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## FAMILY REUNIFICATION: Happily Ever After?

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## Introductions

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### Serving torture survivors and their families

- LAFLA's Torture Survivors Project
- Access to **legal services** is vital to the rehabilitation of torture survivors:
  - Seeking asylum
  - Post asylum needs
- Unanticipated barriers to integration and self-sufficiency that relate to the inability to reunify with family members.

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### Asylee / Refugee Family Reunification

- Most common tool of family reunification for torture survivor clients
- Form I-730 petition filed by applicant, attorney or BIA accredited representative
- Eligible: spouse & unmarried children <21
- United States: USCIS – NSC
- US Consulate in country of origin: interview beneficiary
- Challenges: documentation, interview, delays
- Travel to the US at petitioner’s expense vs. IOM

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### Learning Objectives

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### Today’s Webinar

- List **the basics of family law** (Marriage, Divorce, Restraining Orders, etc.) that are relevant to torture survivors;
- Recognize **how family law and immigration may interact** in ways that affect torture survivors;
- Discuss **other family law and immigration remedies** relevant to torture survivors (unaccompanied minors and adoption issues)

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## The Law in the United States

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## General Principles

- The Constitution established a federal system of government.
- The federal government has specific powers.
  - Immigration is federal law; single body of law.
- All powers not delegated to the federal government remains with the state.
  - Family law is state law; varies from state to state.
- However, there is significant interaction between immigration law and family law.

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## Marriage

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## Marriage

- The doctrine of "comity" allows for recognition of foreign marriages
  - Forum state will recognize out-of-state or out-of-country marriages so long as they are valid in the location where it was celebrated
  - Except where the marriage would be contrary to the public policy of the forum state or if explicitly forbidden by the forum state

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## Marriage & Immigration Law

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## Marriage and Immigration

- Valid Marriage for Immigration
  - If the marriage creating the spousal relationship was legally valid in the place where it was performed, it is considered valid under immigration law.
    - Common law marriage
    - Religious marriage
    - Proxy marriage: If parties not in each other's presence at marriage ceremony, there must be proof of consummation
    - Same-Sex marriage: As of July 1, 2013, USCIS recognizes same sex marriages.
  - However, marriage cannot be contrary to public policy:
    - **Polygamy** though may be valid under foreign law is against US public policy and will not be recognized.
- Burden on applicant to prove that the marriage is valid.

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### Immigration lingo

- USC = US Citizen
- LPR= Lawful Permanent Resident or green card holder
- Adjust status= apply for LPR status
- Petitioner and beneficiary
  - The person petitioning or a family member's immigration status (or for him/herself in VAWA self-petitioning process) is the Petitioner.
  - Foreign national relative is called a beneficiary
- Principal and derivative
  - The main applicant filing for asylum, VAWA, U or T nonimmigrant status is called the "principal."
  - The principal's family member is called a "derivative."

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### Immigration benefits for spouses

- **Family Petition:**
  - **USC can file family petition for undocumented spouse**
    - Can also file for spouse's children if marriage creating step-child relationship took place before the child turned 18.
      - BUT: If the child marries, s/he will have to wait longer to get a visa.
    - With the family petition can also file for LPR status at same time.
  - **Lawful Permanent Resident (LPR) can file family petition for spouse**
    - Can also file for spouse's children if marriage creating relationship took place before child turned 18.
      - But: If that child gets married, s/he loses eligibility to immigrate as the son or daughter of an LPR!
    - Unlike with marriage to USC, must wait for visa to become available before being eligible for LPR status

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### Family Petitioning cont.

- **Must prove bona fide marriage**
  - Preponderance of evidence
  - If beneficiary in removal proceedings, have higher burden of proof
- **Sham Marriage:**
  - Marriage for sole reason of procuring LPR status
    - Did bride and groom intend to establish life together?
    - Conduct of parties before and after marriage
    - Refusal by alien to consummate marriage
- **Marriage Fraud**
  - Criminal and immigration consequences

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### Effect of marriage on other immigration petitions

- **Violence Against Women Act (VAWA)**
  - Undocumented person may file **self-petition** for him/herself if s/he is or was the abused spouse of a USC or LPR.
  - Undocumented person may also file as an **abused spouse** if his/her **child has been abused** by his/her USC or LPR spouse.
  - Must prove bona fide marriage

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### Effect of marriage on other immigration petitions

- **U visa**
  - Victim of certain crimes may file for a U non immigrant visa to legalize status for themselves and their spouses (and other family members)
    - **Benefit for spouses:**
      - if marriage exists prior to principal filing U visa, can petition for spouse concurrently or of later date- as long as before filing ACS application.
      - Can petition for after-acquired spouses and step children later when U principal ready to adjust status.
      - Spouse can be in USA or outside USA
  - No visa number limits for derivatives
  - BUT: If spouse is perpetrator of crime forming basis for U visa claim, s/he cannot receive U visa immigration benefit!
  - Note: If beneficiary child of the principal gets married, it can prevent him/her from becoming a LPR

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### Effect of marriage on other immigration petitions

- **T visa**
  - Victim of human trafficking may file for T visa for themselves and spouses
    - marriage must have existed prior to filling petition
    - Legal standard: sufficient evidence
    - Spouses can be in or outside USA
    - Can file for spouse at any time as long as before adjusting status to LPR
    - Evidence demonstrating extreme hardship for immediate family members if petition not granted

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### Effect of marriage on other immigration petitions

- **Asylum**
  - Derivative asylum status for:
    - Spouses and unmarried children under 21, and
    - Listed in principal's asylum application and
    - Physically present in the USA
  - marriage must have occurred prior to asylum **grant** or refugee admission

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### Effect of marriage on other immigration petitions

- **Asylum (cont.)**
  - Derivative asylum for:
    - spouse and unmarried children <21
    - outside the USA (or in USA and was not included in asylum petition),
    - asylee files an asylee relative petition within 2 years of date of asylum grant
      - can be extended for humanitarian reasons
    - Marriage must continue to exist at time of filing asylee relative petition
  - NOTE: Marriage of derivative child prior to receiving LPR status, invalidates benefit

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## Divorce

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## Divorce: Foreign Decrees

- Recognition of Foreign Divorce Decrees
  - Doctrine of Comity applies;
  - However, the forum state must have domicile jurisdiction over the parties
    - One of the parties must have lived within the forum state

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## Divorce: In the United States

- Any married person can get a divorce
  - All states are now "no fault"
- **SOME RELIEF YOU CAN REQUEST:**
  - Custody (generally by Best Interest of the Child Standard)
  - Visitation
  - Child Support (Formula varies by state, but custodial time share and incomes of both parties are major factors)
  - Division of Property (some states are "community property; others are "equitable distribution")
  - Spousal Support (generally to restore to the marital standard of living")
  - Name Change

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## Divorce & Immigration Law

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## Divorce and Immigration

- **Religious Divorce in the US and abroad:**
  - Usually not valid if not secured through judicial proceedings conforming with US state divorce law
- **Tribal or Customary Divorce:**
  - May be valid if can show evidence:
    1. Membership in a tribe
    2. the current customary divorce law of that tribe,
    3. Showing pertinent ceremonial procedures were followed and
    4. Advisory opinions as to the procedure from orgs, amongst other safeguards.
- **Sham Divorce**

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## Divorce and Immigration

- **Family Petition:**
  - Divorce makes foreign national ineligible to adjust status to LPR.
- **VAWA:**
  - Domestic violence victim may file VAWA petition up to two years after a final divorce judgment.
- **Conditional Green Card:**
  - A person who entered into a good faith marriage, obtained a conditional LPR status and then divorces, is eligible to file a waiver to obtain LPR status.

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## Divorce and Immigration

- **U visa:**
  - Divorce **may** make derivative spouse ineligible
- **T visa:**
  - Divorce may make derivative spouse ineligible, if prior to the primary petitioner's adjustment granted.
- **Asylum:**
  - A derivative spouse of asylee who has final divorce decree, cannot adjust status.
  - But s/he may file a **nunc pro tunc** asylum to obtain asylum in his/her own name.

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## Restraining Orders

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### What is a Restraining Order? *(In Family Law Cases)*

- **Court order** (on a piece of paper) that keeps someone from doing something
- REQUIREMENTS: abuse and domestic relationship.
- Definition of **abuse**: intentionally or recklessly to cause or attempt to cause bodily injury or engage in behavior prohibited by Family Code

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### Different Types of Restraining Orders

- **Criminal Protective Orders**
  - Issued by the court in criminal cases (with district attorney prosecuting)
  - States Attorney can request it for witness (pending trial)
  - Or it can be a condition of probation
  - Can be issued for an indefinite amount of years
- **Civil Protective Orders**
  - Issued by the court in civil cases (where one party sues another)
  - The protected party must first file action, obtain temporary restraining order, and then obtain permanent restraining order after an evidentiary trial
  - Issued regardless of the immigration status of the protected and restrained parties.

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## Restraining Orders and Immigration

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### Restraining Orders: Immigration Consequences

- **Victim:** It can help victim provide evidence of battery for VAWA and U visa.
- **Perpetrator:** Violation of certain protection orders are a deportable offense. (credible threats of violence, repeated harassment, bodily injury)
  - Immigrant convicted of domestic violence, crime of violence, stalking, child abuse, child neglect, or child abandonment can be deported.

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## Other topics

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### Other Topics: Unaccompanied Alien Children (UAC)

- **Special Immigrant Juvenile Status (SIJS)** is a possible form of relief.
- Must obtain **predicate orders** in a “juvenile court” to be eligible for immigration benefits.
- Once predicate orders are obtained, child is eligible to file a SIJS application with USCIS to legalize status and ultimately become a LPR.

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### Other Topics: Adoption

- Different types of adoption in family law
  - Step-parent adoption
  - Agency adoption
  - Independent adoption
  - International adoption
  - Adult adoption

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### Adoption and immigration law

- Children who are legally adopted while under 16 years old and have been residing with and in the legal custody of the adoptive parents for at least 2 years, may qualify as children under Immigration law.
- Customary adoption
  - Very difficult
  - Show evidence that traditional adoption is recognized by the foreign country’s jurisprudence

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## Questions?

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## THANK YOU!

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