



Which Status to Choose?

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Goals



By participating in this webinar, you will be better able to:

- Identify the most common immigration status options for your immigrant survivor clients;
- Discuss the pros and cons of each option
- Explore ways you can help your client document a path to status



IMMIGRATION OPTIONS FOR SURVIVORS

Some Possible Immigration Relief

- VAWA-based Relief
 - VAWA Self Petition
 - VAWA Cancellation of removal
 - Battered spouse waivers
- U Visa
- T Visa
- Gender-based Asylum
- Special Immigrant Juvenile Status

DV/SA Advocate Roles

- ❑ Explain how our systems work
 - "negotiate" safe cooperation with law enforcement if fear is an impediment
 - What confidentiality means and your relationship with government systems
 - What their rights are in those systems
 - Do immigration safety planning

- ❑ Get the full story and help them frame it
- ❑ Help them find immigration representation
- ❑ Corroborate non-physical violence and harm from the crime
- ❑ Help identify and creatively collect supporting documentation
- ❑ Other things you are doing/think you could do?



VAWA SELF-PETITIONS

VAWA General Requirements

- Abuser =
 - USC or LPR Spouse
 - USC or LPR parent
 - 21 – 25 exception
 - USC son or daughter (over 21)

- Suffered “battery or extreme cruelty”
- Resided with abuser somewhere
- Good moral character
- If abuser – spouse, also good faith marriage

Supporting Documents Generally

- Burden of proof: preponderance
- Evidentiary standard: “Any Credible Evidence”
 - only for VAWA, CR waivers, U and T visas
- Best evidence = credible evidence
 - Systems evidence
 - Applicant’s declaration
 - Corroborating declarations from counsellors and others
 - Creative document collection and presentation

Spousal Relationship with Abuser

- ❑ Common law marriage counts
 - Immigration law rule = ok if legal where it took place
- ❑ Divorced within two years OK
- ❑ Bigamy by abuser OK (but not by survivor)
- ❑ How can you show abuser's status?

- ❑ Good faith marriage (not married solely to get status)
 - How can you help them show this?
 - Also required for waiver if already has green card

Helping show other requirements

❑ Battery or extreme cruelty

- What kinds of DV do you see that are not battery?
 - Also required for waiver if already has green card

❑ Good moral character

- What kinds of crimes do you see survivors commit or be convicted for?
- Is the crime connected to being a DV survivor?

Benefits

- No abuser control
- Special unit determines all VAWA, U and T applications
- If need public benefits (and available), may get prima facie determination
- Get work authorization on approval (or immediately if abuser = USC)
- May include “derivatives” = minor children both in US and abroad

Benefits for getting green card

- Can work legally until eligible to apply
- Some special inadmissibility waivers
- Derivative children may also get LPR

Process Differences

If abuser is USC

- Able to file for green card at “same time” as VAWA self-petition
- May receive work authorization before self-petition is approved
- Faster process

If abuser is LPR

- Get work authorization when self-petition is approved
- Must wait until “priority date” is current to file for green card

I-751 Conditional Residence Joint Filing Waiver

- Does client already have green card with two-year expiration date (old, current or new)?
- I-751 requirement is why Congress created battery/extreme cruelty definition for DV
- If abuser = USC or your client got green card within two years of marrying LPR must get
- “conditions” removed by both spouses signing a form OR

Waiver of Joint-Filing Requirement



May be filed at any time (after “expired”)

No abuser participation required

Get regular green card if approved

Waivers available for

- Divorce*
- Death of spouse*
- Domestic violence*
 - Any credible evidence standard applies

- Extreme Hardship
- * Requires showing “good faith marriage”

Considerations



Considerations:

- When and where to file I-751 waiver?
- Interview?
- Derivatives?
- If previous application was denied?
- If in removal?

Hypo

- Soli is a conditional resident married to her USC abuser. Her son Cristian was also abused by his step-father. Cristian is not a conditional resident because her husband refused to file papers for him, part of his power and control over Soli.

Poll



How would you file?

- A. I-751 waiver for Soli, with Cristian as derivative
- B. I-751 waiver for Soli, I-360 for Cristian
- C. I-360 for both Soli and Cristian
- D. Other



U VISAS

U visas

- Created in 2000 as part of the Victims of Trafficking and Violence Prevention Act.
 - 10,000 visas available annually
 - Waitlist
- Dual Purpose:
 - Strengthen the ability of law enforcement to detect, investigate and prosecute criminal activity.
 - Offer protection to victims of such offenses in keeping with humanitarian interests of the United States

Requirements

- Suffered substantial physical or emotional abuse because
- Victim of Qualifying Criminal Activity
 - “categories” of crimes, i.e., “domestic violence”
- Survivor is, was, or likely to be helpful to law enforcement, prosecutors, a judge, or other authority in the investigation OR prosecution of the crime
- Crime occurred in US or otherwise violated US law
- Admissible or qualify for a waiver

Benefits

- Four years nonimmigrant status with
- Employment authorization
- Can include derivative family members
- Can apply for lawful permanent residence after 3 years of U nonimmigrant status
- ❖ Can waive almost any inadmissibility ground!
- Public benefits in a few states

U visa certifications



- Essential to U visas, cannot file without one
- Certify 3 elements:
 - Qualifying Crime occurred
 - Applicant was, is, or will be helpful
 - Violated U.S. Law

The U visa Certification

- Which Agencies Can Certify?
 - Federal, state or local law enforcement, prosecutors, judges
 - Any other state, local or federal agency that investigates qualifying crimes
 - Federal or state Dept. of Labor
 - Other Investigative Agencies: CPS, EEOC, NLRB

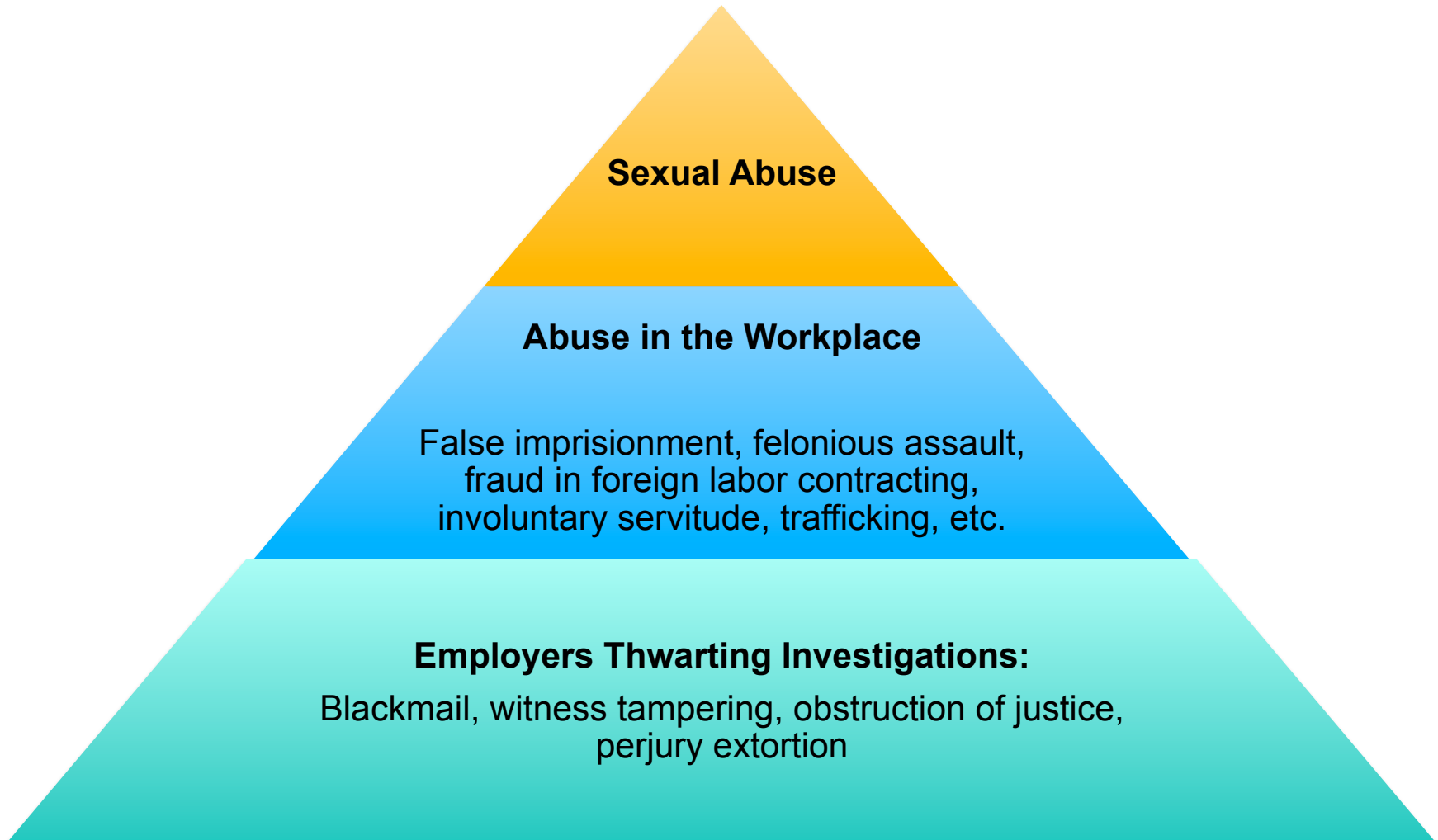
Who can Certify

- ❑ Head of Certifying Agency
- ❑ Any person in a supervisory role who is specifically designated by the head of the agency to sign.
 - Need letter from “chief” or “supervisor” designating singer as certifier
- ❑ A Federal, state, or local judge who “detects” a qualifying crime

U Visa Crimes

Abduction	Hostage	Prostitution	Unlawful criminal restraint
Abusive Sexual Contact	Incest	Rape	Other related crimes
Blackmail	Involuntary Servitude	Sexual Assault	*includes attempt, conspiracy or solicitation
Domestic Violence	Kidnapping	Sexual Exploitation	
Extortion	Manslaughter	Slave Trade	
False Imprisonment	Murder	Stalking	
Female Genital Mutilation	Obstruction of Justice	Torture	
Felonious Assault	Peonage	Trafficking	
Fraud in Foreign Labor Contracting	Perjury	Witness Tampering	

Examples of Workplace U visa crimes



Who is a victim?

- Direct = proximate harm
 - Bystander is not a separate category
- Indirect
 - When direct victim = murder or manslaughter victim
 - or incapacitated or incompetent, includes
 - Spouse
 - Children under 21 and unmarried
- if the direct victim is under 21 years old
 - Parents and siblings under 18
 - Child victim's age measured at time of crime

Derivatives = family members

- For survivors over 21= children, spouses
- Child's age frozen (no "age-out") on date "principal" files her U visa application
- For survivor under 21= children, spouse, parents, siblings under 18

- Cannot file for abuser or perpetrator

U EAD options

- Work authorization when granted a U
- Work authorization when put on the waitlist
- May also ask them to make bona fide determination
 - They will not grant right now but it's in the statute

U visa Waitlist

Benefits of U visa grant

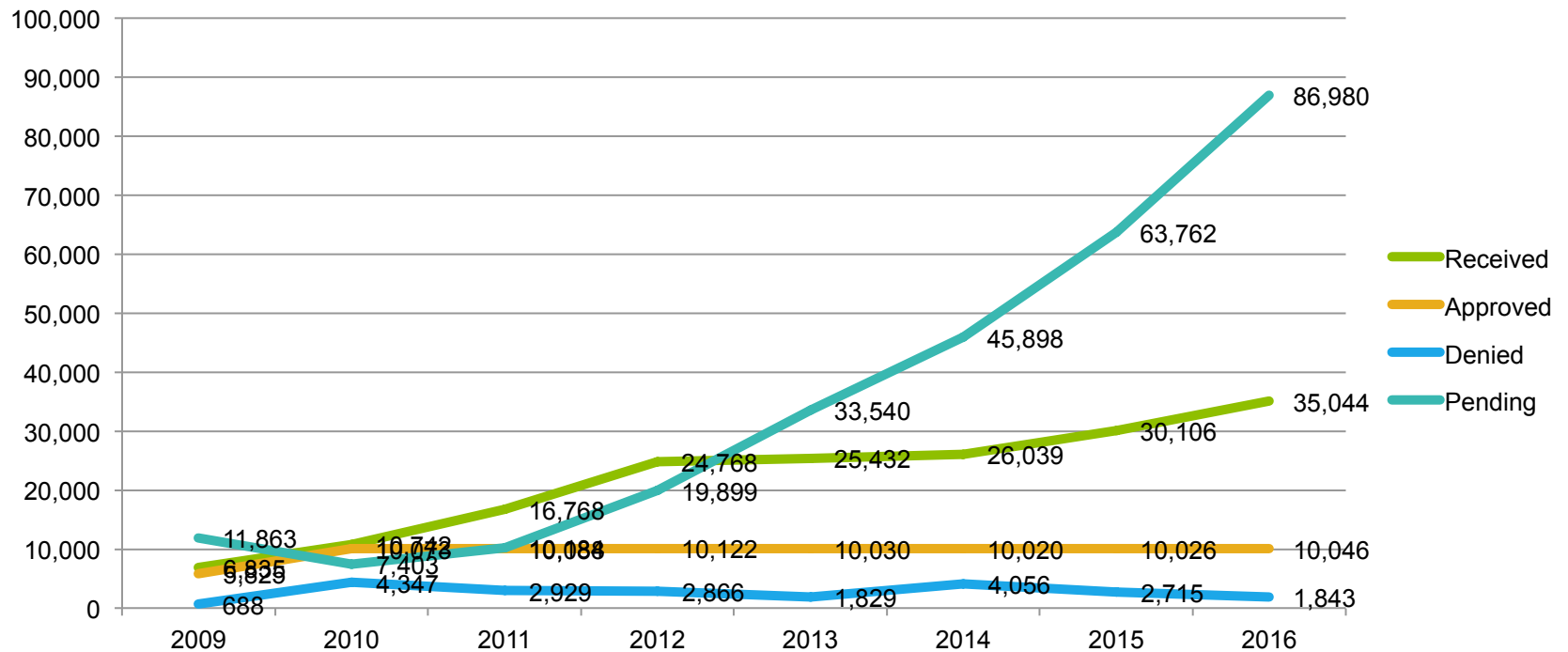
- 4 year work authorization
- Family reunification
 - Includes derivatives abroad who can enter US
- The ability to adjust status after 3 years continuous presence

Benefits of Waitlist

- 2 year work permit under deferred action status
- Family members abroad
 - Not part of waitlist system
BUT
 - Parole option
- Deferred is not continuous presence for adjustment

State of the U visa program

U visa Principal applicants



Source: USCIS Data Set 2nd Q: FY 2017



T VISAS

T visa eligibility

- ❑ Is or has been a victim of severe trafficking (sex or labor)
- ❑ Is physically present in the U.S. or at a point of entry on account of the trafficking
- ❑ Has complied with any reasonable request for assistance in investigating or prosecuting the trafficking (if 18 or older)
- ❑ Would suffer extreme hardship involving severe and unusual harm upon removal
- ❑ Is admissible to the United States or eligible for a waiver

Sex Trafficking



- Trafficker uses force, fraud, or coercion to make victim perform commercial sex act or
- Victim is under 18 years of age

- May also qualify as labor trafficking, even if not large scheme

Labor Trafficking

Process

- the recruitment, harboring, transportation, provision, or obtaining of a person

Means

- Through Force, Fraud or Coercion

End

- the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

Trafficking Red Flags

- Can person come and go as he/she wishes?
- Are they in control of their identity/travel documents?
- Recruited to come to U.S. through false promises?
- Is unpaid, paid very little
- Works excessively long or unusual hours
- Not allowed breaks, unsafe work conditions
- Owes large debt, not able to pay it off
- Poor Physical or mental health
- Not in control of own money

T visa benefits

- Full 4-Year Visa
- Work authorization upon approval
- Ability to apply for green card after 3 years or upon DOJ certifying conclusion of investigation or prosecution
- Can include derivative family members

Hypo

- Angelina is 19 years old and was brought to the U.S. by her father when she was 14. Her father physically abused her and forced her to work in his restaurant where he didn't pay her, forced her to sleep on the floor of the restaurant, and took all her identity documents. She was able to leave the situation when she was 18 and comes to your office for help.

Special Immigrant Juvenile Status

□ Eligibility

- Unmarried and under 18
 - up to 21 in states that extend juvenile jurisdiction
- Juvenile court has jurisdiction or has assigned custody
- Judge makes finding that reunification not viable with one or both parents due to abuse, neglect or abandonment of applicant and in the
- Not in the best Interest of the child to be returned to home country

Gender-Based Asylum

- ❑ Well-founded fear (physical harm, threats, detention, past persecution) of
- ❑ Persecution (violence against women = persecution)
- ❑ On account of race, political opinion, religion, nationality, membership in a *particular social group*
- ❑ Persecutor is state actor, or state “unwilling or unable” to control private actor
- ❑ Cannot safely or reasonably relocate within state

Hypo

- Inez came to the U.S. with her infant son Rafael to escape domestic violence from her daughter's father, who was also abusive to the child. Inez was a victim of felonious assault in the U.S. in 2014. What are the options for her and son?

Inadmissibility!

- When is is relevant?
 - Application or Adjustment?

- What are the big issues you see?
 - Crimes?
 - Immigration fraud? False claim to USC?
 - Unlawful presence?
 - What else?

- Special waivers vary by status
 - What are they for the problems you identified?

Inadmissibility flagging hypo

- Sara is a victim of domestic violence at the hands of her USC spouse. She called the police and testified against her spouse and he was convicted of domestic violence. Sara once put she was a U.S. Citizen on an I-9.

Poll



- What would you file for Sara?
- Just I-360
- “VAWA one-step” since abuser = USC
- U visa
- Both
- other

Hypo continued

- You check Sara's I-9 and it turns out she didn't put she was a USC after all (Phew!)
- Sara first entered the U.S. In 2001.
- After she got married and the abuse started, she left back to her home country for safety in 2003.
- Her spouse apologized and said this time it'd be different so she re-entered in early 2004, but the abuse continued.

What does this change?



- Does this change what you would file for her?
- What other inadmissibility issues now concern you?

Questions?



ASISTA Resources

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