



# UPDATES ON VAWA SELF-PETITIONS AND U VISAS: PRACTICE POINTERS ON EMERGING ISSUES, INCLUDING KEEPING YOUR SURVIVORS SAFE WHILE APPLYING FOR STATUS

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# Goals



- Apply latest procedural and substantive best practices to your immigrant survivor cases
- Anticipate and plan for barriers to gaining more secure status
- Identify issues that make a survivor vulnerable to deportation
- Develop safety plans that address this vulnerability

# U process updates



# Adding Nebraska Service Center

- Kinds of cases transferred?
- Where do you send back documents?
- How do you ask for supervisory review?
  
- Keep us in the loop early
  - We can communicate directly with them also

# Issuing the 10,000

- **In past:** All resources shifted to issuing them from October through December, severely impeding other U case review
- **New system:** Staggering them through the year so can continue reviewing for waitlist and resolving open RFEs
  - ▣ No backdating; actual grant date = first day in U status

# Hypo

- Lucy met Ron, a USC, while he was on vacation in Mexico.
- She entered the US with him with a tourist visa in 2011. They had a religious marriage ceremony soon after her entry and then the abuse started.
- Ron told her he would report her to ICE if she didn't work for free in his shop.
- She fled home to Mexico in 2013.
- She feared that his family there would harm her and so she re-entered in 2014.

# Status Options?

- POLL:
- VAWA self-petition
- U visa
- T visa
- Asylum
- All of the above
- Other

# VAWA Employment Authorization

- New I-360 Form-Page 14, Q re EAD
- Yes = (c)(31)-based EAD
  - No I-765 required
  - Automatic with approval
  
- No = you must ask for Deferred Action-based EAD
  - ▣ DA = (c)(14)
    - Must file 765
    - DA does NOT prevent removal
    - It is used for VAWAs before Congress added auto EAD
  
- When/why would you want DA-based?



# VAWA derivative EADs

- No automatic EAD
- File I-765 concurrently with principal's applications
- Ask for (c)(14) = DA basis
- Technically DA requires showing economic need
  - Similar to fee waiver showing
  - Compare assets/income v. Expenses (whole family)

# U applicant EADs

- Waitlist = (d)(14)
  - ▣ Creative strategies to get EAD before waitlisted
  - ▣ Statutory bona fide language
  - ▣ Mandamus project
- Approved
  - ▣ Principal = (a)(19) but no 765 required
  - ▣ Derivatives = (a)(20) but must file 765

# VAWA derivatives abroad

- Not independently eligible to enter or adjust status
- Consulates vary in education on VAWA exceptions
  - Special child age-transformation provision
  - When principal applies to adjust status, include I-824
  - leave approval and receipt date blank. VSC will fill this in and send it to NVC

# U Derivatives abroad: Getting them in

## □ U derivatives

- When U is approved = getting U through consulate
  - Entering some other way may cause problems getting status
  - Consulates vary greatly in knowledge and practice
  - Extension memos help overcome less than three years
  - Remember principal can NOT adjust before derivative comes in on a U

# When the address changes

Legally required to notify CIS when address changes

**Don't forget safe address system!**

If using survivor info, Do NOT use regular system

Abusers have gotten notices back from CIS

- Special location for Us, VAWAs & Ts =
  - VSC
  - If represented, CIS says through email Hotline
    - Best practice is to ALSO formally file ALL documents
    - Email hotline is NOT a formal filing
  - If pro se or if representation ends, then file AR-11 to VSC
    - Best practice is to do this for everyone

# U derivatives of waitlisted principals

- CIS can't grant DA to those abroad
- Parole under (d)(5) still available
- Use the samples on our website to make novel arguments related to U program and goals

# When you get RFEs/NOIDs/denials

- Contact/send to us right away
  - Were you missing something they needed?
  - Are they wrong about what you provided or what the law requires?
  - Framing the response
    - Boilerplates
    - Can't get what they want
    - Risk/benefit and legal pushback

# Any credible evidence = best evidence

- How did you try to get what they want?
  - Usually = primary evidence
  - Not legally required but explain how you tried and
- Why can't you get it?
  - Survivor didn't access systems
  - Abuser/perp controls documents
  - Other reason you can't get what they want
- Why is what you ARE supplying credible?



# Risk/benefit

- VSC often asks for evidence that
  - You may not be legally required to provide and
  - May harm your client in later contexts
    - If file is returned to ICE
    - If adjusting at a different office (VAWAs)
    - At naturalization
    - If the survivor is put into immigration proceedings

# Motions and Appeals

- Another paradigm shift
  - Used to say always file motion to reopen or reconsider at VSC
  - Opposite may be true now, depending on your case
    - VSC is not fixing problems through motions
    - AAO can review de novo and has reversed some denials
    - Best way to get independent review is straight appeal to AAO
    - We are working on developing amicus firms to help us help you with appeals and beyond

# When things go sideways

- When Ron found out Lucy was leaving him, he called the police saying she had stolen from him
- They arrested and charged her with theft but she left soon after
- Ron also called the local CIS office to say she had married him just to get status

# Deportation spotting

- POLL:
- What could make her vulnerable to deportation?
- Unlawful entries
- Criminal charges
- Ron calling the local CIS office
- All of the above

# More facts

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- Before she left, Lucy met with a shelter and they helped her prepare to file for a protection order against Ron
- Ron found out and called ICE to tell them a criminal who committed marriage fraud would be at the courthouse that day

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# Enhanced Safety Planning

# Where is the risk?



- Where/how may a survivor be arrested/detained?
  - daily life activities
  - appointments/meetings
  - public agencies/government offices
  - your office?

# Safety Planning for Immigration Arrest/Detention

## **Update safety plans to include:**

- Collect important documents (identity, medical and financial information)
- Give client ICE letter, see sample by ICWC
- Survivors should know their and their children's "alien registration number" or A#
- Don't travel without talking to you first (and you talk to us)
- Share and practice "Know Your Rights Materials"
- Make sure written documents done on child care, custody, etc



# Planning for arrest/detention

- **What will you/she do if. . .**
  - Her children are alone at home or daycare?
  - She did not pick up her last paycheck?
  - The perpetrator has her passport and access to her money?
  - Doesn't have money to pay bond (criminal or immigration)?
  - Who has custody/guardianship of children?
  - What medical concerns, trauma issues will be triggered?
  - Anything else?

# Safety Planning: Case Preparation



- Accelerate getting applications filed
  - Any risks?
  
- Identify possible flags for removal
  - Fix with waivers in application?
  - Other ways to head off removal?
  
- Track & document equities as you go

# IDENTIFYING AND ADDRESSING REMOVAL PROBLEMS



# Remember Lucy?

- Lucy first tried to enter the US in 2009 but was stopped and “sent back after signing something.”
- She entered the US on a possibly fraudulent tourist visa in 2011.
- She fled home to Mexico in 2013.
- She re-entered EWI in 2014. Meanwhile. . .
- Criminal charges were dropped, but she may have
- Notice to Appear for immigration proceedings
  - What could be bases, from what we know?

# What needs fixing here?

- Unlawful entry or entries?
  - What do you want to know about tourist entry?
  - Are there VAWA and U waivers available?
- Removals or removal orders?
- What if she has both?
  - ▣ **removed** then re-entered unlawfully

# Reinstatement: 241(a)(5)

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Removed and re-enter unlawfully

- Prior order of removal is reinstated
- No immigration judge hearing
- Can happen at any time

# Overcoming reinstatement

- What inadmissibility ground overcomes elements of reinstatement?
  - Unlawful entry after removal?
  - Can VAWAs overcome this ground?
  - What about Us?

# VAWA 212(9)(C) waiver

- References (6)(A) VAWA exception
- Self-petitioner and
- Battery/extreme cruelty and
- Substantial connection between B/EC and unlawful entry



# Procedure for fixing: VAWA

- VAWA self-petitioning/adjustment
- When eligible to adjust, file
  - 601 and I-212 with 485 in envelope to VSC
  - Once filed, hotline request to let you know when transferred
  - Cc us, we bring in HQ
  - They chat with local DD if necessary

# For U applicants

- AAO confirms
  - (d)(14) waiver for 212(a)(9)(C) cures it
- Make sure you ask for (9)(A) waiver too
  - No explicit I-212 requirement so covers your bases

# Fixing Final Orders

Expedited removals?

Us = automatic but does the system register this?

Immigration court removals (240 orders)

Motions to Reopen to terminat

when to file those?

OCC joint or sua sponte

Remember special VAWA motions

overcomes timing and number limits

# Fixing in absentia orders



For Us, 212(a)(6)(B) waiver?

For VAWAs (and maybe Us)

motion to rescind exceptions to 240(b)(5)?

notice

VAWA motion?

# And it just gets worse for Lucy

- Before she left, Lucy met with a shelter and they helped her prepare to file for a protection order against Ron
- Ron found out and called ICE to tell them a criminal who committed marriage fraud would be at the courthouse that day
- ICE detained Lucy as she was walking the street to the courthouse

# ICE Directives

- Feb 21, 2017 ERO Memo
  - Effective immediately, ERO will take enforcement actions against all removable aliens encountered in the course of their duties
  - Under the terms of the Executive Order, DHS will no longer exempt classes or categories of removable aliens from potential enforcement

# But existing memos still true



Prosecutorial discretion for victims

To avoid deterring individuals from reporting crimes

DV, trafficking, other serious crimes

but “adverse factors” loophole = excuse

# ICE stay memos affirmed by HQ

- FOD should favorably review if PF granted by VSC
  - And consider other humanitarian factors
  
- Only not appropriate to grant stay if
  - PF or U denied by VSC
  - Adverse factors = loophole they use to deny
    - National security or human rights violator
    - *Significant* immigration fraud or criminal history
    - *Significant* public safety concerns



# PF system

- If ICE gets stay request from pending U
  - It *must* contact local OCC which requests PF from VSC
  - No removal for five days while await PF decision
  - If grant PF and grant stay = 180 days and no decision or new adverse factors, ICE *should extend the stay as needed for CIS to make a decision*
  - FOD should work with CIS for swift merits decision
  - If grant PF and ICE decides to deny stay it **MUST**
    - Provide summary to DRO HQ for their review

# Detention of those requesting stays



- Should release unless serious adverse factors or subject to mandatory detention
- If detained ICE should ask VSC to expedite the case

# If in removal

- If in removal and you show proof of filing U
- OCC *shall request a continuance* for VSC to make PF finding
- If PF granted *should consider* closing or terminating until final decision
- If U granted and adjustable should consider termination
- If granted but gets final order OCC should consider motion to reopen to terminate

# Challenging NTAs: 239(e)

- 239(e) ICE MUST certify for every NTA
  - Did not violate 8 USC 1367 when arrests at
  - Courthouse if U or T eligible
  - DV shelter, rape crisis center, supervised visitation center, family justice center, victim services provider, or community-based organization.

# 8 USC 1367

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## 8 USC 1367

No fed employee may rely solely on info from perp or relatives to make decisions re admissibility/  
deportability

- willfully uses, publishes, or permits information to be disclosed or
- knowingly makes a false certification under section 239(e)
- **shall** be subject to disciplinary action and
- **civil money penalty of not more than \$5,000**

# Work with local ICE and LEOs

- Collaborate with effective messengers
  - Whose opinion does ICE/LEO care about or have to care about?
- To discuss:
- Law enforcement NOT referring survivors to ICE
- ICE NOT issuing detainers for victims or witnesses
- ICE and LEOs
  - referring victims to local CBOS, DV/SA programs, agencies with expertise in helping survivors apply for status
  - allowing survivors to contact your agency or the 1-800 hotline
- Ensure ICE understands 8 USC 1367
  - Information from perpetrator not sole basis; monetary sanctions for violating



# ADMINISTRATIVE STAYS

# Who, when, where?

- Who can apply?
- When: at what stage of U case
  - At different stages
    - At U filing
    - On waitlist
      - Balancing act between positive and negative factors
- Where to file?
  - Are you/were you in proceedings?
  - If not. . .



# What does it do?

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- How long is the stay in effect?
- What does a stay accomplish?
  - EAD?

# How?

- Know the Practice of Local ERO Office
  - E.g.. in NY: Only adjudicate when removal is “imminent”
- Cover letter
- Fee
- G-28
- Form I-246 Stay of Removal
- [Brief]
- Applicant Statement
- Birth certificate (with translation) for principals & all family
- If ERO does not have original passport on file, you must submit valid passport (risk?)
- ◆ Documents relating to any arrests/criminal convictions (risk?)

# What?

- Supporting Docs
  - GMC docs
  - Hardship to self or close family members
  - Evidence of rehabilitation (if criminal history)
  - Family ties in US
  - Country conditions as in asylum
  - Exceptional circs as in removal
  - Taxes (depends on. . .)
- How is this like what you already do?
  - U visa application docs (i.e., declaration, 192)
  - Other supporting documents for discretion & hardship

# In Practice

- “Pocket Stay” for OSUP (supervision)
  - ▣ Who can get/may have supervision?
  - ▣ Risk reminder in reporting
  
- Preparing Skeletal stay as part of application process?
  
- Extending existing stays/supervision: Use those memos!
  
- Experience in different ICE offices
  - ▣ Los Angeles
  - ▣ New York
  - ▣ Other ICE offices

# Other ways to stop removal



If in proceedings: does IJ have jurisdiction to grant stay?

If was (no longer) in proceedings: Motion to Reopen  
Sanchez-Sosa reaffirmed by BIA  
Document ICE violation of its own memos  
For VAWAs, M to R has automatic stay

Appeal IJ motion/stay denials to BIA

# Finally, Federal Options



Circuit court review of BIA denial or

If removal imminent

Habeas/TRO

# ASISTA Resources

- [www.asistahelp.org](http://www.asistahelp.org)
- [gail@asistahelp.org](mailto:gail@asistahelp.org)
- [cecilia@asistahelp.org](mailto:cecilia@asistahelp.org)
- [questions@asistahelp.org](mailto:questions@asistahelp.org)

