

Summary: U.S. Citizenship and Immigration Services (USCIS) Answers Judges' Questions on SIJS, U Visas, and T Visas

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**This session was not recorded at USCIS request.

USCIS Opened the session by answering many of the question they received via a 1-hour presentation, in the following order:

- I. Introduction of the U and T Visa**
- II. Special Immigrant Juvenile Classification Overview**
- III. Violence Against Women’s Act (VAWA) Self-Petitions**
- IV. VAWA Confidentiality – U.S.C.1367 Protections**

I. Introduction of the U and T Visa

- a. Strengthens law enforcement’s ability to detect, investigate, and prosecute trafficking in persons – T visa and certain qualifying crimes – U Visa
- b. This tool encourages victims to report crimes and participate in the criminal justice system even if they don’t have immigration status
- c. Offers protection to victims in keeping with the humanitarian interest of the U.S.
- d. USCIS confirms USCIS dual intent to help law enforcement and stabilize victims of crime
- e. **Basic T Visa Requirements**
 - i. Victim of “severe form of trafficking in persons” (both sex & labor)
 - ii. Victim physically present in the U.S. on account of trafficking
 - iii. Must comply with reasonable request to help investigate or prosecute traffickers (exemption for age and exception for trauma) - if under the age of 18 when the trafficking occurred, lack of contact with LE agency is due to psychological or physical trauma
 - iv. Victim must show that removal from U.S. would cause extreme hardship
 - v. Victim is admissible to the U.S.
- f. **Other Important Points about T visa**
 - i. Trauma / child exception: if under of the age of 18, exception if they establish lack of cooperation with law enforcement was due to physical or psychological trauma
 - ii. Must comply with reasonable request to help investigate or prosecute traffickers (exemption for age and execution for trauma - if under the age of 18 when the trafficking occurred, lack of contact with LE agency is due to [psychological or physical trauma]
 1. In other words, it can be exception to comply if under age 18 when at least an act of human trafficking is reason for lack of contact with certifier due to trauma
 - iii. Recognition of under the age of 16 or unable to provide info, a parent or friend can provide that info on the victim’s behalf

- iv. There does not need to be an exchange of money for the purpose of commercial sex. Any exchange of goods constitutes commercial sex (e.g., housing or drugs)
- v. More cases filed for forced labor trafficking cases than sex trafficking cases
- vi. Victims can qualify for T Visa even If the trafficking is interrupted
- vii. Not focused on the severity of the abuse for the T Visa
- viii. Officers have a broad range to waive unlawful presence or criminality if caused by or incident to the human trafficking
- ix. Elements of force, fraud, or coercion unless its sex trafficking and the victim is under 18
- x. Judges can detect severe forms of victimization even if the proceeding is not a trafficking case
- xi. Form I-914B – Supplements B, Declaration of Law Enforcement
 - 1. Supplement B is optional
 - 2. Is completed as part of a victim-centered approach to combat human trafficking
 - 3. T Visa declarations do not expire in contrast to the U Visa law enforcement certification
 - 4. Charges do not have to be filed, nor does an investigation need to be opened at the time the certification is signed
 - 5. A judge may sign this form based on having completed the sentencing in a criminal case

g. Basic U Visa Requirements

- i. Victim of qualifying criminal activity
 - 1. Most frequently seen crimes are domestic violence, felonious assault, sexual assault
- ii. Victim has specific, credible, and reliable information about qualifying criminal activity
- iii. Victim was, is being, or is likely to be helpful to law enforcement in detection, investigation, prosecution, conviction or sentencing or criminal activity – ongoing requirements
- iv. Additional eligibility requirements:
 - 1. Victim suffered substantial physical or mental abuse as a result of qualifying crime
 - 2. Victim is admissible to the U.S.

h. Form I-918 Supplement B - U Visa Certification

- i. This form is **REQUIRED** (Initial Evidence for the U Visa)
- ii. Certifying agency should complete Form I-918B
- iii. Signing the certification does not confer immigration status
- iv. Certifying official specifies:
 - 1. Which crime the petitioner suffered
 - 2. Statutory citation for crime
 - 3. Victim’s helpfulness
 - 4. Any observations of injury to the victim
 - 5. Any other relevant information

i. Other Important Points on the U Visa

- i. Judges may sign certification who conducted the sentencing or detected a qualifying criminal activity during a case (civil or criminal proceeding)
- ii. USCIS will look at all evidence submitted
- iii. Bystanders might be eligible usually if they suffer a direct injury as of result of the crime.
 - 1. Another person/parent or guardian or next of friend can provide the helpfulness if under the age of 16 or disabled
 - 2. Termination of Parent Rights not required

II. **Special Immigrant Juvenile (SIJ) Classification Overview**

- a. Immigration benefit for certain noncitizens children who cannot be reunited with 1 or both parents due to abuse, neglect, abandonment, or similar basis under that law
- b. No derivatives or immigration benefits for the parents
- c. Each child will need their own order and SIJ case
- d. Provides a pathway to lawful permanent residence status (three step process)
 - i. Obtain juvenile court determination
 - ii. Get I-360 petition approved
 - iii. Apply for green card or Lawful Permanent Resident status
- e. **SIJ: Eligibility Criteria**
 - i. Under 21 at time of filing w/ USCIS
 1. Will remain eligible even if they turn 21 after filing
 - ii. Unmarried
 - iii. Physically present in the U.S.
 - iv. Subject of state juvenile court order with required determination on:
 1. Custody or dependency
 2. Parental reunification and
 3. Best interest
 - a. Be eligible for USCIS consent
- f. **SJI: Age**
 1. Age at the time of filing
 2. Petitioner will remain eligible even if they turn 21 after filing
- g. **Age at time of juvenile court order(s)**
 1. State law is controlling as to whether a petitioner is considered a “child” or any equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceeding at the time the orders are issued
- h. **Juvenile Court**
 - i. U.S. court has jurisdiction under state law to make judicial determinations on the custody and care of juveniles (8 C.F.R. 204.11(a))
 1. This means the court has the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law
 2. Title and type of the court may vary (e.g., juvenile, family, probate, youthful offender)
 - ii. Validity of Determination
 1. Generally expected to remain in place until the juvenile reaches the age of majority or the goal of a child welfare permanency plan, such as adoption, has been reached
 2. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state laws
 3. Issued under state law
 - a. The order(s) should use languages establishing that the judicial determinations were made under state law (e.g., citation to relevant state law(s))
 4. Determinations do not all have to be in the same order
 - a. Multiple orders are fine, as long as all required determinations are made
 - b. Looking for juvenile court to make an individualized assessment and analyze what they would normally consider under their own state law

- c. Court must have authority to make determination over care and custody or dependency over that juvenile. There will be many names, they are looking to see if the court has the determination.
- d. It's helpful for courts to cite state law if your able to, helps them to make determinations. If you only cite federal law, it may not be sufficient and then the orders may look like they were made in order to get SIJS.
- e. USCIS is not looking for other factors that they usually do not look at, such as country conditions. Recommend that judges look at what they normally are required to look at under your state law.
- f. Should the judge have to also address gangs and social economic conditions in the home country? Not required.

5. Factual basis

- a. Can be the order(s) and or underlying filings
- b. USCIS does not require specific documents to establish factual basis
- c. Burden is on petitioner factual basis for court determinations

III. **VAWA / Overview of I-360 Self-Petitions**

- a. Pathway to immigration relief to victims of DV
- b. Does not require abuser's cooperation
- c. Victim can submit without abuser's knowledge
- d. Victims are no longer dependent on their abuser and a barrier to relief is lifted
- e. Eligibility
 - i. Qualifying relationship: spousal relationship, child, parent
 - ii. Applies equally to both men and women despite the name of the petition
- f. If self-petitioner has had their important documents destroyed, USCIS allows any credible evidence for U and T's as well.
- g. Must meet the burden of proof by preponderance of the evidence
- h. **Who can file a VAWA Self-Petition?**
 - i. Spouse—The abused spouse or former spouse of a U.S. citizen or lawful permanent resident (child may be included)
 - ii. The spouse of a U.S. citizen or lawful permanent resident whose child has been abused (child may be include as a beneficiary)
 - iii. Child—The abused child(ren) of a U.S. citizen or lawful permanent resident
 - iv. Parent—The abused parent(s) of a U.S. citizen son or daughter
- i. VAWA SP Eligibility
 - i. Has or had a qualifying relationship to the US Citizen or LPR abusers
 - ii. Subject to battery or extreme cruelty by the US Citizen or LPR abuser
 - iii. Resides or resided with abuser
 - iv. Good moral character
 - v. Married in good faith - for self-petitioning spouses only

IV. **VAWA Confidentiality U.S.C. 1367 Protections**

- a. Limitation on use of adverse information - USCIS will treat info from abusers inherently suspect, must independently verify it
- b. Prohibition against disclosure - if an application exists
- c. Protection applies to the individual and anything they apply for

- d. These protections apply to all applicants and beneficiaries (including qualifying relatives of: T Visa, U Visa, and Relief under VAWA – Victims of domestic violence).
- e. Notice to Appear (NTA) (Notice for Removal Proceeding/Immigration Court) and limitation of enforcement action – limitation on Immigration Custom Enforcement - at certain locations, including to a courthouse particularly hearings related to abuse
- f. When Do VAWA Confidentiality Protections Apply?
 - i. From the moment of filing or when officials believe a person is a beneficiary of T, U or VAWA Relief
 - ii. Prohibitions to disclosure may remain in place even after appeals have been exhausted
 - iii. If the underlying benefit is granted, the protections apply indefinitely