



WEBINAR SERIES ON ROUTES TO IMMIGRATION STATUS FOR NON-CITIZEN CRIME SURVIVORS

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Advanced U Visas: Responding to Requests for Further Evidence and Notices of Intent to Deny and Challenging Denials

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Goals



- Identify and address possible problems to avoid RFEs and denial
- Frame persuasive responses to RFEs and denials
- Identify other steps you may need to take to protect your survivor clients



COMMON ISSUES

They ask for stuff you provided

- USCIS RFEs you for a birth certificate for a derivative that you already submitted.
- POLL: How do you respond?
 - A) respond to RFE with copy of the birth certificate
 - B) respond to hotline with copy of previous cover letter showing you already gave it to them
 - C) contact the Hotline
 - D) all of the above
 - E) Other

Incomplete information

- You get an RFE alleging your client made a fraudulent statement at the border. Your client says she didn't.
- POLL: What do you?
 - FOIA to CBP
 - FOIA to OBIM
 - Explain details in client declaration
 - All of the above
 - Other

They're asking for police reports

- You have just filed a U adjustment of status case, and you receive an RFE asking for police reports and charging documents for an assault arrest but your client was never charged or convicted. How do you respond?

- POLL:
 - Provide police report and explain why not material or relevant
 - Don't provide police report and explain why not material or relevant
 - Other

Crimes after waitlist approval

- Your client was placed on the U visa waitlist 3 months ago and has been recently convicted of a crime of shoplifting.
- POLL: Do You?
 - Submit amended I-192 right away
 - Wait a moment to file I-192 to allow client to gain some equities
 - Don't do anything, allow VSC to issue to issue RFE

Updates on RFEs

- RFE processing times
- Supervisory review?
- Nebraska Service Center
 - ▣ Inconsistencies in address
 - ▣ Envelopes

Avoid Problems Up Front

- Identify inconsistencies
 - ▣ Determine if they are a problem
 - Material?
 - If not, why not?
 - ▣ If material explain NOW

- Organize so easy to follow
 - ▣ Road map cover letter
 - ▣ Index and mark documents

General RFE Response Tips

- ALWAYS review front and back of RFE

- ALWAYS respond on time

If don't have what they want, explain

why you don't have it

what you are doing to get it (if you are)

why what you supplied is credible and sufficient

More tips



- Be civil: Focus on what's wrong factually or legally
- ALWAYS place original RFE on top of RFE response package
- ASISTA will help with training issues

General RFE Response Tips

The “best” evidence is the most credible evidence

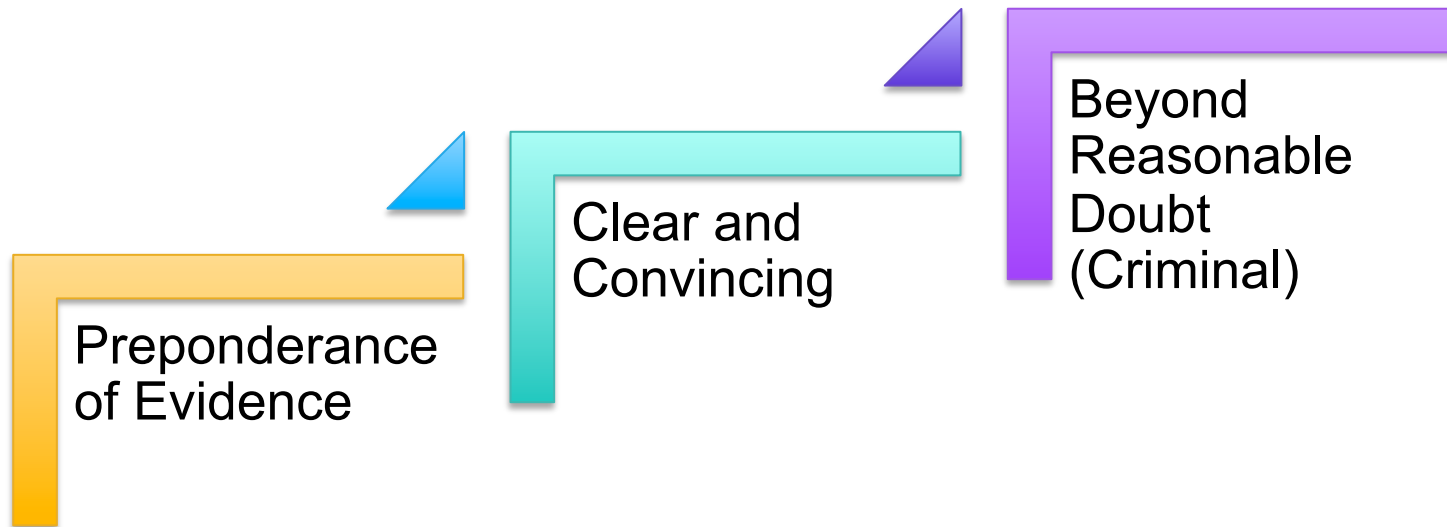
- What is best evidence? (hint: usually systems evidence)
- How did you try to get that?
- Why is it unavailable?
- Why what you're submitting is credible



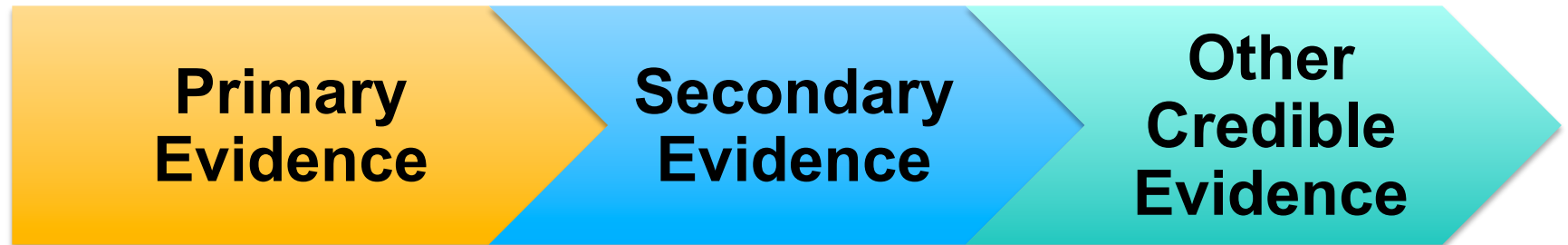
Evidentiary Standards Review



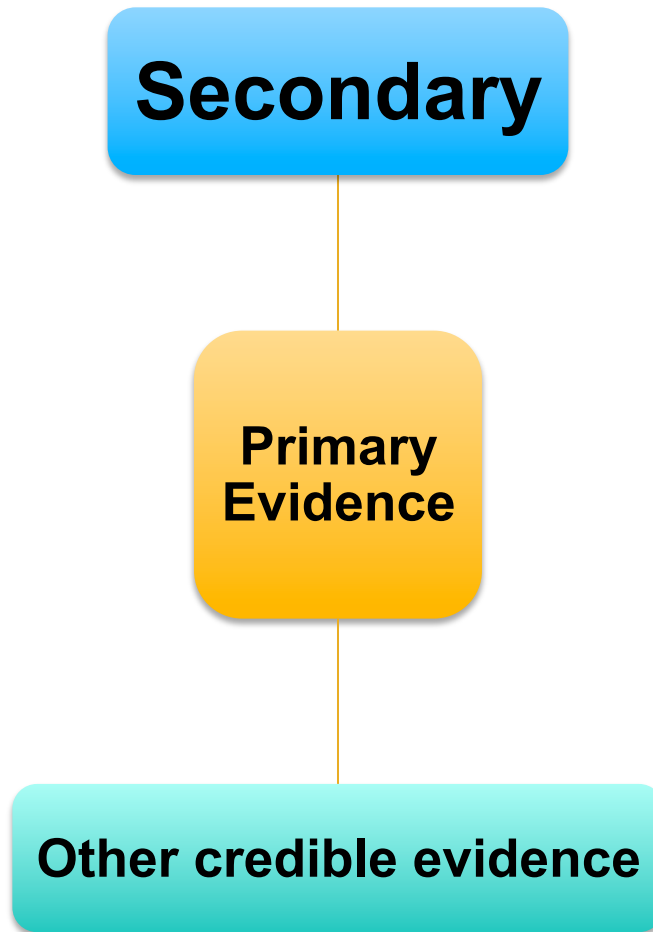
Burden of Proof



Forms of Evidence



Standard of Proof



Credible Evidence-Virtue Memo (1998)

- VAWA
 - Can not deny for failure to submit particular evidence
 - Case-by-case
 - Internal credibility: Check for inconsistency: within application and with prior applications

Tips from VSC

- Each applicant has own G-28: Notice of Appearance
- Page Numbers
- Two-hole punch on top
- Do NOT submit double-sided documents
- Tabs are torn off and section dividers are put at bottom of application package

Order of Documents

- G-28: Notice of Appearance;
- Application or Petition;
- Other supporting documentation
- U specific:
 - 1st - Form I-918,
 - 2nd - Form I-918 Supplement B, and
 - 3rd - Principal Applicant's Affidavit or Declaration.



POLICY ISSUES ON RFES

Boiler Plate RFE

- Problem:
 - RFE requests information without discussing how what was submitted is inconsistent or insufficient

- Strategy:
 - USCIS must explain what's lacking and
 - Why what you submitted isn't credible or
 - Follow up with Hotline, ccing us, we will let heads know

Documents already submitted

- Make sure road map and index clearly include
- Literally highlight where it was supplied
- Don't go overboard trying to find new evidence if already supplied; ask us for help raising with unit heads

The RFE is wrong

- Problems

- ▣ Asks for documentation immaterial to eligibility
- ▣ Mischaracterizes the evidence you supplied
- ▣ Factually wrong about what you supplied

- Strategy

- ▣ Respond timely
- ▣ Ask for supervisory review through hotline
- ▣ CC us to follow up



Most common VAWA RFEs

RFEs on declarations

- Applicant's declaration does not provide enough detail
- RFE dismisses supporting letters from "those who did not witness the abuse firsthand"
- ALL declarations must focus on FACTS
 - Applicants provide boring, idiosyncratic details of events and history of relationship
 - Corroborating declaration must provide factual details, not merely a list of times your client attended counselling sessions

DV Advocate Declarations

- Explain how writer knows DV and when someone is telling the truth
- Provide detailed FACTS of what survivor told them
 - Opinions by themselves are unhelpful
- How is that DV?
 - Economic control, humiliation, other forms of extreme cruelty
- What impact did writer see on survivor?
 - How is that typical of DV?

Good Faith Marriage



- Review declarations and ensure they include details
- Identify reliance on primary evidence and use best evidence argument
- Review and use two ASISTA Amicus briefs to AAO
- Get us involved now, don't wait

U visa RFEs

Waivers: Avoiding problems

- Remember to emphasize (d)(14)
- Literally cite each ground you want waived
- How would you explain to a non-lawyer neighbor at a party that this person should live in your neighborhood?
- **Public** interest is not same as survivor interest or family interest, though those may be factors

How?

- Applicant's declaration is key
- Letters of support and elucidation
 - Family ties and support for them
 - Helpfulness to criminal system
 - Helpful to others in community, etc.
- Income taxes and other evidence that abiding by the law
- Articles relevant to your arguments
- Evidence unique to client's situation

No review of discretion

- AAO can review legal issues
- Was VSC wrong about inadmissibility?
- Did VSC fail to articulate (d)(14) factors and how it weighed them
- Relying solely on (d)(3) violates the law

RFEs for non-record evidence

Case law: CIS can not consider evidence outside the Record of Conviction to determine whether a conviction triggers inadmissibility

VSC says they are NOT using it for this, but for discretion

If they do ask for it to determine inadmissibility = legal violation

Responding: Legal violation?

- Is VSC asking for evidence outside record of conviction to
 - Determine inadmissibility?
 - Did they fail to articulate (d)(14) factors?
 - AAO can review

Discretion: theirs and yours

Same due process issues for discretion

Hearsay you can't challenge

If this is true in your case, apply this legal theory

- Should you provide it anyway?
 - If it helps your client?
 - To get a swifter approval?

Qualifying Crimes Categories

- CIS regs are clear that crimes are categories
 - DV is obvious
 - Emerging = robbery and extortion
- When is robbery in felonious assault category?
- When is notario fraud in extortion or other category?

Framing your arguments

- "Similar" is a losing argument for most cases
 - Only use after argue your crime fits a category
- What's does Supp B say?
 - Much harder if it doesn't mention a category
 - Mentioning lots of categories is confusing, not helpful
- Do a chart comparing elements of chosen category with your crime's elements and facts

Helpfulness



- Declaration says not helpful either completely or in notes
- More detail in certification on why not helpful is useful for your arguments to VSC
- But consider how your client can be more helpful

Negotiating helpfulness

- Work with DV/SA advocates to “negotiate” with LEOs
- What do LEOs need?
- Why can't your client do this?
- Is there something else that will satisfy the LEO?
- Something they can do to make your client feel safer?

Remember U goals

- Not just to help victims
- Providing useful tool to LEO
 - They are tasked with public safety; make sure your client isn't impeding that
 - Holding perps accountable is crucial to ensure and emphasize; may be other ways to accomplish

RFEs after case is waitlisted

- They say you get these as
 - quality control check or
 - New information that comes to VSC's attention

- Case is taken off the waitlist until RFE issue is reviewed

- Deferred action EAD remains valid unless denied

Ongoing Helpfulness: Adjustment

- Continued cooperation with law enforcement?
- Regs clear that new certification is NOT required
- Use best evidence approach =
- If not submitting new certification
 - Statement from client (can be very brief)
 - Proof case is closed (if available)
- Let us know; HQ and heads agree with this

Continuous Presence: Adjustment

- Continuous presence evidence
- Do best evidence argument up front
 - Vary types of proofs, if possible
 - Explain any deficiencies and why what you have is credible
- CIS is granting if show reaccred
- No formal acknowledgment so let us know

RFE: Reinstatement

- Become familiar with 241(a)(5)
- VSC thought 241(a)(5) prevented a U grant
- BUT
- AAO confirmed Us can overcome reinstatement
- Agreed with our arguments that 212(a)(9)(C) is the key

RFE: in absentia order

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- Ask for (d)(14) waiver for 212(A)(6)(B)
 - Failure to attend removal proceeding

- Otherwise you must meet in absentia exceptions or otherwise cure
 - No notice
 - Different kind of motion = rescission
 - 180 days of order & show exceptional circs

RFE: Failure to Voluntarily Depart

- How many of you have inherited cases where client took VD?
- New CIS memo and AAO say failure to comply bars U adjustment
- But it should not bar the U itself
- Explicit VAWA exception (but not U)

VD Arguments at U adjustment

- More than 10 years since failure to VD
- No notice (did abuser/perp receive it and not share?)
- Not “voluntary” (CIS memo mentions this exception)
- Never presented travel doc so reverted to final order
- Ineffective assistance of prior counsel = due process violation
- Reopen and terminate old proceedings

Protecting your clients: Parole

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- Have you tried our suggested parole arguments?
 - They should use public interest prong of (d)(5)
 - Their own regs say they will grant parole
 - Public charge doesn't apply so asking for affidavit of support violates the law
- If yes, how did it go?
- If no, please do so and keep doing it
 - Ombuds suggested they adopt our approach
 - CIS was about to implement; will it do it now?

Your questions and cases?



Thank you



More information is available at www.asistahelp.org
OR, contact us at questions@asistahelp.org