

Representing U Clients with Complex Issues: Part I

Presented by
Gail Pendleton and Sonia Parras
ASISTA Co-Directors



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What we're doing

- General practice pointers to avoid problems or if there are problems
- Suggestions on
 - Substantial abuse
 - Framing the crime
 - Indirect victims
- Overcoming inadmissibility

What evidence?

- Burden = Preponderance
- Kind = Any credible evidence
- BUT they want best evidence, so. . .
 - How you tried and why you couldn't get it
 - Why what you're giving them is credible

All covered by ICE Prosecutorial Discretion Memos

- These are the people ICE should NOT be deporting per memos!
- Go up local ICE chain of command
- Then let ASISTA know if still intransigent

Common prep

- All forms MARK IN BIG RED LETTERS **VAWA/U UNIT**
 - USCIS, 75 Lower Welden St., St. Albans, VT 05479
- Use blue pen not black for signatures
- Don't use tabs (or put at bottom)
- G-28s for derivatives, not just principals
- Detailed statement by victim in her own voice as per regulations
- Child and traumatized victim strategies
- Work with victim advocates
- What can they do?

How victim advocates can help

Safety planning!!

- Not just for your client

Reach LEOs (law enforcement)

Get your client's story

- They are trained in how to question
- This is their job anyway

Help collect evidence and corroborate
not just meetings by factual details

Avoid problems up front

- Identify credibility issues in your application
 - Why they are not really a problem (legal & factual)
 - If they are a problem, declaration on why they happened
- Organize so easy to follow
 - Road map cover letter
 - Index and mark documents

Responding to RFEs

Use the email hotlines!

- Boilerplate RFEs that don't mention your evidence
 - VSC says this violates their policy, so report it!
- hotlinefollowupI918I914.usc@dhs.gov
- Let ASISTA know if legally wrong and I can advocate with unit head and CIS HQ

Responding to denials

- Consider Motion to Reconsider/Reopen rather than appeal to AAO
- Let ASISTA know (preferably at RFE stage)
- We have done a couple amicus “briefs” to AAO and I often do advocacy emails re reopening or reconsidering denials
 - Go to our webpage under the clearinghouse:
 - www.Asistahelp.org

U basics: dual purpose

- To help law enforcement
- To help victims

Substantial abuse/harm

- Impairment of emotional or psychological soundness
- Substantial factors include:
 - the nature of the injury;
 - severity of perpetrator's conduct;
 - severity of harm suffered;
 - duration of infliction of harm;
 - permanent or serious harm to appearance;
 - health, physical or mental soundness.
- aggravation of a victim's pre-existing conditions
- Continuum of violence, on-going

Practice pointer

- Nexus between experiencing the crime and harm is key!
- What behaviors, emotions, etc. do you see in crime victims that show they are suffering and/or having trouble recuperating from the crime?
- Advocates, etc. may be best positioned to provide this detail
- Mental symptoms may be delayed so check in with client in several months

Explore crimes as categories

- Categories: explore them with LEOs
 - What crimes do you use to investigate/prosecute domestic violence?
 - E.g., choking, stalking, harassment, lots of possible crimes, depending on facts
 - These all count as long as you say in your cert that it was in the DV context and give some facts
 - What could you use here for child abuse?

Framing crimes not on the list

- Category is better than “similar”
- Depends on “the wording of the essential elements of the codified crime and the other evidence provided in the record”
- E.g., robbery may fall under felonious assault; many things may be DV crimes depending on facts
- Certifying official should explain facts that meet codified crime definition
- Smuggling and fraud do NOT WORK; must find enumerated crime for facts in case

Who's the victim?

- Cert must be clear on this!
 - Indirect . Direct vs.. Bystander
 - If possible, do direct = proximate harm
 - CIS recognizing 2 kinds of indirect
 - Children and other incompetent
e.g., sexual violence
- Close family members of murder victims

Indirect victims: 2 kinds

1 = When direct victim died b/c of murder or manslaughter

2 = Direct victim is incompetent or incapacitated; or is under 18

- Spouses
- Unmarried children under 21
- If victim under 21, parents and unmarried siblings under 18
- Some indirect victims will have a choice whether to file as principals or derivatives

Flagging inadmissibility

- What do you ask to ferret out problems?
- What are most common problems?

The analysis

- Does the ground apply to my client?
- Do the facts of my client's case establish each of the elements of the ground?
 - Is there an exception = doesn't apply versus. . .
- Even if the ground applies and the elements are established, is there a waiver?

Common inadmissibility problems

- Entries and exits
- Manner of entry
- Encounters with DHS
- Fraud
- Public charge
- Crimes
 - Setting the stage

Overcoming inadmissibility

- Use (d)(14) waiver
- For everything but being a Nazi
- National or public interest
- What is this?
 - General arguments, make specific to your client
 - Connection to victimization
 - Think good moral character
 - Think VAWA & T extreme hardship factors

General arguments

- Congress designed the U for this category = unlawfully here
- Because they fear accessing justice due to lack of status
- How was this true for your client?

Factors VSC knows: GMC

- Good moral character and its exceptions
- Is problem connected to being a victim?
- What other evidence of good character despite problematic conduct?

Factors VSC knows: extreme hardship

- Juxtapose here v. there
- Need for ongoing access to our legal systems
- Need for services here not available in the home country
- What will happen to family if returned?

Crimes

- Excuses and connection to abuse/crime is not enough
- Show contrition and how changing life so won't happen again
- How can you show it will not happen again?
- Would your neighbor want this person living next to her?
- Bottom line: VSC adjudicators are NOT lawyers, so think normal person standard, not lawyer standard

Reinstatement theory

- The predicates to 241(a)(5) =
- 212(a)(9)(A) - (C)
- So get those waived and
- Elements for reinstatement are gone

Thank you



More information is available at www.asistahelp.org

OR, contact us at questions@asistahelp.org