

Testimony of

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Submitted to the Committee on the Judiciary
Of the U.S. Senate

March 15, 2017

INTRODUCTION

Thank you, Chairman Grassley and distinguished members of the Committee. As the Policy Director at the Asian Pacific Institute on Gender-Based Violence (API-GBV), I am deeply honored to be able to comment on the impact of the K-visa system on immigrant survivors of domestic and sexual violence and human trafficking.

The Asian Pacific Institute on Gender-Based Violence (formerly, Asian & Pacific Islander Institute on Domestic Violence) is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities, serving a national network of advocates and community-based programs that work with Asian and Pacific Islander victims of gender-based violence. In collaboration with the National Taskforce to End Sexual and Domestic Violence, API-GBV has successfully worked to educate society about the severe and long-lasting impact of domestic violence, addressing victim-blaming attitudes, making systems that victims face more accessible, and advocating for policies that support justice for victims of domestic and sexual violence. We appreciate the opportunity to submit this testimony relating to K-1 fiancé fraud as it relates to the constituents our programs work with.

STRONG AND HEALTHY FAMILY TIES HELPS PREVENT FUTURE DOMESTIC AND FAMILY VIOLENCE

As an organization that works to support healthy, strong families we firmly believe in the importance of family-based immigration. The United States was founded by individuals seeking better opportunities and freedom for themselves and their families. Families are crucial to the economic and social integration of new immigrants and have positive impacts on the economic development and stability of our communities.

In our work in the Asian-American and Pacific-Islander communities and in immigrant communities, we work to support healthy, strong family relationships. Research shows that factors such as parental resilience against their own adverse experiences, strong social connections, and concrete support, including economic resources, promote optimal child and youth development, and help prevent future victimization or perpetration of domestic violence¹. It is in this context that the work of our programs takes place: we believe in the supporting strong and healthy families, and we work to support policies that prevent abuse.

FACTORS IN THE FIANCE VISA PROCESS THAT MAY ENABLE ABUSE

We appreciate the attention this committee is giving to improving our immigration system and reducing the possibility of fraud or abuse. We know that when there is fraud and abuse, those system resources are drained, meaning fewer resources are available for those who need the most help. In examining changes to the immigration process, however, we urge you to be careful that the remedies don't undermine current protections which have proven time and again to be a lifeline for the most vulnerable and isolated immigrant victims, with the least access to systems designed to protect them. We applaud the work of this Committee in consistently expanding rights and protections for survivors of domestic and sexual violence, including the work you have done to protect immigrant victims. Too often these victims fear reaching out to police or seeking medical or even social services assistance. There is obviously much more that needs to be done, but I want to thank you for your attention to this matter.

¹ See, e.g. <http://www.researchconnections.org/childcare/resources/28802/pdf>;
https://www.unicef.org/protection/files/Report_on_preventing_and_responding_to_violence_in_early_childhood_2013_Cassie_Landers.pdf

As we know, individuals entering on K-1 visas make up 0.1% or less of the non-immigrants entering annually² so the problems we are discussing today are not widespread, but they are significant for the lives of the people they impact.

The Institute's constituent local anti-domestic and sexual violence programs have reported challenges faced by victims, both U.S. Citizen victims as well as immigrant victims in the context of fiancé visas. Let me lay out a few examples of concern and some recommendations for ways to improve the screening process for K-1 visas that we believe would reduce the risk of abuse, while also maintaining the K-1 visa as an important avenue for allowing loved ones to stay together and begin families, which ultimately strengthen our communities.

One issue we've identified has been in the context of an engagement or marriage that an individual has been pressured or threatened to enter, by either their family or an abusive partner. In these situations, victims are particularly vulnerable to domestic violence, sexual assault, and other forms of coercion, intimidation, and abuse not only to force them into an unwanted marriage, but also to prevent them from being able to leave the marriage after it takes place. Either a U.S. citizen sponsor, or a foreign beneficiary may be the victim of this kind of coercive pressure, and minors (those who lack the legal rights of an adult, generally, under age 18) are especially vulnerable and may lack options to prevent or escape the marriage. But while the U.S. citizen sponsor must be at least age 18 (because they must execute an affidavit of support, which the U.S. government considers a legal contract), there is no minimum age requirement for the foreign beneficiary. In addition, exceptions currently exist that permit a waiver of the otherwise standard requirement that the parties to be married must have met each other previously, which can potentially mask a marriage that is not bona fide; not entered with sufficient information

² https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Admissions_2015.pdf

about the intended spouse; or that is being forced by an individual's family.³ Finally, the limited timeframe of the K-visa (90 days for fiancé(e)s to marry or lose status) can compel either the sponsor or a foreign beneficiary to proceed in the face of misgivings - that is, to discount abusive treatment by the fiancé(e) as a pre-wedding outlier due to the time-pressure rather than as a red flag of consistently abusive behavior she will face after the marriage. In this way, the K-visa process fails to provide a meaningful mechanism to determine whether the applicant is submitting an I-129F application with their full and free consent, or to permit them time to recognize and react to warning signs of future abuse. **Three recommendations** we would suggest are 1) to require foreign beneficiaries of a K-visa petition to be **age 18 or older**, and/or to apply heightened scrutiny to K-visa cases where either or both the U.S. Citizen applicant and the beneficiary **are under age 21**; 2) to **strike or narrow** the exception that permits a waiver of the in-person meeting requirement for K-visa petitions, in particular, in cases where one of the parties is under age 21; and 3) to **extend the length of the K-visa** from 90 days to at least 120 days.

A more common situation our affiliate programs are faced with is a scenario where a U.S. Citizen submits a K-1 application for a foreign fiancée abroad, and after arriving in the U.S., the foreign fiancée is abused or exploited. Advocates report that they work with victims who have been brought in on fiancée visas by a sponsor who abuses them physically, sexually, and emotionally, isolating them, or in other cases, treating them as servants. In some cases, the foreign fiancée is very young, and her family may have arranged for her to marry someone in the

³ Form I-129F require applicants to describe how the parties met and how the relationship was established, or to set forth in detail why the requirement of at least one prior meeting in the preceding 2 years between the parties should not apply to them. Those exceptions are described here: <https://www.uscis.gov/family/family-us-citizens/fiancée-visa/fiancée-visas>, as either: 1. If the requirement to meet would violate strict and long-established customs of your or your fiancé(e)'s foreign culture or social practice, or 2. If you prove that the requirement to meet would result in extreme hardship to you.

United States. Recently we have heard of cases where young women are sponsored on a fiancée visa, enter the United States, and learn that they were actually brought to be a paramour for the sponsor's married father, uncle or friend.

As noted by the Office of the Inspector General for the Department of Homeland Security in its January 4, 2016 report on data collection and exchange as they relate to human trafficking,⁴

“[F]iancé visas were used to lure human trafficking victims to the United States as part of marriage fraud schemes. The traffickers confiscated the victims' passports and subjected them to involuntary servitude, forced labor, and/or forced sex. In one case, upon arrest and prosecution, three individuals pled guilty to marriage fraud, forced labor trafficking, and forced labor organization. Suspects involved in another case were not prosecuted due to a lack of sufficient evidence.”

Although the foreign fiancée may not have had fraudulent intent, she will be the one penalized for the sponsor's deception. In these instances, a significant gap in the law is that someone who enters on K-1, who is able to identify that the sponsor is abusive and does not marry her or him will be ineligible to adjust status to permanent residency based on another family-based petition. We **recommend a humanitarian waiver** for these cases where there is a finding of a bona-fide intent to enter into the marriage with the sponsor, but where the marriage does not take place.

In these types of cases, immigrant victims frequently face significant barriers in accessing help and legal protections afforded them both under state law, such as assistance from the police or protective orders and under immigration law, due to fear, language barriers, isolation, and lack of knowledge of the U.S. laws. There is considerable body of research that demonstrates that immigrant victims are at particularly high risk of serious domestic violence. They tend to have fewer resources, sustain more severe physical injury and emotional consequences as a result of

⁴ The report can be found at: <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-17-Jan16.pdf>.

the abuse, and the duration of the abuse than other domestic violence victims in the US.⁵ In addition to physical and sexual violence and stalking, immigrant victims often face psychological aggression, which the U.S. Centers for Disease Control defines as

“the use of verbal and non-verbal communication with the intent to harm another person mentally or emotionally, and/or to exert control over another person. Psychological aggression can include... coercive control (e.g., limiting access to transportation, money, friends, and family; excessive monitoring of whereabouts); threats of physical or sexual violence; ... exploitation of victim’s vulnerability (e.g., immigration status, disability); exploitation of perpetrator’s vulnerability; and presenting false information to the victim with the intent of making them doubt their own memory or perception (e.g., mind games).”⁶

In particular, research studies have found that abusers of immigrant victims actively assert their power to control their dependents’ immigration status and threats of deportation as tools that play upon victim’s fears so as to keep their abused victims and children from seeking help or from calling the police to report the abuse.⁷ For example, I learned about a case from an advocate in Georgia about a situation involving domestic violence against a woman who’d entered on a fiancée visa and one of her young sons. After Family Services (Child Protective Services) got involved, following a neighbor’s call to them when one of the boys was beaten in the street by the husband, the women and her children fled to a domestic violence shelter as a condition set by Family Services to not remove her children. After she fled, the husband went to ICE and claimed she had tricked him, that she was trying to find other men in the U.S, and even

⁵ A. Raj and J. Silverman, “The roles of culture, context, and legal status on intimate partner violence”. *Violence Against Women* 8, 367-398 (2002).

⁶ <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>. See also, E. Stark, *Coercive Control, How Men Entrap Women in Personal Life*, New York, Oxford University Press (2007); S. Miller and N. Smolter, “Paper Abuse”: When All Else Fails, Batterers Use Procedural Stalking, *Violence Against Women* 17, 637-650, (April 28, 2011), found at: <http://vaw.sagepub.com/content/17/5/637>

⁷ A. Reina, B. Lohman B., and M. Maldonado, “He Said They’d Deport Me,” *Journal of Interpersonal Violence*, Vol 29, Issue 4, pp. 593 – 615 (October 17, 2013); Erez E., Adelman M., Gregory C. “Intersections of immigration and domestic violence: Voices of battered immigrant women,” *Feminist Criminology*, 4, 32-56, (2009); A. Raj and J. Silverman, “The roles of culture, context, and legal status on intimate partner violence”. *Violence Against Women* 8, 367-398 (2002).

went to the trouble of creating a false internet profile page on a dating site. The immigration officer, based on these allegations, initiated a Notice to Appear to have the woman appear for removal proceedings. With the help of the shelter and the child protection agency she was referred to an attorney to assist in intervening with ICE and helping her file a self-petition.

In examining changes to the immigration process to be careful that the remedies don't undermine protections for the most vulnerable and isolated victims, in particular, those who have been most isolated, and who may lack documentary evidence as they may have feared reaching out to police or seeking medical or social services assistance.

Sadly, we are hearing from advocates in the field that the current anti-immigrant rhetoric and expanded enforcement policies – including the arrest of a domestic violence victim leaving a courtroom following her hearing for a temporary restraining order – are exasperating this abuse dynamic. It is more critical than ever that we send a message of support and reassurance to immigrant victims of domestic violence.

FURTHER RECOMMENDATIONS

Some of our constituents have been extremely frustrated with the lack of training of consular officers that process these visas, and that they are not better prepared to identify cases involving prospective abusive sponsors. In 2005 Congress passed the International Marriage Broker Regulation Act as part of the Violence Against Women Act to improve the information that foreign fiancées receive about their prospective spouses' criminal history, limited the ability of prospective sponsors to file serial K-visa applications, and strengthened accountability for international marriage brokers that "match" prospective couples overseas, but there is still more to do.

In 2014, the Government Accounting Office examined the extent to which (1) DHS, Dept. of State, and DOJ had implemented processes to ensure compliance with the International Marriage Broker Regulation Act, and (2) DHS collects and maintains reliable data to manage the K visa process. Based on its findings, the GAO recommended that the Department of State provide training to consular officers on IMBRA documentation requirements, and that USCIS ensure that all IMBRA-related data be captured with the electronic release of the I-129F petition, and that its officers receive additional training on IMBRA requirements. My understanding is that DHS and the Department of State both concurred in the findings and have begun implementing the recommendations. The Form I-129F was recently modified and released in December of 2016 to capture some of the data elements required under IMBRA. As part of the information collected on the form, we would **request that DHS collect data, audit, and report** on the number of applications that involve sponsors that have filed waivers for the bars to sponsorship for those with multiple prior fiancée visa petitions or based on criminal grounds. We are particularly interested in learning whether applicants with multiple prior K-visa or I-130 applications are being detected. In addition, we would **request that DHS distribute the IMBRA-related information pamphlet at K-visa adjustment of status interviews.**

We further **recommend** that the Department of Justice, who is responsible for enforcing IMBRA, provide a report on the cases prosecuted, or on efforts to disseminate information about IMBRA to service-providers that may be assisting women harmed by violations by International Marriage Brokers as well as other actions to enforce IMBRA, whether involving International Marriage Brokers or U.S. citizen applicants.

Finally, with respect to additional training, we recommend **more robust training** on the underlying purpose of IMBRA and the underlying dynamics of abuse, in particular as they relate

to coercive control and psychological aggression. USCIS interviewers should receive enhanced training regarding the dynamics of domestic violence and identifying the primary perpetrator, both to help protect potential victims, and to better identify fraudulent cases. When interviewers are untrained in these dynamics, they may misidentify the perpetrator, discount, or fail to identify the abuse, and as a result the cycle of violence continues.

CONCLUSION

Thank you for the opportunity to testify before this committee. I look forward to working with members to explore opportunities to strengthen protections for victims, both U.S. Citizen sponsors, and immigrant beneficiaries of K-visas.