Vulnerable Petitioners, VAWA, & SIJs

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Outline

- VAWA Overview
- VAWA Inadmissibility Waivers
- U Nonimmigrant Status Overview
- U Nonimmigrant Status Hot Topics
- SIJS Overview
- One Parent SIJS Option

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VAWA Self-Petition (I-360) Who Qualifies

- Abused spouses of USC or LPR
- Abused spouses of USC or LPR with children as derivatives
- Abused children (unmarried and under 21*, can be step-child) of USC or LPR
- "Non-abused" spouse/parent of abused children
- Abused parents of adult U.S. citizen children

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VAWA Self-Petition (I-360) Battered Spouse Eligibility

- Valid "good faith" marriage to U.S. Citizen or LPR Abuser
- Battery or Extreme Cruelty
  - Self-petitioner was "battered" or "subjected to extreme cruelty" (including verbal, emotional or economic cruelty/abuse)
  - Abuse doesn't have to have occurred in the U.S.
- Resided with abusive spouse during marriage

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Priority Date Issues for VAWA Beneficiaries

- Deferred Action granted for approved I-360's (unless in removal proceedings)
- Receive work authorization
- Can recapture priority date from I-130 filed by abuser
- CSPA applies (as do special, additional, VAWA age-out rules)

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Inadmissibility Grounds and Special VAWA Waivers

- Fraud
- 3/10 Year Bar
- Permanent Bar
- Prior Removal Orders
- Crimes

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Fraud

- VAWA AOS Standard: Extreme hardship to self and children (as well as to LPR or USC parent).
  - Look at both regular hardship factors and the special VAWA hardship factors

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Special VAWA Hardship Factors

- Nature and extent of physical or psychological consequences of abuse
- Impact of the loss of access to the U.S. court system re protective orders, criminal investigations and prosecutions, child support and custody, etc
- Continued need for social, medical, and mental health services for victim and children
- Fear of abuser's family in the home country
- Societal or familial persecution of DV victims in home country
- Fear of the abuser in the home country

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3/10 Year Bars

- VAWA AOS Standard: If can show substantial connection between the abuse and the violation of the terms of the non-immigrant visa or the accrual of unlawful presence and the departure.
- Exception not waiver so no form – address in declaration/cover letter.

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Permanent Bars

- VAWA AOS Standard: If can show a connection between the abuse and the activity that triggered the bar (accrual of unlawful presence and subsequent EWI or attempt or the removal and subsequent EWI or attempt).
- Waive with I-601

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Prior Deportation or Prior Expedited Removal

- Subject to Reinstatement: No review by immigration judge and no eligibility for cancellation of removal and risk of detention at AOS interview!
- Need both I-601 and I-212.
- Contact Gail Pendleton at ASISTA if you want to try for adjustment.

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Outstanding Removal Order

- If just an outstanding unexecuted removal order then use special VAWA MTR provisions:
  - Within a year of final order, or
  - Show extreme hardship to Respondent's children or extraordinary circumstances
  - Includes an automatic stay
- Joint Motion to Reopen also an option for outstanding orders

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Extraordinary Circumstances

- Congressional-issued guidance on the subject:
  - "Such extraordinary circumstances may include but would not be limited to an atmosphere of deception, violence, and fear that make it difficult for a victim of domestic violence to learn of or take steps to defend against or to reopen an order of removal in the first instance...Extraordinary circumstances may also include violence or cruelty of such a nature that, when the circumstances surrounding the domestic violence and the consequences of the abuse are considered, not allowing the battered immigrant to reopen the deportation or removal proceedings would thwart justice or be contrary to the humanitarian purpose of this legislation"

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Crimes

- VAWA adjustment waiver for crimes: No connection required for criminal waivers of inadmissibility.
- Need Good Moral Character for both VAWA I-360 (for three years, although USCIS may look beyond) and VAWA Cancellation of Removal (for three years) – good moral character can be found despite criminal convictions if there is a connection between crime and domestic violence.

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U Nonimmigrant Status

- Created in October 2000 as part of the Victims of Trafficking and Violence Prevention Act (VTVPA).
- PURPOSE is to encourage undocumented immigrant victims of certain violent crimes to report crime to law enforcement without fear of removal (deportation) AND to assist law enforcement in the investigation and prosecution of crimes.
- Confers nonimmigrant status rather than a visa if you are in the U.S. when approved.

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U Nonimmigrant Status Eligibility

- Suffered substantial physical or mental abuse resulting from being a victim of certain criminal activities in the United States (or covered by U.S. law); and
- Possesses information about the crime; and
- Has been, is being, or is likely to be helpful in the investigation or prosecution of crime.
  - Signed Form I-918 Supplement B, U Nonimmigrant Status Certification

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U Nonimmigrant Status Qualifying Criminal Activities

- **Qualifying criminal activities** specified in the Immigration and Nationality Act (INA) § 101 (a)(15)(U)(iii)
- **Criminal activities occurred in** U.S. or U.S. territories or possessions or can be prosecuted in U.S. under extraterritorial statute
- Certain surviving family members of murder victims qualify;
- Parents of USC/LPR/Asylee/Refugee victims of criminal activity may qualify.

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U Nonimmigrant Status Qualifying Crimes
INA §101(a)(15)(U), 8 USC §1101 (a)(15)(U)

- domestic violence, rape, incest, trafficking, torture
- sexual assault, abusive sexual contact, prostitution
- sexual exploitation, FGM, being held hostage
- peonage, involuntary servitude, slave trade
- kidnapping, abduction, 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, or any similar activity in violation of federal, state or local criminal law

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U Nonimmigrant Status Inadmissibility Waivers

- Available for almost all grounds of inadmissibility
  - Entry without inspection, receipt of public benefits, crimes, "alien" smuggling, etc.)
- Discretionary standard: must be in national or public interest
- If criminal grounds of inadmissibility, will have to show rehabilitation
- If violent or dangerous criminal history, "exceptional circumstances" will be required
- NO WAIVER if history of involvement in:

Nazi persecution	Genocide
Torture	Extrajudicial Execution

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U Hot Topics

- Age Out Update
- VAWA IV Update
- U Adjustment of Status

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Special Immigrant Juvenile Status (SJIS)

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SIJS Basics

Statutory Authority

- The Immigration and Naturalization Act at §101(a)(27)(J), codified at 8 U.S.C. § 1101(a)(27)(J).
- This statute was recently amended by the Trafficking Victims Protection and Reauthorization Act (TPVRA) of 2008, now fully in effect.
- This statute is in turn implemented by standards set out in federal regulations, found in the Code of Federal Regulation at 8 CFR §204.11. However, given the new law, many of these regulations may no longer be valid and will need to be amended.

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Eligibility Requirements

1. Is under twenty-one years of age;
2. Is unmarried;
3. Has been declared dependent upon a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody or an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.
4. Whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect or abandonment, or a similar basis found under State law.
5. For whom it has been determined in and administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

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Dependent on a Juvenile Court

- The term "juvenile court" is a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.
- Each state has different qualify courts and different qualifying case types;
  - In California SIJS cases could be based on dependency, delinquency or guardianship.
  - In New York, order might come from family court, surrogacy court or supreme court and might typically arise in a custody, guardianship, PINS, or abuse/neglect case.
- 8 CFR §204.11(a).
- The new law makes it very clear that guardianships are included because includes minors placed with an "individual or entity."

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Reunification Not Viable

- New law clarifies that minor does not need to be in "long term foster care". New requirement is that reunification not viable (as was previously in the regulations) with at least one parent (no longer both parents).
- **NOTE: Although LTP no longer necessary-make sure reunification efforts exhausted before proceeding.**

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Examples of Abuse, Neglect or Abandonment (Not Exhaustive)

- Abuse: Physical, emotionally, verbal by parents or caretaker.
- Neglect: Not providing for basic needs, forced to work full-time and not attend school.
- Abandonment: Parent left child. Parents are deceased.
- Other similar basis in state law: will vary state to state.

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Best Interests

- A court determines that it is in the young person's best interests to stay in the U.S., as opposed to return to their home country.
- Factors such as family/friend support system, emotional well-being, as well as medical and educational resources may be included.

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One Parent SIJS

- Try family court for order with paternity action
- Statutory language – "one OR both parents"
- New process with mixed results

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Inadmissibility Exemptions and Waivers

- SIJS applicants are specifically exempted from several grounds of inadmissibility (and more were recently added), including:
  - prior work without authorization
  - accrued unlawful presence
  - unlawful status at the time of application
  - likely to become a public charge
  - entry without inspection.
  - Document fraud
  - Stowaway

  INA §245(c)(2)/(h)(1)/(h(2)(A); 8 USCA §1255(c)(2); 8 USCA §1255(h)(1)/(2)(A)

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Statutory Authority of Waivers

- The authority for waivers from other grounds of inadmissibility are found in INA §245(h).
- NOTE: the waiver standard in this section is the same as that for refugees (See I.N.A. §209(c), 8 USCA §1159(c)) – "for humanitarian purposes, family unity, or when it is otherwise in the public interest."
- Discretionary waivers that may be necessary include:
  1. mental or physical disorder that poses a risk to people or property
  2. history of prostitution
  3. drug addict or abuser
  4. people who have helped others enter illegally.

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Criminal Bars

- Like all other applicants for adjustment of status, SIJS applicants may be inadmissible if they have been convicted of a crime of moral turpitude, most drug related offenses or other specific crimes which affect admissibility.
- Remember to review waivers, however, under INA §245(h).

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Juvenile Delinquency Adjudications

- Juvenile delinquency adjudications and youthful offender adjudications are not considered convictions for immigration purposes. They are, however, evidence of bad moral character which must be mitigated by evidence of good moral character.
- Watch out for adjudications that are evidence of an inadmissibility bar especially drug sales.

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Factors to Consider When Counseling Clients About SIJS vs. Other Relief

- SIJS beneficiary cannot later petition for parent
- Immediate route to LPR status, rather than other forms of relief (such as VAWA based on relationship to an LPR, U nonimmigrant status or asylum status) which requires a wait for adjustment
- Fairly efficient (by immigration standards) and fairly predictable

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Ensure Your Client Remains Eligible

The four most important things for you and your client to keep in mind about SIJS eligibility from the outset are…

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Dependent on Juvenile Court

1. Your client **SHOULD REMAIN IN FOSTER CARE** until obtaining a green card (unless adopted or appointed a legal guardian)
   - New law is unclear on this. Regulations need to be amended and this will probably no longer be true. However, look at emancipation requirements—foster children will usually not be ready to emancipate if cannot work legally. Look at 391 re: documents needed and also best interest standard for termination of jurisdiction.

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Avoid Criminal Bars

2. Your client SHOULD AVOID CRIMINAL CONDUCT LEADING TO ARREST!

- Criminal activity may give rise to a ground of inadmissibility. Not criminal activities can be waived of being granted SIJS, though it may still be worth. Carefully review INA §245(h).
- <u>If your client does get arrested during the pendency of the SIJS application, work closely with criminal defense counsel to mitigate as best you can collateral consequences for immigration matter</u>.

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Stay Unmarried

3. Your client MUST NOT GET MARRIED!

– One of the statutory eligibility requirements is that the applicant is unmarried. Therefore, marriage will make your client ineligible for SIJS.

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Stay in the U.S.

4. Your client should NOT LEAVE THE COUNTRY.

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Review of SIJS Steps

- Determine eligibility and review risk factors
- After case is in LTP, get SIJS order
- Arrange for client to get medical exam
- Arrange for client to get passport
- Fill out and submit all forms
- Ensure client attends biometrics appointment
- Attend interview with client
- Make sure client receives green card
- Review LPR responsibilities with client
- If your petition is denied it can be appealed to the Administrative Appeals Office

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Questions & Answers

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