

U Visa Fundamentals

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,
and the Northern California Coalition for Immigrant Victims of
Crime*



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This course will provide a comprehensive overview of the entire U nonimmigrant and adjustment of status process, including strategies to get law enforcement agencies to sign the certification of helpfulness. It is intended for those who are new to U visas, including those who are new to legal advocacy and/or new to the practice of immigration law, those with little or no prior knowledge of immigration law, and those with basic familiarity with immigration law but no prior experience working on U visas specifically.

Agenda

9:00-9:30am	Introductions and Overview of Training (Sonia)
9:30-11:00am	Overview of U Nonimmigrant Status (Susan, Monica, Sarah, Debbie)
11:00-11:15am	Break
11:15-12:00pm	Overview of Inadmissibility Issues and Waivers (Sarah, Debbie)
12:00-1:00pm	Lunch
1:00-1:45pm	Working with Law Enforcement (Nancy, Susan)
1:45-2:30pm	U Nonimmigrant Status Application Process and Practice Pointers (Susan, Cecilia)
2:30-3:30pm	Overview of U Adjustment of Status (Susan, Nancy)
3:30-3:45pm	Break
3:45-4:30pm	Overview of Consular Processing (Cynthia, Monica)
4:30-5:00pm	Remaining Questions



Speaker Bios:

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

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.

Debbie Smith, Training and Legal Support Attorney – CLINIC

Debbie Smith is an attorney specializing in immigration law who has practiced for more nearly thirty years in the non-profit, private and public sector. She is an attorney at Catholic Legal Immigration Network (CLINIC) where she conducts trainings in immigration law. Debbie previously was a staff attorney at the U.S. Court of Appeals for the Ninth Circuit in San Francisco, a partner at the immigration law firm Simmons & Ungar, and the national coordinator of the landmark *American Baptist Churches* ("ABC") class action settlement representing more than 300,000 class members.

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.

Sarah Bronstein, Training & Legal Support Attorney – CLINIC

Ms. Bronstein provides training and technical assistance on immigration law to CLINIC members and other community based organizations. Prior to joining CLINIC's Training and Legal Support section, Ms. Bronstein served as a detention fellow in CLINIC's Los Angeles office from 2000 – 2002 representing detained adults and children in removal proceedings. She subsequently ran CLINIC's San Francisco detained children's representation project from 2002 – 2004 and supervised the legal work of the attorneys in CLINIC's national detention representation project from 2004 – 2007. Ms. Bronstein is a graduate of the Georgetown University Law Center and is member of the California State Bar.

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 Fundamentals Materials

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U Status Overview

- U Status application contents checklist

U Status Application Process

Screening and Analysis

- U status screening instructions
- U Status screening questions (Spanish only)
- How to review a police report to determine U status eligibility
 - Copy of annotated police report
- Inadmissibility analysis

Getting Started

- First appointment checklist
- U Status Intake Form
- Model U Status contract
- Consent to joint representation (for clients with derivatives) (Sp and Eng)
- Model letter to ICE – do not detain or deport U Status eligible crime victim
 - Copy of official ICE memo to attach to ICE letter
- Authorization to release records
- Client Advisory on helpfulness in open investigations/prosecutions
- Document gathering checklist
- Explanation of U Status Process (Sp and Eng)
- Forms to show clients when explaining U status process

Declaration Preparation Materials

- Working with Clients on U Visa Declarations
- Clarifications and Corrections to mistaken police report
- Physical Abuse questionnaires (Sp and Eng)
- Questions to assist with DV declaration (Sp and Eng)
- Memo – showing substantial emotion abuse
- Cycle of DV chart (Eng and Sp)
- Questions to assist with Felonious Assault declaration
- Trauma symptom checklist (Eng and Sp)
- Declaration outline for DV
- Declaration outline for Felonious Assault
- For Declarations in support of inadmissibility waiver:
- Hardship/Equities worksheet (Sp and Eng)

- I-192 Declaration outline

Supporting Documents

- Therapist letter instructions and models
- Instructions for good moral character letters (Sp and Eng)

Forms

- Model G-28
- I-918 Preparation Materials
 - I-918 Form with explanations of questions and terms (Sp and Eng)
 - I-918 yes/no questions in Spanish
- I-192 instructions and template language

Derivatives

- Introduction to working with Derivative applicants
- Derivative's I-192 Declaration outline

Compiling Application

- Birth Certificate Summary Translation template
- Fee Waiver request template
- Model U Status cover letter
- Model U Status cover letter with explanation that robbery is equivalent to felonious assault
- Case review checklists for Principal and Derivative applicants
- Model U status application

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

Inadmissibility Issues and Waivers

- U visa waiver sample
- Practice Guide for Representing U Visa Applicants With Criminal Convictions or Criminal History
- Overcoming Inadmissibility for U Visa Applicants By Gail Pendleton
- Questionnaire on Waivers of Inadmissibility on Form I-192

U Adjustment of Status

- U Visa Adjustment Interview Guide
- Red Flag Checklist for Adjustment
- Sample I-485 Cover Letter (cooperation completed at time of original U cert & no new issues)
- Sample I-485 Cover Letter (amending I-192 with inadmissibility issues missed/ not previously waived)
- Sample Fee Waiver
- Sample Adjustment Declaration
- Sample Adjustment Declaration Template
- Sample "Continued Cooperation" LEA Request
- Sample language for "Continued Cooperation" I-918, Supplement B
- Sample Notices: I-485 receipt, biometrics & I-485 approval
- Qualifying Family Member (I-929)
- Sample I-929 Cover Letter-basic
- Sample Declaration of I-929 Petitioner
- Sample Declaration of I-929 Qualifying Family Member
- Sample Adjustment & concurrent I-929 Cover Letter & Declaration Template
- I-929 Receipt notice
- I-929 Approval notice

Consular Processing

- I-918 Approval Notice
- 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
- CIS Memo on T and U Extensions
- ICWC GoogleDocs invitation



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June 26th, 2013

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Today's Speakers

- Susan Bowyer, Deputy Director, ICWC
- Sarah Bronstein, Training & Legal Support Attorney, CLINIC
- Monica Kane, Staff Attorney, NLSLA
- Debbie Smith, Training & Legal Support Attorney, CLINIC
- Nancy Reyes, Legal Aid Foundation of Los Angeles
- Cecilia Friedman Levin, Asista
- Cynthia Lucas, Private Immigration Attorney

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Overview of U Nonimmigrant Status

Presented by

Susan Bowyer, Deputy Director, ICWC
Sarah Bronstein, Training & Legal Support Attorney, CLINIC
Monica Kane, Staff Attorney, NLSLA
Debbie Smith, Training and Legal Support Attorney, CLINIC

Immigrant Legal Resource Center



U Visa Purpose

- Policy and Humanitarian Fix for Unintended Consequences of Strict Immigration Policies
- Law Enforcement policy:
 - Overcome victim fear of detection; and
 - encourage reporting and other cooperation
- Humanitarian policy: help domestic violence and other crime survivors

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Compare VAWA, U Nonimmigrant Status

• VAWA

- Abuser is USC or LPR
- Abuser spouse/parent
- Battery or Ext. Cruelty
- Applicant Declaration
- No law enforcement requirement
- Derivative child
- GMC/Admissible

U Visa

- Status of Abuser n/a
- Victim of Crime
- Substantial Abuse
- Applicant Declaration
- Evidence of crime, helpfulness, LEA Cert
- More derivatives
- Admissible (easier)

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Requirements

- Victim of Designated Crime
 - Immediate relative of deceased victim
- Is/Was/Is Likely to be Helpful to Law Enforcement
- Law Enforcement must Certify helpfulness
- Can't unreasonably refuse to help
- Substantial "abuse" as result of crime
- Admissible or eligible for waiver

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Qualifying Crimes

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Abusive sexual contact
- Prostitution
- Sexual exploitation
- FGM
- Witness tampering
- Perjury
- Obstruction of justice
- Stalking (VAWA 2013)
- Being held hostage
- Peonage
- Involuntary servitude
- Slave trade
- Kidnapping
- Abduction
- False imprisonment
- Blackmail
- Manslaughter
- Murder
- Felony assault
- Labor Contract Fraud (VAWA 2013)

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Qualifying Crimes

- Qualifying crime need not be crime that is charged, as long as qualifying crime is investigated as well

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“Substantially Similar”

- GA § 16-5-23.1. Battery
 - (a) A person commits offense of battery when s/he intentionally causes substantial physical harm or visible bodily harm to another.
 - (b) “visible bodily harm” means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.
 - (c) person who commits offense of battery is guilty of a misdemeanor.
- GA § 16-5-24. Aggravated battery
 - (a) A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.
 - (b) shall be punished by imprisonment for not less than one nor more than 20 years.

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Substantially Similar

- Video voyeurism charge – what would that be “substantially similar” to?

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Direct Victim of Crime

- “Directly and proximately harmed by qualifying criminal activity”
- May include bystanders “where bystanders suffers an unusually direct injury as a result of a qualifying crime”

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Indirect Victim of Crime

Where Direct Victim:

1. Died as a result of murder or manslaughter;
2. OR, is incompetent or incapacitated;
3. OR, is under 18

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Who's an Indirect Victim?

Following may be indirect victims:

- Spouses
- Unmarried children under 21
- If victim under 21, parents and unmarried siblings under 18
- Parents of USC victims “may qualify for U status” (CIS, 6/30/09)

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Where Must Crime Occur?

- **Basic rule: In the U.S.**
 - Incl reservations, military installations, territories and possessions of U.S.
 - AND violates U.S. law
- **Narrow exception if outside U.S.**
 - must violate a U.S. federal statute that provides for extraterritorial jurisdiction

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Helpful to Law Enforcement

- INA § 101(a)(15)(U)(i)(III); Victim “has been, is being, or is likely to be helpful to a gov’t official or authority in the investigation or prosecution” of qualifying crime
- 8 CFR § 214.14(b)(3); victim cannot refuse or fail to provide reasonably requested info and assistance

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Law Enforcement Certification

- I-918 Supplement B
- Completed by designated official of certifying agency investigating/prosecuting qualifying crime
 - Agency with authority to detect, investigate or prosecute qualifying crimes
- Signed w/in six months immediately before submission of I-918

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Who May Sign?

- Police officer
- Prosecutor
- Judge
- DHS officers
- Officers of state or federal law enforcement agency
- Child Protective Services, Equal Employment Opportunity Commission, and Dept. of Labor may also certify

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Physical or Mental Abuse

- Must have suffered “substantial” physical or mental abuse as a result of being crime victim
- Must document harm suffered

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What is Substantial Abuse?

- Case by case determination
- Factors in the regs (8 CFR 214.14(b)(1):
 - Nature of injury;
 - Severity of perpetrator’s conduct;
 - Duration of infliction of harm;
 - Extent of permanent or serious harm to appearance, health, or physical or mental soundness of victim

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Demonstrating Substantial Abuse

- Detailed declaration of the victim
- Declarations from family members, witnesses
- Psychological evaluation (or social worker eval)
- Photos of injuries
- Medical reports

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U Visas for Qualifying Family Members

- Principal petitioner (U-1) can include qualifying family members (“derivatives”) who are NOT perpetrators of the crime on which the U visa petition is based:
 - Spouse (U-2)
 - Children (unmarried and under 21) (U-3)
 - Parents (U-4), if U-1 under 21 at time of filing
 - Unmarried siblings under 18 (U-5), if U-1 under 21 at time of filing

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Qualifying Family Members (“Derivatives”)

- Same benefits as U-1:
 - 4 years of nonimmigrant status
 - Employment authorization (if requested)
 - Possibility to adjust status to lawful permanent resident after 3 years
 - Eligibility for public benefits in some states

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Derivatives (cont'd)

- Principal files separate I-918A petition for each derivative.
 - Can be filed concurrently with or after I-918.
- Derivatives may be petitioned even if living outside U.S.
- Derivatives must be admissible or eligible for a waiver.

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Derivatives (cont'd)

- Family relationships defined at INA 101(b).
- Relationship must exist at time of filing of I-918, approval of I-918A, AND derivative's admission to U.S.
- Age-out protections:
 - Child's age locked in at filing of I-918.
 - Under-21 petitioner's age locked in at filing of I-918.
 - Sibling's age locked in at filing of I-918 and I-918A.
 - Child and sibling derivatives must remain unmarried (arguably until they adjust status to LPR).

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Derivatives (cont'd)

- Petitioner must still be in U-1 nonimmigrant status when derivatives are first admitted to U.S.
 - May need to extend U-1 status until all derivatives are in U.S. as U nonimmigrants.
- Minor derivatives
 - Parents/guardians may prevent minors (especially those abroad) from obtaining passports, attending fingerprinting appointments, or completing other steps necessary to obtain U nonimmigrant status.

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Applicant may be Admitted as Nonimmigrant

- Applicant is admissible, or
- Qualifies for discretionary inadmissibility waiver

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Application for Inadmissibility Waiver

- Each applicant needs waiver of each nonimmigrant inadmissibility ground
 - Immigration and criminal violations, health grounds
- Principals and Derivatives need waivers
- U Specific Waivers 212(d)(13)
 - “Public and National Interest” standard
 - Everything except Nazi persecution

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Waiver adjudication factors

- **Public and National Interest**
 - Applicant’s need for protection and services
 - Likelihood applicant will be targeted in home country
 - “Humanitarian Considerations”
 - Discretionary factors – positive outweigh negative

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Application Packet

- All applications to VSC – U Visa Unit
- I-918 for principal; I-918A for derivative
- I-918 Supplement B for principal
- I-192 for principal and derivative w/inad grounds
 - \$585 fee or fee waiver application
 - Supporting documentation
- Eligibility evidence for principal
- I-765 for derivative only
 - \$380 fee or fee waiver application

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Eligibility Documentation

- “Any Credible Evidence”
- Principal Applicant Must Include
 - Applicant’s signed statement
 - Law Enforcement and other helpfulness documentation
 - Police report, subpoena
 - Restraining Orders
 - Substantial abuse documentation
 - Medical Record(s)
 - Mental Health Evaluation

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Next Steps

- After I918 submitted
 - Receipt
 - ASC Biometrics Notice
 - RFE?
- After approval
 - EAD
 - 3 year appt
 - Marriage/divorce/travel
 - Derivatives Consular Processing
- Adjustment

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Overview of Inadmissibility Issues and Waivers

Sarah Bronstein, CLINIC

Debbie Smith, CLINIC

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Inadmissibility Grounds: INA § 212(a)

- Health-related
- Criminal-related
- National security
- Public charge (U visa petitions exempt)
- Labor protection
- Fraud or misrepresentation
- Documentation requirements
- Military service in the U.S.
- Prior removals or unlawful presence in the U.S.
- Miscellaneous

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Common Inadmissibility Issues

- 212(a)(6)(A): entry without inspection
- 212(a)(6)(C): misrepresentation and false claims to USC
- 212(a)(9)(B): unlawful presence
- 212(a)(9)(C): permanent bar
- 212(a)(2): crimes

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Entry without Inspection 212(a)(6)(A)

- Present in the U.S. without being admitted or paroled
- Monica entered the U.S. by crossing through the desert from Mexico into Arizona with a smuggler. She entered without inspection.





Misrepresentation and False Claims 212(a)(6)(C)

- Seeking to procure a visa, other documentation, or admission into the United States or other benefit under INA by fraud or willfully misrepresenting a material fact
- Falsely representing oneself to be a U.S. citizen for any purpose or benefit under INA or any other federal or state law

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212(a)(9)(B): 3 AND 10 YEAR BARS

3 YEAR BAR:

- Unlawfully present
- More than 180 days, less than 1 year
- On or after April 1, 1997
- **Voluntary departs**
- Before proceedings
- Departure stops time

10 YEAR BAR:

- Unlawfully present
- 1 year or more
- On or after April 1, 1997
- **Voluntary departs or is removed**
- Departure stops time

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212(a)(9)(C) PERMANENT BAR

212(a)(9)(C)(i)(I):

- Unlawfully present
- More than one year in aggregate
- On or after April 1, 1997
- Attempted EWI or EWI
- On or after April 1, 1998

212(a)(9)(C)(i)(II):

- Prior removal or deport (at any time)
- Attempted EWI or EWI
- On or after April 1, 1997

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Crimes 212(a)(2)

- General crimes, including crimes of moral turpitude, drug violation offenses
- Multiple convictions
- Controlled substance trafficking
- Prostitution and commercialized vice



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Screening for Crimes

- Have you ever....
 - Been stopped by the police
 - Been in a police car
 - Been handcuffed
 - Been fingerprinted
 - Had to pay a “fine”
 - Spent time in jail
 - Appeared in front of someone in a black robe
 - Had to do community service

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FBI Record Check

- Form available on the FBI website
- Hard copy (not electronic) fingerprint form FD-258
- Money order or cashier's check \$18.
- Send to:
 - FBI CJIS Division – Record Request
1000 Custer Hollow Road
Clarksburg, WV 26306

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FOIA and DHS Records

- File FOIA with --USCIS, ICE, CBP
- USCIS:
 - National Records Center FOIA Division
P.O. Box 648010
Lees Summit, MO 64064-8010
- ICE:
 - FOIA Office – ICE
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

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Inadmissibility Pop Quiz

- Do these issues trigger inadmissibility?
 - Overstaying a visa
 - Working without authorization
 - A traffic ticket for speeding

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Inadmissibility

- ALL grounds waiveable “in the national or public interest” except
- 212(a)(3)(E) (Nazi persecution, genocide, torture, extrajudicial killings)

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Inadmissibility

- For “violent or dangerous crimes” and for security grounds at 212(a)(3), USCIS will only grant waiver in “extraordinary circumstances.”
8 CFR § 212.17(b)(2)

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How to approach inadmissibility

- Does the ground apply to your client?
- Is there an exception to the ground?
- If ground does apply, how does client merit a waiver?
- How does client merit favorable exercise of discretion?

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Waiving Inadmissibility

- Form I-192
- Identify ground(s) on form
- Discretionary
- Documentation proportional to severity of the ground

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Which Grounds of Inadmissibility Apply?

- Mariana crossed the border between Mexico and the U.S. with a coyote in 2004. She has been here ever since. She has worked off and on at various Mexican restaurants.

Does Mariana need a waiver of any of the grounds of inadmissibility? If so, which one(s)?

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Does Tomas Need a Waiver?

- Tomas entered the U.S. without inspection in Feb. 2002. He stayed in the U.S. until Aug. 2004 when he returned to Mexico for his grandmother's funeral. He came back to the U.S., entering without inspection, after two months. He has been here ever since.

Does Tomas need a waiver of any of the grounds of inadmissibility? If so, which one(s)?

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How Can You Help Juan?

- Juan, from Mexico, attempted to enter the U.S. in May 2005. He was caught by CBP, fingerprinted and sent back to Mexico. He attempted to enter the U.S. again two days later, this time successfully. He has been here ever since.

Do you have enough information? How might you go about figuring out what happened at the border?

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What Else Do You Need?

- John was arrested for shoplifting in Chicago in 1998. He doesn't remember what happened to the charges, but his attorney told him that he would not have a record after he completed community service.

Do you have enough information to determine whether he is subject to any of the grounds of inadmissibility? What additional information do you need?

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Questions?



Contact Information:

415 Michigan Ave., NE, Suite 200
Washington, DC 20017



202-635-2556



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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

Agency	City and State	Agency Address	City	State	Zip	Agency Phone	Agency Email	Agency Website
U.S. Marshals Service	Washington, DC	U.S. Marshals Service	Washington, DC	DC	20535	(202) 696-6000	usmarshals@usmarshals.gov	usmarshals.gov
U.S. Marshals Service	Albuquerque, NM	U.S. Marshals Service	Albuquerque, NM	NM	87102	(505) 261-5000	usmarshals@usmarshals.gov	usmarshals.gov
U.S. Marshals Service	San Francisco, CA	U.S. Marshals Service	San Francisco, CA	CA	94102	(415) 398-0000	usmarshals@usmarshals.gov	usmarshals.gov
U.S. Marshals Service	San Jose, CA	U.S. Marshals Service	San Jose, CA	CA	95113	(408) 281-5000	usmarshals@usmarshals.gov	usmarshals.gov
U.S. Marshals Service	San Diego, CA	U.S. Marshals Service	San Diego, CA	CA	92101	(619) 594-5000	usmarshals@usmarshals.gov	usmarshals.gov
U.S. Marshals Service	Phoenix, AZ	U.S. Marshals Service	Phoenix, AZ	AZ	85004	(602) 442-5000	usmarshals@usmarshals.gov	usmarshals.gov

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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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U Nonimmigrant Status Application Process and Practice Pointers

Presented by:

Susan Bowyer, Immigration Center for Women and Children
Cecelia Friedman Levin, ASISTA Immigration Assistance

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Goals

How to prepare U visa applications

- Intake and Framing
- Document Preparation and Collection
 - U visa elements
 - Addressing Inadmissibility
- Personal Declaration
- Application submission and next steps

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Intake

- Purpose
 - Explain the U Visa and answer questions
 - “Proceso de la Visa U” Video on youtube answers questions posed by focus group of clients
 - Confirm and deepen information from screening
 - Formally start representation
 - Start on document gathering
 - Start working relationship

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Principal's Intake Form

- Biographical information for the I-918
 - Including spouse, children
- Information about the crime and helpfulness
- Information about entries/exits; other immigration and criminal history
- Income (for use in fee waiver application, and your agency's income guidelines)

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Preparation of Case: Explore Crimes as Categories

Explore Crimes as Categories

- Categories: explore them with LEAs--What crimes do you use to investigate/prosecute domestic violence?
- E.g., choking, stalking, harassment, lots of possible crimes, depending on facts
- These could all count as long as you say in your cert that it was in the DV context and give some facts

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Preparation: Who is the Victim

- Cert must be clear on this!
- Indirect . Direct vs.. Bystander
- If possible, do direct = proximate harm
- CIS recognizing 2 kinds of indirect
- Children and other incompetent victims (e.g., sexual violence)
- Close family members of murder victims

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What Forms Do I need?

- I-918: Petition for U Nonimmigrant Status
- I-918- Supplement B-Law Enforcement Certification
- I-918-Supplement A—Application for Derivative Family Members
- G-28: Notice of Appearance (for each applicant including derivatives)
- I-192: Waiver of Inadmissibility if needed (for each applicant, including derivatives)

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What Documents Do I need?

- Identification Documents
- Evidence of substantial harm/victimization
- Evidence of client's helpfulness to law enforcement
- Supporting documents regarding inadmissibility/hardship

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What kind of Evidence?

- Burden = Preponderance
- Kind- Any credible evidence
- But, USCIS wants the best evidence
- So if you can't get it state
 - How you tried to get it and why you couldn't
 - Why what you're giving them is credible.

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Avoid Problems Up Front

- Identify credibility issues in your application
- Why they are not really a problem (legal & factual) If they are a problem, declaration on why they happened
- Organize so easy to follow
 - Road map cover letter
 - Index and mark documents

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Substantial Harm/ Victimization

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Substantial Abuse/ Harm

- Impairment of emotional or psychological soundness
- Substantial factors include:
 - The nature of the injury;
 - Severity of perpetrator's conduct;
 - Severity of harm suffered;
 - duration of infliction of harm;
 - Permanent or serious harm to appearance;
 - Health, physical or mental soundness.
- Aggravation of a victim's pre-existing conditions
- Continuum of violence, on-going

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Supporting Documentation for Abuse

- Photographs of injuries
- Medical or hospital records and bills
- Supporting declaration from therapist or counselor
- Declarations from third parties who witnessed injury
- Client declaration covers all elements of applications

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Practice Pointers

- Nexus between experiencing the crime and harm is key!
- What behaviors, emotions, etc. do you see in crime victims that show they are suffering and/or having trouble recuperating from the crime?
- Advocates, etc. may be best positioned to provide this detail
- Mental symptoms may be delayed so check in with client in several months

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Evidence of Helpfulness

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Helpfulness: The Key to the U

- How police got involved
- Interactions with police at the scene
- What was said about wanting perpetrator arrested or charged?
- [Corrections in police report if needed]

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Problems With Helpfulness in Report

- What problems are there, and why?
- Do you think the police officer(s) understood you well?
- What do you think they missed?

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I-918B LEA Certification

- Find certifier from local advocates or the Google Doc.
- Prepare I-918B with the basics from the police report only – don't need to argue the whole case here.
- Learn process for submitting request for Supplement B in your jurisdiction (e.g. some jurisdictions request that advocates prepare cover memo and send packet with police report to their agency)
- Make note to follow up with LEA

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Other Documentation of Helpfulness

- Police report
- Victim Witness Impact Statement
- Declarations from Victim Witness Advocates
- Subpoenas or other court notices

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Declaration Practice Pointers

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Declaration Basics

- Form
 - Signed under penalty of perjury
 - Relevant Requirements
 - Divided into short paragraphs
 - Chronological easier for adjudicator (and you)
 - Must be credible
 - Must be relevant to legal requirement
 - Special relevance issues in domestic violence, sexual assault and felonious assault

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Working with your Client on Declarations

- Demystify
- Avoid Retrauma
- Relevance
- Details
- Context

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Credible

- Detailed and Specific:
 - Adjudicator is 3,000 miles away, only reading
 - Should not say “He would always”
 - Use at least three very detailed, specific examples
- Consistent with other documentation
- Supported by other documentation

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Relevant

- Declaration should focus on
 - Helpfulness in Reporting crime
 - Helpfulness in Telling Police What Happened
 - Helpfulness in Follow Up with Law Enforcement
 - Details of the criminal activity
 - Substantial Abuse
 - Eligibility for Inadmissibility Waiver

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The Client's Story of Abuse

- This isn't a VAWA application, so story of past incidents of abuse only needed to prove substantial abuse
 - Balance risk of retrauma with whether prior abuse needed to meet “substantial” standard
- Describe one or two of the worst incidents preceding the qualifying crime
- Provide specific details of each incident, described on following slide.

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Substantial Abuse: This is not the time to be stoic

- Abuse from this incident AND history of abuse
- Physical injury
 - Intensity of pain
 - Duration of pain
 - Permanence of injury or scarring
 - Restriction of activity
- Emotional harm
 - Humiliation
 - Completeness of control
 - Emotional abuse packet and questionnaires

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The Qualifying Crime

- Briefly, what led up to it
- Very specific details of the crime. Give at least two details about each aspect, including:
 - Where did things start? Did they move to another place?
 - Where were the perpetrator and victim in relation to each other at any given time?
 - What exactly did the perpetrator say?
 - How did perpetrator assault and injure her?
 - Hit, choke, punch, shove, etc.

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Declaration Prep Materials in Materials Packet

- Outlines for clients and advocates
 - DV
 - Felonious Assault
- Questionnaires
- Emotional abuse packet
- Model declarations

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Follow Up: Perpetrator's Criminal Case

- Was the perpetrator arrested?
- Was the perpetrator jailed?
- How long was he in jail?
- Were charges brought against him (was he ordered to go to court? Were you subpoenaed to go to court?)
- Were you contacted by the District Attorney's office?
- Then what happened?

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Addressing Inadmissibility

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Key Issues For CIS To Consider the Waiver

1. "Favorable vs. Unfavorable Factors"
2. The "National and public interest"
3. Violent acts require extraordinary circumstances

If convicted of crimes:

- Name of the crime
- Explain date & place of commission of EACH crime
- final disposition & court that issued sentence
- Rehabilitation and positive factors

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Documents related to I-192 Waiver

- Record of Disposition if criminal grounds of inadmissibility
- Evidence of Hardship
 - Nature and extent of victimization
 - Access to systems and resources for client and his/her family
 - Documentation regarding hardship upon return
 - Client declaration
 - Other third party attestation
 - Other evidence

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Documents related to I-192

- Evidence of Rehabilitation (if criminal grounds)
 - Programs/therapy completed
- Evidence of Equities
 - USC children
 - Supporting letters from employer, community members, clergy
 - Evidence of Community involvement
 - School or employment records
 - In VAWA context, think of evidence related to showing good moral character.

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Declaration in Support of Request for Inadmissibility Waiver

- Start with: Please grant my request for a waiver of my immigration (and criminal) violations. Without a waiver, I will be unable to obtain U Status, and I am otherwise eligible because I was a victim of (crime) and I was helpful to the police.
- Need for victim-specific services only available in the US:
- Equities (can use worksheet) – specific details of:
- Hardships to self and family if she has to leave US (can use worksheet)

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Discussion of Crimes

- Excuses and connection to abuse/crime is not enough
- Show contrition and how changing life so won't happen again
- How can you show it will not happen again?
- Would your neighbor want this person living next to her?
- Bottom line: VSC adjudicators are NOT lawyers, so think normal person standard, not lawyer standard

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Putting it all together

- Cover letter
- Forms
- Fee or Fee waiver for I-192
 - Show economic need
- Biographic info – birth certificate/passport
- Documentary evidence to support U visa claim
- Any evidence of positive factors to overcome inadmissibility grounds stated

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Where to file?

- All forms Mark in Big Red letters—Crimes Victims Unit
- Mail to USCIS 75 Lower Welden St. St. Albans, VT 05479

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Application Forms Resources

- I-918 resources:
 - Annotated I-918s in English and Spanish (Materials packet)
 - Video at <http://www.youtube.com/watch?v=eXZkf3PIHss>
- I-192 resources
 - inadmissibility worksheet (Materials packet)
 - Video at <http://www.youtube.com/watch?v=eXZkf3PIHss>

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Application Packet Contents Worksheet

Formulas	Explanations	Notes
Regression for Multiple Linear Regression	1. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	2. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	3. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	4. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	5. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	6. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	7. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	8. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	9. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	
	10. Formulas for the regression line: Y = a + bX Y = a + bX + cZ Y = a + bX + cZ + dW Y = a + bX + cZ + dW + eV Y = a + bX + cZ + dW + eV + fU Y = a + bX + cZ + dW + eV + fU + gT Y = a + bX + cZ + dW + eV + fU + gT + hS Y = a + bX + cZ + dW + eV + fU + gT + hS + iR Y = a + bX + cZ + dW + eV + fU + gT + hS + iR + jQ	



Responding to Denials

- Consider Motion to Reconsider/ Reopen rather than appeal to AAO
- We have done a couple amicus “briefs” to AAO and I often do advocacy emails re reopening or reconsidering denials
 - Go to our webpage under the clearinghouse:
 - www.Asistahelp.org

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Denials con't

- **Appeal vs. Motion to Reconsider**
 - Motion to reconsider See 8 CFR 103.5(a)(2)
 - Motion to reopen
 - Appeal
 - Strategies for when to do what
- When case is denied based on the I-192 denial
 - 212.17(b)(2) no appeal (8 CFR 103.5(a)(6)- Motion to reconsider only)
 - May file NEW I-192 with Motion to Reopen/Reconsider 918 denial

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Resources

- Immigration Center for Women and Children:
<http://icwclaw.org/>
- ASISTA Immigration Assistance Clearinghouse:
<http://asistahelp.org>
- Immigration Advocate Network:
<http://www.immigrationadvocates.org/>

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Overview of U Adjustment of Status

Presented by

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



Where to find the law

- Statutory Cites
 - INA § 245(m)
- Interim Regulations
 - Federal Register: December 12, 2008 (Vol 73, #240) [Pages 75540-75564]
- Regulations
 - 8 CFR § 245.24
- USCIS Memoranda
 - See www.uscis.gov or www.asistahelp.org

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U Adjustment of Status

- INA § 245(m) is not a variation of INA § 245(a)
- Principal and derivatives must apply to adjust before U NIV status expires
- U nonimmigrant adjustment-eligible after 3 years in U status
 - Cannot file early
 - Derivatives may need extension
- 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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Continuous Physical Presence

- 3 years after U status grant
 - Interim relief period counts
- 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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Documenting Continuous Physical Presence

Must include applicant's statement attesting to the continuous physical presence; may also include:

Primary Evidence:

- Government or non-government official docs
- School transcripts
- Employment records
- Income tax returns
- Installment payments
- Monthly rent receipts
- Utility bills

Secondary Evidence:

- Letters from others with first-hand knowledge and an explanation why other evidence unavailable

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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
- Medical Exams are needed (8 CFR § 245.5)
- May request to amend previously filed I-192 or file a new I-192 for inadmissibility ground missed at time of U application/adjudication
- What IF inadmissibility triggered post U approval?

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Documenting no lack of helpfulness

- 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

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Documenting no lack of helpfulness

- Option Two
 - Submit a statement describing efforts to obtain a new I-918 Supp B
 - Submit evidence of involvement in criminal case, if case still open after U was granted.
 - If criminal case was closed before U was granted, USCIS has accepted brief statement in applicant's declaration that, therefore, help not needed and no Supp B because certifier overwhelmed.

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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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Discretionary Determination by USCIS

- Burden of applicants to show that they merit favorable exercise of discretion
- INA 245(m) permits adjustment where USCIS determines it is justified on humanitarian grounds, to ensure family unity, or in public interest
- 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

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Making Case for Discretion

- Discretionary Factors are basically the same as an I-192 inadmissibility waiver
 - Equities & hardships substantially outweigh adverse factors
 - Applicant's statement may be submitted
- If no negative factors since U visa grant, ask USCIS to refer to I-192 documentation
- If I-192 insufficiently documented, or adverse factors arise after grant of U visa, use I-192 approach.

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Discretionary U Adjustment

- Adverse factors (i.e. minor crimes)
 - May offset with docs establishing mitigating equities for favorable exercise of discretion
- More serious adverse factors (i.e. drug crimes)
 - May require showing exceptional and extremely unusual hardship
- Serious violent crime, sexual abuse committed upon a child, multiple drug-related crimes, or where there are security- or terrorism-related concerns
 - May require more compelling facts

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Effects of Marriages/ Divorces/ Death

- Marriage
 - Derivatives
 - Parent marries – No effect
 - Child marries – revocable
 - Sibling marries – probably revocable
 - Principal - No effect
- Divorce
 - While I-918A pending – not eligible
 - Post I-918A approval
 - USCIS “may” revoke; best practice don’t divorce!
- Death
 - Derivative can still proceed with 918A and AOS despite death of principal
- Closing letter

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Traveling While Adjustment Pending

Practice Pointer:

- May request travel document concurrently with I-485
- See *Matter of Arrabally Yerrabally*, 25 I & N Dec. 771 (BIA 2012)
 - Advance parole does not trigger unlawful presence bar
 - Warn clients to use only IF needed
- Form I-131, Application for Travel Document
 - Include photo ID
 - Include two passport style photographs
 - No reason for travel needed
 - Permission to travel may come on work permit

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Adjustment Documents

- I-485, G-325A and medical exam (8 CFR 245.5)
- Filing and biometrics fee or fee waiver request
- I-131 – optional if want permission to travel
- Photocopy of U approval notice
- Photocopy of I-94 and all passport pages

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Adjustment Documents

- Applicant's declaration (helpfulness, absences, and discretion/humanitarian need for AOS)
- Evidence of lawful U admission and status
- Evidence relating to requests for assistance
- I-918 Supp B or other evidence
- Evidence of continuous physical presence
- Evidence related to discretion

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Adjustment Procedure

- File with Vermont Service Center
- Biometrics appointment
- USCIS has the ability to call people in to the local office to interview applicants

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Approvals

- Approval notice
- Green card arrives in the mail
- LPR status recorded as of date of adjustment approval
 - No special citizenship provision
 - Eligible for naturalization after 5 years of LPR status
 - Watch out for aggravated felonies despite I-192

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Denials

- May get an RFE or NOID first
- Written decision
- Can be appealed to the Administrative Appeals Office (AAO)
- Unclear if will be placed in removal proceedings
- Cannot be reviewed or filed before an IJ in removal proceedings

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Revocations

- Approved 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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Questions & Answers



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



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
 - Not available to siblings

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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
- 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:
 - (If in U.S.) I-485 to adjust status, OR
 - No need to prove admissibility
 - May apply for I-765 work permit w/AOS pending
 - (if outside U.S.) do Consular Processing at U.S. embassy or consulate for an immigrant visa
 - Must prove admissibility or waive inadmissibility
 - Will enter U.S. as permanent resident

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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 U Status holder'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:
 - he or she would suffer extreme hardship if not allowed to remain in or join the principal in the United States
 - he or she merits a favorable exercise of discretion
 - Statement that either:
 - he or she had no information about the qualifying crime, or
 - that having information, he or she did not unreasonably refuse to cooperate with the law enforcement agency in charge of the investigation or prosecution

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USCIS on Extreme Hardship Factors – to U Status Holder

- Loss of access to US criminal justice system
- Nature or extent of physical or mental abuse
- Perpetrator or someone on P's behalf in home country would harm applicant or A's children
- Need for social, medical, mental health services
- Practices in home country punish applicant or applicant's children for leaving abuser
- Perpetrator's ability to travel to home country and ability/willingness of authorities there to protect applicant and applicant's children
- Applicant's age at entry to U.S. and at adjustment

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Extreme Hardship Factors - QFM

- Ages of petitioner and qualifying relative
- Language/cultural assimilation
- Health conditions and availability/quality of medical treatment in home country
- Ability to obtain work in home country
- Relative length of US residence and contributions to U.S. community
- Other family legally residing in U.S. vs in home country
- Financial/Psychological impact of departure
- Disruption of education opportunities
- Political/economic conditions in home country
- Availability to adjust through other means

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An Introductory Overview of Consular Processing and Travel with a U Visa

Presented by
Cynthia Lucas, Attorney, ICWC
&
Monica Kane, Attorney, ICWC



Agenda

1. Resources
2. U nonimmigrant petition vs. U visa
3. Consular processing step-by-step
 - I. Applicants abroad/1st time entry
 - II. Applicants in U.S./traveling
4. Preparing clients who want to travel
5. Additional issues/considerations
6. I-539 extensions of status

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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

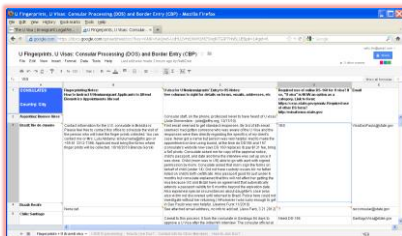
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U Travel Googledoc

- 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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Approved Nonimmigrant Petition vs. Visa

A sample of Form I-129, Petition for a Nonimmigrant Worker, showing the 'APPROVED PETITION FOR A NONIMMIGRANT' section.

Approved Petition



Visa

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Nonimmigrant Status vs. Visa

Nonimmigrant Petition

- ☐ USCIS (DHS)
- ☐ Vermont Service Center
- ☐ Nonimmigrant eligibility
- ☐ 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 for Applicant INSIDE the U.S.

A sample of Form I-129, Petition for a Nonimmigrant Worker, showing the 'APPROVED PETITION FOR A NONIMMIGRANT' section.

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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Applicants Abroad

Consular Processing Overview 1st Time Entry

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Step 1

Petition for U Nonimmigrant Visa *Classification* with USCIS Vermont Service Center

- File Form I-918 for Principal Applicant (U-1)
- File Form I-918A for Derivative(s)
 - File packets in *duplicate* for forwarding to KCC
 - Indicate on I-918/A that applicant is abroad, designating US Embassy/Consulate closest to applicant abroad.
 - Not eligible for EAD yet, so don't file I-765.

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Step 2

Approval of U Nonimmigrant Visa Petition

- USCIS-VSC finds applicants eligible and approves them for U-1, U-2, U-3, U-4, or U-5 visa classification.
- Petition approval for those abroad *will not* contain I-94 admission document.
- Applicants abroad must apply for and obtain a visa stamp in their valid passport and formally seek admission at a Port of Entry.

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A Note about KCC & PIMS

Communication between DHS and DOS

- Kentucky Consular Center (KCC): centralized processing facility under DOS for USCIS petition-based nonimmigrant visa programs.
- Petition Information Management Service (PIMS): database system that allows consular posts to obtain USCIS petition information.

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Step 3

Prepare Consular Packet to Designated U.S. Embassy/Consulate

- Always start by reviewing the detailed information available online for the specific consular office.
- You may also refer to the Google Doc for additional input/tips from other practitioners.

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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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Completing the DS-160

- ☐ Review DS-160 questions w/ applicant in advance.
- ☐ Ensure applicants have all relevant information to complete the form before commencing.
- ☐ Complete electronic application:
<https://ceac.state.gov/genniv/>

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Completing the DS-160, cont.

- ☐ Note Application ID number and Security Question/Answer when you start the application for easy retrieval.
- ☐ Save form frequently!
- ☐ Select U visa category and request 4 years for length of trip to U.S.
- ☐ For additional FAQ's, see http://travel.state.gov/visa/forms/forms_4401.html

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Step 4

Schedule the Appointment(s)

- Application Support Center (ASC) appointment, if applicable
- Consular Interview
- Usually scheduled online or by phone
- In most cases, you will need:
 - Valid passport information
 - DS-160 confirmation page code
 - Visa application processing fee receipt number

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Step 5

Preparing Your Client for the Appointment

- Advise on all documentation they must bring.
- Review potential questions that may be asked
 - i.e., U-1 may be asked about underlying crime, while the emphasis w/ derivatives should be on relationship to the principal
- Review Post procedures to the extent possible
 - i.e., security procedures, appointment time v. wait time

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Step 6

Visa Issuance & Entry into the U.S.

- Upon approval, Consulate may issue visa same day or w/in a few days of interview
 - Check Post protocol. E.g., some ask applicants to leave courier fee along w/ passports & ship them after issuing visa stamp
- Visa should be issued for multiple entries, “M”
- ***Applicants must enter U.S. before the visa expiry date.***

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Entry into the U.S.

- Applicant presents passport with visa at port of entry to be admitted as U nonimmigrant.
 - Should be admitted through I-918/A petition expiration date, unless passport expires earlier.
- If admitted for less than 3 years (due to delay between approval of I-918/A and entry with U visa), applicant will need to file extension of stay to accrue 3 years continuous presence in U.S. and qualify for adjustment of status.

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Entry into the U.S., cont.

- Admission Records:
 - Applicants entering through land ports of entry will still be issued a paper I-94 card.
 - I-94s for those entering through air/sea ports of entry are now processed electronically.
 - Entry date, class of admission, expiration date should be stamped in passport by CBP.
 - I-94 can be accessed at www.cbp.gov/i94

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

Consular Processing Overview Traveling Post-Approval

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Preparing Clients for Travel

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

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Step-by-Step Process

- Follow previous slides Steps 1-6 outlining overview of consular processing.
- 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 on 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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U Visa Consular Processing

Additional Issues & Considerations

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Travel Delay Risks Recap

- 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

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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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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 nonimmigrants 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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Updates

Look for updates at:

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

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Thank You!



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ILRC Technical Assistance

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Famvisa

Family immigration topics and updates, including legal developments and practitioner materials pertaining to accessing and applying the benefits of 245(i) through the LIFE Act.

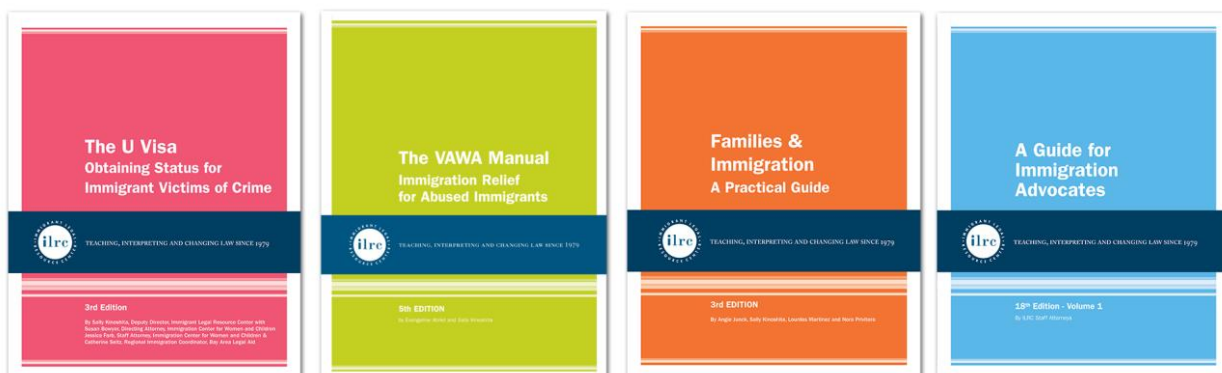
SIJS (Special Immigrant Juvenile Status)

Immigrant children’s rights advocacy and policy updates.

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.

The VAWA Manual: Immigration Relief for Abused Immigrants

Half-off in anticipation of the 6th Edition to be released summer 2013!

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.

Families & Immigration: A Practical Guide

This guide provides a comprehensive overview of family immigration law, with clearly worded explanations about each topic, including sample applications, declarations, waivers, and charts. It reaches all aspects of family-sponsored immigration and provides an understanding of qualifications for who can file and how to submit a family-based visa petition. It also offers practical advice on how to engage your client to bring forth necessary information to allow you to more effectively assist them through the petition process.

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