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Mail Dominance: A Critical Look at the International Marriage Broker Regulation Act and Its Sufficiency in Curtailing Mail-Order Bride Domestic Abuse

INTRODUCTION¹

Anastasia Solovieva King, a beautiful, intelligent 18-year old university student from Kyrgyzstan, came to the United States as a mail-order bride with big dreams.² Her new husband, a short, heavy 40-year old man named Indle G. King, Jr. from Washington, met Anastasia through an international marriage broker (IMB).³ Shortly after their marriage, Anastasia realized that she had married an abusive man and decided to seek divorce.⁴ According to Anastasia's diary, her husband beat her, and she feared him—Mr. King threatened to kill her if she ever were to leave him.⁵ Unfortunately, this threat came true; Mr. King sat on Anastasia's chest to hold her down while he had an accomplice strangle her to death.⁶ At trial it was discovered that Anastasia was not Mr. King's first mail-order bride—he had been previously married to another woman whom he met through an IMB.⁷ That woman divorced him and filed for a domestic violence protection order against him.⁸ After Anastasia's death, authorities discovered that Mr. King was in the process of procuring a third mail-order bride through an IMB.⁹

1. The author wishes to express her sincere thanks to Ross S. Goldstein, a Washington D.C. lawyer with the firm Arnold & Porter, whose insights on this subject were most helpful, particularly in the portion of this comment which suggests a penalty of perjury to help guarantee that consumer-husbands are truthful in submitting their background information to potential mail-order brides. The author would also like to thank Professor Jean M. Cary for her guidance in preparing this Comment for publication.

2. Lewis Kamb & Robert Jamieson, Jr., *Mail-Order Bride's Dream of a Better Life Ends in Death*, SEATTLE POST-INTELLIGENCER, Feb. 2, 2001, available at <http://seattlepi.nwsourc.com/local/brid02.shtml>.

3. *International Marriage Broker Regulation Act: Hearing Before the Senate Foreign Relations Comm.*, 149 CONG. REC. 59,960-01 (daily ed. July 25, 2003) (statement of Sen. Maria Cantwell) [hereinafter *Hearing*].

4. Lana Mobydeen, *Something Old, Something New, Something Borrowed, Something Mail-Ordered?*, 49 WAYNE L. REV. 939, 941 (2004).

5. *Id.*

6. Kamb & Jamieson, Jr., *supra* note 2.

7. *Hearing, supra* note 3.

8. *Id.*

9. *Id.*

Susanna Remerata Blackwell also met her husband through an IMB and left her native Philippines to move to Washington to marry him.¹⁰ Like Anastasia, she was attractive, young, and educated; Timothy Blackwell was in his mid-forties when he chose Susanna out of a catalogue called "Asian Encounters."¹¹ Mr. Blackwell began physically abusing Susanna shortly after they were married.¹² She decided to leave him and instituted divorce proceedings.¹³ The Blackwells had been separated for more than a year, and Susanna was pregnant with another man's child.¹⁴ In the courthouse, with the divorce proceedings coming to a close, Mr. Blackwell shot and killed Susanna and her unborn child.¹⁵

Sadly, cases such as these are not uncommon. Across the country, many mail-order brides who meet their American husbands through IMBs are later abused or even murdered. With an estimated 9,500-14,500 foreign fiancées entering the United States every year as a result of IMB matches, mail-order bride domestic abuse can no longer be ignored.¹⁶

In response to the two Washington mail-order bride murder cases, and similar mail-order bride domestic abuse and murder cases throughout the country, Congress enacted the International Marriage Broker Regulation Act of 2005 (IMBRA) on January 5, 2006.¹⁷ Senator Sam Brownback (R-KS), Senator Maria Cantwell (D-WA), Representative Frank Wolf (R-VA), and Representative Rick Larsen (D-WA) introduced the Act as a part of the reauthorization of the Violence Against Women Act.¹⁸ IMBRA requires IMBs to provide mail-order brides with information about the violent criminal history of American men who use IMBs, as well as about the rights and resources available to domestic violence victims in the United States.¹⁹

10. *Id.*

11. Timothy Egan, *Mail-Order Marriage, Immigrant Dreams and Death*, N.Y. TIMES, May 26, 1996, § 1, at 10.

12. *Hearing, supra* note 3.

13. *Id.*

14. *Id.*

15. *Id.*

16. *New Law Signed by President Bush to Prevent the Abuse of Foreign Women through International Marriage Brokers*, (Tahirih Justice Center, Falls Church, V.A.), Winter 2006, at 8 [hereinafter *Newsletter*].

17. *Id.* at 1, 8 (citing International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162 (2006) codified at 8 U.S.C.S. § 1375a (LexisNexis 2007)).

18. *Id.* at 8.

19. 8 U.S.C.S. §§ 1375a(d)(3)(A)(iii)(II), (III).

This Comment will look through a circumscribed lens at the mail-order bride domestic abuse in the United States that is facilitated by the IMB industry and will also consider the sufficiency of IMBRA in curtailing the problem. This comment will: (1) give background information on the IMB industry; (2) examine mail-order bride domestic abuse and how IMBs facilitate the problem; (3) explain IMBRA and its goals; and (4) take a critical look at IMBRA and give recommendations to further prevent mail-order bride domestic abuse in this country.

I. BACKGROUND INFORMATION

A. *The IMB Industry*

Although the mail-order bride industry is not new, the IMB industry is relatively new and has become more prevalent in recent years, largely due to the Internet.²⁰ Many IMBs credit the American women's movement of the 1970s with creating the modern mail-order bride industry, the backlash of which encouraged some American men to look overseas for more traditional wives.²¹ A simple search on the Internet for "mail-order bride" will produce over one million hits and reveal the hundreds of IMB sites that comprise the industry.²²

The following advertisement is just one example of the numerous enticements that IMBs use to court their prospective customers:

There are, of course, attractions for men other than the escape from feminist values to the traditional, family oriented [sic] females. We all know Philippine women make perfect wives. In the Philippines wives are very loyal house wives, As [sic] a mail bride they make excellent mailorder brides for American [sic] men. . . And the Filipina believes that men must have regular sexual activity. It is the nature of the beast. It is very unusual for a Filipina wife not to make herself available for her husband whenever requested: "It's just a natural part of marriage." She is there, among other things, to be a provider of quality sex. Headaches are fairly rare.²³

The IMB websites contain databases of names, addresses, email addresses, telephone numbers, biographical sketches, and photo-

20. See generally Christine S. Y. Chun, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155 (1996).

21. Melinda Henneberger, *Well, the Ukraine Girls Really Knock Them Out*, N.Y. Times, Nov. 15, 1992, § 4, at 6.

22. A search for "mail-order bride" at www.google.com, on Oct. 13, 2006, produced 1,730,000 hits.

23. Kate O'Rourke, Article, *To Have and to Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT'L L. & POL'Y 476, 477 (2002).

graphs of the prospective mail-order brides. One of the largest and oldest of the IMBs is Cherry Blossoms, which lists over 6,000 prospective foreign brides at any one time.²⁴ Cherry Blossoms reports serving over 1,000 American men per month.²⁵

The IMBs recruit potential brides through newspaper and magazine advertisements.²⁶ Next, they screen and select the women.²⁷ Additionally, IMBs require the women to provide personal information ranging from their physical traits to personal interests, breast size, and underwear preferences.²⁸ One IMB, American-Asian Worldwide Services, requires the women to answer an eight-page questionnaire containing questions such as "Do you wear makeup?" and "Have you experienced premarital sex?"²⁹ If the men searching these websites find an interesting prospect, they must purchase information from the IMB to contact the woman. Typically, the IMB charges between \$4.00 to \$15.00 per address, and all of the addresses in the existing database can be purchased for a flat fee of approximately \$40.00.³⁰ If a client chooses to purchase an address from the database, he can contact the woman directly and begin correspondence.³¹

However, the lion's share of IMBs' profits comes from guided tours offered for the client to go to a foreign country to meet women, typically those with whom he has corresponded.³² For instance, the IMB Pearls of the Orient offers tours to the Philippines where the client will be introduced to an unlimited number of prospective brides.³³

Once a client finds a bride, the IMB provides many services, such as assembling the paperwork for the marriage, providing low-cost wedding arrangements, obtaining a visa and providing immigration con-

24. Robert J. Scholes, *The "Mail-Order Bride" Industry and its Impact on U.S. Immigration*, in Commissioner of the Immigration and Naturalization Service and the Director of the Violence Against Women Office at the Department of Justice, *International Matchmaking Organizations: A Report to Congress* (1999).

25. *Id.*

26. O'Rourke, *supra* note 23, at 478.

27. *Id.*

28. *Id.*

29. Lisa Belkin, *The Mail-Order Bride Business*, N.Y. TIMES, May 11, 1986, § 6, at 28.

30. Erin Elizabeth Chafin, Comment, *Regulation or Proscription?: Comparing American and Philippine Proposals to Solve Problems Related to the International Marriage Broker Industry*, 23 PENN ST. INT'L L. REV. 701, 704 (2005).

31. Chun, *supra* note 20 at 1166.

32. Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 148 (1998).

33. *Id.*

sultation for the bride.³⁴ IMBs open the gateway for mail-order brides to enter the United States and become citizens.

B. *The Consumer-Husbands*

John Line, a 43-year old cabinetmaker from California explains, “I wanted a wife who isn’t career-oriented, who participates very little in the world outside, who doesn’t have high aspirations, who is useful, whose life revolves around me And yes, she had to be a virgin.”³⁵ Line found his 23-year old bride through an IMB in a remote and rural area of the Philippines and traveled the distance to marry her and bring her home.³⁶ He admits to keeping her away from money, dialing the telephone for her, and not teaching her to drive.³⁷

John Line seems to be representative of the typical consumer-husband who uses an IMB and shares the same concept of the mail-order bride’s role. IMBs say their clients complain that “American women are too aggressive, too demanding, [and] too devoted to their own careers to put their husbands’ needs first.”³⁸ IMBs also say their typical client wants a needy woman for whom he can care and who will look up to him in return.³⁹ Americus Mitchell, a 67-year old retired patent attorney from Kilmarnock, Virginia, says, “American women put themselves on a pedestal and are neglecting U.S. men It’s the same thing as when Ford and General Motors keep turning out bad products. You turn to the Japanese.”⁴⁰ One IMB, American-Asian Worldwide Service, asked consumer-husbands in a questionnaire if they believed in women’s liberation—the answer was unanimously and unequivocally “no.”⁴¹ The perception among the consumer-husbands is that American women do not have traditional values of marriage and motherhood, while foreign women are content to be homemakers who want only a husband, home, and family.⁴²

A 1994 survey of American men who used IMBs to seek mail-order brides found that consumer-husbands tend to be overwhelmingly white (94%); educated (50% with two or more years of college,

34. *Id.*

35. Raymond A. Joseph, *New Addresses: American Men Find Asian Brides Fill the Unliberated Bill—Mail-Order Firms Help Them Look for the Ideal Women They Didn’t Find at Home*, WALL ST. J., Jan. 25, 1984.

36. *Id.*

37. *Id.*

38. Henneberger, *supra* note 21, at 6.

39. *Id.*

40. Joseph, *supra* note 35.

41. *Id.*

42. Scholes, *supra* note 24.

6% with M.D.s or Ph.D.s—only 5% did not complete high school); generally economically and professionally successful (42% were in professional or managerial positions); and politically and ideologically conservative.⁴³ The men surveyed came from forty-four states, with 22% from California, and 84% lived in metropolitan areas.⁴⁴ Of the men, 57% had been married at least once, 35% had at least one child, and 75% desired to have additional children.⁴⁵ Their median age was thirty-seven.⁴⁶ According to another study that examined thirty mail-order bride couples between 1986 and 1993, only two had a close age difference of four to six years—in the other twenty-eight marriages there was a twenty to fifty year age difference.⁴⁷

David Jedlicka, the researcher who conducted the 1994 survey, believes men who use the mail-order bride route to find a wife “have control in mind more than a loving, enduring relationship.”⁴⁸ Although there are no firm statistics yet on how many men using IMBs have prior records of domestic violence or violent acts, the evidence seems clear that many consumer-husbands seek much younger, submissive women. These women are “bought” with the expectation they will be subservient.

C. *The Mail-Order Brides*

Most America-bound mail-order brides who are marketed by IMBs come from Asia (mostly the Philippines) and the former Soviet Union.⁴⁹ Many sources suggest these women want to become mail-order brides for American husbands because they are searching for a better way of life in terms of socio-economic factors.⁵⁰ As one author wrote about women in the Philippines, “the plain facts of unemployment, inflation, malnutrition, and militarization, permeate their everyday lives.”⁵¹

In the major countries which “export” mail-order brides, “more and more women find themselves unemployed and with substantially

43. This study surveyed 607 American men seeking mail-order brides and received 206 responses. See Scholes, *supra* note 24.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Scholes, *supra* note 24.

50. *Id.*

51. Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197, 203 (1994) (internal quotations omitted).

reduced social welfare benefits.”⁵² The vast majority of mail-order brides do indeed come from countries that are under economic distress, where there is rampant subordination of women, and few job and educational opportunities for women.⁵³ Weak national economies lead to sex discrimination in job markets, and many women have to fight for survival by engaging in prostitution or other degrading activities in order to earn a living.⁵⁴ When IMBs recruit these women to become mail-order brides with promises of a better life in America, it is easy to see why this option seems like the better choice at the time.

Mail-order brides, like consumer-husbands, generally have a stereotypical preconception of the kind of person with whom they are engaging in marriage.⁵⁵ “These women typically have learned about [America and American men] solely through Western media”⁵⁶ When mail-order brides are asked by IMBs why they want a foreign husband, “the answer generally indicates an attraction to American men (they look like movie stars) and an aversion to native men[,] . . . [they] make good husbands [and] Americans are thought to be faithful to their wives.”⁵⁷

Other considerations that encourage young women from the Philippines to enter the mail-order bride industry are cultural and social practices.⁵⁸ For example, sons get preferential treatment regarding inheritance in rural and agricultural areas of the Philippines, with the result that “young women tend to migrate to the cities.”⁵⁹ With the increased ratio of women to men in the cities and the great social pressure on women to marry before they become “old maids,” Filipinas have an added incentive to become mail-order brides.⁶⁰ It is also well-known that social pressure on women in underdeveloped countries to marry before the age of thirty certainly is a prevalent factor to encourage women into the mail-order bride industry.⁶¹

52. Vanessa Brocato, *Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International Human Rights Law*, 5 SAN DIEGO INT’L L.J. 225, 233-34 (2004) (internal quotations omitted).

53. *Id.* at 234.

54. *Id.*

55. *Id.* at 233.

56. *Id.*

57. Scholes, *supra* note 24.

58. Meng, *supra* note 51, at 204.

59. *Id.*

60. *Id.*

61. This proposition is based upon the personal experience of the author in undergraduate women’s history.

It seems that there is ample evidence to show that the predominant factor that leads mail-order brides to IMBs is poverty and the hopes of a better life. In addition, misconceptions and social and cultural pressures probably play a large part. One thing is quite clear, however; the motivations that draw the consumer-husbands and the mail-order brides to IMBs are starkly dissimilar.

II. A LOOK AT MAIL-ORDER BRIDE ABUSE AND HOW IMBs FACILITATE THE PROBLEM

A. *The Mail-Order Bride Domestic Abuse Problem*

Although there are no national figures on abuse of mail-order brides, authorities agree that domestic violence in these marriages can be expected at higher levels than in other marriages.⁶² Documentation to show the extent of the mail-order bride domestic abuse problem is quite difficult to find because “[m]arriages arranged by IMBs are not tracked separately from other immigrant marriages.”⁶³

Also, it is currently difficult to find statistics on mail-order bride domestic abuse because many of the women do not complain.⁶⁴ Mail-order brides do not complain for a variety of reasons—they do not know their rights, they are fearful of deportation, or they are isolated.⁶⁵ Grace Lyu-Volckhausen, a women’s rights activist and a member of the New York City Commission on the Status of Women, says that she receives “late-night phone calls from mail-order brides who have been beaten by their husbands” but are too fearful of deportation to seek help.⁶⁶ Lyu-Volckhausen expands, “[The mail-order bride] has to tell [the public] everything is fine, . . . [because] she has to live with her husband.”⁶⁷

Even with the absence of firm national statistics on mail-order bride domestic abuse, there is strong evidence that the abuse is far too common. When mail-order brides and consumer-husbands meet through IMBs, the women have little opportunity to get to know their prospective husbands or assess their potential for violence, unlike most American women or even foreign-born fiancées who have dated their husbands and gone through the “normal” courtship ritual. The consumer-husband has the benefit of a complete background check on

62. Scholes, *supra* note 24.

63. *Hearing, supra* note 3.

64. See generally Vanessa B. M. Vergara, Comment, *Abusive Mail-Order Bride Marriage and the Thirteenth Amendment*, 94 Nw. U. L. REV. 1547 (2000).

65. See generally *id.*; see also Belkin, *supra* note 29.

66. See Belkin, *supra* note 29.

67. *Id.*

the mail-order bride (a requirement for the immigration process), but the foreign woman does not have that privilege.⁶⁸ The mail-order bride gets only the information that the consumer-husband wants to share and has little, if any, knowledge of her rights as a victim of domestic abuse in the United States.⁶⁹ Because these women typically immigrate alone, they have no support system other than their husbands. Such dependency and fear of deportation can make it difficult for women to report abuse and leave the marriage.⁷⁰ Researchers agree that isolation and dependency put mail-order brides at greater risk for domestic abuse.⁷¹ All of these factors lead to a growing epidemic of domestic abuse among couples who meet using IMBs.

An immigration service report entitled *The Mail-Order Bride Industry and Its Impact on U.S. Immigration* states, “[T]here is every reason to believe that the [incident of wife abuse] is higher in this population than for the nation as a whole.”⁷² As part of legislation passed in 1996, Congress found there was a heightened risk of domestic abuse in marriages formed by IMBs.⁷³

Attorney Layli Miller-Muro of the Tahirih Justice Center, an international women’s rights group based in Virginia, has followed problems in the IMB industry for years.⁷⁴ When she surveyed 175 legal aid groups in the United States, more than half reported female clients who had been abused by men they had met through an IMB.⁷⁵

Congress undertook a substantial study leading to the enactment of the 1994 Violence Against Women Act (VAWA).⁷⁶ Congress found that domestic violence rates could be very high (77% in one study) in marriages between alien women and U.S. citizens or lawful permanent resident men.⁷⁷ In particular, Congress found that an American man’s control over his foreign wife’s visa, together with her lack of knowledge of domestic abuse remedies kept many foreign women locked in abusive relationships.⁷⁸

[A] battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal

68. *Hearing, supra* note 3.

69. *Id.*

70. *Id.*

71. *Id.*

72. Scholes, *supra* note 24.

73. *Id.*

74. Daren Briscoe, *Mail-Order Misery*, NEWSWEEK, Feb. 7, 2005, at 54.

75. *Id.*

76. H.R. REP. NO. 103-395 (1993), 1993 WL 484760.

77. *Id.* at 34.

78. *Id.* at 34, 42.

charges, or calling the police, because of the threat or fear of deportation. *Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help.* They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.⁷⁹

Also, VAWA allows an abused immigrant woman to apply alone for permanent residence in the United States through a process called “self-petitioning” if the U.S. citizen spouse is unwilling to cooperate in the process.⁸⁰ The Immigration and Naturalization Service (INS) reported that in 1997 almost 2,500 self-petitions were filed, and in 1998, VAWA petitions rose to 3,300.⁸¹

Before IMBRA, Congress enacted the 1996 Mail-Order Bride Act.⁸² In enacting this legislation, Congress found that “mail order brides find themselves in abusive relationships.”⁸³ Congress also found that:

Many mail order brides from the United States were ignorant of the 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.⁸⁴

In a 1999 INS report required under the Mail-Order Bride Act, Congress was provided with more information of abuses in mail-order bride relationships.⁸⁵ The report concluded that “with the burgeoning number of unregulated international matchmaking organizations and clients using their services, *the potential for abuse in mail-order marriages is considerable,*” and “that an unregulated international matchmaking industry presents *numerous opportunities for exploitation.*”⁸⁶ The report also noted the balance of power is skewed between the consumer-husband and the foreign bride because the husband is considered to have purchased the bride.⁸⁷ The report stated:

Unlike dating services or personal ads, the mail-order-bride transaction ‘is one where the consumer-husband holds all the cards.’ In using

79. *Id.* at 34, 42 (emphasis added).

80. 8 U.S.C.S. § 1154(a)(1)(A)(iii) (LexisNexis 2007).

81. Vergara, *supra* note 64, at 1552; *see also* Commissioner of the Immigration and Naturalization Service and the Director of the Violence Against Women Office at the Department of Justice, *International Matchmaking Organizations: A Report to Congress* (1999) [hereinafter INS Report].

82. 8 U.S.C.S. § 1375(a)(3) (LexisNexis 2004) (repealed 2006).

83. *Id.*

84. 8 U.S.C.S. § 1375(a)(4) (LexisNexis 2004) (repealed 2006) (emphasis added).

85. INS Report, *supra* note 81.

86. *Id.* at 6-8 (emphasis added).

87. *Id.* at 6.

these services the male customer has access to and chooses from a pool of women about whom personal details and information are provided, while the women are told virtually nothing about the male customer - or only what he chooses to reveal about himself.⁸⁸

B. IMBs Facilitate Mail-Order Bride Domestic Abuse

A United States Court of Appeals case out of the Fourth Circuit presents an example of how IMBs facilitate domestic abuse. In 1998, Natasha Spivack, a Russian-American who runs the IMB Encounters International, met a 26-year old college student from Kiev named Nataliya Derkach.⁸⁹ Spivack claimed that she had the perfect husband for Nataliya, a man named James Fox.⁹⁰ Spivack told Nataliya that Mr. Fox “was the best man . . . was her favorite client [and] . . . was very good.”⁹¹ During the time that Spivack was working to introduce Nataliya to Mr. Fox, Spivack knew that Nataliya was a Ukrainian national who was “unfamiliar with the language, laws, and customs of the United States.”⁹² On Encounters International’s website, the IMB held its employees out as relationship counselors stating, “[i]f you ever need someone to talk to, we’ll be available to advise you . . . or her . . . with any suggestions for adjusting to your new life together . . . [Encounters International] links its counseling services to its 95% success rate.”⁹³

Nataliya married Mr. Fox and moved to his Virginia home.⁹⁴ Just two months after they married, Mr. Fox began to subject Nataliya to emotional abuse by calling her cruel names, throwing items at her head, and smashing a full glass of Pepsi Cola against a kitchen wall when Nataliya refused to drink it after he had spit in it.⁹⁵ About six months later, Mr. Fox began physically abusing Nataliya by pinning her against a wall and biting her finger, which left bite marks for two weeks.⁹⁶ In December of the same year, the abuse continued when he threw her on the bed when she was four months pregnant while threat-

88. *Id.* at 4 (emphasis added).

89. Fox v. Encounters Int’l, No.’s 05-1139 & 05-1404, 2006 U.S. App. LEXIS 9269, at *3 (4th Cir. April 13, 2006). Encounters International caters specifically to American men seeking Russian and Ukrainian brides. See *id.* at *2. Encounters International has offices in America, Russia, and Ukraine. *Id.*

90. *Id.* at *6.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at *7.

95. *Id.*

96. *Id.*

ening to break her leg and then hitting her face causing her lip to bleed when she screamed in pain about her leg.⁹⁷

Nataliya turned to Spivack and Encounters International on three separate occasions, seeking counseling and advice regarding the domestic abuse that she was suffering at the hands of Mr. Fox.⁹⁸ Spivack minimized the abuse, telling Nataliya that “all American men are crazy” and advising her to deal with it or risk being deported.⁹⁹ Nataliya did as she was told until one night when Mr. Fox threatened to kill her, holding a gun to her head and then beating her severely.¹⁰⁰ Nataliya went to the hospital after the incident, suffering from numerous physical injuries, including contusions and swelling on her face, hand marks on her arms, a human bite to her hand, and contusions on her chest.¹⁰¹

Nataliya escaped with her baby to a women’s shelter.¹⁰² She sued Spivack and Encounters International, becoming the first woman to win a case against an IMB.¹⁰³ Nataliya was awarded damages of \$433,500, and the court found that the IMB owed Nataliya a fiduciary duty.¹⁰⁴ The jury found the IMB guilty of fraud, unfair and deceptive trade practices, willful and wanton negligence, unauthorized appropriation of Nataliya’s name and likeness, and defamation.¹⁰⁵ Further, the jury found Spivack and Encounters International liable for failing to tell Nataliya about a federal law that allows foreign nationals to escape abusive marriages without fear of automatic deportation and for actively misleading her about her legal options.¹⁰⁶ Finally, the jury found the IMB liable for misrepresenting that it screened male clients when it did not and for publicizing Nataliya’s marriage to Fox as a success, even after she fled to a domestic violence shelter.¹⁰⁷

Who knows how often IMBs actively mislead mail-order brides about their legal options, further facilitating domestic abuse in this country? Nataliya’s case is the only example of a mail-order bride who dared to sue an IMB as of yet. But it must be noted that Arnold & Porter, a powerful Washington law firm, handled Nataliya’s case free of

97. *Id.*

98. *Fox*, 2006 U.S. App. LEXIS 9267 at *7.

99. *Id.* at *9.

100. *Id.* at *10.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at *15.

105. *Id.*

106. *Id.*

107. *Id.* at *21.

charge.¹⁰⁸ Most women in Nataliya's shoes do not have the resources to sue an IMB.¹⁰⁹

III. HOW IMBRA PLANS TO CURTAIL MAIL-ORDER BRIDE DOMESTIC ABUSE

IMBRA, the federal legislation enacted just this year to protect mail-order brides from domestic abuse, seeks to alleviate many of the problems facilitated by the IMB industry.¹¹⁰ Senator Maria Cantwell (D-WA), one of the four legislators who introduced IMBRA, explained:

The primary goal of my legislation is to better inform women entering this country as a prospective spouse about the past history of the man she may be marrying and to better inform them of their rights as residents of the United States if they become victims of domestic violence.¹¹¹

First, IMBRA requires IMBs to obtain the permission of the mail-order bride before releasing information such as her name, address, telephone number, or email address.¹¹² Before IMBRA, the consumer-husband only had to pay the requisite fee, and then the IMB would provide this information without the foreign woman's consent.¹¹³

Second, IMBRA obligates IMBs to provide the mail-order bride with information in her own language regarding the rights of victims of domestic abuse in the United States.¹¹⁴ The information must discuss domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline, the National Sexual Assault Hotline, the legal rights of mail-order bride victims of abuse in immigration, criminal justice, family law, and how to obtain a civil protective order.¹¹⁵

Third, IMBRA requires each IMB to collect personal information from the consumer-husbands such as: (1) arrests or convictions of homicide, manslaughter, rape, assault, battery, sexual assault, incest, child abuse or neglect, torture, trafficking, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment,

108. Telephone interview with Ross S. Goldstein, Associate, Arnold & Porter, L.L.P., in Washington, D.C. (Nov. 22, 2006).

109. Brisco, *supra* note 74.

110. International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162 (2006) codified at 8 U.S.C.S. § 1375a (LexisNexis 2007).

111. *Hearing, supra* note 3.

112. 8 U.S.C.S. § 1375a(d)(3)(A)(iv).

113. Chun, *supra* note 20, at 1163.

114. 8 U.S.C.S. § 1375a(a)(5)(A)(i).

115. § 1375a(a)(2)(B-D).

stalking or any attempt to procure prostitutes; (2) any restraining orders entered against them; (3) any arrest or conviction for offenses related to controlled substances or alcohol; (4) marital history, including whether the client is currently married and whether the client has previously sponsored an alien to whom the client was engaged or married; (5) the ages of any children under 18; and (6) all states where the client has resided since the age of 18.¹¹⁶ The IMB must also search sex offender public registries.¹¹⁷ All of this information must be made available to the mail-order bride.¹¹⁸

Finally, IMBRA requires a U.S. citizen seeking a foreign fiancée visa to undergo a criminal background check.¹¹⁹ This background check is the same one that the mail-order brides must have before entering the United States.¹²⁰ The government will provide for the disclosure of such criminal background information to the mail-order bride at the consular interview in her primary language.¹²¹ This requirement will greatly level the playing field between the foreign women and the consumer-husbands by providing the women with information they have never had before.

IMBRA makes significant strides in regulating the IMB industry—a previously unregulated industry—by: (1) forcing the consumer-husband to undergo the same background check as his mail-order bride; and (2) requiring IMBs to provide important information about the consumer-husband to the mail-order bride.¹²² However, there is more that should be done to protect mail-order brides in this country from domestic abuse.

IV. RECOMMENDATIONS TO IMPROVE IMBRA

A. *Required Counseling Services*

IMBRA would be more effective if the legislation also required IMBs to provide some form of counseling to the consumer-husbands and mail-order brides before a foreign fiancée visa can be obtained. IMBRA should also impose a federal civil and criminal penalty if this provision is violated. Counseling would help the prospective spouses get better acquainted and ensure that the foreign fiancée knows exactly who she is marrying. The counselor could help explain to the foreign

116. § 1375a(d)(2)(B).

117. § 1375a(d)(3)(A)(i).

118. § 1375a(d)(3)(A)(iii).

119. § 1375a(d)(3)(A)(ii).

120. *Hearing*, *supra* note 3.

121. 8 U.S.C.S. § 1375a(a)(5)(A)(iii).

122. *See supra* notes 112-21.

fiancée information that IMBs must disclose, such as the consumer-husband's criminal background and marital history. Also, counseling could start the couple off on the right foot by showing the consumer-husband how to communicate by talking to his wife instead of relying on physical violence to convey his message.

The idea of requiring counseling is not new.¹²³ People are often required to go to counseling when convicted of domestic abuse and other various criminal acts.¹²⁴ Spouses often seek counseling at the recommendation of family service professionals as an appropriate and effective intervention to abusive and controlling relationships.¹²⁵ "Studies have shown that with appropriate intervention, the abusive person can learn new attitudes and new ways to resolve conflict."¹²⁶ Counseling programs generally aim "to confront the abuser [about his] level of responsibility for the abuse; address underlying attitudes that support abuse; examine and change beliefs about relationships; and teach non-violent ways of dealing with interpersonal conflict."¹²⁷ This suggestion of required counseling for consumer-husbands and mail-order brides would be a preemptive measure to curtail the problem of domestic abuse that mail-order brides face in this country.

B. *Photographs of Consumer-Husbands with Violent Criminal Backgrounds or Who Are Sex Offenders on IMB Websites*

IMBs should be required to display photographs on their websites of consumer-husbands with violent criminal backgrounds or who are federal or state sex offenders. IMBRA should also impose a federal civil and criminal penalty if this provision is violated. Under IMBRA, IMBs must disclose this information to mail-order brides, but providing photographs of these people on their websites would further ensure that foreign women are armed with the same knowledge that the consumer-husband has when he chooses a bride. By being provided photographs of men who have violent criminal backgrounds or who are sex offenders, foreign women can better protect themselves from these men.

123. Support Network for Battered Women, http://www.snbw.org/dv_faq/criminalcourt.htm (last visited Feb. 11, 2007).

124. *See id.* ("[M]ost first-time offenders only go to jail for a few days, are put on probation, and are required to attend a batterers' counseling program.").

125. Familyserv.org, Time Out Abuser Intervention Services, http://www.familyserv.org/vr_toais.cfm (last visited Dec. 26, 2006).

126. *Id.*

127. *Id.*

Often, the consumer-husbands go on “bridal tours” to meet women with whom they have been corresponding, or to meet new women.¹²⁸ By having a photograph displayed of men with violent pasts on the IMBs’ websites, the foreign women have a better chance of avoiding these men.

Again, the idea of posting photographs of men with violent records or histories of past sexual abuse is not new.¹²⁹ Many federal and state sex offender websites post photographs, as does the Federal Bureau of Investigation with its “most wanted” list.¹³⁰ This way, foreign women who could potentially become United States citizens have some of the same safeguards that citizens in this country enjoy.

C. Regulating IMB Websites

IMBRA could more effectively curtail domestic abuse with regard to mail-order brides if it regulated IMB websites to prevent them from advertising foreign women as mere fungible goods. IMBRA should impose a federal civil and criminal penalty if this provision is violated. IMBs often market women as merchandise, with “satisfaction guaranteed” promises to the consumer-husbands.¹³¹ These marketing practices attract predatory abusers with histories of violence against women.¹³² From examining the websites of IMBs, it is clear that women are marketed using sexual, racial, and ethnic stereotypes—often the websites have sexualized and semi-nude photographs of the mail-order brides.¹³³ Descriptions of the women frequently claim that they are submissive and that their only goal is to please men.¹³⁴

Not only are foreign women presented as objects, but the consumer-husbands spend large amounts of money to seek, “charm,” and import mail-order brides.¹³⁵ People do not usually spend thousands of dollars to gain nothing, and these men expect to gain a wife that fits

128. Kathryn A. Lloyd, Comment, *Wives for Sale: The Modern International Mail-Order Bride Industry*, 20 Nw. J. INT’L L. & BUS. 341, 349 (2000).

129. See, e.g., North Carolina Sex Offender & Public Protection Registry, <http://ncregistry.ncsbi.gov> (last visited Dec. 26, 2006); Federal Bureau of Investigation: Wanted by the FBI, <http://www.fbi.gov/wanted.htm> (last visited Dec. 26, 2006).

130. See, e.g., *id.* sources cited *supra* note 129.

131. Newsletter, *supra* note 16, at 8.

132. *Id.*

133. *Human Trafficking: Mail-Order Bride Abuses*, Hearings Before the Subcomm. on East Asian and Pacific Affairs Senate Foreign Relations Comm. (2004) (testimony of Prof. Donna M. Hughes).

134. *Id.*

135. Brocato, *supra* note 52, at 240.

the bill.¹³⁶ If a mail-order bride is portrayed only as an object on an IMB's website, bought to provide her consumer-husband with certain services, he can more easily rationalize dominating her.¹³⁷ If the image that the IMBs create on their websites does not coincide with reality, violence is likely to ensue.

IMB websites contain speech that is protected by the First Amendment, but this speech is predominantly commercial and therefore would warrant intermediate scrutiny if it were to be regulated by the government.¹³⁸ Although some may argue that the speech on IMB websites is not merely commercial speech but also has elements of other types of speech that are inherent to First Amendment concerns (such as political, gender, or social issues),¹³⁹ it seems that the purpose of the website is to facilitate a commercial transaction, which should be the determining factor.¹⁴⁰ The reason for the speech on IMB websites is to sell a service or commodity, not to present a forum for people to express political or social views.

Even though this speech is only commercial, it is still protected by intermediate scrutiny which is a fairly high bar.¹⁴¹ But perhaps these advertisements by IMBs could still be regulated. Under Supreme Court precedent, commercial speech is given intermediate scrutiny, which involves a four-part analysis.¹⁴² The four-part test asks: (1) Is the speech advertising illegal activities or false or deceptive advertising; (2) is the government's restriction justified by a substantial government interest; (3) does the law directly advance the government's interest; and (4) is the regulation no more extensive than necessary to achieve the government's interest?¹⁴³

If IMBRA added a provision to regulate the IMB websites in an effort to curtail domestic abuse by preventing the commodification of foreign women, it is likely that it would survive this four part analysis. The IMB websites are not advertising illegal activities, but they can certainly be seen as false and deceptive advertising because they promote the mail-order brides as submissive and rely on gender and racial stereotypes. The regulation would also directly advance a substantial

136. *Id.*

137. *Id.*

138. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 573 (1980).

139. Online Dating Rights, <http://www.online-dating-rights.com/> (last visited Feb. 11, 2007).

140. See generally *Cent. Hudson*, 447 U.S. at 562-63.

141. *Id.* at 566.

142. *Id.*

143. *Id.*

government interest, specifically the prevention of mail-order bride domestic abuse. The regulation could be narrow enough to achieve the government's interest by making the law only apply to IMB websites and only to prevent IMBs from advertising foreign women as mere chattels bought to be subservient and fulfill the consumer-husband's every need.

D. Attaching a Penalty of Perjury to Help Guarantee that Consumer-Husbands are Truthful in Submitting Their Background Information

Lastly, IMBRA would be greatly improved if it attached a penalty of perjury to help guarantee that the consumer-husbands are truthful in submitting their background information to the IMB. The Act currently instructs the IMB to collect a signed certification of a consumer-husband's background information accompanied by documentation or an attestation.¹⁴⁴ However, there is no overt guarantee that the background information that they provide is truthful.

This is a significant weakness of IMBRA, because it is vital that the consumer-husbands are truthful in supplying this information. The truthfulness of the information is crucial to the mail-order bride's safety because it contains information such as whether the consumer-husband has a restraining order issued against him, whether he has ever been arrested or convicted for murder, battery, domestic violence, rape, child abuse, kidnapping, and whether he has been arrested or convicted for any offenses related to controlled substances or alcohol, and his marital history.¹⁴⁵ A penalty of perjury is needed to strengthen IMBRA in order to prevent consumer-husbands from concealing and/or misrepresenting their background information. Foreign mail-order brides greatly need this information for their safety.

CONCLUSION

While IMBRA is a step in the right direction to prevent mail-order bride domestic abuse by regulating the IMB industry, more legislation should be enacted to further correct the plight of the mail-order bride. IMBs should bear responsibility and be forced to help stop the mail-order bride abuse that occurs in this country. Mail-order bride domestic abuse is not an issue that should be ignored. When foreign women come to this country as brides, they have legal status in the United

144. 8 U.S.C.S. § 1375a(d)(2)(B) (LexisNexis 2007).

145. § 1375a(d)(2)(B)(i-v).

States and should be afforded the same liberties and protections that we all receive. The women not only become American citizens, but they become American wives, sisters, daughters, and mothers who, because of their situations, may not have a strong voice. Therefore, they need the thundering voice of strong legislation to protect them from domestic abuse.

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