



LAES has developed a series of immigrant issue instructional modules entitled "Tierra de Oportunidad" for orientation to our complex society.

INSTRUCTIONAL AREA: Promoting Community Participation

Tierra de Oportunidad - Module 8

Issues Relating To Women's Immigration Status

Overview

Latino men are often the "pioneering migrants" who come first to work in the United States and later send for their wives and children to join them. This means that in many families--particularly farm worker families--the male head of household has legal status, but his wife or children may not.

Several strategies make it possible for women to achieve legal status based on their husbands' permanent residency. One strategy that takes time and perseverance but which is straightforward is for a man who is a permanent resident to apply for citizenship and then petition for his wife and children to be legally admitted to the country, but this is not the only way. Another is via the **Family Unity** provisions of immigration law -- allowing the wives and children of legal permanent residents to remain in the U.S. Women and their husbands should seek advice from an established immigrant advocacy group or lawyer before deciding what to do -- and be particularly careful about promises made by *notarios* or other fly-by-night immigration consultants.

Immigration law is now responsive to several factors that have made women particularly vulnerable when their immigration status derives from being married to a man who is a citizen of the United States. The so-called "**battered spouse waiver**" makes provisions for women who are being abused by their citizen husbands to divorce those husbands without fearing loss of immigration status. The so-called "**good faith**" waiver allows a woman to continue to seek legal immigration status even if her husband does not cooperate (e.g., by refusing to file a joint petition).

There has been extensive litigation about the status of persons (most of them women) who were afraid to seek legalization under Immigration Reform and Control Act of 1986 (IRCA) because they had received public assistance. A woman who falls into this class -- i.e. who had been living illegally in the U.S. since before 1982 but who did not apply for legalization -- should seek advice from an immigrant advocacy organization.

Some women who are not legally authorized to live and work in the United States have been afraid even to go to a hospital or to their children's school out of fear that their unauthorized legal status might be found out and they would be deported.

While some human service providers are obliged to deny services to undocumented persons, they do not report people who seek service to the Immigration and Naturalization Service (INS). Even though the public has become more concerned about undocumented immigrants, applicants without documents who seek service can expect respectful treatment from service providers.

Basic Skills Development

<i>Information:</i>	Acquires and evaluates information. Identifies need for data, obtains it from existing sources or creates it, and evaluates its relevance and accuracy. Example: checking the references of a potential provider of immigration services.
<i>Systems:</i>	Understands systems. Knows how governmental systems work and operates within them.
<i>Problem Solving:</i>	Recognizes that a problem exists, identifies possible reasons for the discrepancy, and devises and implements a plan of action to resolve it. Weighs the consequences of alternative courses of action. Evaluates and monitors progress, and revises plan as indicated by findings.

Teaching Points

1. **A woman who joined her husband in the U.S. too late to be legalized under IRCA can still be legally admitted to the U.S. if her husband secures U.S. citizenship.** The process is a long one. The wait to secure citizenship is about one and a half years. Subsequently, the wait is also very long, after petitioning for a wife and minor children to be admitted as legal permanent residents (even outside the visa preference system). The family should consult with an immigrant advocacy organization to understand how the entire process works.
2. **A woman who joined her husband in the U.S. too late to be legalized under IRCA but before May 5, 1988, can apply for legal authorization to reside in the U.S. under the Family Unity provisions of immigration law.** Potential applicants under the Family Unity program should talk to an immigrant advocacy group or reliable immigration lawyer for details on how the process works and when they will be eligible for the benefits generally available to citizens and legal permanent residents.
3. **A woman whose legal immigration status stemmed from being married to a U.S. citizen may file a "good faith" petition to transform her "conditional legal residency" (based on her husband's citizenship) to legal permanent status if their marriage has broken up.** . A woman has a right to legal residence based on her marriage to a legal U.S. citizen as long as the marriage was "in good faith". Technically, a woman's divorce from her husband must be final in order to file a "good faith" petition for her own independent legal residency but, in some cases, the waiver is continued without being denied when a divorce petition has been filed but a final divorce hasn't been granted -- recognizing that the marriage is in the process of being dissolved.
4. **A woman who has been abused by her husband, or whose children have been abused by her husband, can seek a "battered spouse waiver" of the requirement that she and her husband jointly petition to secure her (and her children's) legal residence.** Women need not remain in abusive marriages so as to continue residing in the U.S. Women's shelters, battered women's support groups, and immigrant advocacy organizations will provide a battered woman with support and assistance while she pursues her legal rights. The legal definition of "cruelty" that is the basis for alleging that a woman is a battered spouse may be broader than many women believe and a woman should consider seeking expert legal advice if she feels she is being mistreated -- either mentally or physically. Threats of physical cruelty as well as documented cases of physical cruelty can provide a basis for a "battered spouse waiver" but the issue of mental cruelty is more complex legally and a woman should be sure to get legal advice.
5. **The information submitted in a woman's petition to INS for a "battered spouse waiver" is supposed to be confidential but it would be wise for a woman who fears her husband will injure her to use only the address of her legal counsel.** There are currently no legal sanctions for such confidential information being released inadvertently so caution is the wisest course.
6. **Even those women who are not authorized to reside and work in the U.S. can go about their lives without fear of being reported to the INS by schools, hospitals, or**

other service agencies. Seeking help is not likely to result in being reported to the INS and being deported but it may lead to hostile and unpleasant treatment by the staff of some programs. Also women should be aware that false statements made in order to secure benefits from a public program may jeopardize their ability to secure legal status in the future. Even unauthorized women are specifically entitled to receive free emergency medical care and WIC (Women, Infants, and Children) vouchers for food if they are pregnant or nursing mothers.

Sample Classroom Activities

1. Ask the students to locate immigrant advocacy organizations in the area, in the phone book or in the newspaper ads. Students may contact the organization to find out what services they offer. Students prepare a mini phone book of organizations to share with students in other classes.
2. Invite a representative from INS or from an advocacy organization to visit the class and respond to students questions.
3. Role play effective ways to deal with human service providers who are hostile to immigrants.
4. Research on Internet various kinds of U.S. immigrant visas, the process for applying or petitions for waivers.
5. Students in a cooperative learning activity can look up and discuss the terms they did not understand.

RESOURCES

Internet addresses:

- <http://www.autonomy.com/immig.html>
An information forum.
- <http://www.fourmilab.ch/uscode/8usc/www/contents.html>
An index and access to the "real" U.S. Immigration Laws.

Coalition for Immigrant and Refugee Rights and Services
995 Market St., Suite 1108, San Francisco, CA 94103
(Multi-lingual immigration assistance hotline)

National Immigration Law Center
1636 West 8th St., Suite 215, Los Angeles, CA 90017
(213) 487-3531.

National Immigration Forum
320 I St., NE, #220, Washington, DC 20002-4362
(202) 554-0004

Family Violence Prevention Fund
(Excellent handout pamphlets)
(415) 821-4553

International Institute of Los Angeles
435 South Boyle Avenue, Los Angeles, CA 90033
(213) 264-6217
Immigration & Refugee Concerns

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