


Identifying the Best Immigration Options for Your Client: Safety, Benefits, and Economic Security


Day One
Session 1C
New Orleans, LA



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Introductions

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Learning Objectives

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

- Identify different forms of immigration relief for survivors and assist survivors in deciding which path is best for their situation
- Determine timeframes for decisions on different forms of immigration relief for survivors
- Understand the connection between eligibility for public benefits and different forms of immigration relief



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Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number
- Better access to housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship



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Sonia's Story

Sonia is a survivor of family violence and sexual assault. You meet with her because she is seeking help. She is in an abusive relationship with her partner, Eddie. She tells you that she came to the U.S. two years ago from Honduras because she was fleeing a cousin who had raped her. She left a newborn baby behind in Honduras. She was 15 when she came to the U.S. Sonia enrolled in high school when she came to the U.S. Soon after she arrived in the U.S., she met and fell in love with Eddie who promised he would take care of her and start a family with her.

Sonia decided to drop out of high school to be with Eddie. Then Eddie started drinking and staying out late at the same time Sonia became pregnant with their first child.



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Sonia's Story Continued

Money was very tight and Eddie refused to let her look for work or attend English language classes at the church down the street. He wouldn't let her friends call or visit her at the house. Eventually Eddie started hitting her. After one particular brutal beating, Sonia ran into the street and flagged down help from a passerby who called the police. The police came and arrested Eddie. She tells you she is not sure what to do and is thinking of staying with Eddie. She doesn't know where she could go if she leaves him because the lease is in Eddie's name. She doesn't have a job and doesn't know how she would support herself and her child.



Systemic Barriers

- Fear of Deportation
- Language Barriers
- Fear of Losing Custody/Access to Children
- Fear of Abandoning Home
- Economic Survival
- Misinformation about the U.S. Legal System
- Fear of Being Ostracized by Cultural Community




Potential Immigration Legal Remedies for Survivors

- **Applications filed with USCIS**
 - VAWA self petition*
 - Battered spouse waivers
 - U visa*
 - T visa*
 - SIJS*
 - Asylum and withholding of removal
- **Forms of relief from removal-granted by an Immigration Judge**
 - VAWA cancellation of removal
 - VAWA suspension of deportation




VAWA SELF-PETITIONING




General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage




VAWA Self-Petitioning Available

- If case filed within 2 years of marriage termination
- Bigamy exception
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)




Does Sonia qualify for relief under VAWA?

Do you need to know anything else to determine this?




Sonia's Story Continued

Sonia tells you that she recently applied for and received a protective order. She also says that Eddie has his green card and that he got it through his mom. She doesn't have a copy of it though. Sonia says that she was arrested by Immigration when she first came to the US because she was using someone else's green card to try and enter. She didn't go to her hearing with the Immigration Judge because Eddie told her not to go. She and Eddie got married 3 weeks ago before the police were called because he said he was going to help her with her immigration status.




Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:**
 - VAWA self-petitioners' children receive immigration benefits – no separate petition needed
- **Public Benefits:** As qualified immigrants (≈ 3 months)
- **Employment Authorization:**
 - Citizen abuser (≈ 6 months);
 - Lawful permanent resident abuser (currently ≈ 6 months, past ≈ 15 months)
- **VAWA Confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful Permanent Residency:**
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator (≈ 5+ years-depends on when a visa is available)



THE U VISA FOR CRIME VICTIMS




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U Visa - Congressional Intent

Congress designed this visa to assist law enforcement and criminal justice systems in the investigation/ prosecution of criminal activity, while providing an incentive for undocumented immigrant victims to report crimes as well as protection for such individuals

- 1) Strengthens ability of law enforcement to investigate and prosecute designated crimes; and
- 2) Offers humanitarian protection to crime victims and family members.



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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



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Why "Criminal Activity" and Not Limited to "Crimes"?

- U visa protection available even when:
 - Investigation does not result in prosecution
 - Survivor/Victim helpful in investigation does not testify at trial
 - Abuser eludes arrest
 - Criminal case dismissed
 - Survivor/Victim comes forward makes report and police or prosecutors decide not to prosecute
 - Prosecution but no conviction
 - Survivor/Victim of listed criminal activity but another crime prosecuted
 - Prosecution cannot take place (diplomats, no extradition)



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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



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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



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Who can certify?


- Police officer
 - Local and State police
 - Federal
 - University
- Prosecutor (State and Federal)
- Judge
- Immigration Officer
- Adult and Child Protective Services
- EEOC, DOL and state labor agencies
- Other authority with responsibility for investigation or prosecution of criminal activity



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Other Federal, State or Local Agencies


- Agencies with criminal investigative jurisdiction
- In areas of expertise
- Including but not limited to:
 - Child Protection Services Worker
 - Adult Protective Services Worker
 - EEOC
 - Department of Labor
 - AFT, FBI



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What the U Visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
 - Include any findings regarding injuries
- Helpfulness of the victim
 - Current,
 - Past, OR
 - Willingness to be helpful
- Any family members implicated in the crime



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Does Sonia qualify for a U Visa?
Do you need to know anything else
to determine this?



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Sonia's Story Continues

After talking to Sonia some more she confides in you and tells you that she has been arrested in the U.S. for shoplifting. She didn't tell you at first because she was embarrassed. It happened right before she met Eddie.


She also tells you that she was arrested once before for possession of marijuana, but it was because she was trying to help Eddie. He had been arrested before for something else and he convinced her to take the blame for the marijuana.



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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



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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)



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Finding Out About Potential Bars

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



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Survivors with Criminal or Immigration Violation History

- Unlike VAWA, there are more generous waivers available for U visa applicants
- U visa applicants can apply for a waiver of all grounds of inadmissibility except for those who are Nazis or perpetrators of genocide, torture, or extrajudicial killing
- Must show that the waiver should be granted in the national or public interest



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The U Visa Process

- Law Enforcement signs certification
- Survivor files U visa application
- DHS adjudication – grants/denies U visa
- U visa or wait-list approval
- Can apply for lawful permanent residency “green card” after 3 years
- Can apply for U.S. citizenship 5 years after “green card”
- **Benefits:**
 - U visa recipients are lawfully present for federal health care purposes
 - Some states give benefits upon filing of the U visa



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U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually – Currently there is a Wait List
- Work authorization (≈ 14-18 months) – Via Deferred Action Status
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- Lawful permanent residency after 3 years if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - + humanitarian need, family unity or public interest
- U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character



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Which U Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not **unreasonably refuse** to cooperate in the detection, investigation or prosecution of criminal activity; AND
 - Humanitarian need, OR
 - Family unity, OR
 - Public interest
- Department of Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency



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Sonia's Story Continued

You ask Sonia more about how she came to the U.S. and she tells you that she used all the money she had and paid a person to help her get to the U.S. When she arrived, the smuggler demanded more money. She had none and no family who would help her, so he refused to let her leave. He made her cook and clean for the others who came through and could pay and leave. He also sexually assaulted her and told her it was part of her "payment" to him. She was eventually able to escape one night when the smuggler fell asleep and forgot to lock the door to her room.



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THE T VISA FOR HUMAN TRAFFICKING VICTIMS



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Requirements for a T Visa

- Must be survivor of a severe form of trafficking in persons;
- Survivor must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking;
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR
- Has not attained the age of 18; AND
- Would suffer extreme hardship involving unusual and severe harm upon removal



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A Severe Form of Trafficking in Persons Means:

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery



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Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation from protections
- Psychological isolation
- Threats to deport or contact law enforcement



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Trafficking v. Smuggling

Trafficking

- Crime against a person
- Contains an element of coercion
- Subsequent exploitation
- Trafficked people treated as victims

Smuggling

- Unauthorized border crossing
- No coercion
- Facilitated entry by another person
- Smuggled people treated as criminals



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Based on what Sonia told you about her trip to the U.S., is she eligible for the T Visa ?


T Visa Facts and Benefits

- 5,000 U Visas can be granted annually
- The T visa grants a temporary 4 year stay to live and work in the U.S.
- Work authorization (6 months- 2/2014)
- Adult: Can petition for victim's spouse/children
- Under 21 child: Can petition spouse, children, parents + siblings under 18
- Family members can include their children
- Lawful permanent residency after 3 years
- U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character

Sonia's Story Continued

You ask Sonia where her mother and father are – since she came to the US so young and by herself. She tells you that her mother died and she never knew who her father was. That was the reason why she was targeted by her cousin. She lived with an aunt, who basically neglected her. As a result she had no one to protect her when her cousin began sexually assaulting her. When she became pregnant she was scared. She had her daughter and left her with a friend and then fled to the US. She is 17 now, but about to turn 18 in a few months.


**SPECIAL IMMIGRANT
JUVENILE STATUS (SIJS)**



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Special Immigrant Juvenile Status


- Jurisdiction over the care, custody or dependency of a minor child
- PLUS – finding that reunification with at least **one** parent is not viable due to:
 - Abuse, abandonment, neglect
 - VAWA 2005 Abuse includes battery
- AND NOT in the child's best interest to be returned to their home country



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Range of Court Orders in Which Findings Can be Made

- Court order, finding, declaration
- Awarding custody or
- Any order involving placing a child with:
 - An agency
 - Department
 - Individual
 - Non abusive parent
 - Grandparent
 - Kinship care
 - Other



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Types of Proceedings SIJS findings

- Custody
- Divorce
- Legal Separation
- Motions for a declaratory judgment
- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Paternity
- Child support
- Criminal cases

Materials: SIJS Examples Provided By Case - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/familylaw/SIJS-Proceedings_Chart.pdf/view



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What Children with SIJ Status Receive

- Protection from deportation and removal
- Legal permanent residency
- Government issued ID
- Legal work authorization
- Eligibility for driver's license or state ID and social security number
- Eligible for citizenship after 5 years, if at least 18 years old
- SIJS recipient may NEVER file family petition for natural parents



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Is Sonia eligible for SIJS?



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Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016
- **NIWAP Technical Assistance:**
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Questions



Evaluations



