

U.S. Immigration Laws as Applied to Social Service Clients

Presented by
Cynthia A. Aziz
Aziz Law Firm

www.azizimmigrationlaw.com

AGENDA

- Immigrant victims of abuse
 - Battered spouse or children
 - Victims of crime
 - Victims of human trafficking
- Unaccompanied Minors
 - Special immigrant juveniles
 - Possible asylum claims
- Family based immigration benefits

Victims of Abuse

- Child or spouse who have been the victim of abuse or extreme cruelty by his or her U.S. citizen or lawful resident spouse or parent may immigrate without the assistance of the U.S. citizen or lawful resident spouse or parent.

Source: VAWA; INA §§204(a)(1)(A)(iii)-(vii) and (B)(ii)-(vii); 8 USC §§1154(a)(1)(A)(iii)-(vii) and (B)(ii)-(vii); 8 C.F.R. §§204.2(c),(e)

Victims of Crimes

■ U VISA REQUIREMENTS

1. Applicant has suffered substantial physical or mental abuse because of being victim of certain criminal activity;
2. Applicant (or if under 16, parent or guardian) has been helpful, is being helpful, or is likely to be helpful to law enforcement official or authorities investigating or prosecuting the crime (federal, state, or local);
3. Applicant (or if under 16, parent or guardian) possesses information about crime;
4. Criminal activity violated U.S. law or occurred in the U.S. or territories or possessions; and
5. Certification from a federal, state or local law enforcement official, prosecutor or other federal, state or local authority investigating criminal activity.

Source: INA Sec. 101(a)(15)(U)

Victims of Crime

- Family Members of Victims (Derivative Beneficiaries) can be included in the victim's application.
 - Victims under 21 years of age can include-
 - Spouse
 - Children
 - Unmarried siblings under 18 years of age on the date the application was filed
 - Parents
- Victims 21 years and older can include-
 - Spouse
 - Children (unmarried and under age 21
- Family members of victims who are involved in the perpetration of the crime are not eligible to be included in the U application.

Victims of Human Trafficking

Requirements for T Visa:

- An individual who is or has been a victim of a severe form of trafficking in persons;
- is physically present in the United States (including the 50 states, Washington DC, Puerto Rico, Guam, and the US Virgin Islands, American Samoa, or the Commonwealth of the Northern Mariana Islands, on account of such trafficking);

Victims of Human Trafficking (cont.)

- has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or has not attained 18 years of age; and
- the alien would suffer extreme hardship involving unusual and severe harm upon removal;

Victims of Human Trafficking(cont.)

A Victim of a Severe Form of Trafficking Means:

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age;

OR

- 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.

VAWA, U, and T Resource

- Legal Aid of North Carolina Battered Immigrant Project
1-866-204-7612
<http://www.legalaidnc.org/default.aspx>
- **Battered Immigrant Project (BIP) Staff**
- Rona Karacacova, Esq., BIP Coordinator, (Charlotte Office)
- Jennifer Stuart, Esq., Staff Attorney (Raleigh DVPI Office)
- Hope Williams, Esq., Staff Attorney (Durham Office)
- Roselle Margolis, BIP Paralegal/Intake Coordinator (Wilmington Office)
- Mulcahy, Katie, Paralegal (Charlotte Office)

Special Immigrant Juvenile

- Unmarried child under 21
- Declared dependant of a U.S. juvenile court while within jurisdiction of the court
- Continues to be dependant upon the juvenile court and eligible for long-term foster care
- Return to previous home country not in the child's best interest
- Subject of abuse, neglect, or abandonment.

SOURCE: 8 C.F.R. 204.11

SJIS Red Flags

- No general Custody Proceedings
- AGE Requirement
- No benefits will accrue to biological parent
- Juvenile court must retain jurisdiction until both the petition and application for residence have been granted
- Specific findings must be made in juvenile court order

SIJS Resource

SIJS Manual prepared and produced by:
Center for Human Rights &
Constitutional Law - Unaccompanied
Minors Project

<http://immigrantchildren.org/SIJS/>

Asylum/Refugee Protection

Person seeking protection must demonstrate “well-founded [reasonable] fear of persecution should he or she be returned to home country based on race, religion, nationality, political opinion, ethnicity or social group.”

Source: INA §101(a)(42),
8 USC 1101(a)(42)

Asylum Resource

- “Asylum and Withholding of Removal,” David L. Cleveland
- R. Germain, *AILA’s Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure*, 4th ed. (AILA 2005)
- D. Anker, *The Law of Asylum in the United States* (Refugee Law Center 1999), 2002 Supplement

Family Based Immigration

- Children = Unmarried person < 21 who is:
 - Child born in wedlock
 - Legitimated child under law of father's or child's residence
 - Stepchild – marriage creating step relationship must occur before child reaches 18
 - Illegitimate child
 - Adopted under age of 16
 - Orphan

SOURCE: INA 101(b)(1); 8 USC 1101(b)(1)