



WE SERVE TO PROTECT: VICTIMIZING THE VICTIM

Simarjeet Sahota, Ph.D.
October 25, 2005



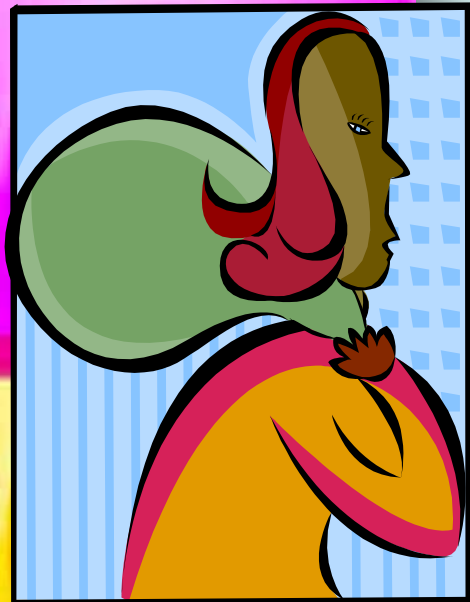
H1 B Visa

Non immigrant specialty
occupation temporary worker



L 1 Visa

Non-immigrant specialty
occupation temporary intra
company transferee



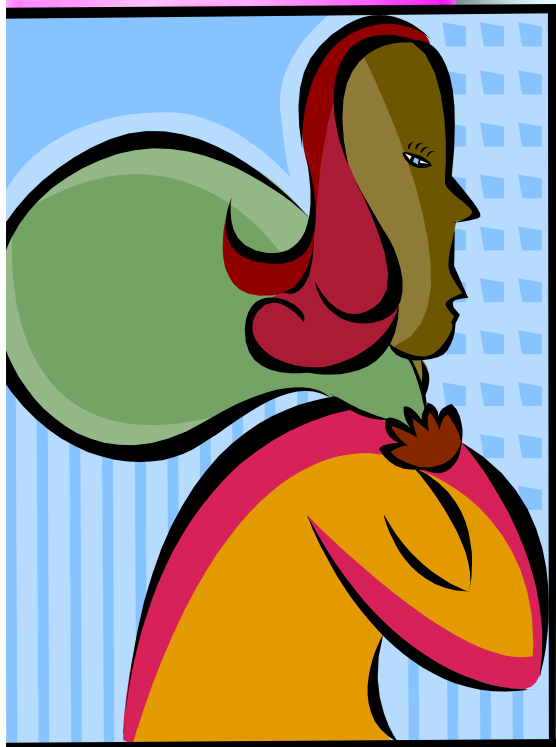
H 4 Visa

Non-immigrant, legal alien

Dependant Spouse of H 1B

- Ineligible to work
- No social security number
- No bank account
- No money
- No family
- No legal papers
- Community disapproval





World Conference on
Prevention of Family Violence
2005

L 2 Visa

Non-immigrant, legal alien

Dependant Spouse of L1
Eligible to work

If has work permit

If no work permit:
No bank account
No money
No family
Community disapproval

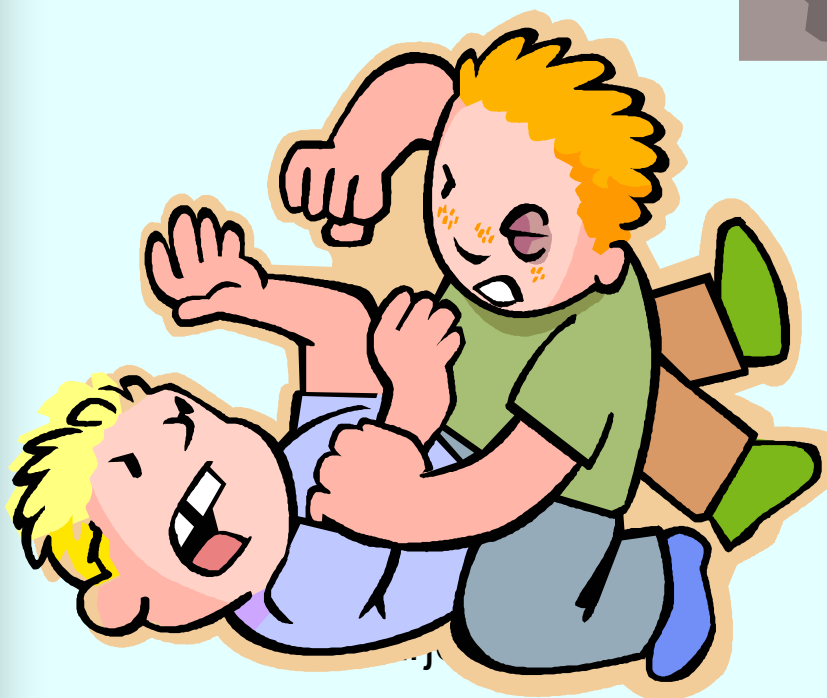


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Domestic Violence

Call 911

Arrested.



Bailed out by evening



The Real Struggle Begins HOUSING:

- Live in same house?
 - ask him to leave
 - but no money for rent.
- Move to emergency shelter
 - Only 28 days
- Transition housing policy:
 - Get a job
 - No work permit.
 - Increase legal, economic and sexual exploitation vulnerability

The Real Struggle

No Money, No Roof, No Food

No eligible for most
County Programs

No Medi-Cal

No food Stamps

No legal aid

No housing

No health insurance



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Change of Visa Status

Getting work permit

- Copy of Principal Visa holder's blanket petitions
- I - 129S
- I - 94
- Passport ID page
- Current Visa Stamp
- Her own Documents
- Fee

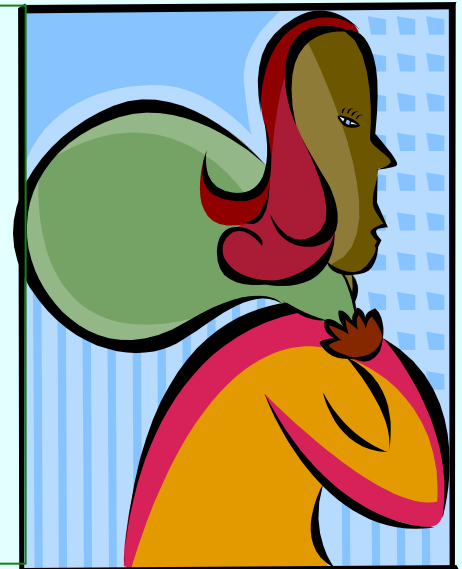


Justice

Press Charges
Prove Charges
Found Guilty
Deported

Plea
Bargain
Free Man
Poor record
Ready to hit
back

**Hardships –
Economic
Residential
Social
Emotional
Deportation**



Arm Twisting Settling Scores

- Change Visa Status
 - Change Jobs, New H1
 - L1 to H1
 - Stop her Permanent Resident Petition
 - Worst of all Divorce
 - Report her to Homeland Security

Interventions suggested

■ At Airport

- Dependant Visa a Red Flag
- Authorities inform partner violence Illegal
- Handout about Public Service Agencies
- Staple national DV hotline No. with I -94
- Involve non-profits working against DV

Responsibility of Sponsor

- Mandatory inclusion of Dependant Spouse in direct deposit account.
- Liaison with non-profits that prevent DV
- To create a safe space for dependents

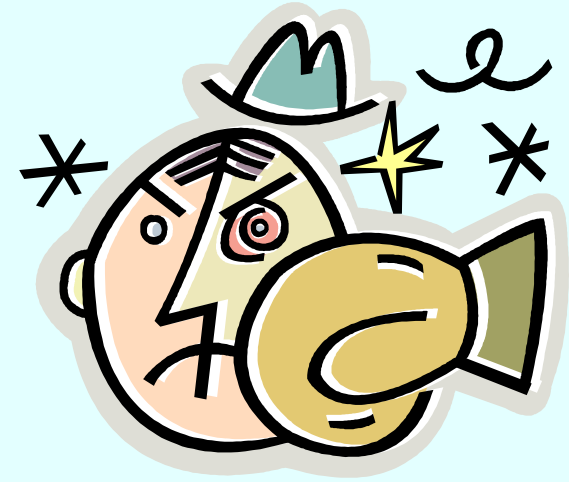


Abuser's New Job

- Mandatory Petitioning for H 4 or Green Card if dependant spouse is still on the passport.



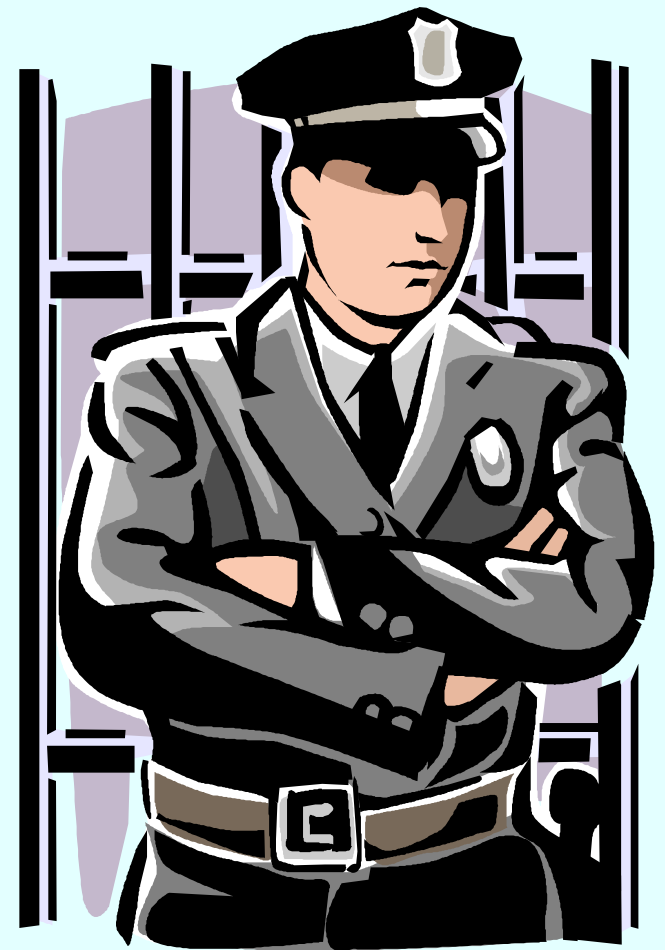
Restrict divorce



- Prevent no-fault divorces to temporary aliens
- Rules of Service of Legal Papers should be as in home country.
- Dowry should be considered as in the home countries.

Role of Police & DA

- Hear to what victim is saying
- Learn about immigration policies
- Network with immigration experts & non profits
- Before arraignment take account of victim's hardships
- Get the passport and legal papers & interim spousal support before restraining order



Social Services

- Create one stop shop for DV related needs for all women
- Network with court, non-profits and employer for interim spousal support, wage garnishment
- Make system victim friendly



Role of Non-Profits



- **Widen understanding of various categories of victims**
- **Reach out to employers with employee base from different countries.**
- **Build pressure groups to assure effective coordination between police and immigration.**



Goals



- Get the abuse reported
- Reduce gaps between the idea of justice and the practical implications of justice devoid of contexts

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WE SERVE TO PROTECT: VICTIMIZING THE VICTIM

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The scope of this paper is to demonstrate the plight of an invisible category of legal nonimmigrant temporary legal residents in US suffering domestic violence. The idea is to analyze the gaps between the idea of justice and practical implications of justice devoid of contexts of victims through exploring the role of state in perpetrating the structural violence against temporary legal nonimmigrant women victims of domestic violence.

Key Words:

H1 B visa: Non immigrant specialty occupation temporary worker

H 4 visa: Non immigrant, temporary legal alien dependent on H 1B, not entitled to work hence have no social security number. Can obtain independent H 1B or F 1 visa if able to secure employment or admission to a university and produce copy of principle visa holder's Blanket petitions, I- 129S and I – 94, passport ID page and current visa along with their own documents and required fee.

L 1 visa: Non immigrant specialty occupation temporary intra company transferee

L 2 visa: Non immigrant temporary legal alien dependent of intra company transferee, can work if she/he procures a work permit by submitting copy of principle visa holder's Blanket Petitions, I- 129S and I – 94 passport ID page and current visa along with her own documents and required fee.

Every year US companies employ foreign individuals in “specialty occupations” by sponsoring their H 1B non immigrant temporary work visas. Other multinational companies transfer their overseas employees to US on intra company transferee L 1 visas. These employees come to US on a long term basis of six to three years respectively. During their stay in the US, they can establish residency in the states of destination. They are entitled to bring their spouses and children as dependents if their employer sponsors their visas, namely H 4 and L 2. The sponsorship agreement entails health insurance and visa status for the dependents as long as the principle visa holder is employed with the company. The employee can change visa status from L 1 to H 1B, and H 1B to permanent resident by seeking new employer or with the help of same employer respectively. In either case the current visa status of dependents is terminated by default. To maintain the visa status the principal visa holder has to initiate or the dependents have to change their status on their own to H 1B or any other independent category like F 1(student visa). In both cases they need to have the H 1B or L 1 blanket petitions of the principle visa holder and the copies of their passports.

The following table indicates the number of persons coming to US on these visa categories in the year 2004:

Non immigrants by selected class of admission by gender in year 2004

2004	H1 B	H 4	L 1	L 2
	386,821	130,847	314,484	142,099
Male	460,021	35,519	266,507	40,332
Female	150,755	105,934	44,363	100,621

India	83,502	41,604	23,134	11,912
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Source: <http://uscis.gov/graphics/shared/statistics/yearbook/YrBk04TA.htm>. October 20, 2005.

The data demonstrates the greater number of principle visa holders are men.

Approximately 3:1 disparity between the genders is too vast. Many more women come to US as dependent on their male spouses than vice versa.

Review of literature: Only two studies were available about this category of domestic violence victims. Anita Raj and Jay G. Silverman studied intimate partner violence against South Asian women residing in greater Boston in 1998 and 1999. They found domestic violence was a serious and highly prevalent concern among this group of South Asian women. Knowledge of available services is limited among these people. Victim-blaming attitudes are common in the community resulting in further isolation of victim. Culturally tailored domestic violence services and Intimate Partner Violence Education are needed for this underserved population.

Another attempt to document the problems of this group is being made by Shivali Shah, a New York based Lawyer, co founder of Kiran: Domestic Violence and Crisis Services for South Asians in North Carolina. Ms. Shah is net working with all non-profit organizations working against domestic violence in US for recording the incidences of violence against H 4 visa holders for influencing policy interventions through lobbying for right to work and self petition for these women.

It is undeniable that violence is prevalent against this category of women and their options are limited as their legal stay in the country is dependent on the good will of their abusers. A greater number of women do suffer in silence but what happens to those women who report violence? All state agencies like law enforcement, court and social services jump in to serve the victim. Yet they protect her by creating hardships for her beyond their comprehension. Once the woman makes a 911 call in states like California, arrest of the abuser is mandatory. Even the novel idea of one stop shopping for DV related needs at San Diego's Family Justice Center has no clue about the existence of this category of victims (though it's duplication is suggested for in other parts of the country). The woman does not have to press the charges. It is the state that presses the charges. The bail process is quick and easy. The abuser is out by evening.

The real struggle for the women begins after the arrest is made. She has following options:

- A. She can live in the same house and ask her abuser to leave the place by law. Does she have money to pay the rent?
- B. She can move to an emergency shelter for 28 days maximum. Where does she go after 28 days?
- C. If she is accepted into a transition home, policies there require her to hold a paying job.
- D. If she is not legally permitted to work, or if she does not have a work permit at that time, what does she do? Pick up an under the table job and initiate another cycle of abuse.

E. More over, how many transition homes are there in the county that can accommodate her? Many specialize their service to pregnant, incarcerated, mentally instable or HIV positive. If she is single with no children, the scene is much different than if she escapes with children.

The enthusiasm of the county detective is commendable. He records the statement over the phone without meeting the victim in person. Hence, he fills in the gaps according to his own presumptions, creating severity of charges in ignorance of immigration policy implications for the victim.

At the arraignment the DA wants to protect the poor victim by procuring a long restraining order against the abuser. He may leave without even caring to know how the victim is going to support herself. For the DA, the number of emergency shelters in the county is great relief, irrespective of their policy limitations.

When the victim left her home in distress, she did not have her legal papers or passport with her. Subsequently, there is a restraining order against the husband, preventing her from seeing him. Shelter policies prevent associating with the abuser or his associates. She reports this to the DA through the victim advocate who responds after a week's time to let her know they cannot help her. She'll have to find some mediator to get her documents back.

Now it is the abuser's turn to harass her. It is surprisingly easy to trace the victim. Just do a search for homeless shelters in county on an internet search engine. They do not list names of the clients, but the category of clientele is so narrow that only a few options exist. (Please try <http://www.sdhc.net/giAffordHsgRes2.html>). Once she is traced out, she

is a security risk for other clients. Current policies require that the subject be removed from that transition home. Now she has neither money nor roof over her head. Although the city attorney's office is working hard to provide her justice, her unstable existence in a foreign country is very stressful.

Justice for this woman is to be able to live peacefully in a safe environment where she has food and roof over her head. But the definition of justice is different for the DA; hence this woman is further victimized.

Now it is the abuser's turn to attack. He can switch jobs and not apply for her new H 4 visa. She becomes illegal. Or he can stop the proceedings of her permanent resident petition (green card). She becomes illegal. Worst of all, he can file for divorce. It is easier in states with no fault divorce, like California, Nevada. The vengeful husband could report an illegal alien to the Department of Homeland Security. She becomes a hunted illegal.

The victim is further victimized by the system that has no laws to help her because she is invisible. Her invisibility is purposive; she did not pay income tax to earn a deserving spot. The law executors are far removed from the realities of this category of victims. They have no clue about immigration related complications. Domestic violence against any category of victims can not be tackled in the alienated approach displayed by the police, law and service providing agencies. There has to be a synchronized understanding and sharing of information amongst various instrumental groups. The efforts have to be initiated when the potential victim set the first step on the US soil.

ACTION STEPS

At the Airport:

- A. A dependent visa should be a red flag for the I- 94 issuing authority. The U. S. Customs Officers should inform people about the illegality of intimate partner abuse in this country like Miranda warning. And staple the national domestic violence hotline number along with the I – 94. It would help women to know that there is a legal recourse against it.
- B. They should hand out a pamphlet about community specific service agencies. This is neither difficult nor impossible. All it needs is political will. If we can do finger printing to prevent terrorism then we can even do this. It is about how we prioritize safety of those women who we know will never pay taxes.
- C. The community specific non profits are always trying to reach out to potential clients. Pamphlets can be color coded to check confusion. This will even instill a fear of law in the potential abuser that his prey is aware.

Responsibility of the Sponsor:

The employer of principle visa holders are the sponsors of dependent visas too hence they too are responsible for the safety of the dependents. The patronizing attitude that women and children belong to man has to be rethought. It should be mandatory to include the dependent's name in the direct deposit account. Employers should have liaising with non profits working against DV in the area, so that dependents can feel safe to voice their concerns. Spouses should not be permitted to withdraw health insurance or permanent resident petition or sponsorship until they prove divorce. If the principle visa holder

changes job and the name of spouse are still on the passport it should be mandatory for them to file for spousal sponsorship even with the next employer.

Police:

- a. If an arrest is made arresting officer should enquire about the type of visa while he is asking nationality. If it is a visa status and the abuser has a dependent it is a complex issue. Police should coordinate with immigration experts to assess the repercussions for the victim.
- b. Seek help of court, employer and non profits for garnishing the abuser's wages
- c. Interim spousal support through law, even if the charges are not yet proved because victim is still abuser's dependent.

Court:

It is interesting to observe this category of women do not have many rights in this country nor do they qualify for most programs and they remain invisible until they report abuse but all other laws do apply to them. They come from countries where divorce may be socially condemned but legally possible with a cause so no fault divorce works against them.

The rules of service and community property all favor the abuser, He is the prime earner. Considering their short stay, they never really acquire any assets. Women even lose the dowry they received at the time of marriage because it is in custody of his family in their native countries.

Non Profits:

- A. Should widen their understanding of various categories of DV victims, it is just not limited to immigrants and refugees.
- B. They should try to reach out to communities and employers with employee base from different countries.

These suggestions are for immediate relief to the victim; they do not have long term strategic goals of making these potential victims independent of their abusers. These suggestions pave way for long term independence of abused women from their abusers.

Conclusion:

Culturally tailored domestic violence services and Intimate Partner Violence education are needed for dependent visa spouses (Asian Women). Ignorance of prosecutors victimizes the invisible dependent visa spouses (South Asian women) reporting domestic violence. There are culturally specific and immigration-specific issues that increase a woman's vulnerability and affect her ability to seek help. South Asian women on dependent temporary legal aliens' visa, H-4 and L-2 are an invisible category of victims of domestic violence. They accompany spouses with professional visas H-1B and L-1. The invisibility of these women is pronounced in the lack of awareness about them amongst the service providing agencies namely non profit organizations and state representatives, the prosecutors. The law prohibits H-4 holders from getting a social security card and obtaining paid employment, which prevents them from opening a bank account thus, keeps them economically and legally dependent on their spouse. Economic dependence and residency filing privileges are instrumental in spousal control. The

enthusiasm of the prosecution to press charges is making mockery of the victim. They just don't have coordination and understanding of immigration issues.

This paper analyzes the gaps between the idea of justice and practical implications of justice devoid of contexts of victims through exploring the role of state in perpetrating the structural violence against temporary legal South Asian women victims of domestic violence.

The significance of this work is to question the accountability of people sponsoring and issuing these visas, the employers and the state respectively. These stakeholders are selfishly interested in procuring cheap professional labor but do not want to be accountable for the dependents they bring to this country. This is an issue of wider implications on women's rights in global economies desiring practical solutions to check this structural violence.

There are neither legal options nor effective support systems available if they have to leave their abusers. They do not qualify for conditional admission to transition homes due to legal inability to seek employment. Spouses prevent reporting of abuse by threatening to change jobs and not file for their new H-4 status or pursue divorce. In either case they can be deported. Domestic violence is a deportable charge. Reporting abuse means removal of spouse leading to deportation for them resulting in wrath of relatives and economic hardships back in their home country. The inability to support themselves and deportation can cost them custody of children. The legal systems in the home countries are not victim friendly either.

The idea of providing work permits for H-4 and enabling them by law to self petition under VAWA, U or T visa are difficult in the present job market situation and with limited technical skills most women possess. More practical will be to ensure once the abuse is reported, along with the arrest of the abuser his wages should be garnished. To prevent people on temporary legal visa from seeking no fault divorces. Binding divorce with proved cruelty and abuse. Making it mandatory for the employers to ensure that, the name of the dependent spouse is included in the direct deposit bank accounts and any petitioning for permanent status or new H- 1 visa until the name of the dependent spouse is reflected on the passport; and coordination between various agencies.

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Table 25. Nonimmigrant admitted as temporary workers, exchange

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