



# ASISTA

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## ASISTA Staff

Gail Pendleton,  
*Co-Director.* Co-founder of the National Network to End Violence Against Immigrant Women (NNEVAIW)

Sonia Parras Konrad,  
*Co-Director.* Founder of the Iowa Coalition Against Domestic Violence MUNA Legal Clinic, Des Moines, Iowa.

Maria Jose Fletcher,  
*Staff Attorney.* Director/Supervising Attorney for LUCHA: A Women's Legal Project Immigrant Advocacy Center, Miami, Florida.

Sally Kinoshita,  
*Staff Attorney.* VAWA Project Director of the Immigrant Legal Resource Center, San Francisco, California.

Ana Vallejo,  
*Staff Attorney.* Supervising Attorney for Florida Immigrant Advocacy Center LUCHA: A Women's Legal Project, Miami, Florida.

Ann Benson  
*Staff Attorney.*

Jonathan Moore  
*Consultant.*

Joanne Picray  
*Clearinghouse Manager*  
ASISTA, Des Moines, Iowa.

### *From the Co-Directors:*

*We hope you had a good holiday season! For this issue of the Newsletter, we are focusing on some complicated issues for your crime-surviving clients. Sally Kinoshita's article on good moral character, inadmissibility and the relationship between the two provides an overview and practice pointers for self-petitioning and later adjustment of status to lawful permanent residence. Jonathan Moore gives us useful advice on how to address juvenile offenses when applying for U visas. We suggest you read this latter article in conjunction with prior articles on overcoming U inadmissibility ([Asista Winter 2008 Newsletter](#)) and analyzing criminal conduct generally ([Asista Summer 2008 Newsletter](#)). We'd also like you to note our new address and contact information, located on the last page of this newsletter.*

*Please let us know if there are particular issues you'd like us to address. We also welcome your contributions to our Newsletter!*

*Look for information on the new regulations on adjustment of status for U and T Visa holders on our website and in upcoming newsletters.*

*Gail Pendleton and Sonia Parras-Konrad*

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# Analyzing Good Moral Character and Inadmissibility Issues in VAWA Cases<sup>1</sup>

by Sally Kinoshita

Many practitioners find the comparisons and differences between the good moral character requirements for VAWA self-petitioning and the inadmissibility grounds at adjustment of status to be confusing. We hope this article will bring some clarity to the issues.

## Good Moral Character

VAWA self-petitioners must establish that they are of good moral character at the time they submit the VAWA self-petition.<sup>2</sup> The immigration laws do not define good moral character per se. Instead, there are statutory bars to good moral character listed at INA § 101(f) stating that a person will be barred from showing good moral character if he or she is or was:

A habitual drunkard;

engaged in prostitution within the last ten years before filing the application;

engaged in any other commercial vice, whether or not related to prostitution;

involved in smuggling people into the United States;

convicted of, or has admitted, committing acts of moral turpitude, other than (1) purely political crimes, (2) a petty offense or (3) crime committed

### **PRACTICE POINTER: False statements**

"False testimony" under 101(f)(6) is not the same as immigration fraud under INA § 212(a)(6)(C). False testimony requires making statements orally and under oath to an immigration authority.<sup>1</sup> In addition, note that while the general language following the list of bars at INA § 101(f) references false claims to citizenship, this is (a) not a bar and (b), according to the CIS guidance, only relates to claims to voting<sup>1</sup>. Clients who may be inadmissible under INA § 212(a)(6)(C)(i) or (ii) are not, therefore, barred from showing good moral character unless their statements

<sup>1</sup> This article is partially excerpted from The VAWA Manual: Immigration Relief for Abused Immigrants by Evangeline Abriel for Catholic Legal Immigration Network, Inc. (CLINIC) and Sally Kinoshita for Immigrant Legal Resource Center (ILRC). The entire manual can be purchased online at [www.ilrc.org](http://www.ilrc.org). Gail Pendleton provided some of the practice pointers.

<sup>2</sup> INA § 204(a)(1)(A)(iii)(II)(bb) [spouses and intended spouses of U.S. citizens]; INA § 204(a)(1)(B)(ii) [spouses and intended spouses of lawful permanent residents]; INA § 204(a)(1)(B)(iii) [children of lawful permanent residents].

both when the alien was under 18 years of age and more than five years before applying for a visa or admission;

convicted of two or more offenses for which the aggregate sentences to confinement were five years or more;

***PRACTICE POINTER:***  
**Structuring Your Argument**

Many practitioners make the mistake of automatically assuming their clients face a bar to good moral character or admissibility, rather than first checking whether there's an argument the bar does not apply. The best practice, and zealous advocacy, requires that you first argue that the barrier doesn't apply. Asking for the exception (or a waiver, in the case of inadmissibility) is your back-up argument. So here's the way to think about any possible barrier to status, whether or not raised by DHS:

- 1) The ground doesn't apply and here's why;
- 2) If you disagree and think it does apply, there's a waiver available and my client meets it
- 3) (For good moral character) And the triggering act/problem is connected to domestic violence

As a caveat, it is important to disclose and address potential inadmissibility issues rather than having to deal with it later on during the adjudication phase.

convicted of, or has admitted, violating laws relating to controlled substances (except for simple possession of 30 grams or less of marijuana);

earning income derived principally from illegal gambling;

convicted of two or more gambling offenses;

one who has given false testimony for the purposes of obtaining an immigration benefit;

incarcerated for an aggregate period of 180 days or more as a result of conviction;

convicted of an aggravated felony, as defined in INA § 101(a)(43), where the conviction was entered on or after November 29, 1990 (except for conviction of murder, which is bar to good moral character regardless of the date of conviction);

engaged in polygamy.<sup>3</sup>

The VAWA self-petitioner must demonstrate good moral character for the past three years<sup>4</sup> by showing that none of the bars to good moral character listed in INA § 101(f) applies. If any of the bars do apply, the self-petitioner will need to show he or she is eligible for the special VAWA exceptions noted below.

As noted in these examples, Congress created special arguments for self-petitioners who might otherwise be ineligible for status.

### **VAWA Exceptions for the Bars to Good Moral Character**

A person who falls under one of the statutory bars normally cannot show good moral character. For VAWA self-petitioners, however, there is a special exception for the statutory bars to good moral character, found at INA § 204(a)(1)(C).<sup>5</sup> Under that exception, even if the self-petitioner has committed an act or has a conviction listed under INA § 101(f), that act or conviction does not bar CIS from finding that the self-petitioner is a person of good moral character if (1) the act or conviction is waivable with respect to the self-petitioner for purposes of determining whether the self-petitioner is admissible or deportable, and (2) the act or conviction was connected to the abuse suffered by the self-petitioner.

<sup>3</sup> INA § 101(f).

<sup>4</sup> The CIS may also investigate the self-petitioner's background beyond the three year period to determine good moral character, "when there is reason to believe that the self-petitioner may not have been a person of good moral character during that time" (emphasis added). See January 19, 2005 CIS guidance memorandum available on the Asista website at [www.asistaonline.org](http://www.asistaonline.org).

<sup>5</sup> A good moral character exception for VAWA self-petitioners was added to the Immigration and Nationality Act by VAWA 2000.

### **Example:**

#### ***Immigration Fraud***

*My Client did not commit false testimony and is not barred under 101(f)(6) because her inaccurate statement about her status was not under oath. Even if you find it was under oath, it is document fraud under INA §212(a)(6)(C(i) and is waivable under INA §212(i)(1). She made the statement because she was a victim of domestic violence (document through affidavit and any other credible evidence) and therefore meets all the requirements for an exception to good moral character problems. Here is why you should use your discretion to find she is a person of good moral character (document).*

### ***Showing that a waiver is available***

In a memorandum of January 19, 2005, the USCIS provided guidance on the exception to the good moral character requirement for VAWA self-petitioners.<sup>6</sup> According to this guidance the self-petitioner must submit evidence to address whether a waiver would be available for any act or conviction that falls under the categories listed at INA § 101(f). The self-petitioner does not need to demonstrate that she would be granted a waiver, only that one would be available at the time the self-petition is filed. However, it is important to note that if a CIS adjudicator determines that an *act or conviction constitutes an aggravated felony*, the self-petitioner may be placed in removal proceedings.<sup>7</sup>

Along with this guidance, CIS provided a [chart](#) to indicate which bars to good moral character may qualify under the VAWA exception because they are acts or convictions which may be waived. It also included a reference guide for authorities affecting false testimony determinations made under INA § 101(f)(6). The relevant waivers include waivers for prostitution under INA § 212(h)(1)(C), alien smuggling under INA § 212(d)(11), crimes involving moral turpitude, multiple crimes and controlled substances crimes under INA § 212(h)(1)(C), fraud or misrepresentation under INA § 212(i), and domestic violence crimes under INA § 237(a)(7).

### ***Showing that the act or conviction is connected to the abuse***

### **Example Crimes:**

*My client's theft conviction is not an aggravated felony and therefore does not trigger the 101(f)(3) because she didn't get a sentence of a year or more. It's also not a crime of moral turpitude because the maximum possible sentence is less than a year and she got a sentence of less than six months, so she meets the exception at 212(a)(2)(A)(ii)(II); and it's connected to domestic violence (document). Please use your discretion to find she is a person of good moral character (document).*

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<sup>6</sup> William R. Yates, Ass. Dir. Oper. USCIS, Memo re: Determinations of Good Moral Character in VAWA-Based Self-Petitions (Jan. 19, 2005) (available at [http://www.asistahelp.org/VAWA/GMC\\_011905.pdf](http://www.asistahelp.org/VAWA/GMC_011905.pdf))

<sup>7</sup> Id. at p. 3.

***PRACTICE POINTER:***  
**Demonstrating Good Moral Character.**

In addition to demonstrating the absence of a statutory bar to good moral character or eligibility for an exception to such a bar, the self-petitioner must also present sufficient information to allow CIS to conclude that he or she is a person of good moral character. The applicant's affidavit is primary evidence of his or her good moral character.<sup>1</sup> It must be accompanied by police clearances from each place where the self-petitioner has lived for six months or more during the past three years.<sup>1</sup> The CIS will also consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.<sup>1</sup>

The CIS memorandum specifically addresses this connection requirement, defining "connected to" as requiring a showing that the abuse experienced by the self-petitioner "compelled or coerced" the self-petitioner to commit the act or crime that precludes good moral character.<sup>8</sup> "In other words, the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the relationship of the abuser to, and his or her battering or extreme cruelty."<sup>9</sup>

To demonstrate the connection between the act or conviction and the abuse, self-petitioners should submit evidence of:

- The circumstances surrounding the act or conviction, including her role in, the act or conviction committed by the self-petitioner; and
- The requisite causal relationship between the act or conviction and the battering or extreme cruelty.<sup>10</sup>

Self-petitioners need not show that the act or conviction occurred during the marriage to the U.S. citizen or lawful permanent resident abuser. Instead, CIS adjudicators should consider the full history of domestic violence in

the case.<sup>11</sup>

Although the statutory bars to good moral character sometimes reference the grounds of inadmissibility at INA § 212, these issues must be analyzed and addressed separately for adjustment. The waivers to the grounds of inadmissibility are sprinkled throughout INA § 212, so it is important to read the statute carefully!

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at p. 4.

## Related Inadmissibility Grounds

Note that during the self-petitioning process, we are looking at the waivers of inadmissibility grounds only for the purposes of overcoming the inadmissibility grounds that bar a finding of good moral character. When a VAWA self-petition has been approved, the self-petitioner moves to the second step of the immigration process, that is, actually obtaining lawful permanent resident status. This is done by either filing an application for adjustment of status with CIS in the United States or applying for a permanent resident visa at a U.S. consulate abroad through “consular processing.”

To adjust status or consular process, the self-petitioner will need to establish that he or she does not fall under one or more of the inadmissibility grounds set forth at INA § 212, or that, if he or she does fall under one of those grounds, there is a waiver for which he or she is eligible. At that point, an act or conviction that posed an obstacle to establishing good moral character may also result in the self-petitioner being inadmissible under a section of the INA. In other words, even though the I-360 VAWA self-petition has been approved, the beneficiary of the petition will not receive lawful permanent status if he or she is inadmissible and not eligible for any waiver.

Inadmissibility grounds that you may encounter in VAWA cases include those related to:

- communicable diseases<sup>12</sup>
- vaccination requirements<sup>13</sup>
- physical or mental disorders that may pose a threat<sup>14</sup>
- drug abuse or drug addiction<sup>15</sup>
- criminal acts or convictions including crimes involving moral turpitude, drug convictions, a reason to believe the self-petitioner trafficked (sold or transported) drugs, prostitution<sup>16</sup>
- security or terrorism issues<sup>17</sup>
- public charge<sup>18</sup>
- immigration violations such as being present in the United States without permission or parole, failure to attend removal proceedings, misrepresentation or fraud for an immigration benefit, alien smuggling, civil document fraud, prior removals, unlawful presence<sup>19</sup>
- false claims to U.S. citizenship<sup>20</sup>
- polygamy<sup>21</sup>
- unlawful voting<sup>22</sup>

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<sup>12</sup> INA § 212(a)(1)(A)(i)

<sup>13</sup> INA § 212(a)(1)(A)(ii)

<sup>14</sup> INA § 212(a)(1)(A)(iii)

<sup>15</sup> INA § 212(a)(1)(A)(iv)

<sup>16</sup> INA § 212(a)(2)

<sup>17</sup> INA § 212(a)(3)

<sup>18</sup> INA § 212(a)(4)

<sup>19</sup> INA § 212(a)(6)-(7)

<sup>20</sup> INA § 212(a)(6)(C)(ii)

<sup>21</sup> INA § 212(a)(10)(A)

Many grounds of inadmissibility have a waiver that is generally available to those who qualify, while other inadmissibility grounds have special waivers or exceptions for VAWA self-petitioners. The grounds of inadmissibility that carry special provisions for VAWA self-petitioners include: public charge at INA § 212(1)(4)(C)(i), crimes involving moral turpitude, multiple criminal convictions and prostitution at INA § 212(h), fraud or misrepresentation at INA § 212(i), unlawful presence at INA § 212(a)(9)(B)(iii)(IV), present without permission or parole, which does not apply to self petitioners,<sup>23</sup> and reentering the United States without authorization following a prior removal or ten years' unlawful presence at INA §212(a)(9)(C)(iii).

It is important to discuss these inadmissibility grounds very carefully with your client, as some of them carry serious consequences. For example, there are no waivers available for a false claim to U.S. citizenship or a reason to believe the self-petitioner is a drug trafficker. These grounds could have been triggered by the self-petitioner falsely claiming to be a U.S. citizen at the border (even if she was not ultimately allowed entry) or by a drug arrest for selling a small amount of marijuana. If the self-petitioner is charged with this ground of inadmissibility, she could have her adjustment application denied and find herself in removal proceedings.

**PRACTICE POINTER:  
When the Ground Was At Issue for Good Moral Character**

Where an inadmissibility ground was included in your good moral character argument, use VSC's approval to help overcome inadmissibility at adjustment. For instance, if you were able to show good moral character despite a crime of moral turpitude,<sup>1</sup> argue that this is evidence that your client not only merits the special VAWA waiver at INA § 212(h), but that CIS should adjust as a matter of discretion. The part of the agency that is charged with deciding these cases and has training and expertise in domestic violence has found your client eligible, in its discretion. Local CIS should not now undermine the Congressional goal of helping immigrant survivors of domestic violence by denying adjustment for the same acts that VSC found were outweighed by other factors at the self-petitioning phase

If it appears that your client might fall under a ground of inadmissibility, keep some of the following tips in mind. First, as noted in the earlier practice pointer, analyze whether

<sup>22</sup> INA § 212(a)(10)(D)

<sup>23</sup> See Aytes, Michael L., Associate Director, Domestic Operations, "Adjustment of Status for VAWA Self-Petitioner who is present without inspection," CIS Memorandum to Field Leadership (dated April 11, 2008) available online at <http://www.asistahelp.org/VAWA%20Adjustment%20Memo.pdf>



the inadmissibility ground really applies. Some inadmissibility grounds – for example, being present in the United States without permission or parole – do not apply to VAWA self-petitioners at adjustment.<sup>24</sup> Even if your client has a criminal arrest or conviction in his or her past, can you make the argument that it does not meet the definition of a “conviction”? Can you argue that it is not a crime involving moral turpitude under the case law in your jurisdiction? Does it fall under an exception, such as the juvenile or petty offense exceptions for crimes of moral turpitude<sup>25</sup> so that an inadmissibility ground is not even triggered?

Finally, if you are not quite certain that an inadmissibility ground has been triggered, analyze whether your client qualifies for a waiver and think strategically about when to file the waiver. Remember it is CIS’ job – not yours – to charge inadmissibility. Many practitioners wait until the adjustment interview to see whether they must argue that the inadmissibility ground does not apply, and only file the waiver if CIS does not accept that argument. Waivers are costly (currently \$545 to file the I-601) and can cause delays in the adjudication of the adjustment application, so if it turns out your client has *not* triggered an inadmissibility ground, do not start off the process by conceding to one.

## **Conclusion**

As you can see, there is some interaction between good moral character and inadmissibility, but the fit is not exact. In some cases, your good moral character arguments may help you at adjustment. In others, your client may face inadmissibility issues that did not come up at the good moral character phase. In all cases, however, you should identify inadmissibility problems at the self-petitioning phase, so you can start preparing for adjustment early. In addition, always apply the tiered analytical framework suggested here: it is the best way to both help your clients and educate CIS officers that may be making other, less well-represented victims, overcome barriers that do no apply to them.

Please contact ASISTA with any questions about good moral character or inadmissibility, preferably well before you must make your arguments to CIS. Each case is different, and we will help you decide the best analysis and strategy for your client, to ensure she gets the status and attendant safety Congress intended.

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<sup>24</sup> Id.

<sup>25</sup> INA § 212(a)(2)(A)(ii)

# Juvenile Adjudication: Dealing with the “youthful offender” on the U Visa Application

by Jonathan Moore, ASISTA<sup>1</sup>

All U visa applicants must overcome inadmissibility due to convictions for certain crimes. Many children charged with crimes do not receive adult convictions; instead they receive “juvenile adjudications.” Such a formal adjudication does not count as a conviction for immigration purposes—and therefore should not invoke any conviction-based ground of inadmissibility; however, that does not mean that you can answer “no” to all the questions.

## Not a “conviction”

Unless it is for a drug-trafficking offense, or invokes some other non-conviction-based ‘conduct’ ground of inadmissibility, a juvenile adjudication should only have negative discretionary weight in any immigration application or adjudication.

A juvenile adjudication is not a conviction under immigration law.

This is not something that is controlled by the state law. Even if it was treated as a juvenile “crime” punishable by detention in a juvenile facility, it should not be a conviction for immigration purposes. In *Matter of Devison*, the Board of Immigration Appeals (BIA) stated, “We therefore reaffirm that an adjudication of youthful offender status or juvenile delinquency is not a conviction for a crime for purposes of the immigration laws.”<sup>1</sup>

*A juvenile adjudication is not a conviction under immigration law.*

However, if a juvenile is treated as an adult, the simple fact of minority doesn't exempt him/her from having a conviction. <sup>2</sup>

1 *Matter of Devison*, 22 I. & N. Dec. 1362 (BIA 2000); (The BIA analyzes juvenile offender proceedings under standard of the Federal Juvenile Delinquency Act); Additional authorities include: *Matter of De La Nues*, 18 I. & N. Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135 (BIA 1981) (conviction in Cuba); *Matter of F-*, 4 I. & N. Dec. 726 (BIA 1952); *Matter of A-*, 3 I. & N. Dec. 368 (BIA 1948); *Matter of O’N-*, 2 I. & N. Dec. 319 (Att’y Gen. 1945). These above holdings were adopted by the State Department at 52 Fed. Reg. 17,942 (May 13, 2987) (amending former 22 C.F.R. §§ 41.91(a)(9) and (10) and 42.91(a)(9) and (10)) (new rule does not apply to juvenile tried as adult for a violent crime).

2 See, e.g., *Vieira Garcia v. INS*, 239 F.3d 409, 413 (1st Cir. 2001) (noncitizen deemed convicted where was adjudicated as an adult by state court, even though under 18 at time of offense); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966) (deportation statute has no minimum age limit; 18 year-old treated as adult); *Circella v. Sahli*, 216 F.2d 33 (7th Cir. 1954); *Matter of Andrade*, 14 I. & N. Dec. 364 (BIA 1973) (deportation not barred solely by age of noncitizen at time of conviction); *Matter of R-*, 1 I. & N. Dec. 613 (BIA 1943). *Matter of C-M-*, 9 I. & N. Dec. 487 (BIA 1961) (eighteen-year-old tried as adult in state court);

In addition, there are issues that may arise because of these adjudications which may indicate other grounds of inadmissibility such as sale of drugs,<sup>3</sup> coming to the US to engage in prostitution<sup>4</sup>, or other health<sup>5</sup> or conduct-based grounds<sup>6</sup>. These can trigger grounds as people who CIS has 'reason to believe' are or have been drug traffickers,<sup>7</sup> people convicted **as adults** of any number of offenses, or who have made a formal admission of any drug offense or a 'crime involving moral turpitude', including theft, some assault crimes, or a sex crime<sup>8</sup>

*“there are issues that may arise because of these adjudications which may indicate other grounds of inadmissibility”*

It is also worth noting that a juvenile delinquency finding relating to prostitution or behavior that indicates a 'mental or physical disorder' or drug abuse/addiction also can support a finding of inadmissibility.<sup>9</sup>

### Answering the question in I-918 Part 3

Failing to reveal a material fact is a problem for several reasons. Trying to obtain “admission to the United States, a visa, or other benefit under Immigration and Naturalization Act (INA)” “by fraud or willfully misrepresenting a material fact” is a separate ground of inadmissibility.<sup>10</sup>

<sup>3</sup> 8 USC § 1182(a)(2)(C); INA § 212(a)(2)(C);

<sup>4</sup> 8 USC § 1182(a)(2)(D); INA § 212(a)(2)(D)

<sup>5</sup> 8 USC § 1182(a)(1)(A)(iii); INA § 212(a)(1)(A)(iii) (physical or mental disorder and associated behavior that makes a person dangerous to self or others);

<sup>6</sup> 8 USC § 1182(a)(1)(A)(iv); INA § 212(a)(1)(A)(iv); (drug abuser or addict is inadmissible)

<sup>7</sup> 8 USC § 1182(a)(2)(C); INA § 212(a)(2)(C);

<sup>8</sup> 8 USC § 1182(a)(2)(A)(i); INA § 212(a)(2)(A)(i) (for more on the requirements for admitting the “essential elements” of a moral turpitude or drug offense, see *Matter of J-*, 2 I. & N. Dec. 285 (BIA 1945); also *Matter of G-M-*, 7 I. & N. Dec. 40 (Att’y Gen. 1956); and *Matter of S-*, 8 I. & N. Dec. 409 (BIA 1959), *Matter of K-*, 7 I. & N. Dec. 594 (BIA 1957); *Matter of W-*, 5 I. & N. Dec. 578 (BIA 1953).

<sup>9</sup> A juvenile adjudication could be used to establish inadmissibility under 8 USC § 1182(a)(1)(A) (iii); INA § 212(a)(1)(A)(iii) (physical or mental disorder and associated behavior that makes a person dangerous to self or others); or under 8 USC § 1182(a)(2)(D); INA § 212(a)(2)(D) (coming to the US to engage in prostitution), because these inadmissibility grounds don’t require a criminal conviction.

<sup>10</sup> 8 USC § 1182(a)(2)(C)(i); INA § 212(a)(6)(C)(i)

To be a *material* statement or omission it “must have ‘a natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed.”<sup>11</sup> The Attorney General has ruled that a misrepresentation is considered to be material if the respondent would be excludable on the true facts; and the misrepresentation tends to shut off a line of inquiry relevant to the visa, document, or other benefit procured or sought to be procured that might have resulted in the alien's exclusion.<sup>12</sup> Congress did not intend to allow DHS to *deport* aliens for nonmaterial misrepresentations;<sup>13</sup> also, a “harmless” misrepresentation that does not affect admissibility is not “material.”<sup>14</sup>

However, a grant or denial of U-visa application is an almost entirely discretionary decision by DHS, with very little right of appeal. So what is “material” to a U-visa decision is likely to include statements and omissions that might not be strictly material to a legal determination of inadmissibility and deportability, if such omissions shut off lines of

inquiry relevant to the exercise of discretion. The threshold for materiality in such a case may be lower.

*“it is important to maintain your own credibility, since this implicates how VSC views the credibility of your clients, current and future”*

Finally there can be consequences for

practitioners who are found to have knowingly made a false statement of material fact or law or to have willfully misled any person concerning a material and relevant matter relating to a case.<sup>15</sup> When working with VSC, in particular, it is important to maintain your own credibility, since this implicates how VSC views the credibility of your clients, current and future.

While there is a potentially generous waiver available for U-visa applicants, you don't want to be in the dicey position of arguing that the client needs a waiver for a new misrepresentation made in her application for the U itself! Better to admit any encounters with law enforcement, while bolstering the client's credibility, and request the waiver as needed.

<sup>11</sup> *U.S. v. Gaudin* 515 U.S. 506, 509, 115 S.Ct. 2310, 2313 (U.S. Mont., 1995), citing *Kungys v. United States*, 485 U.S. 759, 770, 108 S.Ct. 1537, 1546 (1988)

<sup>12</sup> *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1960; A.G. 1961),

<sup>13</sup> *Romero v. I.N.S.* 39 F.3d 977, 980 (C.A.9, 1994)

<sup>14</sup> Cf. *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 414 (BIA 1962) A.G. 1964 (finding no materiality in the non-citizen's misrepresentation of a job offer where he was not likely to become a public charge); *Matter of Mazar*, 10 I. & N. Dec. 80, 86 (BIA 1962) (finding no materiality in nondisclosure of involuntary communist party membership that would not have resulted in a determination of excludability)

<sup>15</sup> See, e.g., *Matter of Shah* 24 I. & N. Dec. 282, 286 (BIA 2007); under 8 CFR 1003.102(c) the EOIR can sanction practitioners for a false statement of material fact made with “reckless disregard” or one who “willfully misleads, [or] misinforms” any person about evidence relevant to a case.

Even if we assume that a juvenile adjudication is neither a “crime”, *nor* an “offense,” it is likely you will still need to answer the questions under §3.1.b: “have you ever been arrested...by any law enforcement officer...for any reason?”<sup>16</sup>

If you assume that, because a juvenile adjudication isn't a conviction of a crime for immigration purposes, therefore an arrest of a juvenile is not an arrest for purposes of answering this question, you run the danger of committing misrepresentation. Given that the questions on the form go far beyond simply “have you ever been convicted of a crime”, it's clear they are asking about *any arrest, by anyone*. The introductory language to Part 3 of the form that says “even if your records were sealed and you were told that you have no record, please answer anyway”<sup>17</sup> sounds applicable to juvenile matters.

Question 3.1.b, “have you ever been arrested, cited, or detained by any law enforcement officer (including DHS, former INS, and military officers) for any reason?”<sup>18</sup> is so broad that it includes arrests and citations that do not result in an adult conviction. For example, arrests by DHS can be for administrative, non-criminal matters, yet the question specifically asks for them<sup>19</sup> Status-based arrests by ICE are usually civil and not criminal and do not lead to a conviction, yet the question asks for those; plus it also even asks for citation--“for any reason”.<sup>20</sup> Given that, a juvenile arrest is probably a material fact.

The questions also contemplate being informed of alternative or rehabilitative dispositions at least some of which—even for adults—might not constitute convictions. For example, the instruction to Part 3 of the I-918 say “[f]or the purposes of this petition, you must answer ‘Yes’ to the following questions, if applicable, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer or attorney, told you that you no longer have a record.”<sup>21</sup> Asking for the information “even if your records . . . were cleared” is a fairly explicit request. Question Part 3.1(e) of the form I-918 asks if you have “EVER” ...[b]een placed in an alternative sentencing or a rehabilitative program (for example: diversion, deferred prosecution, withheld adjudication, deferred adjudication).<sup>22</sup>

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<sup>16</sup> USCIS form I-918, Part 3

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> To avoid answering affirmatively to this question while having a juvenile adjudication, you would have to argue that the parenthetical was restrictive as far as non-criminal arrests, (e.g.: it doesn't mention juvenile arrests so those don't count) rather than illustrative. For a negative example, albeit from a completely different context, see *Matter of Ruiz-Romero*, 22 I. & N. Dec. 486 (BIA 1999) (“We disagree with the respondent's view that the parenthetical, ‘relating to alien smuggling,’...is language limiting the type of convictions...that may be regarded as an aggravated felony. Rather, we find that the parenthetical is merely descriptive.”)

<sup>20</sup> USCIS form I-918, Part 3

<sup>21</sup> <http://www.uscis.gov/files/form/I-918.pdf>

<sup>22</sup> Some types of deferred adjudications of adult offenses are still going to be convictions under 8 USC 1101(a)(48)(A), the definition of a conviction for immigration purposes; some may not be convictions, depending on how the disposition was done, but it's clear from the broad language of the form that they are asking for information about all such dispositions.

Additionally, several of the questions ask for “crime or offense” so, to justify answering “no” you must have a good, non-frivolous argument that not only was a juvenile charge or adjudication not a “crime,” it also did not pertain to an “offense.” The better practice is to attach an explanation, even if you decide that you could answer “no.” For example, you could say: “NO, I have never been charged or convicted of an adult crime or offense; however, I was charged as a juvenile with...” and provide the full explanation.

### **When You Answer "Yes"**

If you answer yes to any of the questions, you must provide the full table explanation at the bottom of page 3<sup>23</sup>, so it's better to provide the full explanation. To avoid this, you might answer the crimes question at §3.1.d by saying “NO (but see answer to §3.1.b, above).” If you do answer of yes to any of the questions you must provide specific information, which means the juvenile record. You should, however, also provide an explanation and attach any material that softens, explains or puts it in context.

*“The better practice is to attach an explanation, even if you decide that you could answer ‘no’.”*

### **Conclusion**

Even though the BIA does not consider juvenile adjudications to be convictions of crimes, you should address them on the U-Visa application. Most of them will not trigger inadmissibility (which you may wish to explain in the admissibility

section). Keep in mind, however, that the U-Visa allows for waivers of many inadmissibility issues.<sup>24</sup> Therefore, with a proper explanation, it is likely that a client with a juvenile record may still be granted a U visa, even if the juvenile record were to trigger an inadmissibility ground.

Finally, as always, keep in mind that ASISTA consultants are available to help with complex issues posed by a juvenile adjudication. If you have questions, email us at [questions@asistahelp.org](mailto:questions@asistahelp.org) or visit our website at [www.asistahelp.org](http://www.asistahelp.org).

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<sup>23</sup> *Id.*

<sup>24</sup> 8 USC §1182(d)(14); INA §212(d)(14)



Asista has moved to increase our capacity to help you with your questions on immigration relief for survivors of domestic and sexual violence, trafficking, and stalking. For more information on what Asista can do for you, please contact Joanne Picray, [joanne@asistahelp.org](mailto:joanne@asistahelp.org), or Jackie Santana, [jackie@asistahelp.org](mailto:jackie@asistahelp.org).

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3101 Ingersoll Ave  
Suite 210  
Des Moines, IA 50312

Phone: 515.244.2469  
Fax: 515.868.0089  
E-mail: [questions@asistahelp.org](mailto:questions@asistahelp.org)

**[www.asistahelp.org](http://www.asistahelp.org)**