



# Strategies for Preparing Effective Principal and Corroborating Affidavits in U and VAWA Cases

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# Objectives

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- By participating in this webinar, you will be better able to:
  - ▣ Identify characteristics of a strong affidavit
  - ▣ Assess effectiveness of principal and corroborating affidavits
  - ▣ Guide affiants in writing affidavits

# Why Do Affidavits Matter?

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- Evidence for your case
  - ▣ Required for U and T visa principal petitioner
  - ▣ Not required for VAWA self-petition or I-751 petition/waiver
    - Can you prove your case without affidavit? What other evidence do you have?
  - ▣ Under “any credible evidence” standard, petitioner’s affidavit alone *can* establish eligibility as long as other documentary requirements are met
    - Especially useful in T visa, VAWA self-petition, and I-751 domestic violence waiver cases where extrinsic evidence not available



# What Can Affidavits Do?

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- Affidavits can:
  - ▣ Frame the case
  - ▣ Connect the dots
  - ▣ Fill in the blanks
  - ▣ Explain affiant's point of view
  - ▣ Witness/corroborating affidavits can bolster credibility
  - ▣ Character references can address discretionary issues
  - ▣ Reports from medical/social service providers can support credibility, show how client meets elements



# When to Submit an Affidavit

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- U visa:
  - ▣ Principal petitioner must submit signed statement “describing the facts of the victimization.” 8 CFR 214.14(c)(2)(iii).
- T visa:
  - ▣ Principal petitioner must submit “signed statement describing the facts of the victimization and compliance with any reasonable law enforcement request (or a basis for why he or she has not complied) and any other eligibility requirements in his or her own words.” 8 CFR 214.11(d)(2)(i).



# When to Submit an Affidavit, cont'd

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- VAWA self-petition:
  - ▣ Not required, but useful for showing good faith marriage, battery/extreme cruelty, and good moral character, as well as inadmissibility waiver eligibility (for AOS), and other elements for which extrinsic evidence is lacking
- I-751 waiver:
  - ▣ Not required, but useful for showing good faith marriage, battery/extreme cruelty

# Format

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- Few requirements from USCIS
- Must be signed
- Can be notarized for formal affidavit, but not required
- Numbered paragraphs can aid organization of topics and citation of record in cover letter and later filings
- Headings can aid thematic organization
- Spaces between paragraphs and keeping paragraphs on-topic can aid readability

# What Should an Affidavit Contain?

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- Affidavit should always be in affiant's own words
- Role of attorney/accredited representative:
  - ▣ Help affiant understand purpose of affidavit and what type of content is important
  - ▣ Organize and clarify content
  - ▣ Main approaches: (1) Attorney helps affiant draft affidavit through interviewing v. (2) Affiant drafts own affidavit with guidance from attorney
  - ▣ Factors: affiants' literacy skills and level of understanding, resource limitations



# Content of Affidavit, cont'd

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- Purpose of every affidavit in U/T/VAWA/I-751: to show principal's eligibility for the immigration benefit they are seeking
  - ▣ Focus on eligibility requirements and discretion (if benefit is discretionary)
- Each affidavit should be tailored to what affiant knows that is relevant to principal's eligibility
- Each affiant should explain *how* they know what they know, i.e.,  
“Although I did not see X hit Y, one day I saw Y crying and she had a red mark on her face. I asked her what happened, and she said X had slapped her” versus “X hit Y many times.”



# Content of Affidavit, cont'd

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- Should contain idiosyncratic detail
  - ▣ If affidavit sounds like anyone could have written it, it will sound canned = not credible
  - ▣ May need to probe for additional detail

# What Should an Affidavit Not Contain?

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- Irrelevant details
  - ▣ When reviewing affidavit, for every fact, consider whether it relates to one of the eligibility requirements or discretion
  - ▣ If not, is it particularly helpful in another way (e.g., explaining motivations, showing principal's point of view, providing background)?
- Legalese
  - ▣ Affidavits should always be written in affiant's own words
  - ▣ Do not use terms of art, such as “substantial abuse,” “good moral character,” “extreme cruelty”
  - ▣ Limited exception if affiant is attorney



# Who Should Submit an Affidavit?

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- Principal:
  - ▣ Required for U/T principals
  - ▣ Optional but helpful for self-petitioners, I-751 petitioners
- Derivative: If derivative must satisfy own eligibility requirements and lacks extrinsic evidence
- Witnesses: If they can corroborate account, provide other evidence
- Service providers: DV counselors/other mental health providers, medical providers if they can corroborate account and/or address other eligibility requirement

# Affidavits for Principals

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- Must address any topics required by regulation, e.g, U and T visa
- Can be very helpful to address all eligibility criteria, particularly any that lack "systems" evidence

# What's More Convincing?

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- Joint residence for self-petitioner:
  - X and I lived together off and on for 8 months. We didn't have enough money for our own place, so we bounced around to different relatives' or friends' houses, and there were a couple weeks we were at a motel.
  - X and I lived together off and on from January to August 2018. We didn't have enough money for our own place, so first we spent about a month and a half at X's mom's place at [address] and were living in her basement apartment. It's set up as a separate unit with its own kitchen and bathroom and a separate entrance, so it was like we were living on our own. But X got into an argument with his mom and she kicked us out. After that, we went to my friend S's house at [address] and crashed on her couch for a week, but it was uncomfortable because the couch was just in her living room and we didn't have any privacy.

# What's More Convincing?

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- Substantial abuse:
  - ▣ I got a protection order to keep X away from me and the kids, but the day after, X texted me and said he wanted to talk. I was scared about what he would do, so I called the police and they arrested him.
  - ▣ X had attacked me many times during our relationship. Once, he gave me a black eye for asking him not to drink so much. Another time, he grabbed me by the hair and dragged me out of a party because he thought I was flirting with someone else. He always told me there was nothing anyone could do to stop him. When he violated the protection order, I thought maybe he was right, but I hoped that the police would finally help me. Now that X can't get to me or my kids, I feel safer, but I still have nightmares about him, and sometimes, I think I see him at the store or on the street even though I know it's not him.



# Corroborating Affidavits

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- Does third party have first-hand knowledge of any facts relevant to eligibility requirements?
- If not first-hand knowledge, how did they find out?
- Should explain:
  - ▣ Who they are
  - ▣ How they know the principal and for how long
  - ▣ What they know
  - ▣ How they know it



# What's More Convincing?

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## □ Good Faith Marriage:

- Susy and John were a perfect couple. They were very happy together, and I know Susy loved John very much. I was shocked to hear that John had been treating Susy badly. I know that Susy married John because she wanted to be a family with him.
- I first heard about John around 2007 when I was visiting Susy and she told me she had started seeing someone new. Susy seemed giddy when she told me about him and was smiling the whole time. She later introduced me to him at a friend's party, and I thought they seemed happy. They stayed close to each other the whole night and were holding hands a lot. When Susy told me they were getting married, she said she was excited because they had talked about having a child soon.



# Character References

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- Can be useful to address discretionary issues
- Especially helpful if witness is aware of petitioner's criminal history or immigration violations but not required
- Depending on what witness knows, could address:
  - ▣ Contributions to the community
  - ▣ Helpfulness to friends/neighbors
  - ▣ Role in supporting family
  - ▣ Remorse/rehabilitation
  - ▣ Lack of danger to community



# What's More Convincing?

- Monica is a respectable woman, a good friend, and a loving mother. I can honestly vouch for her good character, and I hope USCIS grants her a green card.
- I have known Monica for 4 years. We met when we lived in the same apartment complex and our daughters attended the same school. I often saw Monica tidying up the building hallways and sidewalk around our complex even though she was just a tenant and no one was paying her to do that. I also saw her waiting at the bus stop every morning with her daughter, and her daughter always had her hair braided and her clothes neat and clean. Monica told me that she had to work two jobs to support her daughter, but she never complained.

# Reports from Service Providers

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- Mental health providers do not need to be psychologists. DV counselors can even be more credible in explaining why facts constitute DV or what kind of mental abuse DV victim suffered
- Typically write report on letterhead
- Should explain their training/expertise in assessing DV and mental health, how they assessed petitioner, summarize facts, explain why those facts show DV/mental abuse, explain any diagnosis and treatment
- Should not make statements outside their knowledge, i.e., if counselor is not knowledgeable about availability of mental health treatment in El Salvador, should not say “Petitioner will not be able to access treatment in El Salvador”

# Takeaways

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- Quality over quantity!
- Affidavits should be in affiant's own words
- Affidavits should focus on eligibility requirements and discretion and fill in blanks from “systems” evidence
- If principal is submitting affidavit, adjudicator should be able to read principal's statement and understand why she is eligible

# Thank you!

- For individual technical assistance:  
[http://www.asistahelp.org/en/technical\\_assistance/](http://www.asistahelp.org/en/technical_assistance/)
- To get on our list serves (U litigation/VAWA Experts/VAWA Updates), email [questions@asistahelp.org](mailto:questions@asistahelp.org)



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