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OBTAINING STATUS FOR VICTIMS OF DOMESTIC VIOLENCE: PART TWO:
THE VIOLENCE AGAINST WOMEN ACT (VAWA).

Under the Violence Against Women Act (VAWA), spouses and children of United States citizens or lawful permanent residents may request lawful permanent residency if they have been the victims of domestic violence.

This law applies even if the person applying is undocumented, and entered the United States illegally. If the VAWA application is granted, the person's unlawful presence here is forgiven, and they become eligible for a green card.

The person applying must have been legally married in good faith to a U.S. citizen or lawful permanent resident who committed the domestic violence. The law also allows the unmarried children of the battered spouse under the age of 21 to get status as derivative beneficiaries.

Likewise, VAWA allows an opportunity to apply for status for a battered child under 21 years of age and unmarried. The parents of a child who has been abused and unmarried minor children can also apply as derivative beneficiaries.

A battered spouse only qualifies for relief if the abuse occurred in the United States. The only exception is when the abusive spouse is an employee of the United States government or a member of the uniformed services of the United States.

It is important to know that the emotional or psychological abuse also qualifies; it is not absolutely necessary to show that the victim suffered physical attacks. The law requires the victim to prove they were subjected to "extreme cruelty", which can include threats, verbal abuse, harassment and other forms of emotional abuse, without the necessity of physical abuse.

Our office has had great success obtaining VAWA status for women who were subject to various forms of cruelty or violence. In these applications, a police report of the abuse is helpful, but not necessary. We have been able to succeed in winning these cases with statements from witnesses including family members.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY & ASSOCIATES has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine “Super Lawyers” edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060.