Advanced Immigration: Best Practices for Complex U Visa Representation

Day One
Session 2C
New Orleans, LA

Introductions

- Edna Yang
  - Assistant Executive Director, American Gateways
- Veronica Thronson
  - Clinical Professor of Law, Michigan State University College of Law
- Rocio Molina
  - National Immigrant Women's Advocacy Project

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

Learning Objectives

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

- Identify potential grounds of inadmissibility for U visa applicants and derivatives
- Understand the process of relief with the U visa waitlist and deferred action
- Understand the process for requesting humanitarian parole for derivatives on the U visa waitlist outside the U.S.
- Identify what to do when your U client is in removal proceedings

Large Group Poll

- What are the complex issues in representation U visa clients that you want to have the answers to by the end of this workshop?

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- 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

Qualifying Criminal Activity

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

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

Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an "indirect victim" if:
  - the victim is a child under 21 years of age and/or
  - is incompetent, incapacitated, or deceased due to murder or manslaughter
- Bystanders victimization – very limited
- For child victims a "next friend" can provide helpfulness

Qualifying Family Members/Derivatives

Certain family members of U visa applicants will be able to obtain U nonimmigrant status as **derivative family members**

If you, the U Visa applicant (referred to as the) "principal", are...	**Then...**
Under 21 years of age	You may petition on behalf of your spouse, children, parents and unmarried siblings under age 18
21 years of age or older	You may petition on behalf of your spouse and children

INA §§101(a)(15)(U)(ii)

U Visa Cap

- Only 10,000 visas per fiscal year. INA 214(p)(2)(A)
  - Derivative approvals do not count towards the 10,000 cap, INA 214(p)(2)(B)
- If cap met, a wait list will be created. 8 CFR 214.14(d)(2)
  - Do not accrue unlawful presence
  - Can be removed from waitlist and have deferred action status/parole terminated at discretion of USCIS, 8 CFR 214.14(d)(3)

Scenario

Maya has two children who live with her in the U.S. - a 10 year old daughter, Diana, who is a U.S. citizen and a 17 year old son, Hector who is undocumented. Maya also has a 19 year old daughter, Ana, in her home country.

Diana was the victim of a sexual assault. When Maya found out she immediately reported what happened to the police and sought services for Diana. She is now cooperating with the prosecutor in the criminal case.

What to File

- Form I-918 – U Visa Application
- Form I-918 Supplement A for Derivatives (family members)
- Form I-918 Supplement B Certification
- Form I-192 if there are inadmissibility issues that need to be waived (pardon)
- Fee for Form I-192 or Fee Waiver
- Form I-765 (category (C)(14) for principal and (a)(20)) for Employment Authorization Document
  - Two photos of the Applicant
  - ID Document
  - I-765WS

Inadmissibility

- INA Section 212(a) – lists all the grounds of potential inadmissibility

- INA Section 212(d)(14) – All grounds of inadmissibility (except national security grounds) can be waived for U visa applicants

What potential grounds of inadmissibility have your clients faced?

Common Inadmissibility Issues

- Crimes/criminal activity of the applicant, INA 212(a)(2)
  - CIMTs, drug offenses, multiple criminal convictions, etc.
- Immigration violations –
  - Entry without inspection INA 212(a)(6)
  - Unlawful Presence, INA 212(a)(9)(B)
  - Permanent Bar, INA 212(a)(9)(C)
- No passport, INA 212(a)(7)

Scenario

When you interview Maya, she tells you that she has entered the U.S. [without inspection] 3 times – in 1995, 2002, and 2005. She was stopped at the border in 2002. She doesn't remember what happened in 2002. Anna tells you she has a conviction for shoplifting from 2001 and that she went before an Immigration Judge after that. Anna tells you Hector only had one entry in 2005. She states that Hector has had one arrest when he was 14 for possession of marijuana. She says nothing happened to him and that he was "just let go" into her custody. Ana has never been to the U.S.

Finding Out About Potential Bars

- Multiple interviews with client
- Get records!
  - FOIA (NRC, CBP, ICE, EOIR)
  - FBI fingerprint check
  - Arrest records: police report, charging document, final disposition, plea documents/agreements
- General Discretion

What else do you want to know about Maya and Hector?

More Facts

You interview Maya and Hector again. Maya tells you that Diana is currently in therapy for the sexual assault. Diana goes to counseling weekly. Maya also tells you that she works 2 jobs to support her kids, and also volunteers through her church and at Diana's school. Hector tells you that he is now a straight A student. He plays on his school's baseball team and that he also volunteers at the family's church.

How Do I Apply for a Waiver?

- Form I-192 – USCIS website
- Fee is $545 but can request a fee waiver
- Identify all grounds of inadmissibility specifically
- Address equities of the case in your argument
  - Should waiver be granted in national or public interest?

What Evidence should Maya and Hector submit for their I-192 waiver?

Supporting Documents

- Birth certificates of U.S. citizen children
- Rehabilitation evidence
  - Certificates for classes/awards
  - Affidavits from family, friends, co-workers
- Criminal documents
  - Final dispositions/sentences
  - Only use Record of Conviction (ROC) Challenge if they ask for records outside of ROC (i.e. police reports)

Scenario

After you file the applications for Maya, Hector, and Ana, Maya tells you that she has another arrest for assault from last year. She didn't tell you because she was embarrassed. She got into a fight with a neighbor. She was convicted of a class A misdemeanor. She also tells you that Ana has been to the US once before, but she was caught for shoplifting. Ana had an immigration hold and was then returned to her home country.

Scenario

A month later Maya comes back to your office and tells you that Hector was arrested for possession of marijuana. He was with some other friends driving to a party and they were pulled over. The police found marijuana in the car and everyone was arrested. Hector is now 18 years old. He was issued a "Notice to Appear" to and placed in removal proceedings.

What if the inadmissibility is not identified in advance or triggered later?

- Ground that is not revealed, or a new arrest or criminal issue
- Travel outside the U.S. – triggering unlawful presence (ULP)
- Pre- or Post- U visa/I-192 approval
  - Amend I-192 waiver
  - File new I-192 waiver

Discretion by Immigration Judge in Removal Proceedings?

Matter of KHAN, 26 I&N Dec. 797 (BIA 2016), http://go.usa.gov/xZ9Cj

- BIA precedent decision limiting IJ ability to review of VSC's decision on inadmissibility waiver discretion
- Immigration Judges do not have authority to adjudicate a request for a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(3)(A)(ii) (2012), by a petitioner for U nonimmigrant status

U Visa Waitlist and Deferred Action Status

- USCIS mails Deferred Action Status (DAS) letter to applicants and derivatives (qualifying family members)
- DAS is not "lawful status"
- DAS has no expiration date – valid until U visa awarded, or DAS revoked
- DAS gives employment authorization eligibility – category (c)(14)
  - only available to applicants inside the U.S.

If Maya's U visa applications are approved, who can apply for Deferred Action Status?

What about Ana who is living abroad?

Parole for U Visas on Waitlist

Parole in the Regulations:

"USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." - 8 CFR 214.14(d)(2)

Parole for U Visas on Waitlist

- DHS has accepted the Ombudsman's recommendations to adopt parole policy for U visa petitioners and family members https://content.govdelivery.com/accounts/USDHS/bulletins/1627040
- New form and policy guidance will be issued in FY 2017
- Also waiting for guidance based on Ombudsman recommendations that :
  - U visa and parole can be filed concurrently
  - VSC will adjudicate the parole applications

Humanitarian Parole

What if your derivative can't wait until USCIS Guidance is issued?

- Humanitarian Parole:
  - What is the humanitarian or public benefit reason for parole?
  - Submit evidence of any immigration petition filed
  - Form I-131
    - 2 passport style photos
    - $360 filing form or fee waiver
    - Form I-134 Affidavit of Support

Scenario

Maya comes to see you after she and her kids have had their U visas for 3 years. Maya tells you that she is now married.

Maya also tells you that Ana wants to marry her boyfriend. She also tells you that Ana was arrested for assault last year and that Hector left the US 2 weeks ago because of a family emergency – he wanted to see his grandfather who is very ill. Maya is not sure what the final disposition of the criminal cases is.

Discussion of Additional Complex Issues

- Referring back to our list of participants learning goals for this workshop
- Answer outstanding questions

U Visa Adjustment of Status

INA 245(m); 8 C.F.R. 25.24

- 3 years continuous physical presence
- Must be admitted in U status
- Continued presence in U.S. justified for humanitarian reasons, ensure family unity, or in the public interest
- Applicant cannot unreasonably refuse to provide assistance to Law Enforcement
- Discretion

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

Questions



Evaluations



Thank you!