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**THE DISRUPTION OF
MARITAL E-HARMONY:
DISTINGUISHING MAIL-
ORDER BRIDES FROM
ONLINE DATING IN
EVALUATING “GOOD FAITH
MARRIAGE”**

by **BRANDON ROBINSON**

INTRODUCTION

In today's society, more and more people turn to the information superhighway to find love. No longer confined to the girl or boy next door, many of today's single men and women can connect with potential soul mates across the globe with the simple click of a button—another consequence of a world community that is quickly becoming smaller and more interconnected.¹ Internet dating sites have experienced a boom in terms of proliferation and popularity, and the trend continues to grow.²

Today, an American man seeking an overseas bride “may avail himself of more than 200 different services in which foreign women advertise for husbands,” including such well-established organizations as Match.com, eHarmony.com, Friendfinder.com, and others.³ An INS-commissioned report⁴ estimates that of the 100,000-150,000 women listed on international matchmaking organization (IMO) websites, 10 percent of these end up married, and 40 percent of these marriages are to U.S. men, resulting in an estimated 4,000-6,000 marriages to U.S. men each year.⁵ Once a “match” is made, the U.S. citizen (USC) can begin the complicated process of bringing his newfound loved one to the States, either by sponsoring her for a K-1 fiancée visa,⁶ or by marrying overseas and bringing her in as an immediate relative.⁷

This seemingly innocuous search for Cupid's well-aimed fiber optic arrow, however, has a much more sinister underbelly, one whose roots stretch back far before the invention of the computer.⁸ Reliable figures concerning the number of trafficking victims in the United States are hard to come by.⁹ However, evidence indicates that tens of thousands of women and children are trafficked into the United States each year, most for prostitution, contributing to an underground industry with an annual net profit of more than \$7 billion for organized crime rings, second only to drugs and weapons trafficking.¹⁰ Human trafficking under the guise of matchmaking has only been fueled by the popularity of the Internet and IMOs.¹¹

Just as organized crime rings exploit immigration laws to subjugate females, some immigrant women also exploit those laws for their own benefit. Many women advertising through IMOs “are far more interested in gaining permanent residence alien status than in gaining a good marriage.”¹² It is not uncommon for an Internet bride to leave the marriage immediately after obtaining legal permanent residence.¹³ Until the enactment of the Interna-

tional Marriage Broker Regulation Act (IMBRA) in 2005, there were no reliable statistics on the frequency of such fraud committed through IMOs.¹⁴ Estimates of the magnitude of marriage fraud in general also vary widely, and are subject to much debate.¹⁵

Finally, exploitation also occurs when the USC misrepresents his background or expectations, not to the immigration authorities per se, but to the innocent immigrant spouse. All too often these relationships often end in domestic violence.¹⁶ The incidence of domestic violence against immigrant women is likely even higher than that of the nation as a whole.¹⁷ Moreover, there is evidence to show that married immigrant women may be even more vulnerable to abuse than unmarried immigrant women.¹⁸

Part I of this Essay gives a brief overview of the general marriage-based visa application process, the Violence Against Women Act (VAWA) and the IMBRA. Part II analyzes existing factors used by adjudicators to determine good faith marriage and suggests additional considerations that may aid in distinguishing truly good faith marriages from fraudulent ones. A clearer understanding of both available and potential considerations with regards to Internet dating will aid immigration officials in all marriage-based visa applications to more accurately determine whether a good faith marriage exists when faced with limited information. In the VAWA context, it will help abused Internet brides overcome existing prejudices against such courtships.

PART I: BACKGROUND OF RELEVANT IMMIGRATION LAW

General marriage-based immigration law and the Violence Against Women Act

More than one-third of immigrants entering the United States each year do so based on marriage.¹⁹ The process begins with, and is controlled by, the USC or legal permanent resident (LPR) spouse, or petitioner who sponsors the immigrant or beneficiary.²⁰ “Good faith marriage” is defined negatively in that it is marriage not “entered into . . . for the primary purpose of circumventing the immigration laws.”²¹

The sponsorship power of a USC, however, frequently becomes a weapon in the hands of an abuser who threatens deportation if the immigrant calls the police, tries to leave, or otherwise does not behave. The VAWA allows an

abused spouse to self-petition, thereby removing the power to adjust immigration status from the hands of the abusing spouse.²²

To qualify for a self-petition, the immigrant must prove the following: (1) a qualifying relationship to a USC or LPR; (2) evidence of physical battery or extreme cruelty; (3) joint residence with the USC/LPR spouse; (4) good moral character; and (5) that the marriage to the USC/LPR was entered into in good faith.²³ These criteria select only those who would otherwise qualify for marriage-based visas but for the impediment caused by the abusive spouse. The VAWA definition for good faith marriage, therefore, is identical to the typical marriage-based visa petition: that the spouse did not enter into the marriage to circumvent the immigration law.

Existing factors used by adjudicators examine documentation surrounding the existing relationship to retroactively indicate the couple's intent upon entering the marriage.²⁴ The problem with abusive relationships is that the abused spouse often doesn't have access to such documentation. Lacking such documentary evidence, the self-petitioner's affidavit regarding her courtship and intentions will assume crucial importance to the adjudicator evaluating her case, as "primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit."²⁵ Additionally, the more the self-petitioner's experience "differs from a theoretically typical American marriage experience, the more explaining [she] will have to do."²⁶

The International Marriage Broker Regulation Act of 2005 ("IMBRA")

IMBRA marked a shift in the legislative battle against more "sinister" Internet matchmaking, focusing for the first time on IMO's and citizen-spouses as opposed to the immigrant participants. The impetus for IMBRA came after two "mail-order brides" were murdered by their USC husbands in Washington. The first occurred when a Filipina woman and the two women accompanying her were shot in a Seattle courthouse, prompting Senator Herbert Kohl (D-WA) to introduce a bill authorizing a study of the IMO industry.²⁷ The second occurred in 2000 when Anastasia King, an immigrant bride from Kyrgyzstan, was killed by her husband, who had previously divorced a foreign bride and was seeking a third before the killing.²⁸

IMBRA has three main purposes. First, IMBRA requires that each IMO collect certain background information about the USC, including any permanent

or temporary restraining orders, various arrests or criminal convictions associated with trafficking, arrests or convictions related to controlled substances or alcohol, any current or previous marriages, the ages of any of the USC's children under 18, and all states and countries in which the USC has resided since the age of 18.²⁹ "Many mail-order brides come to the United States unaware or ignorant of United States immigration law. Mail-order brides who are battered often think that if they flee an abusive marriage, they will be deported. Often the citizen spouse threatens to have them deported if they report the abuse."³⁰

The underlying assumption of the IMBRA's background information requirement is that the more informed immigrant will make "more educated choices about whom to date and will be less likely to find themselves in abusive relationships."³¹ If a USC or LPR has filed two or more approved fiancé(e) petitions in the last 10 years, the U.S. Attorney General will notify both the petitioner and the foreign beneficiary.³² Naturally, if a USC has been through two foreign fiancées in the last 10 years, some questions undoubtedly arise as to what happened to the previous women. This disclosure allows both parties to be informed. "Thus, under the current IMBRA regime, international marriage brokers are now required to serve the informational needs of both their U.S. consumers and their foreign brides."³³

For data collection purposes,³⁴ IMBRA requires, during a K-1 visa interview, that the consular officer ask the immigrant "whether an [IMO] has facilitated the relationship between the applicant and the United States petitioner"³⁵ If so, the consular officer is to "obtain the identity of the [IMO] from the applicant and confirm that the [IMO] provided to the applicant the information and materials required [as discussed above]."³⁶

Second, IMBRA prohibits a consular officer from issuing a K-1 visa unless the USC/LPR petitioner has disclosed his own criminal background on the K-1 visa petition.³⁷ This provision extends to all petitioners, not just those who used Web sites to meet their mates.

Third, IMBRA provides that the consular officer may not issue a visa until he has confirmed that: "(1) the petitioner has not, previous to the pending petition, petitioned [for a fiancée visa] with respect to two or more applying aliens and (2) if the petitioner has had such a petition previously approved, two years have elapsed since the filing of such previously approved petition."³⁸ Regard-

less of the exact limit of visas available to any one petitioner, the thrust of the provision is to keep track of “serial” petitioners and to eye them with closer scrutiny. John R. Miller, Officer to Monitor and Combat Trafficking in Persons at the Department of State, explained in testimony before the Senate subcommittee how nongovernmental organizations had made similar attempts to track serial petitioners prior to the enactment of the IMBRA by “taking Polaroid photographs of each man who comes to a particular community to take a bride. These photos [were] then used to identify men who return to the community for brides multiple times, revealing some men to be traffickers who have no interest in real marriages to the women they claim to be picking up as brides.”³⁹

The final noteworthy aspect of IMBRA is its scope. IMBRA defines an “international marriage broker” as “a corporation . . . or other legal entity, whether or not organized under any law of the United States, that charges fees for providing [matchmaking services] between [USC/LPRs] and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.”⁴⁰ IMBRA exempts the following organizations, however, from regulation: (1) “principally” domestic matchmaking organizations that offer “comparable fees” and services to both genders; and (2) nonprofit “cultural or religious” organizations.⁴¹

PART II: ANALYSIS: GOING ONLINE TO EXAMINE “GOOD FAITH”

Marriage-based immigration law struggles to balance various policies: freedom of marriage, protection of citizens from fraud, and battling human trafficking and domestic violence in our country. Indeed, provisions such as the two-year conditional status and IMBRA’s disclosure provisions seem to address issues that are only indirectly related to immigration.⁴² The requirement that the couple enter into the marriage in good faith is another such attempt to protect the institution of marriage from being exploited to achieve legal immigration status.⁴³

Superficially, determining the good faith of couples seems simple. The conscientious adjudicator, however, knows that accurately divining good faith is more complex and nuanced, requiring one to read between the lines of a particular petition. The credibility of many VAWA self-petitions will often hinge upon the petitioner’s affidavit, with little documentation for support. Thus

“[t]he heart of any immigration case for an immigrant victim of domestic violence is her story.”⁴⁴ If the adjudicator is too lenient, he risks allowing a spouse to gain legal immigration status on the basis of a sham marriage and maybe a false charge of abuse. If too strict, it runs the risk that an innocent victim is deported from this country and sent back to a world she has left behind, possibly for good reason, because she refused to accept the abuse of her husband. Additionally, many women, expecting their self-petition to be denied merely because of IMO courtship, may feel trapped inside an abusive relationship, fail to apply, and continue to suffer. Both women meet American men through the use of IMO websites, and both women experience similar Internet courtships from a bird’s-eye point of view. Therefore, any factors or considerations that can serve to detect and distinguish one situation from the other will help an adjudicator avoid these risks.

Existing tools in conducting a “good faith marriage” determination

Regulations interpreting good faith marriage provide that evidence may include, but is not limited to, proof that the beneficiary spouse is listed on “insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of evidence include the birth certificates of children born to the abuser and the spouse; police, medical or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship.”⁴⁵ The regulation adds that “[a]ll credible relevant evidence will be considered.”⁴⁶

While the listed indications of good faith marriage may be relevant, an adjudicator who reads too much into the absence of such documentation may be ignoring the realities of abusive relationships. First, a self-petitioner often will have left the abusive home, therefore losing the opportunity to gather such documentation. Second, even if such documentation were theoretically accessible, such per se credible relevant evidence often simply doesn’t exist. Abusive relationships are about power, and physical abuse often accompanies other forms of abuse, such as economic, social or emotional abuse and isolation.⁴⁷ The abused spouse therefore will often not be named on property leases, bank accounts or tax forms because the abusive spouse prevents her from having knowledge of or control over any financial decisions. Similarly, there may be few available friends with personal knowledge of the relationship, because the abused spouse was socially isolated.⁴⁸ The evidence listed in the regulations,

therefore, is often inaccessible or nonexistent in even the most bona fide of abusive marriages. Third, defining a “bona fide marriage” based on joint residence and commingled finances can be seen as ethnocentric and overbroad, imposing “American” norms onto the validity of a marriage and failing to recognize that many happily married U.S. citizens have separate bank accounts, separate property and no children.⁴⁹

In addition to the factors listed in the Code of Federal Regulations, the United States Customs and Immigrations Services (USCIS) Adjudicator’s Field Manual (hereinafter *Field Manual*) lists other indications of marriage fraud.⁵⁰ Such indications include:

- Large disparity of age;
- Inability of petitioner and beneficiary to speak each other’s language;
- Vast difference in cultural and ethnic background;
- Family and/or friends unaware of the marriage;
- Marriage arranged by a third party;
- Marriage contracted immediately following the beneficiary’s apprehension or receipt of notification to depart the United States;
- Discrepancies in statements on questions for which a husband and wife should have common knowledge;
- No cohabitation since marriage;
- Beneficiary is a friend of the family;
- Petitioner has filed previous petitions on behalf of aliens, especially prior alien spouses.⁵¹

Individually, each factor would raise questions as to overbreadth, accuracy in distinguishing sham marriages from bona fide ones, and even constitutionality. Indeed, excluding couples with age differences or cultural, ethnic and linguistic differences would deem many legitimate international marriages as shams. In several cultures, especially those with arranged marriages, older men commonly

have younger brides. Census data shows that nearly 20 percent of all American marriages in the United States consist of husbands who are six or more years older than their wives.⁵² Even if the marriage is not arranged, several couples meet as a result of being introduced by family and friends, thus resulting in a situation where the “[b]eneficiary is a friend of the family.”⁵³

While previous petitions filed on behalf of prior alien spouses may seem to indicate serial petitioners, it is certainly conceivable that a naturalized citizen or LPR with substantial ties to his home country merely prefers to marry women from his native country and culture; the fact that previous attempts ended in divorce or natural death should not imply that subsequent marriages were entered into for purposes of evading immigration law.

Finally, some of the Field Manual factors may lend themselves towards arbitrary determinations. For instance, how much age disparity constitutes a *large* disparity in age, and what constitutes a *vast* difference in cultural and ethnic background? The threshold age difference undoubtedly differs among cultures, and even among individual adjudicators. In areas of the world rocked by sectarian violence, moreover, a common geographical background may belie ethnic and cultural differences far more vast than that between a Caucasian-American and Filipina, for example.

There are myriad reasons why the above list may be overbroad and even discriminatory. In defense of USCIS, however, these factors often appear in fraudulent marriage petitions, and the Field Manual merely refers to them as “indications [that] may raise questions about the intent of the marriage, and therefore necessitate more in depth questioning.”⁵⁴ Given the high degree of discretion accorded an adjudicator in investigating good faith, these factors would likely be viewed accordingly and considered only as cumulative indications.

Curiously absent from the factors is disparity in wealth.⁵⁵ Plenty of marriages between USCs display similar wealth disparities, but while wealth disparity is not dispositive of marriage fraud, it seems no less relevant and no more discriminatory than differences in age, language, culture or ethnicity.⁵⁶ The absence of this factor may simply be a result of its obvious nature, or from the fact that, in the eyes of immigration law, marrying for money is still a good faith marriage, which merely requires that the primary purpose of the marriage is not to gain legal immigrant status.

Additional suggestions for evaluating good faith marriage in the context of IMOs.

The CFR and Field Manual list several indications that raise questions as to the good faith intent of an immigrant fiancée or spouse.⁵⁷ All examine aspects of the existing marriage to determine the intent of the parties upon entering into the marriage, focusing their attention on the behavior of the parties themselves to determine bona fide intent. In the context of Internet matchmaking, however, several clues may be extracted from the IMO Web sites as well as the participants' use of them. Like the indications listed in the Field Manual, such clues are in no way dispositive, and should be considered cumulatively rather than individually.

One revealing indication may be the length of correspondence between intended spouses before deciding to enter into marriage. Undoubtedly, written exchanges between intended spouses may be packed with misrepresentations, but evidence of a candid and sustained exchange of information may reveal that the sought-after "golden ticket" is that of marriage to the specific citizen, and not an easy entrée into the United States. Conversely, a rapid exchange of e-mails, subsisting mainly of discussion about immigration documentation, may reveal the opposite. An immigration official with access to such correspondence may gain considerably more insight into the immigrant's intent than he would by examining a joint tax return. Although such love letters could be artificially constructed to manufacture evidence, the typical adjudicator is trained in assessing credibility, whether interviewing evidence or petitioners.

Other indications of bona fide intent may be gleaned from the IMO's organizational structure. The name, description, payment structure and advertising of IMOs may be quite revealing as to whether they, intentionally or accidentally, solicit fraudulent Internet marriages.

To an extent, IMBRA regulations designed to protect against the abuses perpetrated by IMOs may also provide insight into the women who post profiles. Assuming an IMO has disclosed to an immigrant that her match has a history of domestic violence, violent crime and prior petitions, one must question why she would agree to come to the United States to marry him. Similarly, one would question why one would seek a soul mate (or even a "sugar daddy")

through IMOs with advertisements that blatantly encourage the formation of misogynistic and exploitative relationships.

For example, “[h]undreds of businesses now use the term “mail order bride” to describe the women whose images they present on the Internet and in catalogs, with company names such as ‘Exotic Asian Women’, ‘Philipina [sic] Passion’, ‘Blonde Russian Women’, ‘Latin Senioritas’, and the ‘Black Girls Agency’ among many others. Some Internet sites present collections of these individual agency listings, including one mammoth site called ‘The Mail Order Bride Warehouse.’ . . . IMO advertisements emphasize different characteristics of the women offered, depending upon their region of origin, exploiting and perpetuating sexist and racist stereotypes as well as conceptions of women as commodities.”⁵⁸ Moreover, “[w]omen are advertised as if generic to their ethnic ‘type’: ‘Soviet’ women are ‘elegant’, ‘romantic’ and ‘educated’; Asian women are ‘devoted’, ‘sweet’, ‘playful’ and ‘unspoiled’; and women from Latin American countries are ‘exotic’, ‘educated’, ‘cultured’ and ‘feminine’ Women as a group are described as ‘waiting’ for ‘Western’ or ‘American’ men: they ‘want to marry you!’”⁵⁹

The way an IMO presents itself should be examined alongside the immigrant’s stated intentions.⁶⁰ The consistency or inconsistency of the two may help to distinguish between good faith and ulterior motives.

Profile inconsistencies also may be revealing. When profiles have different pictures but contain identical profile descriptions this may raise questions about their veracity, or the intentions of the participants.⁶¹ There may be several possibilities for this redundancy: a trafficking conspiracy posts several profiles at once, an individual posts several profiles with multiple different photos, or an individual may simply borrow a description from another profile. In all three scenarios, there is misrepresentation; with the latter two, the misrepresentation is on the part of the immigrant, and is worthy of consideration in determining good faith.

Another factor to consider is the amount of detail given to men’s profiles in proportion to those of the women. As discussed above, IMBRA excludes from coverage those IMOs whose principal business is not to arrange dating or marriages between U.S. residents and foreign brides if they charge comparable rates and offer comparable services to all individuals irrespective of gender or national origin.⁶²

No statute or regulation interprets the meaning of “comparable,” but the exception “appears to be a means of directly targeting ‘mail-order bride’ Web sites . . . [that] . . . typically charge men subscription fees for access to addresses, [but] not . . . the women who advertise on them.”⁶³ IMO that don’t offer comparable services or fees may be subject to IMBRA disclosure and background requirements, but one might question why a woman would choose to participate in such an arrangement when more egalitarian alternatives are available. IMOs who offer greater but still “comparable” services and fees for men could theoretically avoid the background and disclosure obligations and associated penalties; such manipulation may also be noteworthy in determining a particular immigrant’s knowledge and intentions in participating.

Those IMOs falling under the nonprofit cultural or religious exception may also warrant closer scrutiny, for they are neither subject to background disclosure requirements nor obligated to provide comparable fees and services. The opportunity to circumvent IMBRA’s attempts to prevent abuse and exploitation would therefore seem most available to these IMOs. An immigrant bride may sign up for an online Christian dating service and marry a man, only to discover once stateside that he has a history of domestic abuse and a string of previous marriages.⁶⁴ However, that an individual woman might sign up to a Web site to meet men of a common religion or cultural background, and not just to gain immigration status, seems more credible when the cultural or religious Web site was never obligated to disclose the man’s background or prior convictions.

On the other hand, cultural or religious nonprofit IMOs containing particularly exploitative advertising and providing unequal fees and services may raise the opposite inference. Why would a woman sign up for such an inherently unequal search process that encourages the formation of an oppressive relationship? Ultimately, the Web site’s nature must be examined, with the knowledge that nonprofit cultural/religious IMOs as well as principally domestic IMOs offering comparable service and fees are not subject to the same obligations as their counterparts. Such examination may either corroborate or undermine the credibility of an intended immigrant spouse’s claims of good faith.

CONCLUSION

As Internet dating increasingly gains social acceptance, and as affordable access to the Internet continues to penetrate developing countries, U.S. immigration adjudicators can expect to see an increase in marriage-based and fiancée visa applications founded on an online relationship. Although IMBRA partially addresses problems faced by immigrant women (and men) seeking an Internet match, it does nothing to modify the traditional “good faith” factors used by adjudicators. Existing good faith factors sometimes cloud the issues and leave adjudicators and the adjudicated lost in a sea of attenuated and often-confusing analytical swamps.

At the same time, while immigration law begins to shift its focus from the marriage parties themselves to those who create the opportunity for marriage, immigration officials should take closer looks at the IMOs themselves as well as the participants’ conduct in the IMO process when determining whether marriages were entered into in good faith. This broader, more holistic approach should aid both immigrants and immigration officials in forming more accurate distinctions between those seeking the benefits of marital e-harmony and those with quite another set of benefits in mind.

NOTES

1 See Thomas L. Friedman, *The World Is Flat*, p. 91 (Farrar, Straus, and Giroux, 2d ed. 2006) (2005) (characterizing the convergence of several globalizing influences as “flattening” the world, and stating that the advent of the Internet, the browser, and fiber optics “enabled more people than ever to be connected and to share their digital content with more other people for less money than any time before” leading to “the crude foundation of a whole new global platform for collaboration.”).

2 Josephine Marcotty, *Love at First Site*, Minneapolis Star Trib., February 14, 2007, at 1E (“There are some 33 million U.S. adult singles who go online, and about five to six percent of them subscribe to a dating website, according to the market research company JupiterResearch.”).

3 Robert J. Scholes, *International Matchmaking Organizations: A Report to Congress* (February 1999), Appendix A: The “Mail-Order Bride” Industry and Its Impact on U.S. Immigration at 1, available at http://www.uscis.gov/files/article/MobRept_AppendixA.pdf. [hereinafter *Appendix A*]. Although all of the laws and regulations discussed in this paper are gender-neutral in intent and application, an overwhelming majority involve U.S. men and female immigrant spouses. International Matchmaking Organizations: A Report to Congress at 9 (February 1999) [hereinafter *IMO Report*] (reporting that, of all marriage-based spousal petitions in 1997, women con-

stituted 67% of spouses of U.S. citizens, and 87% of spouses of legal permanent residents (“LPRs”). The remainder of the article, therefore, will discuss issues in the context of a male U.S. citizen or LPR and a female immigrant spouse. The author would like to clarify that this Essay makes no claims as to the sites listed above, but simply mentions them as some of the more popular IMOs.

4 In 2003, the Homeland Security Act abolished the INS and delegated its responsibilities to the newly established Department of Homeland Security (“DHS”). This author uses the term “INS,” as opposed to the USCIS or DHS, because of the agency’s existence at the time of the cited report.

5 *Appendix A, supra* note 3, at 6. Dr. Scholer’s estimates, however, have been criticized based on flawed methodology, restrictive definitions, and unwarranted assumptions, suggesting that the true numbers may be much higher. See Suzanne H. Jackson, *To Honor and Obey: Trafficking in “Mail Order Brides,”* 70 *Geo. Wash. L. Rev.* 475, 504–511 (2002).

6 8 U.S.C. § 1101(a)(15)(K) (2006).

7 8 U.S.C. § 1151(b)(2)(A)(i) (2006).

8 See Jackson, *supra* note 5, at 482, 482–489 (2002) (chronicling the history of the U.S. mail-order bride industry, stating that “[w]omen have emigrated to the Americas for pre-arranged marriages since the first European colonies were established in Virginia and New England in the early 1600s.”).

9 A CIA estimate conducted in 1999 originally estimated that 40,000–50,000 women and children are trafficked into the United States each year. Amy O’Neill Richard, Center for the Study of Intelligence, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, at iii (Nov. 1999) [hereinafter CIA Report]. When the Department of Justice increased its anti-trafficking efforts in response, however, their inability to accurately identify victims led them to question these numbers as gross overestimations. See Jerry Markon, *Human Trafficking Evokes Outrage, Little Evidence*, *Washington Post*, September 23, 2007, at A1. A revised study produced a new estimate of 14,500 to 17,500 U.S. trafficking victims each year. *Id.* Regardless of the exact number of trafficking victims, however, legislators and Department of Justice officials are determined to combat human trafficking both abroad and in the U.S. See *Exploring Potential Links Between Human Trafficking and International Marriage Brokering: Hearing before the Subcomm. on East Asian and Pacific Affairs of the Sen. Comm. on Foreign Relations*, 108th Cong. (2004) (testimony of John R. Miller, Director, Officer to Monitor and Combat Trafficking in Persons, Department of State), available at <http://www.america.gov/st/washfile-english/2004/July/200407141701572XRnuS0.088772.html>. [hereinafter Miller Testimony] (last visited October 8, 2008).

10 Jackson, *supra* note 5, at 478. Trafficking into the United States is only one lucrative piece of the worldwide trafficking puzzle; the United Nations estimates that 4 million people a year are trafficked annually, and UNICEF estimates that two million children are trafficked worldwide annually, one million of which are forced into prostitution in Southeast Asia. *Id.*

11 Jackson’s article provides a compelling example of the influence of IMOs on human trafficking:

In March of 1998, federal agents uncovered a house in Atlanta in which eight girls aged sixteen and under were held for prostitution, part of a nationwide network believed to involve between 500 to 1,000 Asian girls and young women. . . . In April of 1999, seven people were found guilty . . . after “enslaving dozens of Mexican women and girls, some as young as fourteen, in brothel houses in Florida and the Carolinas, through beatings, rapes, and threats. . . . IMOs facilitate criminal trafficking in several ways. Women and girls may be offered to the public as prospective brides but privately sold into prostitution, into marriage (including marriage to men who prostitute

them), or into slavery as domestic servants. Women may be tricked into debt bondage by IMO “marriage brokers” who promise an escape to a good life in another country in exchange for assuming a debt for transport Brothels in consumer countries can use IMO Internet sites as their catalog, selecting the most desirable “new” women to order for their customers, or advertising “old” women whose use to a particular brothel has ended. Various U.S. embassies around the world report that matchmaking agencies conceal organized prostitution rings victimizing newly arrived “brides.”; *Id.* at 479–80; *see also* Miller testimony (“We believe marriage brokers – legal brokers who, for a fee, introduce prospective brides to wealthier foreign men – are used to facilitate trafficking in persons. Documenting this trend, however, is not easy.”).

12 *Appendix A, supra* note 3, at 7.

13 *Id.* Such “sham” marriages typically manifest themselves in two forms: (1) bilateral, or “contractual,” in which both the U.S. citizen and the immigrant “agree at the outset to enter the marriage solely for immigration purposes;” and (2) “unilateral,” in which “an alien deceives an unsuspecting citizen or resident of the United States into marriage, [and] upon acquiring preferential or immediate relative status, the alien beneficiary abandons the citizen or resident spouse who petitioned for adjustment of status on [her] behalf.” Note, *The Constitutionality of the INS Sham Marriage Investigation Policy*, 99 Harv. L. Rev. 1238, 1240 (1986)(“Note”).

14 *IMO Report, supra* note 3, at 11 (“The U.S. Government does not collect data on the number of marriages in which the parties have been brought together by an international match-making firm. Further, information on how the couple met is not requested of U.S. citizens or LPRs petitioning for the immigration of a spouse on INS Form I-130. The petition for a fiancé(e) of a U.S. citizen (INS Form I-129F) *does* ask this question, but the answer is not captured electronically.”). The International Marriage Broker Regulation Act (“IMBRA”), however, now requires consular officers interviewing for fiancé visas to inquire whether the couple met through the assistance of an IMO, and to ensure that the IMO provided the intended immigrant fiancé with specific information. *See infra* notes 35-36 and accompanying text.

15 Note, *supra* note 13, at 1240–41 (“According to internal studies by the INS, at least thirty percent of all marriage-based applications for green cards involve fraud. . . . Another commentator . . . argues that no more than five percent of all green cards issued on the basis of marriage involve fraud.”).

16 Pervasive and nondiscriminatory, domestic violence “occurs in almost half of the homes in the United States,” affecting 3-4 million individuals and causing “more than one million individuals annually [to] seek medical assistance for injuries caused by battering.” *IMO Report, supra* note 3, at 2.

17 A 2004 study found that 51% of intimate partner homicide victims in New York City from 1995 to 2002 were foreign-born, while 45% were born in the U.S. Family Violence Prevention Fund, *The Facts on Immigrant Women and Domestic Violence*, <http://www.endabuse.org/resources/facts/Immigrant.pdf> (last visited October 8, 2008).

18 At least one study showed that married immigrant women experience higher levels (59.5%) of physical and sexual abuse than unmarried immigrant women (49.8%). *Id.*

19 Thomas A. Aleinikoff et al., *Immigration and Citizenship: Process and Policy*, 302 (5th ed., 2003).

20 *Id.* at 276. In the VAWA context, by contrast, the abused immigrant spouse is known as the *petitioner* or *self-petitioner*.

21 8 C.F.R. § 204.2(c)(1)(ix). The negative definition of “good faith marriage” does not require the reasons for marriage to be love: “family pressure, arranged marriage, desire for economic stability for oneself and one’s children, and accidental pregnancy are also common and valid reasons—from an immigration perspective—for a decision to marry.” Julie E. Dinnerstein,

Violence Against Women Act (VAWA) Self-Petitions, American Immigration Lawyers Association, at 5 (2007) (“The heart of any immigration case for an immigrant victim of domestic violence is her story.”).

22 8 U.S.C. § 1151(b)(2)(A)(i) (2006) (spouses of USCs); 8 U.S.C. § 1153(a)(2)(A) (2006)(spouses of LPRs).

23 See generally 8 U.S.C. § 1154(a)(1)(A)-(D); see also 8 C.F.R. § 204.2(c). If the couple has divorced within two years prior to filing a VAWA petition, the immigrant spouse may still be eligible if she can additionally demonstrate a connection between the divorce and the abuse. 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc) (2006) (for spouses of USCs); 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb) (2006)(for spouses of LPRs). Similarly, if the abusive spouse lost their USC or LPR status within two years of the immigrant filing the VAWA petition, she may still be eligible if she can additionally demonstrate a connection between the abuse and the abusive spouse’s loss of status. 8 U.S.C. § 1154(a)(1)(A)(iii) (II)(CC)(bbb) (2006) (spouse of USC); 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(CC)(aaa)(2006)(spouse of LPR).

24 *Id.* See also *infra* notes 45-46 and accompanying text.

25 8 C.F.R. § 204.2(c)(2)(v); Rothwell, Leila, Comment: *VAWA 2000’s Retention of the “Extreme Hardship” Standard for Battered Women in Cancellation of Removal Cases: Not Your Typical Deportation Case*, 23 Hawai’i L. Rev. 555, 578 n.151 (2001) (describing the difficulties that immigrant women face in gathering the documentation necessary to prove the elements).

26 Dinnerstein, *supra* note 21.

27 See Jackson, *supra* note 5, at 501 nn.203-05 and accompanying text (citing Timothy Egan, *Mail-Order Marriage, Immigrant Dreams and Death*, N.Y. Times, May 26, 1996, at A12).

28 See Kerry Abrams, *Immigration Law & Regulation of Marriage*, 20 & n.102 (University of Virginia Law School, Public Law and Legal Theory Working Paper Series, Working Paper No. 56, 2007) (forthcoming U. Minn. L. Rev. Jun. 2007) (citing *Indle King Found Guilty of Killing Mail Order Bride*, <http://www.cbsnews.com/stories/2003/07/05/politics/main561828.shtml>).

29 8 U.S.C. § 1375.

30 *Id.*

31 Abrams, *supra* note 27 at 22; see also 151 Cong. Rec. S13749-01, 2005 WL 3448189 (Cong. Rec.) at *9 (Dec. 16, 2005) (statement of Sen. Brownback, R. Kansas) (“A simple but incredibly powerful premise drives these provisions: that this information can help a woman help herself, help her save herself or her child from becoming the next victim of a predatory abuser. Through this information and other safeguards, this important legislation will help prevent those intent on doing women harm from perverting and subverting both the institution of marriage and the immigration process to find new victims overseas.”).

32 8 U.S.C. § 1184(r)(4)(B)(i) (2006).

33 Miller testimony (“[W]here governments offer no civil protections, this option leaves women with little information about their prospective marriage matches and whether these men have been married before, have criminal records, etc.”); Del Vecchio, Christina, Note: *Match-Made in Cyberspace: How Best to Regulate the International Mail-Order Bride Industry*, 46 Colum. J. Transnat’l L. 177, 197-98. The Attorney General will also include an “information and resources pamphlet on domestic violence.” 8 U.S.C. § 1184(r)(4)(B)(ii) (2006). The pamphlet includes information with respect to the “legal rights and resources for immigrant victims of domestic violence” and is prepared by DHS in consultation with nongovernmental organizations with expertise on the legal rights of immigrant victims of domestic violence. 8 U.S.C. § 1375a(a)(1) (2006).

34 See notes 14–15 and accompanying text.

35 8 U.S.C. § 1375a(b)(1)(C) (2006).

36 *Id.* One scholar argues that this requirement may be a way of “sidestepping the problem of regulation of non-U.S.-based matchmaking organizations”—that even though foreign-based organizations are not subject to IMBRA’s regulations, its clients nonetheless may be denied visas on the basis of noncompliance. Abrams, *supra* note 27 n.111.

37 8 U.S.C. § 1184(d)(1) (2006).

38 8 U.S.C. § 1184(d)(2)(A) (2006). Should this limitation appear unduly harsh, the statute further provides that the Secretary of DHS may issue a waiver to this “three strikes” prohibition if, in his discretion, such a waiver is justified, unless the U.S. petitioner has a history of violent offenses. In classic statutory complication, an exception to the exception applies, and the Secretary may nonetheless grant a waiver if the offense arose from a situation in which the petitioner was acting in self-defense, was violating a protecting a protective order designed for his or her own protection, or it was a crime in which the petitioner was a victim of battery or extreme cruelty and the offense did not result in “serious bodily injury.” 8 U.S.C. § 1184(d)(2)(C)(ii) (2006).

39 See Miller testimony *supra* note 9

40 8 U.S.C. § 1375a(e)(4)(A) (2006).

41 8 U.S.C. § 1375a(e)(4)(B) (2006).

42 Abrams argues that laws such as IMBRA appear to have a “more tenuous” link to immigration regulation than many other laws, and suggests that the regulation of marriage through immigration law may strain the limits of Congress’s plenary immigration power, thus intruding on the state-controlled realm of family law. See generally Abrams, *supra* note 27.

43 A secondary purpose of regulating international marriages through the policy of family unification may be to ensure that those immigrants entering the United States through marriage can be productive and stable members of society, instead of becoming drains on national resources and wards of the state. See Abrams, *supra* note 27, at 24 (discussing the policy implications of the IMBRA criminal background disclosure provisions and suggesting that “the policy justifications underlying family unification have been successfully met: this particular immigrant, married to this particular person, was unlikely to become a stable member of society because the marriage upon which the immigrant’s entrée into society was premised was faulty from the start.”).

44 See Dinnerstein, *supra* note 20, at 5.

45 8 C.F.R. § 204.2(c)(1)(ix) (2006). These same examples of evidence are repeated almost verbatim elsewhere in the provision with respect to proving good faith for a prior marriage within five years of the current petition, and proving good faith of a marriage conducted while the beneficiary is in removal proceedings, respectively. See 8 C.F.R. § 204.2(a)(1)(i)(B) (2006); 8 C.F.R. § 204.2(a)(1)(iii)(B) (2006).

46 *Id.*

47 Immigrant Power and Control Wheel, National Center for Domestic and Sexual Violence, http://www.ncdsv.org/images/ImmigrantWomenPCwheel_NO%20SHADING_NCDSV.pdf (adapted from original wheel by Domestic Abuse Intervention Project) (last visited October 8, 2008).

48 The few people who know the couple may also be unwilling to “get involved” for fear of retaliation by the abusive spouse.

49 See, e.g., Note, *supra* note 13, at 1243–44 (“[Sham marriage investigation] procedures often intrude upon the right of marital privacy both by implicitly imposing norms of marital life and by requiring disclosure of intimate matters.”).

50 USCIS Adjudicator’s Field Manual (Redacted Public Version), [hereinafter *Field Manual*] Chapter 21: Family-Based Petitions and Applications, 21.3 Petition for a Spouse, 21.3(a)(2)(H) *Interviewing Petitioner and Spouse*. The manual as a whole is available at <http://www.uscis.gov/>

propub/ProPubVAP.jsp?dockey=724ce55f1a60168e48ce159d286150e2 (last visited October 8, 2008).

51 *Id.*

52 U.S. Census, *Table FG3. Married Couple Family Groups, by Presence of Own Children, Under 18, and Age, Earnings, Education, and Race and Hispanic Origin/2/ of Both Spouses: March 2002*, available at <http://www.census.gov/population/socdemo/hh-fam/cps2002/tabFG3.pdf> (last visited October 8, 2008).

53 Field Manual, *supra* note 50

54 *Id.*

55 In most IMO marriages, “women from economically weaker nations are offered en masse as potential wives to men from wealthier countries. Men invited to choose a wife . . . enjoy superior bargaining power—they are the prizes, unique and valuable, while the women appear to be fungible, cheap commodities.” Jackson, *supra* note 5, at 493. When relationships reflecting such an economic imbalance of power ultimately result in abuse once in the States, the pressure to stay in the abusive relationship for fear of deportation is compounded by a sense of obligation to support the family back in the home country. See Joyce Nishioka, *Marriage by Mail*, Asian Week, July 29, 1999, http://www.asianweek.com/072999/feature_lovelistings.html (“A lot of times the eldest daughter will seek a marriage outside the Philippines to help the family,’ possibly sponsoring relatives for citizenship down the line or by sending financial help ‘Once you’ve left, you do have an obligation to send money back.’”) (internal citations omitted) (last visited October 8, 2008).

56 See Nishioka, *supra* note 55 (citing an INS report for the proposition that “women searching for husbands are also looking for a means to escape poverty and have no access to computers. The ones who use online matchmaking services tend to be older, better educated, and more likely to live in a relatively developed country such as Japan or Russia, according to the INS report.”).

57 See 8 C.F.R. § 204.2; *Field Manual*, *supra* notes 50-51.

58 Jackson, *supra* note 5, at 494-45.

59 *Id.* (internal citations omitted). The home page of one mail order bride site caters to controlling and misogynistic men by posting the following diatribe: “We, as men, are more and more wanting to step back from the types of women we meet now. With many women taking on the “me first” feminist agenda and the man continuing to take a back seat to her desire for power and control many men are turned off by this and look back to having a more traditional woman as our partner. What does that mean? That is one hell of a good question.” It also features a link encouraging “guys” to oppose IMBRA as a violation of Constitutional rights. <http://www.goodwife.com> (last visited October 8, 2008).

60 In some cases, the IMO may have alleged procedures in place that enhance, rather than detract, from its legitimacy. See, e.g., http://www.anastasiaweb.com/antiscam_policy.php (boasting a “full-time staff specifically devoted to spot-checking correspondence for suspicious activity and reacting to reports of suspicious correspondence that we receive from our clients” and featuring a “blacklist” of women who have been previously reported) (last visited October 8, 2008). While the authenticity and effectiveness of such procedures should always be evaluated, the fact that extra procedures are in place to detect fraudulent intentions beforehand may enhance assertions of “legitimacy” by its other participants.

61 For example, a review of the profiles in the Ukraine section of one of the oldest and largest IMOs, “Cherry Blossoms,” revealed two separate profiles with different pictures, names and ages, with identical descriptions: “I am a very romantic, self-confident and optimistic person who is searching for a self-confident, reliable, responsible man with as [sic] sense of humor to” <http://www.blossoms.com/cgi-bin/htmls.cgi/01258.23.13543130378214329357>. (last

visited May 06, 2007). To read the rest of the profile description required registration, but the above-quoted material is sufficient to convey that at least one of these profiles was not posting original thoughts.

62 8 U.S.C. § 1375a(e)(4)(B) (2006); *see supra* notes 50-51 and accompanying text.

63 Abrams, *supra* note 27, at 22 (citing <http://www.elenasmodels.com/services/membership.htm> and <http://www.elenasmodels.com/faq/index.htm> (noting that placing ads are free for both men and women; the only charges are for accessing a woman's contact information and/or receiving a weekly catalog featuring the "ladies" who joined within the previous month) (last visited October 8, 2008)).

64 This, in fact, occurred with a VAWA self-petitioner for whom the author participated on a case.