



EMERGING ISSUES IN U VISA PRACTICE

Presenters:

Amy Cheung & Cecelia Friedman Levin

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Goals



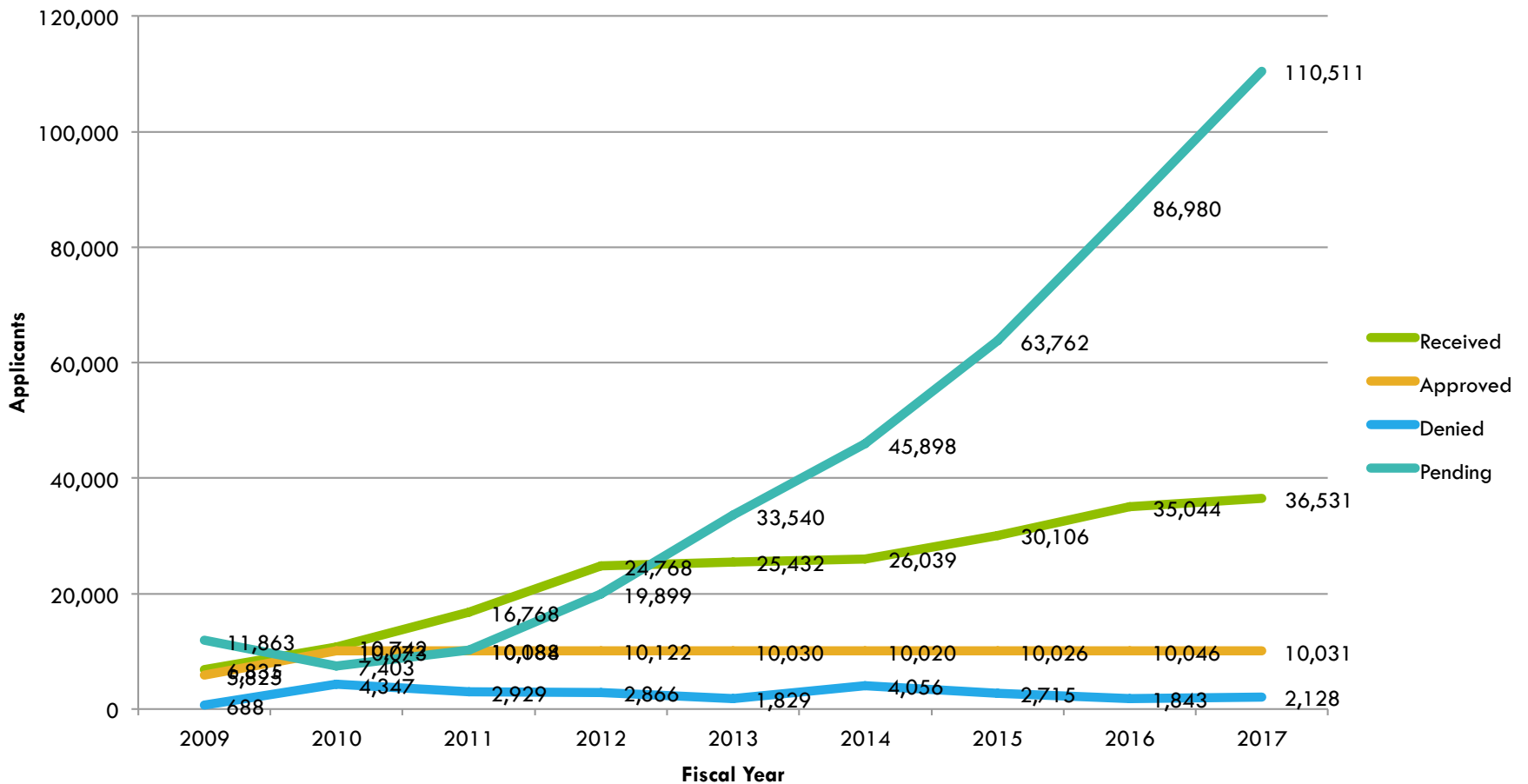
- By participating in this webinar, attendees will be better able to...
 - ▣ Identify emerging trends in VAWA U and T visa practice and adjudication
 - ▣ Strategize on complex issues of inadmissibility
 - ▣ Evaluate other forms of relief for survivors of domestic violence and sexual assault.



TRENDS IN ADJUDICATION

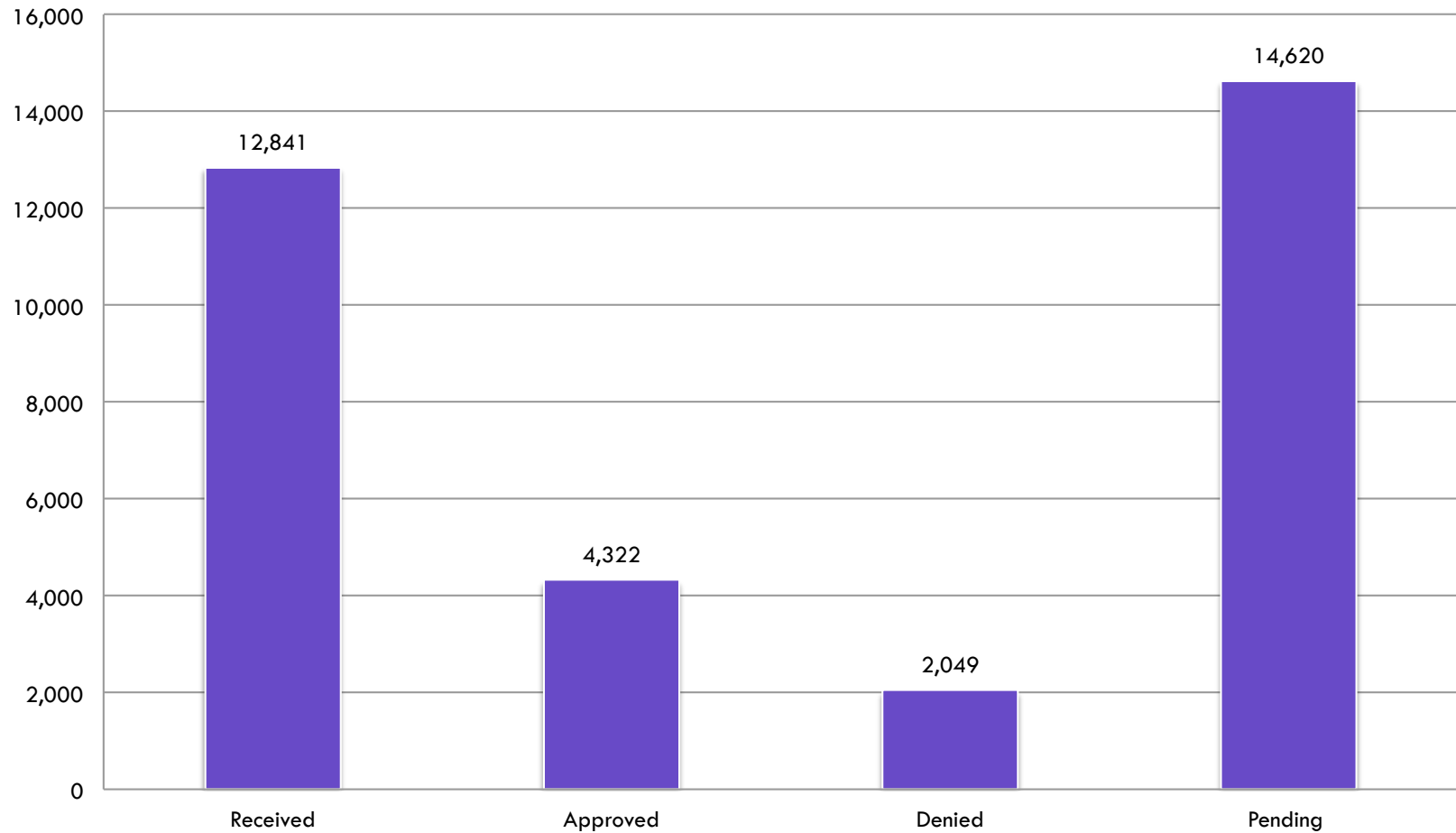
State of the U visa program

U visa principal applicants



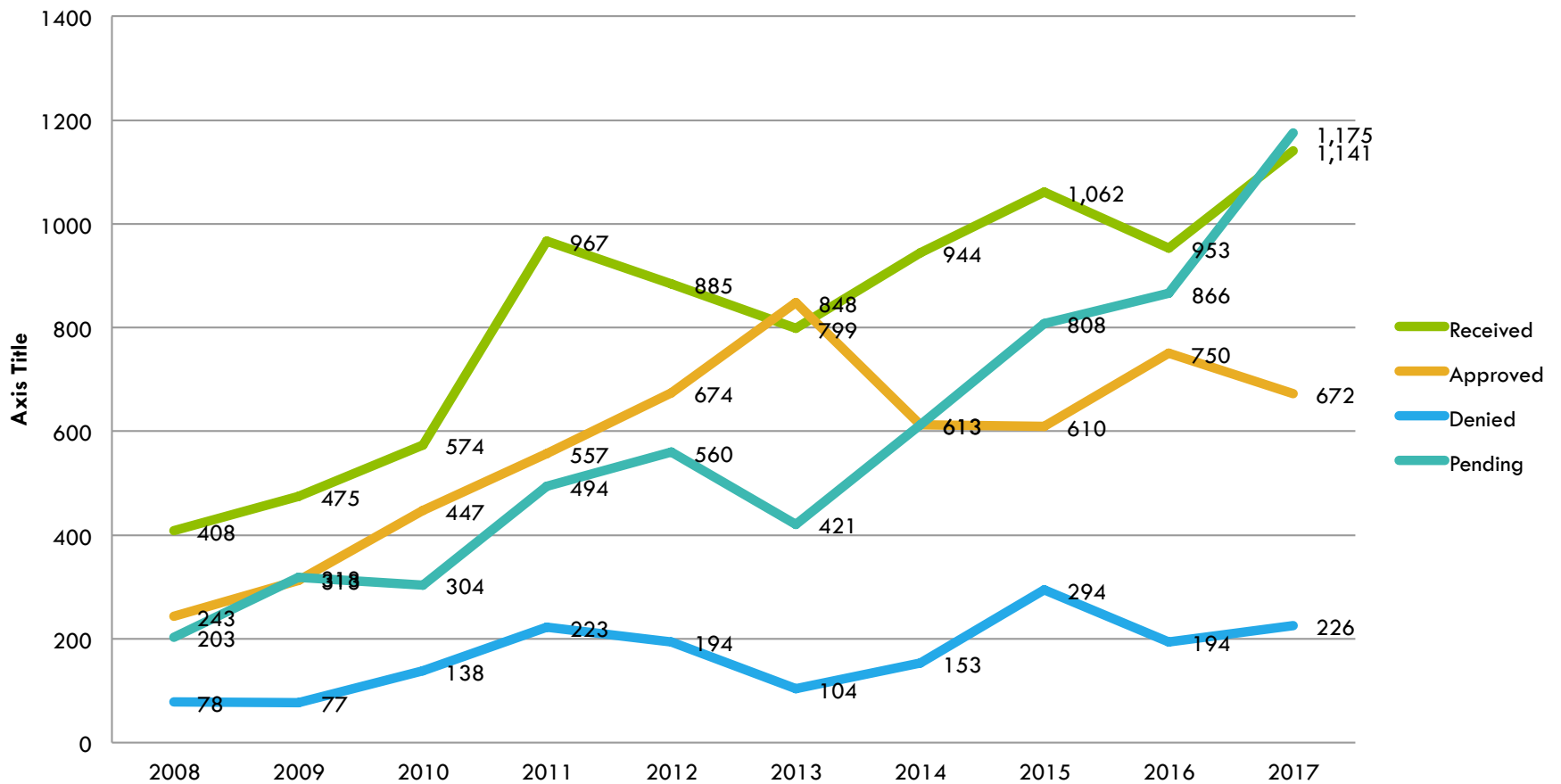
VAWA Statistics

VAWA Self-Petitions FY 2017 + 1st Q 2018



T visa data

T visa: Principal Applicant Filings



More numbers

- Last count: 60 adjudicators working U visa
- Posted processing times:
 - VAWA: 15-19 months (case inquiry date October 23, 2016)
 - U visa: 42-54.5 months (case inquiry date December 30, 2013);
 - T visa: 10-15 months (case inquiry date: May 21, 2017)

Adjudication

- USCIS utilizes first in/first out process
- Older cases at NSC
- Waitlist:
 - Cases filed about August 2014- early 2015
- U visa issuance
 - Cases filed ~ summer/fall of 2014
- What are you seeing?

Category & Direct Victim

- Crimes as categories (not similar)
- AAO recently cited favorably and remanded to VSC
- Direct victim = proximate harm definition
- Citing CIS regulations and case law in other areas for broad definition of “proximate” and “harm”



ASSESSING RELIEF

T or U visa

- Gloria was working at a store and one of her frequent customers offered her a place to stay at his house. She agreed to move in, but then later, he started sexually abusing her, saying that was the “rent” she had to pay. He said if she told anyone, that he would report her because she was undocumented.

Screening for T visa elements

- Force, Fraud, Coercion
 - Coercion: serious harm including psychological, financial or reputational harm
 - Threatened abuse of the legal process
- Commercial sex act: any sex act of which **anything of value** is given to or received by any other person.

DEALING with INADMISSIBILITY

Hypo

- In 2015, Tara enters the U.S. without inspection along with her 2 year old daughter.
- She marries Simon a USC who becomes so abusive she leaves the U.S. in 2017, she returns EWI 4 months later because Simon insists he will change.

Poll

- Which inadmissibility ground applies so far?
 - EWI
 - Smuggling
 - Unlawful presence
 - Permanent bar
 - All of the above
 - Unsure

Poll



- What would you apply for?
 - VAWA
 - U
 - Both
 - Neither

Hypo

- As Simon was withholding financial support for her and her daughter, Tara was arrested for shoplifting basic necessities from her local grocery store. She entered into a pre-plea agreement, completes community service and the case is dismissed.

Poll



- POLL: What are you concerned about?
- Good moral character
- Inadmissibility
- Risks of removal
- All three

Adjudication Trends

- USCIS asking for police reports, even in dismissed cases.
- Interpretation of inadmissibility standards
- In U context, inadmissibility issues once waived coming up again in AOS
- If it's not named, it's not waived.

Inadmissibility Grounds

(d)(3)—Hranka Factors

- the risk of harm to society if the applicant is admitted;
- the seriousness of the applicant's immigration or criminal law violation, if any; and
- the nature of the applicant's reasons for wishing to enter/remain in the United States.

U context- 212(d)(14)

- National or public interest
- Beyond interest of applicant or family, but community interest
- “Good neighbor”



REINSTATEMENT and VOLUNTARY DEPARTURE

Factors of Reinstatement

- INA 241(a)(5)
- EWI entry
- AFTER having been removed or departed voluntarily under a removal order
- EWI Re-entry

VAWA and U context

- For VAWA Adjustment
 - How to address the issue?
 - System with CIS HQ = 601, I-212 & 485 to VSC
 - In envelope marked “Evidence of Eligibility to Adjust and Overcome Reintatement”
 - After received send to hotline ccing us

- For U visa and T visa
 - Fix with I-192 waiver for
 - Waiver 212(a)(9)(C) AND 212(a)(9)(A)

Failure to Voluntarily Depart

- Matter of L-S-M
 - Adopted decision based on AAO case say failure to comply bars U adjustment for 10 years unless failure to depart not “voluntary”
- Only affects U Adjustment not the initial issuance of a U visa
- Explicit VAWA exception but not for U

Strategies to address VD at Adjustment

- More than 10 years since failure to VD
- IJ failed to give notice of consequences at time of grant
- Not “voluntary” (CIS memo mentions this exception)
- Never presented travel doc so reverted to final order
- Ineffective assistance of prior counsel = due process violation
- Reopen and terminate old proceedings



U applicants in Removal

Trends in Immigration Court

- Matter of Castro Tum (AG May 17 2018)
 - IJs and the Board do not have the general authority to suspend indefinitely immigration proceedings by administrative closure.
 - IJs may only admin close if provided by previous regulation or settlement (T visa regs provide for admin closure)

What this means for practice

- Audit of your cases
 - Which cases have been administratively closed?
 - Of those, which cases have been adjudicated or close to adjudicated?
 - What are the inadmissibility issues at play in the case?
 - What remedies/strategies to consider if case recalendered?

ICE Guidance: Prima Facie Determinations

- Vincent Memo (Sept. 25, 2009)
 - “OCC shall request a continuance to allow USCIS to make a *prima facie* determination”
 - If PF determination is positive → ICE should consider administrative closure or termination

Stay Requests for U visa applicants

- Guidance
 - INA 237(d)
 - 8 CFR 214.14(c)(ii)
 - Venturella Memo (Sept. 24, 2009)
- If ICE gets stay request from pending U
 - It must contact local OCC which requests PF from VSC
 - No removal for five days while await PF decision
 - If grant PF and grant stay = 180 days and no decision or new adverse factors, ICE should extend the stay as needed for CIS to make a decision
- FOD should work with CIS for swift merits decision
- If grant PF and ICE decides to deny stay it MUST
 - Provide summary to DRO HQ for their review

Sanchez-Sosa Continuances

- Prima Facie Determination Factors
 - Harm resulting from qualifying crime
 - Helpfulness of the victim
 - Inadmissibility Issues – Likelihood of I-192 approval
 - Other Factors (non-exhaustive)
 - Multiple continuances
 - Length of time the application has been pending
 - Delays caused by the victim

Make a record

- BIA cases
 - IJ has to indicate the basis on which he found the Respondent's eligibility for a U visa to be speculative and the IJ must make specific finding of fact and conclusions of law relevant under Sanchez-Sosa
- Remember that you are setting up your case for appeal. Put everything on the record!
- Challenge assumption that OK to pursue U visa from abroad = undermines Congressional goal

8 USC 1367 Protections

- Non-disclosure
 - Apply to VAWA self-petitioners, U and T visa
- Relying on abuser-provided information for an adverse determination of admissibility or deportability
 - Applies to information provided by abuser's family and members of household
 - Applies to all victims abused by spouse or parent, all victims in the process of applying for U or T or VAWA self petitions
- Location Protection = 239(e)
 - All victims

Resources

- ❑ www.ASISTAhelp.org
- ❑ Questions@asistahelp.org
- ❑ Amy Cheung, Amy@asistahelp.org
- ❑ Cecelia Friedman Levin, cecelia@asistahelp.org
- ❑ Gail Pendleton, gail@asistahelp.org

Thank you for joining us!



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