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!

- hotlinefollowup|918|914.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

OR, contact us at questions@asistahelp.org