

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:

- Battering?
- 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 with 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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