# Section 212(a)(6)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

By design, adjudications in the VAWA Unit are informed as much by the applicant's perspective as by traditional USCIS parameters as preventing fraud and excluding undesirable immigrants. VAWA Unit adjudicators are continuously trained in domestic violence dynamics, and their decisions are guided by an "any credible evidence" standard. In contrast, adjustment of status applications by approved self petitioners are adjudicated by officials whose training and experience emphasizes skepticism. It is possible that some adjudicators in USCIS district offices believe it is their job to guard against perceived credulity of VAWA Unit staff.

Institutionalized sensitivity to problems faced by battered immigrant women is no accident. From the outset, VAWA procedures have been informed by a particularly effective partnership between domestic violence advocates, immigration practitioners and legislators, coordinated by the brilliant and tenacious National Network to End Violence Against Immigrant Women. Because of the framework created and maintained by the National Network, nonprofits and private practitioners with busy and diverse caseloads can effectively assist battered immigrant women in the VAWA self petition process with relatively few resources. Just as important, the Network can significantly magnify the effect of advocacy efforts that are still needed. While monitoring and occasional advocacy efforts are necessary to ensure that the VAWA Unit maintains an applicant-centered approach, more significant advocacy efforts are required in our own back yards -- USCIS district offices.

In 2007 and '08, the International Institute of the Bay Area (NIFVI Partner) joined National Network members in an arcane but critical advocacy campaign. This section describes how linking up with the Network's advocacy apparatus pulled IIBA's staff out of denial, frustration and bewilderment and into a time consuming, but super-effective campaign to block a harmful policy change. Our purpose in telling the story is to encourage practitioners to contribute to VAWA advocacy efforts -- both to acknowledge our debt to people and organizations that brought the law to this point, and because working in concert with such a capable team is gratifying, exciting and effective.

<u>The Issue: VAWA Adjustment of Status provision vs. INA § 212(a)(6)(A)</u>. The Violence Against Women Act was created before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Among its many draconian provisions, IIRAIRA created several unintended negative consequences for battered immigrants who were otherwise eligible for lawful status under VAWA. When VAWA was amended in 2000, much of its purpose was to ameliorate those consequences. Specifically, VAWA 2000 made it possible for undocumented VAWA self petitioners to avoid unlawful presence bars by making them eligible to adjust their status in the US. Another IIRAIRA provision -- the unwaiveable INA § 212(a)(6)(A) present without permission ground of inadmissibility – created the same unintended negative consequences to battered immigrants. Because INA § 212(a)(6)(A) included a *savings* clause that instructed the Immigration Service not to apply the provision if it conflicted with another provision (like VAWA), most practitioners and officials believed it would not apply to battered immigrants deemed VAWA eligible by the Immigration Service. INA § 212(a)(6)(A) was not invoked in VAWA cases for years.

<u>IIBA's advocacy efforts: a progression of steps</u>

<u>Step 1: Not Our Problem</u> In about 2006, adjudicators in some districts started applying 212(a)(6)(A), reasoning that there was no VAWA-specific waiver of it. Senator Edward Kennedy wrote a letter to USCIS headquarters to remind the agency of Congress's intent that unlawful presence should not prevent a battered immigrant from gaining permanent resident status. The issue continued to cause intermittent problems with

some adjudicators in some local USCIS districts, and my staff was concerned on behalf of immigrants and practitioners in those areas. But it was not our problem, so we chose to ignore it for the most part.

Step 2: Our Problem In late summer 2007, some USCIS adjudicators hinted to practitioners that USCIS would soon send a memo instructing district offices to apply 212(a)(6)(A) to VAWA-based adjustment applications. Some adjudicators, convinced that the purpose of VAWA would be undermined by application of § 212(a)(6)(A), continued to approve adjustments for self petitioners who were present in the US without permission. Others denied these adjustment cases outright. In the San Francisco district office, adjustment cases were continued, pending denial, after adjustment interviews. With one adjustment case already continued and three more set for interviews, IIBA stopped submitting VAWA adjustment applications for battered immigrants who entered the US without inspection.

Step 3: Others are surely on top of this. Like any immigration practitioner staggering under a workload tripled by bad immigration policy, our staff does not have a moment to spare from case work. We feel privileged to work in a field in which outstanding advocates monitor and fight back most legal threats to our clients. We know how to follow email directions to call our representatives and to prepare clients for simple media interviews, but we leave anything more to the advocates because they have special expertise that we just don't have. The 212(a)(6)(A) problem had been around for a while, and would surely be resolved soon. We learned of potential litigation, and emailed our interest in signing on.

Step 4: Trying to reason with Immigration. After double-checking our understanding of 212(a)(6)(A) in Kurzban, my colleague Eleonore Zwinger dedicated herself to finding the answer in the labyrinth of the INA. Surely if she could find a clear path from VAWA's purpose and provision through IIRAIRA, the generally sympathetic officials in the San Francisco office would approve our cases. She wrote up case scenarios to prove that application of §212(a)(6)(A) in VAWA cases created absurd results. Eleonore presented her analysis to USCIS, but received no answer. She hoped that if we could just prove Congressional intent on this specific issue, we'd win, so we started asking around for more information about the co-evolution of VAWA and IIRAIRA. A second case was continued. A third client was terrified that she would be detained at her interview, and her family urged her not to appear. Ultimately, she went to her interview, and her case was continued, pending denial.

Step 5: We need to advocate (a little bit). Law student Mayte Santa Cruz wrote a memo to our Congressional Representative. I printed it on bright lime green paper, and handed it to Representative Lee at a community event. I got the business card of a staffer from another Congressional office at the event, and sent him the same memo. I called a few other Bay Area Congressional offices. I drafted a model letter to USCIS from each of the Representatives. They asked for details of cases from their affected constituents, so I created a page of profiles and sent them around. That seemed like it ought to do the trick. We waited. Local Members of Congress did not act instantly. On reflection, they probably faced the same obstacles that IIBA had earlier: the issue seemed both absurd and arcane, and would probably be resolved shortly when USCIS thought more clearly. They were working feverishly on children's health insurance and veterans' benefits. And as the advocacy effort was not yet coordinated, any action they took would be just a drop in a bucket. Our fourth adjustment case was continued, pending denial.

Step 6: We need to advocate (a lot) We started to think we'd have to pursue VAWA adjustments in proceedings – which would sharply reduce the number of cases we could handle. More intensive advocacy to change the policy suddenly seemed like the less burdensome option.

Step 7: Advocacy experts and legislators to the rescue. By this point, our frantic dedication became widely understood, and the National Network started to give us information for Eleonore's new memo and ideas for advocacy. There was a USCIS memo on § 212(a)(6)(A)'s savings clause, and a letter to USCIS from Senator Kennedy. Ellen Kemp of the National Immigration Project asked me to call Kennedy's office before using the letter. His staff was very concerned that the 212(a)(6)(A) problem had deepened. Staffer Janice Kagayutan put me in touch with staff of Congressional Representative Zoe Lofgren, Chair of the House Immigration Subcommittee. Both legislators understood the issue immediately. Other members of the National Network

swung into action, including AILF and NOWLDEF. I was delighted, because the problem was both on the path to being solved, and it was passing out of my hands.

Step 8: Working toward a solution together – shifting into high gear. Identifying and issue is a necessary, but insufficient element of an effective advocacy partnership. Ellen and Gail Pendleton of the National Network developed a plan that required additional work, but made the work far easier because our efforts were building on a well developed model toward an attainable goal. Senator Kennedy and Congresswoman Lofgren wrote letters to USCIS restating Congressional intent that VAWA provides a path to permanent residence for undocumented, as well as documented battered immigrants, and asking that the agency specifically exempt VAWA-qualified immigrants from the INA § 212(a)(6)(A) bar. *Compared with the frustration and enervation in the first months of IIBA's involvement, we were really flying now.* Once our local Congressional Representatives saw their roles in an effort by their colleagues, they wrote their own letters to USCIS, focusing on affected immigrants in their districts. A press release from the National Network resulted in media calls from throughout the U.S., and VAWA practitioners Mary Dutcher, Marien Sorensen, myself and our clients briefly became minor media stars. Mary, Marien and I were able to use the issue's national scope to attract local newspapers to an otherwise arcane issue. The San Jose Mercury News article was reprinted in dozens of papers nationwide. Our local Univision and Telemundo stations featured Kennedy and Lofgren's letters and interviews with IIBA clients.[1]

Step 9: NOW the advocacy experts take over. With the attention of (part of) the nation on the issue and a brilliant advocacy team doing whatever it is they do, USCIS thanked Congress for clarifying the issue and on April 11, 2008 issued a Memorandum to Field Leadership guiding USCIS District Offices "effectively waiving" INA § 212(a)(6)(A) for VAWA self petitioners.

Step 10: Luxuriate in the policy. The day the memo was released, Alyssa Simpson went to the USCIS with a client. The security guard screening her at the front door told her how great it was that battered women got new protection. A few days later, another USCIS staffer told me the staff there all knew things would turn out this way, to help the battered immigrants.

Step 11: Plan for the next campaign. IIBA has tools now to make any future work more efficient and effective. We're paying more attention to cataloguing client stories that point to problems or solutions. We recognize more quickly when something is "our problem." We problem solve with elected officials more easily. *We are more eager and energized to include advocacy in our practice since experiencing first hand how intensely a partnership with local and national knowledge and expertise magnifies our effectiveness.*

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[1] Watch for the double edged sword!. An advocacy message generally hopes to illustrate a dire situation to motivate effective advocacy. However, keep in mind that a dire message can also dissuade .immigrants from accessing important benefits. Spanish language media in the Bay Area is expert at framing a message to convey urgency, but not fear – but it's valuable to identify the need for a nuanced message.