

U VISAS T VISAS VAWA

**Protection for immigrant children and their families
under the Violence Against Women and Trafficking
Victims Protection Acts**



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Who is CAIR Coalition?

We are the only non-profit in the DC metropolitan area solely dedicated to providing legal services to those detained by immigration in Virginia and Maryland.

Our three programs are:

- ❑ Adult Detention Program
- ❑ Detained Children's Program
- ❑ Virginia Justice Program



Forms of Relief

- ❑ U visa
- ❑ T visa
- ❑ VAWA

Sources of law for U & T visas, VAWA

- Immigration and Nationality Act (INA)
- Violence Against Women Act of 1994 (VAWA)
- Victims of Violence and Trafficking Protection Act of 2000 (VTVTPA)
- Trafficking Victims Protection Reauthorization Act of 2008
- Trafficking Victims Protection Reauthorization Act (TVPRA within VAWA), (2013)
- Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002)
- USCIS Memoranda
- USCIS Administrative Appeals Office decisions

U Nonimmigrant Status (U Visa)

INA 101(a)(15)(U)

U visa

- Provides immigration protection to victims of certain types of crimes
- Congress wanted to aid law enforcement in investigating a prosecuting crime by providing a way for alien victims to remain in the U.S. to assist in an investigation or prosecution.



Eligibility Requirements

- In order to be eligible for a U visa a victim must:
 - ▣ Be a victim of a qualifying criminal activity
 - In rare cases a witness of a qualifying crime
 - Must have occurred in the U.S. or violated U.S. law
 - ▣ Have suffered substantial physical or mental abuse as a result of the crime
 - ▣ Possess credible and reliable information concerning criminal activity
 - ▣ Have been helpful, is being helpful, or is likely to be helpful to law enforcement in investigation or prosecution of crime
 - ▣ Admissible (waiver available)

What crimes qualify?

- ❑ Rape
- ❑ Torture
- ❑ Trafficking
- ❑ Incest
- ❑ Domestic Violence
- ❑ Sexual assault
- ❑ Abusive sexual conduct
- ❑ Prostitution
- ❑ Sexual exploitation
- ❑ Female genital mutilation
- ❑ Being held hostage
- ❑ Peonage
- ❑ Abduction
- ❑ Involuntary servitude
- ❑ Slave trade
- ❑ Kidnapping
- ❑ Unlawful criminal restraint
- ❑ False imprisonment
- ❑ Blackmail
- ❑ Extortion
- ❑ Manslaughter
- ❑ Murder
- ❑ Felonious assault
- ❑ Witness tampering
- ❑ Obstruction of justice
- ❑ Perjury
- ❑ Stalking* (VAWA 2013 Reauth)
- ❑ Fraud in foreign labor contracting* (VAWA 2013)

Who is a victim?

- Direct victim
 - ▣ Direct and proximate harm
 - ▣ Bystanders who suffer unusually direct injury

- Indirect victim
 - ▣ Certain family members if direct victim
 - Deceased through murder or manslaughter; or
 - Is under 21 and incapacitated or incompetent
 - ▣ Still have to meet other U visa requirements

Substantial Mental or Physical Abuse

- Case-by-case analysis
- Factors considered by USCIS include:
 - ▣ Nature of injury inflicted
 - ▣ Severity of perpetrator's conduct
 - ▣ Severity of harm suffered
 - ▣ Duration of infliction of harm
 - ▣ Extent of permanent or serious harm to victim's
 - Appearance
 - Health
 - Physical or mental soundness

Corroborating Substantial Harm

- “Any credible evidence” standard
 - ▣ Personal statement of applicant
 - ▣ Supporting affidavits from those with personal knowledge
 - ▣ Health records – medical, hospital, mental health
 - ▣ Photos of any visible injuries
 - ▣ School records
 - ▣ Newspaper articles
 - ▣ Relevant birth or death certificates
 - ▣ Records from non-certifying agencies, court orders

Working with child victims

- Focus in personal statement on
 - ▣ Details of harm
 - ▣ Ongoing effects of harm on child
- Difficult for child trauma victims to consistently recall dates, times, & locations
- Consider using therapist or counselor during representation
- May assist child deal with renewed trauma of recalling past harm
- Doctors or therapists as expert witnesses to corroborate child's story

LEA certification requirements

- Possess information about the qualifying criminal activity.
- Have been, is being, or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.

LEA certification for minors

- If the application is under 16, incompetent, or incapacitated, information and certification requirements may be fulfilled by
 - Parent
 - Potential to qualify for U visa as indirect victim
 - Guardian
 - Next friend
 - Dedicated to best interests of petitioner
 - Can be guardian *ad litem* or social worker (child welfare)

What does “helpful” mean?

- Helpfulness to law enforcement can include
 - ▣ Making phone calls to police
 - ▣ Assisting during police questioning
 - ▣ Testifying in court
- Helpfulness does not require a prosecution or conviction to result from investigation
- Ongoing duty to cooperate
 - ▣ LEA can withdraw certification during application process, or USCIS can revoke U visa
 - ▣ LEA request must be reasonable

Certifying LEAs and Officials

- Federal, state, & local law enforcement agencies
- Federal, state, & local prosecutors
- Federal, state, & local judges
- Federal, state, & local family protective services
- Equal Employment Opportunity Commission
- Federal and state departments of labor
- Other agencies with criminal investigative jurisdiction
 - E.g., Homeland Security Investigations (HSI)

LEA certification practice tips

- USCIS Form I-918, Supplement B
 - ▣ Must be signed by agency head or designated certifier
 - ▣ Request signature in blue ink
 - ▣ Valid for 6 months from date of signature
- Research agency's certifying procedures
- Following initial outreach via phone and/or email, send written request
 - ▣ Include as much info as possible on crime & helpfulness
 - ▣ Consider including a completed Supplement B form

Benefits



- ❑ U visa derivatives:
 - ▣ Principal under 21 years: parents, children, spouse, unmarried sibling under 18 years
 - ▣ Principal 21 years or older: spouse and children
- ❑ Limited to 10,000 visas each fiscal year for victims, no limit for family members
 - ▣ Cap reached annually; deferred action for prima facie eligibility determination
- ❑ Eligible to work in the U.S.
- ❑ U visa is a 4-year visa and petitioner may be eligible to adjust status after 3 years of continuous presence in the U.S.

Broad inadmissibility waiver

- Yes/no questions on I-918 cover many of INA's inadmissibility grounds
- DHS may waive any ground of inadmissibility for U visa applicant if it would be in the national or public interest
 - ▣ Public charge automatically waived under VAWA 2013
 - ▣ Genocide, torture, extrajudicial killing not waived
 - ▣ Extraordinary circumstances required to waive violent/dangerous crimes or security-related grounds
- Waiver application on Form I-192
 - ▣ \$585 fee can be waived
 - ▣ If more than minor ground such as EWI or lack of valid passport, submit evidence of equities and rehabilitation

T Nonimmigrant Status (T Visa)

INA 101 (a)(15)(T)

T Visa

- Provides immigration protection to victims of human trafficking
- Congress wanted to aid law enforcement in investigating and prosecuting human trafficking by providing a way for alien victims to remain in the U.S. to assist in an investigation or prosecution.



Eligibility Requirements

- In order to be eligible for a T visa the applicant must:
 - Be a victim of a severe form of trafficking in persons
 - Be physically present in U.S. on account of the trafficking
 - Compliance with any reasonable request for assistance in a law enforcement investigation or prosecution of acts of trafficking
 - Exemptions: under 18 or unable to participate due to trauma
 - Suffer extreme hardship involving unusual and severe harm upon removal from the United States
 - Admissible (waiver available)

Severe form of Trafficking in Persons (Federal Definition)

- ❑ **Sex trafficking:** a commercial sex act induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- ❑ **Labor trafficking:** the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Examples of trafficking

- ❑ Drug Cartels forcing child to be a “mule”
- ❑ Working for little or no pay
- ❑ Forced or coerced work to pay off debt
- ❑ Prostitution, servile marriage or domestic relationship



Purpose and Means of Trafficking

- “Severe form of trafficking in persons” definition requires applicant to prove that both **purpose** and **means** of trafficking meet definition.
- Purpose
 - ▣ Sex trafficking → commercial sex act
 - ▣ Labor trafficking → subjection to involuntary servitude, peonage, debt bondage, or slavery
- Means
 - ▣ Sex and Labor trafficking → fraud, force, or coercion
 - Sex trafficking victims under 18 exempted from requirement

Purposes of labor trafficking

- Involuntary servitude
 - ▣ Any scheme, plan or pattern
 - ▣ Intended to cause someone to believe s/he would suffer serious harm or physical restraint
 - ▣ If fail to enter into or continue servitude
 - ▣ OR abuse/threatened abuse of legal process
- Peonage
 - ▣ Involuntary servitude based on real or alleged debt
- Debt bondage
 - ▣ Pledge of services as security for debt if
 - Value of services not applied toward debt, and
 - Length and nature of services not limited & defined

What constitutes force, fraud, or coercion?

□ Coercion:

- Threats of serious harm to or physical restraint against any person;
- Any scheme, plan, pattern intended to threaten serious harm or physical restraint for failure to perform act; or
- Abuse or threatened abuse of legal process

■ 22 U.S.C. § 7102(3)(A)-(C); 8 C.F.R. § 214.11(a)

□ Examples:

- Threats
- Fear and submission
- Disorientation – forced drug consumption
- Control
- Physical/sexual abuse
- Ability to come & go
- Debt
- Isolation

Smuggling v. Trafficking

	<i>Smuggling</i>	<i>Trafficking</i>
<i>Purpose</i>	Obtain illegal entry into the U.S.	Recruiting, transporting, harboring, providing, or obtaining persons by force, fraud or coercion for the purposes of exploitation.
<i>Consent</i>	Consent to be smuggled.	May or may not have consented, or initial consent rendered meaningless by coercive or abusive actions of the traffickers.
<i>Result</i>	Ends with arrival in the U.S.	Involves ongoing exploitation.

U.S. presence requirement

- Elements:
 - ▣ Physically present in U.S., U.S. territory, or port of entry
 - ▣ On account of trafficking
- Fulfill by showing:
 - ▣ Being subjected to severe form of trafficking
 - ▣ Recently escaped or liberated from scheme
 - No Clear Chance to Leave before LEA involvement
 - ▣ Past victim whose continued presence directly related to original trafficking (exit or entry included)
 - ▣ Permitted to enter U.S. to participate in investigation or judicial processes associated with trafficking

Cooperation with law enforcement

- Not required if victim under 18
 - ▣ or unable due to physical/psychological trauma
- Regardless of age, no certification required
 - ▣ But USCIS considers a discretionary factor
- However, submitting the LEA certification, USCIS Form I-914, Supplement B, provides primary evidence that
 - ▣ Applicant is victim of severe form of trafficking
 - ▣ Applicant complied with reasonable request for assistance from law enforcement

LEA cooperation practice tips

- Certifying agency must be federal LEA charged with detection, investigation, or prosecution of trafficking
 - ▣ E.g., U.S. Attorney's Office, DOJ, FBI, ICE, Diplomatic Security Service (DOS), U.S. Marshals
 - ▣ Natl Human Trafficking Resource Center connects victims & advocates with appropriate LEAs: 888-373-7888
- Secondary evidence if certification unavailable
 - ▣ Applicant statement on efforts to cooperate
 - ▣ Correspondence detailing efforts to obtain certification or provide assistance
 - ▣ I-914B or letter from local LEA
 - ▣ Police or court records, news articles, witness affidavits
 - ▣ ORR file**

Risks of cooperating with LEA

- Lack of control over how & by whom information is used
- Possibility of compelled testimony by victim
- Potential re-traumatization of client
- Risks to safety of child and child's family members
 - ▣ in U.S. and/or in home country
- Potential liability for past criminal or delinquent conduct

Continued Presence

- Only federal LEA can apply for Continued Presence for victim
- Permits victim to remain in U.S. while law enforcement investigation of trafficking pending
- Comes with one year of work authorization
 - ▣ Potentially renewable during pendency of investigation
- May also permit administrative closure, termination, or continuance of removal proceedings
- **Primary evidence applicant is victim of severe form of trafficking
- See 28 C.F.R. § 1100.35

Extreme hardship if removed from U.S.

- USCIS considers factors including:
 - ▣ Age & personal circumstances of applicant
 - ▣ Physical & mental fitness of applicant
 - ▣ Trafficking-related physical/psychological consequences
 - ▣ Impact of losing access to U.S. criminal justice system
 - ▣ Likelihood of legal/social penalization of victim at home
 - ▣ Likelihood of retaliation by trafficker(s)
 - ▣ Likelihood of re-victimization
- Also look at:
 - ▣ Country conditions (conflict in country, lack of services)
 - ▣ Expert witnesses

How can ORR help with UAC victims of trafficking?

- ORR has an Anti-Trafficking in Persons (ATIP) unit
- ATIP can certify someone as a victim of trafficking, rendering the person eligible for public benefits and services
 - ▣ Medicaid, food stamps, mental health services, foster care
- Minors don't need certification – ATIP eligibility letter sufficient
 - ▣ No bona fide T visa application required
- ATIP application for benefits can be submitted by ORR or child's attorney
- ATIP eligibility letters can be used as corroborative evidence when applying for T visa

Benefits

- T visa derivatives:
 - ▣ Principal under 21 years: parents, children, spouse, unmarried siblings under 18 years
 - ▣ Principal 21 years or older: spouse and children
 - ▣ T-6 category: children of derivatives facing retaliation
- 4-year visa; applicant may be eligible to adjust after 3 years of continuous presence in the U.S.
 - ▣ or when investigation/prosecution complete
- No numerical limit for family members (5,000 annual cap for principals has never been reached)
- Eligible to work in the U.S.
- May be eligible for federal refugee benefits

Broad inadmissibility waiver

- Yes/no questions on I-914 cover many of INA's inadmissibility grounds
- DHS may waive any ground of inadmissibility for T visa applicant if in the national interest
 - ▣ Public charge automatically waived
 - ▣ Terrorism, international child abduction, renouncing citizenship to avoid taxes not waived
 - ▣ Special consideration if caused by/incident to victimization
 - ▣ Exceptional circumstances required to waive criminal grounds not connected to victimization
- Waiver application on Form I-192
 - ▣ \$585 fee can be waived
 - ▣ If more than minor ground such as EWI or lack of valid passport, submit evidence of equities and rehabilitation



VAWA

Self-petition

Cancellation of removal

Battered spouse waiver

VAWA Self-Petition

- Requirements:
 - ▣ Spouse or child of a U.S. citizen or Lawful Permanent Resident (LPR)
 - ▣ Parent of adult U.S. citizen (over 21)
 - If spouse and now divorced from batterer, must submit VAWA within 2 years of divorce.
 - If spouse or child and batterer was deported based on domestic violence, must submit VAWA within 2 years of deportation.
 - ▣ Good Faith Marriage (for spouses only)
 - ▣ Resided with U.S. citizen or LPR spouse/parent
 - ▣ Battered or extreme cruelty by USC or LPR spouse or parent
 - Battery/extreme cruelty occurred in the U.S.
 - ▣ Currently present in the U.S.
 - ▣ Good Moral Character (waivers available)

VAWA Self-Petition, continued

- Derivatives:
 - ▣ Children may petition for VAWA derivative status based on parent's VAWA self-petition
- Time required to adjust status depends on—
 - ▣ spouse/parent's legal status and
 - ▣ if spouse/parent had already filed adjustment of status application

Battery and extreme cruelty

- Extreme cruelty akin to psychological harm
- Considered in context of victim's own history and attributes
 - ▣ i.e., the eggshell plaintiff
- Overall pattern of abuse
- Verbal threats
- Controlling/manipulative behavior
- Intent to harm may not be necessary

Good Moral Character

- Defined in the negative
 - ▣ See INA § 101(f)
- Good moral character barred if:
 - ▣ Habitual drunkard
 - ▣ Prostitution in 10 years preceding application
 - ▣ Commercial vice/gambling
 - ▣ Alien smuggling, polygamy
 - ▣ Conviction or Admission of certain criminal acts
 - ▣ False testimony to obtain immigration benefit
 - ▣ False claim to U.S. citizenship
- Possible waiver if connected to battery/extreme cruelty

VAWA Cancellation of Removal

- a.k.a. Special Rule Cancellation for Battered Spouse or Child, INA § 240A(b)(2)
- Requirements
 - ▣ Battery/extreme cruelty by USC/LPR spouse/parent
 - ▣ 3 years' continuous presence preceding application
 - ▣ 3 years' Good Moral Character preceding application
 - ▣ No criminal or security-related inadmissibility or deportability grounds
 - ▣ Not deportable for marriage, other immigration fraud
 - ▣ No aggravated felony conviction
 - ▣ Removal would cause extreme hardship to applicant or his/her child or parent

Foster care for minor victims of crime or trafficking

- Minors may be eligible for federal Unaccompanied Refugee Minors (URM) program
 - ▣ ORR-funded foster care and other appropriate placements and services
 - ▣ For UACs granted asylum, T visa, U visa, SIJS, or ATIP eligibility letter
 - ▣ Grants to 15 states to oversee 20 programs
 - ▣ State Refugee Coordinators contract with licensed foster care agencies to provide URM services, sometimes via state or county child welfare agencies

Thank you and good luck!

- You're welcome to access a free copy of the CAIR Coalition Practice Manual for Pro Bono Attorneys: *Representing Unaccompanied Immigrant Children* at <http://tinyurl.com/CAIRJuvManual>
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