

NIWAP

CONFERENCE



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

Advanced Immigration Law Issues in Cases Involving Immigrant Survivors

**Workshop 3C
August 2023**

NIWAP

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

Introductions



Edna Yang
Co-Executive
Director
American Gateways



Rocio Molina
Deputy Director
National Immigrant Women's
Advocacy Project,
American University
Washington College of Law

Thank you to OVW

This project was supported by Grant No. 15JOVW-21-GK-02208-MUMU and 15JOVW-22-GK-04002-MUMU awarded by the Office on Violence Against Women, U.S. 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:

- Identify changes in DHS policy that affect survivors and their ability to apply for different forms of immigration protection
- Identify new policies and case strategies that will help survivors secure work authorization and/or protection from removal

Updates in Crime Victim Protection Policies from DHS

ICE Victim Centered Directive

- August 2021 - ICE announced a new “victim centered” approach
 - Equal value on victim’s needs and other law enforcement objectives
 - Minimize undue stress, harm, and trauma to the victim
- Use of Prosecutorial Discretion for survivors as part of ICE decision to arrest, detain, release, and refer noncitizens

Large Group Discussion

- How have you used the Victim Centered Approach Directive in the cases of victims you serve?

Large Group Discussion

Prosecutorial Discretion and Motions to Reopen

What have been your experiences with
Prosecutorial Discretion and Motions to
Reopen?

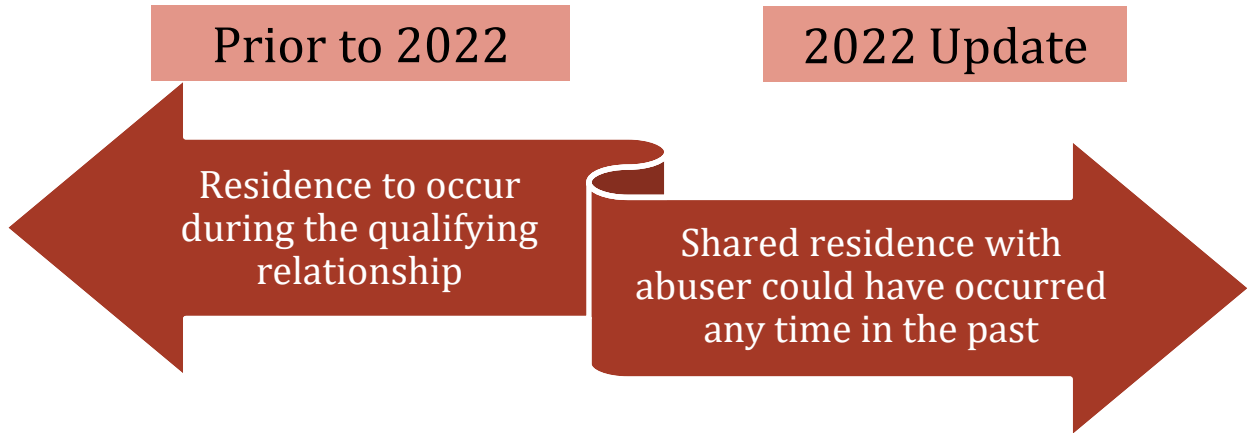
USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center

- Dedicated Service Center that will improve quality and efficiency of humanitarian caseloads
- Will have its own directorate
- Will initially focus on:
 - U visas – initial focus will on be bona fide determinations
 - VAWA self-petitions, and Special Immigrant Juvenile Status
 - Form I-601A, Application for Provisional Unlawful Presence Waiver
 - Refugee/ Asylee Relative Petitions

VAWA Policy Changes: Shared Residence

- **Previous Policy**
- Must have shared residence with abuser during qualifying relationship
- **Revised Policy –**
- Shared residence can occur at any time prior to filing the VAWA self-petition (I-360)

Broader Interpretation of Shared Residence Requirement



VAWA Policy Changes: Good Moral Character (GMC)– “Connected To”

- **Previous Policy**
- Self Petitioner must have been compelled or coerced by abuser to violate GMC / INA 101(f)
- **Revised Policy –**
- Need only show “logical or causal relationship” to the abuse
- Da Silva 3rd Circuit

Good Moral Character

Compelled or
Coerced



Logical or
Causal
Relationship

Da Silva v. Attorney General (2d Circuit) held that when evaluating the good moral character requirement, an act or conviction is “connected to” the battery or extreme cruelty when it has “a causal or logical relationship”

VAWA Policy Changes: Bona Fide Marriage Exemption

- **Previous Policy**
- Self Petitioners who married abusive spouse in proceedings are subject to INA 204(g), but there is no requirement to request an exemption in writing
- **Revised Policy –**
- Self Petitioners who married abusive spouse in proceedings are subject to INA 204(g) and now must request an exemption in writing

Bona Fide Marriage Exemption

- Self Petitioners who married abusive spouse in proceedings are subject to INA 204(g) and now must request an exemption in writing.

VAWA Policy Changes: Conversion of I-130 to I-360 with Pending I-485

- **Previous Policy**
- Unwritten policy to hold a pending I-485 in abeyance for 30 days
- **Revised Policy –**
- Policy to hold a pending I-485 in abeyance for 30 days is now written

Holding I-485 in Abeyance

- Conversion of I-130 to I-360
- Previous policy to hold I-485 in abeyance for 30 days was unwritten
- Policy to hold a pending I-485 in abeyance for 30 days is now written

VAWA Policy Changes: Abused Step-Children

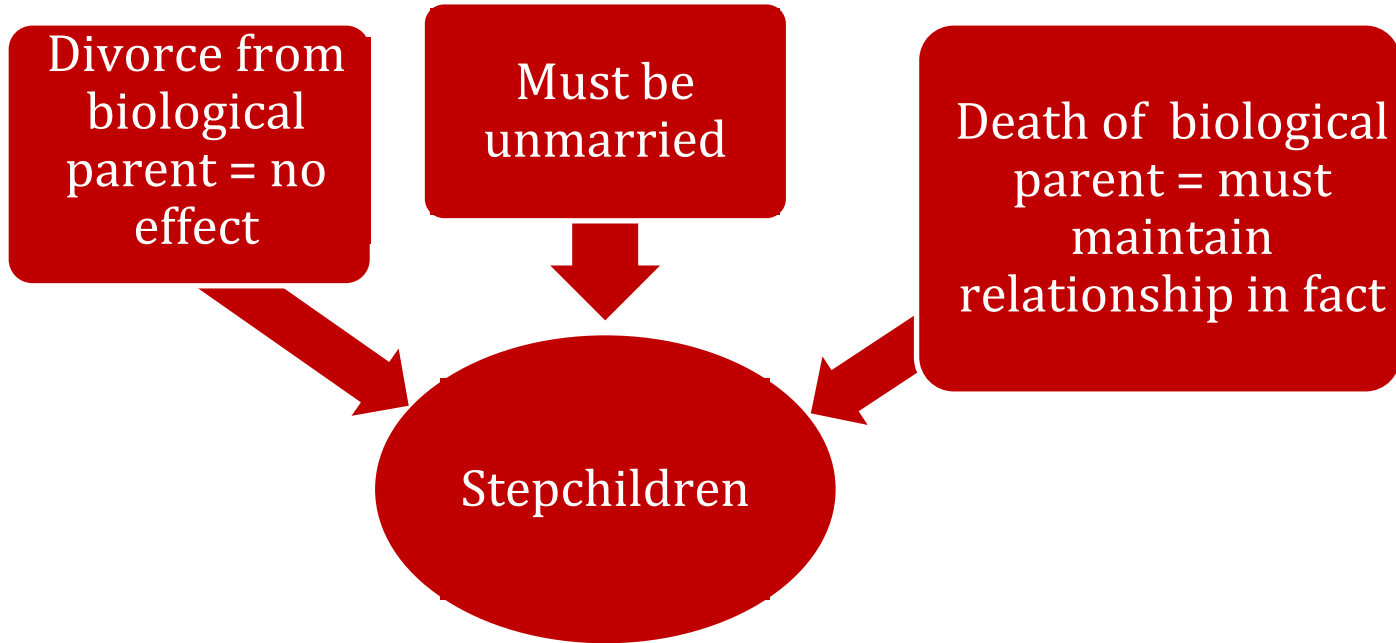
- **Previous Policy**

- If marriage between parent & abusive step parent ended in divorce prior to filing I-360, stepchild must have ongoing relationship to abuser

- **Revised Policy –**

- No ongoing relationship required if marriage between parent & abusive step-parent ended in divorce

VAWA Self-Petition Updates for Stepchildren



Small Group Activity and Report Back

Step-child Relationship and Child Analysis

- Your client is sexually abused by her U.S. citizen stepmother.
- Stepmother married her father when client was 12 years old.
- Stepmother started abusing your client when she was 14 years old. As soon as she turned 18, your client left to join the Navy and married her high school sweetheart. Because they rushed into things they divorced when your client was 19.
 - Would your client be able to self-petition if her father divorce her stepmother?
 - What if her father passed away prior to filing?

Safe Address and VAWA Confidentiality

- Safe Address & Special Procedures Updates for VAWA Confidentiality - [20230411-SafeAddress.pdf \(uscis.gov\)](#)
- USCIS Policy Update: VAWA Confidentiality and Safe Address for Survivor-Based Petitions (April 11, 2023)
<https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-policy-update-safe-address>

Raise Your Hand if you Have Received Bona Fide Determinations?

Raise Your Hand Exercise

- Raised your hand if you have sought U visa certifications from...
 - State police
 - Local police/sheriffs
 - Prosecutors
 - Judges
 - EEOC/DOL
 - State labor agencies
 - Child/Adult protective Services
 - Other



What Challenges are you Encountering with Obtaining U Visa Certification?

Addressing Common Issues for Certifiers

Doesn't it have
to be a felony?

How can I
determine
whether the
victim suffered
serious harm?

Nervous about
granting victim
immigration
status

What if the
victim is lying to
get a visa?

Shouldn't we
wait until after
the trial?

Who is the best
agency to sign?

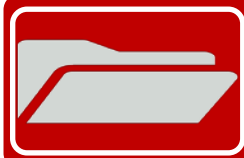
Common Points of Tension



Whether prosecutor's office will sign a Certification



When a prosecutor's office will sign a Certification



When and what information to share

Policy Manual Updates

T Visa Cases

- Policy Manual T Visa Chapter Issued
- Definition of a severe form of human trafficking
 - Coercion
 - Purpose of sex & labor trafficking
 - Clarifying key principles related to trafficking
- Expansion of T Visa eligibility for family members of trafficking survivors

Deferred Action for Workers in Labor Disputes

- New streamlined process for workers involved in a labor dispute at their workplace to request deferred action and a work permit
- To be eligible, a worker's current or former employer must be the subject of an open investigation at a labor agency AND the labor agency investigating the labor dispute must submit a letter to DHS supporting deferred action for the worker
- OSHA U visa certifications

New SIJS Regulations

- In effect April 7, 2022
- Last promulgated in 1993, proposed rule released in 2011 and 2019.
- 8 C.F.R. § 204.11
 - Age out protections incorporated
 - Bona fide language remains
 - **No automatic revocation for marriage after SIJS petition granted**
- 8 C.F.R. § 205.1
 - Moved to 8 C.F.R. § 204.11
- 8 C.F.R. § 245.1
 - Applicants deemed paroled for limited purpose of adjusting status.
 - Incorporated all inadmissibility grounds as inapplicable and waivable

NIPNLG AAO Index



Advancing the Rights of Immigrants



LOGIN JOIN RENEW SEARCH

- About
- Membership
- Training
- For Practitioners
- For the Community
- Find Attorney
- News
- Donate

Unpublished AAO Decisions on SIJS



No Image

Price: \$20.00

[Add to Cart](#) [Previous](#)

Description

To help practitioners understand the latest USCIS adjudicatory practices and interpretation of policies relating to Special Immigrant Juvenile Status (SIJS), NIPNLG offers an Index of Unpublished Administrative Appeals Office (AAO) Decisions on SIJS from 2005 to the present categorized by issue as well as by the state that issued the predicate order. NIPNLG updates this resource three times a year and provides all three editions for free to [NIPNLG members](#) via the member portal (you will receive a notification when a new edition is available for download in the member portal).

Non-NIPNLG members can purchase the Index for a fee of \$20 per edition. We are currently accepting [pre-orders](#) from non-members.

Questions of financial hardship? Please reach out to us at membership@nipnlg.

AAO Unpublished Decision Trends: Deseased Parents/Consent

- Deceased parent cases
 - There must be a finding/determination that death constitutes abuse, abandonment, neglect, or similar basis.
 - See [In Re: 13866443](#)
 - Consent
 - There must be protective or remedial relief for dependency declaration.
 - See [In Re: 13039982](#)
- **NIPNLG AAO Index consulted

AAO Unpublished Decision Trends: Acting as a Juvenile Court

- Court acting as a juvenile court
 - Must cite to state statute authorizing jurisdiction after age of majority (18 in most states).
 - See [In Re: 15820693](#) (AZ- no statute cited, court not acting as juvenile court)
 - See [In Re: 13258676](#) (TX- child support statute, court acting as juvenile court)
 - **NIPNLG AAO Index consulted

OPEN FORUM

What questions do you have?

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/BostonAdvancedImmigration>
- Contact NIWAP to provide training for your jurisdiction