PRO BONO ATTORNEY MANUAL ON IMMIGRATION RELIEF FOR CRIME VICTIMS: U Non Immigrant VISAS

OCTOBER 2025

National Immigrant Justice Center
111 W. Jackson Blvd. Chicago, Illinois, 60604
Phone: 312.660.1370
Fax: 312.660.1505
www.immigrantjustice.org

2025
National Immigrant Justice Center

Acknowledgements

This manual was developed by staff at the National Immigrant Justice Center ("NIJC"), who work directly with immigrant survivors of domestic violence and sexual assault who are seeking immigration relief. NIJC would like to acknowledge the different organizations that granted us permission to adapt their materials for inclusion in this manual. We are very grateful to the following organizations for allowing us to adapt their materials for this manual: the Catholic Legal Immigration Network (CLINIC), the Family Violence Prevention Fund, the National Organization of Women's Legal and Education Defense Fund (NOWLEDF).

We would also like to thank the National Network to End Violence Against Immigrant Women and the National Immigration Project of the National Lawyer's Guild for its tireless efforts to advocate for legislative and procedural changes and policies in favor of immigrant survivors.

Finally, we would like to thank our clients who demonstrate remarkable strength and courage in the face of hardship as immigrants and as survivors of abuse. Our clients inspire us every day to continue the struggle for dignity and human rights.

Please Note: This manual is a brief guide to U visas and does not purport to discuss all aspects of immigration practice concerning immigrant crime victims. Additional sources should be consulted when more complex questions regarding current law and procedure arise. Many of these resources are referenced in this manual. In addition, NIJC maintains an extensive library of immigration law materials, and *pro bono* attorneys are encouraged to consult these materials at any time.

TABLE OF CONTENTS

INFORMATION ON NIJC'S PRO BONO PROGRAM

The National Immigrant Justice Center…….. 4
About Our Clients……..... 4
About this Manual…….....…… 5
What We Expect from Our Volunteer Attorneys…….. 5
What Our Volunteer Attorneys Can Expect from NIJC…… 6
Obtaining a Case…… 6

UNDERSTANDING DOMESTIC VIOLENCE

Understanding Transnational and Cultural Barriers Facing Immigrant
Survivors of Domestic Violence…… 7
Stereotypes and Myths…….. 8
Power and Control Factors…… 9
Immigrant Power and Control Wheels……. 10
General Power and Control Wheels……. 12
Cycle of Violence Wheels…… 14
Immigration Issues Facing Abused Immigrants…….. 16
Overcoming Barriers to Working with Abused Immigrants……..……. 16
Discussing the Abuse…….. 16
Confidentiality and Immigration Status…….. 17
Safety Planning for Battered Immigrants…… 17

U NONIMMIGRANT VISAS FOR CRIME VICTIMS

Part A. The Basics…….. 19
I. Background…….. 19
II. Requirements…….. 19
a. Certain Criminal Activity…… 20
b. Direct and Indirect Victims……. 20
c. Substantial Physical or Mental Abuse……. 21
d. Possession of Information……... 21
e. Cooperation with Law Enforcement…… 22
f. Admissibility…… 22
III. Derivative Family Members…….. 23
IV. Special Considerations……. 24
a. Criminal History……. 24
b. Prior Final Orders of Removal…… 25
V. Two Steps: Issuance of Deferred Action (Waitlist) and Eventual U Visa Approval. 26
a. U Visa Waitlist and Deferred Action……. 26
b. U Visa Approval and Employment Authorization……. 26
c. Obtaining a Social Security Number…….. 27
d. Travel……..... 27
e. Adjustment of Status…….. 27
i. Derivatives Granted Status for Fewer than 3 Years…… 28
ii. Derivatives Not Yet Approved or Admitted in U Status…….. 28
Part B. Client Interviews…… 29
I. Initial Client Interview…… 29

a. Initial Considerations…….. 29
b. Discussing Domestic Violence…… 30
c. Procedural and Other Issues…… 31
Part C. Preparing the U Nonimmigrant Application Package……. 31
I. Basics of the Application……. 31
II. Practical Considerations…… 35
III. What Happens After Filing…… 36
IV. Closing the *Pro Bono* Case After Approval…….. 37
a. After U Visa Waitlist and Deferred Action……. 37
b. After U Visa Approval…… 37

IMPORTANT PHONE NUMBERS AND ADDRESSES……. 39

GLOSSARY OF IMMIGRATION TERMS……. 40

FOR SAMPLES AND ADDITIONAL RESOURCES, PLEASE SEE THE APPENDICES FOR PRO BONO MANUAL

INFORMATION ON NIJC'S PRO BONO PROGRAM

* * *

The National Immigrant Justice Center

The National Immigrant Justice Center is an organization that has helped immigrants and refugees find safety and opportunity in the United States since its inception in 1888. Each year, NIJC provides free or low-cost legal immigration services to more than 10,000 immigrants and asylum seekers from more than 95 countries. NIJC seeks to preserve the civil and human rights of immigrants, refugees, and asylum seekers through its Immigrant Legal Defense Project, as well as its Asylum; Counter-Trafficking; Unaccompanied Minors; and Detention, Due Process & Democracy projects. In addition to direct legal services, NIJC is actively engaged in policy reform, impact litigation, and public education. Throughout its history, NIJC has been unique in blending individual client advocacy with efforts toward broad-based systemic change.

NIJC's *pro bono* program relies almost entirely on volunteer attorneys, the vast majority of whom have no previous experience in immigration or asylum law. NIJC assists its volunteers by providing training, materials, support services and consultation as needed. Largely as a result of the efforts of its volunteers, NIJC has helped thousands of noncitizens begin new lives in the United States and has become a national model for legal clinics providing immigration legal services.

About Our Clients

Our clients come from a wide range of different cultural, religious and socioeconomic backgrounds. NIJC's clients come from different countries around the world, including countries from Africa, the Middle East, Europe, Asia and Latin America. Our clients speak many different languages, and they have varying levels of English proficiency. Some clients have children and other family members in the United States, whereas others have no relatives in the United States. All of NIJC's clients are low income or impoverished.

For those of NIJC's clients who have suffered domestic violence by a spouse, partner, or other family member, the abuse may take various forms, including emotional, psychological, physical and sexual. Some of our clients have left their abuser, and they may reside in a domestic violence shelter or with family or friends. Others may continue to live with their abusers throughout the process of applying for legal immigration relief. In the process of trying to leave their abusers, some clients will leave and return again over a period of time. This latter scenario is common to many survivors of domestic violence. It takes an average of seven attempts to leave an abusive relationship before the relationship finally is terminated. Sometimes the relationship between the abuser and the survivor never permanently ends, particularly where there are children involved. Additionally, some of our clients are involved in criminal proceedings as victims of domestic violence or sexual assault, and are weighing how best to manage various legal and other systems.

About this Manual

This manual is intended to provide information about and guidance on representing immigrant crime victims, including survivors of domestic violence, who qualify for the "U visa." These materials are meant to provide attorneys and accredited representatives with the tools necessary to provide compassionate and comprehensive services to victimized immigrants. Please note that this manual is **not** intended to substitute for experienced legal counsel and representation. Always consult an immigration expert when legal questions arise.

Because many of NIJC's clients who qualify for the U visa have experienced, or may continue to experience domestic violence, this manual also addresses some of the socioeconomic, cultural and legal issues facing this unique immigrant population; as well as many issues that may arise when assisting these individuals in their immigration case. It is important for attorneys and accredited representatives to understand the dynamics of domestic violence to provide these individuals with quality representation. To adequately represent clients who are immigrant survivors of domestic violence, legal practitioners must consider not only the law, but also what it means to live in a cycle of abuse and what are the unique obstacles facing abused immigrants. When representing victims of gender-based violence who are also working within the criminal justice system, it is critical to understand the complex issues facing your client, and to consider that the prosecution or conviction of a perpetrator does not always leave your client feeling that justice has been served.

The appendices include various materials used by NIJC staff in the provision of legal services to immigrant crime victims, including domestic violence. Also included are relevant memoranda issued by the U.S. Citizenship & Immigrant Services and sample templates for use as a guide to preparing a U visa application.

What We Expect from Our Volunteer Attorneys

NIJC's clients often face considerable challenges not only with their immigration status, but also in terms of the economic, psychological and cultural barriers that they must overcome to break the cycle of violence. For that reason, we treat every case very seriously and ask that our volunteers do the same.

Due to the long processing times for U Visa cases, we request that NIJC volunteer attorneys agree to stay with a case until the client has a scheduled biometrics (fingerprint) appointment. Pro bono attorneys are only expected to represent the client through their biometrics appointment. After receiving the biometrics notice, the pro bono attorney will withdraw as counsel. We ask that volunteers not agree to take a case if they are not sure whether they will be able to remain with the case throughout the preparation, filing, and until the case has been issued a biometrics appointment. Some cases will take longer than others and we understand that an attorney might not remain for the duration in such cases. If an attorney must withdraw from a case, we ask that he or she attempt to obtain substitute counsel. If that is not possible, please advise NIJC as soon as possible so that we can try to find new counsel.

Our clients are most successful when their legal representative has spent significant time preparing their U visa application. It is important to allocate enough time to your client to develop a relationship of trust. As a result, the client will be more likely to open up to you regarding the painful details of the abuse, and you will be able to prepare a stronger application. The applicant's affidavit detailing the qualifying crime and substantial physical and/or mental abuse is one of the most important components

of the application, and after getting to know your client and the story, you can ensure that the client paints a comprehensive picture of the experience for the U visa application.

On behalf of NIJC's staff, we would like to thank you for your interest in and commitment to assisting immigrant crime victims, including survivors of domestic violence and sexual assault.

What Our Volunteer Attorneys Can Expect from NIJC

NIJC provides pro bono attorneys with training and information on how to assist your client with preparing various immigration applications, including U visas and requests for employment authorization. NIJC additionally provides other relevant materials, documentation and consultation with experienced practitioners.

NIJC does not simply refer out cases. It remains "of counsel" in every case. Volunteers are strongly encouraged to call project staff when they have any questions or simply want to discuss case theories or interview strategies. NIJC understands that many of our volunteers have no prior experience in immigration law, so we try to provide as much support and assistance as possible.

NIJC conducts basic U visa training courses on a regular basis and will schedule a training upon request. The basic course is approximately two hours in length, and all training materials are provided. Also, NIJC carries comprehensive professional liability insurance, which specifically covers *pro bono* attorneys.

Finally, NIJC's volunteers can expect the experience of representing an immigrant crime victim to be very humbling and rewarding. Assisting an immigrant crime victim and/or survivor of domestic abuse to achieve legal status and to break free of the cycle of violence can be very satisfying both personally and professionally, and our clients are extremely appreciative of your efforts to assist them.

Obtaining a Case

Please contact NIJC's VAWA/U Visa Pro Bono Project Coordinator, Jacqueline Mares at (312) 660-1318 or via email at jmares@immigrantjustice.org to attend a training. After attending a training, you are welcome to contact Charlotte Sall, NIJC's Pro Bono Manager, at csall@immigrantjustice.org to take on a case. Once a client has been assigned to you, NIJC will inform you where to obtain forms and/or provide you with the following:

1. A copy of the client's file; and
2. All necessary forms (Note: All U.S. Citizenship & Immigration Service (USCIS) forms may be downloaded from http://www.uscis.gov), including:
    a. Notice of Entry of appearance as Attorney or Representative (Form G-28)
    b. Petition for U NonImmigrant Status (Form I-918)
    c. Petition for U NonImmigrant Derivative (Form I-918, Supplement A)
    d. Law Enforcement Certificate for U Visa (Form I-918, Supplement B)
    e. Application for Advance Permission to Enter as a Nonimmigrant (Form I-192)
    f. Application for Employment Authorization (Form I-765)
    g. Application to Extend/Change Nonimmigrant Status (Form I-539)
    h. Freedom of Information Act Request (FOIA) (Form G-639)

UNDERSTANDING DOMESTIC VIOLENCE

* * *

Understanding Transnational and Cultural Barriers Facing Immigrant Survivors of Domestic Violence

Gender-based violence in its various forms is a pervasive problem around the world affecting women from all socioeconomic backgrounds.[1] Although violence against women is a global issue, how women experience violence and how communities respond to violence varies according to different cultural and legal traditions as well as political factors. It is important to keep in mind that immigrant victims of gender-based violence continue to struggle with cultural, social and familial pressures stemming from their countries of origin while trying to adapt to the new culture and systems found in the United States.

Accounting for cultural differences among abused immigrants is necessary to provide appropriate and sensitive services. It is important to refrain from assuming that domestic violence occurs to a greater extent in non-Western cultures. As a social problem, domestic violence is not unique to any particular culture or society. While cultural differences must be considered when one looks at the issue of domestic violence in various ethnic communities, remember that violence is endemic in all cultures, including the United States. Assumptions should not be made about an abused immigrant woman's culture, such as "in her culture, domestic violence is accepted as normal behavior" or "in her culture, women are passive." While domestic violence happens all over the world, it is not more a part of culture in any other country than it is in the United States.

Certain widely accepted beliefs among some immigrant or refugee communities may make it challenging for abused immigrants to obtain needed assistance. For example, there may be a common belief that the close-knit nature of the family prevents domestic violence from occurring, or that the family is the only appropriate forum for dealing with such problems. In some instances, outside interference is not encouraged or accepted. Some communities may resist acknowledging that domestic violence exists as a problem, that remedies can and should be sought, or that women have the right to seek alternatives independent of their abusive partners. In addition, women from some countries and cultures are severely stigmatized when they are divorced, and even though they might be divorced in the United States, the stigma still attaches back home as well as within their communities in the United States.

We must remember to be sensitive to the challenges abused immigrant woman encounter when coming to the United States, and to understand that returning to her home country may not be a viable option. At the same time, she might view leaving the abusive relationship as a process that is fraught with seemingly insurmountable barriers. Leaving an abusive relationship often requires abandoning the only community she knows in the United States. It is of particular importance to be attuned to cultural barriers at this critical stage when an abused individual is thinking about leaving.

Of course, many of the same barriers and challenges apply to both immigrant and nonimmigrant survivors of domestic violence alike. For example, victims of domestic violence and sexual assault

[1]Though the majority of domestic violence victims throughout the world are female, men can be victims of gender-motivated violence as well. Men experience domestic violence in similar ways as women, but also face unique obstacles such as gender stereotypes and limited resources for support. Since most of NIJC's U visa clients are female survivors of domestic violence, however, this manual will default to the feminine pronoun for its substantive text.

experience similar issues such as psychological harm, finding employment and shelter, supporting their children and safety and other concerns. The dilemmas facing abused immigrant women are complex, and the solutions must be comprehensive. It is helpful for legal and social service providers to view immigrant women both as individuals and as members of a community with their own unique customs, strengths and pressures.

Stereotypes and Myths

Abused immigrant women face many barriers to accessing legal assistance and social services. Societal attitudes towards immigrants may inform how domestic violence and legal services are provided. Prejudices towards immigrants based on race and ethnicity are deeply entrenched in our society, and we must work to overcome this intolerance. Maintaining an awareness of the different assumptions we make about immigrants helps us to identify when those assumptions arise in the context of our work. It is important that the professionals helping abused immigrants make an effort to treat each individual as a unique person, rather than to assume certain character traits based on social categories including ethnicity and immigration status. The following are some assumptions that are commonly made concerning immigrants generally and abused immigrants in particular.

Prevalent stereotypes include ideas that *all* immigrants:

- are undocumented or have no legal immigration documentation;
- are poor;
- are people of color;
- are of limited English proficiency;
- are heterosexual;
- have many children;
- cannot survive economically without immigration documentation;
- do not want to or will not use the legal system;
- have an immigrant status which cannot change; and/or
- come only from certain countries or regions of the world.

Other prevalent stereotypes include ideas that many immigrants:

- have no right to be in the United States;
- came here for welfare benefits;
- are passive;
- are childlike; and/or
- marry solely for immigration purposes.

Stereotypes about immigrants and domestic violence include the ideas that:

- abused immigrant women are only abused by other members of their immigrant community;
- abused immigrant women are only abused by members other than their immigrant community;
- abused immigrants are so-called "mail order brides;"
- abused women married solely for immigration purposes; and/or
- abused women can escape an abusive relationship by returning to their home country.

Stereotypes about all survivors of domestic violence include the ideas that:

- it is easy to leave an abusive situation;

- women return to an abusive relationship because they like the abuse, because they deserve to be abused, because they have psychological problems, or because they are co-dependent on their abusers;
- domestic violence only happens to women of color, or women who are poor or uneducated;
- domestic violence always involves physical abuse; and
- men cannot be victims of domestic violence.

Domestic Violence - Power and Control

Domestic violence involves an abuser's ongoing conduct of asserting power and control over a spouse, partner or child. Domestic violence includes both physical and non-physical forms of abuse. Many tactics might be used by abusers to dominate a spouse, partner or child, and some of these methods are specific to abused immigrants. To complicate matters, many immigrants who experience domestic violence are unaware of various resources that may be available to them. An abuser's methods used to control an abused immigrant woman are reinforced where the woman lacks information about available legal, medical and social resources. Also, many women do not know that domestic violence is a crime and lack information about how domestic violence and sexual assault are addressed in the United States. In some cases the abuse started while they were in their homelands whereas in other cases the abuse began upon their arrival in the United States.

Immigrant Power and Control Wheel

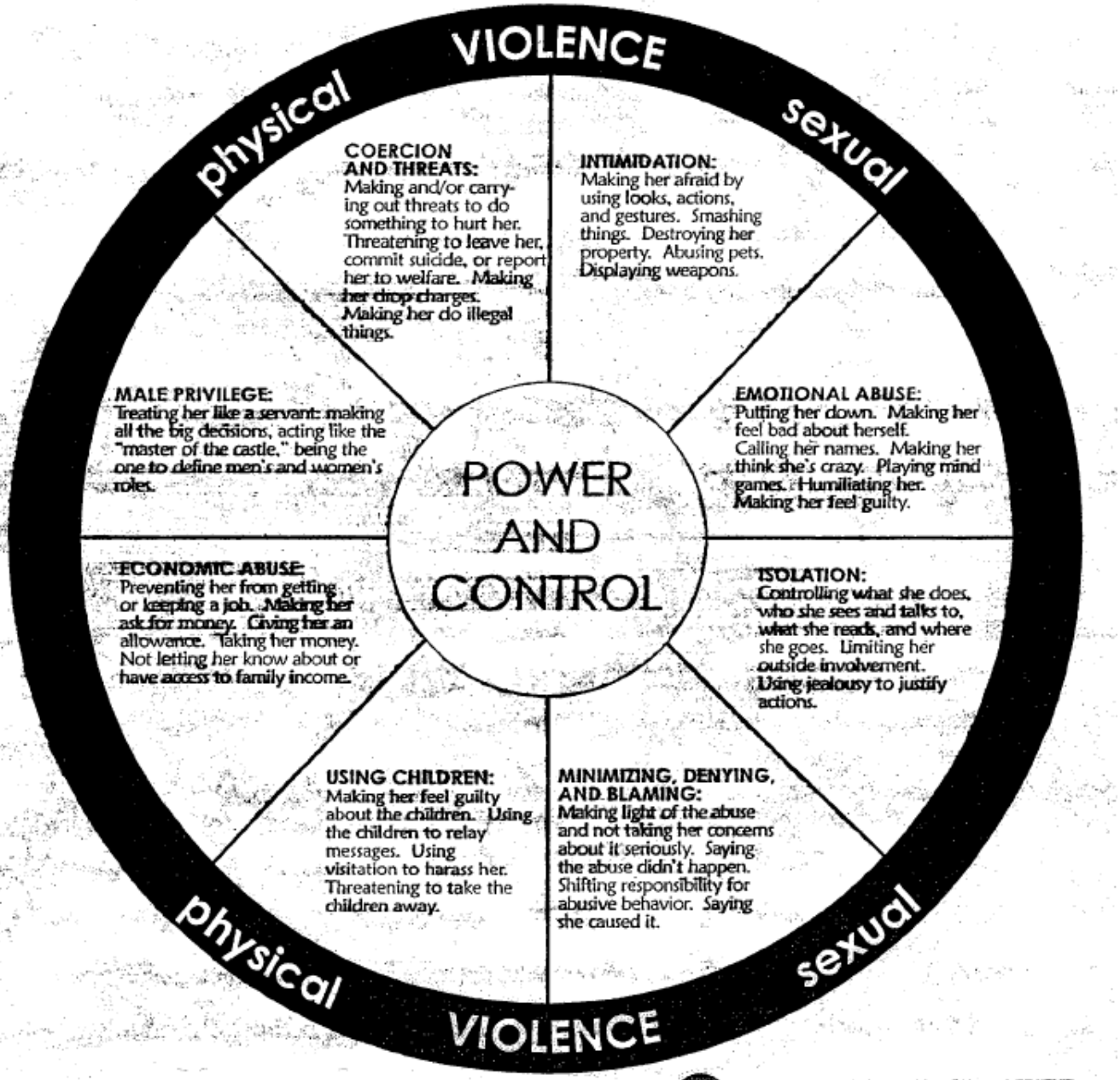
This version of the Power and Control wheel, adapted with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota, focuses on some of the many ways battered immigrant women can be abused.

Rueda de Poder y Control Para Inmigrantes

General Power and Control Wheel

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Developed by:
Domestic Abuse Intervention Project
202 East Superior Street
Duluth, MN 55802
218.722.4134

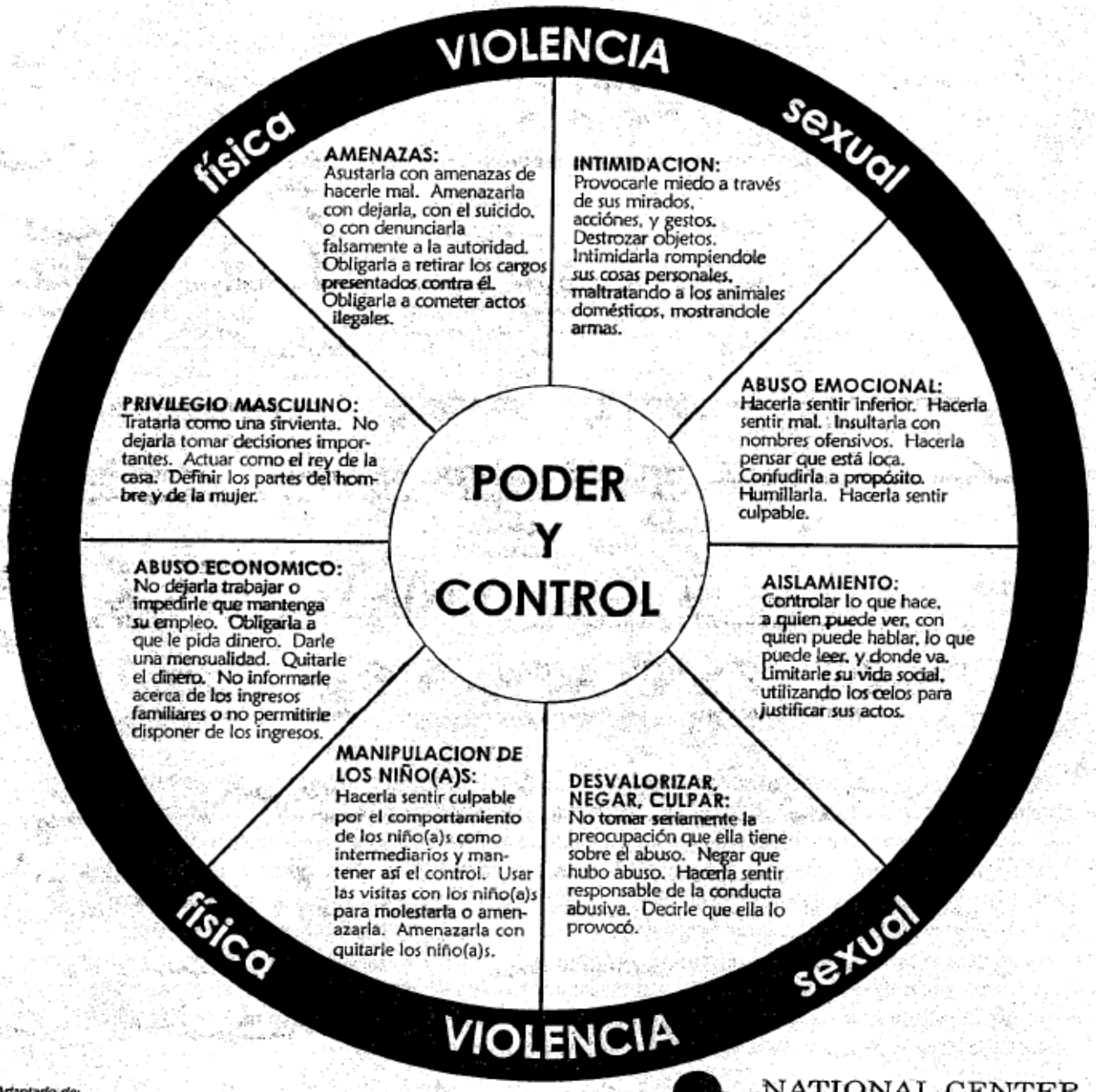
Produced and distributed by:

NATIONAL CENTER on Domestic and Sexual Violence
training · consulting · advocacy
4612 Shoal Creek Blvd. · Austin, Texas 78756
512.407.9020 (phone and fax) · www.ncdsv.org

Rueda de Poder y Control

El abuso físico y sexual, o la amenaza de realizaelos, son las formas más evidentes de la violencia familiar. Y generalmente son las conductas que permiten a los demás tomar conciencia de que el problema existe. Sin embargo, el uso habitual de otras conductas abusivas por parte del golpeador, reforzadas por uno or varios actos de violencia física, constituyen un sistema de abuso aún mayor. Aunque los ataques físicos ocurrien sólo una vez u ocasionalmente, éstos establecen un precedente de futuras agresiones y permiten al golpeador controlar la vida de la mujer y su entorno.

El diagrama sobre poder y control es una herramienta particularmente útil para comprender el patrón general de las conductas abusivas y violentas que son usadas por el golpeador para establecer y mantener el control sobre su pareja. Frecuentemente, uno o más hechos violentos están acompañados por estos tipos de abuso. Estos últimos no son fácilmente identificables, a pesar de que establecen firmemente un patrón de intimidación y control en la relación.

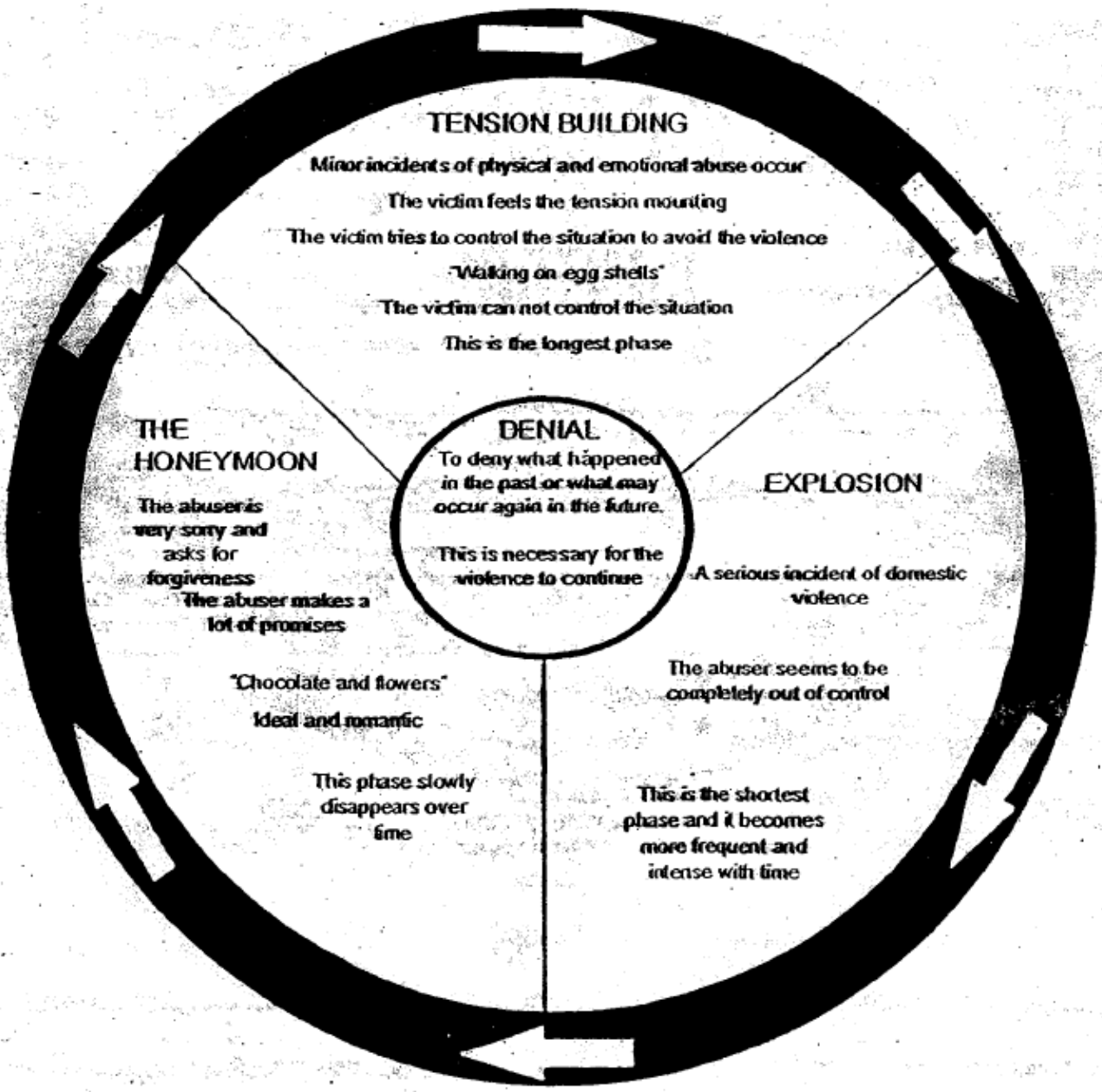


Adaptado de:
Domestic Abuse Intervention Project
205 West 4th Street
Duluth, MN 55806
218.722.4134

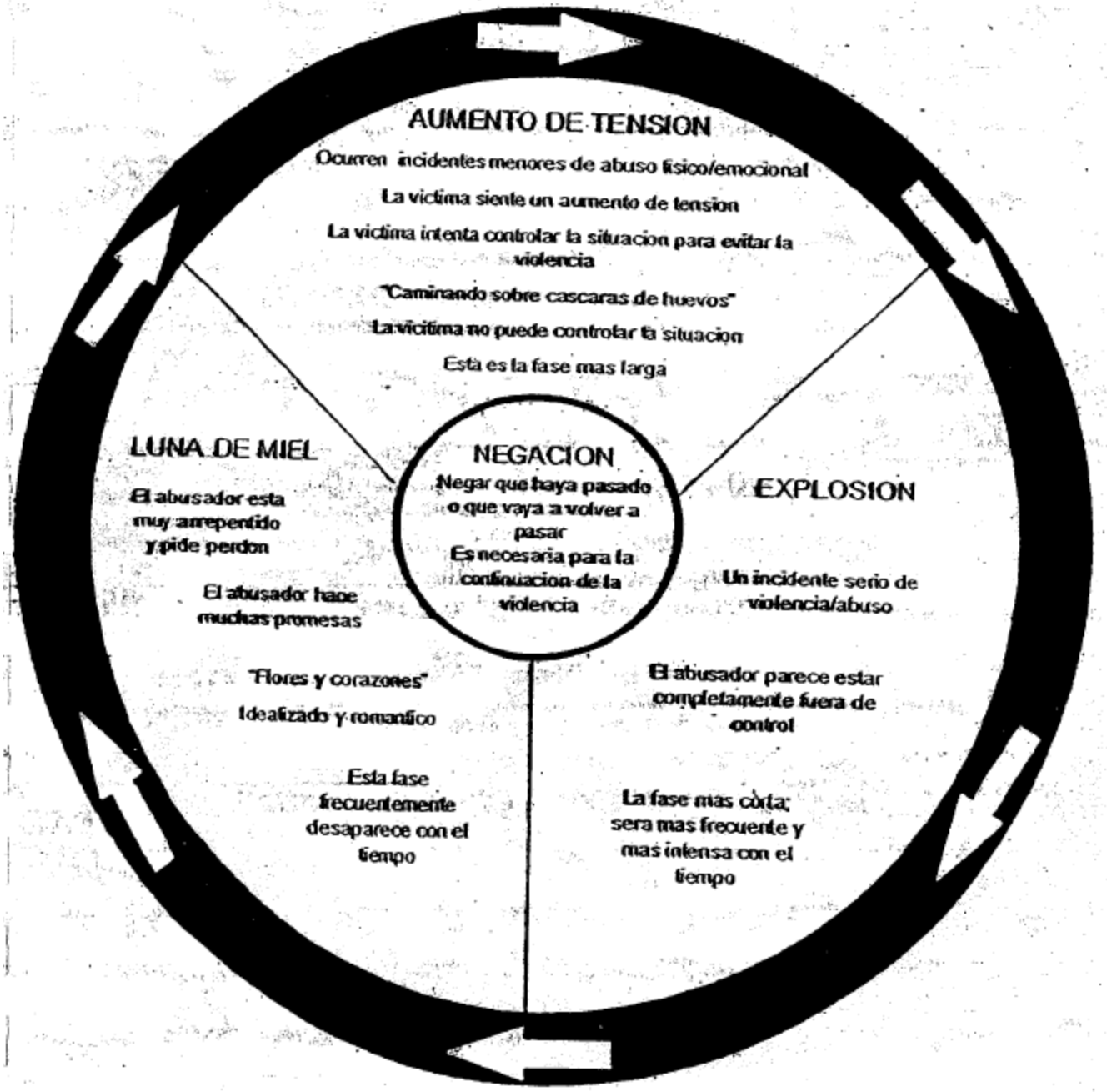
Producido y distribuido por:

NATIONAL CENTER
on Domestic and Sexual Violence
training · consulting · advocacy
4612 Shoal Creek Blvd. · Austin, Texas 78756
512.407.9020 (phone and fax) · www.ncdsv.org

Cycle of Violence Wheel



El Ciclo de Violencia



Immigration Issues Facing Abused Immigrants

One of the most salient fears abused immigrants experience is related to their immigration status. Some abused immigrants may be reluctant to discuss their immigration status because they fear deportation for themselves, their children, or their abusive spouse. If an abused immigrant is removed to the home country, he or she may face a number of severe impediments. For example, the person may lose custody of their children, may return to poverty, famine, or political persecution, and may no longer be able to support her family financially. Moreover, the country of origin may lack legal protections for victims of domestic violence, and if the abuser follows the victim to the home country, he or she could face danger or even death. Finally, if a victim is removed to the home country, he or she may be ostracized by friends and family because they may be viewed as someone who failed at the marriage. If the victim obtained legal assistance in the United States, such as seeking an order for protection, the abuser's family in the home country may seek retribution. In short, removing a victim of domestic violence to the home country may leave the victim and the children increasingly isolated and more likely to return to the abusive spouse and a dangerous situation.

Many abused immigrants who have legal immigration status do not know that their abuser cannot take that status away. You should be aware that if an immigrant is a U.S. citizen, lawful permanent resident, or has a valid visa, that person cannot be removed by immigration authorities unless he or she entered the United States using fraudulent documents, violated conditions of the visa or has been convicted of certain crimes. Moreover, immigrants do have certain constitutional due process rights. Thus, an immigrant placed in removal proceedings in immigration court is entitled to a hearing before an immigration judge.

Overcoming Barriers in Working with Abused Immigrants

Discussing the Abuse

When helping an abused immigrant, be sensitive to the language you use. "Domestic violence" is not a phrase that is common in every culture. Thus, asking an immigrant whether he or she has been a victim of domestic violence may be confusing. Moreover, if an immigrant does not define her situation in terms of the abuse, he or she may feel threatened initially by attempts to frame the situation as one involving domestic violence.

Every person is unique with different comfort levels about discussing the abuse. Some will immediately open up to you, while others are initially very reluctant to talk. It is difficult to talk with victims of domestic violence and sexual assault about such intimate and sensitive issues. Victims are often embarrassed and ashamed for being victimized. It takes some time to develop a trusting relationship with your client. Avoid asking the client to reveal all of the personal details of the abuse suffered during your first meeting. Throughout your legal representation, your client will open up to your more and more. Language barriers may make it difficult for immigrants to communicate, especially if they are discussing sensitive issues such as abuse. The difficulty in telling one's story can be compounded when an immigrant tries to talk about sensitive information in English, which may not be the native language.

An effective strategy is to discuss what domestic violence is using the "power and control" wheels to avoid personalizing your initial discussion and making your client uncomfortable. You might tell the client that different forms of abuse are present in domestic violence relationships to varying degrees.

For example, some people are subjected to physical abuse while others are not. Sexual abuse is a particularly sensitive issue. In much of the world, marital rape is not a crime and individuals might internalize the idea that sexual submission is a normal part of marriage. One way to approach this issue is to tell the client that if he or she has ever been forced or coerced to do anything sexually against their will, then they have been subjected to sexual abuse. These issues can be tackled in the initial interview without asking the client about it outright.

In most domestic abuse cases involving immigrant victims, abusers will use the immigrants' lack of immigration status as a tool of power and control. For example, the batterer may threaten to report the immigrant to the immigration authorities if he or she is undocumented, or may hide the victim's passport to try to prevent him or her from leaving the relationship. Although individual citizens are not authorized to remove an immigrant from the United States, anyone may contact the immigration authorities. Additionally, a person who has petitioned on behalf of an immigrant to obtain lawful immigration status may withdraw that petition at any time. Thus, an abuser's threats and intimidation based on their spouse's immigration status may have detrimental consequences.

Confidentiality and Immigration Status

Be sensitive to the fact that an abused immigrant may be reluctant to offer information about their immigration status. When obtaining information about an abused victim's immigration status, assure the client that you do not intend to use the information in a negative manner, such as giving it to immigration authorities, but that you are asking for such information to assist her better. Only ask for enough information to allow you to make appropriate referrals. It is important for you to avoid frightening immigrants when asking about their immigration status. In situations where you are required to report immigration status, you may choose not to ask about immigration status and to report that the immigration status of every person assisted is "unknown" (if your program permits you to do so).

Immigration applications filed on behalf of domestic violence victims are treated by the Department of Homeland Security (DHS), the Department of State (DOS), and the Department of Justice (DOJ) as confidential.[2] All employees of DHS, DOS, and DOJ are prohibited from disclosing information about a U visa applicant to the perpetrator of the crime and/or abuse on which the U visa application is based, or to an unauthorized third party. Moreover, adverse decisions about an immigrant's admissibility or removability cannot be made based solely on information provided by an abuser, and must be independently verified. Violators may be fined up to $5,000.

Safety Planning for Battered Immigrants

As *pro bono* attorneys it is important to consider safety planning when your clients are still living with an abuser. The time when a victim decides to leave the abuser can be the most dangerous for the victim and the children because the abuser feels that he is losing control over the family. A crisis situation will make it difficult, if not impossible, to gather everything the victim will need after leaving an abusive relationship. Developing a safety plan involves accumulating things such as money and legal documents that a victim will need in case he or she must leave the home under crisis conditions. You can talk to your client about this when you meet to help him or her start thinking about how they would respond in a crisis. Discuss with your client that they might place important documents and other necessities in case of a crisis with a friend or even in your office.

[2] 8 U.S.C. §1367; 8 C.F.R. § 214.14(e)

The following is a list of important documents and other items your client might want to place outside of the home in the event of a crisis:

- Birth certificates (for client and children)
- Passport
- I-94 entry/departure record
- Permanent resident card (green card)
- Social security card
- USCIS issued employment authorization
- All other immigration related documents, including receipt and other notices
- Orders of Protection and other court documents such as divorce
- Social security number of the spouse and the parent of the child(ren)
- Copy of most recent pay stub of the spouse and the parent of the child(ren)
- Copy of tax returns
- Copies of the spouse's birth certificate, social security card, green card, or naturalization certificate

Finally, please confirm that you have a safe mailing address and phone number to reach your client.

U NONIMMIGRANT VISAS FOR CRIME VICTIMS

* * *

Part A. The Basics

I. Background

The U visa is a nonimmigrant visa that allows noncitizen crime victims and certain qualifying family members to live and work in the United States for up to four years, with extensions in some cases. Although a typical "nonimmigrant" visa is temporary in nature, the U visa provides a path to permanency in that U visa holders become eligible to apply to adjust status to lawful permanent resident ("green card") after three years in U nonimmigrant status. After five years as a lawful permanent resident, one becomes eligible to apply for U.S. citizenship.

The U visa was created by Congress in October 2000 by the passage of the Victims of Trafficking and Violence Prevention Act (TVPA),[3] and was subsequently reauthorized in 2003, 2005, 2008, and 2013 (Trafficking Victims Protection Reauthorization Act (TVPRA).[4] The U visa is intended to protect victims of serious crime who have gathered the courage to come forward, report the crime, and assist in its investigation and prosecution. It is available to noncitizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic abuse and sexual assault.[5] Unlike the Violence Against Women Act (VAWA), there is no requirement that the victim be related to the perpetrator of the crime or that the perpetrator have lawful immigration status.

There is an annual limit of 10,000 U visas per year, not including spouses and other derivative family members.[6] Once the annual cap has been reached, applicants for U visa status will be placed on a waitlist and will be issued deferred action.[7] Those on the waitlist are eligible to receive employment authorization and deferred action status for U derivatives inside the United States.[8]

II. Requirements

A noncitizen may be eligible for a U visa if:[9]

1. The immigrant suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;

2. The immigrant (or in the case of an immigrant child under the age of 16, the parent, guardian or next friend of the child) possesses information concerning that criminal activity;

---

3 Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [VTVPA].

4 Pub. L. No. 108-193, 117 Stat. 2875 (Dec. 19, 2003), Pub. L. No. 109-164, 119 Stat. 3558 (Jan. 10, 2006), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008), Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).

5 Immigration & Nationality Act (INA) § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U); 8 CFR §214.14 *et. al*.

6 8 C.F.R. § 214.14(d)(1).

7 8 C.F.R. § 214.14(d)(2)

8 *Id.*

9 INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. 214.14(b)

3. The immigrant (or in the case of an immigrant child under the age of 16, the parent, guardian or next friend of the child) has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity; and

4. The criminal activity violated the laws of the United States or occurred in the United States.

In addition, all U visa applicants must be "admissible" to the United States as a nonimmigrant and be in possession of a valid, unexpired passport.[10]

a. Certain Criminal Activity

"Certain criminal activity" is defined by the statute and regulations. The crime must generally have occurred in the United States or violate a U.S. law.[11] The U visa is available to victims who have suffered from any of the following qualifying crimes or substantially similar activity: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[12] VAWA 2013 also added fraud in foreign labor contracting and stalking to the categories of qualifying crimes.[13] The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.[14]

b. Direct and Indirect Victims

U visa applicants can be either direct or indirect victims of the qualifying crime.[15] A **direct victim** is a person who suffered direct or proximate harm as a result of the crime.[16] DHS suggests that cases of victims proximately harmed are rare. An example of a proximately harmed victim is a woman who miscarries after being frightened from witnessing a crime.[17]

DHS considers **indirect victims** to be:

- The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity.[18]

    - USCIS has confirmed that parents of abused children qualify as indirect victims, even if the child is a United States citizen.[19] In a case such as this, the Form I-918 Supplement

10 8 C.F.R. § 214.1(a)(3); INA § 212; 8 U.S.C. § 1182
11 INA § 101(a)(15)(U)(i)(IV); 8 U.S.C. § 1101(a)(15)(U)(i)(IV); 8 C.F.R. § 214.14(b)(4).
12 INA § 101 (a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9).
13 Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).
14 *Id*.
15 8 C.F.R. § 214.14(a)(14)
16 *Id*.
17 USCIS Interim Final Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007).
18 8 C.F.R. § 214.14(a)(14)(i)
19 VSC Stakeholders Meeting Minutes; August 20, 2009

B should reflect the parent/indirect victim as the victim on the form. It is also recommended that in this situation the affidavit and supporting documents should address all the harm suffered by all victims involved, including both the indirect victim as well as the actual victim of the crime.

- A victim of witness tampering, obstruction of justice, or perjury, if the perpetrator committed the offense to (1) avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity committed against the direct or indirect victim, or (2) to further the perpetrator's abuse, exploitation of, or undue control over the U visa applicant through manipulation of the legal system.[20]

It is important to note that the person who is culpable for the qualifying crime being investigated or prosecuted is excluded from being recognized as a victim of qualifying activity.[21]

c. Substantial Physical or Mental Abuse

The applicant must demonstrate that he or she suffered substantial physical or mental abuse as a result of being a victim of the qualifying crime.[22] Physical or mental abuse means "injury or harm to the victim's physical person, or harm to or impairment of the emotional and psychological soundness of the victim."[23] Whether abuse is substantial is based on a number of factors including:

- The nature of the injury inflicted or suffered;
- The severity of the perpetrator's conduct;
- The severity of harm suffered;
- The duration of the infliction of harm; and
- The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including the aggravation of pre-existing conditions.[24]

A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.[25]

d. Possession of Information

The applicant must possess credible and reliable information about the criminal activity of which she has been a victim, including specific facts regarding the criminal activity which would assist in the investigation or prosecution.[26] In the case where the victim is under 16 years of age on the date that the qualifying criminal activity first occurred or otherwise incapacitated or incompetent, a parent, guardian, or "next friend" may possess information regarding the qualifying crime.[27]

---

20 8 C.F.R. § 214.14(a)(14)(ii)(B).
21 8 C.F.R. § 214.14(a)(14)(iii).
22 INA § 101(a)(15)(U)(i)(I); 8 U.S.C. § 1101(a)(15)(U)(i)(I); 8 C.F.R. § 214.14(b)(1)
23 8 C.F.R. § 214.14(a)(8)
24 8 C.F.R. § 214.14(b)(1)
25 *Id.*
26 INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II); 8 C.F.R. § 214.14(b)(2).
27 *Id.*

"Next friend" is defined as a person who appears in a lawsuit to act for the benefit of an immigrant victim who is incapacitated, incompetent, or under the age of 16, and who has suffered substantial physical or mental abuse as a result of being a victim of qualifying activity.[28]

e. Cooperation with Law Enforcement

An applicant for the U visa must provide certification that she was helpful, is being helpful, or is likely to be helpful in the criminal investigation or prosecution of the crime.[29] Like the possession of information requirement, in the case where the victim is under 16 years of age on the date that the qualifying criminal activity first occurred, or is otherwise incapacitated or incompetent, a parent, guardian, or "next friend" may provide the required assistance.[30] The regulations clarify that the applicant cannot refuse or fail to provide "reasonably requested" assistance to law enforcement after the initiation of cooperation and throughout the duration of U visa.[31]

In order for the applicant to meet the initial burden of showing cooperation, the applicant must obtain certification on Form I-918, Supplement B, from a federal, state, or local law enforcement official, or a judge investigating or prosecuting the criminal activity.[32] The regulations limit who can certify cooperation to "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, or a federal, state or local judge."[33]

Please note that NIJC clients already have an original, certified Form I-918, Supplement B, in their possession as a prerequisite to *pro bono* representation. However, please be mindful of the expiration date of the Form I-918, Supplement B, as it **must be certified within the 6 months immediately preceding the filing of the U visa application.**[34] In other words, USCIS must receive the U visa application with the completed, original certification form before its expiration. If the certification form expires before submission with USCIS, the *pro bono* attorney may be required to advocate on behalf of the client to obtain a re-certification from law enforcement. Re-certification is not guaranteed and may be difficult to obtain depending on the internal policies of the certifying agency.

f. Admissibility

In addition to establishing eligibility for the U nonimmigrant visa, all U visa applicants (including derivatives) must demonstrate that they are admissible to the United States as a nonimmigrant or that they merit a waiver of any applicable grounds of inadmissibility.[35] The statutory grounds of inadmissibility are found listed in INA § 212(a).

Some common grounds of inadmissibility include:[36]

- Entering without inspection
- Criminal convictions
- Security grounds

---

28 8 C.F.R. § 214.14(a)(7).
29 INA § 101(a)(U)(i)(III); 8 U.S.C. § 1101(a)(U)(i)(III); 8 C.F.R. § 214.14(b)(3).
30 8 C.F.R. § 214.14(b)(3)
31 *Id.*
32 8 C.F.R. § 214.14(c)(2)(i).
33 8 C.F.R. § 214.14(a)(3)
34 8 C.F.R. § 214.14(c)(2)(i).
35 8 C.F.R. § 214.1(a)(3).
36 INA § 212(a); 8 U.S.C. § 1182(a)

- Fraud/misrepresentation
- False claims to U.S. citizenship, including unlawful voting and falsification of I-9 form for employment
- Health conditions/substance abuse
- Prior deportations
- Unlawful presence

*****Please note: there is no ground of inadmissibility for individuals who entered the United States lawfully but have remained beyond their authorized period of stay.[37]**

For U visa applicants, USCIS has discretion to waive all grounds of inadmissibility found in INA § 212(a) except paragraph (3)(E) (relating to Nazi persecution, genocide, torture, and extrajudicial killing), provided that the applicant can demonstrate that it is in the national or public interest to do so.[38] Section 804 of VAWA 2013 clarifies that U visa applicants are exempt from the public charge ground of inadmissibility.[39] To request a waiver, the applicant must file Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. There is no fee for the Form I-192. Exempt fees are accurate as of April 1, 2024, but please always verify fees and forms by checking the USCIS website directly as USCIS does often issue updates to fees and forms. In adjudicating the waiver, USCIS will balance the adverse factors of inadmissibility against the social and humanitarian considerations presented.[41] If the inadmissibility is based on violent or dangerous crime, then USCIS will exercise favorable discretion only in extraordinary circumstances.[42]

Although NIJC pre-screens all clients for possible grounds of inadmissibility before the case is assigned to a *pro bono* attorney, it is important that you familiarize yourself with INA § 212(a) and discuss all possible grounds with your client as facts giving rise to inadmissibility are sometimes not disclosed during NIJC's initial screening. Be cognizant that grounds of inadmissibility may also arise during the course of representation.

III. Derivative Family Members

A client who is eligible to receive a U visa may also be able to obtain derivative U visa status for his or her qualifying spouse, child, parent or sibling, whether in the United States or abroad.[43] The annual limit of 10,000 U visas applies only to U principal applicants, and does not apply to derivative family members.[44]

If the victim is under 21 years of age (at the time the application is filed) the following relatives qualify for a U visa:[45]

- Parents

---

37 *See* INA § 212(a); 8 U.S.C. § 1182(a)

38 INA § 212(d)(14); 8 U.S.C. § 1182(d)(14); 8 C.F.R. § 212.17(b)(1).

39 Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).

40 8 C.F.R. § 212.17(a).

41 8 C.F.R. § 212.17(b)(1).

42 8 C.F.R. § 212.17(b)(2).

43 INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

44 INA §214(p)(2)(B); 8 U.S.C. § 1184(p)(2)(B).

45 An eligible family member will be admitted in one of the following U nonimmigrant statuses; U-2 spouse, U-3 child, U-4 parent of a U-1 holder who is a child under 21 years of age, or U-5 unmarried sibling under the age of 18. 8 C.F.R. § 214.14(f).

- Unmarried siblings under 18 (at the time the application is filed)
- Spouse
- Unmarried children under 21

When the U visa applicant is over the age of 21, the following family members may qualify:[46]

- Spouse
- Unmarried children under 21

Please note that a qualifying family member who is the perpetrator/abuser cannot apply for derivative status.[47]

In 2012, USCIS issued a policy memorandum to clarify how they will adjudicate U visa applications for derivatives who age-out (turn 21) after the application is filed.[48] This was followed by the passage of VAWA 2013.[49] Previously, a derivative child was granted U-3 status until the day before his 21st birthday. Now, derivative U visa applicants continue to be classified as children, even if they turn 21 while the U visa application is pending, as long as the derivative was under 21 at the time the principal applicant filed the U visa application.[50] Additionally, derivative children in this situation can now be granted a U visa for four years.

VAWA 2013 also clarifies that a U-1 applicant who is under 21 at the time of filing the U visa application will continue to be treated as a child while the U visa application is pending, even if he turns 21 during before the application is adjudicated. This preserves the derivative status of any parents or siblings who applied as derivatives.[51]

The age-out fixes in VAWA 2013 are extremely helpful to many clients. However, a derivative child who marries is no longer considered a child under INA § 101(b). A derivative applicant in this situation is unable to obtain derivative status.[52]

IV. Special Considerations

a. Criminal History

Many crimes, even relatively minor ones, can render your U visa client inadmissible to the United States under INA § 212(a)(2) and necessitate the filing of an I-192 waiver of inadmissibility. As such, it is crucial that you go over every single arrest and conviction with your client, and remind your client that full and truthful disclosure of his or her criminal history is necessary for you to represent the immigration case properly.

Any criminal arrest, whether or not it resulted in a conviction, must also be disclosed to USCIS on the Form I-918 or I-918A and be accompanied by a certified disposition from the relevant authorities showing the criminal charges, disposition, and any sentence. If your client is having trouble locating

46 *Id.*
47 8 C.F.R. § 214.14(f)(1).
48 USCIS Policy Memorandum, PM-602-0077 (Oct. 24, 2012).
49 Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).
50 Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).
51 Pub. L. No. 106-386, 114 Stat. 1464 (Mar. 7, 2013).
52 INA § 101(b).

records for prior arrests, NIJC can assist your client in submitting an FBI or State Police records check request during our regular consultation hours. Please note that a fee may be assessed for this service.

b. Prior Final Orders of Removal

Individuals who are the subject of a final order of removal, deportation, or exclusion are not precluded from filing for U nonimmigrant relief.[53] While the filing of the U visa petition has no effect on Immigration & Customs Enforcement's ("ICE") authority to execute a final order; an alien may file a request for a stay of removal.[54] To date, however, the USCIS Vermont Service Center has not made a practice of reporting an applicant's prior final order to ICE while the U visa is being adjudicated, or even in the case that the U visa is denied.

One of the significant benefits of the U visa is that any final order issued by the Secretary of DHS will be automatically cancelled by operation of law upon approval of the U visa.[55] Individuals with final orders of removal, deportation, or exclusion issued by an immigration judge or by the Board of Immigration Appeals must seek cancellation of the order by moving to reopen and terminate proceedings upon approval of the U visa.[56]

It is not uncommon for NIJC's U visa clients to have been previously stopped or detained by Customs & Border Protection ("CBP") upon an attempted illegal entry into the United States, and then subsequently returned to their home country. Congress introduced the concept of "expedited removal" in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") whereby CBP agents were given exclusive authority to expeditiously remove certain inadmissible aliens at a port of entry without referring such aliens to an Immigration Judge.[57] The Former Immigration & Naturalization Service ("INS") began implementing the expedited removal provisions on April 1, 1997. One problem practitioners face, however, is that often the client does not know whether they were issued a formal order of removal, or were simply allowed to "voluntarily return" to their home country.

Some questions to ask your client to help determine whether a formal order of removal was executed and whether any ground of inadmissibility was triggered include:

- When did the immigration stop or detention occur?
- Where were you detained?
- How long were you detained?
- Were your fingerprints or photograph taken?
- Did you sign anything?
- Did you appear before an Immigration Judge?
- Did you present false documentation or a false name?
- Did you claim to be a U.S. Citizen?

Another way to determine whether your client has an expedited order is to submit a Freedom of Information Act Request ("FOIA") to CBP as well as a background check to the Federal Bureau of Investigation ("FBI"), although the responses are not always 100% conclusive. It can take anywhere

53 8 C.F.R. § 214.14(c)(1)(ii).
54 *Id*.
55 8 C.F.R. § 214.14(c)(5)(i).
56 *Id*.
57 INA § 235; 8 U.S.C. § 1225.

from two to six months to receive a response from these agencies. If your client was previously placed in removal proceedings before an Immigration Judge, you may file a FOIA request with the Executive Office for Immigration Review ("EOIR") or try calling the EOIR automated hotline at (800) 898-7180 if you know your client's A#. (*See* Appendix C(9)) You are welcome to provide these services to your clients. NIJC will also provide these brief services during our consultation hours for a fee.

When meeting with a client who is not sure whether he or she has a final order of removal, it is important that you communicate the risks (and benefits) to filing a U visa. In terms of preparing the U visa application, you should always err on the side of full disclosure of any encounter(s) your client may have had with CBP or hearings before an Immigration Judge in the past. The facts should be disclosed in both the client affidavit and as an addendum to the questions on the Forms I-918 and I-918A relating to previous orders of deportation, exclusion, and removal.

Please contact NIJC if, during your representation, you learn that your client has a prior order of removal.

V. Two Steps: Issuance of Deferred Action (Waitlist) and Eventual U Visa Approval

a. U Visa Waitlist and Deferred Action

USCIS is now taking about 20 years to adjudicate U visa applications. Once an application is deemed approvable, there may not be a U visa available due to the 10,000 annual cap on U visas. Because of the annual cap, USCIS has developed an interim step in the U visa process. When a U visa application is reviewed by USCIS, if it is deemed approvable but there is no U visa immediately available, USCIS will place the case on the U visa waitlist and grant the applicant deferred action. At this stage, principal and derivative applicants become eligible for an employment authorization document (work permit) based on deferred action (category (c)(14)). If Form I-765 based on category (c)(14) was submitted with the initial U visa application, a work permit will be issued. If Form I-765 based on category (c)(14) was NOT submitted with the initial U visa application, you can submit one at this time. USCIS will notify the client of placement on the U visa waitlist and deferred action status with a letter.

Having a valid work permit will enable your client to apply for a social security number. Therefore, it is beneficial for all U visa applicants, regardless of age or ability to work, to apply for employment authorization.

b. U Visa Approval and Employment Authorization

Upon approval of the U visa, the principal applicant will automatically receive an employment authorization document (work permit) based on the U visa (category (a)(19)) valid for the entire duration of U status.[58]

Derivative applicants must file a separate request for an employment authorization document based on the derivative U visa (category (a)(20)) on Form I-765, as it will not be issued automatically.[59] This request can be filed concurrently with the I-918 Supplement A, or after the approval of the derivative U

[58] 8 C.F.R. § 214.14(c)(7).
[59] 8 C.F.R. § 214.14(f)(7).

visa. Two passport photos and the appropriate filing fee or fee waiver request must be included with Form I-765. Derivative applicants who are outside of the United States may only file Form I-765 after admission to the United States in U nonimmigrant status.[60]

c. Obtaining a Social Security Number

Upon receipt of an employment authorization document, the client should apply for a social security number at the nearest social security administration office. The social security administration will issue the client a restricted social security number that is only valid for employment with authorization from USCIS. With the valid employment authorization card and social security number, the client can obtain lawful employment. In addition, the foreign national can apply for a state identification and drivers license, if qualified to do so.

If the USCIS later approves the client's application for adjustment of status, he or she should return to the social security office with her LPR card and request that the restriction requiring employment authorization be removed from the social security card.

d. Travel

Technically, individuals in U nonimmigrant status are eligible to apply for a U visa abroad at a U.S. consulate and may be able to use that visa to reenter the United States after a trip abroad. However, considering the overall lack of guidance from DHS and DOS regarding the consequences of travel abroad and reentry procedures, NIJC strongly urges all U visa holders to avoid overseas travel until they become lawful permanent residents or until further guidance is issued.

Of particular concern for approved U nonimmigrants that have been granted the U visa while inside the United States:

a. There is no guarantee that the visa will be issued at the embassy or consulate to allow re-entry;

b. If the U visa holder accrued "unlawful presence," departure from the United States may trigger a three- or ten-year bar to admissibility; and

c. In order for U visa holders to apply for adjustment of status to lawful permanent residence, the applicant must demonstrate continuous physical presence in the United States. The regulations state that "an alien shall be considered to have failed continuous physical presence...if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days."[61]

e. Adjustment of Status

Under INA § 245(m), a U visa holder may be eligible to adjust status to that of a lawful permanent resident. In order to adjust, U nonimmigrants must demonstrate:[62]

- Lawful admission to the United States as a principal or derivative in U status (U-1, U-2, U-3, U-4, or U-5 nonimmigrant status);

---

60 *Id.*

61 8 C.F.R. § 245.24(a)(1).

62 INA § 245(m); 8 U.S.C. § 1255(m); 8 C.F.R. § 245.24

- Valid U status at the time of application;
- Continuous physical presence in the United States for three years;
- No inadmissibility under INA § 212(a)(3)(E);
- Has not unreasonably refused to provide assistance to an official or law enforcement agency...after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and
- That a favorable exercise of discretion is "justified on humanitarian grounds, to ensure family unity, or is in the public interest."

While we encourage advising your client of the requirements for adjustment of status upon approval of the U visa approval, NIJC does not have the resources to provide *pro bono* support for the actual U adjustment of status application at this time. Instead, we recommend that U visa holders return to NIJC at least two years and nine months from the date of U visa approval for an assessment of eligibility and organizational capacity for representation.

i. Derivatives Granted U Visa Status for Fewer Than Three Years

Derivative U visa holders do not accumulate continuous physical presence in U nonimmigrant status until they enter the United States with a U visa. If a derivative U visa holder abroad does not enter the United States shortly after obtaining the U visa, the derivative might be unable to accrue at least three years of continuous physical presence in U nonimmigrant status as required for adjustment of status to lawful permanent residence under INA § 245(m). As a remedy to this problem, USCIS is recommending that derivatives file Form I-539, Application to Extend/Change Nonimmigrant Status, with the Vermont Service Center to extend the U visa status to at least three years so that the derivative may be eligible to adjust status to permanent residence. A fee waiver request may be submitted in conjunction with Form I-539.[63]

If you believe that your client's period of authorization in U nonimmigrant status was issued in error, please contact NIJC. We may ask that you contact the Vermont Service Center directly via either the attorney hotline or inquiry email address.

ii. Derivatives Not Yet Approved or Admitted in U Status

USCIS' interpretation is that derivatives are not eligible for status if the principal adjusts status to lawful permanent resident before USCIS approves the derivatives' applications.[64] A principal applicant should not file for adjustment of status if the derivative applicants have not yet been granted derivative U status. Additionally, if a U-2 or U-3 derivative applicant abroad has been approved but not yet admitted into the United States, the principal applicant should not yet file for adjustment of status. In such cases, the

---

[63] INA § 245(l)(7); 8 U.S.C. § 1255(l)(7). "The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner or for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3)."

[64] 8 C.F.R. § 245.24(b)(2); USCIS Policy Memorandum, PM-602-0032.1 (Apr. 19, 2011).

principal U-1 should request an extension of U-1 status until the derivatives have entered the United States in derivative U status. The INA allows for such extensions based on exceptional circumstances.[65]

Part B. Client Interviews

I. Initial Client Interview

The initial interview provides you with an opportunity for you and your client to meet, to discuss the case including the U visa application process, to review the documents and to identify next steps.

Every client is different and some will want to discuss their cases in detail, whereas others are more reluctant. It is important to remember that we are trying to empower our clients to reclaim their autonomy and independence. However, each client will determine what is best for them, and regardless of our personal feelings, we have to support our client's decisions. A client who was a victim of domestic violence might remain with the abuser or might return to the abuser after leaving. Although it is fine to discuss these issues with your clients, refrain from giving advice on these matters and remind your client that ultimately it is his or her choice and that you support their decision. If your client is not in counseling, this is a good time to make a referral to allow your client to explore these and other issues in more depth with a qualified individual.

The initial interview with your client will take between 1.5 to 2 hours. However, if you are using an interpreter, it may take longer due to the time it takes for translation. There is no particular "order" in which the various materials that need to be covered should be discussed – you should conduct the interview in a manner that feels comfortable and natural to you. The following are guidelines, and it is important to cover all of this information in the interview.

a. Initial Considerations

- When you set up the initial interview, ask the client to bring in all legal documents such as identity documents (passport and birth certificate), marriage certificates, children's birth certificates, all immigration-related documents, police records, court dispositions, orders for protection, medical records, etc. (*See* Appendix C(5) for Checklists of Supporting Documents). At the interview, you can determine what additional documents you need after your review.

- Determine at the outset whether it is safe for you to send mail to and call your client at home. If not, set up an alternate address and phone number where you can reach the client, or arrange to have the client call you on a specified date or time. (This information is usually obtained during the initial intake, but it is important to verify whether the situation has changed.)

- Avoid using legalese. Try to explain the legal process and other requirements in plain English to avoid confusing the client.

- Explain to the client that everything you discuss will remain confidential and that the information the client provides to you will not be shared with unauthorized third parties. Tell the client that your office has procedures in place to prevent the abuser from finding out that he or she has legal representation or filing an application based on the victimization. This might also be an

[65] USCIS Policy Memorandum, PM-602-0032.1 (Apr. 19, 2011).

appropriate time to discuss the confidentiality provisions of the U visa. You should explain that there will be times when you need to discuss parts of the case with other individuals, but that you will not do so without the client's permission. Have the client sign the "Release of Information" form, and explain its purpose. (*See* Appendix C(2)). For example, you may need to obtain the client's permission before speaking to a particular individual, such as a friend, who can write her a letter of support. Explain that in order to complete the application packet, you may need to talk to her counselor, divorce lawyer or other individuals who might provide needed information about the case. Reassure the client that you will notify him or her before providing or obtaining information from third parties.

- Have the client sign a contract with you and explain its provisions. Make sure that the client understands his or her rights and responsibilities, and give the client an opportunity to ask questions.

b. Discussing Domestic Violence

It is not necessary to obtain a detailed understanding of the victimization or abuse during the initial interview. In fact, we discourage too much discussion about the nature of the abuse at the first meeting since you and your client have yet to develop a trusting relationship, and the client might feel uncomfortable. As your relationship develops, your client will open up more. On many occasions, clients will divulge new facts either at the time of filing or once your receive a request for evidence, because they did not feel comfortable discussing them before. This is often the case with sexual abuse which is very difficult to talk about.

When you discuss the abuse, it is generally in the context of explaining the client affidavit. The client will need to write an affidavit describing the facts of the victimization. Initially, you can discuss the abuse in a way that distances the "issue" of domestic violence from your client's personal experience. Use the "Power and Control Wheel" (pages 10-13) and the "Cycle of Violence Wheel" (pages 14-15) to discuss what domestic violence is. Tell your client that if any of these forms of violence existed in the relationship(s), he or she should write about them in the affidavit.

- Don't ask: Did your husband beat you?
- Ask: Did your husband ever slap you, punch you, kick you, shove you, bite you, choke you, poke his finger in your chest, raise his fist at you, grab you, pull your hair, throw things at you, destroy your property, threaten to use a weapon, threaten you with a weapon, etc.?

- Don't ask: Did your husband ever rape you?
- Ask: Did your husband ever coerce/force you to have sex with him?

- Don't ask: Did your husband ever threaten you?
- Ask: Did your husband tell you he would call the immigration authorities and have you deported, tell you he would hurt you physically, tell you he would take your children away from you, tell you he would hurt your family, etc.?

c. Procedural and Other Issues to Discuss

- Explain the procedure for filing a U visa application, next steps such as receipt notices and biometrics appointment, and the length of time it generally takes to obtain an approval. You should also let the client know what to expect upon approval of the U visa.

- Make sure the client knows that there are no USCIS fees for the applications you will file. As of April 1, 2024, all forms associated with a Nonimmigrant Status Form I-918 (including Form I-765, Form I-192, and Form I-485) filing through final adjudication of the adjustment of status application are exempt from paying fees for immigrant victims. No fees are required.

- Refer your client for domestic violence advocacy and counseling if needed, as well as for legal representation for divorce and/or custody matters.

- Discuss the supporting documentation, whether there is sufficient evidence to prove each requirement and whether the client needs additional evidence. Make copies of the materials the client brought to the interview and review the checklist with the client to see what additional materials might be needed. This is also a good time to assess whether your client needs to develop a safety plan and offer your office as a place to keep important documents.

- Give your client the opportunity to ask any questions that he or she may have. Make sure the client understands what steps need to be taken next, such as writing the affidavit and collecting supporting documents. Make sure you know how to contact the client and vice versa.

Part C. Preparing the U Nonimmigrant Application Package

I. Basics of the Application

The burden of proof is on the applicant to demonstrate eligibility for the U visa and admissibility into the United States as a nonimmigrant. USCIS may consider any credible evidence presented in support of the application.[66]

The regulations provide what initial evidence must be submitted with the application for the U visa.[67] The following is a list of forms and documents that must be included:[68]

- **A cover letter** acting as a roadmap to the evidence included;

66 8 C.F.R. § 214.14(c)(4).
67 8 C.F.R. § 214.14(c)(2).
68 *See* Appendices B(4)-(5) for Sample U Visa Filings
69 8 C.F.R. § 103.7(a)-(b)
70 8 C.F.R. § 103.7(c)(1); 8 C.F.R. § 103.7(c)(5)(ii)-(iii)

-

Please note: exemot fees are accurate as of April 2, 2024, but please always verify fees and forms by checking the USCIS website directly as USCIS does often issue updates to fees and forms.

- **Form G-28**, Notice of Appearance of Attorney;

- **Form I-918, Petition for U Nonimmigrant Status**, with supporting documents, such as a copy of the applicant's birth certificate and identity documents, biographic page of valid passport, evidence of lawful entry into the United States (if applicable) and/or any prior lawful immigration status;

- **Original Form I-918 Supplement B, U Nonimmigrant Status Certification**, with original signature

- **Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient (if applicable)** for each derivative family member, with documents establishing derivative's identity and qualifying relationship to principal applicant (i.e. birth or marriage certificate),[71] including biographic page of valid passport (*parent or guardian may sign forms for derivatives under the age of 14);

    - The qualifying relationship must exist both at the time of filing of the U visa application and at the time of adjudication.[72] Derivative applicants must demonstrate that they are admissible to the United States or submit Form I-192 to request a waiver of applicable grounds of inadmissibility.

    - Derivative applicants do not have to submit their applications concurrently with that of the principal, and may instead submit the application at a later time provided the principal applicant is still in valid U status.[73] Please note that U visa derivatives will not be granted status until the U principal applicant has been approved.[74]

- **Form I-765, Application for Employment Authorization**
    - U principal applicants: Principal applicants automatically receive category (a)(19) employment authorization upon U approval; file one category (c)(14) Form I-765 with the principal U visa application which will be granted upon placement on the U visa waitlist and granting of deferred action.
    - U derivative applications: For each derivative applicant physically present in the United States, file two Form I-765 applications; file one category (c)(14) Form I-765 and one category (a)(20) Form I-765 with the derivative U visa application.
    - Each Form I-765 application for employment authorization requires two passport photos.

71 8 C.F.R. § 214.14(f)(3)(i).
72 8 C.F.R. § 214.14(f)(4).
73 8 C.F.R. § 214.14(f)(2).
74 8 C.F.R. § 214.14(f)(6)(i); 8 C.F.R. § 214.14(g)

- **Form I-192, Application for Advance Permission to Enter as a Nonimmigrant** to waive any and all grounds of inadmissibility found under INA § 212(a);

- **A signed personal statement or affidavit of the applicant describing the victimization including**: the nature of the criminal activity, when the criminal activity occurred, who was responsible, the events surrounding the criminal activity, how the criminal activity came to be investigated, what substantial physical and mental abuse was suffered as a result of the crime, and the extent of the applicant's cooperation with the investigation and/or prosecution of the crime. (*When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian or next friend may submit a statement on behalf of the petitioner).

    - **The statement should also include an attestation to the facts giving rise to any ground(s) of inadmissibility, and if a waiver is being sought, the humanitarian and social factors present in the case that show it would be in the national or public interest for the I-192 waiver to be granted.** It is in the interest of the client to include or explain all possible grounds of inadmissibility to ensure that all applicable grounds are waived so as to prevent future problems with adjustment of status and/or removability, and to boost your client's credibility.

- **Additional evidence supporting the claim**, including:

    - **Evidence that the applicant is a victim of the qualifying criminal activity** such as trial transcripts, court documents, news articles, police reports, orders of protection and affidavits of other witnesses such as medical personnel;

    - **Evidence that the applicant has suffered substantial physical or mental abuse as a result of having been a victim of the crime.** For instance, reports or affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, mental health counselors, copy of protection orders or any other legal documents or signed testimonies from witnesses;

    - **Evidence that the applicant possesses information of the crime of which she was a victim**, including reports and affidavits from police, judges, and other court officials;

    - **Evidence that the applicant has been, is being, or is likely to be helpful to a certifying agency**, such as trial transcripts, court documents, police reports, news articles, copies of reimbursements forms from travel to and from court, affidavits of other witnesses or officials;

    - **Evidence that the criminal activity violated a U.S. law and/or occurred in the United States** such as a copy of statutory provisions showing the elements of the offense or factual information about the crime;

    - **Evidence demonstrating that a waiver of all applicable grounds of inadmissibility would be in the national or public interest.** For instance, proof of U.S. citizenship or lawful permanent residence of children or other family members residing in the United States, police clearance letters, copies of tax returns, employer letter, school/medical records, letters of support, country conditions reports.

- A non-exclusive list of factors to consider when demonstrating that a grant of the I-192 waiver is in the national or public interest include:

    - Ongoing helpfulness to law enforcement;
    - Severity of physical or mental harm as a result of the crime and the need for continued medical/social/supportive services in the United States;
    - The applicant's good moral character;
    - Rehabilitation (if the waiver is based on criminal grounds of inadmissibility);
    - Length of time in the United States;
    - Family ties in the United States including family members with lawful permanent residence or U.S. citizenship;
    - Community ties in the United States for both applicant and/or applicant's children such as work, school, religious institutions, or community groups;
    - Medical conditions of applicant or immediate family members;
    - Political, economic, or cultural conditions in home country;
    - Lack of family/community ties to home country;
    - The impact of loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);
    - The likelihood that the perpetrator's family, friends, or others acting on behalf of the perpetrator in the home country would physically or psychologically harm the applicant or the applicant's family;
    - The existence of laws and social practices in the home country that punish the applicant or the applicant's children because they have been victims of domestic violence or have taken steps to leave an abusive household; and/or
    - The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.

- All cases are unique and not all of the above factors will apply in each case. Documents supporting the client's statement must also be submitted.

- It is the opinion of immigration advocates that to deny a U visa solely because the applicant is undocumented (i.e. entered without inspection or triggered unlawful presence grounds of inadmissibility) would completely undermine the purpose of the U visa since victims would be less willing to report crimes and assist law enforcement out of fear of deportation. The fact that they have cooperated with law enforcement to help keep our communities safe is in and of itself in the national or public interest. Of course, an applicant with more serious violations of immigration law involving crimes or security grounds of inadmissibility, for example, will require stronger countervailing equities in order to prevail on the waiver.

II. Practical Considerations

- **Translations:** Any document not in English must be translated. The translation must include a signed and dated statement from the translator certifying that s/he is competent in both languages to render an accurate translation.

- **Original Documents:** All USCIS application forms, affidavits, letters of support, and certified dispositions must be submitted in the original. Please note that submitting photocopies of all other supporting evidence is best, unless otherwise requested by USCIS, since USCIS will not return your client's original documents once they are submitted.

- **Passports:** All U visa applicants, whether principal or derivative, must include a copy of their valid, unexpired passport with their U visa application.[75] Minor children may have difficulties obtaining a passport in the case where the abusive parent is unavailable or unwilling to authorize the issuance of the passport, unless there is a court order or divorce decree granting the requesting parent custody of the child or a plenary order of protection granting the requesting parent temporary custody of the child. If it is not feasible to obtain a passport for a minor child residing inside the United States, you may request a waiver of this requirement using Form I-192, as you would any other ground of inadmissibility. For minor children residing outside of the United States, you must instead file Form I-193 to waive this requirement.

[75] 8 CFR § 214.1(a)(3)
[76] 8 C.F.R. § 103.7(c).

- **Finalizing the Application Packet:** All supporting documents should be indexed but **avoid using tabs**! Instead, USCIS prefers that you reference your documents via page number. Use a two-hole punch at the top of the packet and fasten everything together with a two-pronged, metal fastener. **Do not use side-binding or a plastic cover sheet.**

- **Submitting the Application Packet:** All requests for U visas are sent to the USCIS Nebraska Service Center (NSC) where the application will be adjudicated based solely on the documentation provided – no in-person interview is granted. The NSC adjudicates all U visa requests, not matter where the applicant resides.

  Requests for a U visa should be sent via certified mail or overnight delivery service to:

  USCIS Nebraska Service Center
  Attn: I-918
  PO Box 87918
  Lincoln, NE 68501-7918

- **Copies of the Application Packet:** Please retain a complete copy of the application for your client's file and email or send a hard copy to NIJC's U visa project paralegal for our files as well.

- **Address Changes:** USCIS must be notified of all address changes within ten days of such change.[77] You may report the change in address either online via www.uscis.gov or by contacting the National Customer Service Center. In addition to reporting to USCIS through these means, NIJC also recommends that you inform the NSC directly and in writing using NSC's routing sheet. (*See* Appendices D(3)-(4)).

III. What Happens After Filing

- **Receipt Notices**: You should receive a separate receipt notice for each application filed within approximately 4-6 weeks.

- **Biometrics Appointments**: All principal applicants and derivatives over the age of 14 will receive an appointment notice for biometrics (fingerprinting) at a local Application Support Center (ASC). Applicants must bring their original biometrics notice and a government-issued photo I.D. with them to the appointment.

  - For U visa applicants outside of the United States: the client will receive a Request For Evidence (RFE) for the biometrics, with an attached FBI fingerprint card to send to the applicant. Applicants should schedule an appointment go to the nearest U.S. embassy or consular office where officials will process the fingerprints and send the results directly to the NSC.

- **Processing Times**: USCIS has not published their processing times for the I-918, I-918A, and I-192. In practice, NIJC has experienced processing times of approximately 96 months.

[77] INA § 265; 8 U.S.C. § 1305.

- **Requests For Evidence (RFE)**: USCIS may issue an RFE for additional evidence and will designate a deadline by which you must respond. If your RFE response is insufficient or untimely, USCIS will likely deny the U visa application. *Please contact NIJC if you receive an RFE!*

- **Approval Notices**: When the U visa is approved, the client will receive the following approval notices (not necessarily at the same time or in this order):
    - I-765 approval notice;
    - EAD issued for duration of status;
    - I-918 approval notice with attached Form I-94 Record of Departure; and
    - I-192 approval notice, if filed.

Please carefully review the notices to make sure there are no mistakes in the client's name, or date of birth. Send all original notices to the client and keep a copy for your records. We also ask that you send scanned copies of the notices to NIJC via email. In the case you receive other USCIS correspondence after withdrawing from the case from USCIS, please contact NIJC.

- **Derivatives Abroad:** U Nonimmigrant derivatives living abroad will need to apply for the actual U visa at a U.S. embassy or consulate abroad. This will require, among other things, the submission of an additional form (DS-160) and a visa processing fee. Because U nonimmigrant consular processing is a constantly evolving process that requires the complex coordination of the Department of Homeland Security and the Department of State, we strongly recommend that you contact NIJC for updated information on consular processing procedures before beginning the process with your client.

IV. Closing the Pro Bono Case

a. After U Visa Waitlist and Deferred Action

We are now offering the option to transfer U visa cases back to NIJC after the client is placed on the U visa waitlist and granted deferred action. The life of a U Visa case is getting longer and we want to make sure this does not discourage pro bono attorneys from taking U visa cases with NIJC. Please contact NIJC if you would like to transfer the case back to NIJC once your client is placed on the U visa waitlist and granted deferred action.

b. After U Visa Approval

The *pro bono* representation should end upon completion of the agreed upon representation listed in the retainer agreement. NIJC provides *pro bono* support according to NIJC's *pro bono* retainer with the client. Therefore, if NIJC signs a retainer for the U visa application, we would expect that the *pro bono* representation terminates upon approval of the U visa. Similarly, the NIJC *pro bono* retainer will specify whether derivatives are also clients and if so, the scope of their representation.

NIJC encourages *pro bono* counsel to sign their own retainers with the clients limiting it to the same representation as listed in NIJC's *pro bono* retainer. If there is any modification to the *pro bono* representation and includes matters outside the scope of NIJC's *pro bono* retainer, please contact NIJC as we cannot guarantee to provide technical support for matters outside the scope of our retainer.

Once the terms of the retainer are met, we recommend that the *pro bono* attorney send the client a closing letter. In addition, please send a copy of the approval notices and a complete copy of the file to NIJC, if you have not previously done so. Upon receipt, NIJC will mail the client a closing letter with appropriate advisals and will also close the case at our office.

Now that your case is complete, please consider reviewing NIJC's case list for additional *pro bono* opportunities and encouraging colleagues to consider our *pro bono* projects!

IMPORTANT PHONE NUMBERS AND ADDRESSES

I. Nebraska Service Center (for Attorneys of Record only):*
   a. Inquiry Hotline: (800) 375-5283; OR
   b. Inquiry Email: nsc.i-918inquiries@uscis.dhs.gov

II. Please include your name, organization's name and phone number in addition to the client's name, date of birth, A number, receipt number for the application and the nature of the inquiry.

III. Voice messages and emails will be responded to within 72 hours.

II. Immigration Court Automated Hotline: 800-898-7180

III. Chicago Domestic Violence Hotline
(for shelter or counseling referrals): 877-863-6338

IV. National Domestic Violence Hotline: 800-799-SAFE or www.ndvh.org

V. Customs & Border Protection FOIA Information:
www.cbp.gov/xp/cgov/admin/fl/foia/

VI. Executive Office for Immigration Review FOIA Information:
www.justice.gov/eoir/efoia/foiafact.htm

GLOSSARY OF IMMIGRATION TERMS

* * *

A

"A" Number: An eight digit number (or nine digits, if the first number is a zero) beginning with the letter "A" that the DHS gives to some noncitizens. (Please note that EOIR now requires all A Numbers to be submitted as nine digit numbers. If your client's A Number only has eight digits, add a "0" to the beginning of the number.)

Adjustment of Status: A process by which a noncitizen in the United States becomes a lawful permanent resident without having to leave the United States.

Admissible: A noncitizen who may enter the United States because he/she is not among the classes of aliens who are ineligible for admission or has a waiver of inadmissibility.

Admission: The decision of the DHS to allow a noncitizen at the United States border or international airport or seaport to enter the United States.

Affidavit of Support: A form (I-134) filed by a U.S. citizen or lawful permanent resident for a noncitizen seeking lawful permanent residence.

Aggravated Felon: One convicted of numerous crimes set forth at INA § 101(a)(43). An aggravated felony includes many crimes, but the most common are: (1) drug trafficking--any crime involving distribution, importation or sale of drugs, no matter the amount or the sentence; (2) the crime of theft, robbery or burglary with one year sentence whether imposed or suspended; and (3) the crime of violence with a one year sentence whether imposed or suspended.

Alien: A person who is not a citizen or national of the United States.

Alien Registration Receipt Card: The technical name for a "green card," which identifies an immigrant as having permanent resident status.

Aliens Previously Removed: Ground of inadmissibility, for persons previously removed for anywhere from five years to twenty years depending on prior circumstances.

Aliens Unlawfully Present: Ground of inadmissibility for three years for an individual unlawfully present in the United States for more than 180 days but less than one year commencing April 1, 1997 or for ten years if unlawfully present for one year or more.

Asylee: A person who is granted asylum in the United States.

Asylum: A legal status granted to a person who has suffered harm or who fears harm because of his/her race, religion, nationality, political opinion or membership in a particular social group.

B

Beneficiary: A person who will gain legal status in the United States as a result of a visa petition approved by the DHS.

C

Cancellation of Removal: Discretionary remedy for an LPR who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an aggravated felony, or anyone physically present in the United States for a continuous period of not less than ten years, who has been a person of good moral character during such period, has not been convicted of certain offenses and who establishes that removal would result in "exceptional and extremely unusual hardship" to the U.S. citizen or LPR spouse, parent, or child.

Child: The term "child" means an unmarried person under twenty-one years of age who is: (1) a legitimated child; (2) a stepchild; (3) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile; (4) an illegitimate child; (5) a child adopted while under the age of sixteen; and (6) a child who is an orphan. There is a significant amount of case law interpreting these categories.

Citizen (USC): Any person born in the fifty United States, Guam, Puerto Rico, or the U.S. Virgin Islands; or a person who has naturalized to become a U.S. citizen. Some people born abroad are also citizens if their parents were citizens.

Conditional Permanent Resident Status: A person who received lawful permanent residency based on a marriage to a U.S. citizen, which was less than two years old at the time. Conditional residents must file a second petition with the U.S. citizen within two years of receiving their conditional resident status in order to retain their U.S. residency.

Consular Processing: The process by which a person outside the United States obtains an immigrant visa at a U.S. consulate in order to travel to the United States and enter as a lawful permanent resident.

Conviction: Formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, if a judge or jury has found the person guilty or the person has entered a plea of guilty or *nolo contendere* and has admitted sufficient facts to warrant a finding of guilt and the judge has ordered some form of punishment, penalty or restraint.

Credible Fear Interview: An interview which takes place if an alien who arrives in the United States with false documents or no documents, and is therefore subject to expedited removal, expresses a fear of persecution or a desire for asylum. The purpose of the interview is to determine if the alien can show that there is a significant possibility that he/she can satisfy the qualifications for asylum.

D

Deferred Action: An exercise of prosecutorial discretion in which DHS will not to pursue removal of a foreign national from the United States for a specified time period. Deferred

	action is not a legal status, but an alien in deferred action status may apply for employment authorization.
Department of Homeland Security (DHS):	The federal department charged, in part, with implementing and enforcing immigration law and policy.
Deportable:	Being subject to ejection from the United States for violating an immigration law, such as entering without inspection, overstaying a temporary visa, or being convicted of certain crimes.
Deportation:	The ejection of a noncitizen from the United States. Prior to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), noncitizens were ejected from the United States through deportation proceedings. IIRIRA combined what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure.
Detention:	Asylum seekers who enter the United States without documentation may be detained at a DHS detention facility until they pass a credible fear interview or until the completion of their asylum hearing.
Derivative Family Member:	An individual who will gain legal status in the United States by virtue of their qualifying relationship to a principal beneficiary of a visa petition or other application for lawful status.

E

Employment Authorization Document (EAD):	The I-688 card that the DHS issues to a person granted permission to work in the United States. The EAD is a plastic, wallet-sized card.
Entry:	Being physically present in the United States after inspection by the DHS or after entering without inspection.
Entry Without Inspection (EWI):	Entering the United States without being inspected by the DHS, such as a person who runs across the border between the United States and Mexico or Canada. This is a violation of the immigration laws.
Excludable:	Being inadmissible to the United States for violating an immigration law, such as for not possessing a valid passport or visa, or for having been convicted of certain crimes.
Exclusion:	The ejection of a noncitizen who has never gained legal admission to the United States (however, the person may have been physically present in the United States). Prior to IIRIRA, noncitizens who had never gained legal admission to the United States were ejected through exclusion proceedings. IIRIRA combined what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure
Executive Office for Immigration Review (EOIR):	The Immigration Court, the Board of Immigration Appeals, and one other agency within the Department of Justice that decides immigration cases.

Expedited Removal: An abbreviated removal procedure applied to aliens who arrive in the United States with false documents or no documents.

I

I-94 Card: A small white paper card issued by the DHS to most noncitizens who do not have green cards upon entry to the United States. It is usually stapled to a page of the noncitizen's passport. The DHS may also issue I-94 cards in other circumstances.

Illegal Alien: See "Undocumented".

Immediate Relative: The spouse, parent, or unmarried child under 21 of a U.S. citizen. Generally speaking, the immigration laws treat immediate relatives better than other relatives of citizens or legal permanent residents.

Immigrant: A person who has the intention to reside permanently in the United States; usually a lawful permanent resident.

Immigrant Visa: A document required by the INA and required and properly issued by a consular office outside of the United States to an eligible immigrant under the provisions of the INA. An immigrant visa has six months validity.

Immigration and Customs Enforcement (ICE): The agency within the Department of Homeland Security responsible for overseeing detention and release of immigrants and the investigation of immigration-related administrative and criminal violations.

Immigration and Nationality Act (INA): The immigration law that Congress originally enacted in 1952 and has modified repeatedly.

Immigration and Naturalization Service (INS): Former branch of the United States Department of Justice charged with enforcing the immigration laws. On March 1, 2003, the INS ceased to exist. Responsibility for immigration policy and immigration functions is now shared between the Department of Justice and the Department of Homeland Security.

Immigration Judge: Presides over removal proceedings.

Inspection: The DHS process of inspecting a person's travel documents at the U.S. border or international airport or seaport.

L

Lawful Permanent Resident (LPR): A person who has received a "green card" and whom the DHS has decided may live permanently in the United States. LPRs eventually may become citizens, but if they do not, they could be deported from the United States for certain activities, such as drug convictions and certain other crimes.

N

National: A person owing permanent allegiance to a particular country.

Native: A person born in a specific country.

Naturalization: The process by which an LPR becomes a United States citizen. A person must ordinarily have been an LPR for five years before applying for naturalization. A person who became an LPR through marriage to a U.S. citizen and is still married to that person in most cases may apply for naturalization after three years as an LPR.

Nicaraguan Adjustment and Central American Relief Act (NACARA): Legislation passed by Congress in 1997 to restore the opportunity for certain individuals present in the United States to adjust to permanent resident status. The legislation covers Cubans and Nicaraguans, Guatemalans, Salvadorans, and certain East Europeans of Former Soviet Bloc Countries. Under the legislation, different requirements apply to each group.

Noncitizen: Any person who is not a citizen of the United States, whether legal or undocumented. Referred to in the INA as an "alien."

Nonimmigrant: A person who plans to be in the United States only temporarily, such as a person with a tourist or student visa. A nonimmigrant will ordinarily have a visa stamp in his/her passport, and an I-94 card which states how long the person can stay in the United States.

Nonimmigrant Visa: A document issued by a consular officer signifying that the officer believes that the alien is eligible to apply for admission to the United States for specific limited purposes and does not intend to remain permanently in the United States. Nonimmigrant visas are temporary.

Notice to Appear: Document issued to commence removal proceedings, effective April 1, 1997.

O

Order to Show Cause: Document issued to commence deportation proceedings prior to April 1, 1997.

Overstay: To fail to leave the United States by the time permitted by the DHS on the nonimmigrant visa (as ordinarily indicated on the I-94 card), or to fail to arrange other legal status by that time.

P

Parole: To permit a person to come into the United States who may not actually be eligible to enter, often granted for humanitarian reasons, or to release a person from DHS detention. A person paroled in is known as a "parolee."

Petitioner: A U.S. citizen or LPR who files a visa petition with the DHS so that his/her family member may immigrate.

Priority Registration Date (PRD): Everyone who files an I-130 Petition For Alien Relative receives a priority registration date. Once a person's PRD becomes current, meaning that a visa is available, he/she can apply for LPR status. This may take a long time, as visa numbers often are not available for many years after the I-130 is approved.

R

Refugee: A person who is granted permission while outside the United States to enter the United States legally because of harm or feared harm due to his/her race, religion, nationality, political opinion or membership in a particular social group.

Relief: Term used for a variety of grounds to avoid deportation or exclusion.

Removal: Proceedings to enforce departure of persons seeking admission to the US who are inadmissible or persons who have been admitted but are removable. After IIRIRA, aliens are placed into removal proceedings instead of deportation or exclusion proceedings.

Rescission: Cancellation of prior adjustment to permanent resident status.

Residence: The principal and actual place of dwelling.

Respondent: The term used for the person in removal proceedings.

S

Service Centers: Offices of the DHS that decide most visa petitions. There are four regional Service Centers for the entire United States: the Vermont Service Center (VSC); the Nebraska Service Center (NSC); the Texas Service Center (TSC); and the California Service Center (CSC).

Stowaway: One who obtains transportation on a vessel or aircraft without consent through concealment.

Suspension of Deportation: Commonly referred to as "Suspension." A way for a noncitizen to become a lawful permanent resident. Historically, suspension has only been available to a person who is in deportation proceedings. The noncitizen usually must show that he/she has resided continuously in the United States for at least seven years, is a person of good moral character, and either he/she or his/her U.S. citizen or LPR relative will suffer extreme hardship is he/she is deported. In the Violence Against Women Act, Congress created a new "suspension of deportation" for spouses and children of U.S. citizens or LPRs who can show that they have been victims of domestic violence or sexual abuse. These persons need only prove three years of continuous residence in the United States.

T

Temporary Protected Status (TPS): A status allowing residence and employment authorization to the nationals of foreign states, for a period of not less than six months or more than eighteen months, when such state (or states) has been appropriately designated by the Attorney General because of extraordinary and temporary conditions in such state (or states).

U

Undocumented: A noncitizen whose presence in the United States is not known to the DHS and who is residing here without legal immigration status. Undocumented persons include those who originally entered the United States legally for a temporary

	stay and overstayed or worked without DHS permission, and those who entered without inspection. Often referred to as "illegal aliens."
United States Citizenship And Immigration Services (USCIS):	The agency within the Department of Homeland Security responsible adjudicating all applications for immigration benefits.
U Visa	A nonimmigrant visa that allows noncitizen victims of crime to stay in the United States and obtain employment authorization. After three years in U-visa status, the noncitizen may be able to adjust status to obtain lawful permanent residency. Certain family members of the U-visa holder may also be eligible for derivative U-visa status.

V

Violence Against Women Act (VAWA):	Legislation passed by Congress in 1994, which contained certain immigration provisions. The immigration law provisions allow a spouse and children, or parents of children, who have been abused or subject to extreme cruelty by their legal permanent resident or United States citizen spouse or parent to immigrate without the assistance of the LPR or USC spouse or parent, provided that they meet certain conditions.
Visa:	A document (or a stamp placed in a person's passport) issued by a United States consulate abroad to a noncitizen to allow that person to enter the United States. Visas are either nonimmigrant or immigrant visas.
Visa Petition:	A form (or series of forms) filed with the DHS by a petitioner, so that the DHS will determine a noncitizen's eligibility to immigrate.
Voluntary Departure:	Permission granted to a noncitizen to leave the United States voluntarily. The person must have good moral character and must leave the United States at his/her own expense, within a specified time. A noncitizen granted voluntary departure can reenter the United States legally in the future.

W

Waiver:	The excusing of a ground of inadmissibility by the DHS or the Immigration Court.
Work Permit:	There is no single document in United States immigration law that is a "work permit." Citizens, nationals, and lawful permanent residents are authorized to be employed in the United States. Certain nonimmigrant visa categories include employment in the United States. Other aliens in the United States may have the right to apply for an Employment Authorization Document (EAD).