

Immigration Options for LGBTQ Survivors of Partner Abuse & Sexual Assault



Why this training?

As a result of this training, participants will be better able to:

- **Identify barriers** LGBTQ/T immigrant survivors might face when attempting to access services/support.
- **Understand basic immigration options** that may be available to LGBTQ/T immigrant survivors.
- Identify & provide **LGBTQ/T immigrant specific suggestions & resources** in safety planning and advocacy.
- **Identify strategies to support LGBTQ/T immigrant survivors** as individual advocates & as organizations.



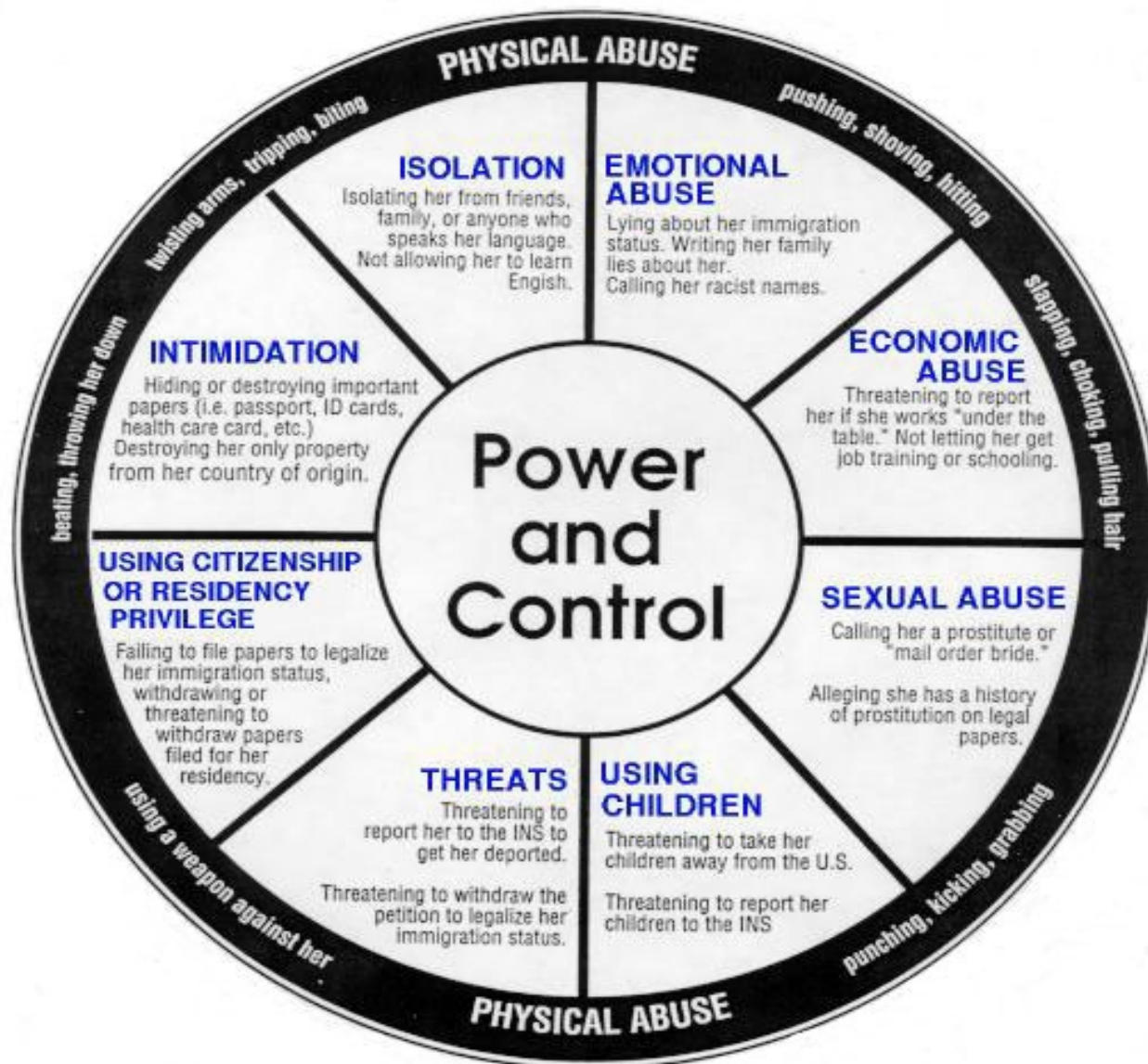
**Chat
Question**

***Partner Abuse & LGBTQ/
Immigrant Survivors***

Brainstorm!

What tactics of abuse do you imagine might be used by an abuser to control an LGBTQ/T immigrant survivor?

Immigration Power & Control Wheel



Common Fears & Barriers

Context: Anti-immigrant Climate

- **Institutional homo/bi/trans-phobia, racism, sexism, xenophobia** (in courts, hospitals, social service providers...)
- **Fear of deportation** (of self &/or abuser)
 - Fear of filing for a protection order
 - Fear of reporting abuse to police
 - Fear of disclosing abuse to doctors

Common Fears & Barriers

Fear of being "outed" here or
in home country

Fear of losing children to Child
Protective Services and/or Abuser

Fear of retaliation by abuser against
family in home country

Shame, social stigma of disclosing
abuse, divorce, etc.

Immigration System Terms

- DHS: Department of Homeland Security
 - ICE: Immigration and Customs Enforcement
 - CBP: Customs and Border Patrol
 - USCIS: United States Citizenship and Immigration Service
- EOIR: Executive Office for Immigration Review (Immigration Court) Under Department of Justice

What is Immigration Status?

How & why do people come to the U.S.?

- “Undocumented” ... What’s that mean?
- How do people become undocumented?

What are some ways people typically get “immigration status”?

- Family
- Employment
- Asylum & Other Special Provisions (like VAWA/U)
- Temporary Protected Status (TPS)

What is a **green card**? What does it get you?

Family Based Petitions: Who Can Apply?

US Citizens may petition for:

- spouse, parents, children (any age, married or unmarried), siblings

Lawful Permanent Residents (LPRs), **a.k.a. green card holders**, may petition for:

- spouse and children (any age, unmarried)

Wait times for **green card** are based on status of petitioner and relationship

Obtaining Permanent Status Through Family

Two Part Process

- 1) US Citizen or LPR (Green Card holding) relative (***petitioner***) files I-130 family based petition for foreign family member (***beneficiary***)
- 2. Beneficiary applies to adjust status to LPR in the US (or at a US Consulate if abroad) based on that relationship

Who controls this process?

Some Immigration Options...

- **VAWA Self-Petition**
- **U Visas**
- **Asylum**
- **Special Immigrant Juvenile Status**

Some Points of Caution

CONTACTING IMMIGRATION

Don't advise a noncitizen client to contact/go to immigration without the accompaniment/advice of an immigration advocate.

TRAVEL

Travel for noncitizens can be dangerous. Encourage non-citizens to talk to an immigration advocate about the risks of traveling outside of the US.

CRIMES

Noncitizens with criminal histories, even charges that were "dismissed", might face serious consequences in the immigration context. Advise noncitizens to talk to an immigration attorney about any criminal history

ANY PRIOR CONTACT WITH IMM. OFFICIALS

VAWA

Self-Petitions

Violence Against Women Act

1994 – Violence Against Women Act

- Included Immigration Provisions –
 - VAWA Self-Petition
- Lessened dependency on abusive USC/LPR spouse or parent

VAWA 2000 & 2005 & 2013

- More immigration provisions added
 - Protections expanded to:
 - Unmarried survivors of DV, SA and other crimes
 - Elder abuse survivors
 - Abused children up to age 25

VAWA Self-Petitioning: Who is Eligible? See INA sec 204

- Survivor of Battering or Extreme Cruelty
- Relationship to Abusive *U.S. Citizen or L.P.R.*
 - Spouse of Abusive USC/LPR (*Divorced/Widowed under 2 years OK*)
Abuse can be to Spouse or to Child
 - Child (up to age 25) of Abusive USC/LPR
 - Parent of Abusive Adult USC/LPR Son/Daughter
- Good Faith Marriage (for spousal petitioners)
- Person of Good Moral Character

Proving the Elements

Element 1:

Battering and/or Extreme Cruelty

Context: Abusive Power and Control

Physical Abuse; Sexual Abuse; Emotional Abuse; Economic Abuse; Coercion and Threats

Proving “Battering and/or Extreme Cruelty”

- Legal Standard: Any Credible Evidence
 - Client Affidavit
 - Hospital Records
 - Photographs of Injuries/Scars
 - Counseling Records
 - Affidavit of Counselor/Medical Doctor
 - Police Reports w/ Narrative
 - Protection Orders w/ Affidavits
 - Letters/Affidavits from Friends/Witnesses
 - Abusive letters/e-mails from batterer

Elements 2(a) & (b): Good Faith Marriage to Abusive USC/ LPR

- Good Faith Marriage & Joint Residence
 - Test: *Intent to Establish a Life Together*
 - Affidavit of Client
 - Birth Certificates of Children in Common
 - Joint Tax Returns
 - Joint Bank Accounts
 - Car/Life/Health Insurance with names of both parties
 - Leases
 - Property Records / Public Records Search
 - Bills
 - Mail showing common address for both parties
 - Letters/cards from extended family to couple
 - Statements of friends/co-workers of couple
 - School records showing names/addresses of parents
 - Greeting cards/Photographs
 - Abuse and legal invisibility

U Visa

INA sec. 101 (a)(15)(U)

U Visa Overview

Enacted under VTVPA 2000

Purpose: To encourage immigrants to report crimes without fear of deportation

Expands immigration options to survivors of violence who are:

- Unmarried
- Married to non-USC/LPR abusers

U Visa Relief

4 year Temporary Visa

Employment Authorization

Eligible to Become a Green Card Holder
after 3 years if certain conditions are met...

U Visa Relief

Applicants can include:

- Children
- Spouses
- Parents (for children under 21)
- Siblings (for applicants under 18)

Element 1:

Victim of Crime:

(direct or indirect victim)

criminal activity involving or similar to violations of (some or all of) the following types of offenses under Federal, State or local criminal laws: 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; man-slaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy or solicitation to commit any of these crimes.

Element 2: Helpfulness in an Investigation or Prosecution

Law Enforcement Certification (Form 918B)

- Victim has been helpful, is being helpful, or is likely to be helpful in investigation OR prosecution of qualified criminal activity
- Signed by police officer, prosecutor, DCF, judge...

Element 2:

Helpfulness in an Investigation or Prosecution

Proving Helpfulness:

- Obtain all police reports/docket sheets for crimes perpetrated against your client
- Contact Police Department and/or District Attorney's Office to begin process of requesting a certification
- Develop relationship with DV Officer / VWA
- Statute does *NOT* require successful prosecution
 - only cooperation of survivor

Element 3:
**Substantial mental or
physical harm**

Asylum

Asylum

Harm in the past or well founded fear of harm in future:

Because of:

- Race
- Religion
- Nationality
- Political Opinion
- Membership in a Particular Social Group
Gender Identity, Sexual Orientation, Family...

Government unwilling or unable to protect you

One Year Filing Deadline

- Extraordinary Circumstances;
- Changed Circumstances

Sexual Orientation, Gender Identity and Asylum

Political Opinion

Membership in a Particular Social Group

- No statutory definition; Group of persons who share a common, immutable characteristic.
- Immutable characteristic = something that you cannot change or something that is so fundamental to you that you should not be required to change
- Can make claim based on the applicant's gender identity as well as an actual or imputed gay or lesbian identity

Hernandez-Montiel v. INS, 225 F.3d 1084
(9th Circ. 2000)

Special Immigrant Juvenile Status

General Overview:

SIJ or Special Immigrant Juvenile

Undocumented child under 18 here in the US
Abandoned, abused, or neglected by one/both parents

Child is in DCF/Child Protective Service custody or is under the care of a relative or friend here in the US.

Prior to child's 18th birthday, family/juvenile court can formalize guardianship & make written findings that:

1. Reunification w/ parent is not possible &
2. It is NOT in the child's best interest to be returned to the home country.

Child can then apply for Green Card.

Final Thoughts: What can we do?

What we already do! Advocate, listen, empower & respect survivors' choices...

Know that immigrant survivors have options under immigration law.

- Advocate for more!!!
- Think about possible immigration relief when safety planning with survivors

Challenge anti-immigrant, racist, homo-/bi-/trans-phobic, sexist, and any other form of oppressive language/sentiment in ourselves, workplaces, families, communities, government, etc...

- Remember that immigrant issues **are** survivor issues **are** LGBT issues.
- Ask where we and/or our organizations need to do work to understand and meet the needs of LGBT immigrant survivors

Resources

[Www.informedimmigrant.com](http://www.informedimmigrant.com)

[Www.immigrationequality.org](http://www.immigrationequality.org)

[Www.asistaonline.org](http://www.asistaonline.org)

[Www.niwap.org](http://www.niwap.org)