



Effective Responses to RFEs and Denials in VAWA and U Cases

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Goals

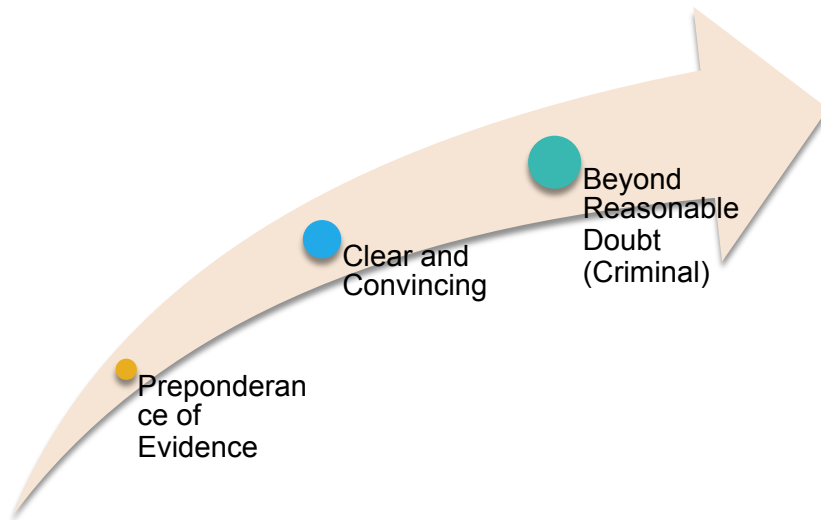


- Apply best practices for for RFE/denial prevention and response

The slide features a decorative header consisting of two horizontal bars. The left bar is orange and the right bar is green. The text 'Standards and Burdens' is centered in white on the green bar.

Standards and Burdens

Burden of Proof



- Burden is on the Applicant to show eligibility for relief
- VAWA, Us and Ts go preponderance of evidence standard
- 51%

Forms of Evidence



Primary Evidence



Secondary Evidence

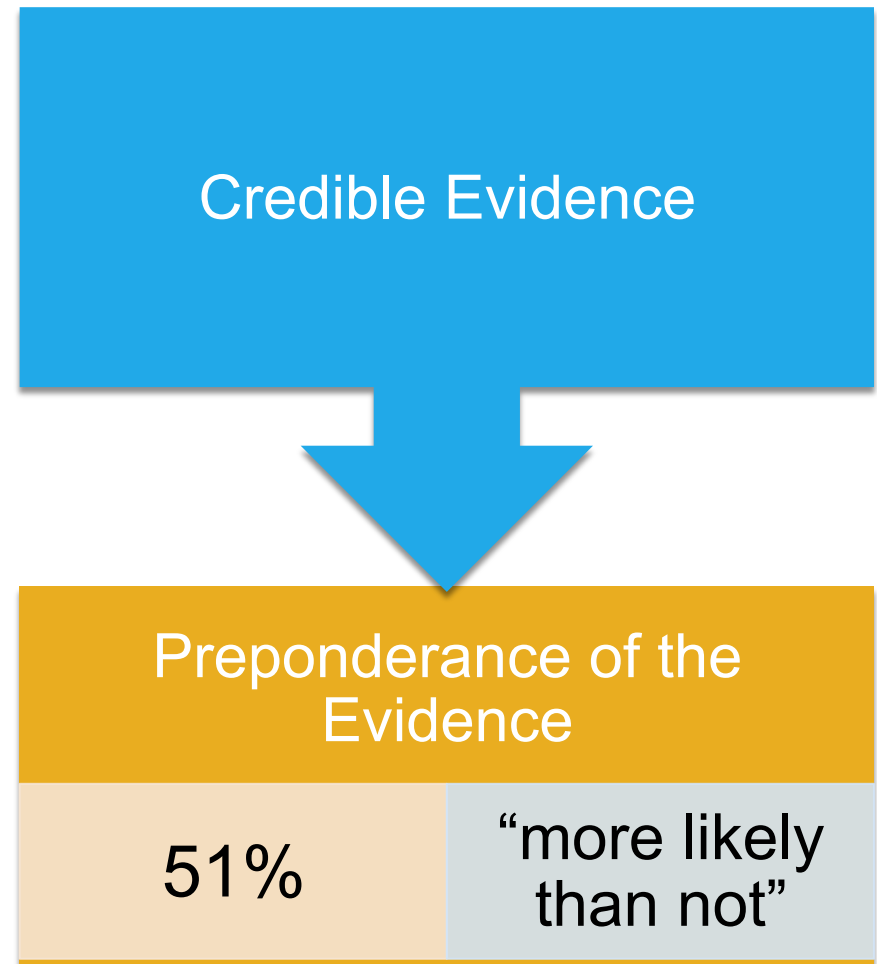


Other Credible Evidence



Standard of Proof

- Congress created “credible evidence standard” for VAWA, U, T visas, etc.
- More lenient standard created in recognition that abusers may control documentation
- USCIS has to consider any credible evidence related to application



Credible Evidence-Virtue Memo (1998)

□ VAWA

- Regulations do not require that the alien demonstrate the unavailability of primary or secondary evidence.
- A self-petition may not be denied for failure to submit particular evidence.
- Case-by-case
- Evidence that is inconsistent with the other elements of the case or other evidence in the case is internally incredible



RFE Prevention

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

Tips from VSC

- What's helpful
 - Each applicant has own G-28: Notice of Appearance
 - Page Numbers
 - Two-hole punch on top
 - Organize derivative documents all together
 - consider having separate index for derivative documents
 - 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
 - For example, if submitting I-192, keep I-192 and related evidence together. The I-192 ends up being at the bottom but it doesn't matter where it goes in the filing.
- U specific:
 - 1st - Form I-918,
 - 2nd - Form I-918 Supplement B, and
 - 3rd - Principal Applicant's Affidavit or Declaration.

Common RFEs & How to Respond

General RFE Response Tips

- ALWAYS respond on time
- ALWAYS place original RFE on top of RFE response package.
- ALWAYS look at front and back of RFE
- ALWAYS respond in full to the RFE
 - If not all the documents requested are included, USCIS can treat submission as a request for decision on the record
- Be civil in your response
 - Focus on what's wrong factually or legally

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

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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 them
- Literally highlight where it was supplied
- Don't go overboard trying to find new evidence if already supplied

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



VAWA RFEs

Key to good declarations



- Lots of boring factual detail
- Highlight any opinions, adjectives & adverbs
- What facts show these points?
- Replace highlights with facts

RFEs on abuse

□ Problem:

- RFE dismisses supporting letters from “those who did not witness the abuse firsthand”
 - CIS agrees this is incorrect standard for VAWAs
- Statements made to counselor for purposes of application
 - Corroborating declarations must focus on FACTS of abuse
 - A list of times your client attended counselling sessions is not sufficient
 - Guidelines for DV advocate corroboration outline what is helpful

Corroborating declarations must

- 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?

Guidelines for Counselors/ Advocates

- Paragraph on experience working with survivors
- Paragraph on the FACTS the applicant told them
 - Not just what happened, but how what happened affected the survivor
- Paragraph about how what applicant told them was credible given their experience working with survivors
 - "intrepret" DV acts and impact for adjudicators
-

Good Faith Marriage

- Problem:
 - RFEs for GFM seem to be a fraud check for VSC, often a higher apparent standard than if an I-130
- Strategy
 - State why evidence not available and how what is submitted is credible evidence of relationship
 - Point to Congressional intent creating “credible evidence standard”
 - ASISTA Amici
 - Beyond AAO?



U visa RFEs

Police Reports, juvenile records

- Problem = asking for documents not in the Record of Conviction or not a conviction
 - VSC says to resolve discrepancies
 - Only for discretion, not inadmissibility
 - If they use for inadmissibility, AAO can review

Police Reports-Strategy

- Legal strategy

- Case law does not allow unless part of record of conviction

- Same reasons apply to unfettered discretion

- Factual strategy

- Availability of police report?

- Content of police report?

Categories of Qualifying Criminal Activity

- Problem:
 - RFE says not a QCA

- Strategy
 - Emphasize your crime fits a category
 - CIS regs are clear that crimes are categories
 - "similar" arguments fail

Qualifying Crimes Categories

DV is obvious

- New challenges = robbery and extortion
- When is robbery in felonious assault or another category?

- The analysis should be:
 - Are elements the same?
 - If not, do facts of the case supply a required element?
 - Show this in a chart

RFEs on Waitlisted Cases

- Problem: Even if case is on the waitlist, may get RFE'd because
 - quality control check or
 - New information that comes to VSC's attention
- Case is taken off the waitlist until RFE reviewed
- Deferred action EAD remains valid unless denied

U Adjustment

- Problem
 - RFEs on applicant's "ongoing" cooperation with law enforcement
 - Insisting on new certification
- Strategy
 - 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)

U Adjustment

- Problem: RFE on Continuous presence
 - E.g. Types of evidence, frequency of submissions
- Strategy
 - Do best evidence argument up front
 - Vary types of proofs, if possible
 - Regs are worth reading on this
 - Explain any deficiencies and why what you have is credible

Reaccruing CP



- CIS is granting if show reaccrual
- No formal acknowledgment
- Let us know if you need the successful arguments



What are you seeing?

Motions/Appeals



- AAO or back to VSC?
 - ▣ Direct appeal v. motion to reopen or reconsider
- Amicus briefs for AAO and beyond

ASISTA Resources

- www.asistahelp.org
- gail@asistahelp.org
- cecilia@asistahelp.org
- questions@asistahelp.org



Thank you!



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