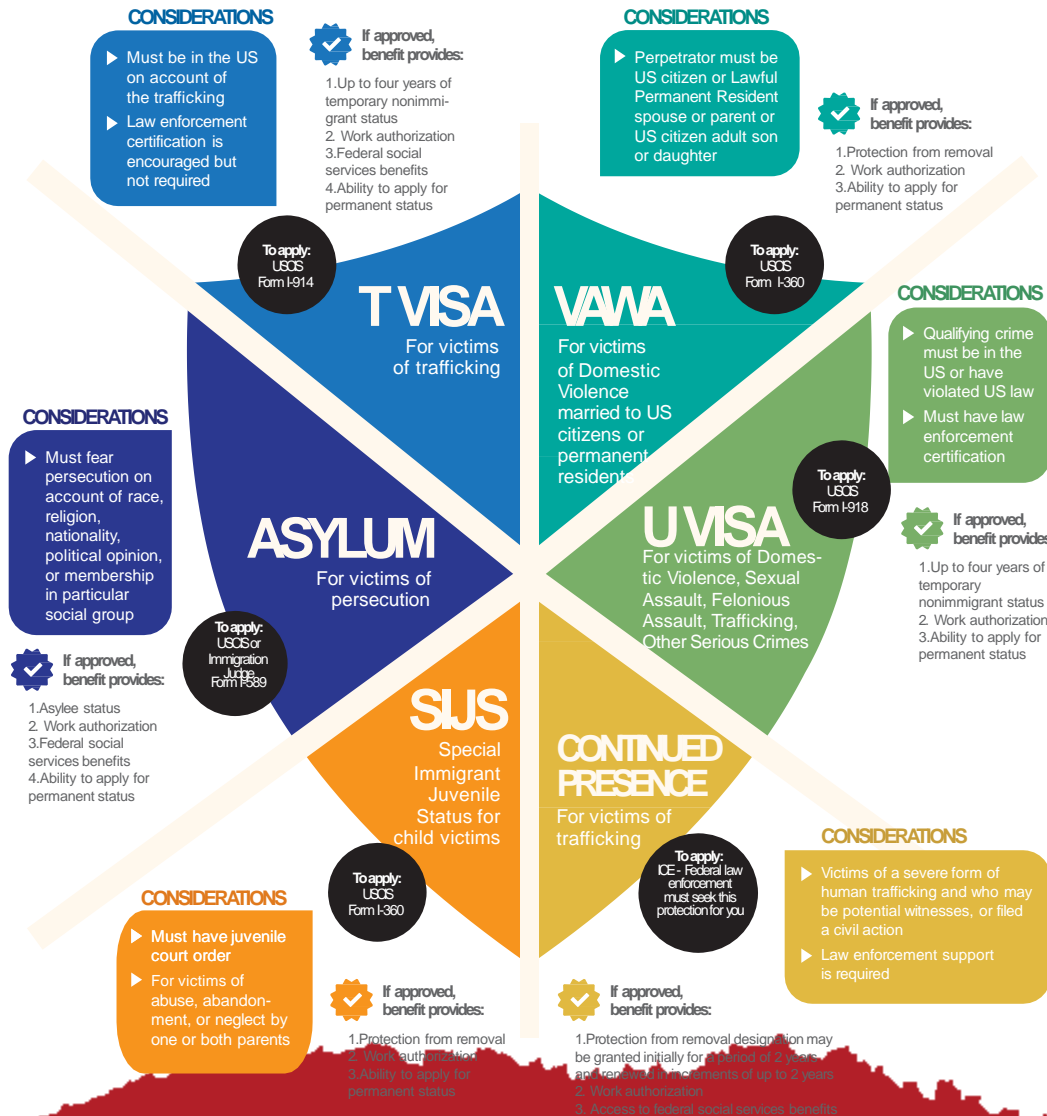


Safe Spaces and Immigrant Crime Victims

March 2, 2018

Harvard Law School

PROTECTIONS FOR IMMIGRANT VICTIMS



Importance of Early Screening for: VAWA, T, U & Abused Spouses of Work Visa Holders

- Screen for crime victim based immigration relief
- Document history of abuse
- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Safety planning includes helping victim safely carry documentation
 - Copies of DHS documents
 - Letter stating victim in the process of filing

Know How to Access Accurate Information About Immigrant Victims' Legal Rights to...

- Legal services
- Immigration relief
- VAWA confidentiality
- Language access
- Life and safety programs open without immigration restriction to all
 - E.g., Shelter, transitional housing, and victim services
- State & federal public benefits immigrant victims can access
- Protection orders and custody

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4%; U visa 7.5%

VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

VAWA Confidentiality Prongs

Non- Disclosure

Protects victims **who have filed** a protected case with DHS

Violation = \$5,000 fine and/or
-disciplinary action
-dismissal of immigration case

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

Protects:

- *All victims **abused by as spouse or parent**
- *All victims in the process of applying for U or T visas
- *Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:

All Victims

Requires:

No action at protected locations OR

Notice to Appear must state how they complied with VAWA confidentiality

DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - 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



January 2018 ICE Courthouse Enforcement Policy

- Limit enforcement to targeted immigrant
 - Criminal convictions, gangs, national security, public safety, orders of removal
 - Will not target witnesses or people accompanying to court
 - Enforcement in family law and other non-criminal
 - Should generally be avoided AND
 - Requires Field Office Director/Special Agent in Charge Approval

Law Enforcement Preliminary Survey Results

- 20% report reductions in immigrant victim cooperation – police reports/investigations
- Top crimes harder to investigate
 - Domestic violence 69%
 - Human trafficking 64%
 - Sexual assault 59%
 - Child abuse 50%
- Due to fear perpetrator will have victim deported (47%) & threats of deportation (42%)

Judges Preliminary Survey Results

- In 2017 - 35% of judges report that court cases interrupted due to immigrant victim's fears of coming to court
- Judges reporting higher rates of parties or defendants raising immigration status of a victim or opposing party in 2017 vs 2016
 - Criminal - 39%
 - Protection order – 32%
 - Custody – 31%
 - Divorce – 23%

Technical Assistance and Materials

- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu