



## Serving Immigrant Survivors of Domestic Violence & Sexual Assault



# Today's Objectives



## Understand

Understand the unique dynamics of domestic and sexual violence experienced by immigrant survivors and common barriers to seeking services and civil/criminal legal protections.



## Recognize

Recognize when a survivor may be eligible for immigration relief (VAWA Self Petition, Battered Spouse Waiver, U Visa, etc.).

# Asha's Story









# Tools of Abuse



Isolation



Withholding identity documents



Failing to file immigration applications



Threats of deportation



Abuse from in-Laws



Lying about police/services in the U.S.



Threats to family in home country




No access to money









# Barriers to Leaving/ Seeking Help


 Language


 Isolation

 Distrust in police/fear of immigration enforcement

 Lack of understanding of U.S. legal system

 Cultural considerations

 Financial concerns/No access to public benefits

 Concern about immigration consequences for abuser and others

 Unaware of shelter/services

# Tips for Serving Immigrant Survivors

- Use *qualified* interpreters
- Assess for literacy and provide written materials in native language whenever possible
- Make sure foreign born victims know their immigration status will be kept *confidential*
- Assist survivors in reporting to law enforcement, provide accompaniment
- Tailor Safety Planning to the special needs of foreign born victims (i.e. copy documents, provide basic education about how U.S. laws and systems)
- Be sure victims know and understand their rights
- Make warm referrals
- Practice cultural humility
- Consider constraints when goal-setting, particularly in shelter
- Refer clients to ISP or another qualified Immigration Legal Service Provider

# VAWA Self-Petition

## Who qualifies?

- Legal marriage/qualifying relationship
  - Good faith marriage
- Abuser's lawful status
- Joint residence
- Battery and/or Extreme Cruelty\*
- Good Moral Character

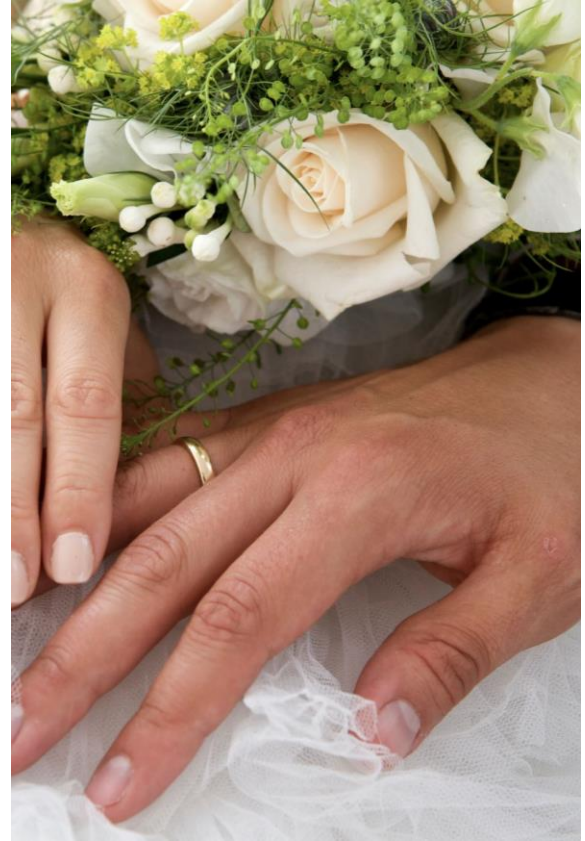


# VAWA Self-Petition: Qualifying Relationship

- Must prove qualifying relationship to a United States Citizen or Lawful Permanent Resident
  - If the LPR abuser was deported
    - Victim can still file for VAWA within 2 years of abuser's deportation if deportation related to the abuse
  - If no longer married to abuser
    - Victim can still file VAWA Self-Petition within 2 years of the date divorce became final (if divorce is related to abuse)
    - Victim can still file VAWA Self-Petition within 2 years of the date of death of abuser

# VAWA Self-Petition: Good Faith Marriage

- Must have entered into the marriage in “good faith”
  - Must have married intending to establish a married life together, not for the sole purpose of gaining legal immigration status in the U.S.



# VAWA Self-Petition: Abuse

- Must have been battered or subjected to extreme cruelty by USC or LPR family member
  - Must only prove past abuse; need not show risk or fear of future abuse
  - Can stay with or reconcile with abuser without losing rights under VAWA
- Evidence of Battery and/or Extreme Cruelty
  - Police reports or complaints
  - Copy of protection order or restraining order
  - Medical records or examinations
  - Psychological or therapy records
  - Photographs of any injuries
  - Photographs of any damage to property
  - Letters, text messages, or emails sent by the abuser
  - Criminal docket sheets and/or convictions for the abuser
  - Affidavits from family members, friends, neighbors who are aware of the abuse
  - Letters from therapists, social workers, or shelter staff attesting to the abuse

# VAWA Self-Petition: Joint Residency

- Must have lived with the abuser at some time
  - No minimum time requirement
  - Joint residence can be within or outside the U.S.
  - Must currently reside in the U.S.
- Evidence of Joint Residence
  - Copy of lease or mortgage listing both spouses
  - Copy of mortgage payments or rental payments
  - Mail addressed to both spouses
  - Cards or letters addressed to either spouse at the same address
  - Copies of identification (driver's license) listing the shared address)
  - Copies of utility bills for a shared address
  - Affidavits from neighbors or landlord attesting to shared residence
  - Copies of tax returns
  - Employment records or W-2s
  - Copy of blank check (voided or cancelled) listing names and address
  - Medical records or medical bills
  - Credit card bills
  - Bank statements



# VAWA Self-Petitioner: Good Moral Character

- Must be a person of “good moral character”
  - Focus on the last 3 years, but prior period can also be considered
- What is good moral character?
  - USCIS states good moral character is “measured by the standard of the community, but does not necessarily require the highest degree of moral excellence”
  - INA defines what can prevent you from establishing good moral character: habitual drunkard, criminals, illegal gamblers, those involved in prostitution or commercialized vice, alien smuggling, aliens previously removed, illegal voters, those who have made a false claim to U.S. citizenship, and those who have given false testimony for the purpose of obtaining an immigration benefits. INA §101(f)
- In the end, good moral character is discretionary
- Evidence of Good Moral Character
  - Statements from family members, friends, employer, religious leaders, etc. attesting that the individual is a good person, friend, parent, etc.
  - Awards or certificates received
  - Letter from children’s school about responsibility as a parent and involvement in child’s life

# VAWA Self-Petition: What happens after filing?

What happens after filing?

- Prima facie determination
- Work permit, Social security card
- Lawful permanent residency
- Citizenship



# Battered Spouse Waiver for Conditional Residents

- A Conditional Permanent Resident receives a green card valid for two years instead of ten years
- Conditional Permanent Residence is issued in every marriage-based green card application where the applicants have been married for less than two years
- Immigrant must apply to remove conditions on their permanent resident status at least 90 days before their green card expires



# I-751 Waiver of Joint Filing

- Conditional resident may apply on their own to receive permanent residency in cases of:
  - Death of Petitioner
  - Divorce
    - Marriage was entered into in good faith but has been terminated by a final divorce or annulment
  - Battery and/or Extreme Cruelty
    - Marriage was entered into in good faith, but during the marriage the immigrant spouse was abused or subjected to extreme mental cruelty
  - Extreme Hardship
    - Extreme hardship would result if the foreign national were removed

# Battered Spouse Waiver for Conditional Residents

- What happens after filing?
  - If green card expires while application is pending, immigrant will need to get an I-551 extension stamp in their passport to continue working
  - If applicant has been a lawful permanent resident for three years while the application to remove conditions is pending, the applicant may be eligible to apply for naturalization
    - The application to remove conditions will be adjudicated first at the naturalization interview
    - Interview will conclude with naturalization English and Civics exam and naturalization eligibility interview

# The U Visa

- Who qualifies?
  - Applicant has been the victim of certain enumerated criminal activity and possesses information concerning that criminal activity;
  - Applicant has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or Local law enforcement agency in the investigation or prosecution of the criminal activity;
  - The criminal activity resulted in substantial physical or mental abuse of the applicant
  - The criminal activity violated the laws of the United States or occurred in the United States
  - The applicant must be admissible to the United States



# The U Visa: Who is a Victim

## Direct Victim

- The person who suffered direct or proximate harm as a result of the crime
- Cases where the victim is proximately harmed are rare
  - Example: woman who miscarries after being frightened from witnessing a crime

## Indirect Victim

- Certain family members if direct victim is deceased due to murder or manslaughter, or is incapacitated or incompetent
- Family members of U.S. citizen victims can also be indirect victims
- Indirect victims apply as the principal applicant and must meet all eligibility requirements

# The U Visa: Qualifying Crime

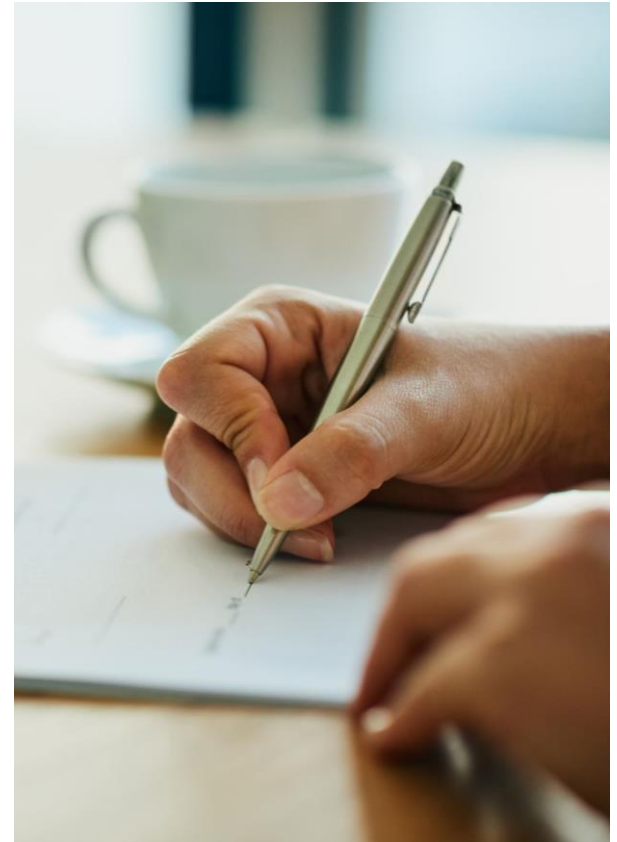
- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Fraud in Foreign Labor Contracting
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault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



# The U Visa: Helpfulness

REQUIRED: Form I-918, Supplement B signed by the head of the law enforcement agency (or other qualifying agency) verifying victim's helpfulness

Applicant has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or Local law enforcement authority in the investigation or prosecution of the criminal activity



# The U Visa: Certification Tips

## Addressing concerns of certifiers:

- Certification is discretionary
- Certifier is verifying facts
  - FACT 1: That individual was victim of qualifying crime
  - FACT 2: That victim was, is, or is likely, to be helpful in investigation or prosecution
- Certifier is not sponsoring the individual for a visa
- Certification may be revoked if helpfulness of victim changes but no affirmative obligation to review and monitor helpfulness
- Certifier may wish to consult *DHS U & T Visa Law Enforcement Certification Guide* (available online at [dhs.gov](https://www.dhs.gov))

# The U Visa: Substantial Abuse

- The criminal activity resulted in substantial physical or mental abuse of the applicant
  - USCIS will consider the severity of the injury suffered and the abuse inflicted
  - Factors to determine 'substantiality' may include:
    - Nature of the injury
    - Severity of the perpetrator's conduct
    - Severity of the harm suffered
    - Duration of infliction of harm
    - Permanent or serious harm to appearance, health, physical or mental soundness

# The U Visa: Admissibility

- Grounds of inadmissibility at INA §212(a)
- Common grounds of inadmissibility:
  - Entry without inspection
  - Unlawful presence in the United States
  - Criminal grounds
  - Prior deportation
  - Fraud and material misrepresentation to obtain immigration benefit
  - False claim to U.S. citizenship

# The U Visa: Waiver of Grounds of Inadmissibility

- Most grounds of inadmissibility can be waived
- U visa-specific waiver can waive all grounds of inadmissibility, except for those regarding perpetrators and participants of Nazi persecutions, genocide, acts of torture or extrajudicial killings
- Discretionary: “in the public or national interest”
- Positive factors outweigh negative factors

# The U Visa: Benefits

- 4 years of employment authorization
- Right to apply for legal permanent residence after 3 years as a U visa recipient
- Right to include derivative family members in the U.S. or abroad
- BUT -- Only 10,000 available per year, long processing times and long waitlist
  - Current wait time for cases with Nebraska Service Center and Vermont Service Center: 59.5 to 60 months

# The T Visa

- Who qualifies?
  - Victim of a severe form of human trafficking
  - Are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking
  - Must comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (unless victim is under the age of 18 or is unable to cooperate due to physical or psychological trauma)
  - Demonstrate that victim would suffer extreme hardship involving unusual and severe harm if victim were removed from the United States
  - Must be admissible to the United States

# The T Visa: Severe Form of Human Trafficking

- Under Federal Law, a “severe form of trafficking” is:
  - **Sex Trafficking:** When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or
  - **Labor Trafficking:** When someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion of the purpose of involuntary servitude, peonage, debt bondage, or slavery.



# The T Visa: Showing Helpfulness

- Victim may submit a law enforcement agency endorsement using Form I-914, Supplement B, Law Enforcement Certification; OR
- If unable to obtain certification, victim can submit secondary evidence of helpfulness



# The T Visa: Presence in the U.S. on Account of Human Trafficking

- Focus of inquiry is not the reason the person came to the U.S. originally
- If a victim escaped trafficking situation prior to making report to law enforcement, they must explain why the human trafficking situation has made them unable to leave the U.S.

# The T Visa: Extreme Hardship

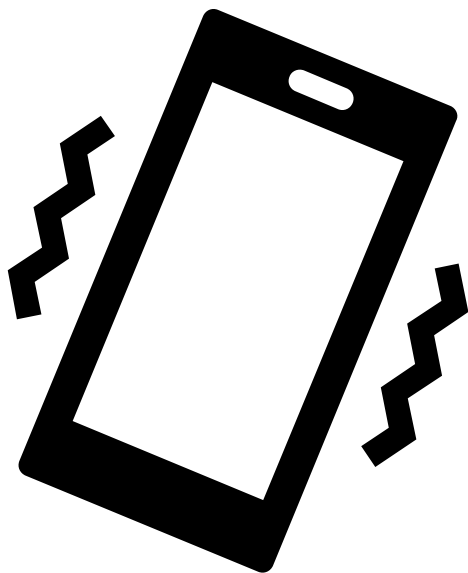
- More than economic harm (e.g., lack of jobs) or social harm (e.g., being considered unsuitable for marriage or employment)
- Consider:
  - Age and particular situation including medical/mental health needs
  - Whether government in native country provides protection from human trafficking and likelihood that victim will be victimized again;
  - Whether victim would be severely punished if returned to native country (by the government, traffickers, or because of social practices) for having been trafficked; and
  - Whether native country is dangerous because of war or civil violence

## The T Visa: Benefits

- 4 years of T nonimmigrant status
- 4 years of employment authorization in the U.S.;
- Possibility of access to public benefits similar to refugee;
- Possibility of lawful permanent residency after 3 years in T nonimmigrant status (or sooner if the investigation is concluded);
- Derivative family member living in the U.S. and abroad can receive the same benefits as the applicant
- Processing times are not backlogged like for the U Visa



Questions?



## Contact Information

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