



Intermediate & Advanced Caserounds

Presented by:

Laura Flores Bachman, Senior Legal Counsel

Cecelia Friedman Levin, Policy Director

Copyright © 2020 by ASISTA Immigration Assistance. All rights reserved. This product or any portion thereof may not be reproduced or used without express written permission from ASISTA Immigration Assistance. This project is supported by Grant No. 2017-TA-AX-K061 awarded by the United States Department of Justice, Office on Violence Against Women. The opinions, findings, and recommendations expressed in this document are those of the author(s) and do not necessarily reflect the views of the United States Department of Justice, Office on Violence Against Women.

Overview

- Troubleshoot complex issues that arise in your VAWA and U visa cases
- Identify options available to address these issues

Today's presentation

- Very interactive
- Based upon questions and concerns participants raised during registration

Fee Waivers

Preparing Fee Waivers

- Christine is eligible to file for a U visa. She hasn't been working since November 2019.
- She gives you her son's medicaid card, her bank statement, and her W-2 from her old job, and her 2018 tax forms.

Poll: What do you submit?

- A sworn declaration outlining her income and expenses and why she's unable to pay.
- An I-912 Form with a copy of her son's Medicaid card, and her most recent W-2.
- An I-912 Form with her Medicaid card, recent W-2, last tax return, declaration from her, declaration from her counselor.
- Other

Fee Waivers

- You file a U visa adjustment with a fee waiver that was filed two weeks before your client's U visa expired. You receive a denial of the fee waiver from USCIS a week after the visa's expiration.

What are your options?

- File I-539 and re-file I-485 with fee or new fee waiver
- File I-290 Motion to Reopen with new fee or fee waiver
- File I-539 first, get receipt #, then refile I-485
- I've no idea.

Fee Waivers: What's going on?

- Changes to I-912 Fee Waiver Form, not yet in effect
- 2011 Fee Waiver Guidance Still Applies (For the moment)
- USCIS must accept:
 - Applicant-generated fee waivers
 - Consider all three criteria
 - One I-912 for a family unit

Practice Pointers for Fee Waivers

- Document, Document, Document
- Clear Roadmap/Index of Supporting Documents
- Get in applications early

VAWA Questions

Holding in abeyance

- Luisa filed a one-step application with her spouse Taylor. Luisa later flees the house with her two children after he was abusive to her and the children. She later meets with you and files a VAWA self-petition. You ask the local USCIS District Office to hold the underlying I-485 in abeyance, and they refuse.

Poll: What are your options?

- Re-file another I-485
- Send a letter asking for the adjustment interview to be rescheduled, invoking 8 USC 1367 protections
- Take it up the chain of command at District Office
- Ombudsman inquiry/ASISTA liaison
- Other

One-Step to VAWA

Victoria is the beneficiary on an approved I-130 (based on marriage to USC). She later filed an I-485 and I-601 for misrepresentation which was denied. She filed a I-290B which is still pending. You subsequently are retained for her VAWA case and are planning on filing the I-360 as soon as possible.

What do you do about the pending 290B for the old adjustment?

What are your options?

- Put your G-28 on the 290B application and just supplement the existing filing with information about the VAWA case.
- Re-file a new I-485 and I-601
- Both
- Other

Emotional abuse

- Joy is married to Phillip, a U.S citizen for a two and half years, and they have an 8 month old child.
- He is constantly calling her names, and insulting her, including in front of his friends and family. He grabs her phone away if he sees her trying to text or call her friends, calling them a bad influence. He doesn't let Joy have access to any of the bank accounts and treats her like a servant in the home, often saying that if she doesn't do all the cooking or cleaning, that he could always call ICE to have her deported, and that she'd never see their baby again.

Poll: Is Joy VAWA eligible?

- Yes
- No
- Unsure

Extreme Cruelty: *Hernandez v. Ashcroft*

- Non-physical actions rise to the level of domestic violence when “tactics of control are intertwined with the threat of harm in order to maintain the perpetrator's dominance through fear.”
- By defining extreme cruelty to encompass “abusive actions” that “may not initially appear violent but that **are part of an overall pattern of violence,**”
- *See 8 CFR 204.2(c)(1)(vi)*

Proving Extreme Cruelty

- Therapist/counselor letter, supporting affidavits
- Credibility important
- Not enough to say what happened, but how survivor felt when it did.
 - He would often call me names.
 - He would often call me names, saying I was worthless and disgusting. When he said these things, I felt like less than nothing, like I had no value at all.

Consular Processing

Your clients are VAWA derivatives and are being delayed in their visa processing because the Embassy keeps asking for I-864s (not I-864Ws) despite pointing out the FAM guidance.

What are your options?

- Ask for supervisory review
- Follow up with consulate
- Congressional liaison
- LegalNet inquiry

Intersections with Other Forms of Relief

Family cases

- Xavier is 15 years old and was seriously physically assaulted in the US by his father. He and his mother Zinora were helpful in the investigation and prosecution which resulted in a conviction against dad.

Poll: How would you file this case?

- Zinora as principal U via applicant , Xavier as derivative
- Xavier as principal U visa applicant, Zinora as derivative
- Zinora applies for U visa, Xavier for SIJS
- Xavier applies for SIJS
- Other

Case scenario

Gina came to the United States EWI in 2017 because her boyfriend was in the United States. Her boyfriend became physically and sexually abusive, and forced her to work at his uncle's restaurant and would take her pay.

You apply for a T visa, you get an RFE saying that what Gina endured was domestic violence and not trafficking.

Poll: How do you respond?

- They're right: A U visa would be a better option
- Respond to RFE focusing on elements of trafficking (force, fraud, coercion)
- Other

Domestic Violence & Trafficking

- Was there grooming?
- Define the trafficking relationship
- Focus on trafficking details
- Bring in any possible third party

U visas

Requests for Evidence

- Your client was arrested but never charged with shoplifting. You disclose this arrest on the I-918 and later receive an RFE asking for police reports and relevant documents. You do not get an RFE on the I-192.
- How do you frame this?

Inherited cases

You inherit a U visa case that is still pending with VSC, and discover the I-192 is incomplete. What are best approaches for capturing missed grounds of inadmissibility while this is still pending?

Poll: Do you

- Submit an amended I-192 with the missing information, plus any supplemental material
- Wait for an RFE
- Other

Catch all language:

- Poll: Is “catch all” language on the I-192 sufficient to waive all potential grounds of inadmissibility?
- Yes
- No
- Huh?

Incomplete Information at Time of Filing

- What if you are approaching a deadline but don't have all the information you'd like to for the case?

U visa Adjustments

Your U visa client as submitted an Adjustment of Status Application. USCIS (Vermont Service Center) has confirmed receipt date, one day after Applicant's U Visa Status ended.

Is this going to be a problem?

Calculating Time

8 CFR 103.2(a)(7)

Benefit requests submitted. (i) USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.

Filing date v. receipt date

Denials

You represent a U visa holder and her 3 children. Her U visa was denied because of a discretionary denial of her I-192. You believe this is in error and want to file an appeal.

Poll: What do you appeal?

- The I-918 denial
- The I-192 denial
- Both

Best Practice

- File the I-290B based on the form denied on the merits.
- File at the location listed on the denial notice (contact ASISTA if there's a question about this)
- List ONLY ONE receipt number on the 290B
- Every derivative needs their own 290B application
 - The derivative should list the receipt # of their own I-918A on the 290B

Other questions?

Thank you!

Cecelia Friedman Levin: cecelia@asistahelp.org

Laura Flores Bachman: laura@asistahelp.org

For Individual Technical Assistance:

http://www.asistahelp.org/en/technical_assistance/

Support ASISTA:

[CLICK HERE TO DONATE](#)



www.asistahelp.org