

Federal Protections For Immigrant Victims of Human Trafficking, Domestic Violence, and Other Crimes Under the TVPA and VAWA

Wilmington University
Human Trafficking Training Webinar Series

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Faculty Introductions

- Loretta M. Young, Esq.
 - Commissioner, NCC Family Court, Wilmington, Delaware
- Leslye E. Orloff, Esq.
 - NIWAP, American University, Washington College of Law



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Learning Objectives

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

- Identify juvenile and adult immigrant victims who are eligible for federal protections
- Carry out the role Congress delegated to State Court Judges, CPS, APS, law enforcement and prosecutors in these cases
- Understand how early access to federal **VAWA**, **TVPA** and **SIJS** immigration protections can stabilize individual victims and increase safety in your community

Delaware Demographics (2018)*

- ❖ Total foreign born population –91,230
- ❖ 9.4% of the state’s population are foreign born
 - 42% naturalized citizens
 - 25% lawful permanent resident
 - 33% undocumented or temporary status
- ❖ 103.2% rise in immigrant population from 2000 to 2018
- ❖ 22% of children in the state under age 18 have one or more immigrant parents
 - 84.9% of children with immigrant parents in the state are U.S. native

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/DE>; Lawful permanent residency percentage from Migration Policy Institute and Population Research Institute based on 2012-2106 American Community Survey Census Data

Delaware – Countries/Regions of Origin (2018)*

- Latin America – 45.6%
 - Mexico (18.7%)
 - Caribbean (13.1%)
 - El Salvador (3.3%)
 - Brazil (1.3%)
- Europe – 10.4%
 - Eastern Europe (3.4%)
 - United Kingdom (2.8%)
 - Germany (1.4%)
- Africa – 8.7%
 - Western Africa (4.1%)
 - Western Africa (3.6%)
- Asia – 31.3%
 - India (12.7)
 - China (7.4%)
 - Southeast Asia (5.3%)
 - Korea (1.8%)
- Middle East – 2%
- LEP non-citizens – 49.7%
- Speak language other than English at home – 13%
- Limited English Proficient (LEP)– 37.2%

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/DE> (Nov 2020)

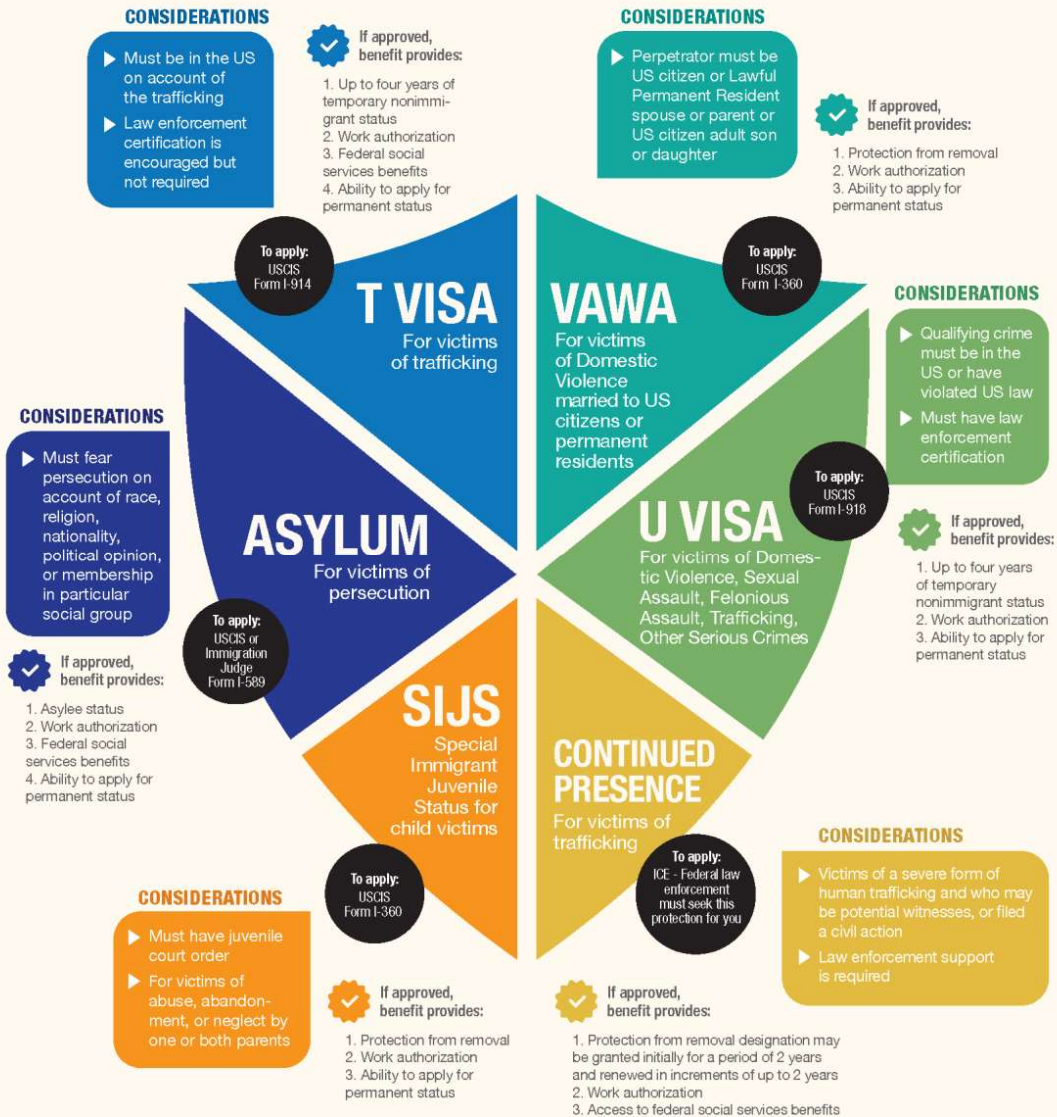
**Many Immigrant Victims of
Human Trafficking, Domestic
Violence, Sexual Assault, and
Other Crimes Are Eligible for
Immigration Relief**

Immigration Relief Available for Immigrant Victims of ---

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

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

PROTECTIONS FOR IMMIGRANT VICTIMS



Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from courts without fear of deportation
- Improve access to justice from family/criminal/civil courts for victims of domestic & sexual violence and child/elder abuse
- Improves survivors options for stability & economic security
Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

VAWA Confidentiality in State Court Proceedings

Why is VAWA Confidentiality Important?

- **Abuser-Provided Information:** Protects victims from deportation by prohibiting DHS from relying on information provided by perpetrators
- **Non-Disclosure:** Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- **Location Prohibitions:** Prohibited immigration enforcement locations include courthouses

DHS VAWA Confidentiality Computer System

- DHS “red flag” “384” computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

Sensitive Locations Protected From Immigration Enforcement

VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
 - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

DHS Policies (ICE & CBP)

- Schools
- Medical treatment & health care facilities
- Places of worship
- Religious or civil ceremonies e.g. weddings and funerals
- Public demonstrations e.g. march, rally, parade

State and Federal VAWA Confidentiality and Discovery Case Law

- Family law - VAWA and U visa case information not discoverable
- Criminal law – only U visa case certification discoverable
 - File not in prosecutors’ custody or control
- Civil cases not discoverable except potentially as needed to prove damages to a specific individual
 - In chambers review judge can redact

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial review exception)

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

Demaj v Sakaj (D. Conn, 2012) –U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - The victim discloses in state court that DHS has approved her protected immigration case

EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
 - That is not possible in a family or criminal court case

Severe Forms of Trafficking Under Federal Law

Labor and Sex Trafficking

T Visa Overview

- Non-Immigrant, 4 Year visa
 - Victim of **severe form** of trafficking
 - In the US or territories on account of trafficking
 - Must respond to reasonable requests for collaboration with investigation and prosecution *unless*
 - Victim is under 18
 - Limited “trauma exception”
 - Hardship upon return to home country
- May apply for lawful permanent residency after investigation/prosecution is over or 3 years, what ever time is shorter

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Entices• Harbors• Transports• Provides• Obtains• Advertises• Maintains• Patronizes• Solicits• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• Force• Fraud• Coercion	<ul style="list-style-type: none">• Commercial Sexual Activity

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Harbors• Transports• Provides• Obtains• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• Force• Restraint• Threats of harm• Abuse or threatened abuse of the legal system• Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint	<ul style="list-style-type: none">• Involuntary servitude• Peonage• Debt Bondage• Slavery

U Visa Requirements

INA § 101(a)(15)(U)

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpful

- Has been, is being, or is likely to be helpful in the
- Detection, investigation, prosecution, conviction, or sentencing

Harm

Substantial physical or mental abuse as a result

Qualifying Criminal Activity

INA § 101(a)(15)(U)(iii)

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	

State Court and Agency Roles: U and T Visas

- U and T visa certification by judges or (local, state, federal, law enforcement, prosecutors, DFS, or EEOC)
- Based upon detection, conviction or sentencing
- Can be in a juvenile, protection order, custody, criminal, civil or family court case
- Judges most often certify after they have made findings or issued an order

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children who cannot be reunified with one or both parents due to abuse, abandonment, neglect or
 - similar basis under state law
- State court findings are required as evidence
 - The state court order does **not** provide immigration status
 - The order is one required piece of evidence in a federal adjudication process

Immigration and Nationality Act § 101(A)(27)(J)

SIJS Orders Require Three Essential Findings

State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

VAWA Self-Petitioning Eligibility

- Subjected to Battery or Extreme Cruelty by a U.S. Citizen or Lawful Permanent Resident and are a
 - Spouse; Parent; or Citizen adult son/daughter who is over age 21
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
 - some intended marriages qualify
- **VAWA cancellation of removal** defense in immigration court – similar requirements

Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that
 - Marriage to U.S. citizen or permanent resident entered into in good faith *and*
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child

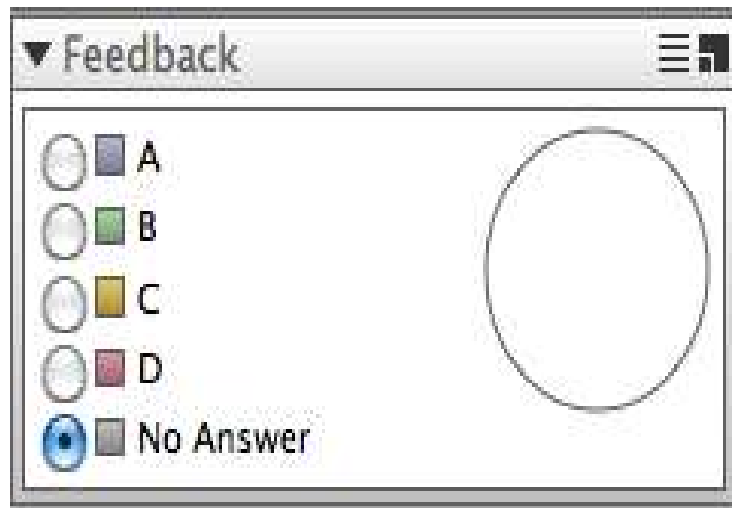
Immigration and Nationality Act § 216(c)(4)

Case Scenario (Handout)

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse.

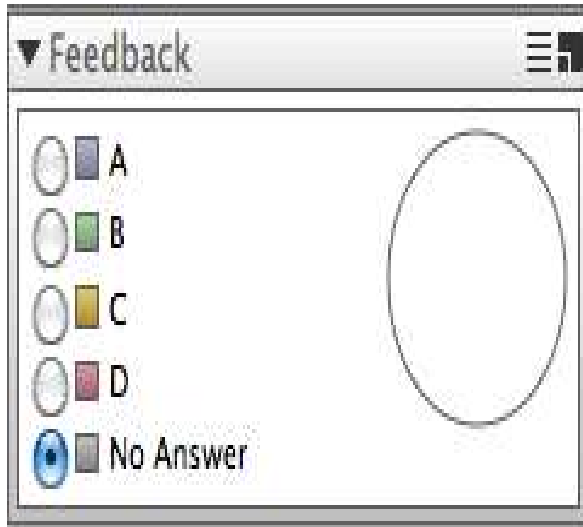
Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state. **What forms of immigration relief would Clara, Eduardo and Lupe qualify for?**

What forms of immigration relief would Clara qualify for:



- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

What forms of immigration relief would Miguel qualify for:



- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS
- E. Two of the above

How can state courts help victims

- Issue U/T visa certification and SIJS findings
- Issue detailed orders that include findings
 - Family relationships
 - Marriage, divorce, parent/child relationships
 - Abuse, domestic violence, stalking, sexual assault, neglect, and abandonment
 - Impact of the abuse on the victim and children
- Distribute USCIS “*Know Your Rights*” Brochures
- Refer victims to legal services

Human Trafficking in State Courts

Spotting the Trafficker

- Civil Cases
 - Truancy
 - Protection Orders
 - Child Support
 - Guardianship
 - Custody
 - SIJS
- Criminal Cases
 - Minor Violations, shoplifting, loitering, runaways
 - Kids in drug houses
 - Traffic stops of adults with passengers
 - DV cases

Human Trafficking in the Work Place

- Divorce proceedings before family court including custody dispute child is foreign born
- Husband is a US citizen
- Victim works for a business owned by her husband's family
 - Locked into the work place daily no ability to leave
 - Arrives at home different times
 - Husband claims victim is fooling around
 - Sexually assaulted by foreman
 - Forced to work and is not paid

Continued Presence

- Temporary immigration status should be requested for any
 - Victim of human trafficking *who may be a potential witness*
 - Sex and/or labor trafficking
 - Based on a totality of the circumstances
- Victim (and certain family) remain lawfully in the U.S. during investigation into human trafficking-related crimes and during civil actions filed by victims against their traffickers
 - Granted for two (2) years; can be renewed up to two-year increments
 - Recipients receive work authorization, public benefits and services
- Local judges can request that federal law enforcement or prosecutors file trafficking victims' applications with HSI
- If HSI approves notifies HHS to issue certification letter

Who would you call to help
Clara and Miguel get
Continued Presence?

State officials can request that federal officials file for Continued Presence

- State, local federal authorities that investigate or prosecute crime can make a CP for a victim to federal authorities
 - Trafficking Coordinating Council Members
- Federal sponsor must file the request with ICE/HSI
 - U.S. Attorneys, F.B.I., EEOC, DOL, HSI
- HSI grants continued presence

The Case of “J”

- 17 year old Argentinian male*

- J had a good relationship with his parents
- He was attending high school
- He had a sweetheart
- Everyday after school he trained to become a jockey
- He dreamed of riding in the Kentucky Derby



*scenario modified for teaching purposes

The Case of “J”

- “J’s” parents thought of the trafficker as their son’s “agent”
- Trafficker charged “J” for housing, food, transportation, toiletries, riding equipment & management fees and required he work excessive hours
 - “J” was in debt to trafficker despite winning numerous races with large purse money
- “J” slept in a sleeping bag on the floor in an attic with several others
- “J” was unable to return home despite having fulfilled his agreement

Protection Orders

Initial Petition
seemed
“ordinary”

Cross-Claim and
Answer told the
story and raised
the red flags

- Foreign National married to US citizen with one child
- Child US citizen
- Mom’s Status “pending”
- Dad was the trafficker seeking *return of economic losses*

Child Support

Obligor before
the Court on
Arrears

Why didn't you
pay?

- I took job as solar salesman
- Took me to Midwest
- Promised wages never paid, conditions horrid
- When I tried to leave, they followed and threatened me until I returned
- I finally got a ride with someone at gas station

Access to Public Benefits by Immigrant Victims of Human Trafficking and Crimes

Why is information about which immigrants qualify for which public benefits important for judges, victim advocates, attorney, and prosecutors to know?

Access for All

Both documented and undocumented immigrant survivors can access:

- Widely Available Public Services including:
 - Police
 - Courts
 - Protection orders
 - Custody/Child Support
 - Criminal Prosecutions
 - Adult/Child Protective Services
 - Fire
 - Ambulance
 - Sanitation
- Legal Services for income eligible immigrant victims
 - Domestic violence
 - Child abuse
 - Sexual assault
 - Stalking
 - Human trafficking
 - All other U visa criminal activities

Access for All

Both documented and undocumented immigrant survivors can access:

- Language Access
- Crime Victim Assistance
- Shelter
- Transitional Housing
- Obtain Public Benefits for Their Children
- Receive Emergency Medical Care
- Health care from community and migrant health centers

Public Benefits Access for Qualified Immigrant Children and Crime Victims

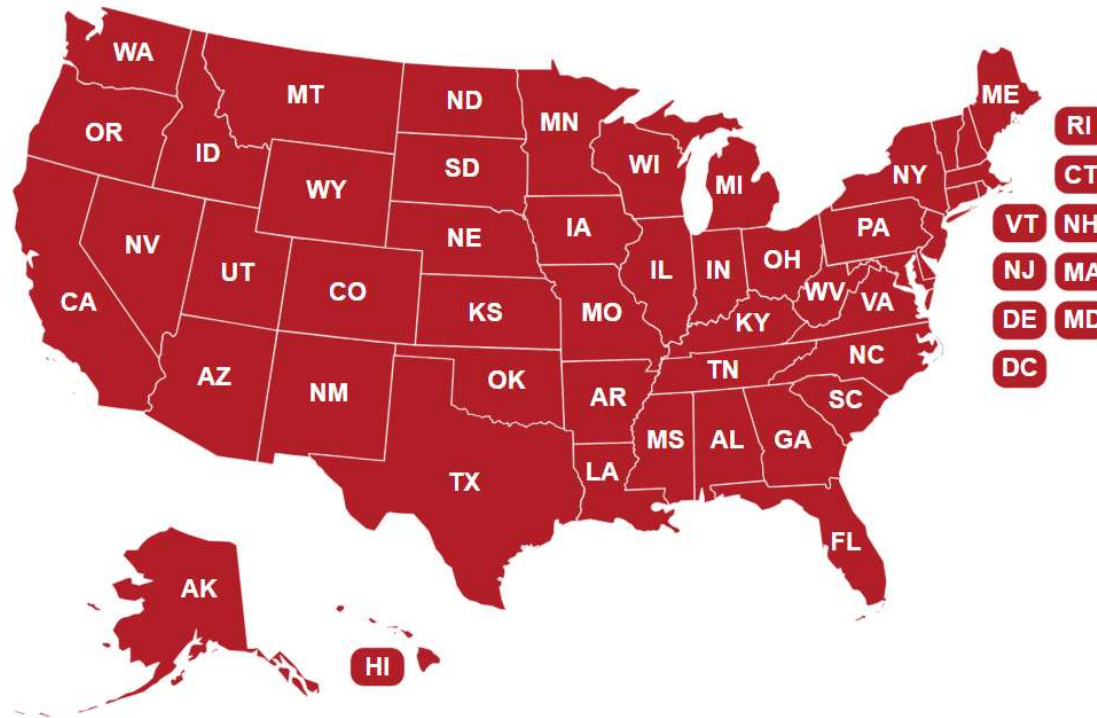
- Qualified Immigrants
 - Lawful permanent residents
 - Includes U visas and SIJS
 - Refugees/Asylees
 - VAWA self-petitioners
 - Trafficking victim with
 - Continued presence or
 - Bona fide determination in T visa case
- Not Qualified Immigrants
 - Asylum applicants
 - DACA recipients
 - U visa applicants & recipients
 - Work/Student visa holders
 - Undocumented

Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- **Public and assisted housing**
- **Post-secondary educational grants & loans**
- **Driver’s Licenses**
- **Access to most subsidized child care (Not TANF)**
- **Adoption assistance**
- **Foster care**
- **Low income and residential energy assistance programs**
- **Disability benefits**
- **Assistance to developmentally disabled**
- **Job opportunities for low income individuals**

Cash Assistance

[Home](#) > [Cash Assistance](#)



Benefits in Delaware

- TANF
 - T visa, Continued Presence
 - VAWA self petitioners and lawful permanent residents 5 year bar if entered after 8/22/96
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - VAWA children, CP, T visas , SIJS-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
- SSI (most limited): CP, T visa
 - VAWA & SIJS LPR (5 year bar+ 40 quarters work)

Benefits in Delaware

- Health Care
 - Exchanges: VAWA, CP, T visa, U visa waitlist, SIJS applicants
 - CHIP: VAWAs, CP, T visa, U visa waitlist, SIJS applicants
 - Subsidized child healthcare until 21
 - Full scope adult Medicaid: CP, T visa, pregnant women
 - 5 year bar for VAWA unless pre 8/22/96; U visa waitlist approved; SIJS lawful permanent residents
- Driver's License
 - Delaware immigrants without legal presence can receive Driving Privilege Card
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA

Benefits in Delaware

- Housing
 - Transitional – all victims + homeless + abused children
 - Public & Assisted: VAWA applicants, CP, T visas, SIJS/U visa – LPRs
- LIHEAP
 - Weatherization everyone
 - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, SIJS/U visa LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS/U visa -LPRs
 - Emergency Food Stamps: T visa, CP, SIJS/U visa-LPRs (after 40 quarters of work credit)

Immigrants Exempt From Public Charge

- Victims
 - VAWA, T visas and U visas exempted
 - SIJS children
- Refugees
- Asylees
- DACA
- Visa holders
- Most lawful permanent residents

Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/ncjfcjPitts2020/>
- Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
- Webinars at
 - <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>
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