

To: Susan Dudley and Alexander Hunt, Office of Management and Budget
From: Leslye E. Orloff and Kavitha Sreeharsha, Immigrant Women Program,
Legal Momentum
RE: Stories of Immigrant Victims Needing an Interim Final Rule
Date: June 13, 2007

Thank you both for meeting with us last month regarding the U visa rule under review at the Office of Management and Budget. As we discussed we sought out examples of some of the types of harms that occur for U visa interim relief recipients who cannot access the full U visa. The victims would greatly benefit from the U visa being issued as an interim final rule as was the case for VAWA 1994 regulations issued in 1996 and T visa regulations issued in 2002. As the stories below illustrate victim safety, victim's ability to heal after trauma and criminal prosecutions will benefit from issuance of an interim final rule. Please contact us if you have any further questions at (202) 210-8886.

Roxana:

Roxana immigrated to the United States from El Salvador along with other members of her family including her brother. When she joined her family members in the United States Roxana was separated from her own children leaving them in the care of other family members in El Salvador. While living and working in the United States Roxana was victimized and raped by her brother. Roxana, although severely traumatized by the rape perpetrated by her close family member, Roxana decided to cooperate with law enforcement and reported the crime. Roxana has cooperated in the criminal investigation and prosecution of the rape case against her brother. Roxana has filed for and received U visa interim relief.

Roxana's youngest child, Marisol is now seventeen years old and herself has a 2 year-old baby. Recently Marisol was diagnosed with leukemia and is undergoing aggressive treatment. Doctors tell Marisol that her leukemia was detected late and that her chances of survival are small. Marisol does not have either of her parents around and has been going through treatment alone. The job Roxana was able to obtain in the United States through U visa interim relief has allowed her to finance Marisol's cancer treatment. Roxana desperately wants to see her daughter one last time. Roxana has U visa interim relief but without regulations, she has no U visa. With U interim relief, as opposed to a U visa, and deferred action status, Roxana cannot be guaranteed that if she leaves the United States to see her daughter in El Salvador she will be granted reentry into the United States. U.S. Customs and Border Patrol agents have virtually no training on U visas and are not required to exercise to discretion to grant reentry to persons with deferred action status. Deferred action in U visa only helps prevent a victim's removal but does not assure reentry if the victim travels outside of the United States even if she secures permission to leave and reenter from States from Citizenship and Immigration Services.

Roxana cannot risk that if she travels abroad she could be denied reentry into the United States. If she cannot return, Roxana will lose her job. Roxana cannot afford to abandon her job even if it is to see her daughter one last time. It is more important to be able to pay for her daughter's medical treatment. Further, as a cooperating witness in her brother's rape prosecution, being unable to reenter the United States places Roxana in danger of retaliation from her brother. If the U visa regulations are issued as an interim final rule that goes into effect immediately upon publication Roxana will be able to obtain a U visa and will be able to leave the United States to visit her dying daughter in El Salvador without jeopardizing her access to legal immigration status and the job in the United States that is making her daughter's health care possible.

Luna:

Luna is a domestic violence survivor who was severely abused by her ex-boyfriend Marco. Luna and her 7-year-old daughter, Marissa, lived with Marco. Luna discovered that in addition to the abuse she personally was suffering at Marco's hands, Marco started abusing Marissa as well. When Luna discovered this, Luna on several occasions tried to call the police for help and Marco stopped her. He told Luna that if she called the police he would kill her daughter Marissa. Luna was so scared for her daughter that she struggled to figure out what might be the safest way to protect her daughter. She decided to send her daughter home to Brazil because though Marco was also Brazilian, Luna believed that he would not go back to Brazil because there was an outstanding open criminal investigation against him there. March threatened to send people after Marissa to kill her there.

Upon Marissa's return to Brazil, she told Luna that Marco had also sexually abused her. Luna desperately wanted to escape Marco and turn him in to police to have him prosecuted for the sexual abuse of her daughter and the physical abuse he inflicted on Luna. Eventually, Luna was finally able to escape and go into hiding. Luna's friends who sheltered her convinced her that the police would protect both Luna and her daughter from Marco and Luna called the police. The police investigated and Luna cooperated with the investigation and told them about what had happened to her daughter. The police want to prosecute Marco for the rapes of Luna's minor daughter Marissa that occurred in the state but they cannot prosecute Marco unless Marissa can return to the United States to assist with the prosecution. In light of Marissa's youth she needs to be in the United States and receive counseling, victim witness support and treatment so that she will be able to effectively testify against Marco. She can only receive these services if she is granted entry into the United States. Marco failed to appear for his first court appearance in the domestic violence case where Luna is the primary victim. Law enforcement and prosecutors will believe they have a stronger case to pursue the child sexual abuse case against Marissa and are unlikely to aggressively pursue the domestic violence charges.

Luna has been granted U visa interim relief status for her cooperation in both the domestic violence and the child sexual abuse criminal cases. Her daughter misses her and constantly asks when she can return to be with her mother. Marissa is suffering additional psychological trauma as a child survivor of sexual abuse who cannot reunite with her mother. Luna's daughter qualifies for U derivative (presumably U-2) visa holder status and she also qualifies for U visa status as a child sexual abuse victim. However, Marissa cannot be granted U interim relief while living abroad. Once U visa regulations are issued and go into effect, Marissa will be able to apply for a U visa or U derivative (U-2) status from abroad directly with the Vermont Service Center and will legally be granted permission to enter the United States. Issuance of a proposed rule as opposed to a final rule will significantly delay reunification of Marissa with her mother and prosecution of Marco. Issuance of an interim final rule that goes into effect immediately will promote Marissa's health and well-being and support efforts of police and prosecutors to hold Marco accountable for his crimes.