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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justice AmeriCorps Training Dec. 9, 2014
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)
- 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 $\rightarrow$ commercial sex act
  - Labor trafficking $\rightarrow$ subjection to involuntary servitude, peonage, debt bondage, or slavery

- **Means**
  - Sex and Labor trafficking $\rightarrow$ 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

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

- 22 U.S.C. § 7102(3)(A)-(C); 8 C.F.R. § 214.11(a)
# Smuggling v. Trafficking

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


- Contact me with any questions:
  
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