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.
OBJECTIVES

As a result of participating in this webinar, you will be better able to:

- Identify relevant sources of law and policy guidance for survivor-based forms of immigration remedies
- Locate relevant statutes, regulations, and policies for survivor-based remedies
- Incorporate research strategies into your legal representation work on behalf of survivors
What research tool do you currently use the most?

- Google
- Westlaw/Lexis/other subscription-based legal search engine
- Kurzbans/other private publications
- Government website (USCIS, DOS, DOJ)
- Other
POLL

- How easily can you locate relevant statutes and regulations when you are doing research?
  - Very easily
  - Pretty easily
  - Not very easily
  - Not at all easily
  - What are statutes and regulations?
Why Aren’t Google and Samples Enough?

“There is nothing strategic or tactical about ignorance.”

- Ethical duty to do your legal research
- Could miss key issues, recent developments
- Samples may be incorrect or outdated
Your case

- Sarah EWI’d in 2002. She left her son, Daniel, in her home country.

- She met and married Mark, a US citizen, in 2006.

- Sarah divorced Mark because he physically and emotionally abused her.
7 SOURCES OF IMMIGRATION LAW
Statute = The Law

Passed by both houses of Congress and signed by President

All statutes for Us, Ts, VAWAs, and I-751s contained in INA

aka 8 USC [+ section number, generally 1101-1537]
Where do I find the INA?

Free online sources:

- INA citations:

- US Code citations:
  - http://uscode.house.gov/browse/prelim@title8/chapter12&edition=prelim
  - https://www.govinfo.gov/app/collection/USCODE

- INA to US Code conversion: private publishers, e.g.,
  https://www.soundimmigration.com/ina-to-usc-conversion-table/; Kurzbans
Where do I find the INA?

Private sources:

- Printed format – GPO (government), private publishers like AILA
- Legal search engines, e.g., Westlaw or Lexis
How do I use the INA?

- Roughly organized by topic, for example:
  - Definitions = Section 101
  - Family-based petitions = Section 204
  - Inadmissibility and inadmissibility waivers = Section 212
  - Nonimmigrant visas = Section 214
  - Removal proceedings = Section 240
  - Immigrant visas and Adjustment of Status = Section 245
Where would you expect to find the statutes on VAWA self-petition eligibility? Check all that apply:

- INA 101
- INA 204
- INA 214
- INA 245
Where would you expect to find the statutes on U visa eligibility? Check all that apply.

- INA 101
- INA 214
- INA 235
- INA 240
- INA 245
Reading the statute

- What other facts do we need to know whether Sarah can qualify for a VAWA self-petition under the statute? How do we know that?

- Can Sarah include Daniel as a derivative on her VAWA self-petition? How do we know that?

- If Sarah’s VAWA self-petition is approved, can she remarry prior to adjustment? How do we know that?
How do I cite to the INA?

- Sections aren’t enough; look at sub sections and sub sub sub sections
  - E.g., 212(a)(6)(A)(i) – unlawful entry

- Can’t find the subsection on the USCIS.gov online version?
  - Click “next document” to see if your subsection falls on a later page
  - CTRL+f is your friend
REGULATIONS: What are they, and where do they come from?

- Regulations = Federal agency interpretation of statute, i.e., how will agency carry out statute?
- Regulations are not The Law, but the agency will follow them
- Promulgated by agency itself through Federal Register publication
  - public notice and comment  final rule  Code of Federal Regulations
Regulations, continued

- Regulations may be outdated if statute was amended after issuance of regulations
  - Example: VAWA self-petitions, I-751 waivers

- Much more detailed than statutes
  - Look to regs for deadlines, additional requirements for eligibility and filing, factors for tests, etc
  - Often go beyond what statute requires – ultra vires?
Where do I find the regulations?

- Code of Federal Regulations, Title 8
  - [https://www.ecfr.gov/cgi-bin/ECFR?page=browse](https://www.ecfr.gov/cgi-bin/ECFR?page=browse) (most updated)
  - Sections 1-499 = Department of Homeland Security
  - Sections 1000-1399 = Executive Office for Immigration Review (EOIR)

- Also published in hardcopy

- Legal search engines, e.g., Westlaw or Lexis
How do I use the CFR?

- Roughly organized by topic, and roughly follows organization and section numbers of INA, e.g.:
  - Inadmissibility waivers for U: 8 CFR 212.17
  - Inadmissibility waivers for T: 8 CFR 212.16
  - Adjustment for U: 8 CFR 245.24
  - Adjustment for T: 8 CFR 245.23
  - DV waiver for I-751: 8 CFR 216.5
How do I use the CFR, continued

- Contains agency’s rules for itself
  - See 8 CFR 103 (DHS)
  - 8 CFR 1003 (EOIR)

- Practice Pointer: Check the regs to make sure agency is following its own rules
How do I cite to the CFR?

- Format: Title + “CFR” + Section
  - E.g, 8 CFR 103

- Sections not enough – look at sub sub sub sub sections
  - E.g, 8 CFR 245.24(h)(1)(iv) (factors for extreme hardship for I-929)
  - Pattern differs from INA – (lowercase letter)(number)(lowercase Roman numeral)
Federal Register

- Daily federal publication in which agencies publish notices of new proposed regulations and final rules
  - Example: public charge proposed rule, Federal Register Vol. 83, No. 196, pp 51114-296

- Includes reasoning for regulations, final rule may address public comments
  - See VAWA self-petition and U visa rules

- Can be persuasive to issuing agency
Where should I expect to find USCIS’s interpretation of what constitutes substantial abuse for a U visa? Select all that apply.

- INA
- CFR
- Federal Register

Bonus question: In what section is this reg located?
How would you actually find it?

- USCIS’s interpretation of what constitutes “substantial mental or physical abuse” for U visa purposes?
POLL

What if Sarah and her husband lived together in her home country but never shared a residence in the US? Will USCIS find her eligible for a VAWA self-petition?

- Yes
- No
- Not sure

Bonus question: What’s the reg?

2nd bonus question: How does that compare to the statute?
POLL

- What if Sarah remarries while her VAWA self-petition is pending? Will USCIS still consider her eligible for a self-petition?
  - Yes
  - No

Bonus question: What’s the reg?
2nd bonus question: How does that compare to the statute?
CASELAW: What is it?

- Caselaw = court’s interpretation of statute (or regs)

- Caselaw also = The Law
  - But only published cases
  - Only certain types of cases will have caselaw
  - Generally very little binding caselaw for Us, Ts
    - A little more for VAWAs, I-751
Where does caselaw come from?

- Administrative v. Judicial case law
- Makers of immigration caselaw:
  - Administrative Appeals Office (AAO)
  - Board of Immigration Appeals (BIA)
  - Federal Courts (district court or circuit court)
  - Supreme Court

- What’s missing?

- Where would U and T visa caselaw come from?
Where do I find caselaw?

- **Legal databases**
  - Westlaw/Lexis: AAO, BIA, all state and federal cases (published and unpublished)
  - Immigrant and Refugee Appellate Center — Unpublished BIA case index by subject (subscription)

- **Books**
  - Kurzban, Immigration Law & the Family, other immigration law treatises

- **Internet search**
  - Hit or miss, can’t tell if it’s current
Where to find caselaw, cont.

- **Government websites**
  - **AAO:**
    - **Unpublished:**
    - **Adopted:**
  - **BIA (published):**
    - https://www.justice.gov/eoir/ag-bia-decisions
How do I find AAO cases?

  - Boolean connectors: “and”; “or”; “not”; etc
  - Or by form, then date (no keyword search)
    - Good if you already have date of decision and just need to see opinion

- Not binding, but can be helpful for understanding USCIS interpretations
Other sources

- USCIS Form Instructions
  - 8 CFR 103.2(a)(1) – instructions incorporated into regulations by regulation

- Agency Policy Memos
  - ASISTA website – by case type
  - USCIS: https://www.uscis.gov/legal-resources/policy-memoranda
  - EOIR: https://www.justice.gov/eoir/oppm-log
  - Developed by agency itself to provide interpretations of law/regs and operating guidance to agency staff
Other sources: Practice Manuals

- USCIS Policy Manual and Adjudicator’s Field Manual
- Operating guidance for USCIS officers
- Slow transition from AFM to Policy Manual
- Some parts redacted
Practice Manuals, continued

- AAO Practice Manual

- Immigration Court Practice Manual
  - [https://www.justice.gov/eoir/office-chief-immigration-judge-0](https://www.justice.gov/eoir/office-chief-immigration-judge-0)

- BIA Practice Manual
Foreign Affairs Manual (FAM)

- FAM is Department of State manual for consular officers
  [https://fam.state.gov/FAM/FAM.aspx?ID=09FAM](https://fam.state.gov/FAM/FAM.aspx?ID=09FAM)
- Describes visa requirements and processing, interview process, and agency interpretation of some statutes
  - 9 FAM [+section]
  - Generally organized by Nonimmigrant visas (NIV) and Immigrant visas (IV)
    - See, e.g., 9 FAM 402.6 (T, U, and S visas)
  - Also has keyword search
Your U-3 client goes for her consular interview, and the officer asks her about the U-1’s qualifying crime and helpfulness to law enforcement. The U-3 doesn’t know the answers and the visa is denied.

How would you argue that the denial was incorrect? That the officer’s questioning was inappropriate? What sources would you use to support your argument?
Legislative History

- Congress may state in the law what its goals are
  - E.g., U purpose; VAWAs can overcome reinstatement
  - Also see conference reports
  - Should be persuasive if agency action/interpretation is contrary to Congressional intent

- Records of Congressional debates and speeches may demonstrate Congress’s intent in creating a law
  - Helps to make sense of ambiguous language
    - E.g., Exceptional circumstances for VAWA motions to reopen
How to find Legislative History

- Look to Congressional Record
  - [https://www.congress.gov/congressional-record](https://www.congress.gov/congressional-record)

- Need additional info to locate the record, such as:
  - Citation for the law for which you are seeking the record
    - See USCIS.gov version of INA for footnotes with citations to Public Laws
  - Date on which debate/conference report was passed
Foreign Law

- Most common in questions of marriage and adoption, i.e., establishing qualifying relationship

- Best source = family law of country in which marriage or adoption took place
  - Some not available online or in English
Sarah tells you that she was married before in her home country but that she was only 15. She never got a divorce but has consulted a family law attorney in her country who said the age of consent for marriage is 17, so it wasn’t a legal marriage.

What would you do?
How to Find Foreign Law

Options:
- LOC country guides – other secondary sources?
- Library of Congress “Ask a Librarian” service
  - https://www.loc.gov/rr/askalib/
- Law school libraries
- Expert, e.g. family law attorney from country in question

Other?
Takeaways

- Always do your own research
- In general, start with the statute
- Check if regs, policy memos, and caselaw are current
Thank you

- Amy Cheung
  - amy@asistahelp.org

- Technical Assistance:
  - Questions@asistahelp.org