis added.
- d. These prohibitions and penalties apply to any act by a DHS officer or trial attorney that took place on or after September 30, 1996. 8 U.S.C. §1367 (d)(2)

B. Limits on Immigration Enforcement Activity

1. ICE enforcement in certain locations.

- a. Immigration court proceedings where an enforcement action leading to removal proceedings was initiated at a domestic violence shelter, rape crisis center,

supervised visitation center, family justice center, victim services provider, or *courthouse* where an immigrant appears in connection with a protection order case, child custody matter, or other civil or criminal matter relating to domestic violence sexual assault, trafficking, or stalking, in which the immigrant has been subjected to certain violent crimes, the Immigration service must include a statement certifying that the agency has complied with 8 U.S.C. §1367.

- b. Under 8 USC §1367, the immigration agency must keep information relating to any self-petition or Violence Against Women Act case confidential.
 - c. 8 USC §1367 further prohibits Department of Homeland Security employees from making any adverse determination regarding the immigrant using information furnished solely by an abuser or perpetrator. Pub.L. No 109-162, Section 825(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, (H.R. 3402).
- 2. Sample court policy regarding Department of Homeland Security Activities at the courthouse.**
- a. See Appendix A, attached.

VI. CONCLUSION

The effectiveness of court interventions can be improved with an understanding of the cultural and immigration legal barriers that face non-citizen litigants in both the civil and criminal court.

APPENDIX A

Court Policy: No Courtroom Arrests Based on Immigration Status

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.

In adopting this policy, the Superior Court recognizes that cooperation with other branches of government, including law enforcement agencies, is essential. The judges respectfully request that the county executive, in cooperation with the other branches of government, initiate a dialogue with the appropriate law enforcement agencies to develop a protocol implementing the policy which: 1) respects the dignity of the courtroom and the proceedings occurring in each of the courtrooms; and 2) discourages arrests inside of the courthouses.

Approved by the King County Superior Court Judges: April 22, 2008.

APPENDIX B

Glossary of Immigration Terms

"A" Number, Alien Registration Number: This is a number that DHS uses to keep track of the file for each alien. When the person immigrates, this is the number that ends up on the alien registration ("green") card.

Adjustment of Status: Anytime people change immigration status to become Legal Permanent Residents (LPRs) without leaving the U.S., they go through a process called adjustment of status. This term is used most commonly to refer to a change in permanent resident status through a family visa petition.

Administrative Voluntary Departure: This occurs where the person gives up the right to a removal hearing and departs the U.S. This is a form of voluntary departure and not a removal since the person never appeared before an immigration judge.

Advance Parole: Aliens with cases which have not been decided can ask for permission to leave the U.S. temporarily and come back later.

Aggravated Felonies: These are listed at INA 101(a)(43)(8) USC 1101(a)(43). They include drug or arms trafficking, murder, or violent crimes for which the person was sentenced to at least one year. A person who is removed because of an aggravated felony is generally ineligible for permanent residence, and if s/he reenters the U.S. after to removal, is subject to federal criminal prosecution. See particularly serious crimes.

Alien: An alien is any person who is not a citizen or national of the United States. The term includes lawful permanent resident aliens, lawful temporary aliens, nonimmigrant students and visitors,

refugees, and aliens who have entered without documents.

Applicant: This is a person who is applying for an immigration benefit such as entry into the U.S., asylum, refugee status, permanent residence or naturalization.

Asylum: Asylum is the status given to people who have left their country and come to the U.S. because they have been or may be persecuted for their political beliefs, race, nationality, or membership in a social or religious group.

Battery or Extreme Cruelty Waiver: Conditional residents who suffer physical abuse or extreme cruelty at the hand of their spouses or parents can receive a waiver of the requirement that they file joint petitions to be made LPRs.

Beneficiary: When a U.S. citizen or LPR petitions CIS to allow a relative or employee to immigrate to the U.S., the relative or employee is the beneficiary.

BIA (Board of Immigration Appeals): This is the group of judges who review decisions of Immigration Judges and District Directors in many cases. If either an alien or ICE disagrees with a final decision made by an IJ, he or she can ask the BIA to review the case and make a new decision. Certain cases can be reviewed above the BIA, Federal District Courts, Courts of Appeal, and finally the U.S. Supreme Court can hear immigration cases.

Bond: Aliens who are in custody may be let out while their cases are being decided if the judge or the ICE will let them pay a certain amount of money. This money is returned to the alien after the case is finished. Similar to bail in criminal proceedings.

Border Crossing Card: This is a permit which allows a person to visit the U.S. for up to 72 hours. The person must stay within 25 miles of the border.

Border Patrol, (CBP): Customs Enforcement and Border Patrol, which is responsible for inspection of individuals at points of entry and enforcement of immigration law at the border.

Bureau of Citizenship and Immigration Services (CIS; formerly INS): The agency under the Department of Homeland Security responsible for granting and adjudicating immigration benefits.

Cancellation of Removal: An Immigration Judge can grant permanent residency if an alien who has lived in the U.S. for 10 years and who has good moral character can show that certain family members would suffer exceptional and unusual hardship if the alien were removed, or in the case of domestic violence survivors, if they have lived in the U.S. for 3 years, have good moral character, have suffered battering or extreme cruelty by a parent or spouse, and they or their parent or children would suffer extreme hardship if they were removed.

Chargeability: When a visa is issued to an immigrant, the visa is "charged" to the quota for that person's country. Country of chargeability is important because some countries have long backlogs, so immigrants will have to wait a long time before the visa is issued. Usually, visas are charged to the country a person was born in, but some people can have their visas cross-charged to a country with a shorter backlog. This is possible when the petitioner is born in a different country.

Charged To: In the visa preference system, each time CIS gives someone a visa, it must subtract one from the number of visas set aside for the country where the person was born; the visa is charged to that country. If that country has a backlog, or

waiting list, then the person may not get a visa for many years.

Child: This is an unmarried person under age 21, who has a child-parent relationship that CIS recognizes. Stepchildren qualify if the marriage which creates the relationship took place before the child was 18. Adopted children qualify if adopted before 16 and if they have resided with or been in the custody of the adoptive parents for two years. Illegitimate children qualify if they immigrate through their mother or if they can show that the father is the natural father and that the child and father had a bona fide relationship before the children reach 21.

Citizen: A citizen of the United States is a person born in the United States or in certain territories of the U.S., such as Puerto Rico and Guam. Certain persons born abroad are also citizens at birth by acquisition through citizen parents. Other persons become naturalized citizens. Citizens are not subject to immigration law.

Citizenship: This is a status that gives you all of the rights of a citizen. It is a collection of rights.

Conditional, Permanent Resident (CPR): People who immigrate or adjust status through their spouse within two years of the marriage become conditional residents for two years. After that, they must petition together so that the beneficiary can become LPRs. The children of a conditional resident are also conditional residents. See Joint Petition, IMFA.

Consulate: This is the U.S. government office in another country where aliens apply for visas.

Continuous Physical Presence: This means that a person has been living in the U.S. Any absences must be brief, innocent and casual.

Crime of Moral Turpitude: This usually means a crime which involves intent

to commit fraud or theft, intent to do great bodily harm, or lewd intent in some sex crimes. Aliens who have committed such crimes may be removable or ineligible for citizenship.

Criminal Grounds of Inadmissibility and Removability: There are various kinds of problems with crimes, including: crimes of moral turpitude, prostitution, problems with drugs or guns, and length of sentence.

Daughter: See Son or Daughter.

Deferred Action: This is an uncommon ICE policy based on an operating instruction. It allows CIS to decide not to remove a person or take other action. It is easier to get deferred action in sympathetic cases.

DHS, or Department of Homeland Security: The federal cabinet department created in response to the September 11 attacks with the primary responsibilities of protecting the U.S. from terrorist attacks, and responding to man-made accidents, and natural disasters. The former Immigration and Naturalization Service was absorbed into DHS in 2003, and divided into separate agencies, including Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and Customs and Border Patrol (CBP)

Derivative Beneficiaries: These are the spouse and children of the principle beneficiary of a preference visa petition. The children have to be under age 21 at the time of immigrating.

Derivative Citizenship: When a parent naturalizes, some minor children become citizens automatically.

EOIR: See Executive Office of Immigration Review.

Employment Visas: Some people, especially college graduates, can immigrate through their employers.

EWI (Entered Without Inspection): This means that a person entered the U.S.

without being checked by CBP or ICE. This is the most common ground of removal.

Executive Office of Immigration Review: This is the official name of the Immigration Court. It includes the local Immigration Judges and the Board of Immigration Appeals and is part of the Department of Justice. EOIR is not part of CIS or ICE but it often has its courtrooms and offices in CIS or ICE District Offices.

Extreme Hardship: This means hardship above and beyond what a person forced to leave the U.S. would normally suffer. This must be shown to receive a waiver for various requirements: filing a joint petition to adjust from conditional residence to permanent residence, to receive cancellation of removal, etc.

Family Unity: This will allow spouses or children of aliens who are legalized through IRCA to remain in the U.S. if the spouse or children lived in the U.S. since before 6-6-88. There are also some disqualifying grounds.

Family Visa Petition: LTRs, LPRs, and USCs can file requests to INS to allow certain close family members to immigrate.

Fiance(e) Petition: This allows USCs (but not LPRs) to bring a fiance(e) into the U.S. in order to marry him or her within 90 days. After the marriage, the fiance(e) can apply for adjustment to LPR status.

Final Order of Removal: Only an Immigration Judge (or the BIA) can enter such an order. An Immigration Judge enters an order of deportation if the IJ finds that the person is not eligible for any immigration remedy, including voluntary departure.

G-325A Form: This biographical data form is for background checks for spouses who are immigrating and anyone who is adjusting status.

Good Moral Character: For many immigration remedies, it is necessary to show that a person has good moral

character. This means that they have not done certain bad things, such as committing certain crimes. GMC incorporates many of the grounds of inadmissibility.

Green Card (Alien Registration Card): This card shows that a person is a permanent resident.

I-94 Form: This is the white paper card which CBP puts in aliens' passports when they enter the U.S. It shows that they were inspected by CBP and what their status was at that time. The CIS also sometimes issues people I-94s for other purposes.

I-130 Form: This is the petition in which a person requests that a family member or employee be allowed to immigrate to the U.S. The official name is Petition for Alien Relative. A USC or LPR family member or employer is the petitioner. The person who will immigrate is the beneficiary.

Immediate Relative: The spouse, unmarried child or parent of a USC.

Immigrant Visa: This is a visa which allows a person to come to the U.S. as a permanent resident.

Immigrant Visa Petition: This is the first step in applying to bring an alien to the U.S. as an immigrant. See I-130 Form.

Immigration and Customs Enforcement (ICE): The Bureau within the Department of Homeland Security which is responsible for enforcement of immigration law in the interior of the United States.

IMMACT (Immigration Act) of 1990: This amendment to the INA made many important changes in U.S. immigration law. These changes include reorganization of the immigrant visa system, Temporary Protected Status, Family Unity, and created a waiver for the joint filing requirements for removal of conditional residence (See IMFA).

Immigration Court: This is another name for the Office of the Immigration

Review. It is an administrative court. It is not as formal as regular court.

IJ (Immigration Judge): These are the people who preside over the Immigration Court. They decide removal cases.

IMFA (Immigration Marriage Fraud Amendment): This law created a new status - conditional permanent resident -- for persons who immigrate or adjust status during the first two years of the marriage. After two years, they must ask CIS to make them LPRs.

INA (Immigration and Nationality Act of 1952): This is the main law of immigration. When amendments are passed, they are incorporated into the INA. It created the visa preference system. See also Immigration Act of 1990.

Inadmissible Aliens: These are aliens who fall within a ground of inadmissible, which are found at INA § 212. (8 U.S.C. §1152)

Inadmissibility: This is the basis for keeping aliens out of the United States before they get in, when they are just trying to get in or when they are applying for an immigration benefit. CBP officers at the border or other places people enter the country can exclude aliens if the aliens cannot show that they are eligible to enter.

IRCA (Immigration Reform and Control Act of 1986): IRCA is the law that allowed many undocumented aliens to become legalized. It also created employer sanctions.

Joint Petition: Conditional residents must ask CIS to make them LPRs by filing a joint petition. This petition must be filed within three months of the two-year anniversary of receiving conditional residency.

Legalization: This includes programs created by IRCA which allowed undocumented aliens to become legal. Two of the major programs allowed persons to

legalize if they had been in the U.S. since January 1 1982 (Amnesty) or if they had been agricultural workers during a specified time period in the 1980's.

LPR (Lawful Permanent Resident): This is an alien who has the right to live permanently in the U.S. Everyone who has a green card is an LPR. LPRs are also called permanent residents or resident aliens.

LTR (Lawful Temporary Resident): This is an alien who has passed the first phase of becoming legalized under the IRCA legalization (amnesty) program.

Merit Hearing: This is the part of the removal hearing in which the Immigration Judge decides whether to grant the person's application. The judge decides the merits of the case.

Motion to Reopen: This is a motion to reopen a case which has already been decided.

Naturalization: Changing from alien to U.S. citizen. CIS gives a Naturalization Certificate as proof of U.S. citizenship.

Non-Immigrant Visa Holder: Tourists, students, temporary workers, and some other aliens are only allowed into the U.S. for a limited time and for a limited purpose.

N.T.A. Hearing (often also called Master Calendar Hearing): The hearing on the Notice to Appear. This is the first hearing in removal proceedings. At this hearing, the person must respond to the charges on the Notice to Appear. See immediately below.

Notice to Appear (NTA): This is the paper issued by ICE which asks you to show why ICE should not make you leave.

Parole: In immigration, this means that CBP or CIS physically lets a person come into the U.S. without having legally "entered." Parolees do not have the rights of people who have entered.

Petitioner: This is the person (or company) who is requesting that a relative or employee be permitted to immigrate to the U.S.

Preference System: The U.S. has a limit on the number of visas the U.S. gives out each year. Every year more people apply for visas than the U.S. gives out. The preference system is the way the U.S. decides who can get a visa first. The numbers for family visas are as follows:

1st: USC's unmarried son or daughter over 21

2nd: LPR's spouse or unmarried son or daughter, any age

3rd: USC's married son or daughter, any age (old 4th preference)

4th USC's sibling (old 5th preference)

Principle Beneficiary: This is the person immigrating under a preference petition. See also Derivative Beneficiaries.

Priority Date: This is the date the I-130 visa petition is filed with CIS. It secures a visa beneficiary's place in line to get a visa. It is important because of the backlog for visas for most countries and most preferences. See Visa Bulletin.

Public Charge: People who are likely to become public charges are excludable. The usual test is whether the person has enough income or resources to be 125% above the Federal Poverty Guidelines, so they won't need public benefits.

Refugee: Persons who are outside the U.S. and who cannot return to their countries because of fear of persecution are refugees. The requirements are the same as for asylum, except that asylees are already in the U.S. escaping, while refugees apply from another country. For example, Vietnamese boat people in Hong Kong who apply to come to the U.S. are refugees. Salvaodrans in Texas who apply to stay in the U.S. are asylees.

Registry: It can legalize the status of people who entered the U.S. and have resided continuously in the U.S. since before January 1, 1972.

Removal: This is the process of forcing an alien to leave the U.S. or the process of keeping an alien out of the U.S. before or when they are trying to enter.

Removal Proceeding: This is a hearing before an Immigration Judge to decide whether an alien is removable or not.

Service File: This is the file CIS creates for a person when it opens a case on a person. It is also called the "A file" because of the "A number" that CIS creates for that person.

Son or Daughter: This is a person who once qualified as a child, but is now over 21 or married. The INA treats "children" differently, so it is important to note whether the person is under 21 or not.

Special Agricultural Workers (SAW): These are people who did agricultural work in the U.S. for at least 90 days, from 1985 to 1986, who were allowed to legalize their status thanks to IRCA. Application for this program has closed.

Spouse: This means current husband and wife.

TPS (Temporary Protected Status): IMMACT of 1990 created this for people from countries which are going through civil wars, natural disasters or other dangerous conditions. It has been given to people from El Salvador.

USC (United States Citizen): This is someone who is not subject to the immigration law.

Visa: This is permission to come to the border to enter the U.S. for a particular purpose, such as tourism, immigrating or studying. However, having a visa does not guarantee the alien permission to enter. The guards at the border can refuse to admit an alien who has a visa if they do not believe

the alien is really coming for purposes allowed by that kind of visa.

Visa Bulletin: This lists the priority dates for which visas are currently available. Practitioners use this to estimate how long a particular person will have to wait before an alien can come on a relative petition. Current processing times can be found at: http://travel.state.gov/visa/bulletin/bulletin_1360.html

Visa Office: This office within the State Department reviews decisions to deny visa made by consulates.

Visa Petition: This is how a USC or LPR initially applies for a family member to become an LPR. Employers can also file these petition for employees.

Visa Processing at a U.S. Consulate: This means that a person will apply for and receive a visa to immigrate to the U.S. in another country (the other way is to adjust to permanent residence without leaving the U.S.).

Voluntary Departure: Voluntary departure means that you agree to leave the U.S. when your case is over. This is a way of avoiding having a deportation on your record, which is important because people who have been deported are excludable for five years. It normally requires willingness to leave immediately, money to pay the fare, and good moral character. This is the most common kind of deportation defense; it often involves simply signing to take the bus to Mexico.

Withholding of Deportation: This is similar to asylum, though the standards are higher for withholding. However, it is mandatory (not discretionary, like asylum) so even people who cannot show good moral character can get withholding. However, it only forbids ICE from deporting them to their home country. It does not give them the right to apply to bring a spouse and children, the right to travel, or eligibility for permanent residency.