

Women Immigrants Safe Harbor Act (WISH)

SECTION-BY-SECTION ANALYSIS

Legal Momentum *and the* National Immigration Law Center

April 2004

Short Title

“Women Immigrants Safe Harbor Act”

Eligibility for Certain Public Benefits of Aliens Suffering from Domestic Abuse

Access to Food Stamps and SSI

This section makes lawfully present victims of domestic violence, sexual assault, trafficking, and other crimes who are helping with criminal investigations eligible to receive food stamps and Supplemental Security Income (SSI) benefits.

The 1996 welfare law restricted immigrants’ eligibility for most public safety-net benefits. The harshest restrictions were imposed in the food stamp and SSI programs. Although Congress has restored benefits to some immigrants, recent immigrants—those who entered after Aug. 22, 1996, when the welfare law passed—remain ineligible for food stamps during their first five years in the U.S. The SSI program is even more restrictive. With few exceptions, recent immigrant seniors and immigrants with disabilities are ineligible for SSI benefits.

These restrictions undermine congressional action intended to ensure that victims of domestic violence have the resources to leave the situation where they are being subjected to violence. Restoring food stamps and SSI eligibility for immigrant victims of domestic violence is a critical step toward severing their abusers’ economic control over them and enhancing safety and security for victims and their children.

In addition, this section would extend food stamp and SSI eligibility to persons who have applied for and have not been denied a “U” visa. “U” visas allow victims and witnesses of certain crimes who are willing to assist investigation or prosecution to remain in the U.S. and to work.

Lifting of Five-Year Bar on TANF, Medicaid, and SCHIP

This section makes lawfully present victims of domestic violence, sexual assault, and trafficking, as well as other crime victims who are helping criminal investigations, eligible to receive Temporary Assistance for Needy Families (TANF), Medicaid, and benefits under the State Children’s Health Insurance Program (SCHIP).

Under current law, battered immigrants who entered the U.S. on or after Aug. 22, 1996, are barred from receiving TANF, Medicaid, and SCHIP for five years after they become qualified immigrants. “U” visa holders are altogether ineligible for these programs.

Providing immigrant victims access to these important safety-net programs increases the likelihood that battered immigrants will leave their abusive relationships, secure safety for themselves and their children, and eventually re-enter or enter the workforce.

“T” and “U” Visa Applicants and Recipients as “Qualified Aliens”

This section adds immigrant victims of domestic violence, trafficking, sexual assault and other violent crimes who help in criminal investigations or prosecutions and have applied for or received a “T” or “U” visa to the list of “qualified” immigrants.

In the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, Congress created a list of “qualified” immigrants eligible for certain federal public benefits. In the Victims of Trafficking and Violence Protection Act of 2000, Congress provided that visas may be granted to adults who are willing to assist in the investigation or prosecution of certain crimes, and to children who are victims of these crimes. The granting of “T” and “U” visas provides immigration relief to victims of trafficking (“T”) and other violent crimes, including sexual assault (“U”). Because these new visas were created after the 1996 law was enacted, persons who have applied for or received a “T” or “U” visa were not included in the list of “qualified aliens.” This section updates the definition of “qualified aliens” to include persons in these categories.

Conforming Definition of Family in Immigration Law to Match Definition in State Protection Order Statutes

This section amends the definition of *family*, for purposes of immigrant victims’ access to benefits, to conform with the definition of *family* used in state protection order statutes. This correction will eliminate confusion at the local level and will remove barriers to immigrant victims’ access to benefits.

Exemption from Deeming Provisions

This section exempts domestic violence victims from sponsor deeming requirements. Immigrants who applied for a visa after Dec. 19, 1997, to reunite with family are required to have their relative file an affidavit of support, promising to maintain the immigrant at 125 percent of the federal poverty level and to repay any means-tested public benefits the immigrant may receive. The income of the sponsor is deemed to be available to the sponsored immigrant in determining income eligibility for certain safety-net services—even if the immigrant is receiving no support from the sponsor. Often, this makes the applicant over-income and ineligible for the benefit. Exempting domestic violence, trafficking victims, and “U” visa applicants from deeming ensures that income eligibility will be determined based on the resources truly available to the immigrant.

Exemption from Public Charge Provisions

This section exempts domestic violence, trafficking, and crime victims with “U” visas from the public charge test. When an immigrant applies for a green card, the immigration service determines whether the immigrant is likely to become a public charge—i.e., primarily dependent on the government for subsistence. The fear that using benefits may affect immigration status prevents victims from using services for which they qualify and that they desperately need. Eliminating the test for this limited category of immigrants would ensure that they receive the services they need to secure safety for themselves and their children.

Elimination of Sponsor Liability for Benefits

This section eliminates enforcement of sponsor liability for reimbursement in cases in which a victim has received benefits because of domestic violence or because she has been a victim of trafficking or sexual assault. The danger of further criminal acts and injuries due to violence becomes greater when a victim of domestic violence or trafficking takes steps to sever her relationship with and/or her economic dependence on her abuser. This is true even when abuse has subsided. If the state seeks to enforce an affidavit of support to collect from an abusive sponsor, the danger to the immigrant victim seeking this benefit can be significant.

TVPRA Technical Correction

A technical correction is required to fully implement the provisions of both the Trafficking Victims Protection Act of 2000 and its subsequent reauthorization. Under this original trafficking legislation, victims of severe forms of trafficking can obtain certifications if they are willing to assist in an investigation or prosecution of their trafficker and they have filed an application for a “T” visa, or if their continued presence is needed to go forward with a prosecution. However, this language was written when the U.S. Immigration and Naturalization Service (INS) was part of the Dept. of Justice (DOJ). The INS has since ceased to exist and its functions have been divided among U.S. Citizenship and Immigration Services (CIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP), all of which are part of the relatively new Dept. of Homeland Security (DHS). Hence, the statute needs to be amended to clarify that certifications should be issued either by the DHS or the DOJ.

Conforming Immigrant Eligibility for Housing with Rules Applicable to Other Federal Programs

The law on access to public housing should be clarified to ensure that immigrant victims of domestic violence and Cuban/Haitian entrants have access to the Dept. of Housing and Urban Development (HUD) rental housing programs, including public housing and Section 8. The 1996 federal welfare law provides access to most federal public benefits for “qualified” immigrants, including battered immigrants and Cuban/Haitian entrants. However, section 214 of the Housing and Community Development Act, an earlier statute that governs eligibility for HUD programs, does not include these two immigrant categories. This disparity has produced confusion among immigrant families, housing advocates, and housing administrators. It forces survivors of domestic violence to choose between homelessness and remaining with their abusers, and prevents other vulnerable immigrants from securing affordable housing.

Effective Date

Immigrant victims of domestic violence, sexual assault, trafficking and other crimes made eligible for public benefits under this legislation are granted immediate access to these benefits.

FOR ADDITIONAL INFORMATION, PLEASE CONTACT:

Adey Fisseha, policy analyst, National Immigration Law Center

fisseha@nilc-dc.org | 202-216-0261

Amanda Baran, staff attorney, Legal Momentum

abaran@legalmomentum.org | 202-326-0040