

U Visa Advanced

June 26th, 2013

9:00 AM – 5:00 PM

San Francisco, California

Training Materials

Produced by the Immigrant Legal Resource Center

*Co-Sponsored by
ASISTA, Bay Area VAWA/U Network, CLINIC,
Los Angeles VAWA Network, AILA Northern California Chapter,
Public Counsel and the Northern California Coalition for
Immigrant Victims of Crime*



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U Visa Advanced Track

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This course will go into greater detail on advanced and emerging issues related to U nonimmigrants, including those with complicated nonimmigrant or adjustment issues, those who are in proceedings and those who must travel. This course will be taught at an advanced level, assuming prior knowledge of the requirements for U nonimmigrant status and adjustment of status and is intended for those who already have experience working on U visa cases.

Agenda

9:00-9:30am	Introductions and Overview of Training (Sally)
9:30-11:00am	Emerging U Nonimmigrant Status Issues (Eunice, Catherine, Cecilia)
11:00-11:15am	Break
11:15-12:00pm	Working with Law Enforcement (Nancy, Susan)
12:00-1:00pm	Lunch
1:00-2:00pm	Travel and Consular Processing (Cynthia, Monica)
2:00-3:30pm	U Adjustment of Status (Catherine, Gina)
3:30-3:45pm	Break
3:45-4:45pm	Clients in proceedings (Sonia, Catherine, Maria)
4:45-5:00pm	Remaining Questions



Speaker Bios:

Catherine Seitz, Regional Immigration Coordinator – Bay Area Legal Aid

Catherine has been working in the field of immigration law since 1990, starting out as legal assistant and then a BIA Accredited Representative before her admission to the bar in December of 2001. Before joining Bay Area Legal Aid as Regional Immigration Coordinator in July of 2009, she worked at Canal Alliance, the International Institute of the East Bay, and the private immigration law firm of Simmons & Ungar.

Cecelia Friedman Levin, Staff Attorney – Asista

Prior to joining ASISTA as a staff attorney in June 2012, Cecelia Friedman Levin worked as a supervising attorney at Women Empowered Against Violence in Washington, DC and as the domestic violence staff attorney at the National Law Center for Homelessness and Poverty. She has also been an immigration staff attorney at Ayuda, providing direct legal representation to low-income immigrants in the Washington, DC area. Prior to law school, she was a Fulbright Research Scholar in Santiago, Chile assessing community responses to domestic violence. Cecelia received her B.A. in International Studies and Women & Gender studies from American University and her J.D. from American University-Washington College of Law.

Cynthia Lucas, Private Immigration Attorney

Cynthia Lucas is a private immigration attorney practicing in Los Angeles, California. Ms. Lucas received her B.A. from the University of California, Berkeley, and her J.D. from the University of San Francisco, School of Law. Since law school she has been dedicated to practicing immigration law and providing legal services to underrepresented populations in family-based immigration matters, U visas, VAWA, Special Immigrant Juvenile petitions, consular processing and waivers. Her past experience includes extensive public interest work as an attorney at ICWC and the Center for Human Rights and Constitutional Law and as an Associate Attorney at Wolfsdorf Immigration Law Group. She has been a speaker at various conferences and trainings for the Federal Bar Association, AILA and ILRC. She was selected as a “Rising Star” in the 2010 Rising Star Edition of Southern California Super Lawyers. Ms. Lucas presently serves on the Executive Committee of the American Immigration Lawyers Association (AILA) Southern California Chapter. She can be contacted at cynlucas@gmail.com.

Eunice Hyunhye Cho, Staff Attorney – National Employment Law Project (NELP), Immigrant Worker Justice Project

Eunice Hyunhye Cho is a Staff Attorney with National Employment Law Project (NELP), which she joined as a Skadden Fellow in 2011. She works with NELP’s Immigrant Worker Justice Project to support and



expand the rights of low-wage immigrant workers and is the author of “U Visa Protections for Immigrant Victims of Workplace Crimes” in *Clearinghouse Review*. She previously worked as a law clerk for Judge Kim McLane Wardlaw of the U.S. Court of Appeals for the Ninth Circuit and, prior to law school, was the Education Director at the National Network for Immigrant and Refugee Rights.

Gina Amato Lough, Senior Staff Attorney – Public Counsel Immigrants’ Rights Project

Gina is a Senior Staff Attorney in Public Counsel’s Immigrants’ Rights Project and sits on the Board of Directors of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). She provides legal representation to immigrant victims of domestic violence, human trafficking, and other serious crimes. Prior to joining Public Counsel, Ms. Amato Lough defended low-income tenants in their eviction actions and represented plaintiffs in sexual harassment, wrongful termination, and discrimination lawsuits. Ms. Amato Lough received her Juris Doctor and Masters Degree in Public Policy from U.C. Berkeley in 2001.

Maria Baldini-Potermin, Founder – Maria Baldini-Potermin & Associates, P.C.

Maria Baldini-Potermin has been recognized as a Leading Lawyer in Illinois since 2004. In addition to being a frequent lecturer on deportation/removal defense, she has written extensively on the area of immigration law and crimes. Her writings include manuals on the effects of criminal convictions for noncitizens in Illinois, Indiana, Minnesota, and Wisconsin and articles for the *Indiana Defender*, as the author of *Defending Non-Citizens in Illinois, Indiana, and Wisconsin* (2009), the definitive work on immigration law and crimes within the jurisdiction of the Seventh Circuit Court of Appeals, *Immigration Trial Handbook* (Thomson West), and of a chapter in *A Judges Guide to Immigration Law in Criminal Proceedings* (American Bar Association, 2004), and as the update editor for *Immigration Law & Crimes*, by the National Immigration Project of the National Lawyers Guild. She is active in the American Immigration Lawyers Association (AILA) on the local and national levels, and she has served on several committees. In July 2010, Maria was the recipient of AILA's Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law.

Monica Kane, Staff Attorney – Neighborhood Legal Services of Los Angeles County

At NLSLA, Monica provides free legal assistance and representation in immigration matters to low-income clients, many of whom are survivors of domestic violence and sexual assault. Monica was previously with NLSLA from 2002 to 2005. Before rejoining NLSLA in 2009, she worked with asylees and refugees at Jewish Family and Children's Services in San Francisco and practiced employment-based immigration law with Haight Law Group, PLC, in Los Angeles. Monica holds a J.D. from UCLA School of Law.



Nancy J. Reyes-Rubi, Senior Staff Attorney – Legal Aid Foundation of Los Angeles (LAFLA)

As a senior staff attorney at LAFLA for the last 11+ years, Nancy has assisted hundreds of domestic violence victims achieve safety through VAWA, U visas, T visas and other available remedies. She provides technical assistance to other agencies across the state. LAFLA's Immigration and Asian Pacific Islander Units have collaborated to engage in cutting-edge legal work in various areas that assist survivors of human trafficking, domestic violence, stalking, and sexual assault. Some of this work has included targeted outreach and services to victims of human trafficking (such as forced prostitution) and assertion of asylum claims based on gender-based persecution (such as rape and domestic violence). She is also very involved with local immigration networks (VAWA and Trafficking) that focus on making changes at the local level to help improve procedures for immigration clients, as well as on a national level. Nancy has provided several U visa & VAWA trainings to community-based organizations, government agencies, universities and large private law firms interested in pro-bono VAWA cases. She is a member of the American Immigration Lawyers Association and the Los Angeles County Bar's Immigration Section.

Sally Kinoshita, Deputy Director – Immigrant Legal Resource Center (ILRC)

Sally joined the ILRC as a Staff Attorney in 2001. She brings to the ILRC her expertise on immigration relief for abused immigrant women and children as the author or co-author of a number of ILRC publications, including *The VAWA Manual: Immigration Relief for Abused Immigrants*; *The U Visa: Obtaining Status for Immigrant Victims of Crime*; *Immigration Benchbook for Juvenile and Family Courts*; and *Living in the United States: A Guide for Immigrant Youth*, and by serving as a trainer to judges, attorneys, accredited representatives, social workers, domestic violence service providers and others.

Sonia Parras Konrad, Co-Executive Director – ASISTA Immigrant Assistance

Sonia Parras Konrad is Co-Executive Director of ASISTA Immigrant Assistance for immigrant survivors, a nationwide program that provides immigration technical assistance to front line advocates and attorneys, and she is also in private practice at the Law Offices of Sonia Parras PLLC. She is a national and international speaker on women's rights working in Peru, Guatemala, Mexico, Costa Rica and all over the USA. Sonia is the author of *Rompiendo el Silencio* (Breaking the Silence), a manual for Latino community activists organizing against domestic violence and sexual assault, published by the Family Violence Prevention Fund, and *Defensa y Promoción de la Mujer Latina* (Defense and Promotion of the Latina Woman) published by National Latino Alliance. Sonia is the recipient of the 2009 American Immigration Lawyers Association (AILA) Michael Maggio Memorial Pro Bono Award, a member of AILA, the Iowa Bar Association, the chair of the Board of Directors of the National Immigration Project of the National Lawyers Guild, a Board Member of the Prevent Child Abuse Iowa, an advisory board member of the National Judicial Institute on Domestic Violence of the National Council of Juvenile and Family Court Judges. She is licensed to practice law in Spain, Iowa and in Federal Court.



Susan Bowyer, Deputy Director – Immigration Center for Women and Children (ICWC)

Susan is the author of a number of publications on immigration remedies for survivors of domestic violence, including those published by the American Immigration Lawyers Association (AILA), the Berkeley Journal of Gender, Law & Justice, and the Immigrant Legal Resource Center (ILRC). She is a frequent trainer on immigration through the VAWA and U Visa and has presented at the American Immigration Lawyers Association National Conference, California and Central Florida Chapters, the Alameda County Law Enforcement Chiefs' Annual Conference, on regional and national webinars, and before the California State Senate and Assembly Human Service Committees. Susan is a 1992 graduate of Stanford Law School, where she was a Public Service Law Fellow.



U Visa Advanced Track Materials

June 26, 2013

Emerging U Nonimmigrant Status Issues

- Final CIR Advocate Advisory
- VAWA 2013 Changes and Practice Pointers
- U visa Age-Out Interim Policy Memoranda
- Comments on Derivative Guidance
- Clearinghouse Review article on U visas for workplace based crime
- Sept. 2012 VSC Teleconference Notes and Practices

Working with Law Enforcement

- I-918 Supplement B instructions for advocates
- Model I-918 Supplement B
- Template Supplement B request cover memo
- I-918 Supplement B request for robbery as felonious assault
- Model 918B request for stalking
- Model 918B request for bystander victim
- Model 918B request for battery as false imprisonment
- Model 918B request for firing into inhabited dwelling as felonious assault
- Model 918B request for indirect victim
- Interim Regulations guidance on bystander victims (to attach to request)
- Model 918B request for fraud in foreign labor contracting
- Model 918B request for stalking
- Model I-918 Supplement B for battery by multiple suspects as felonious assault and false imprisonment
- Model I-918 Supplement B for battery with great bodily injury as felonious assault
- Model I-918 Supplement B for bystander victim
- Model I-918 Supplement B for false imprisonment
- Model I-918 Supplement B for firing into inhabited dwelling
- Model I-918 Supplement B for indirect victim
- Model I-918 Supplement B for robbery as felonious assault
- DHS U Visa certification guide
- Model letter to new law enforcement agency explaining the U visa
- Model letter requesting law enforcement agency to revisit narrow certification policy
- Model training slides for law enforcement training
- Memo regarding reasons to certify a closed investigation/prosecution
- Cleveland Police Chief Op-Ed on U visas

- FBI Bulletin article on U visas
- Article by Gael Strack for prosecutors about U visas

Travel and Consular Processing

- I-918 Approval Notices
- I-918A Approval Notices
- U-1 Visa (waivers approved)
- U-2 Visa (no waivers)
- DS-160 Questions in English
- DS-160 Questions in Spanish
- U-3 interview letter
- AILA Practice Pointer
- CIS Memo on T and U Extensions
- Humanitarian Parole cover letter
- ICWC GoogleDocs invitation

U Adjustment of Status

- Adjustment Cover Letter
- Adjustment Client Declaration I-929 application
- I-929 receipt notices

Clients in Proceedings

- Matter of Sanchez-Sosa
- Matter of Avetisyan
- EOIR OPPM 13-01 (dated 3/7/2013)
- Sample Unopposed Motion to Terminate
- Sample Unopposed Motion to Admin Close



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U Non-Immigrant Status Emerging Issues

Presented by

Cecilia Friedman, Eunice Cho, &
Catherine Seitz

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Agenda

- Agency and Legislative Update 2013
- Tricky Victim Issues
- Complicated Derivative Issues
- Messy Criminal Issues
- Labor and Workplace-Related U Visa Crimes
- U Status updates in CIR

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Agency and Legislative Update 2013



U Visa Age Out Guidance-December 2012

Three Categories covered in new U visa Age-Out Guidance

Derivatives who age out

1. While the principal's U visa application is pending
2. After the principal's U visa application has been approved
3. U-3 status has already expired

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Practice Pointers for Derivatives with Deferred Action

- Adjustment Issues
 - If a derivative has deferred action status, then the principal U-1 applicant **SHOULD NOT ADJUST** his/her Status to LPR
- Principal U-1 applicant should file I-539, Extension of Status
- See: [April 11, 2011 USCIS Memo](#)

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U-3 Derivatives who turn 21 after Approval

- USCIS will (as of December 12, 2012) grant full four-year U-3 status to derivatives who are under 21 years of age at the time of approval, but who will turn 21 during the four-year statutory period.
- For those currently were granted U-3 status for a period less than 4 years and has yet to turn 21:
 - USCIS will **extend** their U-3 status to a 4 year period
 - The U-3 derivative must **file an I-539 extension** of status with USCIS
- ***Tips for derivatives overseas***

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U-3 Derivatives whose Status has Expired

- Guidance permits derivatives to file a Form I-539: Application to Extend/ Change Nonimmigrant Status ("I-539 applications") after the expiration of their U-3 status.
- No expiration for filing date
- Upon approval of a U-3's I-539 application, derivatives would be granted the remaining time of the four-year period of U nonimmigrant status.
- For these U-3 derivatives who aged out long before the Guidance, USCIS may grant the remaining time available in U nonimmigrant status, to equal four years, as well as an additional time from expiration of the four-year period up to one year from the date of approval of the I-539 application.

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Procedural Practice Pointers

- [I-539 instructions](#) state that if the application is filed after status has expired then the individual must demonstrate that the delay was caused by circumstances outside of their control.
- The Age-Out Guidance specifically states that for those with derivative U-3 status who aged out prior to the implementation of the Guidance, the failure to maintain U-3 status was due to extraordinary circumstances beyond their control. CITE this language of the Guidance in your application to make the connection for the adjudicator.
- File an I-539 extension for aged-out derivatives ASAP together with an I-765 under (A)(20) eligibility

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U Age Out Fix in VAWA 2013

- VAWA 2013 fixed the age out problem for derivative children:
 - Age of derivative is fixed on the date the PRINCIPAL's application filed.
 - Best practice to get both I-918 and I-918A in before 21st birthday.
 - Implementation for cases already pending and for derivatives abroad.
 - Back dates to original U law = 2000

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Outstanding Issues

- Who does this cover?
- What about interim relief derivatives abroad?
- What if principal adjusted?

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What should you do now?

- Follow CIS memo until regulations come out
- For those not covered by memo, keep cases alive through principal extensions
 - If adjusted, is CIS aware case exists?

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Addition of New U Crimes

- Stalking
 - Related to harassment and intimidation; may include following the victim in person or monitoring them
 - Does not need to be in DV context
- Fraud if foreign labor contracting
 - More later

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Public Charge Exemption

- Specifically exempts approved U applicants from the public charge grounds of inadmissibility
- Section 804 of VAWA 2013

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Foster Care and Benefits

- Federal assistance for foster care and benefits for unaccompanied refugee minors (URM) to unaccompanied alien children (UACs) who obtain U visa relief
- UACs in Department of Children Services custody are eligible for the URM program, advocates should notify ORR about U visa eligible youth and ensure these children are not kicked out of federal foster care upon turning 18

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Tricky Victim Issues

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Who Can Be a Victim

- Direct victim – this is the obvious one
- Indirect victim –
 - If direct victim is USC child - parents
 - If direct victim is child, but there are children 18 or over who need to be derivatives - parents
 - If direct victim is dead from murder – spouse & children if over 21 plus siblings and parents if under 21

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Bystander Victim

- Higher standard for this category – “rare”
- Pregnant woman example from preamble to regs
- Witnesses who suffer unusually direct injury and so are considered victims.

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Obstruction of Justice and Witness Tampering

- Victim can qualify for the U status if the perpetrator committed the offense:
 - to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or
 - to further his or her abuse or exploitation or undue control through manipulation of the legal system.
- These crimes, however, need not be connected with any other statutorily listed criminal activity

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Complicated Derivative Issues



Complicated Marriage Issues

- The impact of marriage and divorce
 - When does marriage impact eligibility?
 - At nonimmigrant and/or adjustment phase
 - For principals and derivatives
 - When does divorce impact eligibility?
 - What happens to the now-divorced U-2?
 - Can the now divorced U-1 remarry and petition a new spouse?
- Marriage Fraud
 - Does it impact eligibility?

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Issues with Marriage

- When the principal marries: What happens to parents and siblings if the under-21 principal marries? (VSC has said OK)
- When the derivative marries: do they lose eligibility?
 - Derivative parent (no)
 - Derivative child (yes)
 - Derivative sibling (probably)

➡ Practice tip: Add warnings related to marriage in closing letter

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Marriage Timing Issues

- When can a derivative spouse be included:
 - If marriage pre-dates I-918 filing, then eligible for I-918A (or I-929).
 - If marriage post-dates I-918 filing, then only eligible for I-929 (and must wait until AOS stage and must show extreme hardship).
 - Conflict Issue – may want to do spouse's case after principal's approved.

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After Acquired Family Members

- Children v. Spouses:
 - What if give birth abroad after filing the I-918?
 - I-918A or I-929
 - What if marry after filing I-918?
 - Only I-929

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Divorce Issues

- When does divorce affect a derivative:
 - While I-918A still pending,
 - After I-918A approved,
 - While I-485 pending,
 - After I-485 approved.
- Ethics issues and conflicts:
 - State by state – possible conflict waiver, but maybe best to refer both out.

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Questions Related to Divorce

- What happens to the now-divorced U-2 while in U nonimmigrant status? At the time of adjustment?
- Can a now divorced U-1 remarry and petition a new spouse?

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Other Derivatives Issues

- Impact of principal's death
 - INA § 204(l) allows the approval of a pending visa petition, adjustment application or any related application, despite the death of the principal U nonimmigrant

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Messy Criminal Issues



Waiving Crimes at the NIV Stage

- Which are most dangerous?
 - Potentially drug cases, crimes involving violence (e.g. domestic violence), anything that looks gang related, sex-related offenses
 - What kinds of crimes have been waived?
- At what stage are they riskiest?
 - Unable to show rehabilitation

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Addressing/ Waiving Crimes

- Is it worth it to argue that something does not trigger inadmissibility or should you go ahead and waive it?

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Review of the Nuts & Bolts

- INA § 212(a)(3)(E) cannot be waived
 - Nazi persecution, genocide, torture, extrajudicial killing
- Submit waiver on Form I-192 to VSC
 - Fee waiver available
- Disclose on the I-918, I-192 and/or declaration
- Waiver standard is “in the public or national interest”

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How and When to Disclose

- I-918
 - Some grounds aren’t on the form (false claim, trips more than 5 years out, etc)
 - The “asterisk” approach
- I-192
 - How to describe the ground – INA or words?
 - What supporting documentation

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Documenting the Waiver

- How were successful waivers documented?
 - Some grounds do not require any supporting documentation (i.e. simple EWI) while others will require a lot of documentation
 - Examples

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I-192 Approval and Denials

- Approvals
 - What kinds of grounds have been approved on the I-192?
- Denials
 - What kinds of grounds have been denied on the I-192?
 - Cannot appeal the denial of an I-192, so what are the options for next steps?

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Juvenile Records and Police Reports

- Do we have to submit juvenile records when requested? What if I can't obtain them?
- Do we have to submit police reports for our clients' crimes?

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Labor and Workplace-Related U Visa Crimes

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How can a U visa be helpful to immigrant workers?

- Relief for grassroots leaders willing to call attention to abuse
- Strengthens enforcement of labor laws
- Eligibility for remedies: reinstatement in employment or back wages

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Qualifying Criminal Activities

Most often relevant in workplace crime cases

Abduction	Fraud in foreign labor contracting	Rape
Abusive sexual contact	Incest	Sexual assault
Being held hostage	Involuntary servitude	Sexual exploitation
Blackmail	Kidnapping	Slave trade
Domestic violence	Manslaughter	Stalking
Extortion	Murder	Torture
False imprisonment	Obstruction of justice	Trafficking
Felonious assault	Peonage	Unlawful criminal restraint
Female genital mutilation	Perjury	Witness tampering
	Prostitution	

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Abusive Sexual Contact, Rape, Sexual Assault, Sexual Exploitation

- Unwelcome sexual contact, sexual assault, rape or attempt to do so by employer, agents, co-workers, or customers.
- Clients may minimize examples of abusive sexual contact.
- Check state statutes:
National Crime Victim Law Institute:
<http://www.lclark.edu/org/ncvli/clpps.html>

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Blackmail/ Extortion

- Generally—use of a threat or fear to coerce someone to give up something of value
 - Look for:
 - Employer threats of violence, threats to report immigration status to authorities in order to obtain a worker's property or money to which employer is not entitled.
 - VA and CO: extortion statute specifically includes threat to report immigration status to induce an individual to give up money or item of value

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Involuntary Servitude

Involuntary servitude:

a condition of servitude induced by means of—

- (A) *any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer **serious harm** or physical restraint; or*
- (B) *the abuse or threatened **abuse of the legal process.***

—22 U.S.C. § 7102(5).

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Involuntary Servitude

- Threats of physical, psychological, financial, or reputational restraint or harm
- Threats to contact law enforcement/immigration to compel work
- Confiscation of identity documents, passports, travel documents
- Supporting facts: wage violations, inadequate food, housing, medical care, clothing; verbal/physical abuse, restricted contact, use of locks/fences to restrict mobility

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Trafficking

- Generally: compelling or inducing another person to engage in labor; includes recruiting, enticing, harboring, or transporting another person for labor
- See involuntary servitude fact patterns
- Look at both federal and state definitions (some state definitions broader)
- Consider filing T Visa

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Obstruction of Justice, Witness Tampering

Obstruction of justice:

- Attempts to influence, obstruct, or impede any pending proceeding through use of threats or force;
- Destruction, alteration, or falsification of records, including labor certification, wage/hour records, birth certificates
 - 8 U.S.C. § 1519—prohibits act done with the intent to obstruct investigation of any matter within federal agency's jurisdiction

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Obstruction of Justice, Witness Tampering

Witness Tampering:

- Intimidation or threats to delay or prevent testimony in "official proceeding";
- Alter, destroy, conceal objects to impair availability for use in investigation;
- Hinder, delay, or prevent communication to authorities;
- Threats to damage property or cause bodily harm to delay or prevent witness participation.

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Fraud in Foreign Labor Contracting

- New qualifying criminal activity:
"Knowingly and with intent to defraud, recruits, solicits, or hires a person outside the United States . . . For purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment . . ."
 - Also applies to work outside the United States (U.S. government contracts; military installations)
 - 8 U.S.C. § 1351

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Who can certify a U visa for a workplace based crime?

- Federal Agencies: certification authority specified in 8 C.F.R. § 214.14(a)(2)
- State Agencies
- Local Law Enforcement Agencies
- Judges

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U.S. Department of Labor

- Case must fall under jurisdiction of DOL's Wage and Hour Division (WHD):
federal labor law, including minimum wage, overtime, child labor, employment of individuals with disabilities, family/medical leave, temporary/seasonal labor

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U.S. Department of Labor

- Certification currently limited to 5 qualifying crimes:
 - Involuntary servitude, peonage, trafficking, obstruction of justice, witness tampering
- Can request certification before, during, or after WHD investigation

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U.S. Equal Employment Opportunity Commission

- Qualifying criminal activity must be related to unlawful employment discrimination alleged in EEOC complaint or under investigation by EEOC.
- EEOC will certify for any of U visa qualifying crimes.

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National Labor Relations Board

NLRB: conducts elections for labor unions; investigates unfair labor practices against workers organizing/collective bargaining.

- No restrictions on qualifying criminal activity
- Must be related to meritorious unfair labor practice under investigation by NLRB

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State/ Local Agencies

- New York Department of Labor
- California Department of Fair Employment and Housing
- Illinois Department of Labor
- *(California Division of Labor Standards Enforcement)*
- Local law enforcement officials

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Judicial Certification

- *Garcia v. Audobon Cmty Mgmt*, 2008 WL 1774584 (E.D. La. Apr. 15, 2008).
- *Prima facie* requirement, detection of qualifying criminal activity
- Motions for judicial certification of workplace-based crimes

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Substantial Abuse Issues in Workplace U Visas

- Victim must have suffered “substantial mental or physical abuse” as a result of the qualifying crime.
- Physical abuse: documentation
- Mental abuse: documentation in workplace context
 - Specific intake questions geared to workplace
 - Special considerations for employment-based context
- Substantial abuse issues in obstruction of justice/witness tampering cases—USCIS issues

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U Visas for Victims of Workplace Abuse

- NELP listserv for advocates around workplace U visas; bi-monthly calls: email echo@nelp.org to be added
- U visa certification protocols available at www.justpay.org

For more information, contact:

Eunice Hyunhye Cho
510-663-5707
echo@nelp.org
www.nelp.org

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U Status Updates in CIR

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In the Senate Bill (S.744)

(as of May 30, 2013)

- **Increasing the number of U visas available each year** from 10,000 to 18,000 U visas, with no more than 3,000 available for the new civil workplace violations.
- **Making U visas available for a broader range of violations** for immigrants who have suffered serious civil workplace violations such as workplace abuse, exploitation, retaliation, or violation of whistleblower protections and who assist in the investigation, prosecution, or adjudication of covered violations.
- **Adding child abuse and elder abuse** as qualifying U visa crimes.

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In the Senate Bill (S.744)

(as of May 30, 2013)

- **Enabling applicants with pending VAWA self-petitions, U and T visa applications to receive work authorization no later than 180 days after their application was filed.**
- **Protecting legal immigration status and providing work authorization for abused spouses and children of temporary visa-holders (those with work or education visas)**
- **Limiting immigration enforcement at sensitive locations by restricting ICE and CBP.**

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In the Senate Bill (S.744)

(as of May 30, 2013)

- **Ensuring screening of unaccompanied immigrant children at the border to identify victims of persecution or trafficking, and improving their treatment** while in CBP custody; requiring female officers to escort female detainees during transport (to help prevent sexual assault).
- **Bolstering protections for workers who are recruited abroad by foreign labor contractors**, to prevent workers from falling victim to worker exploitation, abuse or human trafficking.

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For CIR Updates

- Check www.asistahelp.org for updates on immigrant survivors issues as CIR moves forward
- VAWAupdates/VAWAexpert listserves
- cecelia@asistahelp.org

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Working with Law Enforcement to Get U Visa Certifications

Susan Bowyer, Immigration Center for Women & Children
Nancy Reyes-Rubi, Legal Aid Foundation of Los Angeles



What We'll Cover Today

Working with a law enforcement agency with:

- Existing, reasonable policy
- No experience with U Status applications
- Existing, bad policy or no policy

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What Are Certifying Agencies?

- Certifying Agency
 - that detects, investigates or prosecutes qualifying criminal activity
- Federal, State, or local agencies
- Non-crim agencies
 - Regs list examples – CPS, EEOC and DOL

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Who Can Certify

- Certifier must be designated by the head of the agency
- Must be a "Supervisor"

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How to Find a Certifier

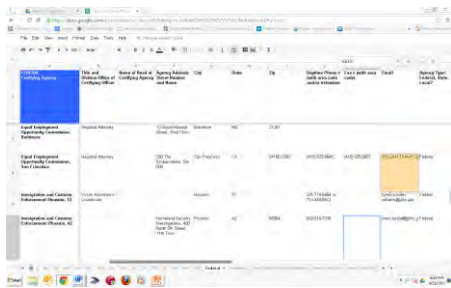
- What agency investigated or prosecuted the crime?
 - Check with agency's victim services coordinator
- Check the Google Doc with nationwide info
 - email jessicafarbuvisa@gmail.com
- Check with local U Visa providers

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U Visa Certifier Google Doc



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I-918B Request to agency with reasonable policy

- Find local procedures
 - Local advocates
 - Google doc
- Provide the essential information needed to process the request.
 - Cover memo with basics
 - Address any special factors

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Addressing New Qualifying Crimes

- New Crimes added by VAWA 2013
 - Stalking
 - Fraud in foreign labor contracting
- Related Crime vs. “other”
- Informing LEA

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Avoid Annoying Official

- Law Enforcement is NOT required to sign
- Limited LEA resources
- Limit pre-complete I-918B form to information in LEA documents

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I-918B Request to agency with no U Status experience

- Cover letter
 - Explain the law
 - Point out benefits to law enforcement
 - Highlight (limited) LEA vs USCIS roles
 - Note LEAs certify nationwide (685 on google doc alone), or in your area
- Provide DHS Guidance Packet

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LEA Concerns that affect Certifications

- Immigration not our job
- Conflicting mandates with immigration
- Could attract criticism of department
- Time consuming
- Signature under penalty of perjury
- Immigrants may file fraudulent reports
- Reasonable assumption to limit to *this* crime

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Common Concerns Addressed by DHS Guidance Packet

- U cases can be approved in Closed Investigations or Prosecutions
- USCIS, not LEA determines Substantial Abuse
- Law Enforcement Agency does not grant U Status – USCIS does
- Law Enforcement will not be penalized if USCIS learns that the applicant stopped being helpful in the future.

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Law Enforcement Training Available

- If Department wants training, sources include:
 - DHS
 - Law enforcement may request training:
 - To ask specific policy questions about T and U visa certifications, call USCIS at (202) 272-1470, or
 - To request training for law enforcement email: T-U-VAWATraining@dhs.gov
 - ASISTA & partners
 - Can do training
 - Can provide materials

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What to do when agency has bad policy

- Fight back in a smart way
 - Collaborate with likely partners
 - Create or work with an existing Network
 - Example: Los Angeles VAWA Network
 - Collaborate with other partners
 - Think top down at the agency
 - Government officials/elected officials
 - Other law enforcement agencies
 - Media?

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Build a U-Positive Atmosphere

- Promote the U Visa
- Don't Abuse the System
- Give good certifiers positive feedback about cases they certified
- Collaborate with law enforcement to reduce burden of certifications

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More Resources on U Visas

- CIS Ombudsgal = Rena Cutlip-Mason
 - Rena.Cutlip-Mason@dhs.gov
- ASISTAhelp.org
 - gailpendleton@comcast.net (Gail Pendleton)
- ILRC.org (Immigrant Legal Resource Center)
 - sally@ilrc.org (Sally Kinoshita)

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Presenters' Contact Information:

- Susan Bowyer, Immigration Center for Women & Children
– susan@icwclaw.org
- Nancy Reyes-Rubi, Legal Aid Foundation of Los Angeles
– Nreyes-rubi@lafila.org

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Advanced Issues in Consular Processing and Travel with a U Visa

Presented by
Cynthia Lucas & Monica Kane



Agenda

- Resources
- U nonimmigrant petition vs. U visa
- Overview of Consular processing steps
- Preparing clients who want to travel
- I-539 extensions of status
- Advance Parole
- I-929 Immigrant Visa Processing

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Helpful Resources



The U Visa: Obtaining Status for Immigrant Victims of Crime

- A guide to the entire process—from eligibility screening through adjustment of status to assisting eligible family members—of a U case.
- Numerous sample materials, checklists, declarations, motions, and more.
- New Chapter on Traveling with a U Visa!



Order at www.ilrc.org

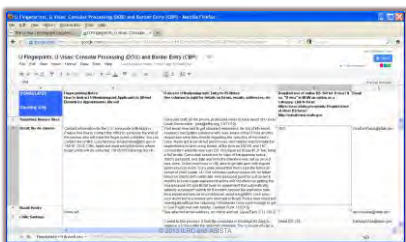
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U Travel Googledoc

- Contact **Jessica Farb** at jessicafarbuvisa@gmail.com
 - nonprofit agency staff: free
 - private practice attorneys: annual fee of \$50
- Video tutorial: <http://www.vimeo.com/33189539>



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Technical Assistance

- **ASISTA:**
 - questions@asistahelp.org
 - Free for OVW grantees
- **Immigrant Legal Resource Center:**
 - aod@ilrc.org
 - Free for California IOLTA agencies and SF Bay Area nonprofit organizations
- **National Immigration Project of the NLG:**
 - ellen@nationalimmigrationproject.org
 - Free for NIPNLG members

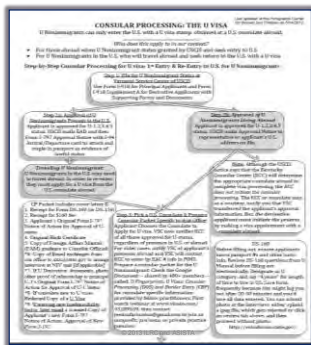


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Consular Processing Flowchart



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U Visa Consular Processing Overview

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Nonimmigrant Status vs. Visa

Nonimmigrant Status

- ☐ USCIS (DHS)
- ☐ Vermont Service Center
- ☐ Nonimmigrant status
- ☐ Work authorization
- ☐ No fee, no interview

Visa

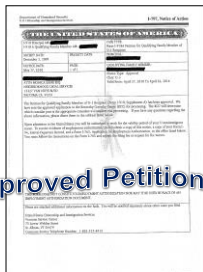
- ☐ DOS
- ☐ Consular post
- ☐ Nonimmigrant Visa
- ☐ Travel and entry
- ☐ Fee and interview

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Approved Nonimmigrant Petition vs. Visa



Approved Petition



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Approved Nonimmigrant Petition for Applicant INSIDE the U.S.



Approved Petition

- Approved I-918/I-918A petition issued with I-94 admission document
- No need to consular process *unless* they have to travel outside the U.S.
- Advise of travel restrictions: Cannot be outside of U.S. for longer than 90 consecutive days or an aggregate of 180 days

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Approved Nonimmigrant Petition for Applicant OUTSIDE the U.S.



Approved Petition

- Approved I-918/I-918A Petition issued without I-94 (DHS-VSC)
- Must consular process to apply for visa in order to seek admission to U.S. (DOS)
- If granted, visa issued for multiple entries.
- Same travel restrictions apply.



Visa

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Preparing Clients for Travel

- ✓ Discourage travel if possible
- ✓ Manage Client expectations
- ✓ Explain the risks and costs
- ✓ Sign forms before they travel

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Brief Overview

1. File I-918/A petition(s) with USCIS-VSC
2. Obtain I-918/A Approval Notice(s)
3. Apply for U nonimmigrant visa through DOS (consular packet, including electronic submission of DS-160 & payment of fees)
4. Schedule Consular Appointment(s)
5. Prepare Client for Interview
6. Visa issuance & entry into U.S.

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Consular Packet

- ❑ DS-160 application confirmation page
- ❑ Receipt for \$160 visa application fee
- ❑ Applicant's original Form I-797 Notice of Action/U-Nonimmigrant Petition Approval
- ❑ Foreign national passport, valid for more than 6 months out, in good condition
- ❑ Relevant original biographic documents, i.e. birth certificate, marriage certificate

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Consular Packet, cont.

- ❑ Print-out of appointment confirmations
- ❑ Cover letter from attorney/representative to Post
(optional but recommended)
 - Include copy of Foreign Affairs Manual (FAM) guidance to consular officials
 - Redacted copy of U visa petition packet
- ❑ Visit Consular website for additional requirements as appropriate

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Applicants in U.S. Intending to Travel/ Return on U Visa

- Similar to process for applicants abroad entering U.S. for the 1st time.
- Key differences:
 - If any additional grounds of inadmissibility will be triggered upon Applicant's departure, s/he will need to file a new I-192 waiver application.
 - Applicant must not remain outside the U.S. for more than 90 days in one trip, or for more 180 days in the aggregate over multiple trips.

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Expediting I-192 Waivers

- Tight timeframe for U nonimmigrants who leave the U.S. and need to file new I-192 waiver application upon departure ((212(a)(9)(B)).
- Request expedite from VSC (via email) once you have the I-192 receipt notice.

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Travel Delay Risks

- Not accruing three years of continuous physical presence for adjustment eligibility
 - Not entering within first year -- must extend stay
 - Being out of the U.S. for 90 consecutive days
 - Being out of the U.S. for 180 days in the aggregate
- Derivative children who don't obtain visa or enter U.S. before turning 21
 - Update/impact of VAWA Reauthorization

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VAWA 2013: FAM Updates

- **Foreign Affairs Manual, Volume 9, Visas**
 - For guidance on U visas, see 9 FAM 41.85 Notes (<http://www.state.gov/documents/organization/87411.pdf>).
- Updated 06/13/13 to reflect VAWA 2013
 - Updated list of qualifying criminal activity
 - Age-out protection
 - Public charge exemption

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U Visa Consular Processing

Additional Issues & Considerations

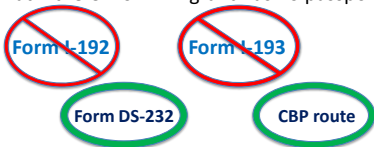
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Challenges in Obtaining Passports for Minors

- Why is this a challenge?
 - getting parents' signatures
 - getting full custody
- What if the U Nonimmigrant has no passport?



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U Admission at the Border

Customs & Border Protection v. DOS

- Present Form I-193 with fee waiver request
- Waives passport and visa requirements
- Also helps U-3s over 21 years old but with valid U status

Where have U Nonimmigrants Entered?

- Laredo, TX
- Nogales, AZ
- Undisclosed Location, AZ
- San Ysidro, CA

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Children of Derivatives

- Children of U-2, -3, -4, and -5 non-immigrants are not eligible for U nonimmigrant status.
- Consider applying for humanitarian parole for children of derivatives.

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Extending U Nonimmigrant Status with Form I-539



Principal vs. Derivative Extensions

- Extending principal/derivative's status once they're in the U.S. if need time to accrue 3 years in U status
- Extending the principal's status if a derivative is stuck abroad.

→ **Warning:** If the principal adjusts status prior to the derivative obtaining a visa *and* being admitted as U nonimmigrant, the derivative will lose eligibility.

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Visa Refusals or Denials



Common Reasons for Refusals

- Applicant must be given a reason for visa refusal or denial based on the section of law that applies.
 - Ground(s) of Inadmissibility
 - Applicant may be eligible for a waiver if hasn't already applied; 212(d)(3) waiver standard applies.
 - If waiver was approved, may need to communicate with VSC
 - 221(g) refusal
 - Application incomplete/Documents missing
 - Subject to administrative processing
- If found *ineligible* for a visa, may reapply in the future w/ new evidence of eligibility

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Problem Resolution with DOS

- Always refer directly to Consular Post website for Post specific contact information *first* for purposes of following up on case status or issues.
- If applicant receives a denial, you may try contacting Post directly to seek reconsideration and/or try reapplying. You should review official grounds of denial carefully; do not just rely on applicant's memory of interview.

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Problem Resolution with DOS, cont.

- When can you inquire with the DOS Visa Office?
 - Case has been pending for more than 60 days and Post is unresponsive after two or more attempts.
 - If you receive a denial that contains an error of law and you have already tried requesting Post to reconsider, you may consider requesting a Legal Advisory Opinion.
 - Note: Factual determinations by a consular officer are NOT reviewable.
- How do you inquire with the DOS Visa Office?
 - LegalNet@state.gov (Attorneys only)

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Problem Resolution with DOS, cont.

- If you have not been able to resolve the problem with DOS, request assistance from Scott Whelan, the USCIS liaison with DOS regarding U visa issues:
 - Scott.P.Whehan@uscis.dhs.gov

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Advance Parole

What it is and how it works



Adjustment and Advance Parole

For travel while U **adjustment** of status is pending:

- Submit Form I-131 to VSC concurrently with I-485 or while I-485 is pending (no separate fee required).
- If applicant travels with approved advance parole document, she will not trigger unlawful presence ground of inadmissibility (212(a)(9)(B)) [*See Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012)].

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Consular Processing with Approved I-929 Immigrant Petition



Travel After I-929 Approval

- Apply for Immigrant Visa (IV) from U.S. Embassy/ Consulate (DOS).
- National Visa Center (NVC) will contact the attorney or applicant to begin consular process.
 - Email NVCAttorney@state.gov if no contact by NVC after I-929 approval.

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Travel After I-929 Approval, cont.

- Forms:
 - DS-3032 (or DS-261)
 - DS-230 (or DS-260)
 - DS-2001
 - I-864W (Do not submit Form I-864)
 - Medical Examination
- Fees (no fee waiver available):
 - \$220
 - \$165 USCIS Immigrant Fee (*NEW*) before departing to U.S.

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Travel After I-929 Approval, cont.

- Embassy/consulate issues immigrant visa in applicant's passport.
- Applicant must travel to U.S. before visa expiry date.
- Passport stamped by CBP upon entry. This is the LPR's date of admission.
- LPR card issued and mailed to applicant *after* arrival in U.S. (only if \$165 Immigrant Fee has been paid).

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Updates

Look for updates at:

<http://www.ilrc.org/info-on-immigration-law/u-visas>

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U Adjustment of Status

Presented by:
Gina Amato and Catherine Seitz



U Adjustment of Status

- INA § 245(m) is not a variation of INA § 245(a)
 - Restrictions under § 245(a) and § 245(c) do not apply
- Principal and derivatives must apply to adjust before U NIV status expires
- U nonimmigrant adjustment-eligible after 3 years in U status
- USCIS has sole jurisdiction
 - Vermont Service Center will adjudicate

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Adjustment Requirements

- Lawfully admitted as U nonimmigrant
- In lawful U nonimmigrant status
- 3 years continuous physical presence since grant of U nonimmigrant status
- Not inadmissible under INA § 212(a)(3)(E)
- Has not unreasonably refused to provide assistance in investigation/prosecution
- Justified on humanitarian grounds, to ensure family unity, or in the public interest

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U Adjustment & Inadmissibility

- The *only* inadmissibility ground that applies is INA § 212(a)(3)(E) - and there is no waiver for it
- When will my client need to show admissibility?
- Will crimes waived with an I-192 be revisited at adjustment?

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Discretionary Determination by USCIS

- Burden of applicants to show that they merit favorable exercise of discretion
- Family ties, hardship and length of residence in U.S. may be sufficient
- Do not need to file Form I-601 but should document merits if there are negative factors

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Continuous Physical Presence

- 3 years after U status grant
 - Derivatives need the 3 years too.
- 90+ days or 180 days in the aggregate outside the U.S. will break continuous physical presence
 - Exceptions
 - If absence is necessary to assist in criminal investigation or prosecution, or
 - An investigation/prosecution official certifies it is otherwise justified

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“Unreasonable Refusal to Assist”

- Ongoing requirement to provide assistance in investigation/prosecution
- Defined as unreasonable refusal after being granted U nonimmigrant status
- Determined by the Secretary of Homeland Security in consultation with the AG based on affirmative evidence and totality of circumstances (TVPPRA 2008)

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“Unreasonable Refusal to Assist”

- General law enforcement, prosecutorial and judicial practices
- Kinds of assistance asked of other victims involving an element of force, coercion or fraud
- Nature of the request
- Nature of the victimization
- Applicable guidelines for victim and witness assistance
- Specific circumstances of the victim, incl. fear, severe physical or mental trauma
- Age and maturity of the applicant

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Documenting Ongoing Cooperation

- Option One
 - Submit a document signed by law enforcement affirming compliance
 - Can be a newly executed I-918 Supp B
 - This option supposedly simplifies process and avoids delays
 - Or a copy of the old one if “completed” box is checked plus a statement in the applicant’s declaration

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Documenting Ongoing Cooperation

- Option Two
 - Submit a statement describing efforts to obtain a new I-918 Supp B and whether requests were received
 - Evidence might also include court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, affidavits of other witnesses or officials

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Documenting Reasonableness

- Option Three
 - Detailed description of reasonable refusal to provide assistance
 - This option subject to review by US DOJ
 - DOJ has 90 days to respond or ask for extension of time
 - After that, USCIS may adjudicate regardless of whether DOJ has provided response

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Documenting Ongoing Cooperation

- Option Four
 - Give a brief statement in the declaration about no lack of cooperation.
 - Submit any evidence you have to show that the criminal case was complete when the U application was filed.
 - We are hearing that this works in practice.
 - You may not want to burden law enforcement with adjustment cert requests.

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Adjustment Declaration

- Each applicant 14 and over needs their own
- Can be very short
- Includes:
 - Statement re no lack of cooperation
 - Statement re no travel
 - Explanation of any gaps in passports
 - Sentence or two in client's own words about why it is important to them to stay in U.S.

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U holders with Outstanding Removal Orders

- Prior removal order and never left
 - Only USCIS can adjudicate the adjustment; *U cannot* adjudicate a U adjustment in proceedings
 - We used to think that you should not need to file a Motion to Reopen and Motion to Terminate to adjust, but now USCIS is thinking you probably do need to.
 - But hopefully should be able to and probably will want to
 - Reasons for and against needing a MTR

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U holders with Executed Prior Removal Orders

- Prior removal order and left
 - Should be able to adjust
 - Inadmissibility grounds related to prior removals [ex. INA § § 212(a)(9)(A) and 212(a)(9)(C)] do NOT apply
- What about VD overstays?
 - Ten year bar if don't leave?
 - Get documentation if do depart

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Extending U Nonimmigrant Status with Form I-539



Principal vs. Derivative Extensions

- Everybody needs their own 3 years in U status in the U.S.
- Extending derivative's status once they're in the U.S.
- Extending the principal's status if the child is stuck abroad.
- **Warning:** If the principal adjusts status prior to the derivative obtaining a visa *and* being admitted on the visa, the derivative will lose eligibility.

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Assisting Qualifying Family Members at Adjustment



Obtaining Status for Family Members

- Derivative U nonimmigrants (U-2, U-3, U-4, U-5) adjust under the same procedure described for U principal (U-1) nonimmigrants
- I-929 petitioning process description applies only to family members who have never had U visa status
 - Will need to show extreme hardship

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Petitioning for a Family Member

- “Qualifying family member”
 - Family members of U principals only
 - Only family members who have never been granted U nonimmigrant status
 - If the U principal is under 21 years old
 - Spouse, parents, and children
 - If the U principal is over 21 years old
 - Spouse and children
 - Siblings will have to get U nonimmigrant status and adjust on their own

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Eligibility to Petition Family

- Family member never had U status
- Family relationship exists at time of U visa holder’s adjustment and family member’s adjustment adjudication or visa issuance
- Qualifying family member or principal U visa holder would suffer extreme hardship

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Eligibility to Petition Family

- Principal U visa holder has adjusted, has a pending adjustment application or is concurrently filing

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Additional Requirement

- If the qualifying (petitioned) family member possessed information about the crime and are asked to assist they have a responsibility to not unreasonably refuse to provide assistance

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Family Petitioning Process

- Step One
 - Principal applicant files I-929 with fee or fee waiver request and evidence establishing relationship
 - May be filed concurrently with the principal's I-485 but cannot be approved until the I-485 is approved
 - Can send all in one packet with one cover letter

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Family Petitioning Process

- Step Two
 - If the I-929 is approved qualifying family member may adjust status in the U.S. or go to a U.S. embassy or consulate for an immigrant visa
 - Can obtain work permit based on pending adjustment application (filing fee can be waived)

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Documents to Petition Family

- Photo of family member
- Form I-929 for each family member
- Filing fee of \$215 or fee waiver request
- Proof of petitioner's I-485 filing or approval
- Evidence of family relationship
- Evidence of extreme hardship to family member or U visa holder if denied
- Family member's signed statement
- Petitioning family member's signed statement
- Any credible evidence; discretionary

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Filing Fee or Waiver Request

- Payable by check or money order to U.S. Department of Homeland Security
- Form I-929 filing fee can be waived
 - 8 CFR § 245.24(h)(1)(ii)

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Proof of Petitioner's I-485 Filing or Approval

- Copy of front and back of permanent resident card; or
- Copies of passport biographic page and page showing admission as a permanent resident; or
- Other evidence of permanent resident status issued by UCSIS; or
- Copy of approval notice of I-918 and receipt notice showing I-485 has been filed

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Evidence of Family Relationship

- Primary evidence such as birth certificates, marriage certificates, etc.
- Secondary evidence may be used
- Must be translated into English
- See Form I-929 instructions

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Family Member's Signed Statement

- Describe eligibility under all of the grounds including:
 - Statement from the qualifying family member that he or she would suffer extreme hardship if not allowed to remain in or join the principal in the United States
 - Statement to establish that he or she merits a favorable exercise of discretion
 - Statement saying either that he or she had no information about the qualifying crime, or that having information, he or she did not unreasonably refused to cooperate with the law enforcement agency in charge of the investigation or prosecution

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Extreme Hardship Factors

Regulations

- Loss of access to US courts and criminal justice system
- Nature or extent of physical or mental abuse
- Likelihood that the perpetrator's family, friends, others in home country would harm the applicant or the applicant's children
- Need for social, medical, mental health/other services

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Extreme Hardship Factors

Regulations (continued)

- Law/social practices in home country that punish the applicant or applicant's children for taking steps to leave abuser
- Perpetrator's ability to travel to the home country and ability and willingness of authorities in the home country to protect the applicant and applicant's children
- Age of the applicant at time of entry to the United States and at the time of adjustment application

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Extreme Hardship Factors

Instructions

- Age of petitioner and qualifying relative
- Language/cultural assimilation
- Health conditions
- Medical treatment in home country
- Ability to obtain work in home country
- Relative length of US residence
- Other family legally residing in U.S.
- Financial impact of departure

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Extreme Hardship Factors

Instructions

- Disruption of education opportunities
- Psychological impact
- Current political and economic conditions in home country
- Family ties to home country
- Contributions to U.S. community
- Availability of relative to adjust through other means

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U Visa Removal Issues

Presented by

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Agenda

- Revocation and Removability
- Criminal Issues
- Removal Proceedings

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Revocation of U Status



Revocation of U Status

- Approved U status can be revoked
- If principal's U-1 status is revoked, principal and all derivatives lose status
- Revocation of a derivative's status does not revoke the principal's status
- Revocation of status also revokes any waiver of inadmissibility from the related I-192

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Automatic Revocation

U nonimmigrant status will be revoked automatically if:

- the approved U beneficiary notifies USCIS he or she will not apply for admission to the US and,
- therefore the petition will not be used



Automatic revocations cannot be appealed

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Revocation on Notice

USCIS *may* revoke U status if...

- Certifying official withdraws certification
- Approval was in error
- There was fraud in the petition
- For derivatives:
 - the relationship to the principal has terminated
 - the principal's U-1 status is revoked

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Revocation on Notice

- Must be in writing
- Must state the grounds for revocation
- U nonimmigrant may submit rebuttal evidence within 30 days
- If status is terminated, USCIS will provide written notification including reasons for revocation
- May be appealed within 30 days to AAO

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U Removability



Safety Planning – an Enhanced Approach

- Safety for survivors takes on a new look
 - Beyond physical safety from abuser
 - Must include trying to stay safe from a system that should be protecting survivor and her family
- Safety requires becoming used to asking difficult questions
- Listening to what survivors want becomes central to our work

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One-on-One Advocacy

- Be pro-active; identify internal challenges
- Your best allies are DV/SA advocates
- Work with them to:
 - Develop internal protocols
 - Provide a business card with a direct number
 - Keeping “positive equities” on file
 - Records to sustain potential immigration remedies
 - Pictures, police reports, no contact orders, G-28, signed I-246, birth certificate, notice of receipt (Form I-707), FOIA, etc.

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One-on-One Advocacy

- On your first meeting:
 - Your intake must be inclusive of all potential victimization questions
 - Address whether your client is a potential target of an enforcement program
 - Ask open-ended questions and stay at her safety concerns

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One-on-One Advocacy

- **Avoid a crisis**, identify issues on day one
- Your work with her around safety planning must also **include** unusual topics:
 - Her children, last paycheck, perpetrator has her passport and access to her money, bond, Medical concerns, trauma issues, memory gaps
- This will **avoid her signing her removal** without first defending her rights.

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Know When She is in Trouble

- Prior encounters with ICE
 - Prior orders of removal
 - Severe prior immigration violations
- Encounters with the criminal system
 - Arrests, Charges, Convictions of certain crimes (aggravated felonies)
- Encounters with Department of Transportation

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She's in Jail – What Now?

- Explaining bond
 - Criminal vs. Immigration
 - 48 hours rule
 - Potential mandatory detention issues
- **IF DETAINED BY POLICE - KEY: NO DETAINER!!!**
- **IF DETAINED BY ICE**
 - Hand a request for prosecutorial discretion to DRO with authority and OCC including equities
 - Request release OR. Be prepare to assist in request of stay of removal (I-246).

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Removability

Nothing prohibits USCIS from instituting removal proceedings for:

- Conduct committed after admission
- Conduct or a condition not disclosed to USCIS prior to granting U status
- Misrepresentations of material facts on the I-918 or I-918A
- Revocation of U status

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Interaction between Revocation, Removability, Marriage, Crimes and Other In/eligibility Issues



Marriage Fraud



Marriage Fraud

- Nothing in the statute precludes the grant of a waiver or U nonimmigrant status
- However, cases are being denied
 - Can't go to the AAO on a waiver denial
 - Can file a motion to reopen and/or a motion to reconsider
 - Possible APA challenge based on arbitrary and capricious adjudication – preserve it for federal district court

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Complicating Crimes Issues



Crimes Not Disclosed or Waived

- Committed before U approval (and not disclosed on the Form I-918 and/or waived with an I-192)
 - submit amended I-192

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Crimes Post-NIV approval

- Revocation potential?
- Removal potential?
- Address it with an I-192?
- Address at adjustment?
- Problems with traveling/at the border?

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Potential Approaches

- Committed after U approval: different approaches
 - submit new I-192 and evidence of violation
 - wait to deal with it until Adjustment, and then admit the violation and ask for discretionary approval notwithstanding the violation (and perhaps submit mitigating evidence)

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Crimes at Adjustment

- Do crimes previously waived with an I-192 need to be addressed again at adjustment?
- Dealing with crimes at adjustment
 - Different discretionary standard

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Discretion

- No I-601 waiver process but need to counterbalance any negative discretionary factors.
- Need statement in declaration as to why applicant merits favorable exercise of discretion.
- USCIS revisiting old (already waived) inadmissibility issues?

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Crimes and I-929s

- Really, no waivers needed?
 - How should they be addressed then?
 - Adjustment
 - Consular processing

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Crimes and Naturalization

- Are crimes that were previously waived with an I-192 waived for naturalization?
- What other issues might come up at naturalization?
 - No three-year naturalization eligibility for spouses unless actually living in marital union with a U.S. Citizen.

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Removal-Related Issues



AOS / Removal Interaction

- May an applicant with an outstanding removal order or pending proceedings adjust status without terminating proceedings?
 - Options:
 - Terminate pending proceedings (recalendar first if admin closed)
 - Motion to reopen and terminate if within 90 days of final order
 - Joint motion to reopen and terminate
 - Sua sponte motion to reopen and terminate

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Common Issues Affecting Your U Client in Removal Proceedings

- Options: Continuances, Admin Closure, Termination.

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Options

- Continuances while I-918 being adjudicated
- Admin Closure while I-918 being adjudicated
- Termination

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Continuances

- Path of least resistance in the past.
 - See Matter of Sanchez Sosa 25 I&N Dec. 807 (BIA 2012)
 - EOIR OPPM 13-01: “Continuances and Administrative Closure” (3/7/2013)
- Maybe now disfavored

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Administrative Closure

- New trend?
- Try for agreement from OCC
- File motion to IJ even if they oppose
- Need to recalendar if later need hearing date or termination for adjustment
- <http://www.justice.gov/eoir/efoia/ocij/oppm13/13-01.pdf> and Matter of Avetisyan 25 I&N Dec. 688 (BIA 2012)

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Termination

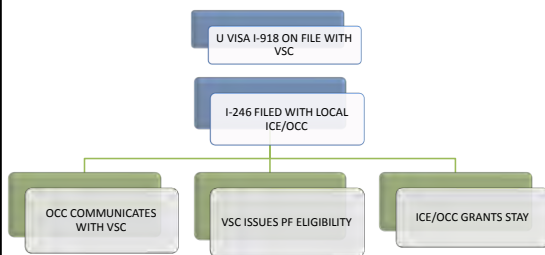
- Probably only likely once I-918 is approved.

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Filing a Stay on U Visa Cases



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U as Deportation Defense for LPRs

- Cannot be approved unless the applicant is not a permanent resident
- File an I-918 with an I-246 stay application on file with the District office
- Notify VSC when there is a final order of removal
- Then if VSC sends PF notice to ICE, ICE will grant a stay pending adjudication of the U visa (but client will remain in custody)

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Post-Final Order and Judicial Review

- If continuance is denied, can seek judicial review – check circuit case law.
 - Petition for review must be filed within 30 days of BIA order.
- For final orders under INA 238(b), automatic stay for 14 days unless waived by noncitizen.
 - Time to review whether possible challenge to 238(b) order itself and/or procedures by which it was issued.

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Judicial Review

- No review of USCIS's denial of U visa or any waiver by federal circuit court of appeals:
 - *Semiani v. United States*, 575 F.3d 715 (D.C.Cir.2009); *Fonseca-Sanchez v. Gonzales*, 484 F.3d 439 (7th Cir.2007)

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Judicial Review

- BUT, can argue judicial review of denial of continuance and/or administrative closure:
 - abuse of discretion,
 - arbitrary and capricious decision, and/or
 - Failure of IJ and BIA fail to follow/properly apply precedent decisions (*Sanchez-Sosa*, *Avetisyan*), regulations, and OPPM.

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Judicial Review

- Any other grounds involving any other forms of relief
- Issue of jurisdiction where criminal convictions listed under INA 242(a)(2)(C): Need question of law or constitutional claim for jurisdiction.
 - IMPORTANT: Create your record below and exhaust admin remedies by thorough briefing.

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Judicial Review

- Standard for Stay of Removal: *Nken v. Holder*, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) – 4 factors
 - Likelihood of success on petition for review
 - Irreparable injury if stay not granted
 - Substantial injury to US government if stay is granted
 - Granting of stay in the public interest

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Judicial Review

- Stay Practice Advisory:
 - National Immigration Project of the National Lawyers Guild, Immigrant Rights Clinic NYU School of Law, and American Immigration Council, "Seeking a Judicial Stay of Removal in the Court of Appeals: Standard, Implications of ICE's Return Policy and the OSG's Misrepresentation to the Supreme Court, and Sample Stay Motion," May 25, 2012, available at http://nationalimmigrationproject.org/legalresources/practice_advisories/pa_Seeking_a_Judicial_Stay_of_Removal_May2012.pdf

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Questions & Answers



Thank you!

Please fill out an evaluation.



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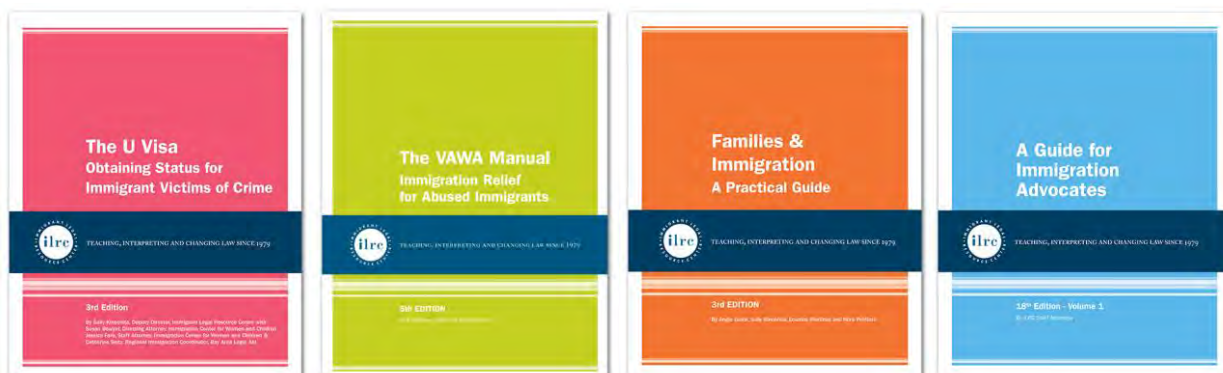
SIJS (Special Immigrant Juvenile Status)

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NACARA (Nicaraguan Adjustment & Central American Relief Act)

Network of advocates, pro bono attorneys, and nonprofit agencies who are working directly with clients in the adjustment process.

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The U Visa: Obtaining Status for Immigrant Victims of Crime will guide you through the entire process of handling an immigration case for a U visa applicant – from eligibility screening for U nonimmigrant status through adjustment of status to assisting eligible family members and helping U nonimmigrants travel. In addition, this manual provides numerous practice pointers and sample materials to help in handling your client's case. These include sample checklists, cover letters, declarations, receipt notices, and other correspondence you can expect to receive from USCIS, motions to submit to the immigration court, and more.

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This comprehensive manual includes information for advocates working with immigrant survivors of domestic violence. Consisting of thirteen chapters, this guide provides in-depth information on VAWA self-petitioning requirements and procedures, adjustment of status, inadmissibility grounds and waivers, removal proceedings and motions to reopen, VAWA cancellation of removal, conditional permanent residency, U nonimmigrant status for victims of crime, consular processing, and more.

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