

# Representing U Clients with Complex Issues: Part I

Presented by  
Gail Pendleton and Sonia Parras  
ASISTA Co-Directors



Copyright © 2012 ASISTA  
All rights Reserved.

# What we're doing

- General practice pointers to avoid problems or if there are problems
- Suggestions on
  - Substantial abuse
  - Framing the crime
  - Indirect victims
- Overcoming inadmissibility

# What evidence?

- Burden = Preponderance
- Kind = Any credible evidence
- BUT they want best evidence, so. . .
  - How you tried and why you couldn't get it
  - Why what you're giving them is credible

# All covered by ICE Prosecutorial Discretion Memos

- These are the people ICE should NOT be deporting per memos!
- Go up local ICE chain of command
- Then let ASISTA know if still intransigent

# Common prep

- All forms MARK IN BIG RED LETTERS **VAWA/U UNIT**
  - USCIS, 75 Lower Welden St., St. Albans, VT 05479
- Use blue pen not black for signatures
- Don't use tabs (or put at bottom)
- G-28s for derivatives, not just principals
- Detailed statement by victim in her own voice as per regulations
- Child and traumatized victim strategies
- Work with victim advocates
- What can they do?

# How victim advocates can help

## Safety planning!!

- Not just for your client

## Reach LEOs (law enforcement)

## Get your client's story

- They are trained in how to question
- This is their job anyway

Help collect evidence and corroborate  
not just meetings by factual details

# 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

# Responding to RFEs

## Use the email hotlines!

- Boilerplate RFEs that don't mention your evidence
  - VSC says this violates their policy, so report it!
- [hotlinefollowupI918I914.usc@dhs.gov](mailto:hotlinefollowupI918I914.usc@dhs.gov)
- Let ASISTA know if legally wrong and I can advocate with unit head and CIS HQ



# Responding to denials

- Consider Motion to Reconsider/Reopen rather than appeal to AAO
- Let ASISTA know (preferably at RFE stage)
- 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](http://www.Asistahelp.org)

# U basics: dual purpose

- To help law enforcement
- To help victims

# 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

# Practice pointer

- 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

# Explore crimes as categories

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

# Framing crimes not on the list

- Category is better than “similar”
- Depends on “the wording of the essential elements of the codified crime and the other evidence provided in the record”
- E.g., robbery may fall under felonious assault; many things may be DV crimes depending on facts
- Certifying official should explain facts that meet codified crime definition
- Smuggling and fraud do NOT WORK; must find enumerated crime for facts in case

# Who's 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  
e.g., sexual violence
- Close family members of murder victims

# Indirect victims: 2 kinds

1 = When direct victim died b/c of murder or manslaughter

2 = Direct victim is incompetent or incapacitated; or is under 18

- Spouses
- Unmarried children under 21
- If victim under 21, parents and unmarried siblings under 18
- Some indirect victims will have a choice whether to file as principals or derivatives



# Flagging inadmissibility

- What do you ask to ferret out problems?
- What are most common problems?

# The analysis

- Does the ground apply to my client?
- Do the facts of my client's case establish each of the elements of the ground?
  - Is there an exception = doesn't apply versus. . .
- Even if the ground applies and the elements are established, is there a waiver?

# Common inadmissibility problems

- Entries and exits
- Manner of entry
- Encounters with DHS
- Fraud
- Public charge
- Crimes
  - Setting the stage

# Overcoming inadmissibility

- Use (d)(14) waiver
- For everything but being a Nazi
- National or public interest
- What is this?
  - General arguments, make specific to your client
  - Connection to victimization
  - Think good moral character
  - Think VAWA & T extreme hardship factors

# General arguments

- Congress designed the U for this category = unlawfully here
- Because they fear accessing justice due to lack of status
- How was this true for your client?

# Factors VSC knows: GMC

- Good moral character and its exceptions
- Is problem connected to being a victim?
- What other evidence of good character despite problematic conduct?

# Factors VSC knows: extreme hardship

- Juxtapose here v. there
- Need for ongoing access to our legal systems
- Need for services here not available in the home country
- What will happen to family if returned?

# 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



# Reinstatement theory

- The predicates to 241(a)(5) =
- 212(a)(9)(A) - (C)
- So get those waived and
- Elements for reinstatement are gone

# Thank you



More information is available at [www.asistahelp.org](http://www.asistahelp.org)

OR, contact us at [questions@asistahelp.org](mailto:questions@asistahelp.org)