



ASSISTING DERIVATIVES OF U VISA APPLICANTS AND VAWA SELF- PETITIONERS

This project was supported by Grant No. 2017-TA-AX-K061 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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OBJECTIVES

- Identify family members eligible for derivative benefits
- Troubleshoot roadblocks that may occur for derivatives
- Strategize on issues that may arise during consular processing
- Identify ethical issues that may arise when working with principals and derivatives



U AND VAWA DERIVATIVE ELIGIBILITY

U Visa Derivative Eligibility

- Relationship must:
 - Exist at filing of I-918, and
 - Continue to exist when I-918 and I-918A are adjudicated; and
 - Continue to exist at time admission of derivative
- Definition of Child (INA 101(b)(1))
 - Unmarried; and
 - Under 21 when I-918A is filed
 - Must remain unmarried through to admission in U status

HYPO

- Susan is considering applying for U and/or VAWA

- She has two children:
 - Kevin is 2 years old, in US but born overseas
 - Isabel is 19 years old, in home country and has a 1 year old son Marco.

POLL

- If Susan is applying for a U visa, who is eligible to be a derivative?
 - Kevin only
 - Isabel and Marco only
 - Kevin, Isabel, and Marco
 - Kevin and Isabel only

VAWA derivative eligibility

- Children under 21 and unmarried at filing of I-360
- CSPA and VAWA provides age-out protection, with limitations
- Must remain unmarried through to admission

POLL

- If Susan is applying for VAWA, which of her relatives is eligible to be a derivative?
 - Kevin only
 - Isabel and Marco only
 - Kevin and Isabel only
 - Kevin, Isabel, and Marco

POLL

- Susan decides to file for a U visa, listing Kevin and Isabel as derivatives. Isabel, without consulting with you first, recently got married.

- Poll question 1: Is this going to be a problem for Isabel to get U visa derivative status?
 - Yes
 - No
 - Unsure

- Poll question 2: What if Isabel got married while Susan was on the waitlist? Would this be a problem for Isabel to get U derivative status?
 - Yes
 - No
 - Unsure

- Poll question 3: What if Isabel got married after she entered with U visa status? Would this cause a problem?
 - Yes
 - No
 - Unsure

- Poll question 4: What if Isabel got married after Susan applied for VAWA? Would Isabel be eligible to consular process as Susan's derivative?
 - Yes
 - No
 - Unsure

What about Baby Marco?

- Grandchildren of principals ineligible for derivative status through U and VAWA
 - Either I-130 by parent once LPR OR
 - Humanitarian Parole (Form I-131)
- U derivatives overseas may be eligible for HP when principal gets on waitlist

Humanitarian Parole

- INA 212(d)(5) + consular processing
- Need to show “urgent humanitarian reasons” or “significant public benefit”
- \$575 fee or fee waiver
- Affidavit of Support required
- I-94 for 1 year, subject to extension
 - May apply for re-parole
- For Isabel, argue 8 CFR 214.14(d)(2)

Timing of Derivative Submissions

□ U

- File I-918A with principal's I-918
 - Or anytime prior to principal AOS
- Last in, last out – File early!
- Derivative can't enter on I-918A until grant
 - Except (d)(5) parole
- Once I-918A granted, 2-6 mo consular processing
- Principal **MUST NOT ADJUST** until derivative is admitted

□ VAWA

- One-step: File I-824 with VAWA packet
- Two-step: File I-824 with principal's I-485
- Derivative cannot consular process until **AFTER** principal has adjusted
- Consular processing can take over 1 year
- Watch out for age-outs if abuser is LPR

Age-out Issues

Child Status Protection Act and VAWA

- CSPA protects age of derivatives depending on:
 - Is abuser USC or LPR?
 - How long was I-360 pending?
 - How old was derivative at time of filing? Now?
 - Country of origin (“chargeability”) of derivative

- Authority:
 - INA § 201(f)(4);
 - INA § 203(h)(4)
 - Yates Memo (Aug 17, 2004)

When Abuser is USC

- Susan is filing for VAWA, listing Kevin and Isabel as derivatives. If abuser is US citizen, the children's ages are frozen at the I360 filing date.
- Age-out protection continues through to admission as LPR/adjustment
- Must remain unmarried

When Abuser is LPR

- If LPR abuser, then CSPA will freeze child's age as of the date visa became available only if:
 - Derivative's **CSPA age** is under 21 **AND**
 - Derivative has **“sought to acquire”** permanent residence within 1 year of the visa's becoming available

CSPA Age Calculation

- **CSPA age** = Age when visa number “**becomes available**” minus the number days I-360 was pending
- “Becomes available”:
 - I-360 is approved AND
 - Priority date (F2A) is current
 - NOTE: If priority date is current when I-360 is granted, then I-360 approval date is when visa became available

Sought to Acquire

- ❑ Age will freeze IF derivative seeks to acquire permanent residence within 1 year of visa's becoming available
- ❑ “Seek to acquire” = file I-824; I-485; or DS-260
- ❑ Watch out for priority date retrogression

Case example

- Susan files for VAWA as an abused spouse of an LPR, filing for Isabel and Kevin as derivatives on January 1, 2017.
- When Susan files the I-360, Isabel is 19 years old, and 2 months.

CSPA age calculation example

Date	Event	Isabel's Age
January 1, 2017	I-360 filed	19 years, 2 mo
April 1, 2018	I-360 approved, F2A not current.	20 years, 5 mo
January 1, 2019	F2A becomes current	21 years, 2 mo

- I-360 pending 455 days (1 year, 3 mo)
- CSPA Age = 21 yrs and 2 mo – 1 yr and 3 mo = 19 yrs and 11 mo
- If derivative seeks to acquire within 1 year of January 2019, her age will freeze at 19 yrs and 11 mo

Let's say Isabel was a bit older

Date	Event	Older Isabel's Age
January 1, 2017	I-360 filed	20 years and 10 mo
April 1, 2018	I-360 approved, F2A not current	22 years and 1 mo
January 1, 2019	F2A becomes current	22 years and 10 mo

- I-360 pending 455 days (1 year, 3 mo)
- CSPA Age = 22 yrs and 10 mo – 1 yr and 3 mo = 21 yrs and 7 mo
- Older Isabel has aged out. Now what?

What if derivative has aged out?

- If derivative has aged out, then category shifts from F2A to F2B
- Derivative is considered self-petitioner
 - No Affidavit of Support required
 - Does not have to submit own I-360
 - Retain priority date of parent's self-petition (January 1, 2017)
- If overseas: Consular process when F2B becomes current
- If in US: Deferred action and EAD until F2B is current

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Troubleshooting issues with USCIS and DOS

Inadmissibility

- Common immigration grounds:
 - Prior removals, including expedited
 - Unlawful presence
 - Lack of passport
 - Unlawful entry
- Common criminal issues:
 - CIMTs
 - Drugs

Waivers

- File I-192 for inadmissibility whether in US or overseas
- Specify exact ground of inadmissibility that applies!
- If consular officer finds additional grounds, will need to file new I192 with USCIS
- Discretion, discretion, discretion

Proving the relationship

- Parent/child:
 - Missing/incorrect BC info
 - No BC
 - DNA test
 - Evidence of ongoing relationship
- Spouse:
 - Termination of prior marriages
- Undisclosed children/spouse/siblings/parents
 - how to remedy?

Passport and Travel for Minors

- What if minor child's other parent won't authorize passport or travel?
 - Seek waiver of passport requirement (I-193)
 - DOS will issue DS-232
 - Present at CBP entry point after obtaining visa
 - OR Seek full custody
 - Time-consuming, logistically complex
 - Depends on home country legal framework
 - Practice pointer: Look up home country laws on age of majority for travel (e.g., Honduras)

I-929 for Us

- Either consular processing or in-US
- Eligibility:
 - Principal under 21: spouse, unmarried children under 21, parents
 - Principal over 21: Spouse and children under 21 and unmarried
 - After-acquired spouse and children included
- Qualifying family member has NEVER held U nonimmigrant status
- No age-out protection

I-929 Requirements

- Principal has U visa based LPR status or application for adjustment pending
- Principal or family member will suffer extreme hardship if not allowed to remain in or enter the US
- Show that discretion should be exercised in favor of family member
- Authority: INA 245(m); 8 CFR 245.24

After the Derivative Arrives

□ U

- File I-765 (a)(20)
- AOS after 3 years continuous physical presence
- May need I-539
- What if derivative EWI'd?

□ VAWA

- If not done already, pay ELIS fee for green card
- What if derivative EWI'd?

U Derivative EWI post-grant

- Practice pointer: If derivatives are overseas, advise not to EWI

If this happens:

- File I-192 to waive EWI and any other grounds
- File I-765 under (a)(20)
- Request amended I918A approval notice
- Potential RFE or NOID or denial
- Check principal for smuggling issues

VAWA derivative EWI post-grant

- Practice pointer: If derivatives overseas, advise derivatives and principal not to EWI
- If principal has adjusted and derivative is immediate relative or priority date is current, file I-485
- Should not need to waive EWI under INA 245(a)
- Check principal for smuggling issues – may have new deportability ground



Ethical considerations when working with principals and derivatives

SCENARIO

- While Susan is on the U visa waitlist, she arranges for Isabel to EWI.
- Susan and Isabel tell you that Isabel is in the US and you agree to represent Isabel for her I-192
- Later, Isabel tells you:
 - Susan is forcing Isabel to provide unpaid childcare to Kevin and threatened to get her deported if she refused
 - Isabel doesn't want you to tell Susan what she has disclosed

Ethical Issues

- Conflict of interest (Rule 1.7)
- Confidentiality (Rule 1.6) and Privilege
- Communication (Rule 1.4)
- Clients with diminished capacity (Rule 1.14)

Conflict of Interest (ABA Model Rule 1.7)

- “...a lawyer **shall not** represent a client if the representation involves a concurrent conflict of interest.”:
 - The representation of one client will be directly adverse to another client; or
 - Significant risk that representation will be materially limited by lawyer’s responsibilities to another client
- In some cases, conflict may be waived

Confidentiality (1.6) and Privilege

- No secrets between joint clients on matters relevant to the joint representation (Rule 1.7, comment 31)
- Privilege does not attach to communications between one client and attorney if joint representation (Rule 1.7, comment 30)

Communication (1.4)

- A lawyer **shall**:
 - Promptly inform client of any decision or circumstance where client's informed consent is needed;
 - Reasonably consult with client about means by which client's objectives are to be accomplished;
 - Explain a matter to the extent reasonably necessary to permit the client to make informed decisions

Diminished Capacity (Rule 1.14)

- What about minor clients (like Kevin and Marco)?
- “the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client”
 - May take “reasonably necessary protective action, including consulting with individuals that have the ability to take action to protect the client”

Thank you!

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