



IMMIGRATION RELIEF FOR VICTIMS OF CRIME: A LOOK AT U VISAS

This Project was supported by Grant No. 2016-WR-AI-0029, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program 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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Goals



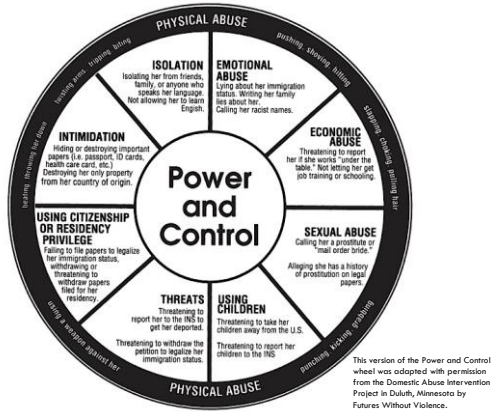
By participating in this session, you will be better able to:

- Identify requirements of a U visa;
- Assess how best to help immigrant survivors through this process
- Discuss emerging issues in policy and practice that would affect U visa applicants

Hypothetical: Patricia



- Patricia entered the United States in 2010 with her husband and two young children.
- She works at a restaurant in Bellevue. She was recently raped by her supervisor. He said if she called the police, then he would call ICE because she is working without documents and she would be separated from husband and her two children.



U Visas

U Visas

- Created in 2000 as part of the Victims of Trafficking and Violence Prevention Act
- Dual Purpose:
 - Strengthen the ability of law enforcement to detect, investigate and prosecute criminal activity.
 - Offer protection to victims in keeping with humanitarian interests of the United States.

Overview



- U visa benefits found in the law at Section 101(a)(15)(U) of the INA

- 10,000 visas available annually
 - Known as "U visa cap"
 - Cap met every year since 2010
 - Waitlist

U visa Requirements



- Suffered substantial physical or mental abuse

- Victim of Qualifying Criminal Activity

- Survivor is, was, or could be helpful to law enforcement, prosecutors, a judge, or other authority in the investigation OR prosecution of the crime

- Crime occurred in US or otherwise violated US law

- Be admissible/qualify for a waiver based upon the national and public interest

Substantial Abuse



- Physical injury or harm

- Emotional or psychological harm or impairment

- Factors considered

Who is a victim?

Victims

- Direct
 - Bystander
- Indirect

Derivatives: Certain family member can receive benefits as well

- For Victim over 21: children, spouses
- For Victim under 21: children, spouse, parents, siblings under 18
- VAWA 2013- "age out protection"
- Cannot extend benefits to abuser

U Visa Crimes

Abduction	Hostage	Prostitution	Unlawful criminal restraint
Abusive Sexual Contact	Incest	Rape	Other related crimes
Blackmail	Involuntary Servitude	Sexual Assault	*includes attempt, conspiracy or solicitation
Domestic Violence	Kidnapping	Sexual Exploitation	
Extortion	Manslaughter	Slave Trade	
False Imprisonment	Murder	Stalking	
Female Genital Mutilation	Obstruction of Justice	Torture	
Felonious Assault	Peonage	Trafficking	
Fraud in Foreign Labor Contracting	Perjury	Witness Tampering	

Hypo:

- Patricia's husband Simon tells her to call the police after the assault, even though she is afraid to do so. She calls the police and she makes a report. Her supervisor is arrested. Patricia cooperates with the persecutors and both she and her husband give victim impact statements.

Helpfulness

- Investigation OR Prosecution of Crime
 - Detection
 - Investigation
 - Prosecution
 - Conviction
 - Sentencing

- No statute of limitations
- Does NOT have to result in conviction

U visa Certification

- Which Agencies Can Certify?
 - Federal, state or local police or sherriff's dept.
 - Federal, state or local prosecutors
 - Federal state or local judges
 - Federal or state Dept. of Labor
 - Other Investigative Agencies: CPS, EEOC,NLRB

- Who can Certify
 - Head of Certifying Agency
 - Any person in a supervisory role who is specifically designated by the head of the agency to sign.
 - A Federal, state, or local judge.

U visa certifications

- Essential to U visas, cannot file without one

- Certify 3 elements:
 - Qualifying Crime occurred
 - Applicant was, is, or will be helpful
 - Violated U.S. Law

Waivers of Inadmissibility

- Standard:
 - whether it is in "national or public interest" to grant waiver
 - grounds of inadmissibility based on being a Nazi or genocide perpetrator cannot be waived
 - Discretionary

- Adjudication trends

- More than applicant or family interest to remain in the United States, but what is the benefit to community?

Application Process

Hypo continued

- Patricia receives a certification from the police department certifying her helpfulness in the investigation of rape.

- Who could we include in Patricia's application?

U visa processing



Current Processing time: 46—46.5 months (nearly 4 years)

Case Processing

- First in, first out
- Cases filed at Vermont Service Center-Humanitarian Division
- Some of oldest cases transferred to Nebraska Service Center
- Waitlist: Cases filed Nov 2014-early 2015
- U grant: Cases filed up to October 2014

U visa Waitlist

Benefits of U visa

- 4 year work authorization
- Family reunification
 - Includes derivatives abroad who can enter US
- The ability to adjust after 3 years continuous presence

Benefits of Waitlist

- 2 year work permit under deferred action status
- Family members abroad-no designated path to entry*
- Time with deferred action does not "count" toward accrual of continuous presence to adjust

Assisting Survivors

Law Enforcement

- Create U visa certification policies
 - Head of Division can designate a supervising certifying official
 - Should be memorialized
 - Transparency in process and timing
 - Provide methods for appeal
- DHS Law Enforcement Certification Guide
- Incorporate into community engagement

Advocates:

- Engage in community outreach so they know services are accessible
- Become familiar with forms of survivor-based immigration relief;
- Provide referrals to experienced advocates and attorneys who can fully screen and apply for immigration benefits.

Improving Access

- Assist in documenting history of abuse
 - Trauma-informed approach

- Courthouse accompaniment and accompaniment to USCIS appointments

- Provide enhanced safety planning

- Ensure meaningful language access

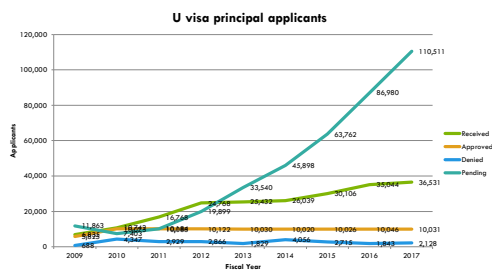
Confidentiality Obligations

VAWA, VOCA, or FVPSA funding recipients

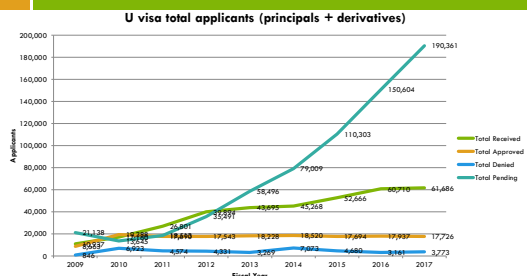
- Cannot Discriminate
- Must provide services to immigrant and refugee victims
- Cannot disclose personally identifying information **UNLESS**
 - Release
 - Order
 - Required by law
- Be aware of difference between DHS issued warrant vs a Court-issued warrant (e.g. signed by judge)
- Cannot enter if 1) Document is not a warrant; 2) If it is not signed by a judge; and 3) If it doesn't name your facility

Updates: Policy & Practice

State of the U visa program



State of the U visa program



Source: USCIS U visa Dataset Fiscal Year 2017: 4th Quarter

Current numbers

- In 2017, reported 60 adjudicators working on U visa program.
 - More?
- Current numbers pending
 - 122,309 PRINCIPAL applications pending
 - 208,813 total (including derivative family members)

New USCIS Policy Memos

- Updated Guidances on Issuances of Notices to Appear
 - Expands cases in which USCIS will issue NTA for purposes of starting removal proceedings
 - Will have an effect on survivor-based filings

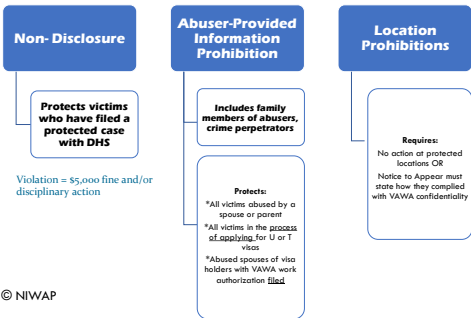
- Updated Guidance on Issuances of Request for Evidence (RFE) and Notices of Intent to Deny (NOID)
 - Designed to combat skeletal filings
 - If cases don't initially meet requirements, can be denied instead of issuing RFEs.
 - Effective September 2018

Whether or Not to File

- Hard to give concrete advice
 - No guarantees

- Advise clients of specific and general risks
 - Inadmissibility issues
 - Criminal history
 - Immigration violations
- Is the underlying U strong?
- Does the client have other options?
- Memorialize conversations about options and decisions made

VAWA Confidentiality Prongs



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Location Prohibitions under VAWA Confidentiality

Enforcement actions are not to be taken at the following locations unless ICE can certify in writing it complied with VAWA Confidentiality provisions

- Shelter
- Rape Crisis Center
- Supervised Visitation Center
- Family Justice Center
- Victim service provider or program
- Community based program
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

Resources

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities:
www.casadeesperanza.org and www.nationallatinonetwork.org

ASISTA Immigration Assistance:
www.asistahelp.org

Tahirih Justice Center:
www.tahirih.org

Asian Pacific Institute on Gender-based Violence:
www.api-gbv.org

National Immigrant Women's Advocacy Project (NIWAP)
<http://niwaplibrary.wcl.american.edu/>

Thank you!