

Community of Practice for Family Law Attorney's Representing Immigrant Survivors of Domestic Violence and Sexual Assault

Case Law on VAWA Confidentiality and Disclosure

October 30, 2019

Next COP Calls

- November 26th at 1pm EST
- December 17th at 1pm EST



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Case law on VAWA Confidentiality disclosure



Strategies to prevent disclosure of VAWA confidentiality protected information

Open case round discussions

VAWA CONFIDENTIALITY AND STATE COURT DISCOVERY

Steps you have taken to avoid
discovery of VAWA
confidentiality protected
information in state court cases
involving immigrant victims?

What are your questions about discovery of information about a victim's immigration cases in a

- Family case
- Civil case
- Criminal case

How do you respond to discovery requests that seek VAWA confidentiality protected information?

- What has worked most effectively
- Where do you need greater assistance
- Any particular tools or models would be helpful

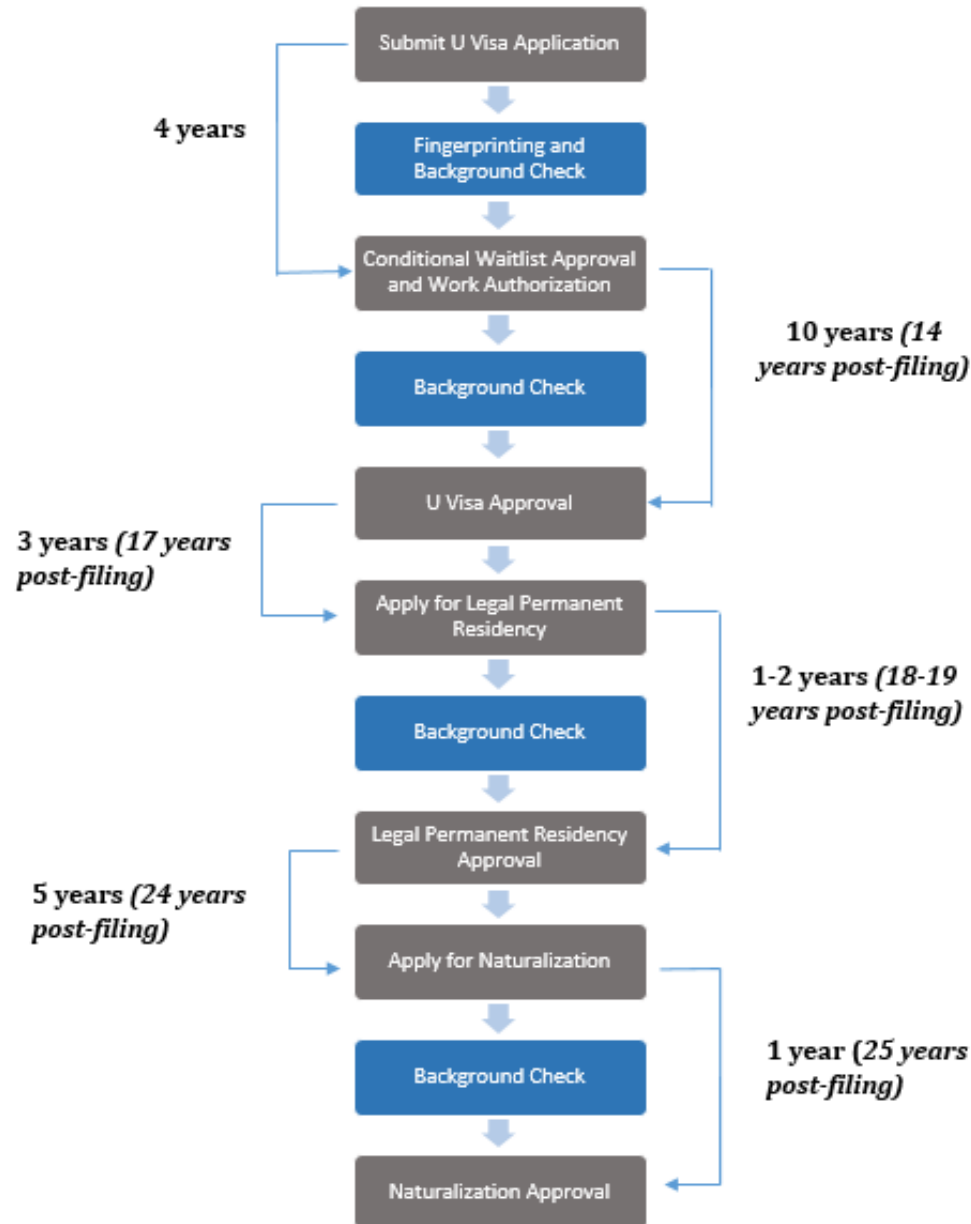
VAWA Confidentiality Statutes and DHS Policies and Regulations

- Protect Victim's Immigration Case Information
- Prohibit disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Decisions made in the case
 - Information contained in the #A file
- Disclosure prohibited to all persons, not just the perpetrator

Designed to prevent perpetrator's interference with the victim's immigration case?

In place as protection of a long duration of time.

U Visa Process Timeline



Helpful VAWA Confidentiality Case Law

- Use to describe and defend against discovery

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial review exception)

- VAWA Confidentiality Protects all cases unless denied on the merits
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purpose of the VAWA confidentiality provision to prohibit disclosure of confidential application materials to the accused batterer”
- Judicial exception applies to appeals of victim’s immigration case only not state family, civil, criminal cases

Demaj v. Sakaj (D. Conn, 2012)

– U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain VAWA confidentiality protected information through custody case discovery is barred by federal statute
- VAWA confidentiality applies even when the victim disclosed that their crime victim related immigration case was approved

EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - How discovery could compromise U visa program goals that promote immigrant victim participate with investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable in a multiple victim case at the damages stage of the proceeding
 - No similar anonymity possible in a family or criminal court case

State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

Gomez v. State

District Court of Appeals of Florida, Fourth Circuit

- The defendant in a criminal case complained of a *Brady* violation for the State's failure to allow discovery of the information contained in the victim's U Visa application.
- The Florida Court denied discovery of the U visa file which was not in the state's possession or control. Thus, the State had no obligation to produce it.

People v. Alvarez Alvarez – Criminal Case

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014),
review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa

What kinds of legal research, sample motions and pleadings would you need to build your skills to defend against release by the courts of your clients' VAWA confidentiality protected case file information?

Web Library Materials

- California Center for Judicial Education:
Discover and Use of Immigration Information
Court Checklist
- VAWA Confidentiality Cases Judicial Quick
Reference Guide
- Quotes From Federal Laws, Regulations and
Statutes: VAWA confidentiality
- U visa interlineated statute
- Copies of all VAWA confidentiality cases cited
- Sample amicus briefs and motions

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