

Complex Issues that May Arise When Filing a U Visa Application: Inadmissibility, Derivative Applications, and Waitlists

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Introductions

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Learning Objectives

By the end of this training, you will be better able to:

- Identify potential grounds of inadmissibility
- Prepare a complete application to overcome any potential grounds of inadmissibility and avoid Requests for Further Evidence (RFEs)
- Identify problems with derivative applications
- Understand the process of relief with the U visa waitlist

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

*Includes any similar activity where the elements of the crime are substantially similar

**Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

Who can apply?

- Victims of qualifying criminal activity
- Bystander victimization – very limited
- For child victims (under 16) a “next friend” can provide helpfulness
- Qualifying Family Members

Who can apply? Qualifying Family Members & Indirect Victims

If the victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, then the following will be considered “indirect victims”:

- If victim is under 21- then parents, unmarried siblings under 18, spouse, and children under 21 years of age
- If the victim is 21- then spouse, children under 21 years of age

8 C.F.R. 214(a)(14)(i)

Case Scenario #1

You meet Anna and her son, William. They are both undocumented. William is 15. Anna tells you that her U.S. citizen daughter, Nancy, who is 9, was sexually assaulted by a neighbor. Anna has reported the crime to the police and is currently working with the District Attorney's office. She tells you that she has a daughter named Gloria in her home country who is 17 years old. Gloria is also pregnant.

What to File

- Form I-918, Petition for U Nonimmigrant Status
- Form I-918 Supplement A for Derivatives (qualifying family members)
- Form I-918 Supplement B Certification – U visa certification
- Form I-192 if there are inadmissibilities that need to be waived (pardoned)
- Fee or Fee Waiver for Form I-192
- Form I-765 Employment Authorization Document (EAD)(category (C)(14) for victim/principle and (a)(20) for derivatives)
 - Two photos of the applicant
 - Identification documents
 - I-765WS

Inadmissibility

- INA Section 212(a) – lists all the grounds of potential inadmissibility
- INA Section 212(d)(14) – All grounds of inadmissibility (except national security grounds) can be waived for U visa applicants

What potential grounds of inadmissibility have your clients faced?

Common Inadmissibility Issues

- Crimes/criminal activity of the applicant, INA 212(a)(2)
 - Crimes involving moral turpitude (CIMT's), drug offenses, multiple criminal convictions, etc.
- Immigration violations –
 - Entry without inspection (EWI) entry, INA 212(a)(6)
 - Unlawful presence (ULP), INA 212(a)(9)(B)
 - Permanent bar, INA 212(a)(9)(C)
- No passport, INA 212(a)(7)

Case Scenario #2

When you interview Anna, she tells you that she has entered the U.S. 3 times – in 1995, 2002, and 2005. She was stopped at the border in 2002. She doesn't remember what happened in 2002. Anna tells you she has a conviction for shoplifting from 2001, and that she went before an Immigration Judge after that. Anna tells you her son only had one entry in 2005. She states that William has had one arrest when he was 14 for possession of marijuana. She says nothing happened to William and that he was “just let go” into her custody. Gloria has never been to the U.S.

Finding Out About Potential Bars

- Interviews with client
- Get records!
 - FOIA: NRC, CBP, ICE, EOIR
 - FBI check
 - Arrest records: police report, charging document, final disposition, plea documents/agreements
- General discretion

What else do you want to know
about Anna and William?

Case Scenario #3

You interview Anna and William again. Anna tells you that she has 2 other children who were born in the U.S. She tells you that her daughter was born with a severe physical disability and has to use a walker. Her daughter receives physical therapy weekly. Anna tells you that she works 2 jobs to support her kids, and also volunteers at the clinic where her daughter receives her physical therapy. William tells you that he is now a straight A student. He plays on his school's baseball team and he also volunteers at the clinic where his sister receives her physical therapy.

How do I apply for a waiver?

- The waiver is similar to a pardon to address grounds of inadmissibility
- Submit Form I-192, “Application for Advance Permission to Enter as Nonimmigrant”
- Fee is currently \$545.00, but can request a fee waiver
- Identify all grounds of inadmissibility with specificity
- Address equities of the case in your argument
 - Consider should waiver be granted in national or public interest?

What evidence do Anna and William have to submit for their I-192s (waiver of inadmissibility)?

Supporting Documents

- Birth certificates of U.S. citizen children
- Evidence of rehabilitation
 - Certificates for classes/awards
 - Affidavits from family, friends, co-workers
- Documents related to criminal offenses
 - Final dispositions/sentences
 - Only use Record of Conviction (ROC); challenge officials that ask for records outside of ROC (i.e., police reports)

Case Scenario #4

After you file the applications for Anna and William, Anna tells you that she has another arrest for assault from last year. She didn't tell you because she was embarrassed. She got into a fight with her ex-sister in law. She was convicted of a class A misdemeanor. She also tells you that Gloria has been to the U.S. once before, but she was caught for shoplifting. Gloria had an immigration "hold" and was then returned to her home country.

U Visa Waitlist

- Only 10,000 U Visas can be issued by US CIS each fiscal year
 - This number only applies to principal applicants, not derivatives
- What happens when the 10,000 cap is reached?
 - U visa waitlist
 - Deferred Action Status

Deferred Action Status under the U Visa Waitlist

- U visas for FY 2014 and 2015 have already been used
- Current wait for a decision on a U visa is 12-14 months
- Once adjudicated, applicants are given deferred action status
- Must apply for an Employment Authorization Document (EAD)

What to File for an EAD Based on Deferred Action

- Form I-765
- Form I-765WS
- Deferred Action Notice
- Two photos of the applicant
- Identification Document
- No fee is required!!
- EAD issued for 2 years

Case Scenario #5

The applications for Anna, William, and Gloria are approved. Anna calls you 6 months later and tells you that she needs to go back to her home country. Her mother is dying and she wants to see her.

What if an Inadmissibility is not Identified in Advance and Triggered Later?

- Ground that is not revealed, or a new arrest or criminal issue
- Travel outside the U.S. – triggering ULP
- Pre- or Post- U Visa/I-192 approval
 - Amend I-192
 - File new I-192

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

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