

Handout Immigration Options for Crime Victims

May 26, 2021
Judge Julie Breslow

Special Immigrant Juvenile Status

- Two separate findings for Court to make:
 - Motion for Custody/Petition for Neglect/Dependency—
 - Motion Seeking State Court Predicate Order for SIJS status –
- Service/finding parents
- Elements:
 - Minor Child is under 21 (but look to state law, DC must make custody/placement/abuse/neg findings before age 18)
 - Minor Child is unmarried
 - State Court has jurisdiction to make custody determination under state law/UCCJEA (Emergency Jurisdiction or Home State Jurisdiction or Neglect/Dependency statute)
 - Requires a state court order with findings:
 - Court order finding child Dependent on court/state or placed in custody of individual or entity appointed by court—can be a non-offending parent, third-party, or foster care/delinquency –
 - Not in the child’s best interest to be returned to the country of nationality or habitual residence
 - That Reunification with one **OR** both parents not viable due to abuse, neglect, abandonment, or a similar basis under state law
 - SIJS status is for the minor only, does not help minor’s family members
 - Can lead to lawful permanent residency (green card) and an opportunity to apply for citizenship
 - SIJS applicant children are considered lawfully present which can provide access to subsidized health care for minors in many states
 - Key Resource: Special Immigrant Juvenile Status Bench Book
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>
- **T Visa (T nonimmigrant status)**
 - Temporary Immigration status (up to 4 years) for victims of severe human trafficking—Sex Trafficking and Labor Trafficking
 - Must be in US when seeking this status
 - Victim must comply with reasonable requests for assistance from law enforcement or prosecutors in investigation/prosecution

- Certain family members of victim can also qualify
 - Can get work permit and many federal/state public benefits
 - Can lead to lawful permanent residency (green card) and an opportunity to apply for citizenship
 - Victim must demonstrate that they would suffer extreme unusually severe hardship if removed from US/returned to home country
 - T visa declarations from judges, police, prosecutors, or child welfare agencies provide important evidence for the victim’s immigration case
 - Declaration are not mandatory
 - T visa provides better protection from deportation than SIJS
 - Key Resource: U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (August 12, 2020) <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2020>
- **U Visa (Broader than the T Visa)**
 - Immigration status for victims of crime and their families
 - Qualifying criminal activities – 25 including:
 - Domestic violence (spouse/intimate partner/child abuse)
 - Sexual assault and sexual exploitation
 - Human trafficking
 - Stalking
 - Kidnapping and abduction
 - Felonious assaults
 - Murder/Manslaughter
 - Witness tampering/obstruction of justice
 - Must be a victim of or “indirect victim” of a qualifying crime
 - Murder victim’s family =indirect victim.
 - Victim has to prove they has suffered substantial physical or mental abuse or injury as a result of the criminal activity
 - Obtaining a U visa certification from judge, judicial official, law enforcement, prosecutor, child or adult protective services is a mandatory prerequisite to filing the victims’ immigration case
 - Certification describes the victim’s helpfulness
 - Can lead to lawful permanent residency (green card) and an opportunity to apply for citizenship
 - Key Resource: U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (August 12, 2020) <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2020>

- **VAWA Self Petition**

- Self-Petitioner's relationship to abuser
 - Victim is or was married to abuser
 - Requires good faith marriage
 - Victim is or was the child or step-child of the abuser, or
 - Victim is the parent of an over 21 year old citizen child abuser
- Abuser must be a legal permanent resident of the U.S. or a U.S citizen
- Self-Petitioner currently or formerly lived with abuser
- Abuser subjected Self Petitioner to "battery or extreme cruelty"
- Self-Petitioner is of "good moral character"/law abiding
- Approved self-petitioners are eligible to apply for lawful permanent residency (a green card) and ultimately citizenship
- While self-petition is pending and after approval the victim has some protection from deportation through VAWA confidentiality but is undocumented until they are granted lawful permanent residency
- VAWA self-petitioners are granted some access to public benefits when they receive prima facie determinations three months after filing.
- Judicial findings in protection orders, custody, child welfare and other cases provide victims helpful evidence for their VAWA self-petition cases.
- Key Resource: Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims

<https://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimimmrights10-11-13>