Immigration Relief for Immigrant Victims of Domestic Violence, Sexual Assault and Human Trafficking Victims

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Immigration 101 and Immigrant Crime Victims
You can gain citizenship while you are in which immigration status:

- **Blue**: a visa
- **Yellow**: a green card (lawful permanent residency)
- **Purple**: either
The most common way to get lawful permanent residency is:

- **Blue:** by staying in the U.S. for many years
- **Yellow:** through an employer
- **Purple:** through a family member
Who of the following would qualify for a work visa:

- **Blue**: someone who invests a million dollars in the U.S. economy
- **Yellow**: a touring artist
- **Purple**: a restaurant worker
An undocumented person is a criminal when:

- **Blue**: always, being undocumented is a crime
- **Yellow**: s/he enters the U.S. unlawfully
- **Purple**: when the undocumented person commits and is convicted of a state or federal criminal law.
Why is Legal Immigration Status Important?
The Importance of Immigration Status

- Severs dependence on potential abusers
- Protection from immigration detention and deportation
- Ability to work legally
- Improved access family law remedies, such as protection orders and custody
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Ability to travel to and from the U.S. (with some exceptions)
Potential Immigration Remedies

• Applications filed DHS
  – VAWA self petition
  – Battered spouse waivers (spouses of USCs with conditional permanent residency)
  – U visa
  – T visa (victims of trafficking)
  – Asylum (persecution based on protected classes)

• Forms of relief from removal- granted by Immigration Judge
  – VAWA cancellation of removal
  – VAWA suspension of deportation
General VAWA Self-Petitioning Requirements

• Subjected to Battery or Extreme Cruelty
• By a U.S. Citizen or Permanent Resident
  – spouse,
  – parent,
  – adult son/daughter (over 21)
• With Whom self-petitioner resided
  – No time period required
• Good Moral Character
• Good Faith Marriage
What evidence would you use to prove:

• Batter ing?

• Extreme cruelty?
Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets
Factors that can constitute extreme cruelty

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic Abuse
  - Employment Related Abuse
  - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money
What kinds of evidence could a victim submit to prove battering or extreme cruelty?
Proof of Extreme Cruelty or Battery

- Self-petitioner’s declaration
- Others’ declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Med records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports
VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy
- Child abuse up to age of 25 to file
- Step children up until divorce
- Police report, protection order, medical records *NOT* required
- *All credible evidence* standard of proof
Approved VAWA petitions

• Protection from deportation and detention — deferred action status.
• Legal work authorization
• Ability to apply for lawful permanent residency through VAWA
VAWA Cancellation Elements

• Relationship to abusive party (broader than self-petition)
  – Mother of a child abused by the child’s other parent who is a USC or LPR even when no marriage
  – More than 2 years have passed since divorce from the abuser
• Battered or Subject to Extreme Cruelty
• Good moral character
• Extreme Hardship to return to the home country
• Three years physical presence in the U.S.
• Not inadmissible
Crime Victim ("U") Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
Criminal activities covered by the “U” visa?

• Rape
• Torture
• Trafficking
• Incest
• Domestic violence
• Sexual assault
• Prostitution
• FGM
• Blackmail
• Extortion
• Manslaughter
• Murder
• Felonious assault

• Witness tampering
• Involuntary servitude
• Slave trade
• Being held hostage
• Kidnapping
• Abduction
• Peonage
• False Imprisonment
• Obstruction of justice
• Perjury
• Attempt, conspiracy or solicitation to commit any of these crimes
• Any similar activity
Who might be helped by the U Visa?
What protection is there for family of U Visa applicants?

- Adult victims:
  - Spouse
  - Children
- Victims under 21 at time of criminal activity
  - Spouse
  - Children
  - Parents
  - Unmarried siblings under 18 (at the time of filing)
Who can certify?

• Police officer
• Prosecutor
• Judge
• Immigration Officer
• Other authority with responsibility for investigation or prosecution of criminal activity
Other Federal, State or Local Agencies

• Agencies with criminal investigative jurisdiction
• In areas of expertise
• Including but not limited to
  – Child Protection Services Worker
  – Adult Protective Services Worker
  – EEOC
  – Department of Labor
“Investigation or Prosecution”
Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing
Why “Criminal Activity” and not limited to “Crimes”? 

- U visa protection available even when:
  - Investigation does not result in prosecution
  - Victim helpful in investigation does not testify at trial
  - Abuser eludes arrest
  - Criminal case dismissed
  - Victim comes forward makes report and police or prosecutors decide not to prosecute
  - Prosecution but no conviction
  - Victim of listed criminal activity but another crime prosecuted
  - Prosecution cannot take place (diplomats, no extradition)
“Physical or Mental Abuse”

• Injury or harm to the victim’s physical person
• Impairment of the emotional or psychological soundness of the victim
What is substantial physical or emotional abuse?

- Decided based upon each individual’s experience
- Case-by-case determination using these factors:
  - nature of the injury inflicted or suffered;
  - severity of the perpetrator’s conduct;
  - the severity of the harm suffered;
  - the duration of the infliction of harm;
  - permanent or serious harm to victim’s
    - appearance,
    - health,
    - physical, and mental soundness
Substantial Abuse (continued)

- No one factor is required
- Can include pre-existing conditions
- Can consider the severity of the perpetrator’s conduct even if the actual impact is less than intended by the perpetrator
Evidence to Prove:

- Physical abuse or injury
- Severity of perpetrator’s conduct
- Emotional abuse or injury
The U-visa Process

1. Certification
2. Application
3. Prima Facie if detained or in removal proceedings
4. Approval
5. U-Visa status 4 years
6. Some will qualify for lawful permanent residence
What kinds of collaborations do you currently have that could help with obtaining U-visa certification?
U-visa Certification:
Considerations For Law Enforcement

• Identify the victim
  – Note injuries observed

• Helpfulness of the victim
  – Current or past
  – Willingness to be helpful

• Any family members implicated in the crime

• Goal: Identification of the crime, the victim and initiation of the process
Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

• Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
  – Humanitarian need; OR
  – Family unity: OR
  – Public Interest

• Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency

• After 5 years lawful permanent residency can apply for naturalization
Factors That Harm Victim Access to VAWAs Immigration Protections

• Criminal History
• Purchase/use of false documents
• Immigration/Benefits Fraud
• Other Red Flags
Screening for Red Flags

• Alcohol abuse
• **Drug trafficking**
• Drug abuse or addiction
• Illegal gambling
• False testimony for immigration purposes
• Penal confinement
• Genocide, torture, killings, violations of religious freedom
• **Child Protective Services intervention**
• Communicable disease
• Physical or mental disorder
• **Any criminal convictions**
• Unlawful voting
  – Polygamy

• Prostitution
• Human trafficking
• $ laundering
• Terrorist activities
• Espionage
• Communist
• Public charge
• Immigration violation
• Misrepresentation for immigration purposes
• Stowaway
• “Alien smuggling”
• Draft evasion
• **Previously deported**
• Unlawfully present
• Unlawful entry
• International child abduction
Comparison VAWA vs. U-visa

- Abuser spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation 1 yr
- Green card after approval if abuser is a citizen or 7 yr wait if abuser LPR

- Abuser anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings case expedited
- Green card after 3 years if can show cooperation + either humanitarian need, public interest or family unity
Requirements for a T visa

- Must be victim of a severe form of trafficking in persons
- Victim must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR
- Has not attained the age of 18; AND
- Would suffer extreme hardship involving unusual and severe harm upon removal
A severe form of trafficking in persons means:

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.
Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation from protections
- Psychological isolation
- Threats to deport or contact law enforcement
Human Trafficking simplified

- Process-
  - Recruiting,
  - Transporting,
  - Obtaining,
  - Moving

- Means-
  - Force,
  - Fraud, or
  - Coercion

- End-
  - Labor or
  - Commercial Sex
Trafficking v. Smuggling

- Crime against a person
- Contains an element of coercion
- Subsequent exploitation
- Trafficked people treated as victims

- Unauthorized border crossing
- No coercion
- Facilitated entry by another person
- Smuggled people treated as criminals
VAWA Protections In a Time of Increased Immigration Enforcement
VAWA Protections In a Time of Increased Immigration Enforcement

• Increased funding = greater likelihood of DHS response to perpetrator’s calls
• Undermines community policing
• Victims safety concerns
  – Transportation
  – Timing of help offered
  – Maintaining custody of children
• Early identification of victims who qualify for VAWA, T or U immigration benefits
Early Identification and U-Visa Certification by Government Official Is Crucial for Victim Safety

• Victims who are eligible for
  – VAWA
  – T-visas
  – U-visas

• Victims will pending/approved visa applications
  – Work
  – Family

• Sole and primary caretaker parents
Early Victim Identification, Certification & VAWA/U-Visa Filing

• Cut off perpetrator’s ability to trigger the victim’s deportation

• Help victim secure
  – Protection from deportation
  – Release from detention
  – Swift adjudication of immigration case for victims detained or in immigration proceedings

• Provide victim security & support

• Victim can more safely cooperate in criminal case against perpetrator
DHS Humanitarian Release

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
  - In English/Spanish
  - Oral and writing
- Release as
  - Order of recognizance
  - Order of supervision
  - Alternatives to Detention
New Release From Detention Homeland Security Policy
(August 20, 2010)

• Applies to Homeland Security Detention
  – Initiation and prosecution of removal of immigrants
  – Homeland Security detention
• Release for immigrants with a filed, pending or approved applications for immigration benefits
  – U visa,
  – T-Visa
  – VAWA,
  – Family Petition
  – Other
August 2010 DHS Policy

• Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit

• Unless applicant
  – Has criminal convictions or misconduct
  – Is a threat to public safety or national security
  – Evidence of fraud

• Importance of Predominant Aggressor Determination
VAWA Confidentiality

• DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers

• DHS cannot disclose VAWA information to anyone (except in limited circumstances)

• Enforcement locational prohibitions
Immigration judge to dismiss case if any part of an enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
  - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking
How To Respond If DHS Comes

- Follow obligations under federal/state law and grant requirements not to disclose privileged or confidential information about victims
- Know if your program is a VAWA confidentiality protected location
- Disclosure only required if warrant or court order
- Subpoena is not a court order
  - DHS cannot obtain a warrant or subpoena without violating VAWA confidentiality if you are a protected location
- File complaint with DHS Office of Civil Rights and Civil Liberties
Safety Planning Challenges Related to Enhanced Immigration Enforcement

• Immigration screening as early as possible essential
• Cannot assume by name or sight that victim is or is not an immigrant
• Changes in strategy – Immigration case filed before
  – CPO, family or criminal court case
  – Victim travels to new location
• Due to VAWA Confidentiality DHS enforcement officers cannot see that VAWA, T or U case exists
Preventative Strategies

- Advise victim and whomever victims interact with to know that such protections exist
- Train personnel who work at prohibited locations
- Work with DHS and local law enforcement to screen out, prevent and not pursue actions against victims
Preventative Strategies, Cont.

• File skeletal immigration applications
• Provide victims with proof of filed VAWA, T or U case
• Object to discovery of information contained in or about the immigration case in family court proceedings
For further assistance

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