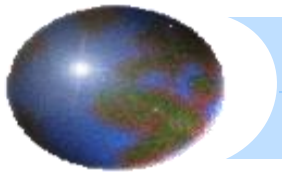


*Immigration Remedies for  
Survivors of Domestic Violence,  
Sexual Assault, and  
Human Trafficking*

Will Johnson & Anna Cushman  
Staff Attorneys  
Legal Aid of North Carolina

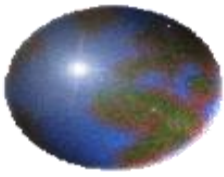
Presentation for  
Social Services Attorneys'  
Winter Conference  
February 25, 2022





# *Agenda*

- ✚ Mission of LANC-BIP
- ✚ Introduction to immigration remedies
  - ▣ U Visas
  - ▣ DSS Directors as Certifying Officials for Form I-918B
  - ▣ Violence Against Women Act Self-petitions
  - ▣ T Visas
- ✚ General Advice to Potential Clients
- ✚ Referrals to the BIP

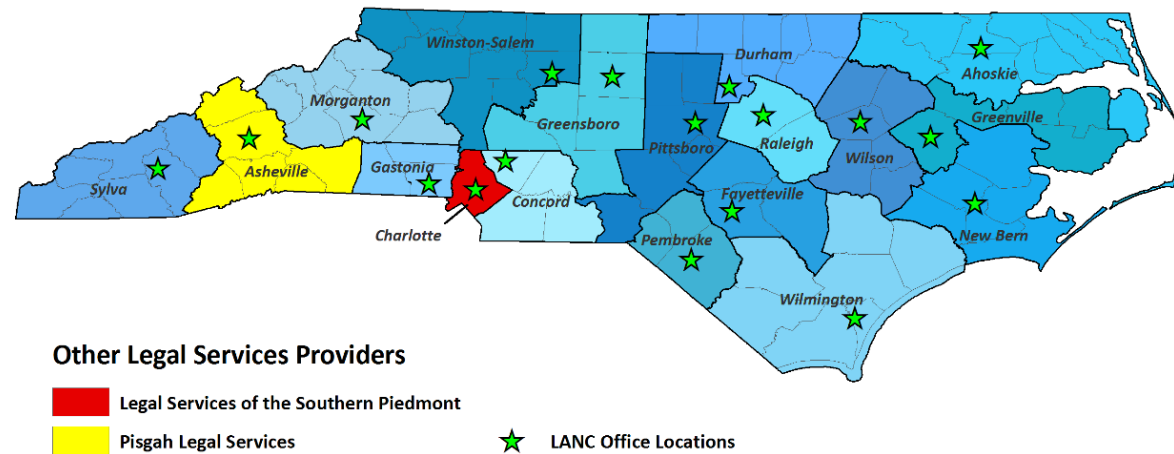


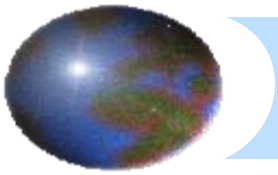
# Legal Aid of North Carolina

## Mission

- A statewide, non-profit law firm
- that provides free legal assistance
- in civil matters
- to low-income people
- in order to ensure equal access to justice
- and to remove legal barriers to economic opportunity

Legal Aid of North Carolina Service Areas





# *Legal Aid of North Carolina*

## Program Areas

Housing

Domestic Violence

Public Benefits

Education

Consumer Law

Employment

Community Economic  
Development

## Examples of Statewide and Regional Projects

Medical-Legal Partnership Program

Outreach & Enrollment for Coverage Under Affordable Care Act

Advocates for Children's Services

Farm Worker Unit, Human Trafficking Project

Domestic Violence Prevention Initiative

### ***Battered Immigrant Project***

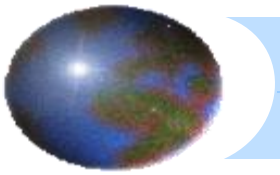
Mortgage Foreclosure Project

Fair Housing Project

Senior Law Project

Community Economic Development, Disaster Relief and Recovery

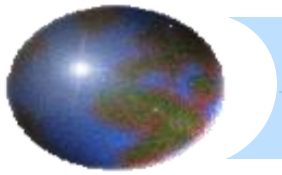




## *Battered Immigrant Project*

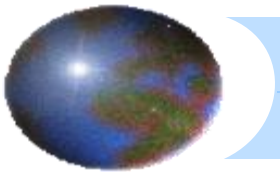
Our Mission: To provide free immigration assistance to immigrant victims/survivors of domestic violence, sexual assault and human trafficking throughout the state of North Carolina.

BIP staff also provides technical assistance and training to domestic violence and sexual assault advocates, social service agencies, and law enforcement agencies across the state.



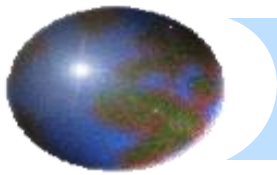
## *What is a U Visa?*

- ✦ Visa that allows victims of certain crimes to remain in the US and work here. Offers a path to lawful permanent residence
- ✦ Dual Purposes of U Visa:
  - ✦ Law Enforcement: Overcome victim fear of detection; encourage victims to come forward and report crimes; convince victims to cooperate in the investigation and/or prosecution of crimes
  - ✦ Humanitarian: Protect vulnerable victims; Help survivors of domestic violence and other crimes



## *Requirements for U Visa*

- ✦ Victim of designated crime
- ✦ Suffered substantial abuse as result of crime
  - ✦ Nature and severity of conduct/injury/harm
- ✦ Was/Is/Will Be helpful in:
  - ✦ Investigation AND prosecution (if case prosecuted)
  - ✦ Continuing helpfulness is required
  - ✦ Can't unreasonably refuse to help
- ✦ Law Enforcement (Police/DA) must certify helpfulness

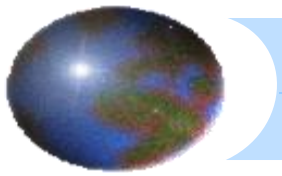


# *List of Crimes for U Visa*

## *(INA Sec. 101(a)(15)(U)(iii))*

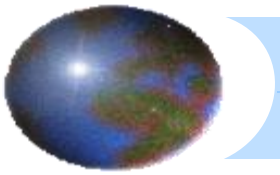
- ✦ Abduction
- ✦ *Abusive sexual contact*
- ✦ Blackmail
- ✦ *Domestic violence*
- ✦ Extortion
- ✦ False imprisonment
- ✦ Female genital mutilation
- ✦ Felonious assault
- ✦ Fraud in foreign labor contracting
- ✦ Hostage
- ✦ *Incest*
- ✦ Involuntary Servitude
- ✦ Kidnapping
- ✦ Manslaughter
- ✦ Murder
- ✦ Obstruction of Justice
- ✦ Peonage
- ✦ Perjury
- ✦ Prostitution
- ✦ *Rape*
- ✦ *Sexual Assault*
- ✦ *Sexual exploitation*
- ✦ Slave trade
- ✦ *Stalking*
- ✦ Torture
- ✦ Trafficking
- ✦ Witness Tampering
- ✦ Unlawful Criminal Restraint
- ✦ Other Related Crimes





## *Benefits of a U Visa*

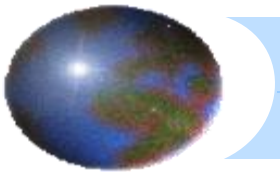
- ✦ 1st: Backlog, wait time of 4.5 years
- ✦ 2nd: Deferred Action status on the waitlist for another several years
- ✦ 3rd: Lawful U visa status for 4 years
- ✦ Employment Authorization
- ✦ Can include qualifying family members
- ✦ May apply for permanent resident status (green card) after 3 years in U status



## *DSS Directors as Certifying Officials – Federal Law:*

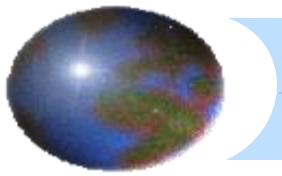
- ✦ 8 CFR § 214.14 - Alien victims of certain qualifying criminal activity.
- ✦ (a) Definitions. As used in this section, the term:
- ✦ (2) **Certifying agency** means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.
- ✦ (3) Certifying official means:
  - ✦ (i) **The head of the certifying agency**, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
  - ✦ (ii) A Federal, State, or local judge.

<https://www.law.cornell.edu/cfr/text/8/214.14>



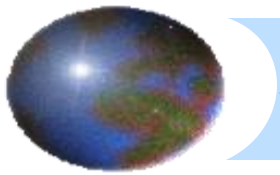
## *Federal Law continued:*

- ✚ **(5) Investigation or prosecution** refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.



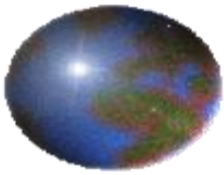
# *Department of Homeland Security U Certification Manual – Guidance to Certifiers*

- ✦ "The law enforcement certification, Form-918B, is a required piece of evidence to confirm that a qualifying crime has occurred and that that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of criminal activity." Pg. 3 of Dept. Of Homeland Security U Visa Certification Manual.
- ✦ [DHS U Visa Law Enforcement Certification Guide.](#)



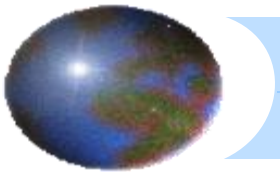
# *DSS detects criminal activity and investigates criminal activity*

- ✦ **See the NC legal definition of "abused juvenile" as it relates to abuse/neglect/dependency proceedings.**
- ✦ § 7B-101. Definitions.
- ✦ As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:
- ✦ (1) Abused juveniles. - Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker:
  - ✦ a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
  - ✦ b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
  - ✦ c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
  - ✦ d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
  - ✦ e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;
  - ✦ f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or
  - ✦ g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

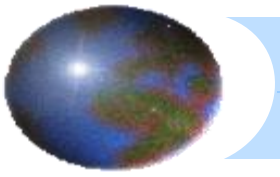


⊕ § 108A-101. Definitions.

- ⊕ (a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.
- ⊕ (d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to an intellectual disability, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.
- ⊕ (e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.
- ⊕ (i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.
- ⊕ (j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.
- ⊕ (n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, c. 1044, ss. 1-4; 1981, c. 275, s. 1; 1985, c. 589, s. 34; 1987, c. 550, s. 24; 1989, c. 770, s. 29; 1991, c. 258, s. 2; 2007-177, s. 4; 2019-76, s. 14.)



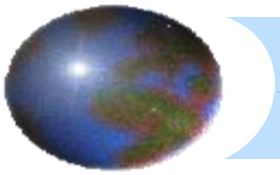
- ✦ § 108A-109. Reporting abuse.
- ✦ Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797; 1981, c. 275, s. 1.)
- ✦ [https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_108A.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_108A.html)



## *Summary*

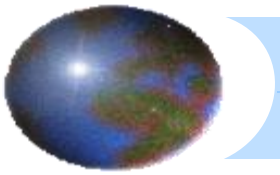
- ✦ The DSS statutes cross-references criminal statutes and makes it clear that a DSS attorney, when proving an abuse case in CIVIL child welfare proceedings, must use and cross-reference the criminal definitions found in our NC criminal statutes. Ergo, when DSS is detecting and investigating child abuse under NC law it is often investigating criminal activity (e.g. sex abuse and trafficking cases in particular).
- ✦ DSS APS is also investigating and detecting crimes when it evaluates whether a disabled adult is abused and in need of protective services.





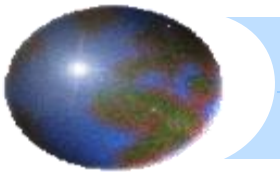
## *Initial Notice Form for APS to refer to DA*

- ✦ NC law requiring initial notice to District Attorney/Law Enforcement is further evidence of APS detection of criminal activity in certain cases
- ✦ [https://policies.ncdhhs.gov/divisional/aging-and-adult/adult-protective-services/forms/adult-protective-services-electronic-forms/daas-0008\\_initialnoticetodaorle\\_electronic\\_2-11-21.docx/view](https://policies.ncdhhs.gov/divisional/aging-and-adult/adult-protective-services/forms/adult-protective-services-electronic-forms/daas-0008_initialnoticetodaorle_electronic_2-11-21.docx/view)



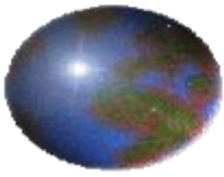
# *Confidentiality and the I-918B*

- ✦ With regard to North Carolina law, N.C.G.S. 7B-300 indicates that child protective services are intended, in part, "to prevent abuse or neglect...and to preserve and stabilize family life."
- ✦ By signing the 1-918 Supplement B form and disclosing the relevant information to the federal government, the victim (direct or indirect) will be able to pursue her immigration case to obtain status in the United States, including the ability to obtain work authorization. The victim will thereby gain autonomy from the abuser and the victim's family will no longer be subject to the abusive environment. Thus, by signing the 1-918 Supplement B form, DSS would be assisting the victim in a process that could help protect him/her from future abuse.
- ✦ North Carolina law states that "[a]ll information *received* by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department," not information produced by the department of social services. N.C.G.S. 7B-302(a1), emphasis added. Therefore, this confidentiality provision does not extend to information that the department did not receive from another source; the department's investigation and report or substantiation of abuse is not bound by this provision of the statute.



# *Confidentiality Continued*

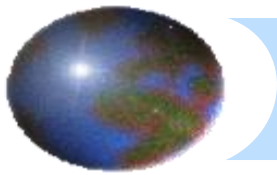
- ✦ N.C.G.S. 7B-302(a1) also explicitly provides child protective services with numerous exceptions to the confidentiality provision. First, the statute mandates that "[t]he department shall disclose confidential information to any federal, State, or local government entity or its agent...in order to protect a juvenile from abuse or neglect." (N.C.G.S. 7B-302(a1)(1), emphasis added. Again, by signing the 1-918 Supplement B form, the victim will be able to gain autonomy from the abuser and his/her family will no longer be subject to the abusive environment, and thus Child Welfare Services would be protecting against future abuse.
- ✦ In addition, 7B-302(a1)(5) provides that child protective services "may disclose confidential information to a parent." When the parent of a child victim requests the I-918B, the disclosure is proper.



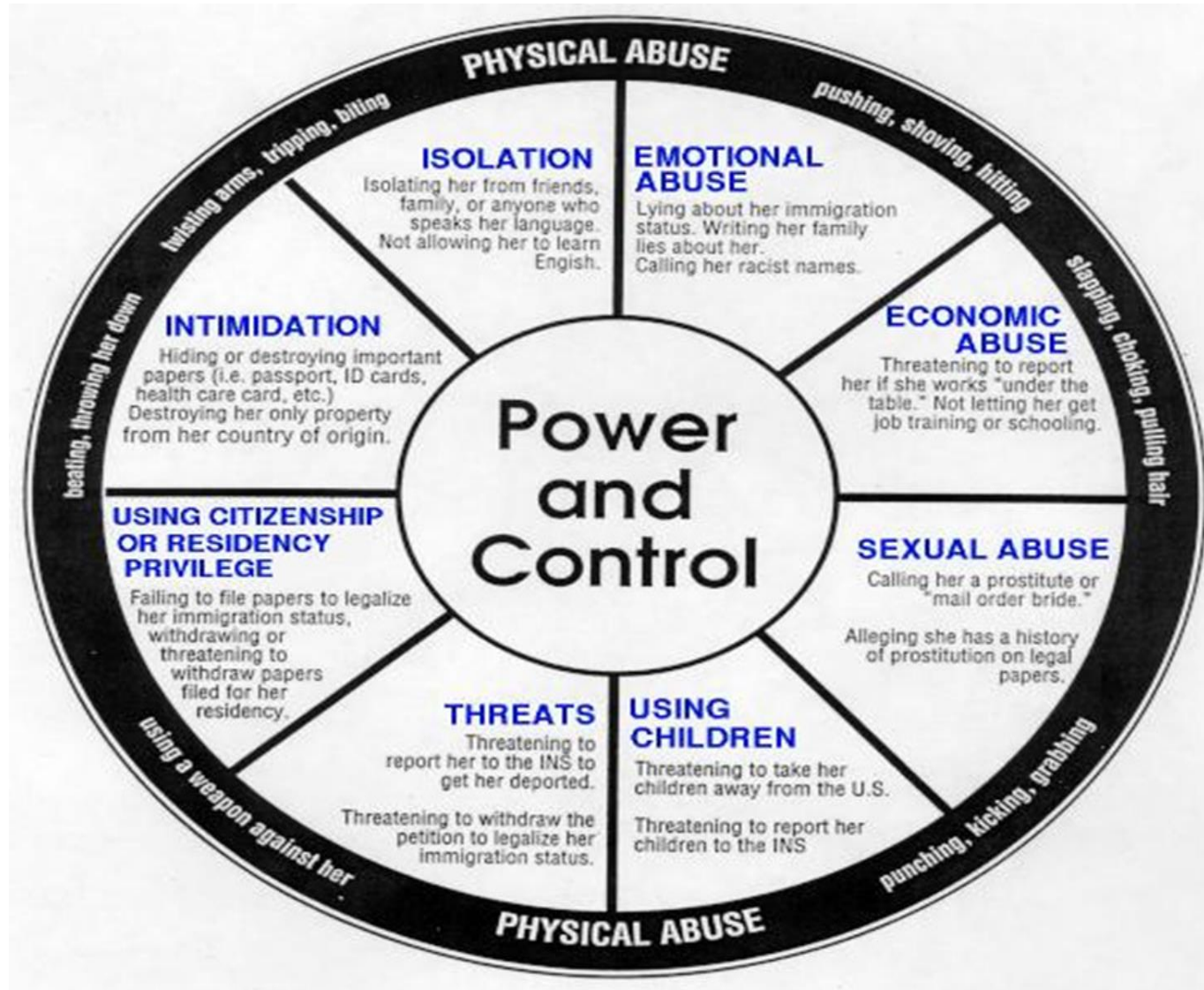
# *Requirements for a Self-Petition*

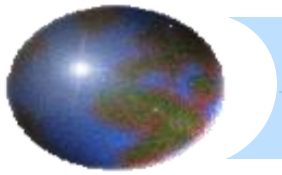
## *VAWA: Violence Against Women Act*

- ✦ Spouse, Child or Parent of USC or LPR
  - ✦ Spouse can be divorced if within last 2 years
  - ✦ Child must be under 21, but can file up to age 25 if abuse was central reason for delay
- ✦ Married in good faith
- ✦ Resided with abuser (past or present)
- ✦ Subjected to physical battering or extreme cruelty
  - ✦ Extreme Cruelty: Behaviors where abuser dominates, controls and/or humiliates the survivor. May include psychological or sexual abuse, threats to contact immigration/ICE and/or police.
- ✦ Good moral character
  - ✦ (If over 14, must do criminal record check for each place client has lived for more than 6 months during last 3 years.)



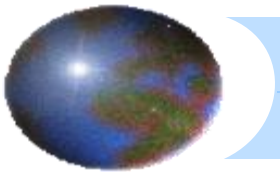
# Power and Control Wheel





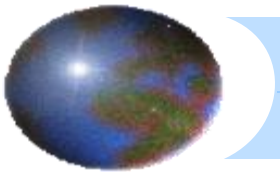
## *Benefits of the Self-Petition*

- ✦ Obtain Deferred Action status
- ✦ Obtain employment authorization
- ✦ Children can also obtain Deferred Action status and employment authorization
- ✦ Can provide pathway to lawful permanent residence



## *Requirements for T Visa*

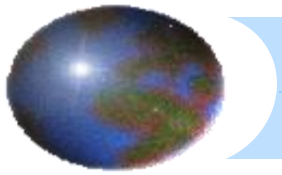
- ✦ Victim of severe form of trafficking in persons as defined by federal law
- ✦ Has complied with reasonable requests from law enforcement for assistance or is under 18
- ✦ Present in the U.S. on account of trafficking
- ✦ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.



# *Definition of Human Trafficking*

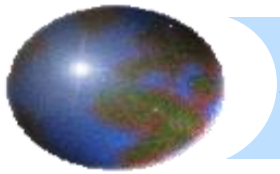
- ✦ **Sex Trafficking:** The recruitment, harboring, transportation, provision, obtaining, patronizing, **or** soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, **or** coercion, **or** in which the person induced to perform such an act has not attained 18 years of age.
- ✦ **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 purpose of subjection to involuntary servitude, peonage, debt bondage, **or** slavery.





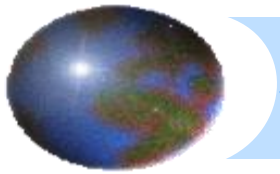
## *Benefits of a T Visa*

- ✚ Work authorization when T visa is approved
- ✚ T visa status valid for 4 years
- ✚ Pathway to lawful permanent residence
- ✚ Can include qualifying family members
- ✚ Eligible for public benefits



## *Advice for Potential BIP Clients*

- Report crime to law enforcement
- Cooperate with law enforcement and DSS
  - Update contact information with each agency as it changes.
- Go to court for criminal case
  - Ask DA for court date and info about attending.
  - In court, let DA know you are there.
  - Obtain form from judge's clerk that shows that you were present in court.
- Get Domestic Violence Protective Order if advised to do so
- Call BIP intake line on Tuesday or Thursday



*Referrals to LANC  
Battered Immigrant Project*

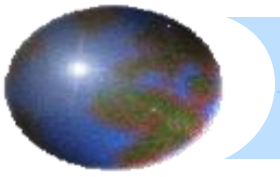
**Intake Line: 1-866-204-7612**

**Open on:**

**Tuesdays 3:30 pm – 7:30 pm**

**Thursdays 9:00 am – 1:00 pm**

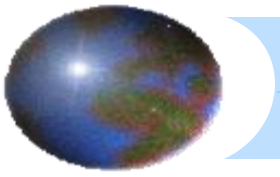
Info Re: BIP: [www.legalaidnc.org/immigration](http://www.legalaidnc.org/immigration)



## *Follow Up Questions*

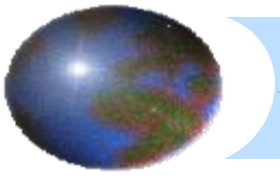
- ✦ Will Johnson – [WillJ@legalaidnc.org](mailto:WillJ@legalaidnc.org)
- ✦ Anna Cushman – [AnnaC2@legalaidnc.org](mailto:AnnaC2@legalaidnc.org)





# *THANK YOU FOR ALL YOU DO!*

- *GRACIAS!*
- *MERCI!*
- *DANKE!*
- *TODA!*
- *GRAZIE!*
- *NGIYABONGA!*
- *OBRIGADA!*
- *XIEXIE!*
- *DHANNYAVAAD!*
- *TESEKKUR!*



# *Resources*

- ✦ [www.legalaidnc.org/immigration](http://www.legalaidnc.org/immigration)
- ✦ [www.uscis.gov](http://www.uscis.gov)
- ✦ [Form I-918B: https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf](https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf)
- ✦ [DHS U Certification Guide: https://www.dhs.gov/xlibrary/assets/dhs\\_u\\_visa\\_certification\\_guide.pdf](https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf)