


IMMIGRATION RELIEF FOR SEXUAL ASSAULT SURVIVORS



“This project was supported by Grant No. 2011-TA-AX-K002 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.”

© 2013 Do not reproduce, distribute, or adapt without permission from the Victim Rights Law Center.

Goals and Objectives

- Identify potential immigration relief for survivors of sexual assault
- Identify Red Flags that might affect a survivor's ability to apply for some form of immigration relief
- Identify collaborations/referrals for immigration services

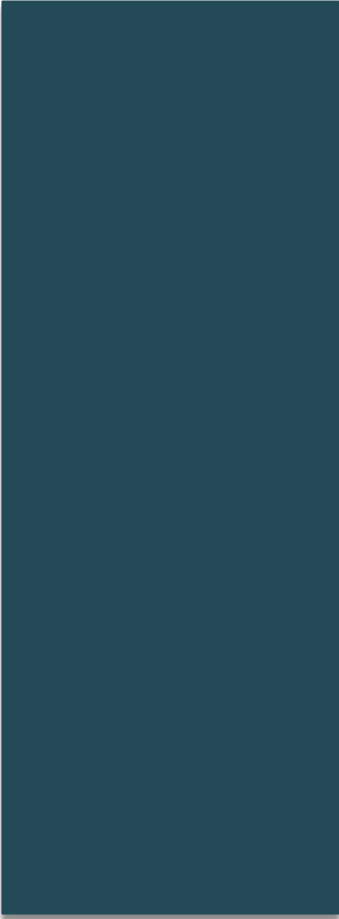



Case Scenario

Large Group Discussion

Acronyms

- DHS Department of Homeland Security
- CIS Citizenship and Immigration Services
- ICE Immigration and Customs Enforcement
- USC United States Citizen
- LPR Lawful Permanent Resident
- INA Immigration and Naturalization Act
- VTPA Victims of Trafficking Protection Act
- VAWA Violence Against Women Act
- EAD Employment Authorization Document
- LEP Limited English Proficiency



**Immigration Options for Sexual
Assault Survivors Victimized by
Spouse or Immediate
Family Members**

VAWA Self-Petition

- Allows non-citizens to petition for their immigrant visa/status and LPR without a sponsor (petitioner)
- Must be related to abuser: spouse, ex-spouse, widow, child, step-child or parent
- Abuser must be USC or LPR



Who can Self-Petition (Form I-360)?

- Spouses and children (up to 25) of USC and LPR, including:
 - Spouses and children of LPR who lost their status within the past two years “due to an incident of domestic violence”
 - Former spouses of USC and LPR within two years of filing, who demonstrate a “connection between the legal termination of the marriage...and battering or extreme cruelty” (divorce/annulment)
 - Spouses of USC who died within two years of filing (widows)
 - Spouses of USC or LPR bigamists who show they “believed” that **they** had married a USC or LPR “with whom a marriage ceremony was actually performed” (intended spouse)

- Parents or Step Parents of USC sons and daughters (over 21)

Self-Petitioning Requirements

- ❑ Survivor Subjected to Battery OR Extreme Cruelty
 - ❑ Battering – “being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or other sexual abuse or exploitation, including rape, molestation, incest (if victim is a minor) or forced prostitution shall be considered acts of violence.”
 - ❑ Extreme cruelty - social isolation, threats, economical abuse, other behaviors intended to control and exercise power over spouse

Self-Petitioning Requirements Cont.

- Good-Faith Marriage to abuser
- Residence with abuser / At one point resided with abuser
- Good Moral Character

Hanna

- ❑ Is Hanna eligible to Self-Petition?
- ❑ Why?
- ❑ Any issues?

If Self-Petitioner is Abroad

- Must have suffered abuse in US or
- Abuser is a US government employee

Children Abused by Parents or Step-Parents

- Unmarried and under 21 (up to 25 if eligible before 21 and did not apply because of abuse)
- Does not have to be in abuser's legal custody
- Show parent/child relationship

Survivors Can Also Apply for their Children

- Unmarried and under 21
- Includes step-children if parents' marriage took place before child's 18th birthday
- Do not have to live in US
- Continue to derive benefits if abuser dies while I-360 is pending*

*VAWA 2013 addition.

Parents Abused by Adult Children

- Parental relationship
- Good Moral Character
- Resided with abusive son or daughter
- Subjected to Battery or extreme cruelty

- **Eligible to apply within 2 years if abuser lost US citizenship or died**

After approval

- Granted Deferred Action
- Employment authorization for self-petitioners and derivative children
- Eligible for some public benefits as a “qualified immigrant”
- Can apply for LPR if visa available or priority date is current
 - Non-citizens who entered without inspection can apply
- Must show admissibility or qualify for exception or waiver to apply for LPR status



Who is inadmissible?

- ❑ Criminal grounds
- ❑ Health-related grounds
- ❑ Security grounds
- ❑ Immigration violations
- ❑ Public charge grounds*
- ❑ Unlawful presence and prior removal
- ❑ Documentation requirements
- ❑ Miscellaneous/Other

*VAWA 2013 fix – VAWA Self-Petitioners as qualified aliens are exempt from public charge ground.



Screening for Red Flags

- ▣ Saying you are a citizen for work or immigration purpose
- ▣ Criminal convictions and charges of the victim
- ▣ Previous deportation orders or entries and exits without permission
- ▣ Fraud or misrepresentation to obtain an immigration benefit including document fraud
- ▣ Mutual protection orders
- ▣ Terrorist activity/security related grounds
- ▣ International child abduction
- ▣ Unlawful voters
- ▣ Prostitution or drug involvement
- ▣ Polygamy

Battered Spouse Waiver for Conditional LPRs (I-751)

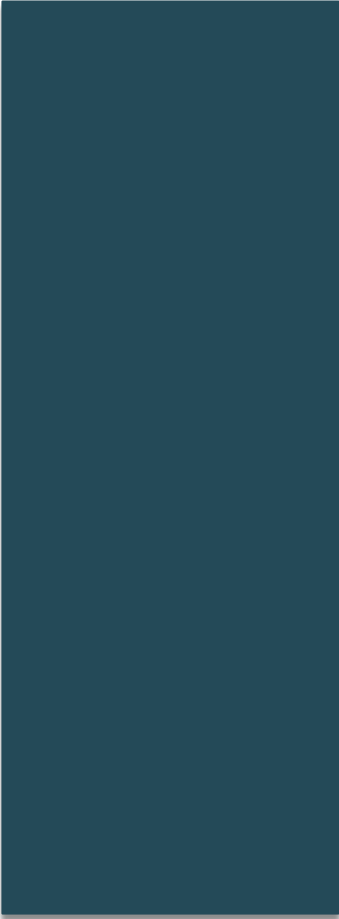

- for spouses and step-children of USCs with conditional LPR (2 year permanent residence card)
- Waives joint-filing (with abusive spouse) requirement
- Because of battery or extreme cruelty
- If bigamist, must have “believed” that had married a USC or LPR “with whom a marriage ceremony was actually performed” (intended spouse)*

*VAWA 2013 addition.



Hanna

Do you see any Red Flags that Might Affect Hanna's ability to get her Lawful Permanent Residency?



**Immigration Options for Sexual
Assault Survivors Victimized by
Intimate Partners and Non-Intimate
Partners Who Cooperate with
Law Enforcement**



U Visa (Form I-918)

- Non-immigrant visa designed to provide immigration status for non-citizens victims who have been helpful, are being helpful or are willing to help authorities investigating and/or prosecuting certain crimes
 - No qualifying relationship to perpetrator required
 - Immigration status of perpetrator irrelevant
 - No time limitation on crimes

U Visa Continued...

- Must have been a victim of a qualifying criminal activity
 - ▣ which occurred in the U.S. or violated U.S. law
 - ▣ available for past crimes, no time limitation
 - ▣ non-exclusive list of crimes - may be a substantial similar activity

AND

- Must possess information concerning the criminal activity



U Visa Continued...

- Must have suffered “substantial physical or mental abuse” as the result of one of the crimes

AND

- Must provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating the criminal activity (Form I-918 Supplement B)
 - Given significant weight but not conclusive
 - Agency not granting U Visa status by signing certification

U visa Qualifying Crimes

- ❑ rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restrain; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; stalking;* fraud in foreign labor contracting;* witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation, to commit any of the above mentioned crimes

*New VAWA 2013 qualifying crimes.

Who Can Apply?

- Direct victims

- Indirect Victims

- ▣ Of deceased victim or incapacitated or incompetent victim of crime
- ▣ Criminal activity includes murder & manslaughter, obstruction, perjury, and witness tampering

- Bystanders

- ▣ Discretionary - those who witness violent crime and suffer unusually direct injury

- Definition of victim drawn from AG guidelines
(<http://www.ojp.usdoj.gov/ovc/publications/welcome.html>)

Who Can Certify? (Form I-918B)

- 8 CFR §214.14(a)(3): an agency that has authority to detect, investigate, prosecute, convict or sentence crime
- Head of federal, state or local law enforcement agency or any person designated to sign by the head of agency
 - ▣ FBI, police, state troopers
 - ▣ Prosecutors
 - ▣ Child protective services
 - ▣ Department of Labor
 - ▣ Equal Employment Opportunity Commission

OR

- Federal, State or local judge
 - ▣ INA §214(p)(1), 8 USC §1184(p)(1)
- Signed within 6 months before filing U visa
- Adjudicator may contact signing agency

Hanna

- ❑ Do you think Hanna qualifies for a U Visa?
- ❑ Why?
- ❑ Any potential issues?

U Visa Benefits

- Inadmissibility
 - ▣ Most grounds waived if in public or national interest
 - ▣ Except: Nazi, genocide, acts of torture, persecution, and extra-judicial killings
 - ▣ Can apply with removal/deportation order
- U Visa valid for 4 years
- Work authorization for duration visa
- Can apply for LPR status after 3 years

U Visa Benefits Continued...

- No number limitations on visas for derivatives
 - ▣ Under 21*: children, parents or unmarried siblings under 18
 - ▣ Over 21: spouses and children*
- Access to federal foster care and unaccompanied refugee minor (URM) benefits for unaccompanied non-citizen children who obtained a U Visa**

*VAWA 2013 fix – if under 21 while application is pending, continues to be treated as under 21 when approved.

** New under VAWA 2013.

T Visa

Non-immigrant visa designed specifically for those who have been subjected to sex trafficking or forced labor

T Visa Requirements

- Be or have been a victim of a “severe form of trafficking”
- Be physically present in the US, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry, on account of trafficking

T Visa Requirements Continued...

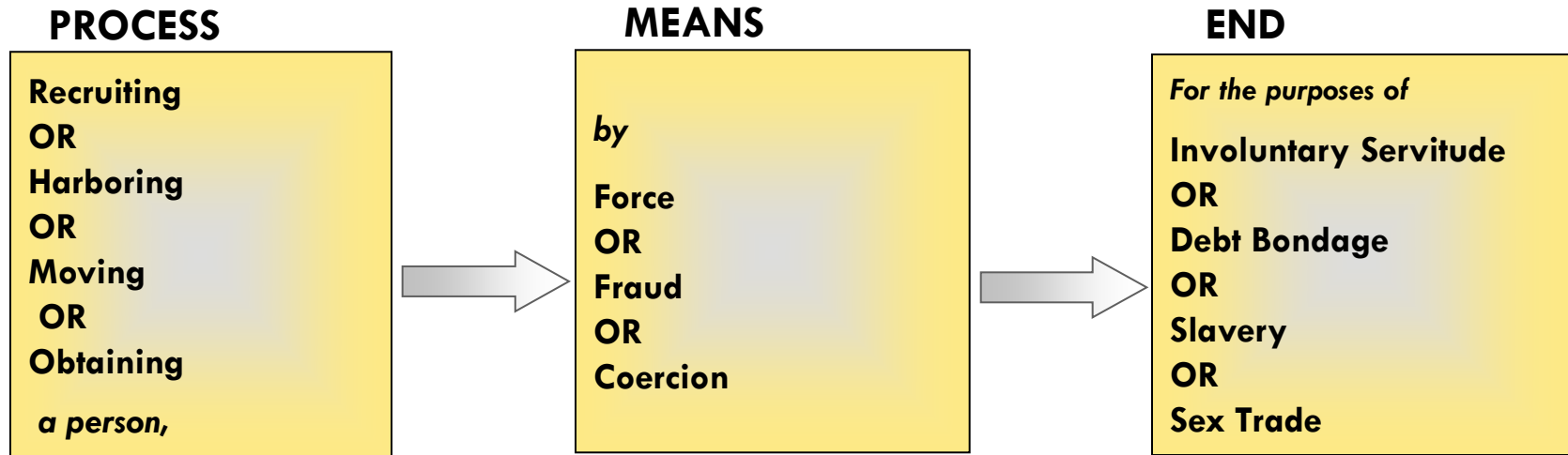
- Have complied with any reasonable request for assistance in the investigation and/or prosecution of a trafficking act, OR be under 18, AND
- Show he/she would suffer extreme hardship involving unusual and severe harm if deported

Severe Form of Trafficking in Persons

- (A) 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

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

Three Elements of Trafficking



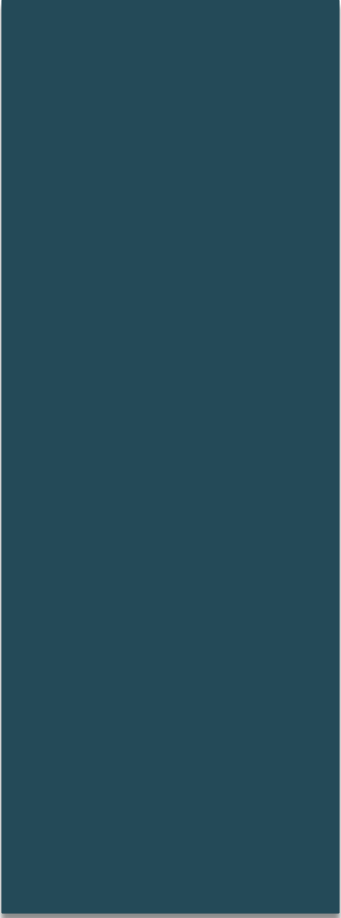

Hanna

- ❑ Is Hanna a victim of trafficking?
- ❑ Do you see any issues with applying for a T Visa?

T Visa Benefits

- ❑ HHS certification gives access to public benefits to the same extent as refugees
- ❑ No number limitation for derivatives: spouses, sons, daughters, siblings or parents, and any minor children of derivatives*
- ❑ T visa valid for 4 years (can be extended)
- ❑ Work authorization for duration of visa
- ❑ Can apply for LPR after 3 years or when investigation/prosecution is complete
- ❑ Waivers for inadmissibility

*VAWA 2013 new category of derivatives.



**Immigration Options for *Minor*
Sexual Assault Survivors and Those
Fleeing Violence in Their Home
Country**

Special Immigrant Juvenile Status

- For abused, abandoned or neglected children in the U.S.
- Must be dependent on a state juvenile court or a state court which makes decisions regarding the welfare of juveniles (delinquency, dependency or probate)
- State court must find that:
 - ▣ the child is a dependent of the court
 - ▣ reunification with 1 or both parents is not viable due to abuse, abandonment, neglect or a similar basis under state law
 - ▣ it is not in the child's best interest to be returned to her/his home country

Hanna

- ❑ Can Hanna apply for SIJS?
- ❑ Any issues?

SIJS Benefits

- May apply for LPR
- Child does not need to be in foster care
- But, CANNOT later assist parents with immigration status

Asylum

- For non-citizens fleeing persecution from their home country
- Should apply within one year of date of entry to the United States

Asylum Seekers Must Show

43

- Unable or unwilling to return to home country due to
- Past persecution or
- Well-founded fear of future persecution by
- the government or a group that the government is unable/unwilling to control, and
- Persecution must be on account of race, religion, nationality, political opinion, or particular social group



Asylum Definition Might Include

- Victims of severe domestic violence
- Persecution based on sexual orientation
- Forced family planning programs
- Harmful traditional practices like Female Genital Mutilation

Hanna

- ❑ Is Hanna eligible for asylum?
- ❑ Should she apply?
- ❑ Any issues?



What's Next?

If you work with immigrants...

- If sexual assault issues come up, what would you do?
- Who would you contact in your area?
- What other resources would you look for?

If you work with SA survivors...

- If immigration issues come up, what would you do?
- Who would you contact in your area?
- What other resources would you look for?

Questions?