

Slide 1

Immigration Issues in Forced Marriage Cases
National Network to Prevent Forced Marriage Webinar
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TAHIRIH JUSTICE CENTER
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Slide 2

The Forced Marriage Initiative

In 2011, the Tahirih Justice Center launched the:

- **Forced Marriage Initiative**
- **National Network to Prevent Forced Marriage**

in response to the findings of Tahirih's Survey on Forced Marriage in Immigrant Communities in the United States.

This webinar is part of a quarterly series.

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Slide 3

Defining "Forced Marriage"

A marriage that takes place without the full and free consent of one or both parties.

Lack of consent can be caused by an individual being:

- Younger than the legal age to marry
- Subject to some other incapacity or disability
- Subject to force, fraud, or coercion

It is not arranged marriage, in which families may take the lead, but the ultimate choice to marry remains with the individual.

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Slide 4

Why is determining citizenship/immigration status important in forced marriage situations?

If a service seeker has stable status, they may be:

- Facing forced or "reluctant" sponsorship of a visa for a fiancée or spouse that is currently residing overseas
- Requiring assistance with withdrawing a visa, as well as replacing important immigration documents



Slide 5

Why is determining citizenship/immigration status important in forced marriage situations?

If a service seeker does not have stable immigration status, they may be:

- Fleeing a forced marriage/honor violence situation abroad and seeking refuge in the US
- Facing a situation of abuse or exploitation where threat of deportation is a tactic used by perpetrators to make them enter or continue in a marriage



Slide 6

Immigration Issues for US Citizens and Permanent Legal Residents who are Facing or Fleeing a Forced Marriage



Slide 10

Requirements for Fiancée/Spouse Visas


- The parties must be "free to marry"
- The marriage must be valid in place of "celebration"
- The marriage must not offend public policy of the United States
 - E.g. Polygamous marriages



Slide 11

Can a Minor Petition for/be the Beneficiary of a Fiancée or Spouse Visa?

- There is NO "official" minimum age requirements for the petitioner of a fiancée (K-1) or spouse (K-3) visa, however:
 - the US government looks at whether the marriage would be valid in the state where the petitioner has residence (evidence of parental/judicial consent may be needed for either/both petitioner and beneficiary if under age)
 - The petitioner must be 18 or older to sign and submit an Affidavit of Support (Form I-864) for their spouse as part of the application for permanent residency



Slide 12

Reluctant Sponsors: Challenges in Withdrawing a Visa

- Individual at risk may not know if/when a petition has been filed
- Perpetrators may control entire visa application process:
 - Restrict access to documents
 - Monitor mail and online status of application
 - Engage attorney
- Risk of notice of withdrawal to perpetrator from "automatic" processes at USCIS and NVC
- Potential for investigation of immigration fraud




Slide 13

Safely Withdrawing a Visa Petition

- Determining if an application was filed:
 - Receipt number known? If not, call USCIS Customer Service
 - Freedom Of Information Act (FOIA) request
- Withdrawing the visa petition:
 - Change the address associated with the petition ONLINE
 - Send written request to withdraw visa petition to the appropriate USCIS Service Center or National Visa Center
 - Flag forced marriage concerns in letter; request all further correspondence directed to attorney/safe address
- Preventing notification of inquiries by perpetrators:
 - Work with USCIS to flag the survivor's file

Technical assistance is available from Tahirih's Forced Marriage Initiative for this process!



Slide 14

Additional immigration needs:

- Replacing documents taken/withheld by abusers:
 - Naturalization Certificate (via USCIS)
 - Green Card (via USCIS)
 - Passport (via Dept. of State)

What additional immigration issues are forced marriage survivors encountering? Email fmic@tahirih.org with further questions and to share your experiences!



Slide 15

Immigration Options for Individuals Without Stable Legal Status who are Facing or Fleeing a Forced Marriage



Slide 16

Asylum:
*Immigration Relief for Survivors
Fleeing Force Marriages Abroad*



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Slide 17

Farida's story*

Farida ("F") is a 22 year old citizen of Afghanistan who came to the United States in July of 2011 as a student. She fled from Afghanistan to escape a forced marriage to a distant relative she was promised to as a child. F's family defied Taliban law by allowing her to get an education, and tried for as long as possible to defer her marriage but faced persecution from the Taliban once they openly refused to force her into marriage. F escaped Afghanistan with the help of a relative who was soon after killed for his participation in F's escape. F would have been killed if forced to return to Afghanistan in order to reinstate her fiancée's "honor" and as punishment for her anti-Taliban actions such as studying and teaching girls to read in her family home.




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*Name has been changed to protect confidentiality.

Slide 18

Who Qualifies for Asylum?

"any person who is outside any country of such person's nationality ... and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."



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Slide 19

Forced Marriage as Persecution


No case law that forced marriage alone is persecution but many of the harms included in forced marriages have long been found to constitute persecution—i.e. loss of freedom, control over reproduction, rape, involuntary servitude, physical abuse.

BIA Cases:

- *Matter of A-T*, 24 I. & N. Dec. 296 (BIA 2007), vacated sub nom. *Matter of A-T*, 24 I. & N. Dec. 617 (2008)
- *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996)

Circuit Court Cases:

- *Keisler v. Hong Yin Gao*, 440 F.3d 62, 70 (2d Cir. 2006) cert. granted, judgment vacated sub nom. *Keisler v. Hong Yin Gao*, 552 U.S. 801 (2007)
- *Nyongwe v. Mukasey*, 543 F.3d 1029 (8th Cir. 2008)



Slide 20

The U.S. Government Recognizes Forced Marriage as a Clear Violation of Human Rights


- Asylum Officer Basic Training Course, Lesson 26: Female Asylum Applications and Gender-Related Claims 16 (2009), available online
- U.S. Dept. of State Foreign Affairs Manual Vol. 7, 7 FAM 1740, at 1 (2005)
- International Protecting Girls by Preventing Child Marriage Act of 2011, S. 414, 112th Cong. § 2(1) (passed Senate without amendment, May 24, 2012)



Slide 21

Forced Marriage Related Grounds for Asylum

- **Actual or imputed political opinion:** about women's roles in society and control over their own bodies/choice in marriage. *Al-Gharbani v. Holder*, 585 F.3d 980 (6th Cir. 2009)
- **Religious beliefs:** that differ from her persecutor's religious beliefs concerning the proper role of women within their religion. *Matter of S-A*, 22 I. & N. Dec. 1328 (BIA 2000)
- **Membership in a particular social group:** of women with shared immutable characteristics. (i.e. who are of a certain age, tribe or religious sect who oppose forced marriage or who have been forced into marriages and are treated as property by virtue of their relationship). *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010)



Slide 22

Successful Forced Marriage Based Particular Social Groups

- Ugandan women sold into arranged marriage
- Unmarried women of the Igbo tribe of Nigeria who refuse to accept an arranged polygamous marriage;
- Persons in Maliinke tribe of marriageable age opposed to arranged marriage;
- Young Bamileke women who are sold into marriage and who resist the practice;
- Unmarried Chinese women, who have been subjected to arranged marriages for money according to feudal practices, and who oppose such practices;
- Women who escape forced marriages to Pashtun Taliban members

*Examples from Kim Thay Sellinger, *Forced Marriage and Asylum: Prosecuting the Invisible Harm*, 42 COLLM. HUM. RTS. L. REV. 55 (2010) and Tahiri Justice Center (email: info@tahiri.org for more information).



Slide 23

Failure of State Protection Is Critical In Forced Marriage Asylum Claims

Government must be **unwilling** or **unable** to protect the applicant from non-government persecutors.

How to demonstrate failure of state protection:

- **UNABLE:** State lacks the necessary resources to provide protection to victims facing forced marriages.
- **UNWILLING:** Forced Marriage Victim reports threats from family to the police and police refuse to take reasonably effective steps to stop family citing culture, religion or tradition to justify inaction
- **FUTILE:** Forced Marriage Victim's attempts to seek government assistance would be futile.



Slide 24

Benefits of Asylum

- Legal status and work authorization forever
- Access to public benefits
- Can obtain asylum status for non-abusive spouse and unmarried children who were under the age of 21 at the time of filing
- Can apply to adjust status to Lawful Permanent Resident ("green card") after one year

Important to Remember in Asylum


- Application must be received by USCIS within first year of arrival in the U.S.-with few exceptions.



Slide 28

Eligibility for SIJS

- Unmarried and under age 21 (usually under the age of 18)
- Unaccompanied =not viable to reunify with a parent or both parents
 - Abuse, abandonment, neglect, or similar maltreatment
- Not in best interest of child to return to country of origin
- Dependent on juvenile court or placed in custody, in accordance with state law




Slide 29

Benefits of SIJS

- Status as a Lawful Permanent Resident ("green card")
- No derivative status available


Important to Remember in SIJS Cases

- Most state systems require predicate orders prior to age 18
- SIJS is only available to unmarried minors so it is important to file prior to official marriage



Slide 30


Violence Against Women Act (VAWA):
*Immigration Relief for
Survivors of Forced Marriage to a
US Citizen or Permanent Resident*



Slide 31

Saira's story*

Saira ("S") is a 31 year old woman who is originally from India. When she was in her mid 20s, her family began exerting tremendous pressure on her to get married. After refusing two potential suitors, her father severely beat her, and told her that she had no choice but to accept the next potential groom they found. A month later, S's family introduced her to D, who was visiting from the US. Afraid of further abuse, S decided to resign herself to the marriage. D was a US citizen, and S was soon able to join him in the US on a fiancee visa. They married shortly after her arrival, and the marriage soon became abusive, with D flying into rages and beating S if she did not respond to his every demand. D never filed immigration papers for S, and she is currently without legal status. S had a child a few months ago, and D has threatened that if she calls the police she will be deported and he will be able to keep the child.




*hypothetical scenario developed for training purposes.

Slide 32

Purpose of the Violence Against Women Act (VAWA)

Provides relief to:


- immigrants;
- in abusive familial relationships (child/spouse/parent) with US citizens or lawful permanent residents (LPRs or "green card holders");
- on whom their own legal status would otherwise have depended.



Slide 33

Who Qualifies for VAWA?

- Abused spouses of US citizens and LPRs
 - If filed within two years of divorce or abuser's loss of status
 - Eligible if marriage would have been legal but for bigamy of abuser
- Non-abused spouses of US citizens or LPRs where their child is abused
- Abused children (natural born/adopted/stepchildren) of USCs (up to age 25)
- Abused parents of adult USCs (over age 21)




* Men can also claim VAWA relief

Slide 34

Three Types of VAWA Relief


- **Self-Petitions:** for victims who do not yet have permanent residency ("green card")
- **Battered Spouse Waivers:** for victims who currently hold conditional residency (2 year green card)
- **VAWA Cancellation/Suspension of Removal:** for victims who are currently in Immigration Court Proceedings and ineligible for other forms of VAWA relief



Slide 35

VAWA Self-Petition Requirements

- **Status of the Abuser** (US Citizen or LPR)
- **Good Faith & Legal Marriage** (evidence that the couple married for purposes other than immigration status)
- **Shared Residence** (evidence that the couple cohabitated)
- **Battery or Extreme Cruelty** (evidence of physical, mental and/or sexual abuse)
- **Good Moral Character** (of the Petitioner)




Slide 36

Forced Marriage and the "Good Faith Marriage" Requirement

The petitioner must show they intended to establish a life together with their spouse at the time of marriage

- BIA/Courts have upheld arranged marriages as long standing tradition, does not negate intent of spouses or preclude GFM
- BIA/Courts recognize a distinction between non-viable and "sham" marriages, a later separation does not in itself negate intent
- **Forced marriage:** complicated, fact based analysis; not yet tested boundaries of law – i.e. what impact does family/social pressure and/or abuse have on intent?




Slide 37

Forced Marriage and the "Good Faith Marriage" Requirement

Second, they must show the marriage was not entered into for the purpose of evading immigration laws

- Monetary or other payment as part of a marriage may be viewed as indicative of a "sham" marriage


We are collecting examples of both successes and hurdles with forced marriage cases and VAWA self-petitions – please email FMI@tahirih.org to share your experiences.



Slide 38

Benefits of an Approved VAWA Self-Petition


- **Green card:** Applicants who are/were married to a USC are immediately eligible to apply for permanent residency
- **Deferred action:** Permission to remain in the U.S. and legally work. Applicants who are/were married to a LPR can apply for permanent residency in the U.S. (or at a U.S. Consulate/Embassy abroad) when a visa becomes available.
- Can petition for Derivatives (unmarried children under the age of 21, and those over 21 who are protected under the Child Status Protection Act)



Slide 39

Benefits of an Approved Battered Spouse Waiver

- Unconditional (Permanent) green card
- Can petition for derivatives (unmarried children under the age of 21, and those over 21 who are protected under the CSPA)



Slide 40


The U Visa
Temporary Legal Status for Victims of Certain Serious Crimes (Such as Forced Marriage)



Slide 41

Saira's story*

Saira ("S") is a 31 year old woman who is originally from India. When she was in her mid 20s, her family began exerting tremendous pressure on her to get married. After refusing two potential suitors, her father severely beat her, and told her that she had no choice but to accept the next potential groom they found. A month later, S's family introduced her to D, who was visiting from the US. Afraid of further abuse, S decided to resign herself to the marriage. D was working in the US on an H1-B visa, and – after their marriage in India – S was soon able to join him in the US. However, the marriage soon became abusive, with D flying into rages and beating S if she did not respond to his every demand. S has called the police multiple times to report the abuse, and is trying to leave D, but is concerned as her immigration status is dependent on him. S's father in India has also threatened to kill her if the marriage is a failure.



*hypothetical scenario developed for training purposes.

Slide 42

Background/Policy

Congress created the U Visa in an effort to **strengthen the ability of law enforcement agencies** to detect, investigate and prosecute crimes against immigrants and **protect victims**.

-Victims of Trafficking and Violence Prevention Act of 2000



Slide 43

Eligibility for the UVisa

Applicant:

- is a **victim of a qualifying crime** in the United States;
- **possesses information** concerning that qualifying crime;
- **has been helpful, is being helpful, or is likely to be helpful** to a law enforcement official;
- has suffered **substantial physical or mental abuse**.



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Slide 44

Qualifying Criminal Activity

One or more of the following **or any similar activity** in violation of Federal, State, or local criminal law.

Forced Marriage	Domestic violence and Felonious assault
Kidnapping, abduction, false imprisonment, or unlawful criminal restraint	Rape, sexual assault or abusive sexual contact
trafficking	peonage, involuntary servitude, slave trade
torture	female genital mutilation
blackmail, extortion	Obstruction of justice




* Attempt, conspiracy, or solicitation to commit any of the above crimes

Slide 45

Helpfulness

- The UVisa is available to those who are "helpful" (in the past, present, or future) regardless of whether the investigation or prosecution results in a conviction.
- Ongoing responsibility to cooperate; certifying official can withdraw certification
- DHS can contact certifying official
- A parent or guardian can fulfill the cooperation requirement for incompetent or incapacitated victims, or victims under 16 at the time of criminal activity



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Slide 46

Benefits of the U Visa

- Legal status and work authorization for 4 years
- Can obtain same legal status/work authorization for:
 - For applicants under 21: spouse, children, parents and unmarried siblings < 18 years
 - For applicants 21 or older: spouse, children
- Can apply to adjust status to Lawful Permanent Resident ("green card") after 3 years

Important to Remember in U Cases

- Cooperation is an ongoing requirement—advise applicants to update contact information with law enforcement every time they move!



Slide 47


The T Visa:
Immigration Relief for Victims of Forced Marriage in Human Trafficking Situations



Slide 48

Nora's Story*

Nora ("N") was 12 years old when her family moved from Guatemala to the U.S. She had a crush on a boy from her high school class but a gang member in her neighborhood claimed her as his own and started raping N regularly. When N was 15 years old she became pregnant with the gang member's child. Embarrassed by N's pregnancy out of wedlock, N's parents in conjunction with the gang member forced N to marry him. As soon as they were married, N's husband made her have sex with other gang members, threatening to have her younger brothers killed by his gang if she refused. N's husband also made her work in his uncle's store from 6am until late into the night for no pay. When N asked for compensation, her gang-member husband told her he would take her little sister as his second wife if she didn't do as she was told. When she tried to leave him, the gang-member said she'd have to pay off her debt for the cost of the elaborate wedding reception or her family would pay the price with their lives.




**Hypothetical scenario developed for training purposes*

Slide 52

Forced Marriage Situations – Services Provided by Tahirih

- If you are working with an individual who is a US Citizen or Legal Permanent Resident (or who has other stable status) who is facing forced marriage, you can access technical assistance and direct services by emailing FMI@tahirih.org
- If you are working with an individual fleeing forced marriage who may be eligible for asylum, VAWA protections, SJS, U or T visa, you can access technical assistance and direct services by emailing services@tahirih.org



Slide 53

To sign up for the:
National Network to Prevent Forced Marriage & Forced Marriage Newsletter
email FMI@tahirih.org, or visit:
www.tahirih.org/advocacy/policy-areas/forced-marriage-initiative/
Or call:
571-282-6161
Thank you!



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