

# Immigration Relief for Immigrant Victims of Domestic Violence, Sexual Assault and Human Trafficking **Victims**

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# Immigration 101 and Immigrant Crime Victims

## You can gain citizenship while you are in which immigration status:

- **Blue:** a visa
- **Yellow:** a green card (lawful permanent residency)
- **Purple:** either

## The most common way to get lawful permanent residency is:

- **Blue:** by staying in the U.S. for many years
- **Yellow:** through an employer
- **Purple:** through a family member

## Who of the following would qualify for a work visa:

- **Blue:** someone who invests a million dollars in the U.S. economy
- **Yellow:** a touring artist
- **Purple:** a restaurant worker

## An undocumented person is a criminal when:

- **Blue:** always, being undocumented is a crime
- **Yellow:** s/he enters the U.S. unlawfully
- **Purple** when the undocumented person commits and is convicted of a state or federal criminal law.

# Why is Legal Immigration Status Important?

## The Importance of Immigration Status

- Severs dependence on potential abusers
- Protection from immigration detention and deportation
- Ability to work legally
- Improved access family law remedies, such as protection orders and custody
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Ability to travel to and from the U.S. (with some exceptions)



## Potential Immigration Remedies

- Applications filed DHS
  - VAWA self petition
  - Battered spouse waivers (spouses of USCs with conditional permanent residency)
  - U visa
  - T visa (victims of trafficking)
  - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
  - VAWA cancellation of removal
  - VAWA suspension of deportation

## 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

What evidence would you use to prove:

- Battering?
- Extreme cruelty?

## Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

## **Factors that can constitute extreme cruelty**

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic Abuse
  - Employment Related Abuse
  - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money

**What kinds of evidence could a victim submit to prove battering or extreme cruelty?**

## Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Med records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports

## VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy
- Child abuse up to age of 25 to file
- Step children up until divorce
- Police report, protection order, medical records NOT required
- *All credible evidence* standard of proof



## Approved VAWA petitions

- Protection from deportation and detention  
–deferred action status.
- Legal work authorization
- Ability to apply for lawful permanent residency through VAWA

## VAWA Cancellation Elements

- Relationship to abusive party (broader than self-petition)
  - Mother of a child abused by the child's other parent who is a USC or LPR even when no marriage
  - More than 2 years have passed since divorce from the abuser
- Battered or Subject to Extreme Cruelty
- Good moral character
- Extreme Hardship to return to the home country
- Three years physical presence in the U.S.
- Not inadmissible

## Crime Victim (“U”) Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- 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

## Criminal activities covered by the “U” visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

# Who might be helped by the U Visa?

## What protection is there for family of U Visa applicants?

- Adult victims:
  - Spouse
  - Children
- Victims under 21 at time of criminal activity
  - Spouse
  - Children
  - Parents
  - Unmarried siblings under 18 (at the time of filing)

## Who can certify?

- Police officer
- Prosecutor
- Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

## 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



# **“Investigation or Prosecution”**

## **Includes:**

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

## Why “Criminal Activity” and not limited to “Crimes”?

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

## “Physical or Mental Abuse”

- Injury or harm to the victim’s physical person
- Impairment of the emotional or psychological soundness of the victim

## What is substantial physical or emotional abuse?

- Decided based upon each individual's experience
- Case-by-case determination using these factors:
  - nature of the injury inflicted or suffered;
  - severity of the perpetrator's conduct;
  - the severity of the harm suffered;
  - the duration of the infliction of harm;
  - permanent or serious harm to victim's
    - appearance,
    - health,
    - physical, and mental soundness

## Substantial Abuse (continued)

- No one factor is required
- Can include pre-existing conditions
- Can consider the severity of the perpetrator's conduct even if the actual impact is less than intended by the perpetrator

## Evidence to Prove:

- Physical abuse or injury
- Severity of perpetrator's conduct
- Emotional abuse or injury

# The U-visa Process

1. Certification
2. Application
3. Prima Facie if detained or in removal proceedings
4. Approval
5. U-Visa status 4 years
6. Some will qualify for lawful permanent residence

**What kinds of collaborations do you currently have that could help with obtaining U-visa certification?**



## **U-visa Certification: Considerations For Law Enforcement**

- Identify the victim
  - Note injuries observed
- Helpfulness of the victim
  - Current or past
  - Willingness to be helpful
- Any family members implicated in the crime
- **Goal: Identification of the crime, the victim and initiation of the process**

## 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
- Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency
- After 5 years lawful permanent residency can apply for naturalization

## **Factors That Harm Victim Access to VAWAs Immigration Protections**

- Criminal History
- Purchase/use of false documents
- Immigration/Benefits Fraud
- Other Red Flags

## Screening for Red Flags

- Alcohol abuse
- **Drug trafficking**
- Drug abuse or addiction
- Illegal gambling
- False testimony for immigration purposes
- Penal confinement
- Genocide, torture, killings, violations of religious freedom
- **Child Protective Services intervention**
- Communicable disease
- Physical or mental disorder
- **Any criminal convictions**
- Unlawful voting
  - Polygamy
- Prostitution
- Human trafficking
- \$ laundering
- Terrorist activities
- Espionage
- Communist
- Public charge
- Immigration violation
- Misrepresentation for immigration purposes
- Stowaway
- **“Alien smuggling”**
- Draft evasion
- **Previously deported**
- **Unlawfully present**
- **Unlawful entry**
- International child abduction

# Comparison VAWA vs. U-visa

- Abuser spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation 1 yr
- Green card after approval if abuser is a citizen or 7 yr wait if abuser LPR
- Abuser anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings case expedited
- Green card after 3 years if can show cooperation + either humanitarian need, public interest or family unity

# Requirements for a T visa

- Must be victim of a severe form of trafficking in persons
- Victim 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

## 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.

## 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



# Human Trafficking simplified

- Process-
  - Recruiting,
  - Transporting,
  - Obtaining,
  - Moving
- Means-
  - Force,
  - Fraud, or
  - Coercion
- End-
  - Labor or
  - Commercial Sex

## Trafficking v. Smuggling

- Crime against a person
- Contains an element of coercion
- Subsequent exploitation
- Trafficked people treated as victims
- Unauthorized border crossing
- No coercion
- Facilitated entry by another person
- Smuggled people treated as criminals

# **VAWA Protections In a Time of Increased Immigration Enforcement**

## **VAWA Protections In a Time of Increased Immigration Enforcement**

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Undermines community policing
- Victims safety concerns
  - Transportation
  - Timing of help offered
  - Maintaining custody of children
- Early identification of victims who qualify for VAWA, T or U immigration benefits

## **Early Identification and U-Visa Certification by Government Official Is Crucial for Victim Safety**

- Victims who are eligible for
  - VAWA
  - T-visas
  - U-visas
- Victims with pending/approved visa applications
  - Work
  - Family
- Sole and primary caretaker parents

## Early Victim Identification, Certification & VAWA/U-Visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure
  - Protection from deportation
  - Release from detention
  - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

## **DHS Humanitarian Release**

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
  - In English/Spanish
  - Oral and writing
- Release as
  - Order of recognizance
  - Order of supervision
  - Alternatives to Detention

## **New Release From Detention Homeland Security Policy**

(August 20, 2010)

- Applies to Homeland Security Detention
  - Initiation and prosecution of removal of immigrants
  - Homeland Security detention
- Release for immigrants with a filed, pending or approved applications for immigration benefits
  - U visa,
  - T-Visa
  - VAWA,
  - Family Petition
  - Other



## August 2010 DHS Policy

- Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit
- Unless applicant
  - Has criminal convictions or misconduct
  - Is a threat to public safety or national security
  - Evidence of fraud
- Importance of Predominant Aggressor Determination

## VAWA Confidentiality

- DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
- DHS cannot disclose VAWA information to anyone (except in limited circumstances)
- Enforcement locational prohibitions

**Immigration judge to dismiss case if any part of an enforcement action occurs at:**

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
  - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

## How To Respond If DHS Comes

- Follow obligations under federal/state law and grant requirements not to disclose privileged or confidential information about victims
- Know if your program is a VAWA confidentiality protected location
- Disclosure only required if warrant or court order
- Subpoena is not a court order
  - DHS cannot obtain a warrant or subpoena without violating VAWA confidentiality if you are a protected location
- File complaint with DHS Office of Civil Rights and Civil Liberties

## **Safety Planning Challenges Related to Enhanced Immigration Enforcement**

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
  - CPO, family or criminal court case
  - Victim travels to new location
- Due to VAWA Confidentiality DHS enforcement officers cannot see that VAWA, T or U case exists

## Preventative Strategies

- Advise victim and whomever victims interact with to know that such protections exist
- Train personnel who work at prohibited locations
- Work with DHS and local law enforcement to screen out, prevent and not pursue actions against victims

## Preventative Strategies, Cont.

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings

# For further assistance

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