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## VAWA 2005: Trafficking Provisions

The Violence Against Women and Department of Justice Reauthorization Act (VAWA) of 2005 significantly extends protection and assistance to trafficking victims. Trafficking involves the sexual or economic exploitation of persons who are recruited, transported, transferred, or harbored through violence. Contrary to popular belief, this form of exploitation is not isolated in distant lands and cultures. Each year 45,000 to 50,000 women and children are trafficked into the United States. Thirty thousand come from Asia, 10,000 from Latin America, and 5,000 from other regions such as the former Soviet Union.

VAWA 2005 provisions on trafficking include (1) deportation, (2) economic stability and security, (3) confidentiality, and (4) the International Marriage Broker Regulation Act of 2005, which addresses what is more commonly known as the mail-order bride industry.

### **Deportation.** The VAWA 2005

- waives the requirement for trafficking victims to assist federal, state, and local law enforcement if psychological or physical trauma impedes their ability to cooperate;
- exempts trafficking victims from penalties for failing to depart voluntarily if the central reason for overstay is due to extreme cruelty or battery.

### **Economic Stability and Security.** The VAWA 2005

- allows trafficking victims to reunite with family members who live abroad by allowing them to receive T visas, while not having to show extreme hardship;
- improves access to permanent residency through an exemption from the penalties for being unlawfully present if at least the central reason for the unlawful presence is trafficking;
- allows some trafficking victims earlier access to permanent residency by counting their continued presence in the United States toward the three-year residence requirement and allowing the U.S. Department of Homeland Security discretion to reduce the three-year wait upon receiving certification if law enforcement officials do not object;
- extends the duration of T or U visas up to four years, but if law enforcement certifies an extension and physical presence of the trafficked victim to be necessary to assist in the criminal investigation or prosecution of human trafficking, a year-by-year extension may be made;
- permits changing of status to T or U for trafficked victims who entered the United States on C (transit), D (crewmen), K (fiancée, nonimmigrant spouse, child), S (criminal informant), or J (exchange visitor) visa; as visitors under the visa waiver program; or as visitors from Guam;
- allows employment authorization for victims with approved VAWA petitions and T visas.

**Confidentiality.** The VAWA 2005 extends VAWA confidentiality to trafficking victims.

### **Regulation of International Marriage Brokers (IMB).** The VAWA 2005

- mandates U.S. citizens filing for K visas to disclose criminal convictions, including domestic violence, multiple convictions for substance or alcohol abuse and other violent crimes; the information will be disclosed to the foreign fiancée or spouse;
- prevents U.S. citizens from sponsoring multiple foreign fiancées or spouses. If a U.S. citizen filed

- previously for two K visas and less than two years have passed since the filing of a pending K visa, the U.S. Department of State may not issue a K visa; Homeland Security may waive the bar, but not when the U.S. citizen has a history of committing domestic violence and other violent crimes;
- mandates Homeland Security to create a database to track multiple K visa petitions filed by the same U.S. citizen petitioner and to notify the foreign fiancée or spouse of prior K petitions;
  - mandates Homeland Security to develop in 14 languages an information and resource pamphlet on the legal rights and resources available for immigrant victims of domestic violence;
  - requires an oral summary during the consular interview of the pamphlet's contents and any results on the U.S. citizen's criminal history, without disclosing locational or personal information about prior victims;
  - prohibits the marketing of children;
  - limits sharing information about the foreign fiancée or spouse until IMBs search the National Sex Offender Public Registry or State sex offender public registry and search for criminal history of the U.S. client and receive a signed, written consent from the foreign fiancée or spouse to release her information to the U.S. client;
  - penalizes IMBs up to \$25,000 for violating these requirements.

This is a brief overview, but we encourage readers to visit [www.legalmomentum.org/issues/vio/vawa\\_immigration\\_provisions.pdf](http://www.legalmomentum.org/issues/vio/vawa_immigration_provisions.pdf) for a breakdown of the VAWA and trafficking. For more information, contact Wendy Pollack at the Sargent Shriver National Center on Poverty Law at 312.263.3830 ext. 238 or [wendypollack@povertylaw.org](mailto:wendypollack@povertylaw.org).

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