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Legal Constructions of Marriage and Hardship: Battered Korean and South Asian American Womens' Experiences Applying for Gender-Based Violence Immigration Relief

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Immigration laws are rife with ambiguous legal concepts like “significant hardship,” “good moral character,” “credible fear,” “good faith marriage,” and “extreme suffering.” When immigrants apply for various legal statuses based on suffering or persecution of different sorts, they are required to demonstrate that their experiences meet such vague standards. They engage in educated guesswork as to how they might narrate their stories of intimate and complex hardship in ways that they hope will meet the standards of government adjudicators. Since the introduction of the Violence Against Women Act (VAWA) in 1994, Congress has created a handful of legalization avenues for immigrant survivors of domestic violence. These forms of immigration relief include the U-Visa, the VAWA Self-Petition, and the I-751 Waiver. Congress’s intent in creating the U-Visa was to create a path to legalization for undocumented victims of certain qualifying crimes committed in the U.S., who fully cooperate with law enforcement in bringing the perpetrator to justice. In creating the VAWA Self-Petition and I-751 Waiver, Congress intended to provide an independent path to legalization for immigrant survivors of domestic violence whose family-based petitions are contingent on marriage to an abusive spouse.

When applying for the U-Visa, the VAWA Self-Petition and the I-751 Waiver, it is not enough for survivors to demonstrate that they suffered abuse. They must also show that the abuse they suffered amount to what U.S. Citizenship and Immigration Services (USCIS) categorizes as “significant hardship.” In the case of the VAWA Self-Petition and the I-751 Waiver, survivors must also show that they originally married their abusive spouse in “good faith.”



In other words, USCIS assesses the immigrant petitioner's intent in marrying their spouse to determine whether the marriage was entered into for "legitimate" reasons and not for the sole intent of obtaining a green card. Yet who gets to decide which kinds of hardship are significant enough? By what standards can one's "good faith" in entering a marriage be measured? The notion that one's hardship and intentions in entering a marriage can be judged by an anonymous adjudicator is predicated on the false notion that suffering and marital intimacy look the same everywhere. It departs from the deceptive premise that dominant constructions of marriage and hardship are somehow apolitical and ahistorical.

Over the past seven months I have been interviewing legal advocates who work in Southern California-based immigrant rights organizations that work with Asian American immigrant survivors of domestic and sexual violence. The majority of the advocates I spoke with serve primarily Korean American and South Asian American women, so for the purposes of this article, I limit my comments to those two groups exclusively. Advocates consistently stated that USCIS operates on narrowly defined notions of what suffering is and what a legitimate marriage should look like. They also noted that meeting the "significant hardship" and "good faith" marriage standards were the most difficult obstacles that battered Asian American petitioners faced in applying for immigration relief.

Before turning to the words of my interlocutors, I want to note that it is not my intention to present essentialized views of Korean and South Asian cultures in order to make my point. Dating and marriage conventions as well as stigmas that surround going public with intra-familial abuse differ across generation, class and other identity markers and there is no such thing as a bounded, homogeneous "Korean" or "South Asian" culture. However, the issues that my interlocutors raise below consistently present challenges for Korean and South Asian immigrant survivors applying for immigration relief based on their abuse. They

thus merit explanation and action. In what follows, I list only a handful of the issues that advocates consistently identified as constituting major obstacles for their clients in meeting the "significant hardship" and "good faith" marriage standards.

DISCOUNTING ABUSE FROM PARENTS-IN-LAW

Given that Congress designed the I-751 waiver and VAWA Self-Petition to allow battered immigrant spouses to leave abusive marriages without jeopardizing their immigration status, the only form of abuse that makes one eligible is abuse committed directly by the spouse. Yet the construction of marriage as being an exclusive union of two individuals is very much a Westernized one. As one advocate notes, in many parts of Asia and Asian America "there is this idea that there is a union of families and not just a union of individuals." Several South Asian advocates stated that it is common for the daughter-in-law to become the caretaker of her spouse's parents. Despite changing gender roles in South Asia in which more women are seeking higher education and entering the work force, many South Asian-Americans of older generations maintain outdated expectations of their daughters-in-law. They encourage their U.S.-born sons to seek brides from back home because of a belief that South Asian-born women will more satisfactorily fulfill those traditional roles. An Indian-American attorney working at a domestic violence organization for South Asian women said the following:

"There's this idea that if I go abroad and get someone she's going to come here and cook and clean and be a super traditional --or sometimes they think that they're going to find somebody who will come here and take care of my parents who are getting old and sick, because part of the South Asian family construct is multiple generations living together."

Due to these mismatched expectation about female duties in marriage, some families become abusive when brides do not fulfill the expectations of their in-laws. Many advocates pointed to the fact that while abuse by in-laws often had more harrowing

effects on their clients than abuse directly from the spouse, they often had to marginalize such aspects of the abuse or to stretch the narrative to tie it back to the spouse, asserting that he “let it happen.” Thus, the collective forms of abuse experienced by many of the South Asian women with whom my interlocutors worked had to be minimized in their applications because of their illegibility within a dominant script in which the spouse is the singular perpetrator of abuse.

NOT CALLING THE POLICE

Advocates remarked that reluctance to report abuse to authorities is particularly prevalent amongst Asian American women. They consistently stated that it is rare that the victim herself call the police to intervene or that she seeks the help of a friend or social service agency to help her leave the abusive situation. More often than not, individuals outside the marriage only become aware of the abuse because a neighbor overhears and calls the police, or a concerned religious leader reaches out. A Korean-American family law and immigration attorney stated that calling the police or reaching out to friends “is not something you do in Korea for domestic violence.” She spoke at length about her frustrations with immigration officials and community members who refuse to believe that the applicant experienced abuse just because she never called the police:

“Some people will ask “well why didn’t you call the police?” And that’s what immigration sometimes asks for...if these situations were true, where is the evidence to show that you were abused or this person was doing this to you? They won’t tell their friends... I rarely see people telling their friends because it’s incredibly shameful. Even family, even if you’re really close to your family they don’t tell their family members.”

Given that proving significant hardship often requires the submission of police reports, restraining orders and testimonies from third parties, reluctance to report abuse to the justice system or even to tell close friends creates

substantial obstacles. The rigidity of these reporting requirements is based on the notion that the domestic violence survivor can be universally recognized and that the patterns of her reactions to her abuse are somehow predictable. Yet as legal advocates show, the women with whom they work do not always react in ways that conform to dominant depictions of a “typical” victim.

DEFYING “DISNEYLAND VERSIONS OF LOVE”

The kinds of documentation that USCIS requires of petitioners – joint bank accounts, love letters, photos of romantic outings, affidavits from friends and families attesting to the couples’ love for one another – implies that only certain performances of marital intimacy are legible as indicators of “good faith.” People enter into marriages all the time for reasons that have nothing to do with love and they express love in ways that do not always follow predictable scripts. The director of the sexual and domestic violence unit of the legal department at a large Asian American immigrant-serving organization said that she often struggled to prove “good faith” given assumptions predicated on what she called the “Western kind of notion of love and marriage.” She challenged the notion that marriages that are entered into for practical reasons are necessarily fraudulent ones:

“Immigration is like ohh, you meet someone and you fall in love and you get married. Versus like when we ask our clients, ok, well why did you marry your spouse...and why this person instead of somebody else? I mean, love comes out a lot but it’s a lot of time it’s other, like practical reasons too. You know some people specifically do want to marry an American person. They want to come to America...that doesn’t mean it’s fraud. That’s just one reason that somebody is more attractive to you than somebody else.”

A Korean-American attorney stated that embedded within immigration marriage fraud legislation is the assumption that all marriages look like “the Disneyland version of love.”

She went on to speak about the prevalence of matchmaking services among elderly, newly arrived Korean-immigrants in Los Angeles. Many of these elderly folks are widowed and in need of company. They come to live with their children in the U.S., who encourage them to find a new husband so that “she’ll have company, she’ll have someone to take care of... somebody to take care of her.” She described another woman, who despite egregious abuse, wanted to stay with her husband because “she liked having somebody to go to church with... because she had been widowed alone for a long time. So even if he was abusive at home she liked when she went to church she had a husband.”

CONCLUSION

By looking to the experiences of California-based legal advocates who support Korean and South Asian immigrant women in applying for immigration relief based on domestic and sexual violence, I have attempted to show that the legal standards that inform eligibility discount forms of suffering and marital dynamics that do not adhere to dominant, Anglo-American, middle-class, heteronormative scripts. Yet hardship, marriage and love cannot be universally recognized and the forces that render certain modes of suffering and love legible in a specific time and place are deeply entrenched in specific cultural and racialized contexts. What sorts of assumptions about what love and marriage are supposed to look like are embedded within the standards that USCIS uses to determine “good faith?” What other sorts of assumptions are built into the metrics USCIS uses to measure the significance of an individual’s hardship?

The U-Visa, the VAWA Self-Petition and the I-751 Waiver all require applicants to prove through police reports, hospital records, affidavits and court records that they experienced abuse. In the case of the U-Visa, they must also show that they fully cooperated with law enforcement in bringing their abuser to justice. Why is it necessary to make them further prove the legitimacy of their intentions upon initially entering into the abusive relationship or to demonstrate that the physical,

psychological, economic and social wounds that they incurred as a result of the abuse measure up to an arbitrary standard of significance? The work of making intimate and complicated stories of abuse legible within the narrow cultural framework upon which immigration relies to adjudicate cases forces survivors to repeatedly recount traumatic details of their abuse. Every single legal advocate with whom I worked spoke to the destructive toll that repeated narrations of traumatic episodes takes on applicants. The process of proving “significant hardship” and “good faith” forces survivors to undergo moments of questioning, rationalizing and justifying in addition to the rounds of intense interrogation sexual and domestic assault survivors must already undergo in the police station and the courthouse. The concern is thus not one of inconvenience but one of profound psychological harm.

Extensive trainings for immigration adjudicators on cultural differences as they relate to marriage and going public with domestic violence may make them more open to comprehending the diverse ways that people understand marriage and react to abuse. They will not however do anything to question the faulty logic behind the notion that the genuineness of a marriage or the significance of hardship can somehow be universally recognized and arranged within a hierarchy of deservingness. It is time that Congress revisit the 1986 Marriage Fraud Amendments that created the “good faith” standard as well as the 2000 Victims of Trafficking and Protection Act that mandated the “significant hardship” standard as a condition for the creation of the U-Visa. This revisiting will allow Congress to reassess whether those two legal standards are essential or antithetical to the mission of protecting immigrant victims of abuse.