

The Critical Role of Community Advocates in Immigration Cases

Northwest Immigrant Rights Project (NWIRP)

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OVERVIEW OF NWIRP

- Only organization providing comprehensive immigration legal services for low-income people in Washington State
- Focus primarily on direct legal services
- Also engage in: impact litigation, community education, & advocacy
- Four offices: Seattle, Granger, Wenatchee, Tacoma
- Assists with all immigration law issues



Agenda for Today

- Part 1—Recap of Legal Relief
- Part 2—Your Role as a Community Advocate
- Part 3—Declarations and Advocate Letters
- Part 4—More Hypotheticals/Discussion

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PART I

RECAP OF THE IMMIGRATION SYSTEM



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Forms of Immigration Relief for Survivors

- VAWA (I-360 self petition)
- I-751 (waiver)
- U Visa
- Asylum
- T Visa
- SIJS

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Violence Against Women Act (VAWA) I-360 Self-Petition

Offers protection for relatives of abusive U.S. Citizens (USCs) and Lawful Permanent Residents (LPRs, also known as green card holders).

“Relatives” of abusive USCs and LPRs include:

- Spouses
- Parents
- Children

If approved, petitioner can obtain LPR (green card) status without abuser’s assistance!

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VAWA Requirements

- Abuser must be USC or LPR
- Petitioners who are spouses of the USC or LPR must be either:
 - (i) married, or
 - (ii) divorced within past two years [\[important deadline!\]](#)
- * Does **not** require police to have been called
- * Does **not** require police reports
- * Does **not** require cooperation with law enforcement

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HYPO

Stephanie came over on a fiancée visa but ended up not marrying the guy she was engaged to, Steve. Stephanie then married Anthony, a naturalized US citizen, who gambles and drinks and beats her up. The police came and Anthony was arrested. Anthony was released on Personal Recognizance and has a misdemeanor assault charge pending. Anthony is a doctor and makes a lot of money. They have a disabled child. Stephanie is concerned that if he is convicted, Anthony will lose his job. She wants him to pay for the therapy their child needs. What can she do?

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I-751 Waiver—What Is It?

If the spouse of an abusive USC has a 2 year green card—making them a conditional resident—they can use the I-751 waiver to remove the conditions on their residency without the participation of the abusive spouse.

This waiver can be based on

- domestic violence,
- subsequent divorce,
- hardship in home country, and/or
- death of spouse.

[important deadline] waiver needs to be **filed** by 2 year card expiration date

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HYPO

Celine came to the US on a fiancée visa and married her husband Pierre. She got a two-year green card but it expired because her husband didn't take the steps to renew it. He has been beating her up and teaches their 2-year old Lulu to call her ugly names. Celine finally called the police and got a protection order. Now he claims she only called the police to improve her situation with ICE.

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U Visa

Grants relief to survivors of crimes who:

- Was victim of a crime
- Possesses information about the criminal activity
- Have or will provide ongoing “reasonable” assistance in the investigation or prosecution of the crime at federal or state level
 - If victim under age 16, a parent, guardian, or “next friend” may provide the assistance

Generally, the crime must have occurred in the United States or on US territory

Can be the direct or indirect victim of the crime



Which Crimes?

(General Categories)

- | | | |
|---|--------------------------------------|---|
| • Murder / Manslaughter | • Abduction | • Perjury |
| • Rape / Sexual Assault / Sexual Exploitation | • Unlawful Criminal Restraint | • Involuntary Servitude |
| • Abusive Sexual Contact | • Felonious Assault | • Hostage |
| • Prostitution | • False Imprisonment | • Witness Tampering |
| • Trafficking | • Kidnapping | • Slave Trade |
| • Incest | • Peonage | • Also attempts or conspiracy to commit any of these! |
| • Domestic Violence (<i>this includes protection orders!</i>) | • Stalking | |
| • Assault | • Blackmail | * Any similar activity to crimes on the list may be qualifying crime. Applies when the nature and elements are substantially similar to the statutory list (ex. video voyeurism > sexual exploitation). |
| • Female Genital Mutilation | • Extortion | |
| • Torture | • Fraud in Foreign Labor Contracting | |
| | • Obstruction of Justice | |



Who Benefits? U Visa Derivatives

- ▶ If principal applicant is under 21 years old, s/he can request derivative status for:
 - ▶ His/her parents
 - ▶ Spouse
 - ▶ Children (defined as those unmarried & under the age of 21)
 - ▶ Unmarried siblings under 18

- ▶ If principal applicant is over 21 years old, s/he can request derivative status for:
 - ▶ Spouse
 - ▶ Children (defined as those unmarried & under the age of 21)

- ▶ **Relationship must exist at the time I-918 is filed**

- ▶ Can't petition for family member who committed crime which established eligibility for U visa status (abuser can't benefit)

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HYPO

Sahar was the victim of a crime by a stranger. Sahar and her husband Ahmed are undocumented and married in 2014. She wants to petition for a U visa but it turns out her husband's divorce in their home country was not a legal divorce under that country's law in 2008. Ahmed did eventually get a legal divorce in 2012. Is her marriage in the US void? How can she include him in her petition for U visa?

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U Visa Deferred Action

Government can only grant 10,000 U Visas per year by statute.

Currently receiving U approvals filed in October 2014. USCIS Processing times are at October 18, 2014.

- **Conditional** approvals (Stuck at around June 2014)
 - Deferred action grant
 - Eligible to apply for employment authorization

Delays for U visa grants also mean delays for consular processing relatives abroad

No international travel on U deferred action or U visa

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Asylum

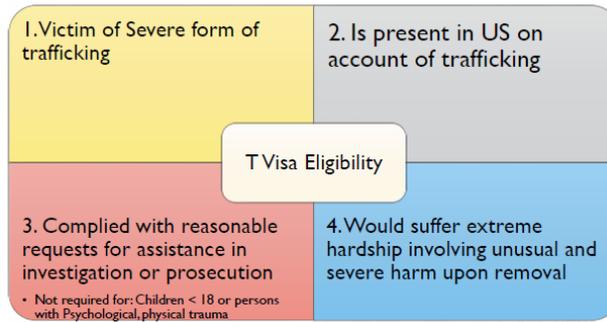
Protection for individuals who are unable to return to their country of origin because of persecution or a fear of persecution on account of their race, religion, nationality, political opinion, membership in a particular social group.

[important deadline] must file within one year of entry into the U.S. (some exceptions exist)

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T Visa

In large part, mirrors U visa in process/benefits.

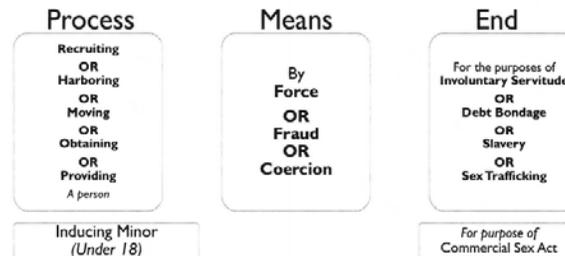


Credit: CAST, 2017



What is Trafficking?

3 Elements of Trafficking -22 USC § 7102(9)



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Cast



HYPO

Vicky married to a man who was not only physically and mentally abusive to her, he also forced her to sell sex to other men for profits. They lived in Ukraine and had 2 kids. In 2015, he brought her and the kids to the US under tourist visas, but the abuse was never ended. He continued beating her up almost daily and forced her to have sex with men for money. He never allowed her to go anywhere on her own or talk to anyone without his presence. They both went to the same ESL class at a community center. One day Vicky's teacher pulled Vicky aside to check on her well-being, the teacher told Vicky's husband that she was just offering Vicky information about employment. The next day, the husband told Vicky he already bought the tickets, and that he wanted the family to go back to Ukraine. He told Vicky because he couldn't get the tickets for the entire family to travel together, he decided to leave the US first and told Vicky and her kids to go the day after. After her husband left the US, Vicky and her daughters moved to another town and never want to go back to Ukraine. She wants to divorce with him and seek immigration options to stay in the US. What can you do to help her?

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Special Immigrant Juvenile Status (SIJS)

Children under 18 (21 in some circumstances):

- Who have been abandoned, abused, or neglected (this can often include inability to care for a child due to poverty) by one or both parents
- For whom reunification with one or both parents is not viable due to this abuse, abandonment, or neglect
- For whom it would not be in their best interests to return to their home country

State court case (dependency, criminal, non-parental custody, etc.) required.

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VAWA Confidentiality

VAWA Confidentiality and Victim Safety Provisions provide 3 types of protections to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking, and other U-visa-listed crimes. Specifically, VAWA:

1. Nondisclosure – Protects the confidentiality of information provided TO the Department of Homeland Security, Department of Justice, and Department of State by an immigrant victim in order to prevent abusers, traffickers, and perpetrators from using the information to locate/harm the victim.
2. Source Limitations – Stops immigrant enforcement agencies from using information provided by an abuser, trafficker, or perpetrator, a relative, or a member of their family, to take adverse action regarding the admissibility/deportability of an immigrant victim, regardless of whether the victim ever filed or qualifies for VAWA related immigration relief.
3. Enforcement Limitations – Prohibits enforcement actions at: DV shelters, victim services programs, family justice center, supervised visitation center, or courthouse if the victim is appearing in connection with a protection order case, child custody case, or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking.

Violation = \$5,000 fine and disciplinary actions.

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PART II

Your Role as a Community Advocate



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Working Hand-In-Hand With A Service Provider The Trauma-Informed Approach

1. Starting off with a warm referral
2. In-person introduction – attorney can arrange a meeting to introduce advocate to the client, or vice versa
3. Discuss each person’s roles, responsibilities, and expectations (of all three parties)
4. Teamwork – develop a work plan together (specifically for T and U applications): declaration, support, letter, additional evidence (who does what and its timeline)
5. Set clear boundaries with client (who to call when things come up)
6. Trust each team member is an expert in their own (sharing equal power and responsibility)
7. Remember: everyone is working toward the same goal; therefore, it is important to keep everyone on the same page and support each other to maximize the benefits for the client.

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HYPO

Tina and her abuser are both undocumented. Samuel assaulted her and is charged with a felony. The trial has been pending for over a year now. They have children and he puts \$500 into her bank account as informal child support. Tina asks me what will happen if he is convicted and goes to prison. Tina won't get the money from him anymore. What will happen to Tina? Will ICE come after her?

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What To Do If Detained by ICE?

- Do **NOT** sign documents without legal help – could waive important rights!
- After providing your name and asking to speak to an attorney, exercise your right to remain **silent**
- Contact attorney/legal services organization as soon as possible
- Some people may be eligible to ask for release on bond
- Implement safety plan

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What To Do If ICE Comes to Your Community Organization

- Ask for the officer's name, badge number, department.
- Do not give ICE permission to enter your organization – federal law prohibits this
- Do not share any client information with ICE, including confirming or denying whether someone is a client of your organization
- ICE must show a search warrant signed by a **judge** to enter your office without your permission (one signed by an "officer" is NOT sufficient)
 - Have them slip it under the door or place it against the window – do not open the door or window
 - Check the information is accurate (address, date, etc.)
- If they enter your organization without your consent, tell them: "I do not consent to you being here, please leave." "I do not consent to your search."
- Tell them there are vulnerable populations present.
- Contact your own legal counsel
- **Please call NWIRP.**



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Family Safety Plan

Detention may not happen to most families, but it's important to be prepared!

Prepare a plan of **who** will care for the client's children if parent(s) detained, and ensure they have the documentation they will need to do so.

More information and templates at: www.nwirp.org/resources/know-your-rights/

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PART III

Declarations and Advocate Letters

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DECLARATIONS

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Purpose of a Declaration

- Client's opportunity to demonstrate they meet the requirements for the relief they are seeking
- **Provide detailed account of the instance(s) of abuse and substantial harm; these are the most important parts of the declaration**
- **Provide detailed account of immigration and criminal history**
- Client's story which must be told in voice of the client
- Explain/address discrepancies in police reports or documentation submitted

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Formatting

- “Affidavit” Style is recommended (numbered paragraphs)
- Word document
- Spelling
- Quick Word Formatting
 - 1” margins
 - 12 pt. font
 - One topic per paragraph
 - Generally paragraphs must be no more than 6 or 7 sentences long
 - Use Word’s numbering instead of writing numbers out yourself.

“Are you trying to write a declaration?”



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Getting Started on Declarations

- Review documents like protection orders and police reports before meeting with clients—discrepancies must be explained
- Explain purpose of declaration to the client
- Declarations take time! Afford yourself multiple sessions
- Must be done with the client
- Accuracy of information is crucial
- Explanation of any discrepancies between declaration and other documents is crucial

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Content Structure

Domestic Violence based U, VAWA, I-751:

- Relationship with abuser: how did they meet?
- When did the abuse start?
- Explain details of the pattern of abuse and how it made them feel

U based on other crimes, T Visa

- Relationship to perpetrator: do they know them?
- Details of the crime/trafficking: what happened and when?

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Content Structure, *cont.*

- Detailed description of police contact (particularly the incident on which the U visa is based).
- If police were not contacted, include an explanation of why.
- Explain what happened when the police were contacted.
- How did they assist the police?
- Was the crime prosecuted? Did they assist with the prosecution?

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Content Structure, *cont.*

- How has the abuse affected them now? What are they doing to heal?
- Why do they fear returning to their country of origin?
- What are their future goals/aspirations? Why do they want status in the US?

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ADVOCATE LETTERS OF SUPPORT

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Purpose of Letters of Support

- Verifies client has received domestic violence and/or social services
- Describes client's healing process and severity of abuse
- Supports client's history of abuse via third party (you), especially if abuse is not reported to police

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Content

Introduction

- Start with a brief overview of the services your agency offers
- Describe your qualifications, including your title and how long you have worked at the organization
- State how long you have known/worked with the client and how they were referred to you
- Describe what specific services they have received from you and length of services

Provide a summary of client's journey and what they have disclosed to you regarding abuse suffered

- **Please do not repeat client's declaration verbatim**

Describe hardships client may face if forced to return to their country of origin

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Additional Notes

- Address letter(s) to “Dear Adjudicating Officer:” or “To Whom It May Concern:”
- Avoid general statements
- End letter with “I declare under penalty of perjury, that the information contained in this document is true to the best of my knowledge.”
- Provide an electronic draft of your letter of support to NWIRP before finalizing. It is important that there are no inconsistencies or errors.
- Once finalized, print with the organization’s letterhead, sign the letter in blue ink, and send the original copy to NWIRP and email PDF
- Send letter to NWIRP at the start of the case, advocate or subsequent advocates can edit or supplement later if necessary

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Part IV

More hypotheticals!



Fact Pattern

- Maria comes to your office for an intake. She says the father of her son has been making threatening phone calls ever since she left him. Her son and his father are both U.S. Citizens, but she is undocumented. Before she left, he used to beat her and threaten to kill her. Ever since she left him, he has been using their child to get back at her. She is nervous because of her immigration status, but feels she needs to stay in the country for her son. She also fears returning to her country because prior to entering the United States, she was threatened by gangs.

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What do you ask Maria?

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What type of immigration relief do you think she may qualify for?

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Who else would you refer Maria to?
What other legal issues do you see present in Maria's case?

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As a community advocate, how can you support Maria with her legal issues?

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The Importance of Self Care



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QUESTIONS & CONTACT INFO

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