

CONFERENCE

Strengthening Community and Organizational Responses: Serving Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

Protecting Immigrant Survivors and their Children: Identifying the Best Immigration Options for Your Client

Workshop 1B
August 2023

Introductions



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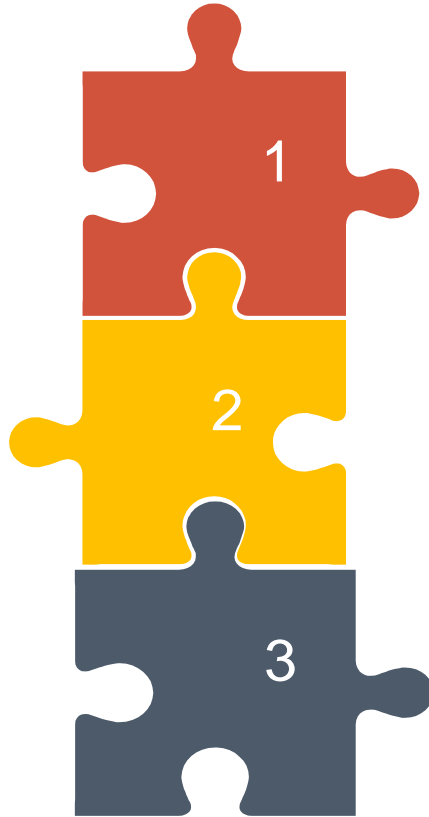
Thank you to OVW

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Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Learning Objectives

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



Understand the different roles of various service providers working to provide holistic and trauma-informed services to survivors.

Identify the different forms of immigration relief available to immigrant survivors and the benefits of each.

Identify a survivor's ability to access to public benefits to secure long-term safety and stability.

Large Group Discussion

What do you hope to walk away with from this training today?



Large Group Discussion

How often do you work with immigrant survivors?

What barriers have you faced when working with immigrant survivors/community?

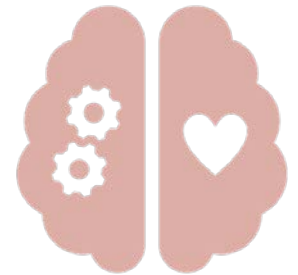
Case Study: Hypothetical #1

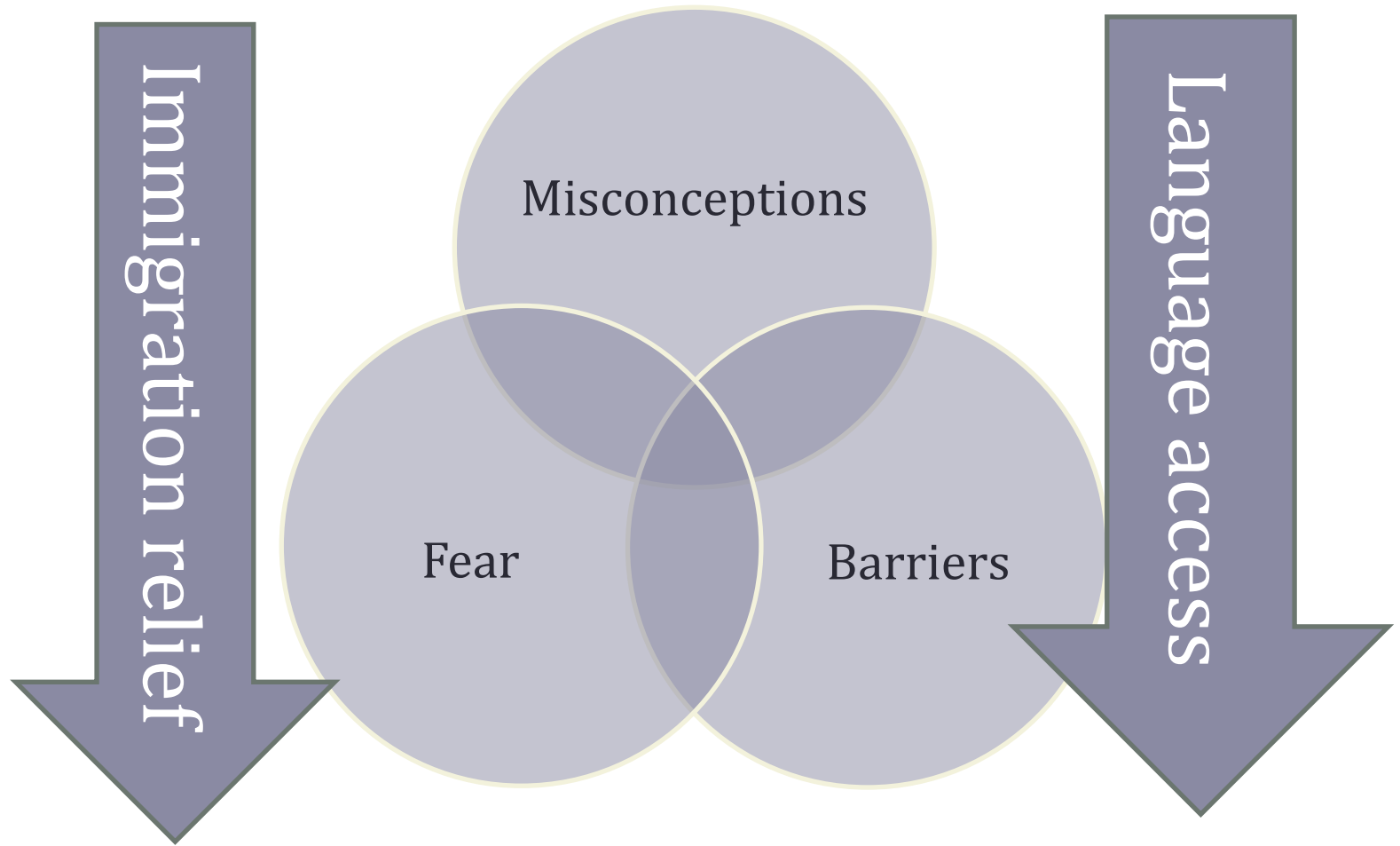
Julie comes to your office. She wants to know if you can help her pay her rent for the month. She fears being evicted and becoming homeless. She has two children - one who is 14 and another who is 2. She says that she is working but her job employer has refused to pay her for the past 2 months. She had some money saved but has now gone through it all. Julie looks tired. You see some bruises on her arm and when you ask her if she feels safe, she seems unsure how to answer at first. She then tells you she is fine and what she really needs is help paying her rent. Julie speaks English well, but you can tell it's not her first language as she has some difficulty explaining a few things to you in a way that you can understand.

Julie tells you she can come back tomorrow to talk some more, but she must pick up her kids and then go back to her job before anyone realizes that she has left the apartment.

Building Trust

- 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





Case Study: Hypothetical #2

Julie comes back the next day. She tells you that she has been kicked out of her apartment and that she has lost her job. She has her 2 kids with her and is very distraught. She tells you she fears her mother-in-law and that her husband won't do anything to help her. You see that she has some more bruises on her arm and chest.

Julie has some documents, but they don't have her name on them. She finally tells you that she is afraid of being deported and that her mother-in-law was her boss at her job and gave her the ID documents that she has. She is afraid that she will be arrested and lose her kids.

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?

Why Does Immigration Status Matter?

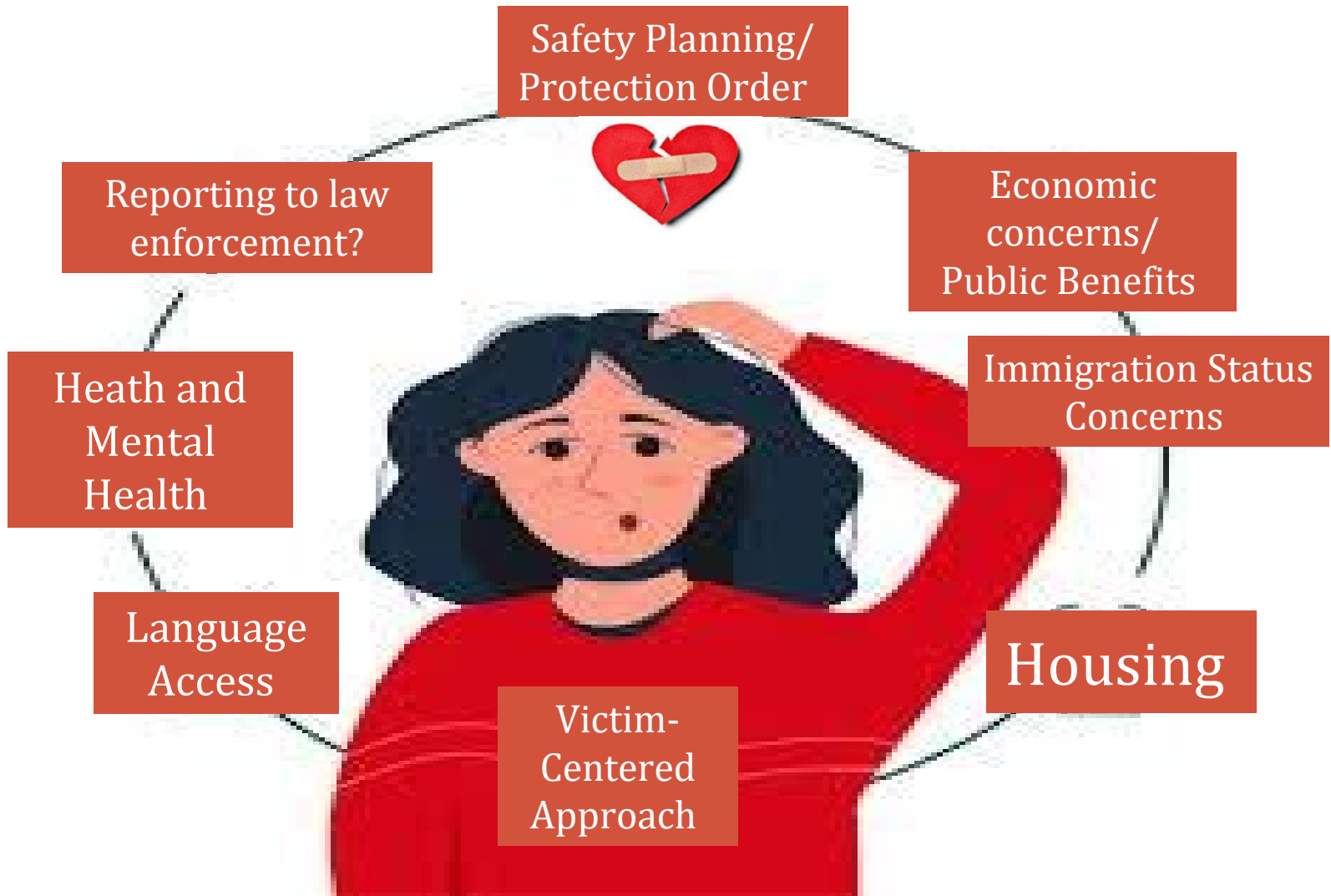
- Work legally
- Obtain SSN, driver's license, state ID
- Greater independence from abusive partner
- Protection from deportation and removal
- Greater stability overall for family
- Greater access to services
- Path to permanent residence and eventually US citizenship
- Ability to freely enter and exit the US

Case Study: Hypothetical #3

Julie tells you that her mother-in-law attacked her. She tells you that her husband was there as well. He didn't hit Julie, but he was yelling at her, swearing at her, insulting her, and encouraging his mother to hit Julie in the arms and chest. Julie says that at one point her mother-in-law tried to strangle her. Julie managed to escape with her children. She doesn't know if anyone called the police, but she was not going to stay and find out. She tells you she has a deep mistrust of the police and she thinks that they will not help her. Julie says she doesn't want to be arrested or deported, and she is terrified her children will be taken from her.

Large Group Discussion

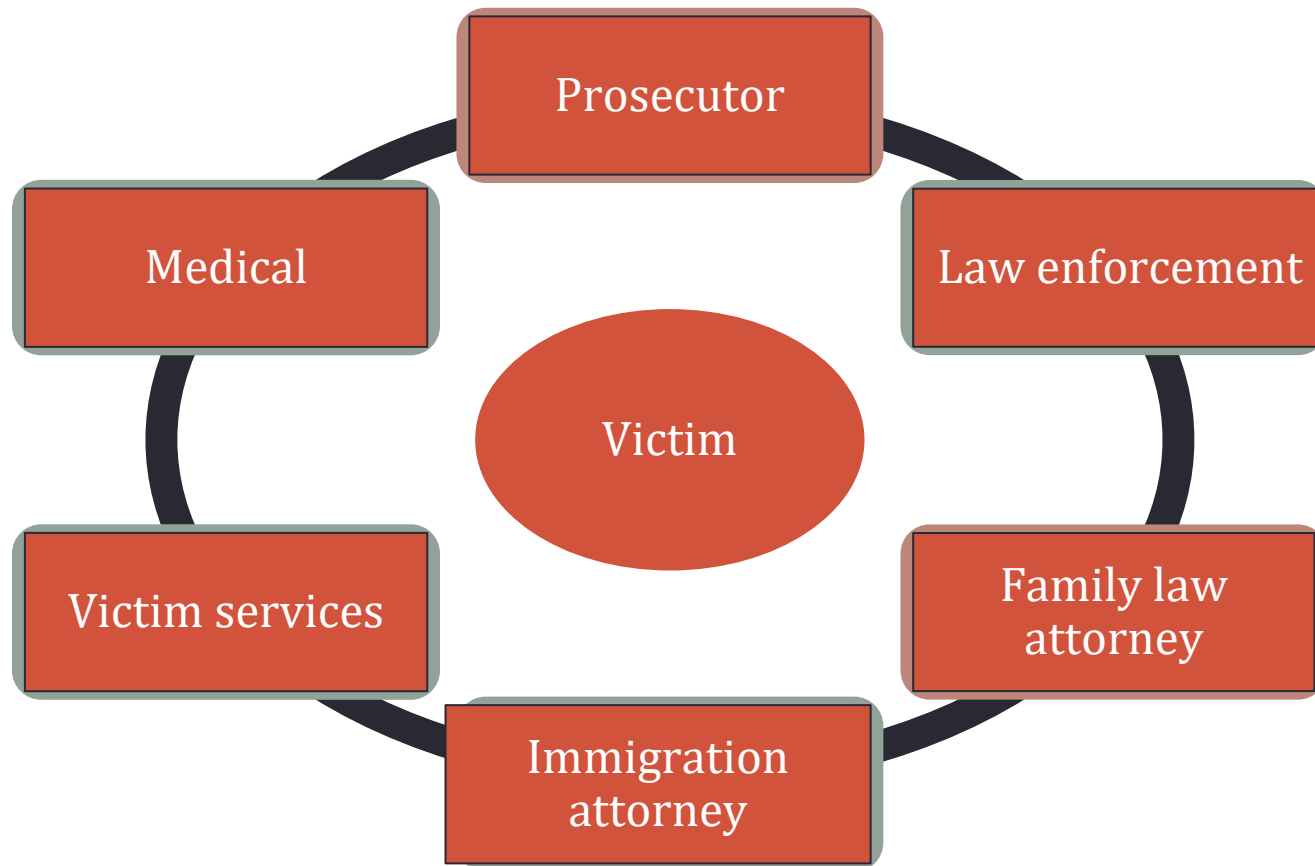
- What are the advocates' roles in helping Julie?



Holistic Services: Advocates' Roles

- Trauma Informed services
- Safety Planning
- Navigating systems that are unfamiliar to the survivor - civil and criminal systems, health care systems, public benefits systems, immigration system
- Advocacy within systems and not just at individual survivor level
 - Meet with systemic leaders and share your stories about systemic barriers with goal to reduce them
 - Inform policy makers of what is happening in your community
 - Work towards community wide education of rights and resources

Systems Immigrant Victims May Encounter



Holistic Services: Advocates' Roles in the Justice System

- Collaborate with prosecutors to educate clients about the civil and criminal justice systems
- With permission, share evidence with prosecutors and/or law enforcement
- Maintain attorney-client privilege
- Discuss what “justice” means to your client
- Coordinate with prosecutors to minimize duplicative meetings and interviews when possible

Large Group Discussion

- What roles can advocates play in the victim's immigration case process?

Red Flags

- Use of false documents
- Irregular entries at a Port of Entry or Entries to the US without documents
- Criminal Arrests
- False Statements to DHS officials or on applications to US CIS
- Previous contact with DHS

Case Study: Hypothetical #4

Julie is eventually convinced that reporting to the police is not a bad thing. She wants to be protected. She is still scared, but willing to move forward to report her mother in laws assault.

You notice that when Julie is nervous or scared, she has difficulty communicating in English.

You help her to call the police to report what happened.

Language Access – Interpreters - Consider...

- When should you get an interpreter?
- Who can serve as an interpreter?
- Things to consider - Maintaining a trauma-informed approach
 - What are the objectives of the conversation?
 - Phone v. in person interpretation
 - How to arrange the room if in person - where do you sit in relation to the survivor and where does the interpreter sit?
 - Additional potential barriers to interpretation (cultural competency, dialect, gender, etc.)

Language Access- Working With Interpreters

- Respecting the interpreter: pauses, taking breaks, length of conversation, bilingual(ish) clients
- Who is having the conversation?
 - Interpreter should interpret everything that is said exactly as it is said without any modifications
 - If interpreter needs clarification, they should let you and survivor know that is what they are doing first and then seek clarification
- What should you do if the interpreter is unclear about their role?

Raise Your Hand Exercise

- Raise your hand if you have helped an immigrant survivor or their child applying for a:
 - VAWA self-petition
 - U visa
 - T visa
 - Special Immigrant Juvenile Status



U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations



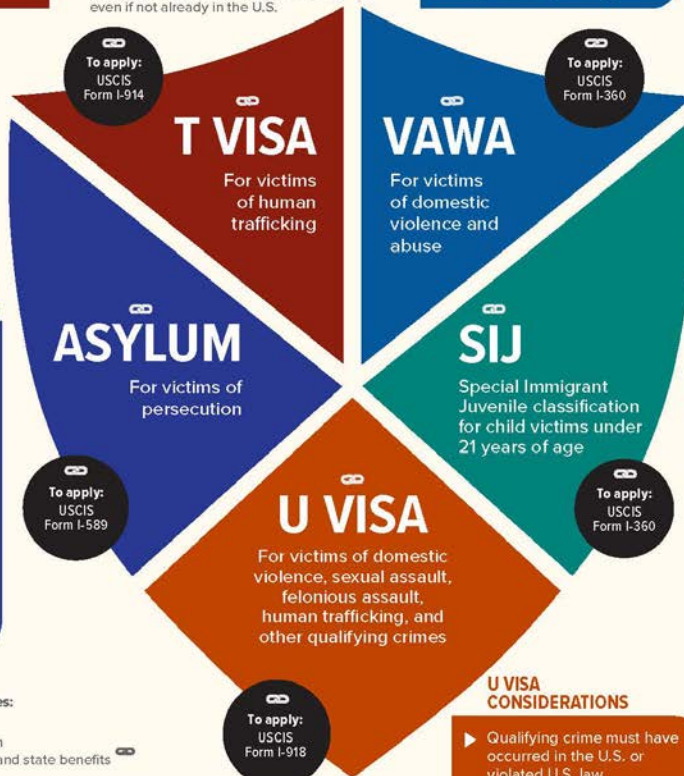
If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



To apply:
USCIS
Form I-914

T VISA
For victims
of human
trafficking

To apply:
USCIS
Form I-360

VAWA
For victims
of domestic
violence and
abuse

To apply:
USCIS
Form I-589

ASYLUM
For victims of
persecution

To apply:
USCIS
Form I-360

SIJ
Special Immigrant
Juvenile classification
for child victims under
21 years of age

To apply:
USCIS
Form I-918

U VISA
For victims of domestic
violence, sexual assault,
felonious assault,
human trafficking, and
other qualifying crimes

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



Center for Countering
Human Trafficking

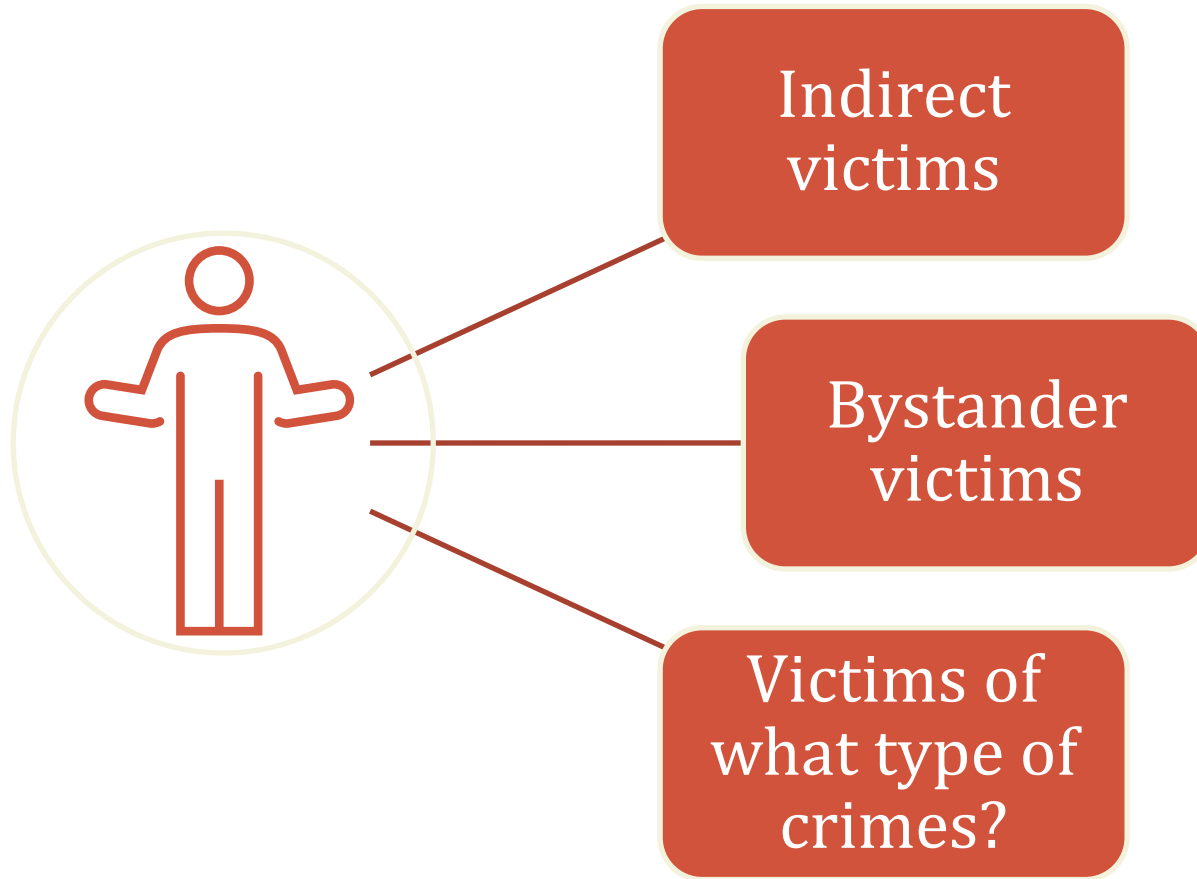


Immigration Relief for Survivors of Certain Crimes: The U Visa

What is the U Visa?

- The U Visa is an immigration application created to help immigrants who are victims of crimes in the United States
- The U Visa was created to keep immigrant victims and witnesses of crimes in the United States so that they can assist during the investigation of prosecution of crimes

U Visa - Who Qualifies?



Who Qualifies for the U Visa?

- Immigrants who are the victims of certain crimes
 - The crime must have occurred in the United States
 - The victim must have helped during the investigation or prosecution of the crime
 - The crime must have caused considerable physical or mental harm
 - A qualifying official must issue a certification stating that you helped the police or prosecutor with your case, that you are still helping or will help at some point in the future

U Visa Requirements

Victim

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

Helpfulness

- Victim has been, is being, or is likely to be helpful in:
 - Detection
 - Investigation
 - Prosecution
 - Conviction
 - Sentencing

Harm

- Substantial physical or mental abuse as a result

This is not a part of the certification

Qualifying Criminal Activity

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

Fraud in Foreign Labor
Contracting

Unlawful Criminal
Restraint

Peonage

Perjury

Prostitution

Rape

Includes attempt, conspiracy or solicitation

Indirect Victims

Parent, guardian, or
"next friend"

Helpfulness
analysis

Minor (under 18)
or disabled or
incompetent adult

How does the U Visa Work?

A U Visa is an administrative case:

- It is not filed before an immigration judge
- The application is filed with Immigration (USCIS) by mail
- No interview is required

Typically, the U Visa application includes:

- An immigration form + biographical information & immigration history;
- A statement of the applicant's experience as a victim, including how they helped the police or prosecutor, and how the crime affected them; and,
- Documents that serve as proof of good moral character and the harm suffered

Certification Requirement

- The application packet, must also include a signed law enforcement certification
- **What is a law enforcement certification?**
 - It is a document signed by the police or prosecutor (or other certified law enforcement official) in charge of the criminal case stating that the applicant is a victim of a qualifying criminal activity and that they have been helpful in the detection, investigation, or prosecution of the criminal activity

Law Enforcement Certification

The certification shows that the applicant is a victim and who was helpful during the detection, investigation, or prosecution of the crime

- Who signs the certification? A Law Enforcement Agency with Authority to investigate the criminal activity that occurred
 - A certification expires 6 months after it is signed
- **Without a signed and valid certification, an applicant is not eligible to apply for a U Visa**
- It is up to each law enforcement agency's discretion to decide whether to offer certifications to immigrant victims
 - Each agency may have different policies regarding signing certifications

What does a U Visa do?

Benefits of an approved U visa application:

- Legal status in the United States for 4 years, including work authorization.
- Protection from deportation
- Ability to include certain family members in the application
- Eligibility to apply for legal permanent residency after 3 years of holding U Visa status

Benefits for Family Members

Family

- U Visa applicants 21 years of age or older:
 - Wives/Husbands
 - Unmarried sons/daughters under 21
- U Visa applicants under 21 years of age:
 - Wives/Husbands
 - Unmarried sons/daughters under 21
 - Parents
 - Single siblings under 18 years of age
- The family member cannot be the perpetrator of the crime
- The ages of the victim (principal applicant) and the derivative family members are determined at the time you (as the principal applicant) file the application for U Visa status



Application Process and Waiting Time

- **Waiting for a final decision on a U Visa case is a long process**
- Immigration can only approve 10,000 applications each year for the entire country
- While the application is pending, **the applicant will still be undocumented.** Entering and leaving the U.S. will affect their case. Another thing that will affect the case are criminal arrests
- **After 1-2 months of submitting the application:** will receive notification from immigration that they have received the application
- **After 2-3 months of submitting the application:** will have an appointment for immigration to take fingerprints
- **After 3-4 years of applying:** Immigration may give you a provisional approval if they think the applicant qualifies. This gives protection from deportation and employment authorization
- **After 9-10 years of filing:** Should have a final decision

Immigration Relief for Certain Survivors of Battery or Extreme Cruelty: VAWA

Purpose of the Immigration Protections of the Violence Against Women (VAWA)

- Immigrant victim allowed to “Self-Petition” without the support of the abuser
- Information from the abuser cannot be used against the survivor/ confidential
- Non-citizen children of the survivor are also protected
- Approved self-petition leads to lawful permanent residency

Basic VAWA Self-Petition Requirements

Survivor 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

Case Study: Hypothetical #5

Julie tells you she met her husband through her mother-in-law (Anna) 3 years ago. Julie worked at a tourism agency when Anna came in and they began to talk. Eventually, Julie met her husband, Michael, who was traveling with his mom.

Anna told Julie that she owns a hospitality business in the US, where they are originally from, and that she could use someone like Julie as an employee. They agree to keep in touch via phone and email.

After months of communication, Anna convinces Julie to come to the US. She says she will take care of all the paperwork. Anna tells Julie to come to the airport and that a visa and documents will be waiting for her and her son. At the airport, Julie is met by a man whom Anna sent. Julie and her son board a plane to the US. The man presents all the documents for Julie and her son, which she realizes are not her own. He tells her not to say anything. Julie is worried but doesn't know what else to do.

Case Study: Hypothetical #5 continued

Julie and her son arrive in the US. She begins to work with Anna at her B&B cleaning and cooking. She and her son are given a small room upstairs that they rent from Anna. Over months Julie and Michael begin to get to know one another. Eventually, they begin to date. Anna does not approve of their relationship. After a few more months, Michael tells Julie he loves her and asks her to marry him, and she agrees. Julie becomes pregnant and has a child with Michael (her 2-year-old daughter).

Michael begins to change. Anna insults Julie regularly and tells her she is a terrible mother and worker. She then begins to assault Julie - she will slap and hit her when something is not done correctly at work. Michael never defends Julie or stops his mother from hitting her. He never hits Julie himself, but he begins to insult and berate her. He accuses her of cheating on him and makes her feel small.

Benefits of VAWA

- Can obtain work authorization - depending on case work authorization can be filed with the initial VAWA application, or survivor may have to wait for approval of the VAWA self- petition to apply and obtain work authorization
- Deferred Action Status granted once VAWA is approved
- Can include children in the application
- Leads to Lawful Permanent Residency
- VAWA Confidentiality applies
- Battered spouse waiver

Application Process & Waiting Time

- **Waiting for a final decision on a VAWA case can be a long process and depends on US CIS work loads**
- While the application is pending, **the applicant will still be undocumented.** Entering and leaving the U.S. will affect their case. Another thing that will affect the case are criminal arrests
- **After 1-2 months of submitting the application:** will receive notification from Immigration that they have received your application
- **After 2-3 months of submitting the application:** will have an appointment for Immigration to take your fingerprints
- **After 2 - 3 years of filing:** should have a final decision. (Processing times 32.5 months as of 3/23/23.)
- When an applicant can apply for lawful permanent residency depends upon specific factors in each case

Case Study: Hypothetical #6

You ask Julie more about her mother-in-law, Anna, her job at the B&B, Julie tells you that once she arrived in the US, Anna asked her to sign an employment contract. Julie didn't really understand it, but she signed it. That is when Anna changed. Anna began to mistreat her. She stopped paying Julie, saying she was deducting the cost of her food and other "supplies" from her check. Anna eventually began demanding rent from Julie. When Julie protested, Anna threatened her. She said she would report Julie for being "illegal." She threatened to have the police take Julie's son, and eventually her daughter, from her. Anna told Julie she owed her for bringing her to a better life in the US.

Immigration Relief for Survivors of Human Trafficking: the T Visa

What is the T Visa?

- The T Visa is a temporary immigration benefit that enables certain victims of a severe form of human trafficking to remain in the United States for up to 4 years if they have assisted law enforcement in an investigation or prosecution of human trafficking
- Congress created this status in October 2000 as part of the Victims of Trafficking and Violence Protection Act. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers use force, fraud, or coercion to compel individuals to provide labor or services, including commercial sex

Who Qualifies for the T Visa?

- **Are or have been a victim of a severe form of human trafficking**
 - **Sex trafficking:** When someone recruits, houses, transports, furnishes, solicits, sponsors, or obtains a person for the purpose of a commercial sexual act, in which the commercial sexual act is induced by means of force, fraud, or coercion, or when the person induced to commit a commercial sexual act is under 18 years of age, or
 - **Labor trafficking:** When someone recruits, houses, transports, provides or obtains a person to perform work or services using force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage or slavery

Who Qualifies for the T Visa?

- Be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of trafficking
- Comply with reasonable requests for assistance from law enforcement agencies in the investigation or prosecution of acts of human trafficking (unless the applicant meets an exception)
- Show that applicant is a survivor of sex or labor trafficking or both
- Demonstrates that applicant would suffer extreme hardship related to extraordinary and serious personal injury if removed from the United States

Protection for Certain Family Members

For applicants of any age, if there is a present danger to family members due to the trafficking or the survivor's cooperation with law enforcement, derivatives can include parents and unmarried siblings under 18 years old, as well as adult or minor children of derivatives.



Protection for Certain Family Members

Family

- T Visa applicants 21 years of age or older:
 - Spouse
 - Unmarried sons/daughters under 21
- T Visa applicants under 21 years of age:
 - Spouse
 - Unmarried sons/daughters under 21
 - Parents
 - Single siblings under 18 years of age

What Does a T Visa do?

Benefits of an Approved Application:

- Legal status in the United States for 4 years, including work authorization
- Protection from deportation
- Eligibility to apply for legal permanent residency after 3 years of holding T Visa status

Application Process & Waiting Time

- **Waiting for a final decision on a T Visa case can be a long process**
 - Immigration can only approve 5,000 applications each year for the entire country
- While the application is pending, **the applicant will still be undocumented**
 - Entering and leaving the U.S. will affect their case. Another thing that will affect the case are criminal arrests
- **After 1-2 months of submitting the application:** will receive notification from Immigration that they have received your application
- **After 2-3 months of submitting the application:** will have an appointment for Immigration to take your fingerprints
- **After ~1 year of applying:** Should have a final decision. If approved, a work permit is issued at this time

Case Study: Hypothetical #7

Julie eventually tells you she can't return to her home country. She tells you her son's father was abusive to her and her son, so she fled. She is scared that he will locate her and her son and take him from her. Her ex-partner has never given her any kind of support for her son but has used threats to harm her son against her. She managed to escape and is afraid to go back.

SIJS Requirements

- Child is dependent on a juvenile court or legally committed to or placed under the custody of an agency or department of State, or an individual or entity appointed by a State court.
- Child's best interest would not be served by being returned to the child's or their parent's country of origin.
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.
- 8 U.S.C. § 1101(a)(27)(J)

SIJS Eligibility

- Under 21 years of age on date of filing SIJS petition
- Unmarried through adjudication of SIJS petition
- Physically present in the U.S. through adjudication of SIJS petition
- Valid juvenile court order with required findings/judicial determinations
 - Dependency or custody
 - Parental reunification
 - Best interest
- Eligible for DHS consent

SIJS Findings/ Judicial Determinations By a State Court

- The state court uses state laws to make child custody or placement decision and memorializes these as SIJS findings/judicial determinations
- The state court order reflects judge's expertise and application of state law – **it does not provide immigration status**
- The order is just one required piece of evidence in a federal adjudication process

State Court Cases Where Care and Custody of Children Arise

- Adoption
- Civil protection orders
- Custody
- Delinquency
- Dependency
- Divorce
- Guardianship
- Paternity and child support

Recap: Immigration Relief Available for Immigrant Survivors of —

- Domestic violence (battery or extreme cruelty)
 - Child abuse
 - Sexual assault
 - Rape
 - Sexual Exploitation
 - 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

Large Group Discussion

- How does each form of immigration status a victim seeks impact their access to state or federal public benefits?

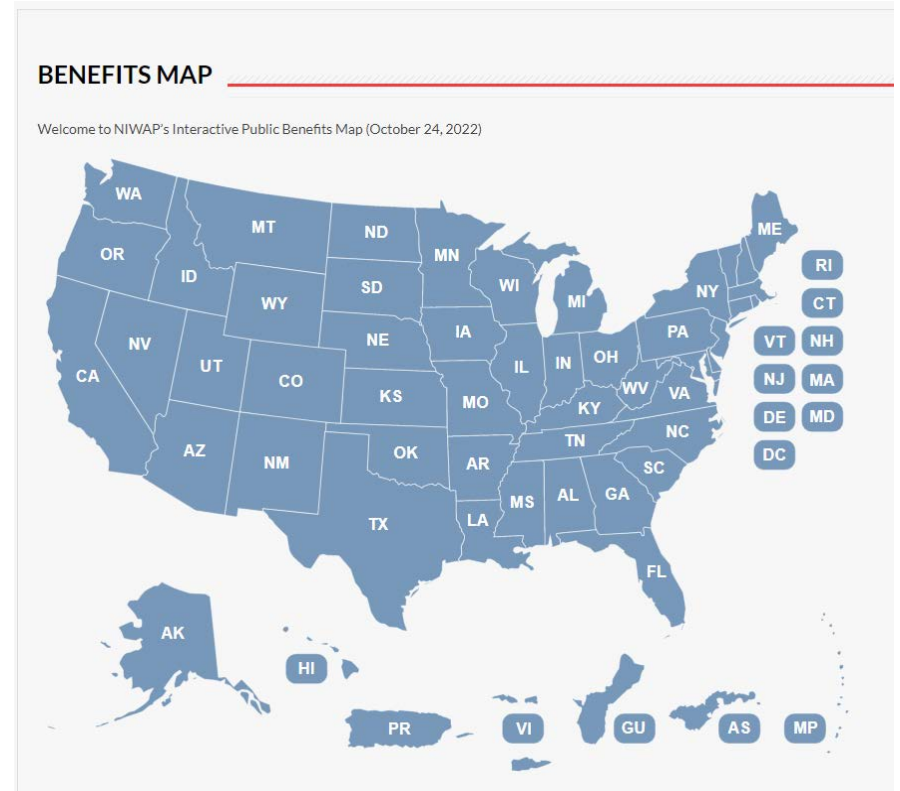
Interactive Public Benefits Map

Hide fields Filter Group Sort ...

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination. ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

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Airtable Download



<https://niwaplibrary.wcl.american.edu/benefits-map>

Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License, IDs, & Professional Licenses
- Earned Income Tax Credit
- Emergency & Transitional Housing & Safety Programs
- Emergency Medicaid
- Family Medical Leave
- Federal Education Benefits
- FEMA Assistance & Restricted Programs
- Food Stamps
- Health Insurance Exchanges
- Income Tax Credits
- Legal Services
- Medicaid
- Prenatal Care
- State Education Benefits
- Supplemental Security Income
- VOCA
- Weatherization & Energy Assistance
- WIC
- Unemployment Insurance

Questions?

Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library:
www.niwaplibrary.wcl.american.edu
- Materials for this Workshop:
 - <https://niwaplibrary.wcl.american.edu/BostonImmRelief>
- Contact NIWAP to provide training for your jurisdiction