

OFFICE OF LEGAL AFFAIRS

January 28, 2000

Edward Berg
Mid-Missouri Legal Services
205 East Forest Avenue
Columbia, Missouri 65203

Re: Services to Alien Victim of Domestic Violence

Dear Mr. Berg:

We recently received your request for an opinion as to whether your Legal Services Corporation (“LSC”) program may represent an alien in a divorce from an abuser. The Office of Legal Affairs is pleased to provide you with the relevant law and regulations for you to make a decision regarding representation.

You stated in your letter that the alien has not obtained replacement immigration documents from the Immigration and Naturalization Service. Note however, that 45 CFR Sec. 1626.4(a) states most requirements of Part 1626 (Restrictions on Legal Assistance to Aliens) are waived to provide legal assistance to alien victims of domestic violence with *non-LSC funds*. The waived requirements include inspection of immigration documents to prove alien eligibility.¹

An LSC program may provide legal assistance with non-LSC funds to an alien who has been battered provided that the requirements of §1626.4 are satisfied. The first requirement is that the alien has been “battered or subjected to extreme cruelty in the United States by a spouse.” §1626.4(a)(1). “Battered or subjected to extreme cruelty” is defined as, “being the victim of any act or threatened act of violence.” §1626.2(f).

The second requirement to provide legal assistance under §1626.4 is that the legal assistance must be “directly related to the prevention of, or obtaining the relief from, the battery or cruelty.” §1626.4(a)(2). “Legal assistance directly related” is

1. See Preamble to §1626.2(f) & (g) and §1626.4 Kennedy Amendment provisions, that states the “immigration status of Kennedy Amendment clients is essentially irrelevant, because they may be served with non-LSC funds regardless of citizenship or alien status;” also see §1626.4(b), which states recipients are not required to maintain records regarding the immigration status of clients served under §1626.4(a).

defined as “any legal assistance that will assist victims of abuse in their escape from the abusive situation.”² §1626.2(g).

It is important to note that the determination of whether legal assistance to alien victims of domestic relations is “directly related” to the prevention of, or relief from battery, must be made by Mid-Missouri Legal Services on a case-by-case basis.³

I hope this adequately responds to your inquiry. Please contact me if you need any further assistance.

Sincerely,

Kelline A. Carroll
Staff Attorney

2. The Preamble to Part 1626 describes possible legal assistance that a program could provide to victims of domestic violence. For instance, a recipient could, “provide legal assistance to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, but could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children.” Preamble to §1626.2(f) & (g) and §1626.6 Kennedy Amendment provisions.

³ Preamble to §1626.2(f) & (g) and §1626.4 Kennedy Amendment provisions.