


Advocate's Role in VAWA and U Visa Cases


Day Two
Session 3B
New Orleans, LA



1

Introductions

- Rocio Molina
 - Associate Director of NIWAP
- Edna Yang
 - Assistant Executive Director,
American Gateways
- Eric Tijerina /Jessica Salsbury
 - Policy Analyst, USCIS Office of
Policy and Strategy




2

Learning Objectives

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

- Understand basic requirements for common types of victim-based immigration benefits
- Identify who may be eligible for immigration relief
- Facilitate access to immigration remedies by assisting survivors and attorneys collect evidence to strengthen their immigration application



3

General Caveats

- Women, men and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas

That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault



4

Must Have Holistic Approach

Survivors are better served when you address their needs holistically



5

Building Trust Establishing the Relationship

- Respect confidentiality
- Believe and validate her experiences
- Acknowledge injustices
- Respect her autonomy
- Help her plan for future safety
- Promote access to community services
- Explain VAWA confidentiality protections



6

Learning About a Survivor's Immigration Status

Important Considerations

- At what point do you raise the question?
- What are some signs that might lead you to ask?
- How would you ask the question without scaring away your client?
- Why is asking sooner rather than later important?

NIWAP

7

Large Group Discussion

How many of you work with the same lawyer(s)/advocate(s) on a regular basis?

NIWAP

8

Small Group

In your table, list the ways that you already work together with attorneys, advocates and law enforcement for the benefit of immigrant survivors?

Let's report back



NIWAP

9

Various Ways Advocates Can Help

- Safety planning for each survivor
- Bridge culture gap
- Ensure victims are aware of civil and criminal remedies
- Monitor what is happening in the civil and criminal systems that may affect a survivors immigration options
- Provide a "trusted" connection to law enforcement/prosecutors to request U visa certification
- Aid survivors navigate the various systems they encounter
- Work with survivors to collect and prepare the documentation you need to file an application



10

Various Ways Advocates Can Help

- Coordinate training for law enforcement, prosecutors, and other potential U visa certification signers
- Training other advocates about safety planning around immigration
- Meet with systemic leaders and share your stories about systemic barriers with the goal to reduce them
- Inform policy makers of what is happening in your community
- Work towards community wide education of rights and resources
- Develop relationships with stakeholders
- Bridge between family law and immigration issues



11

Unlawful Practice of Law

- The unauthorized practice of immigration law occurs when those who are not attorneys or accredited representatives:
 - Provide legal assistance to applicants or petitioners in immigration matters
 - Charge more than a nominal fee
 - Hold themselves out to be qualified in legal matters
- *Notarios* are not attorneys in the US
- Who can represent immigrants in removal proceedings
<https://www.justice.gov/sites/default/files/eoir/legacy/2009/10/06/WhoCanRepresentAliensFactSheet10022009.pdf>
- 8 C.F.R. §292.1 defines who may represent immigrants before DHS



12

Large Group Discussion

- Best Practices – Victim Advocate & Lawyer collaboration
- When lawyers with expertise working with immigrant victims are not available?
 - Long waiting list
 - Not available (Rural)
- Roles of: LSC lawyer, family lawyers, advocates and TA providers

NIWAP

12/5/2016 – 13



Key Points

- Immigration screening as early as possible is essential
- Cannot assume by name or sight that the survivor is or is not an immigrant
- Changes in case strategy- in some instances an immigration case should be filed before:
 - CPO, family or criminal court case
 - Victim travels to new location
 - Especially if you anticipate abuser calling Law Enforcement or using courts

NIWAP

14

OVERVIEW OF VAWA SELF-PETITIONING AND U VISA FROM USCIS

NIWAP

15

VIOLENCE AGAINST WOMEN ACT (VAWA) ELIGIBILITY

- Provides immigration relief to certain victims of domestic violence
- Victim can submit own petition without abuser's knowledge or cooperation
- Cooperation with law enforcement not required



BENEFITS OF VAWA



- ✦ Victim can self-petition (Form I-360), does not need a sponsor
- ✦ After self-petition is approved, the victim may:
 - Receive deferred action
 - Get a work permit
- ✦ Immediate relatives (spouse, child, and parent of a U.S. citizen) can submit Form I-485 (green card application) with Form I-360
- ✦ Relatives who fall into a preference category can submit Form I-485 when a visa becomes available



BASIC VAWA REQUIREMENTS

The victim must show:

- Qualifying family relationship to the abuser
- Abuser is a U.S. citizen or lawful permanent resident
- Subjected to battery or extreme cruelty by the abuser
- Resides or resided with the abuser
- Good moral character




WHO CAN FILE A VAWA SELF-PETITION?


Spouse—The abused spouse of a U.S. citizen or permanent resident (child may be included as a derivative beneficiary)

Child—The abused child(ren) of a U.S. citizen or permanent resident

Parent – The abused parent(s) of a U.S. citizen over the age of 21.

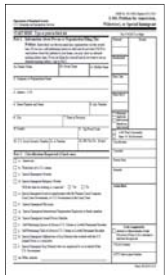



Note: VAWA immigration relief applies equally to women and men



HOW TO APPLY

- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant
- Signed statement describing victimization and eligibility
- Any credible evidence supporting eligibility
- There is no fee for Form I-360 VAWA petitions


Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Employment related abuse
- Sexual Abuse
- Coercion & threats
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Minimizing, denying, blaming
- Harming pets
- Coercive control



21

Good Faith Marriage



NIWAP 22

Good Faith Marriage

- Intent *at the time of the marriage*
- Their subjective state of mind
- Did they intend to establish a life together
- Separation, even after a short marriage
 - Is not proof that marriage was fraudulent
- Bigamy
 - Immigrant can qualify as “spouse” if he or she was unaware of the bigamy at the time of the marriage ceremony

NIWAP 23

Evidence of Good Faith Marriage

- Children
- *The battering or extreme cruelty*
- Coercive control
- Residence with the abuser
- Evidence about:
 - How the parties met
 - How the relationship developed
 - Burden of proof higher for shorter marriages
- No need for ongoing documentation from the time of marriage to:
 - Time of separation or present date

NIWAP 24

VAWA Self-Petitioner Can File Even If

- Marriage is legally terminated
 - must be filed within 2 years of divorce being final
- Abuser dies
 - must be filed within 2 years of death
- Abuser is deported or denaturalized - connection to DV
- Abuse occurred before abuser became LPR or USC
- Survivor is not in the U.S.

NIWAP

25

IMMIGRANT CRIME VICTIM VISA: U VISA

NIWAP

26

BASIC U VISA REQUIREMENTS

- Victim of qualifying criminal activity
- Crime must have occurred in U.S. or violated U.S. law with jurisdiction where crime occurred
- Victim has credible and reliable information about crime
- Victim must have been, is being, or is likely to be helpful to law enforcement – ongoing requirement
- Victim suffered substantial physical or mental abuse as a result of qualifying crime




U VISA LIST OF STATUTORY CRIMES

▪ Abduction	▪ Hostage Taking	▪ Rape
▪ Abusive Sexual Contact	▪ Incest	▪ Sexual Assault
▪ Blackmail	▪ Involuntary Servitude	▪ Sexual Exploitation
▪ Domestic Violence	▪ Kidnapping	▪ Slave Trade
▪ Extortion	▪ Manslaughter	▪ Stalking
▪ False Imprisonment	▪ Murder	▪ Torture
▪ Felonious Assault	▪ Obstruction of Justice	▪ Trafficking
▪ Female Genital Mutilation	▪ Peonage	▪ Unlawful Criminal Restraint
▪ Fraud in Foreign Labor Contracting	▪ Perjury	▪ Witness Tampering
	▪ Prostitution	


Includes:

- Attempt, conspiracy or solicitation to commit any of the crimes
- Substantially similar crimes




WHO IS A VICTIM?

- Generally, it is the individual acted upon during the crime





- Includes certain family members as indirect victim when the crime is murder/manslaughter, or when the direct victim is incapacitated or incompetent




HOW DOES VICTIM PROVE ELIGIBILITY?

- ✦ Form I-918 (main application)
- ✦ Signed statement from petitioner
- ✦ Evidence of the criminal activity including...
 - Form I-918B certification (required)
 - Police reports
 - Other evidence such as court transcripts, medical reports, affidavits, psychological reports, news reports,...
- ✦ Any credible evidence supporting eligibility
- ✦ Form I-192 if applicable


THE VICTIM'S ADDRESS



- ✦ Congress created special protections for people with pending or approved VAWA and U visa petitions.
- ✦ Victims may use a "safe address" on their petition
- ✦ "Safe address" can be the address of an attorney, preparer, shelter, or other safe place
- ✦ USCIS will use this safe address as the mailing address for all correspondence




ANY CREDIBLE EVIDENCE STANDARD



32

Why Survivors May Lack "Traditional Evidence"

- [1998 Paul Virtue Memo](#) recognizes problems for battered women safely accessing documentary evidence
- Survivor may have fled the marital home
- Abusive spouse
 - Controls finances, important documents
 - Did not put the victim spouse's name on the lease, mortgage, utility bills, titles to cars
 - Obtaining *traditional evidence* can tip off the perpetrator
- Lack of *traditional evidence* can be corroborating evidence of:
 - Battering
 - Extreme cruelty
 - Coercive control
- Civil protection order or Discovery in Family Case can be used to obtain traditional evidence



33

Striking a Balance: Goal of Credible Evidence

- Allows survivors to collect what evidence they can to prove their VAWA or U visa case
 - Reduce danger to victims
- Prohibit the requirement of any specific form of evidence
 - Central role of victim's affidavit
- Give adjudicators discretion to decide:
 - If the evidence submitted taken viewed in its totality is credible
 - What weight to give evidence
 - If evidence submitted establishes eligibility
 - By a preponderance of the evidence

NIWAP

34

Large Group Discussion

In what ways have you assisted survivors and attorneys collect evidence to strengthen their immigration application ?

NIWAP

35

What We Can Do

- Screening and identifying survivors
- Flagging for immigration inadmissibilities
- Helping survivors obtain identity documents
- Assist survivors with writing a declaration
- Providing a letter of support/ expert affidavit of services provided
- Collaborating with LE for U visa certification
- Collecting other evidence

NIWAP

36

Screening for Possible “Red Flags”

- Entry as an international exchange visitor
- Previous deportation/removal from the U.S.
- Failure to voluntarily depart
- Departure since original entry
- “Alien” smuggling
- Marriage fraud
- Criminal convictions
- Prostitution
- Drug or human trafficking
- Falsely claiming citizenship
- False testimony for immigration purposes



NIWAP

37

Value of Filing Early

- Benefits for victims of early filing
 - Protection from deportation
 - Earlier access to work authorization
 - State benefits in some states
 - Better position in family law case
 - Can use the RFE process to supplement application

NIWAP

38

Immigration Story Writing Intervention

- **Affidavit = A Survivor’s “Story”**
 - Unique opportunity for trauma informed healing
 - Most important pieces of evidence submitted
 - DHS hears directly from the survivor, in her voice
 - Less affidavit, than “story” of the survivor’s experience
 - Getting the full story for the immigration case can be a traumatic experience for survivors
 - The goal is to develop an approach that:
 - Obtains more complete information
 - Improves outcomes and helps survivors heal

NIWAP

39

Trauma Informed Approach to Immigration Story Writing

- **Immigration Story Writing Intervention**
 - Process by which advocate/attorney supports and helps survivors write their own story
 - By capturing trauma history through narrative (writing or verbalizing), survivors are facilitated to heal from trauma
 - What research tells us about importance of writing or verbalizing the trauma narrative

NIWAP

40

Survivor's Story: What is Required?

The story should include all the statutory criteria for the remedy you are seeking:

	VAWA Self-Petition	U/T Visa
1. Marital or familial relationship development	X	
2. Crime		
3. Helpfulness or cooperation with law enforcement		X
4. Substantial harm of abuse endured/ extreme cruelty and lasting effects	X	X

NIWAP

41

A Note About Interpreter & Translators

- Plan ahead for interpretation needs
- Survivor writing in her own language
- Train your interpreters and translators in:
 - Domestic violence and sexual assault training
 - Interpreter training
 - Trauma training
- Be creative

NIWAP

42

**Trauma Informed Story Writing
Strengthens the VAWA Case**

- **VAWA Self-Petitions/Battered Spouse Waivers/Cancellation**
 - Proof of extreme cruelty and/or battery
 - Details that improve the credibility of the story and the paper evidence presented
 - If abuse is credible it also provides evidence of valid marriage
 - **VAWA Support for:**
 - Domestic Violence Victim Waiver
 - Good moral character
 - Inadmissibility waivers for lawful permanent residency
 - Extreme hardship


NIWAP 43

**Trauma-Informed Story Writing
Strengthens the U Visa Case**

- Criminal activity
 - Impact on victim
 - Details enhance credibility of story
- Proof of substantial harm
 - Physical injury effects
 - Sexual assault emotional impact
 - Trauma and emotional harm from criminal activity
- Builds case of inadmissibility waivers
- Helps prove that victim did not unreasonably refuse to cooperate

NIWAP 44

**Small Group Exercise
Case Studies**




Scenario Sheet – Agata, Ami, and Guadalupe

- What immigration relief is available to the survivor?
- What evidence is available to support their application? What is evidence is not?
- How would you go about supporting them gather the evidence?

NIWAP 45

Evidence Checklist on NIWAP Web library



- VAWA Self-Petition
 - <http://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition/>
- U Visa
 - <http://niwaplibrary.wcl.american.edu/pubs/im-checklist-evidenceforuvisa/>



46

Make Self-Care Priority

- It is important to take care and time for yourself
- Working with those who have experienced violence may cause “vicarious trauma”



47

Tools for Self-Care

- Physical Activity
- Adequate Sleep and Rest
- Good Nutrition
- Nurturing Relationships
- Tending the Mind



48

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
 - Web Library: www.niwaplibrary.wcl.american.edu
- **VRIC Technical Assistance:**
 - Call (503) 274-5477
 - E-mail TA@victimrights.org



National Immigrant Women's Advocacy Project at the American University Washington College of Law

49

Questions



50

Evaluations



51

DISCLAIMER

This presentation module is intended solely to provide information. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner. This presentation does not have the force of law, or of a DHS directive.



Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2015-TA-AX-K043 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/ PROGRAM/ EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.

NIWAP
