

Representing U Visa Clients with Complex Issues Part II

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Goals

1. To review interviewing skills
2. Improve participant's representation of clients with U visa possibilities or U applications in removal proceedings
(Continuation, termination, administrative closing, stays and reopening)
3. Troubleshooting U visa certification issues

U Visa Remedy- Overview

- Purpose
- Requirements and eligibility
- How this remedy assists victims of crimes of violence

U Purpose

- To strengthen the ability of law enforcement to investigate and prosecute crimes listed
- To provide humanitarian relief to crime victims and their family members

Requirements for a U visa

- “Substantial physical or mental abuse” from criminal activity
- Possesses information concerning the criminal activity;
- Law enforcement certification
- “Is being, has been or is likely to be helpful” in the investigation or prosecution of

U visa Crimes

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Abduction
- Unlawful criminal restraint
- False imprisonment
- Blackmail
- Extortion
- Female genital mutilation

U visa Crimes Cont.

- Peonage
- Involuntary servitude
- Slave trade
- Kidnapping
- Abusive sexual contact
- Prostitution
- Sexual exploitation
- Being held hostage
- Obstruction of justice
- Perjury
- Manslaughter
- Murder
- Felonious assault
- or attempt, conspiracy, or solicitation, to commit any of the above mentioned crimes

Who Can Certify?

- Police officers
- Prosecutor
- Judge
- DHS Officer
- State or Federal Agency Employee
- Any agency with criminal investigative power

Interviewing Skills; Not Missing the Chance!

1. Pre-interviewing

1. Understand trauma and the effects it has on memory. Multiple victimization issues and triggers may invoke flashbacks or memories of past abuse.
2. Be patient
3. Is not personal!
4. Use active listening skills

Other Considerations

- Is the setting completely private?
- Is your interaction audible to anyone else?
- Are doors closed?
- Who is present and why?
- What is the purpose of your inquiries?

Other Considerations Cont.

- Be specific about legal remedies as it pertains to the case.
- Allow for questions and expect some confusion.
- Tell her confusion is normal (normalize)

Interviewing Skills (cont.)

1. At the beginning of the interview
 1. Set clear expectations
 2. Explain your role and what you will try to do
 3. Give her time to ask questions and paraphrase your explanation/understanding

Screening Questions

- Has anyone ever hurt you?
- Who hurt you and for how long?
- How old were you?
- Did you ever tell anyone you were being hurt?
- Who did you tell?
- Did you ever report to the police, court, the department of child protection, anyone from any agency that you were being hurt?
- Did anything happen after you reported?
- Have you ever hurt yourself? How do you hurt yourself and how often?

Screening Questions Cont.

- Have you ever received any counseling, therapy, medical or support services as a result of someone hurting you or after you made a report?
- If you were hurt in your home country, did that have anything to do with your decision to come to the U.S.?
- How would you say the victimization has affected you?
- Closing assessment; Is there anything else you would like to add that I might have missed or that you think is relevant?

Raid at the Workplace

- How many hours did you work?
- Where you free to decide whether to do overtime?
- Did you get paid for overtime?
- Did anything happen if you refuse to work overtime?
- Did you inquire into it? What happened?
- Where you forced to buy papers, change papers to work every so often?
- If this happened, did you lose your benefits (seniority, vacation etc)

Raid at the Workplace Cont.

- What was the average length of a shift?
- How many shifts did you do back to back?
- Where you able to take vacation/earn vacation?
- Where you free to leave your job? If so, why didn't you leave your job?

Sexual Harassment/Assault

- How did your supervisor treat you?
- Was any supervisor that mistreated your peers? How?
- Did any of it ever happen to you?
- Did you complain about it to human resources, other supervisors or peers?
- Did you see supervisors or co-workers flirting with your co-workers, inviting them to go out, calling them names?
- Did this happen to you ever? Did you tell anyone about it? Did anyone see it?

Sexual Harassment/Assault Cont.

- Did any of your supervisors/co-workers ever ask you out or offer you to go to lunch, call you outside of work, invite you to give you a ride home before or after work?
- What happened if you said no? (potential punishment/retaliation)
- Did your supervisor/co-worker ever touch you in an offensive way or in any manner?
- How many times did it happen? Did anyone see it?

Screen Everywhere and Connect to Everyone

- Community clinics
- Immigration detention centers
- Representation of non-immigration matters
- Raids
 - Large
 - Small scale (neighborhoods, trap-meetings, work, etc)
- CIS/ICE/EOIR may encounter victims
- At the port of entry
- Between ports of entry

Screen Everywhere and Connect to Everyone

- In detention
- In removal proceedings
- During appointments of orders of supervision
- During AOS interviews
- During their own investigations

Strategies for representing U visa applicants in proceedings or with final orders of removal, exclusion, or deportation

Best case scenario ...

- Persuade ICE not to file NTA- PRIMA FACIE PROCEDURE
- Persuade OCC-ICE not to file the NTA with EOIR
- Request joint motion to terminate proceedings to OCC-ICE
- Request motion to terminate proceedings to the EOIR
- Request continuance of case until approval of I-918 application

U Visa Applicants in Removal

- Work must happen in advance before you have an actual emergency
- File a skeletal application NOW!
- Do not forget that your client may be a derivative of a relative principal. Screen family members if no conflict

Request a Continuance

- “Good cause shown”
 - That is why you need to file your U...
- Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009)
 - Set forth variety of factors to consider by EOIR

Request to Conditionally Terminate

- Before NTA is filed
- Nothing to lose!
- For cases that where administratively closed
 - “sleeping cases”
 - Request to re-calendar
 - Request joint motion to terminate

Stay of Removal

- People subject to final order of removal are not barred from filing U visa
- I-246..To file or not to file...
- Discretionary
- PRIMA FACIE SYSTEM
 - VSC hot line 802-527-4888
 - If U visa denied, the stay is automatically lifted

Reinstatement Issues

- No final system yet
- Plant the seed and argue it through the I-192 waiver

Troubleshooting

- They do not want to sign my I-918B
- Non-traditional certifications
- Networking

Working with law enforcement: practice pointers

- Make contact before a real case
 - Better to sort out priorities, confusion ahead of time
- Work with advocates to contact
 - They know each other already: who is best ally
 - They can explain victim's perspective
 - Law enforcement will trust them more than a lawyer

When You Talk to Them: Using Hypos

- Get "in their shoes": Examine your assumptions
- Identify common ground &
- Acknowledge differing priorities
- Try to understand their concerns &
- Be creative in meeting them

Build a Long-Term Relationship

- Respect & be clear on confidentiality & privilege:
 - They do not do your (or advocate's job); you do not do their job (going after perps)
- Formalize responsibilities: Ask for institutional commitment
- Do joint fundraising to cover everyone's costs
- Create accountability = put it in writing (MOUs, protocols)

Additional Issues:

- **Intervention issues**
 - How, When
- **Replying to RFEs**
 - General tips
 - Answering to “cookie cutter” RFEs
 - Federal crimes vs. State crimes, arguments for “similar crimes”
 - Intent to deny I-912

Continuation

- **Appeal vs. Motion to Reconsider**
 - Motion to reconsider See 8 CFR 103.5(a)(2)
 - Motion to reopen
 - Appeal
 - Strategies for when to do what
- When case is denied based on the I-912 denial
 - Re-file the request
 - 212.17(b)(2) no appeal (8 CFR 103.5(a)(6)- Motion to reconsider only)

Selected Age Out issues

- General tips for preserving the reconsider
 - Client notification at U closing
- 214(p)(6) & 245(m) of INA apply to all U nonimmigrants equally and not just to principal petitioners
- I-539 Fees or Waiver
- If case “pending” when derivative age out- deferred action only in in the USA
- If case approved for less than 4 years
 - no guidance yet
 - file extension
 - Request deferred action
 - Appeal if needed to preserve the record

Thank you



More information is available at
www.asistahelp.org

OR, contact us at questions@asistahelp.org