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Congress Giveth, Congress Taketh Away, Congress Fixeth Its Mistake?

Assessing the Potential Impact of the Battered Immigrant Women Protection Act of 2000

Lori Romeyn Sitowski*

I. Introduction

Battered immigrant women fall into a severely marginalized category of American society.1 Language, culture, and a lack of legal resources often prevent battered immigrants from leaving an abusive relationship.2 In addition, these women often have trouble finding shelter and employment due to language barriers, lack of income, and ineligibility for public assistance.3 Finally, the battered immigrant woman is often faced with an unenviable choice. She must decide to suffer in silence with her abusive husband or risk deportation to her country of origin.4 This

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2. See Virginia P. Coto, LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women, 53 U. MIAMI L. REV. 749, 751 n.4 (July 1999); see also Julie Linares-Fierro, A Mother Removed—A Child Left Behind: A Battered Immigrant's Need for a Modified Best Interest Standard, 1 SCHOLAR 253, 287-88 (1999) (explaining that some foreign cultures accept spousal abuse as the norm and dictate that women should accept the abuse as a matter of duty). An immigrant woman may also fear risking her social status. See id. It may be imperative in her culture that she not dishonor her husband by reporting the abuse, for if she does so, her culture and her family may reject her. See id. Furthermore, many world religions dictate that the woman tolerate the abuse because she is married to the abuser. See id.

3. See Linares-Fierro, supra note 2, at 285.

4. See Maurice Goldman, The Violence Against Women Act: Meeting Its Goal in Protecting Battered Immigrant Women?, 37 FAM. & CONCILIATIONCTS. REV. 375,
combination of factors often leads the woman to stay with her batterer rather than face unknown consequences.\(^5\)

The plight of battered immigrant women is further exacerbated by the fact that, until 1994, their abusers had sole responsibility for their immigration status.\(^6\) Under the Immigration Marriage Fraud Amendments of 1986 (IMFA), a U.S. citizen or legal permanent resident spouse was required to file a permanent residency application on behalf of his immigrant spouse.\(^7\) This requirement allowed the abusive spouse to trap his wife with promises to file the residency petition and threats of deportation if she did not comply with his demands.\(^8\) When President Clinton signed the Violence Against Women Act of 1994 (VAWA),\(^9\) this tyranny ended. Under VAWA, a battered immigrant woman may now self-petition for permanent residency status or suspension of deportation.\(^10\)

Despite the 1994 legislation, battered immigrant women still face grave problems when they attempt to leave their abusive spouses. A battered immigrant's evidentiary burden under the self-petition is extremely difficult to carry.\(^11\) Other factors that

\(^5\) See Tien-Li Loke, Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women, 6 B.U. PUB. INT. L.J. 589, 591 n.2 (Winter 1997) (recognizing that the fear of deportation coupled with the unfamiliarity with the American legal system influences battered immigrants to stay with their abusive spouses).

\(^6\) See Leslye E. Orloff et al., With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women, 29 FAM. L.Q. 313, 324-25 n.2 (Summer 1995).


\(^8\) See Suzanne Tice, Battered Immigrants Given New Hope with Violence Against Women Act, 62 TEX. B.J. 930, 931 n.9 (Oct. 1999); see also Coto, supra note 2, at 749 (relating victim's story where the lawful permanent resident spouse beat his wife and dragged her to the INS for deportation, changing his mind on a whim before they arrived at the center).


hinder battered women's access to the self-petition provisions of VAWA include ineligibility for economic assistance and the lack of legal resources. For these reasons, many battered immigrant women continue to remain under the control of their abusers.

Congress took notice of these inadequacies and introduced several pieces of legislation in both houses of the 106th Congress. The proposed legislation aimed to amend current immigration law to lessen the self-petitioner's burden both substantively and procedurally, primarily through altering the type and amount of evidence necessary to satisfy the rigorous elements of the self-petition. From among the various proposals, Congress enacted a version entitled the Battered Immigrant Women Protection Act of 2000 (BIWPA), which was signed by President Clinton on October 28, 2000. BIWPA amends the 1994 VAWA and current immigration laws to lessen the self-petitioner's burden and better accommodate the unique situation of battered immigrant women. The question that remains is whether BIWPA will effectively remedy the many obstacles battered immigrants face in leaving their abusers, or if more congressional action is necessary.

This Article will attempt to answer that question by looking at the several bills proposed during the 106th Congress and the final product, the Battered Immigrant Women Protection Act of 2000. Through comparative analysis, this Article will determine if the new legislation substantially improves the position of battered immigrant women in the American system or if it simply adjusts the barriers without giving the needed relief. Part II will examine the historical context of both domestic violence and

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12. See Emily Stubbs, Welfare and Immigration Reform: Refusing Aid to Immigrants, 12 BERKELEY WOMEN'S L.J. 151, 155-56 (1997) (explaining that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 creates an exception for otherwise ineligible battered immigrants if their self-petition is approved or pending).

13. See Coto, supra note 2, at 751 (citing the lack of legal services as an impediment to battered immigrants).

14. See id.


19. See infra notes 326-406.

family immigration law in the United States. Part III will look at immigration legislation enacted between 1986 and 1996, including the Immigration Marriage Fraud Amendments of 1986 and the 1990 legislation passed to amend those provisions, the Violence Against Women Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Part IV will compare the provisions of House bill H.R. 4966, Senate bill S. 2787, and the version ultimately enacted to the statutory provisions discussed in Part III. Finally, Part V will determine if Congress has taken adequate steps to alleviate the stress on battered immigrant women who face the dire choice of continued battery or deportation.

II. Historical Context

A. Domestic Violence

Domestic violence is generally thought of as the violence that occurs between couples living together, or who once lived together, in a conjugal relationship. Although both males and females may perpetrate domestic violence, the overwhelming majority of

21. See infra notes 32-70 and accompanying text.
22. See infra notes 71-208 and accompanying text.
31. See supra notes 23-27 and accompanying text; infra notes 209-407 and accompanying text.
victims are female. Statistics show that women are at least six times more likely than men to suffer violence committed by an intimate partner. Between two and four million women are subjected to intimate abuse in a single year. Furthermore, even these staggering figures likely underestimate the incidence of domestic violence because most victims do not go to the police or otherwise report their abuse. All in all, it is estimated that domestic violence is the most commonly unreported crime.

The phenomenon of underreporting domestic abuse stems directly from its historical context. Through the English common law system on which American law is based, a woman’s identity and autonomy were legally subsumed by her husband upon marriage, and men were held liable for acts committed by their wives. Thus, men were legally charged with the obligation of controlling their wives, and encouraged to “chastise” them with physical force. This legal tradition transferred to the American colonies where laws were passed allowing men to chastise their wives as they saw fit. The legal entitlement of men to use violence against their wives has long been abrogated, yet the legal systems of the United States continued to treat domestic violence

33. See id. at 28.
34. See RONET BACHMAN & LINDA E. SALTZMAN, U.S. DEPT OF JUSTICE, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 1 (Aug. 1995), reprinted in 1 DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE 11 (Patricia G. Barnes ed., 1998). This study further shows that in twenty-nine percent of all violence against women by a single perpetrator, the perpetrator was an intimate, and that these victims are more often injured than are females victimized by a stranger. See id. at 3, reprinted in 1 DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE 13 (Patricia G. Barnes ed., 1998).
35. See Karla M. Digirolamo, Myths and Misconceptions About Domestic Violence, 16 PACE L. REV. 41, 42 n.1 (Fall 1995).
36. See U.S. DEPT OF JUSTICE, VIOLENCE BETWEEN INTIMATES (Nov. 1994), reprinted in 1 DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE 1 (Patricia G. Barnes ed., 1998) (explaining that domestic violence is difficult to measure because victims are reluctant to come forward based on shame or fear of reprisal).
37. See Del Martin, The Historical Roots of Domestic Violence, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 3, 3 (Daniel Jay Sonkin ed., 1987) (citing 1974 FBI statistics estimating that domestic violence is ten times less likely to be reported than rape).
38. See generally id. (examining the various societal and legal influences that permit this construct); R. Emerson Dobash & Russel P. Dobash, Wives: The ‘Appropriate’ Victims of Marital Violence, 2 VICTIMOLOGY 426 (1978) (detailing the legal evolution of wife battery from Roman law to the present).
40. See id. In general, the right of domestic chastisement was limited only by the “rule of thumb,” i.e., that a husband was allowed to whip his wife with a switch no bigger in diameter than his thumb. See Martin, supra note 37, at 6.
as a private offense into which the law will not probe.\footnote{See Dobash & Dobash, supra note 38, at 426-39 (citing case law demonstrating courts' refusal to penetrate the "veil of privacy" constructed around the practice of domestic abuse). The law's reluctance to intervene to protect battered women was evidenced by the widespread policy of police departments to refuse to make an arrest in situations of domestic violence. See Martin, supra note 37, at 6-7. Police departments adopted this "hands-off" policy because the general consensus was that arrest would only aggravate the situation and reconciliation was the best avenue for the family relationship. See id.}

Because the law provided no redress for victims of domestic abuse, and because the abuse itself was attributed to misconduct by the women, victims of domestic violence have suffered in silence. It is from this legal and attitudinal tradition that the current epidemic of domestic abuse stems, a tradition that once fostered violence as the protected mechanism used by husbands to control their wives.\footnote{See generally Dobash & Dobash, supra note 38, at 426-39 (documenting the legal and social construction of domestic violence and noting that it has been only a hundred years since men have been denied the legal right to beat their wives in the United States and Great Britain).}


Despite the evolution of domestic violence from a legally protected practice to a criminally prohibited act, many abuse victims, especially within immigrant communities, fail to use the legal resources that are now available.\footnote{See generally Loke, supra note 5, at 590-93 (discussing the obstacles battered women face that leave them feeling helpless and powerless to escape the abuse).}

Many battered women remain in violent relationships due to complex emotional ties to their abusive partners, exacerbated by abusers' apologies and promises to get help after an abusive incident.\footnote{See Linares-Fierro, supra note 2, at 270-71. These promises create hope that the abuse will end and the couple will be able to build a loving, non-abusive marriage. See id.}

Victims may internalize the widespread perception that domestic violence is a private matter, and may hide the abuse out of fear, shame, and denial.\footnote{See Loke, supra note 5, at 592.} Additionally, a battered woman may feel trapped because her partner has systematically destroyed all of her relationships outside the household, leaving her isolated and
without any support. Economic obstacles also play an enormous role in preventing women from leaving violent relationships, as many victims are financially dependent on their abusive partners and cannot afford the expense of relocating and raising their children alone. Finally, battered women may remain in abusive relationships based on their acute and justified fear of violent retaliation if they leave. These fears, the challenge of self-reliance, and the known risk of increased retaliatory violence deter women from leaving an abusive relationship.

Battered immigrant women face all of these obstacles and more. Until 1994 their unique situation was generally ignored by both Congress and the American public. It appears that Congress considered regulating immigrants more important than protecting this marginalized portion of society. Nevertheless, recognizing in 1994 that nearly seventy-seven percent of Latina immigrant women suffer domestic abuse in the District of Columbia alone, Congress undertook to remedy the situation by

47. See Linares-Fierro, supra note 2, at 271.
48. See Loke, supra note 5, at 593.
49. See generally Martha Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 1-79 (1991) (explaining how separation assault—the acutely violent and potentially lethal assaults intended to prevent victims from leaving, to retaliate for the separation, or to force them to return—constitutes the greatest risk to women who attempt to escape violent relationships).
50. See Linares-Fierro, supra note 2, at 271.
51. See supra notes 1-31 and accompanying text (identifying many of these challenges).
53. The Immigration Marriage Fraud Amendments of 1986 established a conditional residency standard for immigrants married to U.S. citizens or legal permanent residents. See Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended in scattered sections of 8 U.S.C.). This conditional status allows an abuser to control his victim because his consent is required for her to become a legal permanent resident. See Felicia E. Franco, Unconditional Safety for Conditional Immigrant Women, 11 Berkeley Women's L.J. 99, 111 (1996) (stating that the conditional residency system empowers abusive partners); see also Linares-Fierro, supra note 2, at 283-87 (discussing the scarcity of resources devoted to battered women).
54. See Lee J. Teran, Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act, 17 B.U. Int'l L.J. 1, 11-12 n.1 (Spring 1999) (stating that national statistics are generally not available).
enacting the battered immigrant women provisions of VAWA.\textsuperscript{55} Despite VAWA's progress, domestic violence victims in general, and battered immigrants specifically, continue to face dire conditions.\textsuperscript{56} Only through new legislation encouraging fair standards, feasible evidentiary requirements, and better access to legal services will battered immigrant women be able to escape violent relationships without jeopardizing their immigration status.

\textbf{B. Family-Based Immigration}

The immigration status of a married non-citizen woman has long depended on her husband.\textsuperscript{57} An 1855 law stated that a non-citizen woman who married a U.S. citizen automatically became a citizen, while a 1907 law stripped a female citizen of her citizenship if she married a non-citizen man.\textsuperscript{58} Although both laws were repealed in 1922, the impact of a spouse's citizenship on that of his or her partner remains a key factor in U.S. immigration law.\textsuperscript{59}

Congress has traditionally given significant weight to reuniting families in its promulgation of immigration law.\textsuperscript{60} Modern family-sponsored immigration law is quite complex, with a variety of preferences\textsuperscript{61} and country quota\textsuperscript{62} considerations that

\textsuperscript{55} See id. at 16; supra note 52.
\textsuperscript{56} See, e.g., Linares-Fierro, supra note 2 (describing the various obstacles battered immigrants still face).
\textsuperscript{57} See generally Linda Kelly, Republican Mothers, Bastards' Fathers and Good Victims: Discarding Citizens and Equal Protection Through the Failures of Legal Images, 51 HASTINGS L.J. 557 (Mar. 2000) (analyzing the doctrine of coverture within the context of immigration law).
\textsuperscript{58} See id. at 566. Congress passed the 1855 law in an effort to prevent non-citizen women married to citizen men from becoming stateless. See id. Alternatively, the 1907 law forced the citizen woman to become stateless and depend on her husband's country of origin for new citizenship. See id.
\textsuperscript{59} See id. at 567.
\textsuperscript{61} Preference refers to the classification system that groups immigrants based on their familial relationships with a U.S. citizen or legal permanent resident. See LAURENCE A. CANTER & MARTHA S. SIEGEL, U.S. IMMIGRATION MADE EASY 4/1 (6th ed. 1998). There are four different family preferences: 1) unmarried people with one U.S. citizen parent; 2) spouses and unmarried children of legal permanent residents; 3) married people with one U.S. citizen parent; and 4) siblings of U.S. citizens. See id.
\textsuperscript{62} There are annual limits on the number of green cards issued to preference immigrants who are not immediate relatives of U.S. citizens. See id. at 4/3. There are two quota systems in the U.S. immigration system, one based on country of origin and the other on a worldwide limit. See id.
must be satisfied before receiving a green card.\footnote{63} It should be noted, however, that immigration based on marriage to a U.S. citizen does not fall into the preference or quota categories.\footnote{64} These non-citizen spouses are considered immediate relatives and may receive a green card subject to several conditions.\footnote{65}

Regardless of the preference classification, the immigrant, in conjunction with the U.S. citizen or legal permanent resident spouse, must complete a two-step process.\footnote{66} The first step is the filing of a petition.\footnote{67} This petition is used by the Immigration and Naturalization Service (INS) to determine that the applicant is an immediate relative or part of a preference category.\footnote{68} The date the petition is filed begins the waiting period for a preference immigrant’s green card.\footnote{69} Before the green card is issued, the

\footnote{63. See Bassett, supra note 60, at 339-40; see also CANTER & SIEGEL, supra note 61, at 5/1-5/3 (describing the four family preferences that establish the relationship between the new immigrant and the lawful resident). Once the relationship is identified, the immigrant may not receive a green card until the applicable quota is available. See id. This amount of time varies considerably depending on both preference and country of origin. See id. This Article will focus on immediate relative (marriage to a U.S. citizen) and second preference (spouses and children of legal permanent residents) immigrants.}

\footnote{64. See CANTER & SIEGEL, supra note 61, at 5/1 (stating that the preference categories are covered by quota while the immediate relative categories are not). An immediate relative does not have to wait until a quota slot opens to receive her green card.}

\footnote{65. See Bassett, supra note 60, at 347. Although there is no official quota, the Immigration and Nationality Act provides that all family-based immigration, preference, and immediate relative immigrants should not exceed 480,000 people. See Pub. L. No. 82-414, 66 Stat. 163 (codified as amended in scattered sections of multiple titles of U.S.C.); Bassett, supra note 60, at 345. This cap, however, is fluid and will increase if the number of immediate relatives exceeds 254,000, a number derived by subtracting 226,000 (the floor for the number of preference immigrants) from the total number of 480,000. See id.; see also infra notes 66-112 and accompanying text (discussing the conditions a non-citizen spouse must meet before becoming a legal permanent resident).}

\footnote{66. See CANTER & SIEGEL, supra note 61, at 5/5.}

\footnote{67. See id. This petition is filed by the sponsoring spouse or, in the case of a battered woman, by the actual applicant. See id. In addition to the petition form, the sponsor must submit biographic information for both parties, an affidavit of financial support, and supporting documents to prove the immigration status of the sponsor and petitioner and the relationship between the two. See Bassett, supra note 60, at 345. There are additional requirements for the battered immigrant’s self-petition. See id.; see also infra notes 126-136 and accompanying text (describing the requirements for a self-petition); U.S. Dep’t of Justice, Immigration & Naturalization Serv., Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, available at http://www.ins.usdoj.gov/graphics/formsfee/forms/files/I-360.pdf (Sept. 11, 2000) [hereinafter INS Form I-360]. This is the form filed by the battered immigrant, which sets forth all the necessary qualifications for a self-petition. See id. at 2.}

\footnote{68. See CANTER & SIEGEL, supra note 61, at 5/5.}

\footnote{69. See id. The petition, however, does not give the immigrant the right to enter, work, or be present in the United States. See id. It is only a prerequisite to
immigrant's petition must be approved and a green card application filed.  

III. Statutory Structure 1986-2000

Between 1986 and 1996, Congress passed five laws that both limited and expanded a battered immigrant woman's opportunity to escape her abusive spouse.

A. The Immigration Marriage Fraud Amendments and the Immigration Act of 1990

An immigrant who marries a U.S. citizen or a legal permanent resident is eligible for permanent residency. Until 1986, there were no conditions placed on this status. However, in response to evidence that thirty percent of marriages between an immigrant and a citizen were "sham marriages," Congress
passed the Immigration Marriage Fraud Amendments of 1986 (IMFA).\textsuperscript{76} IMFA places conditions on the immigrant spouse’s permanent residency status and puts this immigration status solely in the hands of the citizen spouse.\textsuperscript{77}

IMFA provides that a noncitizen spouse married less than two years will be considered a conditional permanent resident.\textsuperscript{78} This conditional status will be removed if, ninety days before the second anniversary of receiving conditional status,\textsuperscript{79} the couple submits a petition requesting the removal of condition.\textsuperscript{80} Once the petition is filed and accepted by the INS, an INS officer must interview the couple to determine that the marriage is valid before the condition is removed.\textsuperscript{81} A decision on validity is made within ninety days of the interview.\textsuperscript{82} If the decision is favorable the condition is removed; if the decision is adverse the immigrant loses her status altogether.\textsuperscript{83} If either the joint petition or the interview requirement is not met, the immigrant will lose her permanent residency status.\textsuperscript{84}

The 1986 IMFA also provides two waivers that allow the immigrant to remove the conditions without meeting the joint petition and interview requirements.\textsuperscript{85} The first, a good faith waiver, allows an immigrant to remove the condition even if the marriage has ended.\textsuperscript{86} The immigrant must show that the marriage was entered into in good faith, the marriage was terminated on the immigrant’s initiative, and the immigrant was

\textsuperscript{76} See Franco, supra note 53, at 105. The law reflected the INS view that marriage to a U.S. citizen is “an inevitable channel through which noncitizens who might not otherwise be eligible to immigrate will seek to circumvent the immigration laws.” Beth Stickney, The Immigration Consequences of Divorce, 13 J. AM. ACAD. MATRIMONIAL L. 271, 279 (1996).

\textsuperscript{77} See Immigration Marriage Fraud Amendments, 100 Stat. 3537 (preventing immigration-related marriage fraud).

\textsuperscript{78} See 8 U.S.C. § 1186a (1986).

\textsuperscript{79} If the marriage is deemed invalid prior to this ninety-day mark, the immigrant will lose her immigration status, subject to a deportation hearing. See id.

\textsuperscript{80} See id. The petition should state that the marriage was entered into in accordance with the law, has not been judicially annulled or terminated, was not entered into in order to establish immigration status and no consideration was given for the filing of the petition. See id.

\textsuperscript{81} See id.

\textsuperscript{82} See id.

\textsuperscript{83} See id. The immigrant may request a review of the evidence in an adverse decision. See id.

\textsuperscript{84} See 8 U.S.C. § 1154 (1986). The immigrant is entitled to a deportation hearing to establish compliance with these requirements. See id.

\textsuperscript{85} See id.

\textsuperscript{86} See id.
not at fault for failing to file the joint petition. The second waiver applies when the immigrant fails to meet the petition and interview requirements, but demonstrates that she will suffer extreme hardship if deported. Neither of these waivers is sufficient to aid a battered immigrant who is trying to escape her husband's control.

IMFA has a disparate impact on women, because the majority of immigrants who obtain status through marriage are women married to citizens or legal permanent residents. This impact is especially harsh on battered immigrant women for several reasons. First, the citizen spouse is required to file the initial petition in order for the immigrant spouse to receive conditional resident status; the two-year conditional period does not begin until the petition is filed. Therefore, battered immigrant women are deportable unless and until their batterer files the petition granting them conditional status. This vulnerability allows the citizen spouse to subject his wife to further abuse through promises to file the petition and threats to turn the undocumented citizen over to the INS.

The second primary way the IMFA adversely affects battered immigrant women results from the joint petition and interview requirements. Assuming the citizen husband files the initial petition, unless he agrees to participate in the joint petition and interview process, the battered immigrant is legally stranded and will lose her immigration status.

In sum, the IMFA's conditional residency requirements vest absolute control over a battered immigrant woman's status in the hands of her abuser, allowing batterers to use the U.S. immigration system as yet another tool of power and control over their victims.

Although IMFA provided two waivers for conditional immigrants who are unable to meet the petition and interview requirements, battered immigrants did not fit well into either

87. See id.
88. See id.
89. See infra notes 95-100 and accompanying text (setting forth the problems with these waivers).
91. See Pressman, supra note 73, at 132-33.
93. See Franco, supra note 53, at 105-06.
94. See id.
category.\textsuperscript{95} Under the good faith waiver as it was originally enacted, the marriage must have been terminated and the immigrant must have been the filing party in the divorce.\textsuperscript{96} This presented a significant barrier for a battered immigrant woman.\textsuperscript{97} First, it required that she file for divorce at what is often a very difficult and dangerous time in a battered woman's life.\textsuperscript{98} The volatility of the situation was complicated by the fact that most battered immigrants are low income and do not have adequate access to legal services, especially if they do not speak English.\textsuperscript{99} Second, the battered immigrant likely could not qualify for the waiver if she lived in a "no-fault" divorce jurisdiction, making this waiver generally useless.\textsuperscript{100} The good faith waiver was thus impracticable for most battered immigrant women, forced to legally maneuver through both divorce and immigration laws that they often can not fully access.

The extreme hardship waiver was similarly impracticable for battered immigrant women. Under this waiver, the INS may consider only evidence relating to the conditional status, thereby substantially narrowing the battered immigrant's opportunity to present proof of battery.\textsuperscript{101} Furthermore, evidence of abuse will probably not be sufficient to satisfy the requirements of this waiver because the legal question is whether the immigrant will suffer extreme hardship \textit{if deported}, not if she remains married.\textsuperscript{102} Therefore, given the limited scope of the evidentiary inquiry by the INS, as well as the fact that proof of abuse is relevant primarily to the immigrant’s present hardship, it is improbable that battered immigrant women are able to fulfill the requirements of the extreme hardship waiver.\textsuperscript{103}

\textsuperscript{95} See id.; see also Pressman, supra note 73, at 136 (stating that the waivers do not provide relief for battered immigrants).
\textsuperscript{96} See Immigration Marriage Fraud Amendments, 100 Stat. 3537.
\textsuperscript{97} See Pressman, supra note 73, at 137; Loke, supra note 5, at 595.
\textsuperscript{98} See Pressman, supra note 73, at 137. Requiring the immigrant to file first created a race to the courthouse because the waiver was inapplicable if the citizen spouse filed first. See id.
\textsuperscript{99} See id.; see also Loke, supra note 5, at 596 (stating that the lack of bilingual legal services makes it difficult to obtain a dissolution of marriage).
\textsuperscript{100} See Pressman, supra note 73, at 137. Although domestic violence is seen as good cause for divorce, there remains a problem of proof in no-fault divorce jurisdictions. See id.
\textsuperscript{101} See id. at 136.
\textsuperscript{102} See id.
\textsuperscript{103} See Franco, supra note 53, at 106. The statute does not permit the INS to consider conditions existing prior to the filing for conditional status. See id. Therefore, country conditions and pre-existing medical conditions are not part of the extreme hardship determination. See id. Furthermore, unless the battered
Battered immigrant women's inability to use these waivers effectively led Congress to amend the IMFA in 1990. The Immigration Act of 1990 (Immigration Act) substantially amended the good faith waiver and created a new battered spouse waiver. The good faith waiver no longer requires that the immigrant file for divorce or that there be good cause for the divorce. The battered spouse waiver provides that an immigrant who enters into a marriage in good faith may petition for removal of conditional status if she can prove she is battered or subject to extreme cruelty. The immigrant need not be divorced or living separately from her spouse in order to qualify for this waiver.

Despite the progress Congress made in passing the Immigration Act, significant problems still remained for battered immigrant women. Most of these problems stemmed from the INS regulations promulgated to implement the new law. The regulations define an individual who is abused or subject to extreme cruelty inclusively, but require these immigrants to meet stringent credible evidence standard. A battered immigrant must submit documentary evidence of abuse including, but not limited to, police reports, medical reports, and social service reports. In order to prove extreme mental cruelty the immigrant must also submit an evaluation from a mental health professional. These strict evidentiary requirements of official records directly contradict the established knowledge that domestic abuse is grossly underreported, particularly by woman can show that her children will be left with an abusive father, she will probably be unable to prove extreme hardship if deported. See Pressman, supra note 73, at 136.

105. See id.
106. See Franco, supra note 53, at 109. Removal of the requirement that the battered immigrant file first leaves the finalization of the divorce and evidence of a good faith marriage as the main requirements for a good faith waiver. See id. The immigrant must also show that she is not at fault for the failure to file a timely joint petition. See id.
108. See Stickney, supra note 76, at 287.
109. See Loke, supra note 5, at 598 (claiming that the regulations are "unnecessarily burdensome on battered immigrant women").
110. See Franco, supra note 53, at 108.
111. See Loke, supra note 5, at 598.
112. See Pressman, supra note 73, at 142. When the claim depends solely on extreme mental cruelty this evaluation becomes the determining factor in a decision to grant or deny the waiver. See id.
immigrant women who face the added barriers of language, culture, and fear of deportation.\textsuperscript{113}

It is unreasonable to hold battered immigrant women to these evidentiary standards.\textsuperscript{114} The INS, however, justified its position as a balance between two needs.\textsuperscript{115} It must make the evidentiary requirements as fair as possible while preventing immigrants from abusing the system and taking advantage of the new waiver.\textsuperscript{116} When compared to the alternative good faith waiver, these requirements are not at all fair. It is easier for a woman to leave her husband and get divorced under the good faith waiver than to apply for the battered immigrant waiver.\textsuperscript{117} This strict evidentiary requirement made the Immigration Act amendments far weaker and less useful than originally intended.\textsuperscript{118}

The major problem with the 1986 IMFA was not addressed in the 1990 Immigration Act. Under the IMFA, the citizen spouse maintained ultimate control over the immigration process.\textsuperscript{119} Thus, the battered spouse waiver applied to only those immigrants whose citizen spouses filed the original petition for conditional status.\textsuperscript{120} A battered immigrant whose citizen spouse did not file the first petition had little hope of escaping her situation.\textsuperscript{121} Undocumented battered immigrant women remained in this precarious situation until enactment of the Violence Against Women Act of 1994.\textsuperscript{122}

\textsuperscript{113} See Loke, supra note 5, at 598 (stating that cultural and language barriers, as well as fear of deportation, prevent a battered immigrant from obtaining any objective documentation of abuse).

\textsuperscript{114} See id; Michelle J. Anderson, A License to Abuse: The Impact of Conditional Status on Female Immigrants, 102 YALE L.J. 1401, 1419 (1993) (stating that the extreme mental cruelty requirement may be inconsistent with congressional intent).

\textsuperscript{115} See Pressman, supra note 73, at 143.

\textsuperscript{116} See id.

\textsuperscript{117} See Franco, supra note 53, at 110. The immigrant need only show a good faith marriage and a valid divorce decree under the good faith waiver. See id. at 111. Under the battered spouse waiver, she must present additional documentary evidence of her abuse. See id.

\textsuperscript{118} See id.

\textsuperscript{119} See Anderson, supra note 114, at 1416-17.

\textsuperscript{120} See id. at 1417.

\textsuperscript{121} See id. (claiming that battered immigrants whose spouses failed to file the first petition "fall through the cracks"); Pressman, supra note 73, at 140 (explaining that the new waiver does not help undocumented aliens).

B. The Violence Against Women Act of 1994

Title IV of the Violent Crime Control and Law Enforcement Act of 1994\textsuperscript{123} deals specifically with violence against women.\textsuperscript{124} This Title, the Violence Against Women Act (VAWA), includes a section designed to increase a battered immigrant's options in her quest to establish legal immigration status.\textsuperscript{125} In its efforts to alleviate the problems created by IMFA, VAWA made great strides toward equalizing the power differential between battered immigrants and their citizen husbands.

1. The Self-Petition Process

Under VAWA of 1994, abused immigrants no longer have to wait for their citizen spouse to file the initial immigration petition establishing conditional residency.\textsuperscript{126} They may gain legal status on their own by completing a two-step process.\textsuperscript{127} The first step is to file an I-360 Petition with the INS Vermont Service Center.\textsuperscript{128} The petition includes an application and credible evidence supporting the claim.\textsuperscript{129} In order for the INS to grant a petition, the battered immigrant must prove residence in the United States, good faith marriage to a citizen, and battery.\textsuperscript{130} In addition, she

\textsuperscript{124} See Violence Against Women Act §§ 40001-40703; see also Linares-Fierro, \textit{supra} note 2, at 296 (asserting that this portion of the Act was passed because of states' failure to adequately punish gender-related violence).
\textsuperscript{125} See Violence Against Women Act §§ 40701-40702.
\textsuperscript{127} See Goldman, \textit{supra} note 4, at 381.
\textsuperscript{128} See INS Form I-360, \textit{supra} note 67; Goldman, \textit{supra} note 4, at 381. Usually immigration petitions are filed with the immigrant's local office; however, only the Vermont Service Center will accept a battered immigrant's self-petition. See Immigration & Naturalization Serv., \textit{How Do I Apply for Immigration Benefits as a Battered Spouse or Child?}, http://www.ins.gov/graphics/howdoi/battered.htm (last visited Nov. 5, 2000). Sending the application to another office may result in a delayed decision. See \textit{id.} The Department of Justice chose to consolidate the adjudication of battered spouse self-petitions in one location in order to ensure sensitivity among the adjudicators and expeditious processing for all self-petitioners. See Teran, \textit{supra} note 54, at 42 n.206.
\textsuperscript{129} See INS Form I-360, \textit{supra} note 67. Petitioners are encouraged to provide evidence of the abuser's immigration status, marriage certificate, proof of good faith marriage, information regarding courtship, documents proving joint residence with the abuser in the United States, evidence of abuse, affidavits of good moral character, and evidence of extreme hardship. See \textit{id}.
\textsuperscript{130} See Violence Against Women Act of 1994, § 40701, 108 Stat. 1902, 1953 (codified as amended in scattered sections of multiple titles of U.S.C.); INS Form I-
must prove she will suffer extreme hardship if deported and that she is a person of good moral character.131 Once a self-petition is approved, the second step requires that the battered immigrant file for an adjustment of status to legal permanent resident.132

Despite its benefits, the self-petition process has developed significant problems. The implementing regulations, issued in March of 1996, require the battered immigrant to remain married to her abusive husband until after she has filed a self-petition.133 This prevents a battered immigrant who has severed ties with her abusive spouse from availing herself of the self-petition and acquiring legal status.134 Furthermore, the battered immigrant must satisfy the stringent evidentiary requirements of the IMFA's battered spouse waiver.135 This creates an undue burden, especially considering that the self-petitioner must also satisfy extreme hardship and good moral character requirements.136

2. Suspension of Deportation/Cancellation of Removal137

VAWA of 1994 also provides relief for battered immigrants who find themselves in deportation proceedings.138 The applicant must establish continuous physical presence in the United States for at least three years.139 In addition, the battered immigrant must prove abuse by a citizen spouse, good moral character, and

360, supra note 67.

131. See supra notes 122-130 and accompanying text. These requirements present the biggest challenge for battered immigrants and will be discussed infra notes 144-175 and accompanying text.

132. See INS Form 1-360, supra note 67; Goldman, supra note 4, at 381. The woman must file for adjustment at her local INS office, not through the Vermont Service Center. See INS Form 1-360, supra note 67.

133. See Loke, supra note 5, at 604. Once the petition is filed, divorce does not affect the decision. See id.

134. See id. This is true for any form of marital dissolution. See id. Therefore, death of the abuser will result in a denial. See id.

135. See supra notes 109-118 and accompanying text; see also Franco, supra note 53, at 121-22 (asserting that the self-petitioner must satisfy the battered spouse waiver evidentiary standard); infra notes 144-175 and accompanying text (discussing the evidentiary problems).

136. See supra notes 109-118 and accompanying text; see also supra note 129 (providing the various forms of evidence that can be submitted with the application).

137. See supra note 10.

138. See Goldman, supra note 4, at 381. “Deportable” in this context generally means a person without legal immigration status. See Loke, supra note 5, at 602.

that she will suffer extreme hardship\textsuperscript{140} if deported.\textsuperscript{141} Relief via suspension/cancellation is granted at the discretion of the immigration judge.\textsuperscript{142} If the immigration judge decides to grant a suspension, the applicant's status is changed to legal permanent resident and she receives her green card.\textsuperscript{143} Like the self-petition process, the battered immigrant must satisfy stringent evidentiary requirements.

3. Evidentiary Barriers to Relief

The primary requirements of a self-petition are a good faith marriage to a citizen and evidence of abuse.\textsuperscript{144} The INS regulations implementing VAWA's battered immigrant provisions prefer the self-petitioner to produce public records corroborating these requirements.\textsuperscript{145} However, due to the dynamics of domestic violence, much of this evidence is nonexistent or unavailable to the battered immigrant woman.\textsuperscript{146} Nevertheless, the INS does not address whether the battered immigrant's own testimony is acceptable as evidence of good faith marriage and abuse.\textsuperscript{147} These evidentiary requirements often appear insurmountable and lead the battered immigrant to reject VAWA relief and remain with her abuser.\textsuperscript{148}

\textit{a. Extreme Hardship if Deported}

Of the two remaining evidentiary requirements, extreme hardship may be the hardest to satisfy. The regulations require consideration of "all credible evidence of extreme hardship... including evidence of hardship arising from circumstances

\textsuperscript{140} This is in contrast to the exceptional and extremely unusual hardship requirement imposed on other deportable immigrants by the IIRIRA in 1996. See id. at 132.


\textsuperscript{142} See Goldman, \textit{supra} note 4, at 381.

\textsuperscript{143} See id.

\textsuperscript{144} See Violence Against Women Act § 40701.

\textsuperscript{145} See Kelly, \textit{supra} note 11, at 683.

\textsuperscript{146} See id. at 684 (declaring that it is common for a battered woman's name to be absent from mortgages, bank accounts, and other public records). The INS Commissioner has stated that "[g]enerally, more weight will be given to primary evidence [of abuse] and evidence provided in court documents, medical reports, policy reports, and other official documents." \textit{Id.} at 675 (quoting \textit{Self-Petitioning for Certain Battered or Abused Spouses and Children}, 61 Fed. Reg. 13,061, 13,068 (1996)).

\textsuperscript{147} See id. at 683.

\textsuperscript{148} See id. at 684.
surrounding the abuse." The ultimate decision, however, is discretionary and must be determined on a case-by-case basis. This leaves battered immigrants at the mercy of the adjudicator with no guarantee that their evidence of hardship will be sufficient to meet an adjudicator's personal standards. Adjudicators may rely on traditional notions of extreme hardship, on six specific factors suggested by the INS, or on a combination of the two. These six INS factors include:

1. The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
2. The impact of the loss of access to the U.S. courts and criminal justice system (including but not limited to the ability to obtain and enforce: orders for protection; criminal investigations and prosecutions; and family law proceedings or court orders regarding child support, maintenance, child custody and visitation);
3. The self-petitioner's . . . need for social, medical, mental health, or other supportive services which would not be available or reasonably accessible in the [native] country;
4. The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner . . . for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse;
5. The abuser's ability to travel to the [native] country and the ability and willingness of foreign authorities to protect the self-petitioner . . . from future abuse; and
6. The likelihood that the abuser's family, friends, or others acting on behalf of the abuser in the [native] country would physically or psychologically harm the self petitioner . . .

It seems only logical that these standards would provide an objective basis for determining a battered woman's extreme hardship; however, these factors are not included in the INS rules, and adjudicators need only consider them at their discretion. In

150. See id. at 154; Teran, supra note 54, at 28.
151. See Teran, supra note 54, at 28.
152. These include family ties in the United States, length of residence in the United States, health of the applicant, economic and political conditions in the native country, possibility of status adjustment through other means, position in the community, evidence of community service, and prior immigration history. See id. at 27-28.
153. See id. at 43-44.
154. Id.
155. See id. at 44.
making these considerations optional the INS fails battered immigrant women. Instead of recognizing the prisoner-of-war-like conditions of domestic abuse, the INS focuses on congressional enforcement goals to limit immigration benefits. This focus creates significant barriers for battered immigrant women and undermines VAWA's purpose: "to provide meaningful relief to battered spouses who are eligible to immigrate and are already in the United States."

b. Good Moral Character

VAWA is the only family-related immigration procedure that requires proof of good moral character to sustain a petition. Considering the historical context of domestic violence, it appears this element is directly related to the societal tendency to blame the abuse on the battered woman rather than the responsible spouse. Regardless of its impetus, requiring battered immigrant women, but not other family-based petitioners, to affirmatively establish their morality is misplaced. Proving good moral character through absence of arrest or other questionable activity will not prevent fraud on the INS. Rather, the element merely corroborates an unfounded stereotype, allowing society to rest assured that the victim of domestic violence is "helpless, virginal, and completely without fault."

A determination of good moral character is discretionary and determined on a case-by-case basis. Adjudicators may consider criminal history, including petty offenses, felony convictions, prostitution, and drug use; habitual drunkenness; smuggling aliens; and INS fraud in determining good moral character.

156. See e.g., Lilienthal, supra note 126, at 1615 (citing In re Rivera-Gomez, Oral Decision of the Immigration Judge, File No. A 70 922 256 (June 5, 1995)) (denying the battered immigrant suspension of deportation because she could apply her employment skills elsewhere and was not threatened by the political situation in her native country).
157. See id. at 1618.
158. See Teran, supra note 53, at 24.
159. Id.
160. See Kelly, supra note 57, at 581.
161. See supra notes 32-56 and accompanying text.
162. See Kelly, supra note 57, at 581 (asserting that it may be a legitimate policy in other immigration contexts).
163. See id. ("An alien able to successfully file a VAWA claim which fraudulently asserts a good faith, but abusive marriage will not be discovered simply by requiring proof of good moral character.").
164. Id. at 580.
165. See Goldman, supra note 4, at 383.
166. See id.
Some adjudicators will even consider the use of public assistance as a negative factor. Originally, establishing good moral character required the petitioner to submit police reports from every place the immigrant resided for more than six months during the three years before filing the self-petition. This proved unnecessarily burdensome and the INS changed the requirement by allowing the self-petitioner to submit her fingerprints so that the INS can run a criminal background check.

In summary, there are two major problems stemming from the good moral character requirement. First, the battered immigrant is once again subject to standards that her non-abused counterpart does not have to meet in order to gain legal permanent residency. The disparate burden of this element is especially unfair considering the unique burdens battered immigrants face. Second, a battered immigrant may fail the good moral character test as a result of the domestic abuse itself. For example, many jurisdictions have mandatory arrest policies regarding domestic assault, which commonly result in mutual arrest of both the batterer and the victim. The victim may also be arrested if the batterer files countercharges out of vengeance. Additionally, many battered women are forced by their abusers to commit crimes under threat of violence, and thus offenses such as prostitution and petty theft are often the direct consequence of the abuse. The good moral character element not only imposes a higher standard of conduct on the victim than on the abuser, but also requires that battered immigrant women overcome an evidentiary burden they likely cannot surmount as a direct consequence of the abuse. In effect, the good moral character requirement once again thwarts VAWA's underlying

167. See id. But see Pendleton, supra note 149, at 151 (stating that "[u]se of public benefits is irrelevant unless fraud is evident," an assertion based on a discussion between the author and Vermont Service Center adjudicators).

168. See id. This included foreign countries. See id.

169. See id. at 152.

170. See Kelly, supra note 11, at 687. The non-abused immigrant spouse also need not prove extreme hardship. See id. at 686.

171. See supra notes 32-56 and accompanying text.

172. See Lilienthal, supra note 126, at 1622 (citing a telephone interview between the author and Gail Pendleton, Coordinator of the National Lawyers Guild (Apr. 28, 1997)).

173. See id.; see also Goldman, supra note 4, at 383 (noting that abused partners are often automatically arrested, even when acting in self-defense).

174. See Pendleton, supra note 149, at 151.
purpose and prevents meaningful remedy to immigrant women trying to escape violent relationships.175

4. The Benefits and Burdens of VAWA

There is no question that satisfying VAWA requirements is "onerous and make[s] cases time consuming."176 Nevertheless, VAWA's benefits are seen clearly in the number of petitions submitted between 1995 and the present. Since the implementation of regulations in 1996, the INS has adjudicated more than five thousand self-petitions.177 In short, VAWA does work, but only for the limited number of battered immigrants who have obtained the required evidentiary materials and who have access to legal services.178


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175. See Lilienthal, supra note 126, at 1626 (describing VAWA's purpose as "helping battered women leave abusive relationships").

176. Tice, supra note 8, at 932.

177. See Teran, supra note 54, at 41. Most of these petitions were approved. See id.

178. In addition to the 1996 legislation discussed infra notes 180-208 and accompanying text, Congress has enacted two other laws restricting access to VAWA. The Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1259 (codified as amended in scattered sections of 8 U.S.C.), essentially eliminated cancellation of removal for undocumented immigrants. See Loke, supra note 5, at 612. As most battered immigrants are undocumented, this law removed the cancellation of removal option provided under VAWA. See id. Access to VAWA was further limited when Congress prohibited recipients of funding from the Legal Services Corporation (LSC) from using any of their funds to aid undocumented immigrants. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a)(11), 110 Stat. 1321, 1321-53 to 1321-54. Under this provision most battered immigrants may not seek legal advice or representation from their local Legal Aid office if that agency receives LSC funding. See id. Without access to legal assistance it is nearly impossible for a battered immigrant to self-petition successfully. See Loke, supra note 5, at 612-13.


180. See Stubbs, supra note 12, at 151-52 (noting that up to 500,000 legal immigrants could lose federal benefits under this Act).
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exceptions, there is a complete bar to all federal benefits including Supplemental Security Income (SSI) and food stamps. This prohibition adversely affects as many as 500,000 legal immigrants and has serious ramifications for battered immigrant women seeking to leave their abusive husbands.

Many abused immigrants need public benefits in order to leave their spouses. Battered women are often economically dependent on their husbands and lack the resources necessary to leave and start over on their own. By eliminating what often is a battered immigrant woman's only alternative source of income, the Welfare Reform Act forced a battered immigrant to choose between starvation on the street or remaining in an abusive environment. Fortunately, Congress soon recognized its error and instituted a battered immigrant exception under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

D. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

In addition to the radical restrictions imposed by the Welfare Reform Act, Congress also overhauled the immigration system in 1996. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) expanded the grounds for

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182. See id. The Act also restricts state policies toward immigrants. See Stubbs, supra note 12, at 152-53. While states were previously prohibited from discriminating between legal and illegal immigrants for the purpose of allocating aid, they may now establish eligibility based on legality or deny benefits altogether. See id.

183. See Stubbs, supra note 12, at 151-52. Illegal immigrants were never eligible for public assistance. See id.

184. See Loke, supra note 5, at 610 (noting that “the period immediately after leaving an abusive relationship is when many battered immigrant women face an unavoidable need for public assistance”).

185. See id. at 611.

186. See id. (stating that women will be forced to stay with their batterers); Stubbs, supra note 12 (stating that the Welfare Reform Act substantially harms immigrant women and children and may result in an increase in the homeless population).


188. See Kelly, supra note 57, at 583.

which an immigrant can be deported and isolated INS actions from judicial review.\textsuperscript{190} Despite its negative impact on the majority of immigrants, IIRIRA recognized the exceptional situation of battered immigrants and provided special provisions and exemptions for them.\textsuperscript{191} The primary change was that battered immigrants are no longer subject to the prohibitions of the Welfare Reform Act.\textsuperscript{192} In addition, Congress maintained the 1994 VAWA provisions for suspension of deportation while increasing the barriers for all other immigrants.\textsuperscript{193} Despite its advances, IIRIRA still managed to create problems for battered immigrant women by requiring the deportation of domestic violence offenders.\textsuperscript{194}

1. The Domestic Violence Exception in the Welfare Reform Act

Congress recognized the error of its over-inclusive ban on public assistance for all immigrants and enacted an exception for battered women in the IIRIRA.\textsuperscript{195} Now a battered immigrant woman who has self-petitioned successfully or has a petition pending is eligible for federal public assistance.\textsuperscript{196} However, this exception does not apply while the battered immigrant lives with her batterer.\textsuperscript{197} In addition, the immigrant must show a substantial connection between the abuse and the need for public

\begin{footnotes}
\footnote{190. See id.}{See id.}
\footnote{191. See Loke, supra note 5, at 614 (discussing the available exceptions and exemptions).}{See Loke, supra note 5, at 614 (discussing the available exceptions and exemptions).}
\footnote{192. See id. In addition, the suspension of deportation problem discussed supra note 178 was remedied by IIRIRA. See id. at 612. Undocumented battered immigrants are no longer excludable, but they must prove that entry without inspection was substantially connected to the abuse. See id. at 615. The LSC funding ban was also amended in 1996 to allow LSC-funded agencies to use non-LSC funds to serve undocumented battered immigrants with legal matters directly related to their abuse. See Legal Serv. Corp., LSC Statutes: Part 1626-Restrictions on Legal Assistance to Aliens, http://www.lsc.gov/pressr/regulati/1626.htm (last visited Feb. 23, 2001) (discussing this amendment in the preamble to the regulations); infra notes 203-208 and accompanying text (explaining how deportation of abusers may preclude relief for victims of abuse).}{See Legal Serv. Corp., LSC Statutes: Part 1626-Restrictions on Legal Assistance to Aliens, http://www.lsc.gov/pressr/regulati/1626.htm (last visited Feb. 23, 2001) (discussing this amendment in the preamble to the regulations); infra notes 203-208 and accompanying text (explaining how deportation of abusers may preclude relief for victims of abuse).}
\footnote{193. See Griffith, supra note 139, at 130-31.}{See Griffith, supra note 139, at 130-31.}
\footnote{194. See Illegal Immigration Reform and Immigrant Responsibility Act § 350.}{See Illegal Immigration Reform and Immigrant Responsibility Act § 350.}
\footnote{195. See id. § 501.}{See id. § 501.}
\footnote{197. See Illegal Immigration Reform and Immigrant Responsibility Act § 501.}{See Illegal Immigration Reform and Immigrant Responsibility Act § 501.}
\end{footnotes}
These changes constitute significant progress and allow battered immigrants to better achieve independence under VAWA.

Nevertheless, there are still substantial barriers to receiving financial assistance. All of the provisions of the Welfare Reform Act still apply; battered immigrants are simply a fifth exception to the general rules. This means that only certain federal programs are available, and state aid is totally dependent on whether a particular state has decided to extend public assistance to legal immigrants. Furthermore, it is unclear what type and amount of proof will constitute a substantial connection between the abuse and the need for aid. Presumably, simply being in the relationship and not working is a substantial connection. It is uncertain, however, if the INS will see it this way.

2. The Immigration Status of the Batterer

IIRIRA mandates the deportation of legal permanent resident domestic violence offenders. Once the legal permanent resident is convicted of a crime and placed in deportation proceedings, a loss of immigration status is imminent. This loss of status in turn negatively affects the VAWA self-petitioner. A battered immigrant is once again left to choose between two undesirables. She may remain with her abusive spouse until he applies for and becomes a citizen, or she may file a self-petition, thereby turning him over to the authorities, and risk the

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198. See id.
199. See Goldman, supra note 4, at 384; supra note 181 and accompanying text (setting forth original four exceptions).
200. See id.
201. See Loke, supra note 5, at 614 (noting this uncertainty and discussing the need for INS clarifying regulations).
205. See id.
206. See 8 C.F.R. § 204.2(c)(1)(iii) (2000) ("The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.")
possibility that her petition will not be adjudicated before her
abuser is convicted and deported. Not only does this undermine
the purpose of VAWA, but it also creates an unnecessary
distinction between battered immigrants married to U.S. citizens
and those married to legal permanent residents. This can be
remedied only by repealing the INS regulations requiring the
husband to maintain his immigration status throughout his wife’s
self-petition process.

IV. Battered Immigrant Women Protection Act of 2000:
Does It Provide the Necessary Remedy?

Congressional policy has not followed a straight course in the
area of battered immigrant women. There is constant debate
over restricting the flow of immigrants versus protecting women in
general, and battered immigrants in particular, from domestic
abuse. In order to protect battered immigrants, Congress must
leave its misgivings about immigration fraud behind and focus on
the needs of this marginalized group. As a result, Congress must
take substantial steps to remedy the apparent downfalls of past
legislation.

Scholars and legal practitioners propose several changes to
make VAWA immigration relief more accessible. The only way
to truly correct the problems that began in 1986 is to abolish the
conditional residency requirement. Total abolition, however, is
a radical change not likely to happen anytime soon. Therefore,
progressive, incremental change is the most feasible political
option. Perhaps the most important incremental change that
may be made is the abolition of the extreme hardship and good
moral character requirements of the self-petition. Intended to
prevent fraud, the requirements in fact do little more than prevent
battered immigrants from accessing VAWA relief. They create
an insurmountable evidentiary burden and should be done away

207. See Espenoza, supra note 204, at 211-12.
208. See id. at 212; supra note 159 and accompanying text.
209. See supra notes 72-208 and accompanying text.
210. See supra notes 72-208 and accompanying text.
211. See infra notes 212-228 and accompanying text.
212. See Franco, supra note 53, at 123-24. If there were no conditional residency
requirement, there would be no need for waivers and self-petitions for a battered
immigrant. See id. Rather, the abused woman would simply gain her status when
she is married and does not have to worry about her husband controlling the
process. See id.
213. See id.
214. See Kelly, supra note 11, at 704 (asserting that these requirements only
impede battered women’s ability to obtain relief).
with in order to promote VAWA's purpose of helping battered women break free from domestic violence.\(^{215}\)

Another necessary change requires broadening the credible evidence standard to allow abuse to be proven despite a victim's lack of official reports and documentation.\(^{216}\) The present standard is too narrow and restrictive for battered women to satisfy.\(^{217}\) INS officials must recognize that battered immigrants often do not turn to the police or community organizations for help.\(^{218}\) The immigrant may not know that protection is available or she may fear further abuse and deportation if she reports her abusive spouse.\(^{219}\) For these reasons, primary evidence, including police and medical reports, is far too often not available.\(^{220}\) Therefore, the INS should accept alternative evidence.\(^{221}\)

There are several other changes that Congress could make in order to increase VAWA's effectiveness. These include lifting the barrier on all public benefits\(^{222}\) and providing domestic abuse education and training for INS officials.\(^{223}\) Unfortunately, in light of the inherently controversial nature of immigration law, such changes could not be made until the political climate was right. The proper political climate finally presented itself during the 106th Congress. With the 1994 VAWA set to expire on September 30, 2000,\(^{224}\) more than nine reauthorization bills with substantive provisions addressing battered immigrants were introduced in

\footnotesize{215. See Franco, supra note 53, at 139 (declaring that extreme hardship places a double evidentiary burden on the self-petitioner); Espenoza, supra note 204, at 215 (stating that the good moral character requirement in a self-petition is "unreasonable and needlessly sets a barrier to relief").

216. See supra notes 110-112.

217. See Franco, supra note 53, at 127-28 (proposing that the INS accept evidence in addition to that derived from official sources).

218. See Goldman, supra note 4, at 385.

219. See id.

220. See id.

221. See Franco, supra note 53, at 127-28. The primary piece of alternative evidence should be the battered immigrant's own testimony. See Kelly, supra note 11, at 696. Battered women should be treated in the same manner as a refugee, who is also required to produce credible evidence corroborating her story. See id. at 697. Refugees who provide "believable, consistent, and sufficiently detailed" testimony meet the credible evidence standard. Id. (citation omitted).

222. See Loke, supra note 5, at 620. This will allow the battered immigrant to leave her husband without fearing loss of subsistence. See id.

223. See Goldman, supra note 4, at 385. Sensitivity training may prevent many of the problems inherent in the discretionary nature of self-petition adjudication. See id.

both Houses. Two of these bills culminated in the Violence Against Women Act of 2000, which incorporates the Battered Immigrant Women Protection Act of 2000, passed on October 28, 2000.

A. H.R. 4966

The Restoration of Fairness in Immigration Law Act of 2000 (H.R. 4966), proposed by Representative John Conyers on July 26, 2000, contains an entire Title calling for the fair treatment of battered immigrants. The Title recognizes that "several groups of battered immigrant women... do not have access to the immigration protection of the Violence Against Women Act of 1994..." Among the purposes established in the Title, Representative Conyers sought "to correct erosions of the [VAWA] immigration protections..." In doing so, the Title promises to restore the protections that existed prior to the 1996 IIRIRA. Despite these noble statements, it is uncertain if the proposed bill is sufficient to remedy the situation.

1. Provisions

The procedural provisions of H.R. 4966 provide for the removal of certain barriers to VAWA immigration relief. The bill eliminates obstacles from the adjustment of status process.

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225. See supra note 15.
230. See id.
231. Id. § 601(a)(3). This is one of three findings Representative Conyers gave in support of the new immigration provisions. See id. The bill reaffirmed the original VAWA goal to remove the immigration laws as a barrier that kept battered immigrants locked in abusive relationships. See id. § 601(a)(1). It also recognized the need to protect battered immigrants against deportation, which allows them to cooperate with law enforcement and criminal prosecution of abusers. See id. § 601(a)(2).
232. Id. § 601(b)(3). Representative Conyers included two additional purposes. See id. § 601(b)(1)-(2). The first is to promote criminal prosecution of the abuser. See id. § 601(b)(1). The second offers protection against domestic abuse. See id. § 601(b)(2).
233. See id. § 601(b)(3).
235. Adjustment of status occurs after the initial self-petition is granted. See supra notes 127-132 and accompanying text.
and exempts battered immigrants from the annual cap on
cancellation of removal grants. It also eliminates time
limitations for motions to reopen removal proceedings thus
allowing a battered immigrant to appeal a removal order at her
c Convenience. This exemption also applies to battered
immigrants who are in deportation proceedings and are eligible for
relief as a result of VAWA or H.R. 4966. Accordingly, battered
immigrants who were in removal or deportation proceedings prior
to 1994 may now seek VAWA relief.

Section 603 of H.R. 4966 changes the INS regulation
requiring that the legal permanent resident spouse maintain his
immigration status until the self-petition is approved. Under
the new provision, "denaturalization, loss or renunciation of
citizenship, death of the abuser, or changes to the abuser's
citizenship status after filing of the petition shall not adversely
affect the approval of the petition . . . ." This section further
alters a battered immigrant's burden by allowing her to proceed
under the IMFA conditional residence requirements regardless of
the abuser's actions. By presenting credible evidence of battery
or extreme cruelty, the INS may adjudicate the IMFA petition
without regard to its withdrawal by the abuser or the failure of the
abuser to attend the interview. Although it is unclear what will
constitute credible evidence, this provision expands relief by
allowing battered immigrants to proceed under IMFA instead of
scrapping everything for a self-petition. Finally, section 603
provides that a battered immigrant may remarry without fear of
losing her status under an approved self-petition.

236. See H.R. 4966 § 602(a)-(b)(1).
237. See supra note 10.
238. See H.R. 4966 § 602(c)(1). A copy of the self-petition should be filed with the
application for cancellation of removal. See id. This exemption also applies to
reopening a deportation proceeding. See id. § 602(c)(2).
239. See supra note 203-208 and accompanying text (describing the problems caused for battered immigrants married to legal
permanent residents under this regulation and IIRIRA).
240. See id. § 603; see also supra notes 203-208 and accompanying text
(describing the problems caused for battered immigrants married to legal
permanent residents under this regulation and IIRIRA).
241. See id. § 603(a)(1). The battered immigrant must file the petition before
her spouse loses status. See id. If she does not, the original INS regulation still
applies and her petition will be denied. See id.
242. See id. § 603(c).
243. See id.
244. See id. § 603(e). It is not clear in the bill, but it is likely that the battered
immigrant cannot remarry her abusive spouse and still maintain her self-petition
status.
In addition to these procedural changes, H.R. 4966 alters several substantive requirements of the self-petition and suspension of deportation procedures. Under the bill, a self-petitioner must prove a good faith marriage and battery or extreme mental cruelty by her U.S. citizen spouse. Also, she must still show that she is a person of good moral character. However, the extreme hardship if deported requirement is eliminated for self-petitioners. The immigrant spouse of a U.S. citizen must also show that she has resided with that spouse. The immigrant spouse of a legal permanent resident, on the other hand, must show that she has resided with her spouse in the United States.

A cancellation of removal applicant must meet most of the same requirements that the self-petitioner must satisfy. She must show a good faith marriage to a U.S. citizen and battery or extreme cruelty by that spouse. In addition, she must establish good moral character. The major differences include a three-year continuous residence requirement and the extreme hardship if deported requirement, which was not eliminated for the cancellation of removal applicant.

Although the good moral character requirement is still present in both the self-petition and cancellation of removal processes, its requirements are more lenient under H.R. 4966. The INS is no longer limited by the battered immigrant’s criminal record and can make exceptions for otherwise qualified self-petitioners and suspension of deportation applicants. These exceptions must be based on an arrest, conviction, or guilty plea to:

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245. See id. § 606(c)(1)(A), (d)(1).
246. See id. § 606(c)(1)(B), (d)(2).
247. See id. § 606(c), (d) (proposing to amend the Immigration and Nationality Act, 8 U.S.C § 1154 (2000), to exclude an extreme hardship if deported requirement for a self-petition).
248. See id. § 606(c)(1)(B). Under this provision it is no longer required that the battered immigrant and citizen spouse reside in the United States, which opens VAWA relief to all immigrants married to citizens living outside U.S. borders. See id.
249. See id. § 606(d)(2). The likely reason for the difference between this requirement and that of section 606(c)(1)(B) is that legal permanent residents are not usually found living abroad.
251. See id. § 607(a).
252. See id.
253. See id.
254. See id. § 608.
255. See id. § 608(a)-(c).
(I) violating a court order issued to protect the alien;
(II) prostitution if the alien was forced into prostitution by an abuser;
(III) a domestic violence-related crime, if the [INS] determines that the alien acted in self defense; or
(IV) a crime where there was a connection between the commission of the crime and having been battered or subjected to extreme cruelty.\textsuperscript{256}

The final changes that H.R. 4966 makes to the existing statutory framework include provisions for economic security,\textsuperscript{257} improved access to legal representation and services,\textsuperscript{258} and required sensitivity training for INS officials and immigration judges.\textsuperscript{259} Section 609 provides an exception to the Welfare Reform Act that allows battered immigrants to collect Supplemental Security Income (SSI) and food stamps.\textsuperscript{260} It also restricts organizations receiving federal funds from discriminating in providing shelter and services to battered immigrants.\textsuperscript{261} Section 610 permits non-profit legal agencies that receive funding from the federal Legal Services Corporation to use those funds to assist undocumented battered immigrants with legal problems resulting from the abusive relationship.\textsuperscript{262} Finally, section 611 mandates training for the INS and immigration judges to provide information of the immigration provisions of VAWA and their impact on domestic violence victims.\textsuperscript{263}

2. Benefits and Burdens of H.R. 4966

H.R. 4966 makes substantial progress toward relieving the negative impact of IMFA, IIRIRA, and the Welfare Reform Act on battered immigrant women, as well as removing some of the barriers arising from the 1994 VAWA. The primary procedural benefit is section 603(a), which provides that the self-petition will not be denied if the legal permanent resident spouse loses his immigration status,\textsuperscript{264} thereby allowing battered immigrants

\textsuperscript{256} Id. § 608(a)-(d).
\textsuperscript{257} See id. § 609.
\textsuperscript{258} See id. § 610.
\textsuperscript{259} See id. § 611.
\textsuperscript{260} See id. § 609(d).
\textsuperscript{261} See id. § 609(f).
\textsuperscript{262} See id. § 610(a); see also supra note 178 (discussing the provision requiring low-income legal agencies that receive LSC funds to turn away undocumented immigrants); supra note 192 (discussing the amendment that allows LSC-funded agencies to use non-LSC funds to aid undocumented battered immigrants).
\textsuperscript{263} See H.R. 4966 § 611(a)(2).
\textsuperscript{264} See id. § 603(a) (proposing to amend the Immigration and Nationality Act, 8
married to legal permanent residents the opportunity to self-petition.\textsuperscript{265} This provision equalizes the status of all battered immigrants and reduces the negative impact of seeking help from the criminal justice system.\textsuperscript{266} In short, by broadening the range of eligible battered immigrant women, this provision takes a large step toward ensuring that VAWA's purpose is fulfilled.\textsuperscript{267}

Nevertheless, section 603(a) does not go far enough. Because the battered immigrant is still required to submit her petition before her husband loses status, an entire class of women may be precluded from relief.\textsuperscript{268} If the legal permanent resident spouse is arrested and put into deportation proceedings before the battered immigrant has the opportunity to prepare and file her petition, she will lose out on any potential relief under this provision.\textsuperscript{269} Although it may be reasonable to require that the battered immigrant be married to a citizen or a legal permanent resident to be eligible for VAWA,\textsuperscript{270} it does not follow that the legal permanent resident must maintain this status until the battered immigrant files her self-petition. The INS keeps records of immigration status and can simply refer to those records in order to determine that the spouse who has lost status was once a legal permanent resident.\textsuperscript{271} Making battered immigrants' eligibility for immigration relief contingent on the status of the batterer impedes the effectiveness of protections designed to assist battered women in escaping abuse and hinders the purposes of both the 1994 VAWA and H.R. 4966.\textsuperscript{272}

The other key benefits of H.R. 4966 include the elimination of the extreme hardship if deported requirement for self-petitioners\textsuperscript{273} and the alteration of the good moral character

\textsuperscript{265} See Espenoza, supra note 204, at 211 (declaring that the regulation eliminates VAWA's provisions for an entire class of battered immigrants).

\textsuperscript{266} See id. at 210 (stating that the victim occasionally must chose between immigration relief for herself and criminal prosecution of her legal permanent resident spouse).

\textsuperscript{267} See supra note 159 and accompanying text (discussing VAWA's purpose).

\textsuperscript{268} See Espenoza, supra note 204, at 211 (discussing the problems battered immigrants face in this situation).

\textsuperscript{269} See H.R. 4966 § 603(a)(1); supra note 241.

\textsuperscript{270} The purpose of family-based immigration is to reunite families; thus, the new immigrant must be related to a person with legal status in the United States. See supra note 57 and accompanying text.

\textsuperscript{271} See generally Kelly, supra note 11, at 683 (stating that the INS is already authorized to look to its own records in determining a spouse's immigration status).

\textsuperscript{272} See supra note 159 and accompanying text; H.R. 4966 § 601; supra note 232 and accompanying text.

\textsuperscript{273} See generally H.R. 4966 § 606(c)-(d) (proposing to amend the Immigration
Eliminating the extreme hardship standard removes the double evidentiary burden VAWA imposed on battered immigrant women. By taking away this element of discretion, Congress will reassure battered immigrants that the key purpose of VAWA is to provide immigration relief, not to eliminate immigration fraud. Unfortunately, the drafters of the bill did not deem it necessary to match the elimination of extreme hardship with the elimination of good moral character.

Good moral character remains a necessary element under H.R. 4966. Although it is altered to account for problems unique to battered immigrant women, the requirement still works to prevent a grant of relief. The exceptions remain somewhat discretionary and leave a battered immigrant in a similar position as the original VAWA requirements. Furthermore, a positive determination of good moral character does not curb immigration fraud. It does, however, keep the woman in a subordinate position by working to blame the abusive situation on her. Contrary to the purpose of VAWA to help battered women leave abusive relationships, the good moral character element mandates that battered immigrants affirmatively prove their morality and worthiness of immigration relief, implying that their abuse is related to their character. The fact that no other family-based

and Nationality Act, 8 U.S.C. § 1154, to exclude the extreme hardship standard); see also supra note 247 and accompanying text.

274. See H.R. 4966 § 608(a)-(c); see also supra notes 254-256 and accompanying text.

275. See Franco, supra note 53, at 139. However, the bill eliminates the extreme hardship if deported element for only self-petitioners, not for battered immigrants applying for cancellation of removal. See supra notes 245 & 253 and accompanying text.

276. See generally supra notes 149-159 and accompanying text (discussing the original VAWA provisions concerning extreme hardship if deported).

277. See H.R. 4966 § 608; see also supra note 254 and accompanying text (explaining that good moral character remains a requirement for H.R. 4966).

278. See H.R. 4966 § 608 (a)-(c). See generally supra notes 170-175 and accompanying text (stating that battered immigrant women face mandatory arrest policies and vengeful charges by their abuser which prevent an affirmative determination of good moral character).

279. See Espenoza, supra note 204, at 215. Imposing this requirement on battered immigrants is unreasonable and is not required for any other family-based immigration petition. See id.

280. See H.R. 4966 § 608; see also supra note 165 and accompanying text (stating that good moral character is determined on a case-by-case basis); supra note 151 and accompanying text (stating that discretionary standards leave the battered immigrant at the mercy of her adjudicator).

281. See supra note 214 and accompanying text.

282. See supra notes 160-164 and accompanying text.

283. See Linares-Fierro, supra note 2, at 270-71 (discussing how the widespread
immigrant must meet the good moral character requirement directly reveals the bias against battered women and the tenacious stereotypes ingrained in the law.

Although these are clearly not the only benefits and burdens present in H.R. 4966, they are by far the most profound. H.R. 4966 does not eliminate the conditional residency program, nor does it fix all of VAWA’s problems. It does, however, constitute progress toward ensuring fair treatment of battered immigrant women. Enactment of this legislation would provide battered immigrants with better access to the VAWA self-petitioning process and more assurance of meeting the petition requirements. It would also provide a base for more incremental changes that may ultimately lead to elimination of the good moral character requirement altogether and the establishment of statutory guidelines toward defining the credible evidence standard.

B. S. 2787

Senator Joseph Biden also introduced a battered immigrant bill on July 26, 2000. The bill, entitled the Violence Against Women Act of 2000, provides both a renewal of the 1994 Act and additional provisions for the protection of battered immigrant women. The bill’s provisions are somewhat less comprehensive than those of H.R. 4966 but still take a substantial step forward for battered immigrant women. The Senate bill presents three findings and two purposes, including an acknowledgement that many battered immigrant women do not have access to the immigration provisions provided in VAWA and a proposal to

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284. See H.R. 4966 (failing to eliminate the conditional residency program in its proposed amendments to the Immigration and Nationality Act, 8 U.S.C. §§ 1154, 1186 (2000)); see also supra note 212 and accompanying text (stating that the only way to fix the problem is to eliminate conditional residence altogether).

285. Specifically, it does not redress the problems inherent in the credible evidence and good moral character requirements. See H.R. 4966 §§ 603, 608; supra notes 243 & 277 and accompanying text (stating, respectively, that the requirements of credible evidence and good moral character remain in the proposed amendments of H.R. 4966).

286. H.R. 4966 does not address credible evidence standards beyond requiring the Attorney General to consider all credible evidence relevant to the petition. See H.R. 4966 § 607(a).


289. See id. §§ 501-512.

290. See infra notes 294-310 and accompanying text.
remove barriers to criminal prosecution of the abuser.\textsuperscript{291} However, the noble purpose stated in H.R. 4966, to remedy the IIRIRA provisions that undermine VAWA relief,\textsuperscript{292} is not present in S. 2787.\textsuperscript{293}

1. Provisions

The proposed self-petition elements of S. 2787 require the battered immigrant to prove good faith marriage and battery or extreme cruelty.\textsuperscript{294} She must also show that she is a person of good moral character.\textsuperscript{295} S. 2787 does not provide a separate section for determining good moral character.\textsuperscript{296} Instead it states that any act or conviction connected to the battery shall not bar the INS from determining that the battered immigrant is of good moral character.\textsuperscript{297} Finally, the battered immigrant is required to show she has resided with the citizen spouse.\textsuperscript{298} The self-petitioner is not required to show extreme hardship if deported.\textsuperscript{299}

Similarly, cancellation of removal requires the battered immigrant to present credible evidence of battery or extreme cruelty.\textsuperscript{300} She must also demonstrate good moral character, three years of continuous physical presence in the United States, and extreme hardship if deported.\textsuperscript{301} This section of S. 2787 provides

\textsuperscript{291} See S. 2787 § 502(a)-(b). The other findings state that the goal of VAWA 1994 was to remove immigration barriers for battered immigrants and to provide them with protection against deportation in order to promote cooperation with law enforcement and prosecutors. See id. § 502(a)(1)-(a)(2). The other stated purpose is to offer protection against domestic violence in family and intimate relationships. See id. § 502(b)(1)-(b)(2).

\textsuperscript{292} See H.R. 4966, 106th Cong. § 601 (2000).

\textsuperscript{293} See S. 2787 § 502.

\textsuperscript{294} See id. § 503(b)(1)(A), (c)(1) (proposing to amend the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)-(B) (2000), to include the requirements of good faith marriage and battery or extreme cruelty).

\textsuperscript{295} See id. § 503(b)(1)(A), (c)(1).

\textsuperscript{296} Compare S. 2787, 106th Cong. (2000) (providing no section on good moral character determinations), with H.R. 4966, 106th Cong. (2000) (providing a separate section on good moral character). See also supra notes 254-256 and accompanying text (discussing the provision in H.R. 4966 on determining good moral character).

\textsuperscript{297} See S. 2787 § 503(d)(2).

\textsuperscript{298} See id. § 503(b)(1)(A), (c)(1). The Senate bill does not distinguish between a woman that is married to a U.S. citizen and a woman married to a legal permanent resident; both must simply satisfy the requirement that they live with a spouse, not that they live in the United States with a spouse. See id. § 503(b)(1)(A), (c)(1).

\textsuperscript{299} See generally id. § 503(b)(1), (c)(1) (proposing to amend the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)-(B), to not require a showing of extreme hardship if deported).

\textsuperscript{300} See id. § 504(a).

\textsuperscript{301} See id.
that a battered immigrant will not fail the continuous presence test if her absence from the United States is connected to the abuse.\textsuperscript{302} It also provides the same waiveability of arrests and convictions for abuse-related offenses in determining good moral character.\textsuperscript{303} The bill does not set out objective standards to measure extreme hardship if deported.\textsuperscript{304}

S. 2787 provides several procedural changes that increase access to VAWA relief.\textsuperscript{305} It removes barriers from adjustment of status and exempts battered immigrants from the annual cap on grants of cancellation of removal.\textsuperscript{306} Section 506 also eliminates the time limit on reopening a cancellation case when the battered immigrant is eligible for relief under VAWA or S. 2787.\textsuperscript{307} The other major procedural provision allows the self-petitioner to maintain her petition even if her spouse loses his immigration status.\textsuperscript{308} Nevertheless, the Senate bill requires that the abusive spouse be in legal status at the time the self-petition is filed.\textsuperscript{309} The final procedural change allows battered immigrants to remarry without fear of losing their self-petition status.\textsuperscript{310}

2. The Benefits and Burdens of S. 2787

Many of the same benefits and burdens discussed under H.R. 4966 are applicable to S. 2787.\textsuperscript{311} The procedural changes in the bills are essentially the same and will produce the same problems for battered immigrants who are unable to file their petitions before their husbands lose their immigration status.\textsuperscript{312} Furthermore, both bills eliminate the extreme hardship

\textsuperscript{302} See id.
\textsuperscript{303} See id.
\textsuperscript{304} See id. (listing extreme hardship if deported as a requirement without providing objective standards).
\textsuperscript{305} See id. §§ 506-507 (proposing to amend scattered sections of the Immigration and Nationality Act, 8 U.S.C. (2000)).
\textsuperscript{306} See id. § 506(a)-(b).
\textsuperscript{307} See id. § 506(c).
\textsuperscript{308} See id. § 507(a).
\textsuperscript{309} See id.; cf. H.R. 4966, 106th Cong. § 603 (2000) (containing a similar provision).
\textsuperscript{310} See S. 2787 § 507(b).
\textsuperscript{311} See supra notes 264-286 and accompanying text (laying out the benefits of H.R. 4966).
\textsuperscript{312} See H.R. 4966, 106th Cong. § 603(a) (2000); S. 2787, 106th Cong. § 507(a) (2000) (proposing to amend the Immigration and Nationality Act, 8 U.S.C. § 1154 (2000), so that the petitioner must file her petition before her spouse loses his immigration status); see also supra notes 268-272 and accompanying text (providing the possible problems with requiring the spouse to have legal immigration status when the self-petition is filed and recommending changes).
requirement for self-petitioners; thus, both confer the same substantial benefit for battered immigrant women. Despite these major similarities between H.R. 4966 and S. 2787, there are a few differences that could make the Senate bill less effective than its counterpart in the House.

The good moral character element is present in both bills. The standards, however, are far more subjective in the Senate bill. S. 2787 establishes merely that any arrest or conviction arising out of the battery may be discarded in determining good moral character. Unlike H.R. 4966, S. 2787 does not provide any examples of what may constitute an arrest or conviction arising out of the battery. This leaves the battered immigrant in great peril as the decision of good moral character is once again left to the discretion of the INS adjudicator. The potential for arbitrary decisions stemming from this broad discretionary power is both unacceptable and unnecessary. Requiring good moral character circumvents the purposes of VAWA by preventing battered immigrants from accessing relief. Moreover, allowing this determination to be made wholly at the discretion of the adjudicator without any statutory guidance leaves battered immigrant applicants without any predictability as to their fate. Therefore, the requirement should, at the very least, contain exceptions such as those in H.R. 4966; more preferably, it should be omitted entirely from any new legislation that purports to protect battered immigrant women.

S. 2787 also fails to address changes to the Welfare Reform Act. It simply maintains the status quo with battered

313. See H.R. 4966 § 606(c), (d); S. 2787 § 503(b)(1), (c)(1) (proposing to amend 8 U.S.C. § 1154 to exclude the requirement of extreme hardship); see also supra notes 273-276 and accompanying text (noting that the elimination of this standard eliminates a double evidentiary burden and promotes VAWA's purpose).

314. See H.R. 4966 § 608; S. 2787 § 503(d)(2).

315. See S. 2787 § 503(d)(2).

316. Compare H.R. 4966 § 608(a)-(c) (providing examples of what may constitute an arrest or conviction arising out of the battery), with S. 2787 § 503(d)(2) (providing no examples of what may constitute an arrest or conviction arising out of the battery).

317. See supra notes 166-176 and accompanying text (addressing the process of a good moral character determination and its inherent problems arising out of the INS adjudicator's discretion).

318. See Kelly, supra note 11, at 704.

319. See S. 2787 § 508 (making only a technical correction to the IIRIRA definition of qualified battered immigrant, as codified in the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. § 1641(c)(1)(B)(iii) (1996)); see also supra notes 199-202 (discussing the inadequacy of IIRIRA's amendments to the Welfare Reform Act).
immigrants qualifying for limited benefits.\textsuperscript{320} Although the status quo is better than the original conditions imposed by the Welfare Reform Act,\textsuperscript{321} S. 2787 does not provide the added relief available in the House bill.\textsuperscript{322} Moreover, S. 2787 fails to provide a section regarding Legal Services Corporation (LSC) funding or sensitivity training for INS officials and immigration judges.\textsuperscript{323} Failing to recognize that the insensitivity of adjudicators and the lack of access to public benefits and legal services are major barriers to successful VAWA implementation is a failure to realize that many battered immigrants are unable to use VAWA because of these problems.\textsuperscript{324}

Neither piece of proposed legislation remedies all of the problems that battered immigrant women face under the statutory structure developed between 1986 and 1996.\textsuperscript{325} However, they both make significant strides toward achieving meaningful relief for battered immigrant women. In light of the differences between the two bills, the most effective congressional action would have been to enact H.R. 4966. Regrettably, the 106th Congress did not choose this route. Rather, it passed S. 2787 as part of the larger Violence Against Women Act of 2000 (VAWA 2000).\textsuperscript{326}

\textbf{C. The Battered Immigrant Women Protection Act of 2000}\textsuperscript{327}

Unfortunately, H.R. 4966 never made it out of the Subcommittee on Immigration and Claims.\textsuperscript{328} Instead the House passed H.R. 1248.\textsuperscript{329} As originally proposed, H.R. 1248 contained no substantive protections for battered immigrant women.\textsuperscript{330} This changed in the final draft to incorporate many of S. 2787's

\begin{itemize}
\item \textsuperscript{320} See id.
\item \textsuperscript{321} See supra text accompanying notes 179-187.
\item \textsuperscript{322} See H.R. 4966, 106th Cong. § 610 (2000).
\item \textsuperscript{323} Compare H.R. 4966 § 610, with S. 2787; see also supra notes 262-263 and accompanying text (setting out these provisions in H.R. 4966).
\item \textsuperscript{324} See generally supra notes 72-208 and accompanying text (describing previous legislation and its negative and positive impacts on battered immigrant women).
\item \textsuperscript{325} See supra notes 284-286 and accompanying text (presenting the positive ramifications and need for improvement under H.R. 4966).
\item \textsuperscript{329} See H.R. 1248, 106th Cong. (1999).
\item \textsuperscript{330} See id.
\end{itemize}
battered immigrant protections. Both VAWA 2000 and the Battered Immigrant Women Protection Act (BIWPA) were incorporated into the Victims of Trafficking and Violence Protection Act of 2000, which was signed by President Clinton on October 28, 2000. BIWPA does not offer all-encompassing relief from the conditional residency process or the VAWA provisions, but it does provide enough change to make a substantial difference for battered immigrant women.

1. The BIWPA Provisions

BIWPA was enacted to provide better access to VAWA’s provisions for all battered immigrants. Congress created this Act to remove barriers to criminal prosecution of the abuser and to offer protection against domestic violence that occurs in familial relationships. Whether implementation of BIWPA will meet these lofty goals or simply create more barriers remains to be seen.

BIWPA re-establishes many of the same self-petition requirements that were present in the original VAWA of 1994. A battered immigrant must show that she has a good faith marriage to a citizen and that she is battered or subject to

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336. See Battered Immigrant Women Protection Act § 1502(a)(3) (stating that "there are several groups of battered immigrant women . . . who do not have access to the immigration protections of the Violence Against Women Act of 1994 . . . "). BIWPA also provides two other findings. First, it restates the 1994 VAWA's original goal of "remov[ing] immigration laws as a barrier that kept battered immigrant women locked in abusive relationships." Id. § 1502(a)(1). Second, it states that granting battered immigrant women protection against deportation "frees them to cooperate with law enforcement and prosecutors in criminal cases . . . without fearing that the abuser will retaliate by withdrawing . . . access to an immigration benefit." Id. § 1502(a)(2).
337. See id. § 1502(b)(1).
338. See id. § 1502(b)(2).
339. See id. § 1503(b)-(c); supra notes 126-136 and accompanying text (describing the VAWA self-petition process). Generally, section 1503 of BIWPA improves access to immigration protections of the original VAWA. See id. § 1503 (amending scattered sections of the Immigration and Nationality Act codified in scattered sections of 8 U.S.C.).
340. See Battered Immigrant Women Protection Act § 1503(b)(1)(A), (c)(1). Proving that the spouse is a citizen or legal permanent resident may show this relationship. See id. § 1503(b)(1)(A), (c)(1). This relationship can also be established if the immigrant believed the union to be legitimate. See id. § 1503(b)(1)(A), (c)(1). In addition, the battered immigrant can still establish this relationship if she is a bona fide spouse of a citizen or legal permanent resident but
extreme cruelty by that spouse.\textsuperscript{341} She must also prove that she is of good moral character,\textsuperscript{342} as determined at the discretion of the INS. However, any arrest or conviction connected to the abuse shall not bar an affirmative finding.\textsuperscript{343} Finally, the battered immigrant must show that she resides with her citizen spouse.\textsuperscript{344}

The process for suspension of deportation/cancellation of removal is nearly identical to that provided in the original VAWA.\textsuperscript{345} The immigration judge may grant a suspension or cancellation to an immigrant who shows that she is married to a U.S. citizen and that she is subject to battery or extreme cruelty by that spouse.\textsuperscript{346} The battered immigrant must be present in the United States for three consecutive years prior to her application.\textsuperscript{347} However, the INS cannot deny relief to a battered immigrant who was absent from the country if there is a connection between the absence and the abuse.\textsuperscript{348} Finally, the battered immigrant must show she is of good moral character\textsuperscript{349} and will suffer extreme hardship if deported.\textsuperscript{350} The determination of good moral character is much like that for a self-petitioner.\textsuperscript{351} The statute contains no specific criteria for establishing extreme hardship.\textsuperscript{352}

BIWPA also provides six waivers that offer equal access to VAWA protections regardless of how the battered immigrant falls within one of the three following categories. First, the spouse has died within two years. See id. § 1503(b)(1)(A). Second, the spouse lost his citizenship in an incident related to the domestic violence. See id. § 1503(b)(1)(A), (c)(1). Third, there is a connection between the abuse and the end of the marriage. See id. § 1503(b)(1)(A), (c)(1).

\textsuperscript{341} See id. § 1503(b)(1)(A), (c)(1).
\textsuperscript{342} See id. § 1503(b)(1)(A), (c)(1).
\textsuperscript{343} See id. § 1503(d)(2).
\textsuperscript{344} See id. § 1503(b)(1)(A), (c)(1). By not requiring couples to live in the United States, VAWA relief is extended to battered immigrants living abroad with their citizen spouses; thus, a battered immigrant married to a citizen who is an employee of the U.S. government or a member of the armed services to file a self-petition. See id. § 1503(b)(3), (c)(3).

\textsuperscript{345} See id. § 1504; supra notes 138-143 and accompanying text (describing the original VAWA procedures). Generally, section 1504 of BIWPA improves access to VAWA in immigration proceedings. See id. § 1504 (amending scattered sections of the Immigration and Nationality Act codified in scattered sections of 8 U.S.C.).
\textsuperscript{346} See id. § 1504(a).
\textsuperscript{347} See id.
\textsuperscript{348} See id.
\textsuperscript{349} See id. § 1504(a).
\textsuperscript{350} See id.
\textsuperscript{351} See id. A prior arrest or conviction for an abuse-related incident shall not bar the INS from finding that the applicant demonstrates good moral character. See id.
\textsuperscript{352} See id.
entered the country.\textsuperscript{353} Under the first waiver, the INS may waive inadmissibility when there is a connection between the abuse and the immigrant’s removal, departure, reentry, or attempted reentry to the United States.\textsuperscript{354} The second waiver permits the INS to consider evidence other than a criminal record when the immigrant is abused.\textsuperscript{355} This waiver applies when the INS determines that the immigrant is not the primary perpetrator of the abuse and (1) was acting in self-defense; (2) violated a protection order meant to protect her; or (3) was arrested, convicted, or pled guilty to a crime in connection with the battery that did not cause serious bodily injury to any party.\textsuperscript{356} The third set of waivers deals with inadmissibility and deportability.\textsuperscript{357} Their essential premise is that the immigrant’s misrepresentation, if linked to the abuse, will not automatically render her inadmissible or deportable. The fourth and fifth waivers provide that immigration relief will not be barred for many VAWA-eligible battered immigrants.\textsuperscript{358} The final waiver provides that receipt of public benefits under the battered immigrant waiver to the Welfare Reform Act shall not result in a determination of public charge and subsequent inadmissibility.\textsuperscript{359}

BIWPA provides several procedural changes for battered immigrants. Section 1506 restores immigration protections under the original VAWA by removing barriers to adjustment of status.\textsuperscript{360} It also eliminates obstacles to the suspension of

\textsuperscript{353} See id. § 1505(a)-(e). Generally, section 1505 of BIWPA provides for equal access to VAWA immigration protections for all qualified battered immigrant women self-petitioners. See id. § 1505 (amending scattered sections of the Immigration and Nationality Act codified in scattered sections of 8 U.S.C.).
\textsuperscript{354} See id. § 1505(a).
\textsuperscript{355} See id. § 1505(b).
\textsuperscript{356} See id.
\textsuperscript{357} See id. § 1505(c). Inadmissibility standards are used when the alien is outside the United States or entered the country through improper channels. See DAVID WEISSBRODT, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 246 (1998). Deportability standards are used when the immigrant was legally admitted to the United States. See id. at 247.
\textsuperscript{358} See Battered Immigrant Women Protection Act § 1505(d)-(e). The fourth waiver allows the INS to waive certain health-related bars. See id. § 1505(d) (amending section 212(g)(1) of the Immigration and Nationality Act codified at 8 U.S.C. § 1182(g)(1)). The fifth waiver allows the INS to waive certain narrow categories of drug possession offenses. See id. § 1505(e) (amending section 212(h)(1) of the Immigration and Nationality Act codified at 8 U.S.C. § 1182(h)(1)).
\textsuperscript{359} See id. § 1505(f).
\textsuperscript{360} See id. §1506(a). Generally, section 1506 of BIWPA restores immigration protections under VAWA. See id. § 1506 (amending scattered sections of the Immigration and Nationality Act codified in scattered sections of 8 U.S.C.).
deportation process,\textsuperscript{361} including elimination of time limits on motions to reopen suspension proceedings, as long as the motion occurs within one year of a final removal order.\textsuperscript{362} This elimination applies when the battered immigrant is eligible for relief under the original VAWA provisions or the new BIWPA.\textsuperscript{363} In addition to these access revisions, BIWPA alters the effect of a change in the batterer’s status on the immigrant’s self-petition.\textsuperscript{364} Any change to the abuser’s status, including death or divorce, shall not affect the self-petition as long as it is filed before such event occurs.\textsuperscript{365} The same qualification applies to a self-petition that is filed before the legal permanent resident loses his immigration status; the self-petition will not be denied due to the loss of status.\textsuperscript{366} The final change allows battered immigrants to remarry without losing their immigration status under the self-petition.\textsuperscript{367}

BIWPA also increases access to basic services and legal representation\textsuperscript{368} through a series of four grant programs. The first program consists of grants for law enforcement and prosecution, which allow assistance to domestic violence victims with immigration problems.\textsuperscript{369} The second grant, intended to encourage arrests, includes a provision for strengthening assistance to immigrant victims of domestic violence.\textsuperscript{370} The third grant, for rural domestic violence and child abuse enforcement, is partially allocated to provide “treatment, counseling, and assistance” to domestic abuse victims dealing with, among other things, immigration problems.\textsuperscript{371} The final grant provides assistance with immigration matters to victims on college

\textsuperscript{361} See id. § 1506(b).
\textsuperscript{362} See id. § 1506(c)(1)(A). This one-year limitation is waiveable in the case of extraordinary circumstances or extreme hardship. See id.
\textsuperscript{363} See id. § 1506(c).
\textsuperscript{364} See id. § 1507(a). Generally, section 1507 of BIWPA addresses the implementation problems of VAWA associated with changes in the batterer’s status. See id. § 1507 (amending scattered sections of the Immigration and Nationality Act codified in scattered sections of 8 U.S.C.).
\textsuperscript{365} See id. § 1507(a)(1).
\textsuperscript{366} See id. § 1507(a)(2).
\textsuperscript{367} See id. § 1507(b).
\textsuperscript{369} See id. § 1512(a).
\textsuperscript{370} See id. § 1512(b).
\textsuperscript{371} See id. § 1512(c).
BIWPA does not include any provisions increasing access to public benefits under the Welfare Reform Act, nor does it address LSC funding.

2. BIWPA's Potential Impact on Battered Immigrants

BIWPA does not offer the most comprehensive remedy possible for victims of the conditional residency requirements. It neither eliminates the conditional residency requirement nor provides relief allowing a battered immigrant to continue the IMFA process regardless of her spouse's actions. In fact, BIWPA does not address any of the problems created by the IMFA, but rather focuses on changing the impact of IIRIRA on the 1994 VAWA and fine-tuning the self-petition requirements. While these changes are important, they are merely band-aid remedies. Congress needs to examine the rationale behind IMFA, and give meaningful consideration to the total elimination of conditional residency guided by the citizen spouse. For a meaningful congressional remedy to occur, major consideration must be given to the total elimination of conditional residency guided by the citizen spouse.

Primary criticisms aside, BIWPA makes several beneficial changes to the self-petition process. The elimination of the extreme hardship element is very important for a battered immigrant woman. No longer will she be subject to the

372. See id. § 1512(d).
373. See id. §§ 1501-1513 (failing to mention increased access to public assistance).
374. See id. (failing to address LSC funding and legal access for battered undocumented immigrants); see also supra note 178 and accompanying text (noting the congressional limitations on LSC funding).
375. See id. §§ 1501-1513; supra notes 73-122 and accompanying text (describing the IMFA process and the problems it creates for battered immigrant women). Reworking the entire conditional residence system to eliminate spousal control is seen as the best way to remove battered immigrants from the negative implications of the IMFA and VAWA processes. See Franco, supra note 53, at 102-03, 138-39.
376. Compare Battered Immigrant Women Protection Act §§ 1501-1513, with H.R. 4966, 106th Cong. § 603(c) (2000). In contrast to BIWPA, the proposed Restoration of Fairness in Immigration Law Act of 2000 would allow the INS to adjudicate the battered immigrant's IMFA petition for conditional residency even if her spouse has already filed but withdrawn it. See H.R. 4966 § 603(c). She must present credible evidence of the battery in order for the INS to go forward in this manner. See id.
377. See Battered Immigrant Women Protection Act §§ 1501-1513; supra Part III.A (discussing IIRIRA); supra Part III.B (discussing VAWA).
discretionary will of the INS adjudicator. As a result, she can meet the other, more objective, standards without fear that it is all for naught. Eliminating extreme hardship will also eliminate the double evidentiary burden and allow unrepresented women better access to VAWA relief. Furthermore, a battered immigrant is now one step closer to being treated as an equivalent to a non-abused immigrant who petitions under the original conditional residency requirements.

The elimination of the good moral character standard would advance toward this equality. Congress, however, did not see fit to abolish the requirement at this time. Nevertheless, some improvement was made: Congress recognized the special circumstances of an abusive relationship and allowed the INS to waive any abuse-related blemish on the applicant's record in making its determination. Unfortunately, this waiver does not go far enough because it still leaves too much to the discretion of the INS adjudicator. The alternative proposal made in H.R. 4966, giving four substantive criteria for judging whether a criminal offense was related to the abuse, would require all adjudicators to use the same standard of determination. This proposal would have eliminated the chance of arbitrary decisions among INS adjudicators. BIWPA instead leaves battered immigrants and their advocates waiting until the INS promulgates new regulations to determine if a standard of this

380. This will promote VAWA's intended purpose to "provide meaningful relief to battered spouses who are eligible to immigrate and are already in the United States." Teran, supra note 54, at 25.
381. See Franco, supra note 53, at 139.
383. See supra notes 73-88 and accompanying text (describing the "normal" petition process for the conditional immigrant with a helpful spouse).
385. See id. § 1503(d); see also supra notes 170-175 and accompanying text (describing the unique problems a battered immigrant faces in a determination of good moral character).
386. No guidelines are given, which leads to the conclusion that the adjudicator must determine what is or is not abuse-related. See Battered Immigrant Women Protection Act § 1503(d) (failing to provide the adjudicator with substantive guidelines).
387. See H.R. 4966, 106th Cong. § 608(a)-(c) (2000) (providing the four criteria used to judge waivability of prior arrest, conviction, or guilty plea).
sort will apply or if the determination will remain wholly subjective.

Nevertheless, BIWPA provides many other benefits. The
section providing equal access to VAWA redresses several of the
harsh immigration measures passed in IIRIRA. This section
ensures that a battered immigrant need not fear ineligibility
because of the manner in which she entered the country.
Procedural changes also allow for greater access to VAWA relief.
Prior to BIWPA, many immigrants were required to leave the
United States before acquiring legal immigration status.
Amending the adjustment of status provisions removes this
requirement for battered immigrant women. Perhaps the most
important procedural changes, however, are the reclassification
and loss of status provisions. Under these, a battered
immigrant need not relinquish her relief by reporting her batterer
to the police. She may file her petition and/or report her abuser
to the police without fearing loss of status if he is deported.
However, one large loophole may prevent the battered immigrant
from satisfying this requirement. At the time the battered
immigrant files her self-petition, her resident spouse must be in
legal status; if she does not file the petition before her batterer
loses status, she becomes ineligible. In the future, Congress
should consider altering this standard to allow for greater relief.

Despite all of the benefits, BIWPA does not do enough. The
financial provisions provide some extra support for battered
immigrants but not what is most necessary. In order to truly
allow battered immigrants access to VAWA relief, they must have
access to SSI and food stamps, which may be the only way they

388. See supra note 353.
389. See Nat'l Task Force, supra note 382.
390. See id.
391. See Battered Immigrant Women Protection Act § 1506(a).
392. See id. § 1507(a)(1)-(2).
393. Compare id., with supra notes 203-207 and accompanying text (discussing
the implications of the IIRIRA mandate requiring the deportation of domestic
violence offenders).
394. See Battered Immigrant Women Protection Act § 1507(a).
395. See id. (providing that this protection is available only when the change of
status occurs after filing).
396. See supra notes 264-272 and accompanying text (discussing the problems
inherent in maintaining that the battered immigrant file her petition before her
spouse loses status and providing options for changing the standard).
397. See Battered Immigrant Women Protection Act § 1512 (providing for a
number of grants to increase law enforcement, prosecution, arrests, treatment, and
counseling assistance).
398. See supra notes 184-187 and accompanying text (discussing the problems
can survive without the batterer's financial support.\footnote{See Loke, supra note 5, at 609-11.} Furthermore, BIWPA does not address the issue of LSC funding.\footnote{See Battered Immigrant Women Protection Act §§ 1501-1513. Under a 1996 law, non-profit agencies receiving LSC funding were not permitted to serve the undocumented immigrant community. See supra note 178. This was later amended to allow the LSC funded agencies to use non-LSC funds to serve undocumented battered immigrants. See supra note 192.} Lifting the ban on LSC recipients from assisting undocumented immigrants would empower more battered immigrants to seek legal help and perhaps increase the number of successful self-petitions. Although the Act provides several monetary grants for legal assistance,\footnote{See supra notes 144-148 and accompanying text (discussing the INS preference for primary documentation of the woman's marriage and battery).} it is not clear that Congress wishes to lift the ban on using LSC funds to aid undocumented battered immigrants. Regardless of whatever changes Congress makes to the original process, if it does not relieve the stress caused by the Welfare Reform Act and provide better access to legal services, battered immigrants will continue to suffer.\footnote{This is not to say that the grants discussed in section 1512 of BIWPA do not provide the necessary legal services. Rather, it is simply too early to tell if they will be effective in aiding battered immigrant women with their self-petitions.}

The final necessary change that BIWPA fails to address is the credible evidence standard. The only provision regarding evidence in BIWPA states that, "what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [INS]."\footnote{Battered Immigrant Women Protection Act § 1504(e).} In view of what the INS has already established as credible evidence,\footnote{See generally Kelly, supra note 11, at 696-99 (proposing that battered immigrants be treated like political refugees during the petition process).} this provision is unacceptable. The INS either does not accept or does not realize that a battered immigrant often does not go to the police, the hospital, or other agencies for help.\footnote{Secondary evidence may include affidavits from friends, neighbors, or family members.} Therefore, Congress must make statutory provisions for acceptable evidence, expressly including reliance on the petitioner's testimony\footnote{See Goldman, supra note 4, at 385 (calling for the INS to realize this reality and amend its evidence standards accordingly to permit secondary evidence).} and acceptance of secondary evidence.\footnote{See supra notes 144-148 and accompanying text (discussing the INS preference for primary documentation of the woman's marriage and battery).} Unfortunately BIWPA did not include this provision, and VAWA relief will remain unattainable for the large number of imposed by the Welfare Reform Act upon battered immigrants receiving public benefits).
battered immigrants who cannot gain enough “credible” evidence to satisfy the INS.

V. Conclusion

The Battered Immigrant Women Protection Act of 2000 is not perfect. It remedies several access problems and eliminates the extreme hardship requirement for self-petitioners, but it fails to address other necessary changes. Nonetheless, the positive impact on battered immigrant women is likely to be substantial. BIWPA is an important step toward recognizing the many difficulties imposed by the statutory structure of conditional residency and might someday lead to abolition of the entire IMFA system. For the time being, however, it is impossible to measure BIWPA's true impact. Only new INS regulations, promulgated with fairness toward battered immigrants in mind, will allow BIWPA to fulfill its purpose and empower battered immigrant women to leave their desperate situations behind in exchange for brighter futures.