

Advocacy for Immigrant Victims of Domestic and Sexual Violence Order of Protection Provisions¹

By Carolyn Seugling²

A 1999 study found that filing for an Order of Protection resulted in a significant decline (66%) in abuse over a two year follow up period.³ Obtaining a civil Order of Protection for a battered immigrant victim may protect her from further abuse and assist her in her immigration claims if she chooses to proceed with them. Orders of Protections should include the general relief provisions as well as specific provisions tailored to the battered immigrant victim's needs. Here are some answers to frequently asked questions about obtaining an Order of Protection for battered immigrant victims.

- Are there any special requirements for immigrant victims to obtain an Order of Protection?
 - No. The victim does not need to be a lawful permanent resident (LPR) or

Citizen to obtain an Order of Protection. Moreover, Orders of Protection should be sought for victims who choose to leave their abusers as well as those who do not wish to separate.

- Should an immigrant victim get a mutual Order of Protection or consent order?
 - No. An Order of Protection that does not require an admission or finding of abuse is never helpful. Consent Orders of Protection should only be used when the abuser admits to the abuse or the judge bases issuance of the Order of Protection on the petitioner's affidavit. Otherwise, the immigrant petitioner should have a full Order of Protection hearing. This hearing is important so that immigrant victims are not limited in their immigration

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AMICUS presents new or emerging issues of domestic and sexual violence law or clarifications of existing law where it is not well understood, as well as practice guidelines in domestic and sexual violence law for attorneys, advocates, courts, law enforcement, and others. It is published monthly by the Tennessee Coalition Against Domestic and Sexual Violence (TCADSV) and is free. This newsletter is not intended as legal advice. For application of the law to your individual case, please consult an attorney.

Order of Protection Provisions

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relief claims and public benefits they might be eligible for. Furthermore, if the immigrant victim is found to be in violation of a mutual Order of Protection, even if in self defense, this could lead to her deportation.

- Are there any special rules or procedures for immigrant victims to obtain an Order of Protection?
 - No. The same rules and procedures that apply to other abused women apply to immigrant women. The same types of relief available should also be included.
- What are the most important types of relief for an immigrant victim?
 - Most importantly, the victim should petition for temporary custody. Temporary custody can be awarded to the victim until further notice. Many immigrant women believe that custody will be awarded to the father. Failure to obtain custody reinforces control over her and may pressure her to return to her abuser to be with her child/ren.
 - Child support and maintenance are also important relief for immigrant victims who do not have work papers. These types of relief need to be specifically requested for her support.

Some specific provisions helpful to immigrant victims should also be included under the catch-all provisions which allow additional relief to be granted as necessary. After discussing the victim's situation, some of the following may be applicable:

- The respondent shall give petitioner access to, or copies of, any documents supporting petitioner's immigration application.
- The respondent shall not withdraw the application for permanent residency which has been filed on petitioner's behalf.
- The respondent shall not contact INS about petitioner's immigration petition. (Although INS is statutorily barred from using any information from the abuser, the abuser should be prevented from informing INS of her immigration status and thereby placing her in a defensive position.)
- The respondent shall take any and all action necessary to ensure that the petitioner's application for residency is approved.
- The respondent shall pay any and all fees associated with the petitioner's and/or children's immigration cases.
- The respondent shall immediately relinquish possession and/or use of and transfer to the petitioner the following items:

- Petitioner's property such as culturally important items and things needed to prove or attain legal status.
- Copies of information or documents of the respondent that the victim needs for her immigration claim.
- Evidence of good faith marriage.
- Other materials needed by the INS that establish that the parties have resided together and that the petitioner currently resides in the U.S.
- The respondent shall pay to the petitioner through the court all costs associated with replacing documents destroyed, hidden, or claimed to be missing by the respondent, including the petitioner's or the children's passports, social security cards, alien registration cards, birth certificates, work permits, bank cards, or driver's licenses.
- The respondent shall under oath sign a document in open court stating whether or not he has been previously married and identifying the jurisdiction in which each prior marriage was terminated, including the date each prior divorce was issued.
- The respondent shall not remove the children from the court's jurisdiction and/or the U.S. absent a court order and shall relinquish the children's passports to the petitioner or the court.
- The respondent shall sign a statement that will also be signed by petitioner and the judge informing an embassy or consulate that it should not issue visitor's visas or any other visa to the child of the parties absent an order of the court.

Be sure to read the other articles in this series,
Advocacy for Immigrant Victims of Domestic and Sexual Violence.
 The articles include: *Introduction, Do's and Don'ts, Safety Planning for Battered Immigrant Women, Order of Protection Provisions, Trafficking Victims, Violence Against Women Act Petitions, and Additional Resources.*

Copies of the entire series are available from:
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¹ Much of the information in this series is taken from Leslye E. Orloff and Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women*, published by Ayuda, Inc. in 1999.

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³ Carlson, M., Harris, S., and Holden, G. (1999). Protective orders and domestic violence: Risk factors for re-abuse. *Journal of Family Violence*, 14, 205-226.

T.C.A. § 36-3-606: "A protection order granted under this part to protect the petitioner from domestic abuse may include, but is not limited to" the relief specified in the statute (emphasis added).



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The Tennessee Coalition Against Domestic and Sexual Violence (TCADSV) is a non-profit organization composed of diverse community leaders and program members who share a common vision of ending violence in the lives of Tennesseans through public policy advocacy, education and activities which increase the capacity of programs and communities to address violence. As a statewide coalition, we serve: Domestic and Sexual Violence Programs, Community Groups and Organizations, Criminal Justice Agencies, Allied Professionals (Medical, Legal, Mental Health, etc.) and Individuals Seeking Information and Resources. For more information, please contact TCADSV at 615.386.9406.

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