



Best of the Listserv

Question:

My client is Indonesian and she applied for her green card during the 2 year marriage. The husband filed for divorce in May, 05 and we've been trying to work out a settlement, no children, lots and lots of debt. Last week the husband withdrew his support (1-130 form) and now the wife has 30 days to leave the country. The husband is now making unreasonable demands about the division of debt. This seems like extortion to me, but I can't find any case law on it. I know nothing about immigration law and my client just fired her immigration attorney. I'm not sure what I should be doing.

Sue Kirk
Iowa City, IA 52244

Answers:

Because SE Michigan is home to the largest Arabic community in the U.S., we have a substantial amount of immigration issues here. Whether Husband can withdraw his petition and cost Wife her residency is a thorny, but, alas, not uncommon, issue. Evidence of abuse, including emotional abuse, can be raised in a hearing to stop his withdrawal of his petition. I recently represented a "mail order" bride for Russia, who Husband promised to support, along with her child, and then tried to withdraw his petition and have her deported. She was terrified, expecting the KGB to appear at her door at any moment. I cannot tell you how that matter eventually resolved itself, but I can direct you to Wife's immigration attorney at Freedom House (a nonprofit agency at the Detroit/Windsor border which houses political refugees): David Koelsch fhkoelsch@sbcglobal.net tel no. 313 964 4320

Elizabeth Sadowski
Rochester, MI

You don't have to know anything about immigration to know Husband is extorting Wife into giving up her right to marital property. And, although I'm sure you'll do a thorough job showing it, the judge won't need to be hit over the head with case law to hear the quack and watch the waddle. "Threat", as provided in 45-2-101, includes virtually any form of extortion.

TITLE 45. CRIMES

CHAPTER 2. GENERAL PRINCIPLES OF LIABILITY PART 1. DEFINITIONS AND STATE OF MIND 45-2-101. General definitions

- (75) "Threat" means a menace, however communicated, to:
- (a) inflict physical harm on the person threatened or any other person or on property;
 - (b) subject any person to physical confinement or restraint;
 - (c) commit a criminal offense;
 - (d) accuse a person of a criminal offense;
 - (e) expose a person to hatred, contempt, or ridicule;

- (f) harm the credit or business repute of a person;
- (g) reveal information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Instructions to Jury: The giving of an instruction defining the word "extortion" in the language of 94-1602, R.C.M. 1947 (a forerunner of this section), was not objectionable in an action to recover money paid under duress, it not being error to give instructions containing abstract statements of statutory law where the facts are few and simple. > Edquest v. Tripp & Dragstedt Co., 93 M 446, 19 P2d 637 (1933).

TITLE 45. CRIMES
CHAPTER 5. OFFENSES AGAINST THE PERSON
PART 2. ASSAULT AND RELATED OFFENSES
45-5-203. Intimidation

(1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

- (a) inflict physical harm on the person threatened or any other person;
- (b) subject any person to physical confinement or restraint; or
- (c) commit any felony.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

Carolyn J. Stevens
Lolo, MT 59847-0999

As long as they are not divorced but only separated, I think there are still grounds for a VAWA claim (it is a stronger case when the abuse occurs when both spouses lived together). You can even pursue a VAWA claim after a divorce but I think it has to be 2 years after the FJ. A DV injunction is normally the first step if you are going to pursue a VAWA claim because you need to prove that your client has been a victim of abuse while married to a USC or LPR. Threats, intimidation and harassment qualify as abuse for VAWA purposes.

Eugene Stilianopoulos, Esq.
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Sorry I didn't see beginning of string by Sue but started with John Crouch's response. First of all an adjustment of status based on marriage is a privilege and not a right. The U.S. citizen spouse must file an I-130 which is a Petition to Immigrate. It is quite common for the U.S. citizen spouse to "harass" the alien-spouse by saying such things as I'm going to cancel the petition and then you can't get a green card and will be an illegal alien. This, in and of itself, is hardly enough to support a direct application for adjustment of status under VAWA. VAWA is designed for the truly

abused alien spouse-it is a direct route where (usually) she can apply for the adjustment of status and get her green card. From my own experience I can tell you that a VAWA application is not a piece of cake. The package could end up an inch thick. First of all immigration assumes that all alien spouses married a US citizen only for the purpose of getting a green card. Add to this the suspicion that a woman is pretending abuse to get her green card because hubby has decided not to go ahead. To say that it is a hard sell is an understatement. Before I took another VAWA case I would have to be personally convinced that the applicant was in the same position as a woman using the battered spouse defense for killing her spouse and that she had a very good probability of winning it.

I hope that the person referred to has indeed gotten a good immigration attorney as few others win these cases.

Glen Smith

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