

Maryland Legal Aid Bureau, Inc. - May 2007 Policy

*As a recipient of federal funding from the United States' Legal Services Corporation (LSC), the Maryland Legal Aid Bureau is subject to the following federal requirements regarding the

SCOPE OF PERMISSIBLE REPRESENTATION ASSISTANCE TO CITIZENS AND NON-CITIZENS.

References: 42 CFR Part 1626 (effective May 21, 1997); P.L. No. 106-386 (Trafficking Victims Protection Act of 2000); P.L. 103-322 (Violence Against Women Act Reauthorization)

1. Definitions:

- A. *Battery or extreme cruelty* has the meaning given to it under Subtitle G of the Violence Against Women Act ("VAWA") of 1994, which includes but is not limited to any act or threatened act of violence which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced detention or prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

Allegations of abuse or neglect which are the basis for a Child in Need of Assistance ("CINA") petition fall within the definition of "battery or extreme cruelty" for purposes of this policy.

- B. *Ineligible alien* is a person who is not a U.S. citizen, does not meet the requirements of 42 CFR § 1626.5 and does not fall within the categories of persons set forth in Section 3.
- C. *Trafficking* has the meaning given to it in the Trafficking Victims Protection Act of 2000 ("TVPA"), which includes (i) inducing a person, by force, fraud, or coercion, to perform a commercial sex act, or in which the person induced to perform such an act has not attained the age of 18; or (2) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

2. Prohibition:

It is impermissible for any individual, while engaged in legal services activities funded by the Legal Aid Bureau, Inc. (Legal Aid), to provide legal assistance for or on behalf of an ineligible alien, except as expressly provided herein.

3. Persons who may be served by the Legal Aid Bureau:

- A. Referrals for any person, without regard to immigration status
- i. Legal Aid staff may provide referrals to any person seeking information or assistance, without obtaining the citizenship or immigration status of the person.

B. U.S. Citizens

- i. Legal Aid staff may serve a U.S. citizen if the individual is otherwise eligible for services and the assistance meets all applicable Legal Aid policies.
- ii. All prospective clients who seek legal services beyond intake and referral and who are citizens of the United States shall complete a declaration of citizenship in accordance with the rules set forth in Section 4 (Documentation).
- iii. Verification of citizenship beyond that required in Section 4 shall not be sought from prospective clients unless the staff member has reason to doubt that the person is not a United States citizen. Race, color, appearance, occupation and/or ability to speak English may not be considered in evaluating whether there is reason to doubt U.S. citizenship.

Staff members who have knowledge of particular facts that call citizenship into doubt shall, after consultation with a supervising attorney, request further verification. For example, if a client has stated that he or she comes to Legal Aid for help with denial of public benefits based on the client's immigration status, the staff member should ask for verification of that status.

(a) If further verification of U.S. citizenship is required pursuant to this sub-section, originals, certified copies or photocopies that appear to be complete, correct and authentic of any of the following documents may be accepted as evidence of citizenship:

- (i) United States passport;
- (ii) Birth certificate;
- (iii) Naturalization certificate;
- (iv) United States Citizenship Identification Card (INS Form 1-197 or 1-197);
- (v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth; or
- (vi) Any other authoritative document such as a document issued by INS, by a court or by another government agency, that provides evidence of citizenship.

(b) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of Legal Aid and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

C. "Documented" Non-citizens

- i. Legal Aid staff may represent individuals who are not United States citizens who demonstrate their eligibility for legal services as provided in 42 CFR §1626.5.
- ii. Included as part of this policy is the Appendix to 42 CFR Part 1626 showing which categories of aliens are eligible for services and which documents are acceptable to

verify eligibility.

iii. Certified copies or photocopies of documents that appear to be complete, correct and authentic may be accepted to verify eligibility under this sub-section. A copy of an application to the INS for replacement of a document, if it adequately describes the document, is acceptable.

D. Victims of Abuse or Trafficking

i. **Victims of Abuse:** Legal Aid may provide assistance without regard to immigration status to:

- (a) Persons who have been battered or subjected to extreme cruelty;
- (b) A person whose child has been battered or subjected to extreme cruelty.

ii. **Victims of Sexual Assault or Trafficking:** Legal Aid may provide assistance without regard to immigration status to:

- (a) children or adults who are victims of sexual assault or trafficking in the United States or
- (b) a person who qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (qualifies for a "U" visa).

iii. **No documentation required:** If an applicant for services is not a citizen and is a victim of abuse, sexual assault or trafficking, s/he shall not be asked anything further about his or her immigration status, unless necessary for purposes of representation, and no records shall be maintained of the immigration status of a client eligible under this section, unless necessary for purposes of representation.

iv. **Change in Circumstances:** If a client who was eligible for Legal Aid services under any of the foregoing provisions becomes ineligible through a change in circumstances, such as denial of certification for an adult seeking an HHS certification letter, staff must discontinue representation, in a manner consistent with the Maryland Lawyers' Rules of Professional Conduct.

E. Scope of Permissible Services for Victims of Abuse:

i. Any legal assistance that is directly related to the prevention of, or obtaining relief from, the battery or cruelty or the crimes such as those listed in section 101(a)(U)(ii) of the Immigration and Nationality Act¹, including escaping from the abuse or

¹ Those crimes are: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to

victimization; ameliorating the current effects of the abuse or victimization or protecting against future abuse or victimization.

ii. Examples of legal assistance that would be considered “directly related” as that term is used in E(i) above include: seeking a civil protection order, divorce, custody, wage claims or termination of parental rights. Actions to secure housing, income assistance or medical assistance for the abused person to free him or her from dependence on the abuser or exploiter is permitted but actions to challenge unrelated evictions or termination of public assistance would not be considered related to prevention of the abuse.

iii. Assistance with seeking suspension of deportation, self-petitioning for immigrant status on behalf of the abused or victimized person or child.

F. Scope of Permissible Services for Victims of Trafficking:

iv. With respect to any child or adult victim of trafficking in the United States or who qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (qualifies for a “U” visa), assistance with any legal issue within Legal Aid’s case acceptance guidelines and practices, even if unrelated to trafficking²;

v. Representation to obtain a certification letter under the TVPA, a “U” visa, interim relief application; a “T” visa; a self-petition for change in immigration status or assistance in obtaining proof to support applications for the foregoing visas;

vi. With respect to victims of trafficking who are under the age of 18, representation can be conducted without an HHS letter of eligibility or certification (since children do not need to receive certification letters from HHS) and can be conducted to obtain an eligibility letter to enable the child to obtain certain public benefits;

vii. With respect to family members of victims of trafficking, Legal Aid may provide representation to a spouse and/or children of an adult victim (age 21 or older); to a spouse, children, unmarried siblings under the age of 18 and parents of a child victim (under the age of 21) with an application for a derivative T nonimmigrant visa or with legal issues unrelated to trafficking, after satisfying the requirements set forth in Section 4 (Documentation).

4. Documentation:

A. General Rules:

i. Telephone intake resulting in brief advice or consultation only: Prospective clients whose initial intake and screening does not occur in person and whose legal problems can be resolved through brief advice or consultation shall be asked to orally declare their

commit any of the above mentioned crimes or any similar activity in violation of Federal, State, or local criminal law.

²LSC Program Letter 05-2

citizenship and/or eligible alien status.

ii. Telephone intake requiring emergency assistance: Prospective clients who contact Legal Aid by telephone may also receive emergency assistance pursuant to Legal Aid procedures beyond brief advice or consultation to respond effectively to the emergency circumstances, but they may not receive any subsequent, non-emergent legal assistance unless they submit a written declaration of citizenship or documentation of eligibility as required under Section 3.

iii. In-person intake: Prospective clients who contact Legal Aid in person shall sign a written citizenship form or provide documentation of eligibility as required under Section 3.

iv. In-person intake requiring emergency assistance: Prospective clients who are physically present in the office, are not citizens and who cannot produce required documentation of eligibility may receive emergency assistance pursuant to Legal Aid policies so long as the prospective client signs a written statement that identifies the person's immigration category as one that permits Legal Aid representation and the documents that will be produced to verify such status. Legal Aid may not provide assistance beyond that necessary to address the emergent circumstances unless the individual submits a written declaration of citizenship or documentation of eligibility for service, consistent with the Maryland Lawyers' Rules of Professional Conduct.

B. Rules regarding victims of trafficking:

i. In the case of a child victim of trafficking, the case file must contain documentation of how the case-handler determined that the child met the definition of a child victim of trafficking. If the child has obtained an eligibility letter, the case-handler should include a copy of the child's eligibility letter or, if photocopying is not possible, a notation that the case-handler has reviewed the eligibility letter.

ii. In the case of an adult victim of trafficking, the case file must contain a copy of the certification document or, if photocopying is not possible, a notation that the case-handler has confirmed the victim's certification status by calling the HHS trafficking verification line.³

iii. For family members of victims, the case file must contain acceptable documentation that the individual has been issued a derivative T nonimmigrant visa. A copy of the document or a note that such documentation has been reviewed if copying is not possible must be in the case file. Acceptable documentation includes:

- a. I-94 coded T-2, T-#, T-4, T-5;
- b. Form I-797 Notice of Action indicating approval of T-2, T-3, T-4, T-5 status;
- c. employment authorization document coded ©(25); or
- d. any other document indicating a grant of T nonimmigrant status.

³ At the time this regulation was adopted, the telephone number for the verification line is (202) 401-5510 or (866) 401-5510.

5. Recordkeeping

A. In cases where a client is required to provide verification of citizenship or eligible alien status, the case handler shall keep in the client file copies of all documents given to them to establish eligibility, except where copying of those documents is impossible or illegal. In situations where copying of documents is not possible, the case handler must consult with the Executive Director or his or her designee to determine what constitutes adequate documentation. Designee, for purposes of this policy, includes the Deputy Executive Director, Director of Advocacy, a Chief Attorney or an Acting Chief Attorney

B. The immigration status of an applicant for services or a client shall not be disclosed to any person not employed by Legal Aid in any manner that permits the identification of the person without first obtaining the person's express written consent.

C. The Bureau will not maintain immigration records for applicants who are rejected or referred to other sources of assistance.

D. If a prospective client is ineligible due to immigration status, the reason for rejection or closure shall be designated "Ineligible" only, without reference to immigration status. If no verification of citizenship or alien status is required because the person is a victim of abuse or trafficking, the fact that verification is not required shall be marked on the Client Intake Form under Spcode 1, "Kennedy Amend. Exc", until further notice.

6. Effective Date: This policy is adopted retroactive to January 5, 2006.

Approved by Board of Directors: March _____, 2007