

CHAPTER 8

IMMIGRATION FOR LEGAL AID LAWYERS

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About The Author

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Acknowledgments

Special thanks to Marco Balducci of Catholic Charities of New Orleans and Chay Sengkhoumany of Legal Aid Society for their assistance in reading and commenting on this chapter. Thanks also to the efforts of the other full-time non-profit immigration attorneys of Louisiana—Hiroko Kusuda, Ken Mayeaux, Corina Salazar, and Homero Lopez.

1. INTRODUCTION

For the first 100 years of the United States' existence, there was a period of unrestrained immigration. Since then, Congress has been continuously restricting and regulating immigration through the Immigration and Nationality Act, which is amended nearly every year. Due to constantly evolving and growing statutory law, changing regulations, numerous administrative agencies, and vast case law, immigration law is notoriously complex. Therefore, this Chapter aims first to lay out the general landscape of immigration law for the Louisiana Legal Services attorneys, as well as to briefly explain how it might interact with other areas of law, including public benefits and criminal justice. This Chapter also provides more extensive information about certain applications that Legal Services attorneys are authorized to complete, specifically applications on behalf of U.S. citizens, Legal Permanent Residents and survivors of domestic violence and human trafficking.

1.1 SOURCES OF IMMIGRATION LAW

There are many sources of U.S. Immigration and Nationality law—from federal statutes, treaties, final agency regulations and proposed rules, administrative adjudications, informal agency guidance and memoranda and court decisions—unpublished and published.

1.1.1 Statutes

The Immigration and Nationality Act (INA), codified in Title 8 of the U.S. Code provides the primary statutory foundation of immigration law. Please note that when using the statute, most immigration practitioners refer to the section of the INA, rather than the corresponding U.S. Code citation. Included in the appendix, is an INA/U.S. Code conversion table. Furthermore, a number of publishers produce physical copies of the INA annually with corresponding regulations, and a pretty up-to-date version can be found on U.S. Citizen and Immigration Services website (www.uscis.gov) under “Laws.”

Some laws affecting immigration have not yet been codified and therefore are referred to by their public law number. Additionally there are a number of immigration-related laws throughout the U.S. Code, which are not under the INA. Furthermore, states, including Louisiana, oftentimes pass state laws related to immigration.

1.1.2 Regulations

The executive branch administers U.S. immigration law and often promulgates regulations in the Federal Register, which are then codified in the Code of Federal Regulations (C.F.R.). There are many administrative agencies involved in immigration matters, and they all publish their own relevant regulations. The most common section that a Legal Services attorney needs are those regulations published by U.S. Citizen and Immigration Services, which are found at 8 C.F.R. Chapter I. The Department of Homeland Security regulations are found at 6 C.F.R. Chapter I, Customs and Border Protection are found at 19 C.F.R. Chapter I, Immigration and Customs Enforcement at 19 C.F.R. Chapter IV, and Executive Office of Immigration Review are found at 8 C.F.R. Chapter V.

1.1.3 Policy Statements and Memoranda

The various administrative agencies often have internal policy guides and memoranda, which practitioners cite to and can provide helpful guidance. U.S. Citizen and Immigration Services (USCIS or CIS) published its Adjudicator Field Manual, which includes most of its policy memoranda and is published on their website (www.uscis.gov). CIS also posts many of their policy memos on their website under “Policy Memoranda” web page which can be accessed from the “Laws” link.

1.1.4 Court cases and Agency Adjudications

The Administrative Appeals Office has jurisdiction over the appeals of most types of decisions made by CIS adjudications officers. There are “adopted decisions” which are a few decisions designated by CIS leadership to serve as a policy guide for CIS adjudicators and the rest are considered unreported decisions. On AAO’s website, they publish both adopted and unreported, or “Administrative” decisions.

The Executive Office of Immigration Review, which contains both Immigration Courts and the Board of Immigration Appeals, publishes its precedent decisions on its website (<http://www.justice.gov/eoir/>) under the “Virtual Law Library.” Non-precedent decisions can be found sometimes on Westlaw or Lexis, in addition to often being shared by practitioners through various websites including the American Immigration Lawyers Association (AILA)’s Infonet, and Bender’s Immigration Bulletin, which has now been moved to “LexisNexis Immigration Law Community.”

1.2 OVERVIEW OF SUGGESTED RESOURCES

Books

- “Kurzban’s Immigration Sourcebook,” by Ira Kurzban, often referred to as the immigration attorney’s “bible,” is a comprehensive treatise relating to all aspects of immigration law.
- “Immigration Practice,” by Robert Divine, is a very good practice manual for all aspects of immigration law.
- “Immigration Trial Handbook,” by Anna Marie Gallagher and Maria Baldini-Potermin, and “Representing Clients in Immigration Court,” by Catholic Legal Immigrant Network, Inc. provide overviews of inadmissibility and deportability, and a variety of defenses to removal.
- “Guide to Immigrant Eligibility for Federal Programs,” by the National Immigrant Law Center, reviews which noncitizens are eligible for which federal programs involving health care coverage, cash assistance, food assistance, job training and financial aid to attend college.

Websites

- **The American Immigration Lawyers Association** (<http://www.aila.org/>) is the professional bar association for attorneys who specialize in immigration law. They publish a number of books relating to immigration practice, have numerous trainings and conferences, and have extensive online immigration resources for its members.

- **Immigration Advocates Network** (<http://www.immigrationadvocates.org>) is a partnership of a number of nonprofits, and they have produced a clearinghouse of materials and information about national trainings regarding immigration. Pro bono and nonprofit attorneys can join for free.
- **Immigration Legal Resource Center** (<http://www.ilrc.org/>) is a national non-profit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. They have a number of books focusing on immigration applications relevant to Legal Service attorneys including “Representing Survivors of Human Trafficking,” “Special Immigrant Juvenile Status,” “The U Visa,” “The VAWA Manual,” “Remedies and Strategies for Permanent Resident Clients,” and “Naturalization and U.S. Citizenship.”
- **U.S. Citizen and Immigration Services** agency has an extensive website (<http://www.uscis.gov/>), which contains immigration application forms, laws, news and other resources.

1.3 LSC FUNDING RESTRICTIONS DEPENDING ON IMMIGRATION STATUS

In 1996, Congress created vast restrictions on Legal Services Corporation (LSC) grantees, including regarding their ability to represent non-U.S. citizens. See 45 C.F.R. § 1626 for “Restrictions on Legal Assistance to Aliens,” including a chart appendix, listing the types of immigrants, the section of the INA pertaining to them, the specific LSC regulation and examples of acceptable documents to prove immigrant status. The chart is included in this chapter’s appendix.

According to this regulation, LSC-funded organizations can represent foreign nationals or “aliens” who are present in the United States and fit in the following categories:

1. Lawful Permanent Resident (LPR, also known informally as “green card” holder), 45 C.F.R. § 1626.5(a).
2. “Immediate relative” of a U.S. citizen, who has filed for adjustment of status (filing for “adjustment of status” refers to applying to obtain lawful permanent residence). 45 C.F.R. § 1626.5(b). “Immediate relative” under the INA means a spouse, parent or unmarried child under 21.
3. Refugee or asylee, as defined in INA § 207 and § 208. 45 C.F.R. § 1626.5(c).
4. Alien granted withholding or deferral of removal. 45 C.F.R. § 1626.5(e).
5. Grantee of conditional entry before April 1, 1980 under INA § 203(a)(7) because of a fear of persecution (These are people who would be considered refugees, but entered before the Refugee Act was passed.) 45 C.F.R. § 1626.5(d).
6. Special Agricultural Worker who has filed for “temporary residence” under IRCA. 45 C.F.R. § 1626.10(d).
7. H2A agricultural workers to be represented for contractual employment rights including wages, housing and transportation. 45 C.F.R. § 1626.11.
8. H2B temporary nonimmigrant non-agricultural worker admitted to or permitted to remain in the United States for forestry labor, for representation

for contractual employment rights including wages, housing, transportation. Consolidated Appropriations Act of 2008, HR 2764, §6, Div. B., Title V, § 540, amending Omnibus Consolidated Rescissions & Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-55 (1996)

9. A parent seeking assistance concerning international child abduction under the Hague Convention 45 C.F.R. § 1626.10(e).
10. Certain American Indians born outside of the U.S. (either born in Canada or members of the Texas Band of Kickapoo). 45 C.F.R. § 1626.10(b).
11. Victim of domestic violence seeking assistance directly relating to the abuse. 45 C.F.R. § 1626.4.
12. Citizens of Micronesia, Marshall Islands or Palau. 45 C.F.R. § 1626.10(a)
13. Victims of Human Trafficking and their dependents. Trafficking Victim Protection Act of 2000 & 2003, LSC Program Letter 05-2.
14. Victims of “U Visa” Crimes, if the assistance is directly related to preventing, protecting against future incidents or obtaining relief from the U-visa qualifying activity. VAWA Reauthorization of 2006, LSC Program Letter 06-2 (discussed in the VAWA section, *infra*).

Although LSC-funded attorneys may not provide legal assistance to an LSC-ineligible noncitizen, legal assistance does not include normal intake and referral services. 45 C.F.R. § 1626.3. Therefore legal services attorneys may interview ineligible noncitizens who apply for services in order to help refer the case, as well as draft a memo about the case in order to refer, as long as that is the “normal” procedure in the office. Legal services attorneys can also indirectly benefit LSC-ineligible noncitizens by representing LSC-eligible family members, as long as it affects a specific legal right or interest of the eligible client. 45 C.F.R. § 1626.2(e). For example, it is permissible to represent a U.S. citizen minor child who has unauthorized noncitizen parents, regarding the child’s own habitability housing claim, even though it would indirectly benefit the parents. Lastly, legal services attorneys can always engage in community education and outreach events to provide general legal rights information or information about their organization to LSC-ineligible noncitizens. 45 C.F.R. § 1638.4(a)

In order to determine eligibility, legal services attorneys should determine what category of noncitizen the potential client fits into. For noncitizens other than trafficking victims and domestic violence survivors and U status crime victims found under VAWA 2006, the legal services attorney should compare the immigration-related document produced by the applicant to the list in the Appendix to 45 C.F.R. § 1626, which is also included in the appendix of this chapter. Next the attorney should make a photocopy of the document, and for noncitizens eligible due to their relationship to a U.S. citizen, the attorney should obtain documentation of the U.S. citizen’s citizenship (a birth certificate, passport or certificate of citizenship will suffice) and documentation of the relationship between the applicant and the U.S. citizen (a marriage or birth certificate.)

There are some exceptions to the documentation requirements, in the case of an emergency, which is defined as a situation where immediate action is needed to preserve significant legal rights or to prevent significant harm to a person’s family, property, or other legal interests. 62 Fed.Reg 19409-01 *19413 (4/21/1997). It is

permissible to begin providing representation to a noncitizen over the phone, when s/he cannot feasibly come to the office to show a document establishing eligibility as long as the individual provides enough information orally to determine eligibility and the applicant submits the necessary documentation as soon as possible. 45 C.F.R. § 1626.8(a). Furthermore if the applicant does come in the office but cannot produce the required documentation, the legal services attorney can provide emergency services as long as the noncitizen signs a statement of eligibility and provides the necessary papers as soon as possible. 45 C.F.R. § 1626.8(b).

2. WHO'S WHO IN IMMIGRATION

There are several federal government agencies that play a role in the immigration law landscape. For many years, the government agency in charge of immigration matters was Immigration and Naturalization Services, which was formerly part of the Department of Justice. In 2003, as a result of the Homeland Security Act, Congress got rid of INS, and divided up the responsibilities of INS among a few different bureaus under the Department of Homeland Security, as well as keeping some responsibilities under the Department of Justice.

2.1 AGENCIES

There are three main bureaus under the Department of Homeland Security, which are involved in immigration law.

2.1.1 Immigration and Customs Enforcement (ICE)

Immigration and Customs Enforcement (ICE) is in charge of enforcing immigration violations within the interior of the United States. Immigration agents, who are part of the Enforcement and Removal branch of ICE, arrest, detain and deport immigrants. Attorneys in ICE's Office of Chief Counsel prosecute immigrants in removal proceedings. There are a number of other divisions within ICE charged with investigations, intelligence gathering, and policing federal facilities and air security.

2.1.2 Citizen and Immigration Services (CIS)

USCIS or simply CIS, presides over immigration "benefits." They adjudicate applications involving lawful immigration to the United States, including citizenship, immigration of family members of permanent residents and US citizens, work authorization in the U.S., and humanitarian relief, to name a few. CIS is divided into regional and local offices, which have authority over different types of applications. The Administrative Appeals Office (AAO) is an administrative body within the headquarters of CIS.

2.1.3 Customs and Border Protection (CBP)

CBP manages port inspection of people and goods, at the land borders, as well as sea ports and international airports. The Border Patrol is in charge of arresting immigrants within a reasonable distance from the "border," which has been designated as within 100 miles. Border patrol agents, like ICE agents, also have the authority to make a custody determination of an immigrant after arresting them—to release the immigrant, to set a bond, or to detain. If the decision is to detain, the immigrant is handed over to ICE, which maintains detention facilities.

2.2 IMMIGRATION COURTS (EOIR)

The Executive Office of Immigration Review (EOIR) is a division with the Department of Justice, which includes all Immigration Courts as well as the Board of Immigration Appeals (BIA). There are about 50 Immigration Courts, with about 200 Immigration Judges within the United States. Please see the Immigration Court Practice Manual for a detailed guide about appearances before the court, filing, hearings, motions and practice points in representing clients before the Immigration Court: http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm. There is a similar Practice Manual for the Board of Immigration Appeals: <http://www.justice.gov/eoir/vll/qapracmanual/apptmnt4.htm>.

Generally, the direct appeal of an immigration judge decision goes to the Board of Immigration Appeals, and appeals of those decisions go the federal appellate court of the circuit where the Immigration Judge is located. For example, all decisions originating from Oakdale and New Orleans Immigration Courts could eventually be appealed to the Fifth Circuit.

2.3 LOUISIANA DIRECTORY OF IMMIGRATION AGENCIES, COURTS AND DETENTION CENTERS

2.3.1 Agency Offices

USCIS Office: The local New Orleans USCIS Field Office is located at 2424 Edenborn Avenue, Suite 300, Metairie, LA 70001. There is no phone number for this office, but immigration agents can be reached by calling the National CIS hotline at 1-800-375-5283 or scheduling an appointment with an officer at the New Orleans office by making an appointment through the InfoPass system: <http://infopass.uscis.gov/>. General processing times for certain applications can be found online as well as specific information about pending applications, when the receipt number is available, by going to <https://egov.uscis.gov/cris/Dashboard/CaseStatus.do>.

The local New Orleans CIS office conducts interviews and adjudicates applications for a number of applications, and is where immigrants have their “biometrics” appointments, to be fingerprinted and photographed, which is part of most immigration application processes.

ICE: There is an Oakdale ICE office, which oversees all detained cases that are in Oakdale Immigration Court. This ICE office is located at 1010 E Whately Rd, Oakdale, LA 71463-2145. Glenda Raborn, the Chief Counsel of the New Orleans region, which covers 5 states, is part of the Oakdale office, as well as a number of assistant chief counsels, who can be reached at (504) 599-7938. Scott Sutterfield, who is currently the Deputy Director of ICE’s Enforcement Removal Office, is also located in the Oakdale Office.

The New Orleans ICE office is at 1250 Poydras St., Suite 325, New Orleans, LA 70113, phone: (504) 599-7800. In these offices, there are a few Assistant Chief Counsels who prosecute cases in the New Orleans Immigration Court, as well as the Field Office Director of ICE’s Enforcement and Removal Office, Philip Miller, and many agents. Immigrants may have to report to ICE officers at this building, if they have been released on their own recognizance, are part of an Alternatives to Detention Program, or if they are under an Order of Supervision. It is also where individuals can go to pay immigration bonds, and where practitioners should serve documents filed with the New Orleans Immigration Court.

CPB: The New Orleans Station is located 3819 Patterson Road, New Orleans, LA 70114, Mailing Address: P.O. Box 6218 New Orleans, LA 70174. Phone: (504) 376-2830; Fax: (504) 376-2836.

The Baton Rouge station is located at 11655 Southfork Avenue, Baton Rouge, LA 70816, Phone: (225) 298-5501; Fax: (225) 298-5505.

The Lake Charles Station is located at 4321 Common Street, Lake Charles, LA 70607, Mailing Address: P.O. Box 868 Lake Charles, LA 70602-0868, Phone: (337) 477-9245; Fax: (337) 477-6133.

2.3.2 Immigration Courts

New Orleans Immigration Court is located at One Canal Place, 365 Canal Street, Suite 2450, New Orleans, Louisiana, (504) 589-3992. Currently, there is only one presiding Judge, Judge W. Wayne Stogner. For those who wish to observe Master Calendar Hearings, they take place Mondays and Tuesdays, with 8:30am and 10:00am dockets. For more information, see <http://www.justice.gov/eoir/sibpages/nol/nolmain.htm>.

Oakdale Immigration Court is located at 1900 East Whatley Road, Oakdale, Louisiana 71463, (318) 335-0365. Currently, there are three sitting judges, Judges Duck, Reese and Beatmann. For more information, see <http://www.justice.gov/eoir/sibpages/oak/oakmain.htm>.

2.3.3 Detention Centers

There are four long term detention centers in Louisiana, where immigrants are sometimes detained during their Immigration Court proceedings, as well as when they are awaiting deportation. To determine where an immigrant is being detained, you can use ICE's online detainee locator system (<https://149.101.24.210/odls/homePage.do>) if you have an Alien number AND Country of Birth or if you have the Name, Date of Birth, and Country of Birth.

LaSalle Detention Facility, 830 Pine Hill Road Jena, LA 71342, (318) 992-7800. For more information, <http://www.ice.gov/doclib/dro/facilities/pdf/jenadla.pdf>.

Oakdale Federal Detention Center, 2105 East Whatley Road , Oakdale, LA 71463, (318) 335-4466. For more information, <http://www.ice.gov/doclib/dro/facilities/pdf/bopoad.pdf>.

South Louisiana Correction Center, 3843 Stagg Avenue, Basile, Louisiana 70515 (337) 432-5493. For more information, <http://www.ice.gov/doclib/dro/facilities/pdf/basilla.pdf>.

Tensas Parish Detention Center, 8606 Highway 65, Waterproof, LA 71375-4523 (318) 749-5810.

3. OVERVIEW OF IMMIGRATION CONCEPTS

3.1 TYPES OF IMMIGRATION STATUSES

There are many types of immigration statuses and oftentimes people may fluctuate between having some kind of authorization and not. In this section, we will cover broadly the concepts of citizenship, immigrant, nonimmigrant, and unauthorized immigrant.

Sometimes people are unaware of their own immigration statuses as well. In order to determine what status someone has it is important to get a complete immigration history. Sometimes individuals will have maintained most or all of their immigration related paperwork and documents, which will make it easier to understand their situation. Otherwise, an immigrant may have to do a Freedom of Information Act request to obtain their entire Alien file: <http://www.uscis.gov/g-639>.

3.1.1 Citizen

There are basically four ways that a person becomes a U.S. citizen—by birth in the United States; acquisition through birth abroad to at least one U.S. citizen parent; deriving citizenship through a parent’s naturalization or through a U.S. citizen’s adoption of a foreign born child; and naturalization. Naturalization is the process of a Legal Permanent Resident becoming a U.S. citizen.

The law for acquisition of citizenship has changed significantly over the years and the law that controls a particular case is the law that was in effect at the time of the individual’s birth abroad. These provisions can be found at INA §§ 301 and 309.

The current law of deriving citizenship is found under INA § 320 and states that children born outside the U.S. who have at least one parent who is or becomes a citizen by naturalization or birth while the child is still under eighteen years old and is unmarried, and who are residing in the U.S. in the legal and physical custody of the citizen parent after a lawful admission for permanent residence, will automatically become a citizen once these requirements are met, as long as they are met on or after the effective date of February 27, 2001, and before the child’s 18th birthday.

Documents which are evidence of U.S. citizenship include an American birth certificate, a certificate of citizenship, and a U.S. passport.

3.1.2 Immigrant

An immigrant is a noncitizen who has been granted permission to permanently live in the United States and can work without restriction, also known as a Lawful or Legal Permanent Resident (LPR). Proof of LPR status is commonly called a green card, and officially known as Form I-551. Green cards generally have an expiration date, which indicates when the card, not the status, expires. LPRs continue to maintain LPR status, even if they have an expired green card. LPRs may lose their status, which will be discussed further under the deportability section below.

Immigrant visas refer to petitions that lead to eligibility to obtain legal permanent resident status. These are generally family- and employment-based petitions, but annually there are also diversity visas distributed, resulting from a lottery. INA § 203(C).

3.1.3 Nonimmigrant

A nonimmigrant is a noncitizen who is making a temporary visit to the United States. Common nonimmigrants include tourists, temporary workers, and students. There are 22 categories of nonimmigrant classifications which can be found in the definitions section of the Immigration and Nationality Act, INA § 101(a)(15)(A-V). Immigration practitioners often refer to the “alphabet soup” of nonimmigrant visas, because each classification is represented by a different letter. For example temporary visitors for pleasure (tourists) and temporary visitors

for business are considered B-2/B-1 visitors, and you will see this notation in the nonimmigrant's passport, where the visa should be located. Visas are obtained generally through U.S. consulate abroad and give noncitizens permission to seek admission to the United States. When the nonimmigrant enters the United States, Customs and Border Protection will decide whether or not to allow admission and will stamp the admission date on the passport and provide an I-94 card, an arrival and departure document, to the noncitizen. CBP will also make a decision at this point as to how long to admit the nonimmigrant and will stamp the passport with the date that the granted period of stay expires.

3.1.4 Unauthorized

Unauthorized, or "undocumented" aliens are either noncitizens present in the United States who entered without permission, or nonimmigrants who fell out of status, because they stayed longer than they were allowed to or because they violated the conditions of their stay in another way, such as by working when their status did not allow them to.

3.2 INADMISSIBILITY AND DEPORTABILITY

Two very important concepts to understand in immigration are inadmissibility and deportability. Inadmissibility grounds involve reasons why noncitizens may be excluded from the United States, which might happen by 1) a US consulate refusing to issue a visa 2) CBP refusing admission at a port of entry (land border, sea port or airport) 3) CIS denying an application for Legal Permanent Residence from a noncitizen within the United States applying to "adjust status," and 4) an Immigration Court finding in removal proceedings against people who never lawfully entered the United States. Inadmissibility grounds are found at INA § 212(a), and include among others: 1) certain health conditions, such as communicable diseases; 2) criminal related grounds such as a "crime involving moral turpitude," which is defined through case law; a controlled substance related offense; and multiple criminal convictions; 3) security-related grounds, including espionage, terrorism, membership in the Communist or totalitarian party, participation in genocide; 4) public charge; 5) not meeting labor certification and physician and health care worker requirements; 6) illegal entrants and immigration violations (being present without admission or parole, failure to attend removal proceedings, misrepresentation of a material fact to obtain an immigration benefit, stowaways, smugglers and student visa abusers); 7) not meeting documentary requirements and 8) miscellaneous other grounds.

Deportability grounds involve reasons why noncitizens can be removed from the United States and apply to individuals who entered the United States lawfully, either as an immigrant or nonimmigrant. They are found at INA § 237(a), and include 1) immigration status violations 2) criminal grounds including crimes involving moral turpitude, aggravated felonies, high-speed flight, drug-related offenses, firearms offenses, domestic violence and failure to register as a sex offender 3) failure to register or falsification of immigration documents 4) security related grounds including espionage, and terrorism 5) public charge and 6) unlawful voting. Furthermore, if LPR's stay out of the country for too long, they can be deemed to have abandoned their status. If they remain outside of the country for 6 months or longer, then there is a rebuttable presumption they have abandoned their status, and if it has been a year or more, then it is considered abandoned.

When someone is put into removal proceedings, they are charged with “inadmissibility” and/or “deportability” grounds which are listed on a document called a “Notice to Appear.” In this context both grounds can also simply be referred to as “grounds of removal.”

3.3 EFFECTS OF CRIMINAL CONVICTIONS

As Justice Stevens recently wrote in the *Padilla v. Kentucky* case, “changes to our immigration law have dramatically raised the stakes of a noncitizen’s criminal conviction...These changes confirm our view that, as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.” *Padilla v. Kentucky*, 130 S. Ct. 1473, 1477 (2010). Because of the dire consequences of even minor criminal charges, it is vital to be aware of the potential effect of criminal convictions—no matter how old—when advising clients about applying for certain immigration benefits. When individuals apply for immigration benefits, they undergo “biometrics” appointments which include taking fingerprints, so that prints are later checked against a national database that has federal and state criminal systems information, as well as immigration violations information.

The intersection of criminal and immigration law, often called “crimmigration” is a complicated and nuanced area of law. A misdemeanor in criminal law can mean an aggravated felony in immigration law. Expungements and partial pardons do not erase criminal convictions for immigration purposes. Diversion programs can often have the same effect in immigration law as a conviction by a jury or judge. This section does not attempt to fully explain the intricacy of crimmigration, as entire books can be written about it. This section merely intends to define a few key terms, to highlight how immigration and criminal law interact, and to help Louisiana Legal Services attorneys identify when they must do further research before advising a noncitizen client about applying for a certain benefit.

As mentioned before, a conviction or admission of the elements of a crime or sometimes even the government having reason to believe a crime was committed can trigger “inadmissibility” or “deportability” grounds, which may result in: 1) a noncitizen being denied an immigration benefit, 2) a noncitizen being denied admission to the United States and/or 3) a noncitizen being placed in removal proceedings.

Inadmissibility issues come up when people are applying to adjust status to become Legal Permanent Residents, when they are applying for certain other immigration benefits, when they are trying to enter the United States, and can be brought up against unauthorized noncitizens in removal proceedings. Deportability issues come up for Legal Permanent Residents or people who entered the country with permission, and may result in them being placed in removal proceedings. In addition to “inadmissibility” and “deportability” issues, another immigration consequence is that some types of immigration relief require “good moral character,” which immigrants can be found lacking if they have certain arrests or convictions or admit to certain illegal conduct.

When analyzing if a crime will have an effect on a noncitizen, it’s important to ask first what status the noncitizen has, and what, if any, status they are seeking. This is important because it will reveal if the attorney needs to worry about “inadmissibility,” “deportability,” “good moral character,” or some combination of

those issues. Furthermore certain immigration statuses carry even more specialized consequences—people who have “Temporary Protective Status” (TPS)¹ become ineligible for that status after the conviction of 2 misdemeanors or 1 felony. The sections below regarding specific types of applications will talk specifically about which inadmissibility grounds matter for that type of relief and what waivers might be available to people who raise the inadmissibility issue.

Below are some key “cimmigration” concepts:

Conviction

A “conviction” in immigration law is

“a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where —

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed. INA § 101(a)(48)(A).

Therefore, it is important in order to be a conviction that the proceeding to be “criminal in nature under the governing laws of the prosecuting jurisdiction.” *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004). Certain juvenile delinquency adjudications are not considered convictions, as juvenile adjudications are usually considered civil in nature, unless the minor is being treated as an adult. *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000). Generally, a deferred adjudication of guilt, or similar state disposition, is a “conviction” for immigration purposes as long as it meets the immigration-law definition, even though the state would not consider it a conviction for state-law purposes. The types of dispositions which are not considered convictions include: 1) Juvenile delinquency adjudications, as mentioned above 2) Acquittal 3) Dismissal before conviction, as long as there was no guilty or no contest plea, nor admission of facts sufficient warrant a conviction 4) Deferred prosecution (including diversionary programs) as long as there is no guilty or no contest plea, nor admission of facts sufficient to warrant a conviction 5) Deferred verdict where there is a trial, but the verdict is postponed and then the case is dismissed, without any guilty or no contest plea, nor admission of facts sufficient for a conviction 6) Potentially a deferred sentence if there has be no punishment, penalty or restraint, but even court costs count as a penalty 7) Convictions that are not final because they are on direct appeal or within the time period for a direct appeal.

Admission of Crime

Some grounds of inadmissibility, such as Crimes Involving Moral Turpitude (CIMT) and drug-related crimes, do not require a conviction, but merely an admission of having committed a crime or the formal elements of crime. INA § 212(a)(2)(A) and (C). In order to be a valid admission, 1) the conduct admit-

¹ Temporary Protective Status is a status allowing permission to work and protection from detention and deportation to some noncitizens from certain countries that the Department of Homeland Security has designated due to temporary conditions such as ongoing, armed conflict or an environmental disaster. See “Temporary Protective Status,” USCIS, at <http://www.uscis.gov/tps>.

ted to must be clearly punishable by law where it happened 2) before admission, the noncitizen must be given a clear and understandable definition of the crime, including essential elements and 3) the admission must be free and voluntary. See *Matter of M*, 1 I&N Dec. 229 (BIA 1942), *Matter of K*, I&N Dec. 594 (BIA 1957), *Matter of G*, 1 I&N Dec. 225 (BIA 1942)

Sentence

In the INA, some references to sentence refer to the maximum possible term of imprisonment, for which the crime is “punishable,” while sometimes they refer to the actual sentence imposed or the “term of imprisonment.” Regardless of whether the sentence is suspended partially or fully, it is counted for the purposes of immigration for the full amount of the sentence.

Term of Imprisonment

Term of imprisonment includes “the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.” INA § 101(a)(48)(B). Therefore, it is important to look at a final criminal disposition as to the final sentence imposed, as individuals who served no time but had a suspended sentence often do not realize they had any sentence at all. Probation is not considered a term of imprisonment.

Good Moral Character

“Good Moral Character” is required for a number of types of immigration benefits including naturalization, cancellation of removal, VAWA self-petitioning, and voluntary departure, and often the relief defines a period of time when the good moral character is required. As with many immigration terms, good moral character is only defined in the negative in the INA. According to the statutory definition, a noncitizen cannot have good moral character if during the defined time s/he 1) was a habitual drunkard 2) committed acts under some inadmissibility grounds including miscellaneous, prostitution and commercialized vice, CIMTs, multiple crimes, drug trafficking, and alien smuggling 3) was deriving income principally from illegal gambling 4) was convicted of 2 or more gambling offenses 5) has given false testimony for the purpose of an immigration benefit 6) has been imprisoned as a result of a conviction for a total period of 180 days. Furthermore, the noncitizen cannot have good moral character if s/he 7) has ever been convicted of murder or 8) has been convicted of an aggravated felony after November 29, 1990. INA 101(f). This list is not exhaustive, as the Act states that “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is not or was not of good moral character.”

Post-conviction relief

Post conviction relief generally refers to types of proceedings to mitigate or erase the effects of criminal convictions for immigration purposes. This relief may take shape in several forms of proceedings—a *habeas* petition questioning the validity of a conviction, a pardon request, a motion to vacate a conviction, or a modification of a sentence, to name a few. A full and unconditional pardon of a crime negates the conviction, although expungements do not.

Crimes Involving Moral Turpitude

Although not defined in the INA, Crimes involving Moral Turpitude (CIMTs or CMTs) are both a ground of inadmissibility and a ground of deportability. Case law defines CIMTs generally as morally reprehensible behavior, which usually has to involve some kind of specific intent, deliberateness, willfulness or recklessness.

If the noncitizen was convicted of or makes an admission of a CIMT other than a purely political offense, then they are inadmissible, unless it falls into one of the two exceptions: 1) Juvenile exception: if the noncitizen was under 18 years of age when committing the crime and the release from any confinement happened more than five years before the immigration application or 2) Petty Offense: the maximum possible penalty was not more than a one year sentence and the noncitizen was not actually sentenced to more than six months of imprisonment. The deportability ground kicks in if the noncitizen is convicted of a CIMT within 5 years of their admission and a sentence of one year or more may be imposed. According to the BIA, admission in this context means a lawful entry after being inspected at a port of entry (airport, border or sea port), as well as adjustment of status. *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005).

Crimes of Violence

Crimes of violence as defined in 18 USC § 16 include offenses with an element including “the use, attempted use, or threatened use of physical force against the person or property of another, or other felonies that involve “a substantial risk that physical force against the person or property of another may be used.”

Crimes of violence come up in immigration law as a type of aggravated felony when the crime had a term of imprisonment of one year or more. INA § 101(a)(43)(F). Also, a conviction of a crime of violence punishable by more than one year of imprisonment is considered to be a “failure to maintain non-immigrant status,” which is a deportability ground. 8 C.F.R. § 214.1(g)

Multiple Criminal Convictions

Multiple criminal convictions can be found in the inadmissibility and deportability grounds. A noncitizen is inadmissible if s/he was convicted of two or more offenses, other than purely political ones for which the aggregate term of imprisonments were five years or more, regardless of whether it was a single trial or single scheme of misconduct. INA § 212(a)(2)(B). A noncitizen is deportable if s/he was convicted after entry for two or more CIMTs not arising out of the same scheme. INA § 237(a)(2)(A)(ii).

Controlled Substance Violations

Controlled substance or drug-related violations come up in both the inadmissibility and deportability sections of the INA. If a noncitizen is convicted of, or makes an admission, of a violation including conspiracy or attempt to violate a law “relating to a controlled substance,” then they are inadmissible. INA § 212(a)(2)(A)(ii). There is a waiver available for a single offense of simple possession of thirty grams or less of marijuana under INA § 212(h).

If a noncitizen was convicted at any time after entry of a violation, including conspiracies and attempts, to violate any controlled substance related law, except for a single offense of possession of thirty grams or less of marijuana, then the noncitizen is deportable. INA § 237(a)(2)(B)(i).

Drug Abuser or Addict

If a noncitizen is a “drug abuser or addict” then s/he is deportable. INA § 237(a)(2)(B)(ii). A noncitizen is inadmissible under health related grounds as a “drug abuser or addict,” as well. INA § 212(a)(1)(iv).

The Public Health Service (PHS) regulation at 42 C.F.R. § 34.2(h) defines drug addiction as the nonmedical use of a substance listed in Section 202 of the Controlled Substances Act (21 USC § 802) that has resulted in physical or psychological dependence. The PHS regulation at 42 C.F.R. § 34.2(g) defines drug abuse as “the non-medical use of a substance listed in section 202 of the Controlled Substances Act ... which has not necessarily resulted in physical or psychological dependence.” The current definition of “nonmedical use” in the technical instructions is “more than experimentation with the substance (e.g., a single use of marijuana or other non-prescribed psychoactive substances, such as amphetamines or barbiturates).”

Drug Traffickers

Controlled Substance or Drug trafficking comes up in both the inadmissibility and deportability contexts. A noncitizen is inadmissible if the Department of Homeland Security or a consular officer knows or has reason to believe s/he is a drug trafficker or that s/he is the spouse, son or daughter of a drug trafficker, if s/he had reason to know s/he was benefiting from the trafficking within the last 5 years. INA § 212(a)(2)(C). In the deportability context, drug trafficking is listed as conduct which constitutes an aggravated felony, which makes the noncitizen deportable. INA § 237(a)(2)(A)(iii); *see also* INA § 101(a)(43).

Aggravated Felonies

An aggravated felony is listed as types of conduct, which could be from a state or federal conviction or even a foreign conviction if the term of imprisonment was completed within the previous 15 years. INA § 101(a)(43). The list includes (A) murder, (B) drug trafficking, (C) firearms or explosives trafficking, (D) money laundering, (E) explosive or firearms offenses, (F) crime of violence, (G) theft offense or burglary for which the term of imprisonment is at least one year, (H) demanding or receiving a ransom (I) child pornography, (J) racketeering or gambling for which a sentence of at least one year of imprisonment may be imposed, (K) operation of prostitution business or transporting for purpose of prostitution crimes or slavery, (L) treason and security related violations, (M) fraud or deceit in which the victim(s) experience a loss of greater than \$10,000 or tax evasion in which the Government loses at least \$10,000, (N) alien smuggling, except for a first offense involving an immediate family member, (O) unlawful entry in the US by an aggravated felon, (P) document fraud for which the term of imprisonment is at least 1 year except for a first offense for the purpose of helping an immediate family member, (Q) offense related to failing to appear for service of sentence if the underlying offense is punishable by a sentence of 5 years or more, (R) commercial bribery, counterfeiting, forgery or trafficking in vehicles for which the term of imprisonment is at least a year, (S) obstruction of justice related crimes for which the term of imprisonment is at least one year, (T) failure to appear before a court pursuant to a court order to answer to a felony charge, for which a sentence of 2 years could be imposed, and (U) an attempt or conspiracy to commit any of the above. INA § 101(a)(43).

Waivers of Criminal Inadmissibility

Under 212(h), many criminal inadmissibility grounds may be waived, including CIMTs, multiple convictions, prostitution and commercialized vice, crimes from which immunity has been claimed, and a single possession of marijuana offense, of less than 30 grams. To be eligible, 1) the crime must have occurred more than 15 years ago or only be related to prostitution and the noncitizen's admission would not be contrary to national interest and the noncitizen has been rehabilitated or 2) the noncitizen is an immigrant who is a spouse, parent son or daughter of a U.S. citizen or Legal Permanent Resident who would suffer extreme hardship by the noncitizen's removal and the noncitizen accepts any terms prescribed by DHS.

Resources:

A seminal book on this topic is "Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants" by Mary E. Kramer and Richard J. Link (Dec 31, 2009). Norton Tooby also has a guide, "Tooby's Guide to Criminal Immigration Law: How Criminal and Immigration Counsel Can Work Together to Protect Immigration Status in Criminal Cases," which is available for download for free: <http://nortontooty.com/free/ToobysGuide.pdf> Also Catholic Legal Immigrant Network, Inc. and Norton Tooby both do annual trainings regarding this subject.

3.4 IMMIGRATION STATUS AND PUBLIC BENEFITS

Only some noncitizens are eligible to receive public benefits, and they may be eligible to receive some types of benefits, but not others. The National Immigrant Law Center has great resources on this issue including a table listing eligibility of various forms of federal benefits with a number of types of immigration statuses available at http://www.nilc.org/pubs/guideupdates/tbl1_ovrww-fed-pgms-rev-2011-10.pdf. They also produce a pamphlet, "When Is it Safe to Use Public Benefits?" available at www.nilc.org/document.html?id=164.

Even for those who are authorized to access benefits, it is important to consider if they might later be deemed to be a "public charge," and inadmissible, which may come into play in adjustment of status applications. DHS is concerned with benefits that implicate 1) cash public assistance for income maintenance and 2) institutionalization for long term care at government expense. Therefore some types of benefits that might trigger further consideration include Supplemental Social Security Income (SSI), cash temporary assistance for needy families (TANF), and Medicaid that's being used for long-term care in some kind of facility. Some benefits that should not trigger consideration are programs like Supplemental Nutritional Assistance Program (food stamps), CHIP, WIC, school lunches, emergency disaster relief, housing benefits, Medicaid and health services (not for long term care), crisis counseling and intervention. Furthermore, your children or other family members use of benefits should not be counted against you, unless their cash welfare, such as TANF or SSI, is the only source of family income.

4. COMMON IMMIGRATION APPLICATIONS FOR LEGAL SERVICES ATTORNEYS

Below are explanations of a number of common immigration applications. It's always important before completing the application to fully read all relevant statutory and regulatory language, as well as the instructions for filling out the applications, which is generally found on the CIS website. Furthermore, applications are often rejected if any information is missing or not filled out on an application—therefore, even if a section is not applicable, it's best to write “N/A” and if the answer is none, it's best to write “None.” USCIS has stated that “N/A” and “none” are not interchangeable, so be sure to select which term is a more appropriate answer.

For applications submitted to CIS or to court, any non-English documents need to be accompanied by an English translation with a certification by the translator of the accurateness and truthfulness of their translation. Recommended language for the “Certificate of Translation” is the following:

I (translator) certify that I am competent to translate from (foreign language) to English and that the foregoing translation of (name of document) is accurate to the best of my ability.

All forms and the addendums must have an original signature. Letters of support, medical evaluations and sworn declarations from witnesses and third-parties should also have original signatures. However, for documentary evidence, such as birth certificates, marriage certificates, and passports, submit copies not originals.

4.1 FAMILY-BASED PETITIONS AND RELIEF UNDER THE VAWA, (FOR VICTIMS OF DOMESTIC VIOLENCE, WHO ARE MARRIED TO, OR THE CHILD OF A US CITIZEN OR LPR, OR WHO ARE PARENTS ABUSED BY A US CITIZEN SON OR DAUGHTER)

U.S. immigration law allows citizens and Legal Permanent Residents to petition for family members to obtain a status that makes them eligible to apply for legal permanent residence. U.S. citizens are allowed to petition for their children, spouses, siblings, and if the individual is at least 21 years old, their parents. LPRs can petition for their spouses and parents, but only unmarried children and cannot petition for siblings.

The U.S. citizen or Legal Permanent Resident must sponsor their spouse by petitioning with CIS through an Alien Petition, Form I-130. The “intending immigrant” files an application to adjust status, Form I-485, after the I-130 is approved (Note: the I-485 may be filed concurrently when the petitioner is a “immediate relative”, as discussed *infra*). There are sometimes waiting times for certain family members for an available immigrant visa number. U.S. citizens can immediately file for their spouses, unmarried children under 21 and if they're over 21, their parents—these relatives are referred to as “immediate relatives.” Other U.S. citizen relatives and LPR relatives must wait in line until an immigrant visa is available. Once the Form I-130 is filed, CIS will assign the immigrant a priority date, and once that priority date becomes “current,” it is possible to apply for legal permanent resident status. To determine when a priority date is current, one must go to the U.S. State Department's Visa Bulletin, which is updated monthly.

If a marriage-based application for immigrant status is approved before the couple has reached their second anniversary, the immigrant spouse and children will be granted conditional Legal Permanent Residence for two years. 90 days prior to the expiration of the conditional permanent residency, the couple must then jointly file to remove the conditions so that the immigrant spouse can become a full Legal Permanent Resident, although there are certain exceptions for the noncitizen to file by his/herself. The full LPR status does not expire; however the card, which is proof of status, will expire after 10 years and then must be renewed. Children and Parents are granted LPR status without conditions. Only spouses and those spouse's derivative children must go through the intermediate step of getting conditional residence and later removing those conditions.

In a domestic violence dynamic involving an immigrant spouse, parent, or child, the abuser often will use immigration status as another tool of power and control over the immigrant. The initial family petition (Form I-130) is filed by the U.S. citizen or Legal Permanent Resident, so an abuser has complete control over the process. Furthermore, participation is needed by the U.S. citizen and Legal Permanent Resident in the application for permanent residence and to jointly file to remove conditional residence. Because of this potential exploitation of the immigration system to further control and dominate battered spouses, children and parents, Congress created relief under the Violence Against Women Act (VAWA), so that battered family members can petition for themselves.

Three types of relief are available for certain survivors of domestic violence, including noncitizen parents of an abused child, parents (abused by USC, but not LPR, sons or daughters), abused spouses, and abused children, when the abuse was perpetrated by the U.S. citizens or Legal Permanent Resident family member: 1) VAWA self-petitioning, 2) Battered Spouse/Child Waiver of the Jointly Filed petition to Remove Conditions and 3) VAWA Cancellation. VAWA self-petitions allow spouses, children or parents of abusive U.S. citizens or LPRs, who have been subjected to physical abuse or extreme cruelty to petition on their own to CIS to obtain status. The Battered Spouse/Child Waiver allows a conditional resident, who is a spouse (or was one, but is divorced) or child of an abusive citizen or LPR to apply on his/her own to remove conditions to become a LPR, even if their conditional residency has expired. In Immigration Court proceedings, a noncitizen can apply for VAWA cancellation to obtain LPR status by showing 3 years of physical presence, the qualifying abuse and relationship to a citizen or LPR, and extreme hardship.

An initial question to ask when determining which relief is applicable is what is the noncitizen's current immigration status. If they have a green card and the expiration date is two years from when it was issued, they are a conditional resident; if the green card is going to expire within 90 days or it has already expired, the noncitizen is eligible to file for a battered spouse/child waiver to remove the conditions on their Legal Permanent Residence. If the noncitizen's qualifying relative (US citizen or LPR spouse, child or parent) has either filed nothing or filed an I-130 and/or I-485, but the noncitizen has not been approved as a LPR or conditional resident, then the noncitizen could be eligible for VAWA self-petitioning as well as VAWA cancellation. The noncitizen must be in removal proceedings to apply for VAWA cancellation, as only the Executive Office of Immigration Review has authority to grant this type of relief.

An important practice pointer for any client, especially one who has a history of previous immigration applications, is to make a Freedom of Information Act request for the entire A-file (or Alien file), so that the attorney is fully aware of what has been previously filed and what the client's status truly is. CIS has information on their website for how to make a request for someone's entire A-file, by filing Form G-639, found at <http://www.uscis.gov/g-639>.

A good resource for these three types of VAWA applications is the ILRC's "VAWA Manual: Immigration Relief for Abused Immigrants," by Evangeline Abriel & Sally Kinoshita.

4.1.1 Self-Petition (Form I-360)

The VAWA self-petition is an immigration benefit for survivors of domestic violence who have never had conditional resident status or Lawful Permanent Residence. This application can be filed regardless of whether or not the US citizen or LPR family member filed a petition for the survivor. An approved self-petition gives the applicant a status called "deferred action" which makes him/her eligible for 1) work authorization, 2) potentially some public benefits and 3) to file an adjustment of status (green card) application, as long as an immigrant visa number is available.

ELIGIBILITY

The law governing VAWA self petitions is found at INA § 204(a)(1)(A), (B) and 8 C.F.R. § 204.2(c), (e). CIS has issued numerous memoranda regarding VAWA relief, which can be found on their website, as well as listed under the "VAWA" section of Asista's (www.asistahelp.org) website. The form that is used to file for VAWA status is the I-360, which is a versatile form used in several other immigration applications, so several sections of the form will be inapplicable.

There are basically four statutory elements for VAWA self-petitioner status:

- 1) Qualifying relationship to US citizen or LPR, and in the cases of spousal relationship, a good faith marriage is required;
- 2) Battery and/or extreme cruelty;
- 3) Joint residence currently or in the past with abusive relative; and
- 4) Good Moral Character.

Qualifying Relationship

Spouse

Abused spouses of U.S. citizen or permanent residents are eligible to self-petition for themselves as well as their unmarried children who are under 21 if they have not filed for themselves. The spousal relationship includes 1) current spouses, 2) the case of when an immigrant unwittingly entered into a bigamous marriage to a US spouse ("intending" or "putative" spouse) or 3) in the case when the immigrant was married to a U.S. spouse but within the past two years a) the spouse died, b) the spouse lost or renounced their status on account of or incident to the abuse or c) if there was a divorce connected to the abuse. INA 204(a)(1)(A)(iii). Also as referenced above, spouses must prove that they entered into, or intended to enter into, a good faith marriage.

Parent

The parent of a child who has been abused by their U.S. citizen or permanent resident spouse is eligible to self-petition and petition for their children, including those who have not been abused, if they have not filed for themselves. Parents of a U.S. citizen that have been abused by their U.S. citizen “son” or “daughter” (i.e., children over 21-years-old) are allowed to self-petition.

Child

Abused children under 21, who are unmarried and have been abused by their U.S. citizen or LPR parent are allowed to self petition, and can petition for any children of their own. Abused children may apply after age 21 but before age 25 if they can demonstrate that the abuse was the main reason for the delay in filing.

Battery and/or Extreme Cruelty

While some form of physical abuse is common in VAWA cases, applicants who suffer extreme cruelty but no physical abuse are still eligible for relief. As the Ninth Circuit stated in *Hernandez v Ashcroft*, “Congress clearly intended extreme cruelty to indicate nonphysical aspects of domestic violence. Defining extreme cruelty in the context of domestic violence to include acts that ‘may not initially appear violent but that are part of an overall pattern of violence.’ is a reasonable construction of the statutory text at hand.” 345 F.3d 824, 839 (9th Cir. 2003). Often, there are various forms of abuse occurring at the same time: verbal threats, isolation, economic marginalization, sexual violence, physical battery, as well as other acts of psychological abuse. It can be helpful to work with a domestic violence advocate and to consult the “power-control” wheel, which is used widely the domestic violence survivor advocacy community.

Joint Residence

Self-petitioners must show that they lived with their abusive family member at some time. Supporting evidence in addition to the noncitizen’s own statement is important: statements from others who knew of the joint residence, leases or mortgages, as well as any other document with the joint address on it, such as mail, utility bills, tax returns, insurance documents, school records, and police or court documents.

Good Moral Character

Good Moral Character is defined in INA 101(f), identifying certain classes of people who do not have good moral character and then concluding that the list is not exhaustive. However, if the noncitizen has no arrest record and does not fall into the categories of persons enumerated, including being a habitual drunkard or someone who commits certain act such as prostitution and gambling, then there is not much evidence required except the noncitizen stating they are a person of good moral character as well as a “certificate of good conduct” or “no arrest record” from their local police department.

There are certain exceptions to good moral character for battered spouses and children. There must be both a waiver available for the conduct

and also the conduct must be connected to the abuse that the noncitizen suffered. Some grounds which may be waived include engaging in prostitution, commission of a CIMT, a controlled substance conviction, if it is a single marijuana possession of 30 grams or less. A good resource to use is CIS's Memorandum "Determinations of Good Moral Character in VAWA-Based Self-Petition," by William Yates, (January 19, 2005), HQOPRD 70/8.1/8.2, available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/gmc_011905.pdf

STANDARD OF PROOF

Congress recognized that undocumented noncitizen survivors of abuse may have difficulty in securing evidence documenting the elements required for prevailing in a self-petition. As a result it created a special "any credible evidence" standard of proof for survivors of domestic violence. INA § 204(a)(1)(J). This is more generous than a preponderance of the evidence standard.

Advocates should seek to secure as much primary evidence of the VAWA eligibility requirements as possible; however, a self-petitioner could theoretically prevail on her claim even if the only evidence she has of the abuse is her declaration. In such a case, the declaration should be detailed and the reasons for the lack of primary evidence should be explained.

PROCEDURE

After thoroughly reading the instructions regarding Form I-360, the attorney should help their client complete the form and collect all supporting documentation. VAWA self-petitions should be filed with the Vermont Service Center, at Attn.: VAWA Unit, USCIS, Vermont Service Center, 75 Lower Welden Street St. Albans, VT 05479-0001.

Applicants who are immediate relatives of a US citizen can apply for work authorization and for adjustment of status concurrently with their self-petition. Relatives of LPRs must wait until after their I-360 is approved to file for work authorization. They also must wait for their immigrant visa priority date to be current before filing for adjustment. LPRs who have approved I-130s based upon the same abusive relationship can use that earlier priority date in order to apply for adjustment of status.

The self-petition application packet should include the following

- Form G-28, Notice of Entry of Appearance as Attorney;
- Cover Letter explaining eligibility;
- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with any necessary addendum, with applicant's original signature;
- Table of Contents of Supporting Documents;
- Applicant's signed statement to address eligibility for self-petitioner status;
- Supporting evidence, which should include
 - evidence of the abuser's US citizenship or LPR status, such a copy of a U.S. birth certificate, a certificate of citizenship, or LPR card; marriage and divorce decrees, birth certificates or other evidence of the qualifying relationship to the abuser;

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- evidence of current residence in US and of joint residency such as employment records, utility receipts, school records, hospital or medical records, birth certificates of common children, mortgages, rental records, insurance policies, or affidavits;
- evidence of the abuse, such as photographs, proof of protective orders, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel;
- for applicants over 14, affidavit of good moral character accompanied by a local police clearance from each locality or State in the United States or abroad in which the applicant resided for 6 or more months during the 3-year period immediately preceding the filing of the self-petition;
- affidavits, birth certificates of children, medical reports, and other relevant credible evidence of the extreme hardship that would result if the applicant were to be removed or deported;
- and for spouses, evidence of good faith marriage, including proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts as well as testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences.

FEE

There is no filing fee for an I-360 based on being a battered spouse/child/parent. Furthermore, fees associated with biometrics and Form I-765, Application for Work Authorization, or Form I-485, Application to Adjust Status, can be waived.

AFTER FILING

Applicants should receive a receipt of filing notice, which will have an individualized receipt number. It is possible to check processing times for VAWA self-petitions by going to CIS's website. If there is an unusual issue or the case is way outside of processing times, attorneys may follow up on the status of a VAWA self-petition by calling the VSC hotline (802) 527-4888 or emailing the designated email address for VAWA petitions: hotlinefollowup1360.vsc@dhs.gov. Please note, the email and hotline are intended for only attorneys.

Applicants that meet all filing requirements will receive a Prima Facie Determination Notice that is valid for 150 days and can be presented to government agencies that provide certain public benefits to certain victims of domestic violence.

Applicants who were unauthorized and whose I-360 is approved may be granted "deferred action," status, allowing them to remain and apply to work in the United States until their priority dates become current at which time they can file their adjustment of status application.

ADJUSTMENT OF STATUS

VAWA self-petitioners are eligible to adjust status under INA § 245(a). Applicants who are immediate relatives of a U.S. citizen can apply for work authorization and for adjustment of status concurrently with their self-petition. Relatives of LPRs must wait until after their I-360 is approved and their immigrant visa priority date is current.

VAWA self-petitioners enjoy special exemptions of inadmissibility as well as expanded waivers of inadmissibility. For example, they are exempt from public charge and they are deemed paroled, so that entry without inspection is not an issue. Furthermore, they have expanded waivers for grounds of inadmissibility including misrepresentation, past unlawful presence and removal, domestic violence as long as it was self-defense, and crimes. The form for Waiver of Inadmissibility is Form I-601.

An application packet for adjustment of status should include:

- Form G-28
- Form I-485, Application to Adjust Status
- Filing Fee or fee waiver request through a written request or Form I-912
- Filing Fee for biometrics or a fee waiver request, Form I-912
- Form G-325A;
- Form I-693, Medical Exam completed by a civil surgeon in a sealed envelope;
 - Note: There is no fee waiver for the fees for medical exam that go directly to the civil surgeon; however, the adjustment application may be filed without the I-693 so long as it is supplied by the time of adjudication. Thus the self-petitioner will likely be able to secure work authorization and acquire income prior to obtaining the I-693.
- Photocopy of VAWA self-petitioner approval notice;
- Photocopy of applicant's birth certificate and other identity documents;
- Form I-601, Waiver of Inadmissibility, if applicable, with supporting documents and filing fee or waiver; and
- If you are filing your I-485 concurrently with the I-360 because of status as an immediate relative of a US citizen abuser, you may apply for work authorization under the (c)(9) category with 2 photographs.

4.1.2 Battered Spouse/Child Waiver (Form I-751)

ELIGIBILITY

The law governing battered spouse/child waivers is INA § 216(c)(4)(C) and 8 C.F.R. § 216.5.

There are two basic elements to prove:

- 1) Good Faith Marriage and
- 2) Physical Battery or Extreme Mental Cruelty during the marriage.

Good Faith Marriage

Please refer to the above VAWA self-petition section regarding Good Faith Marriage.

Physical Battery or Extreme Mental Cruelty

According to regulations, physical battery or extreme mental cruelty includes “being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence.” 8 C.F.R. § 216.5 (e) (3) (i). Regulations also further describe what type of evidence is required, but a later amendment requires DHS to consider “any credible evidence,” which means that CIS may not deny an application for failure to submit a particular type of evidence. In light of this, it seems that the requirement that mental cruelty must be supported by licensed mental health professionals’ evaluations is now invalid.

Whether or not the couple has divorced and the timing of the divorce does not affect the battered spouse/child waiver, although divorce does provide another reason to waive joint filing under 8 C.F.R. § 216.5(e) (2).

PROCEDURE

After thoroughly reading the instructions regarding Form I-751 the attorney should help his/her client complete the form and collect all supporting documentation. Form I-751’s based upon abuse or cruelty are filed with the Vermont Service Center, at USCIS, Vermont Service Center, 75 Lower Welden Street St. Albans, VT 05479-0001. Please note that if the applicant is in removal proceedings, then the Immigration Court has jurisdiction over the I-751 petition and it should instead be filed with the court.

If filing with CIS, the waiver of the joint petition to remove conditions application packet should include the following:

- Form G-28, Notice of Entry of Appearance as Attorney;
- Cover Letter explaining eligibility;
- Form I-751, Petition to Remove Conditions on Residence, with any necessary addendum, with applicant’s original signature;
- Filing Fee or Fee Waiver, Form I-912;
- Table of Contents of Supporting Documents;
- Applicant’s signed statement to address eligibility including good faith marriage and physical and/or mental cruelty;
- a copy of applicant’s Permanent Resident Card, and a copy of the Permanent Resident cards of any of conditional resident children included in the petition;
- Supporting evidence of good faith marriage, including birth certificate(s) of child(ren) born to the marriage; lease or mortgage contracts showing joint occupancy and/or ownership; financial records showing joint ownership or responsibility, such as joint savings and checking accounts, joint federal and state tax returns, insurance policies that show the other spouse as the beneficiary, joint utility bills, joint installments, or other loans; and affidavits sworn to or affirmed by at least two people who have known both spouses since conditional residence was granted and have personal knowledge of the marriage and relationship.

- Evidence of the abuse, such as copies of reports or records issued by police, courts, medical personnel, school officials, clergy, social workers, and other social service agency personnel; legal documents relating to an order of protection; evidence of seeking safe haven in a battered women's shelter or similar refuge; photographs of injuries; and a copy of the divorce decree, if the marriage was terminated by divorce on grounds of physical abuse or extreme cruelty.

FEE

The fee can be found on the CIS website, and is currently \$505 for the form with additional biometric fee of \$85 for applicant and an additional \$85 for each additional derivative children listed on the application. A fee waiver can be requested for the application and biometrics.

AFTER FILING

Once CIS receives the battered spouse/child waiver petition, the applicant's conditional permanent resident status is extended by operation of law, and the attorney should receive a Notice of Action indicating that petition was received and the extension of conditional residence.

Any questions regarding processing times or the application can be directed at VSC hotline 1-802-527-4888. The Vermont Service Center will issue a decision from reviewing the application packet and if an interview is necessary it will be conducted at the local regional office in the district where the applicant lives.

4.1.3 VAWA Cancellation

VAWA cancellation is relief that noncitizens can seek in Immigration Court. The Immigration Judge and BIA, who are part of the EOIR agency, have jurisdiction over these applications, not CIS.

ELIGIBILITY

The statutory authority for VAWA cancellation is found at INA § 240A(b)(2), and relevant regulations include 8 C.F.R. §§ 1240.20, 1240.21, and 1240.58.

To be eligible, the noncitizen must prove:

1. Qualifying relationship:
 - married to someone who was or is a U.S. citizen or LPR, which includes an intended marriage which was not legitimate because of U.S. citizen or LPR's bigamy
 - child of someone who was or is a U.S. citizen or LPR
 - parent of a child of a U.S. citizen or LPR (and child is subjected to the harm);
2. battered or subject to extreme cruelty;
3. has been physically present in the U.S. for a continuous period of not less than 3 years before filing the petition;
4. been a person of good moral character during the 3 year period before filing;
5. is not inadmissible under criminal and related grounds (INA § 212(a)(2)) or security and related grounds (INA § 212(a)(3)), nor is deportable for

- marriage fraud, criminal offenses, failure to register or falsification of documents or security related grounds (INA § 237(a)(1)(G), (2), (3), (4));
6. has not been convicted of an aggravated felony; and
 7. extreme hardship to noncitizen or to noncitizen's children or parents, if removed.

For discussion of the qualifying battery or extreme cruelty element, please see the self-petition section above.

Physically present in the US

The noncitizen must show s/he has been in the US for three years immediately preceding the application for VAWA cancellation. INA § 240A(b)(2)(A)(ii). The “stop time” rule—which breaks continuous presence when a noncitizen commits a criminal inadmissibility offense under INA 212(a)(2)—does not apply to battered spouses and children. INA § 240A(d)(1). If the noncitizen is outside of the U.S. for more than 90 days at one time or 180 days in the aggregate during the 3 year period, that will break the continuous period, rendering him/her ineligible, unless the absence was connected to the extreme battery or cruelty. INA § 240A(b)(2)(B)

Good Moral Character

The noncitizen will not be barred from being found to lack good moral character if the act or conviction was connected to the battery or extreme cruelty and a waiver is available. INA § 240A(b)(2)(C). Please see the self-petition section above for further discussion.

For information about inadmissibility and aggravated felony, please see the “Effects of Criminal Convictions” section above.

Extreme Hardship

Economic deprivation, loss of employment, or difficulty readjusting to life in the native country would not constitute extreme hardship on their own. *Matter of Anderson*, 16 I. & N. Dec. 596 (BIA 1978). A determination of extreme hardship will be made on a case by case basis, but it can often be helpful to demonstrate how deportation would frustrate the progress that the noncitizen has made in overcoming domestic violence (DV) circumstances. Therefore it is highly relevant if s/he is seeking treatment or has a support system in place that would not be in place in the home country.

Circumstances to address can include the regular, non-DV-related hardship factors under 8 C.F.R. § 1240.58(b) and should include the special DV hardship factors under 8 C.F.R. § 1240.58(c):

- (1) The nature and extent of the physical or psychological consequences of abuse;
- (2) 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);
- (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);

- (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
- (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
- (6) 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.

PROCEDURE

As mentioned above, this type of relief is exclusively available to individuals in removal proceedings, so the application is filed with the Immigration Court. It is important to consult EOIR's Immigration Court Manual generally for rules on filing applications in court, and often Judges will impose their own requirements additionally.

The form for the application is EOIR-42B, which is available on EOIR's website, along with instructions. The filing fee is \$100 and there is a biometrics fee, but these can be waived by the Immigration Judge, if you file a motion to waive these fees. Before filing the application, you must file the fee or a copy of the Immigration Judge's decision to waive the fee, along with a copy of the application without attachments, a copy of filing instructions, and an E-28, Notice of Entry of Appearance as Attorney to the Texas Service Center in order to initiate biometrics processing. The filing instructions can be found here: <http://www.uscis.gov/files/article/PreOrderInstr.pdf>.

As with everything in Immigration Court, anything filed with the Court must be served on ICE counsel as well.

The packet that should be filed with court should include:

- Form EOIR 28 Notice of Entry of Appearance as Attorney of Record (if it has not yet been filed);
- Form EOIR-42B, Application for Cancellation of Removal;
- Table of Contents with all supporting documents and additional sheets;
- Form G-325A;
- Copy of the CIS ASC notice of fee receipt and biometrics appointment instructions;
- Two passport-sized, color photographs of applicant with lightly printed name and A number on the back of each photograph; and
- Completed certificate showing service of these documents on the ICE Assistant Chief Counsel, unless service is made in court on the date of filing.

Supporting Evidence should include:

- Evidence of physical presence including copies of passports showing travel, bank statements, leases, deeds, licenses, receipts, letters, birth records, church records, school records, employment records, and evidence of tax payments.

- Evidence of Good Moral Character, including police records from wherever the applicant lived in the statutory period, as well as letters and sworn declarations of support from witnesses, such as family, friends, community members and employers. These individuals should preferably be U.S. citizens, according to the form's instructions.
- Evidence of Qualifying Relationship, including birth records, marriage certificates, proof of divorce or termination of marriage, and death certificates; and
- Evidence of Battery or Extreme Cruelty, which is described above in the self-petition section.

FEE

As explained above the fee is \$100 for the form, \$85 for biometrics, and the fees can be waived by the Immigration Judge upon a motion.

4.2 U NONIMMIGRANT STATUS (FOR VICTIMS OF SERIOUS CRIMES INCLUDING DOMESTIC VIOLENCE)

U Nonimmigrant Status, informally called a "U Visa," is a status that allows noncitizen survivors of serious enumerated crimes to stay in the United States, obtain permission to work, apply for LPR status eventually, and help certain family members obtain U status as well. It was created by the Victims of Trafficking and Violence Prevention Act of 2000 and later amended by the Violence Against Women Act of 2006 and the Trafficking Victims Protection Act of 2008. Congress created the U visa to "strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes ... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." Victims of Trafficking and Violence Protection Act of 2000 (Public Law No: 106-386, 114 Stat. 1464), Sec. 1513(a)(2)(A), Oct. 28, 2000.

U status lasts for 4 years, but after 3 years, the U Nonimmigrant can apply to adjust status to become a legal permanent resident. The statute defining U status eligibility can be found at INA § 101(a)(15)(U) and INA § 214(p) and related U regulations are at 8 C.F.R. § 214.14. Eligibility requirements regarding inadmissibility waivers related to U status can be found at INA § 212(d)(14) and 8 C.F.R. § 212.17. Law regarding adjustment of status to legal permanent residence is found at INA § 245(m) and 8 C.F.R. § 245.24. There are also CIS memoranda and information which can be found on their website. The CIS application form is Form I-918, and the waiver of inadmissibility is Form I-192. Some other good resources are ILRC's U Visa Manual, "The U Visa: Obtaining Status for Immigrant Victims of Crimes," and Asista (<http://www.asistahelp.org/>) has a section devoted to U Visa law, policy and other materials.

The VAWA 2006 amendments explicitly expand the range of services LSC grantees can provide to survivors of domestic violence, sexual assault trafficking and other U-visa related crimes, regardless of their immigration status. LSC grantees are allowed to use both LSC and non-LSC funds to provide an otherwise ineligible noncitizen legal services that are "directly related" to the preventing or obtaining relief from, the battery or cruelty, sexual assault or trafficking, or other U visa crimes, or whose child has been similarly victimized. Secondly, LSC recip-

ients can provide “related legal assistance” to otherwise ineligible noncitizens who are survivors of domestic violence even if they are not married to, or the child of, their abusers. Thirdly, LSC recipients can provide legal assistance using LSC funds to new categories of previously ineligible noncitizens. LSC Program Letter 06-2 (February 21, 2006), at 2. LSC providers can assist noncitizens in filing for a U visa, as well as any related legal assistance, which grantees can make determinations on in a case by case basis. Letter 06-2 at 4. The U Visa status does not make noncitizens eligible for federal public benefits.

ELIGIBILITY

In order to be eligible for U status, the following requirements must be met:

- 1) The primary applicant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- 2) The applicant (or in the case of an applicant child under 16, the parent or guardian) possesses information concerning that criminal activity;
- 3) The applicant (or in the case of an applicant child under 16, the parent or guardian) has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity;
- 4) The applicant has a certification from a federal, state, or local law enforcement authority certifying his or her helpfulness in the investigation or prosecution of the criminal activity (this certification is CIS Form I-918B);
- 5) The criminal activity violated the laws of the United States or occurred in the United States; and
- 6) The applicant must be admissible or obtain a waiver of inadmissibility for any inadmissibility grounds. INA § 101(a)(15)(U); INA § 212(d)(14).

Substantial physical or mental abuse as a result of having been a victim of certain criminal activity

The first requirement is that the applicant suffered “substantial abuse” because they were the victim of a crime, which violates Federal, State or local law. There are three sub-parts to this requirement: 1) the victim, 2) the crime and 3) substantial mental or physical harm.

There are two classes of victims under the law: direct and indirect. A direct victim is a person who suffered direct harm or who is directly or proximately harmed. 8 C.F.R. § 214.14(a)(14). Bystander victims who suffer proximate harm can be considered direct victims. For example, as described in the preamble to implementing regulations, a pregnant woman who witnesses a vicious assault and suffers a miscarriage as a result, would be considered a direct victim; even though she was not the victim who was being assaulted, she suffered proximate harm. An indirect victim includes certain family members of direct victims, who are incompetent, incapacitated or dead. Under the regulations, if the direct victim was a victim of murder or manslaughter, or is incompetent or incapacitated as a result of the crime, then indirect victims include: 1) spouses, 2) unmarried children under 21, 3) parents, and 4) siblings under 18, if the victim is under 21. For the purpose of indirect victims, the age of the victim is controlled by their age at the time of the crime. Indirect victims, like direct victims, still have to prove the other elements of U

status including helpfulness and harm. Victims, who are culpable themselves for the qualifying criminal activity, are excluded from being considered a victim. 8 C.F.R. § 214.14(a)(14)(iii).

The qualifying crimes are listed in the statute and include one or more of the following crimes or *any similar activity* that violates a Federal, State, or local criminal law: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, hostage-taking, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, torture, trafficking, unlawful criminal restraint, witness tampering, a related crime, and an attempt, conspiracy or solicitation to commit any of the above crimes. 8 C.F.R. § 214.14(a)(9). If the crime is witness tampering, obstruction of justice or perjury, then there is an additional requirement, that the perpetrator committed the offense 1) to avoid or frustrate efforts investigate, arrest, or to prosecute or 2) to further his or her abuse or exploitation or undue control through the legal system. 8 C.F.R. § 214.14(a)(14)(ii). Note that these “enumerated crimes” are general categories and that the statute allows consideration of “any similar activity” in determining eligibility for U nonimmigrant status. Thus, one may be able to describe a victim of “stalking” (a crime not enumerated in the U statute) as a victim of domestic violence. Additional documentation proving the “similarity” of a non-enumerated crime to an enumerated crime should be submitted.

The harm suffered by the victim can be physical or mental, but must be substantial. Factors to consider if the harm is substantial include 1) nature of the injury, 2) severity of the perpetrator’s conduct, 3) severity of the harm suffered, 4) duration of infliction of harm and 5) permanent or serious harm to appearance, health, physical or mental soundness. 8 C.F.R. § 214.14(b)(1). CIS will consider the totality of circumstances to determine substantial abuse. Therefore if there are pre-existing, underlying factors that would cause a victim to suffer more greatly than might be expected, those factors and that aggravated harm should be considered. CIS writes in the instructions to the application that if the crime “caused the aggravation of a pre-existing physical or mental injury” that will be considered, and if the crime involved a series of acts or occurred repeatedly over a period of time that is also relevant to the “totality” evaluation. For example, perhaps the victim has long suffered severe domestic violence and rape at the hands of the perpetrator, but the U crime that was certified was just for a simple battery that caused minimal physical harm. As this battery was a part of a long pattern of abuse, the victim likely suffered substantial mental harm, even if the physical harm was minor, due to the pre-existing harm. In order to determine if someone suffered substantial harm, it is often advisable to involve a mental health professional to assess the victim.

Possesses information concerning that criminal activity and Helpfulness

The statute does not specify the extent of information the victim must possess. So as long as the victim has some information about the crime that should be sufficient.

In terms of helpfulness, the statute does not require the criminal investigation lead to an arrest or prosecution. Therefore, a victim who reports a qualifying crime which begins a criminal investigation should be sufficient for helpfulness. Under the regulations, there is an additional requirement that the applicant cannot refuse to provide reasonably requested assistance throughout the duration of their U status. 8 C.F.R. § 214.14(b)(3). There is an exception to the helpfulness requirement in that victims who are under 16 years of age can satisfy the requirement if their parent, guardian or next friend provides the assistance in their place. INA § 101(a)(15)(U)(i)(III), 8 C.F.R. § 214.14(b)(3). Evidence of this helpfulness should include the completed and signed U certification as well as the applicant's own declaration describing how s/he helped (reporting the crime, providing details to investigators, potentially allowing physical evidence or photographs to be taken, and/or if they testified). Other evidence could include the police report, court transcripts if the victim testified, letters of support from investigators and/or prosecutors, other witness statements who have knowledge of how the victim assisted the investigation and/or prosecution.

Certification from a federal, state, or local law enforcement authority

In order to be eligible to apply for U status, a federal, state or local law enforcement entity must sign a completed certification, which is CIS Form I-918B and can be found on the CIS website (www.uscis.gov) under "Forms." INA § 101(a)(15)(U)(i)(III).

A certifying agency can be a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime, including child protective services, the Equal Employment Opportunity Commission, and the Department of Labor. 8 C.F.R. § 214.14(a)(2). Some common examples of certifying agencies are police departments, District Attorneys' offices, juvenile, domestic relations, civil or criminal judges, the FBI, the Department of Justice, the Department of Children and Family Services, and even ICE. The main consideration is if the entity has jurisdiction over the qualifying crime. Some victims might have several possible certifying agencies. Imagine a woman is the victim of domestic violence, so she obtains a protective order and her partner is convicted criminally of the abuse. Certifying entities would include the police to whom she reported the crime, the district attorney's office that brought the charges, the criminal court judge who presided over the proceedings, and the civil court judge who granted the protective order.

The law enforcement certification must be certified by a certifying official, who is 1) the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency or (2) a Federal, State, or local judge. 8 C.F.R. §214.14(a)(3).

Violated the laws of the United States or occurred in the United States

The qualifying crime must have violated the laws of the United States or occurred in the United States. INA § 101(a)(15)(U)(i)(IV); 8 C.F.R. § 214.14(b)(4). This includes Indian country, U.S. military installations, and U.S. territories and possessions. 8 C.F.R. §214.14(b)(4). Indian country is defined as (i) all land within any Indian reservation under the jurisdiction of

the United States, (ii) all dependent Indian communities within the borders of the United States regardless of if it is within a state; and (iii) all Indian allotments. 8 C.F.R. §214.14(a)(4). Military installments are defined as any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control. 8 C.F.R. § 214.14(a)(6). Even if the crime did not occur within the United States, its territories or possessions, military installments or Indian land, if the crime violates a federal statute that provides for extraterritorial jurisdiction, then it qualifies. 8 C.F.R. § 214.14(b)(4).

Admissibility

In order to qualify for U status, the applicant must be admissible, or obtain a waiver for the inadmissibility ground(s). INA § 214(a)(1), INA § 212(a). The U statute has broad waivers of inadmissibility—allowing any ground to be waived except for grounds related to Nazi persecutors, genocides, acts of torture or extrajudicial killings. INA § 212(d)(14). The standard is that it is at the discretion of DHS and that it is in the public or national interest. 8 C.F.R. § 212.17(b). If the inadmissibility is due to criminal or related grounds, CIS will look at the number and severity of the applicant's convictions. With violent or dangerous crimes or inadmissibility based on the security and related grounds, CIS will only exercise favorable discretion in extraordinary circumstances 8 C.F.R. § 212.17 (b)(2). It is also important to note that denials of waivers can't be appealed, and waivers can also be revoked at any time, and that decision can't be appealed, either. 8 C.F.R. § 212.17 (b)(3).

PROCEDURE

As with all immigration applications, practitioners should thoroughly read the instructions for filing the application, which are posted on the CIS website at <http://www.uscis.gov/i-918>. All applications for U Nonimmigrant Status are filed with and adjudicated by the Vermont Service Center, at: Attn.: Crime Victim Unit, U.S. Citizen and Immigration Services, Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479-0001.

The application packet should include the following

- Form G-28, Notice of Entry of Appearance as Attorney;
- Cover Letter explaining eligibility and potential inadmissibility issues;
- Form I-918, Petition for U Nonimmigrant Status with any addendum explanations signed by the applicant, if applicable;
- Form I-918 Supplement A, if applicable, "Petition for Qualifying Family Members of U-1 Recipients, for any derivative applicants;
- Form I-918 Supplement B, "U Nonimmigrant Status Certificate," signed by a certifying official within the past 6 months;
- Form I-192, "Application for Advance Parole to Enter as Non-Immigrant," requesting waivers for any ground of inadmissibility, with supporting evidence. (An individual may submit only one waiver to address multiple grounds of inadmissibility; however if there are derivative applicants, each one of them must submit their own waiver to address their own admissibility issues.);

- Filing Fee for Waiver of Inadmissibility, or Form I-912, “Request for Fee Waiver,” with supporting documents;
- Table of Contents of Supporting Documents;
- Applicant’s signed statement to address eligibility for U status, as well as inadmissibility issues;
- A copy of the identity page of applicant’s valid passport or a waiver of inadmissibility must be included to waive this requirement;
- If there are family member applications, then they must provide proof of the qualifying relationship, such as marriage certificate, birth certificate, and/or adoption decree;
- Any supporting evidence in support of I-918 and I-192, which may include police reports; court documents; medical records; letters, statements or reports from other individuals including medical personnel, school officials, clergy, family members or witnesses; news articles; orders of protection; photographs; psychological evaluations; or any other relevant documents; and
- A copy of the criminal statute(s) defining the crime which the applicant suffered.

The Form I-918 Supplement B, “U Nonimmigrant Status Certificate,” is the most critical part of the U application as it is a mandatory pre-requisite. Often law enforcement agencies are not familiar with U Nonimmigrant Status and informal advocacy and/or education is needed before the agency is willing to certify. It is best to talk to experienced local immigration practitioners familiar with U applications to find out if there is a point person for U certifications at the particular agency, or to do outreach to the agency. Many law enforcement agencies prefer that advocates draft up the form I-918 Supplement B for them, but some may prefer to do it themselves, so it is best to find out as much as possible about the local practice before approaching the agency. Law enforcement agencies are not mandated to sign off on U certification, even if all the information is true, so advocates should try to build relationships with local law enforcement to have a successful collaboration. A good resource is Legal Momentum and Vera Institute’s “Tool Kit for Law Enforcement of the U Visa,” found at <http://www.acasa.us/pdfs/U-Visa-Toolkit%20%20FINAL.pdf>.

As mentioned above, waivers of inadmissibility are available for most grounds. Common grounds of inadmissibility include immigration violations, including entering the United States without permission, failing to attend removal proceedings, misrepresentation or fraud for the purpose of obtaining an immigration benefit, alien smuggling, civil document fraud, prior removal orders, and unlawful presence; communicable disease; physical or mental disorders that may pose a threat; drug abuse or addiction; criminal acts or convictions including CIMTs, drug convictions, prostitution; and public charge.

It is a commonly held belief among advocates who regularly apply for U status that it is best to admit any potential inadmissibility in the initial application, and request a waiver, if needed. In fact, according to notes from a CIS meeting regarding U status with advocates, CIS stated: “[I]t’s better to acknowledge and explain as much as possible to not appear evasive. It’s better

to include and explain as much as possible upfront so your client will appear more credible. Err on the side of caution and disclose upfront." *Q&A on U Visas* (November, 2007) at page 4, available at http://www.asistahelp.org/documents/resources/CIS_Q_A_on_Us_2007_9EB4BC84ED006.doc Furthermore, one practice is to seek waivers of inadmissibility for whichever grounds you have identified, and "any other ground for which CIS detects," as a catch-all.

The inadmissibility waiver (Form I-192) must be accompanied by a fee or fee waiver (Form I-912), and if the conduct does trigger inadmissibility it is often best to have a separate client statement specifically addressing why the grounds should be waived, as well as other evidence in support of the waiver. An explanation addressing potential inadmissibility should be included in the cover letter to the whole application packet as well as being attached to the Form I-192. Think broadly about why it is in the public interest for your client to obtain the waiver. First, consider the purpose of U non-immigrant status itself: to "strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes ... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." In fact, if the applicant has no serious inadmissibility issues, USCIS will generally grant the waiver on the basis of the applicant's eligibility for U status and without additional documentation.

If, however, there are more serious inadmissibility issues, USCIS will require additional documentation to support the waiver. Potentially their family will suffer hardship and statements from all family members can be included. If your client is involved in the community, you should include letters from community members, church leaders, etc. to show the positive impact the client is making. If there are reasons why it would be dangerous for your client to return to their native country, include country and news reports, as well as personal statements about what danger is likely to come to them if they cannot remain in the United States.

FEE

There is no fee for filing a U Nonimmigrant Status application, although there is a fee for the waiver of inadmissibility. Currently the fee is \$545, although you can apply for a fee waiver. Furthermore, there is a fee for the work authorization applications, Form I-765, for any derivatives, if they wish to seek permission to work along with U-status. The fee waiver can also be sought for these filing fees. The filing fee request need only include the Form I-912, or a short statement from the applicant detailing their financial situation, although other proof of inability to pay may also be included in support of the request.

AFTER FILING

Once you submit an application to the Vermont Service Center, they will promptly issue a receipt of the application to the applicant and applicant's attorney, with a receipt number that can be used to track the case status online through CIS's website. If there is an unusual issue or a case way outside of processing times, an attorney may use the hotline for U & T applications: 802-527-4888 or use the email address hotlinefollowupI918I914.vsc@dhs.gov.

Average processing times can be found on CIS's website, and currently the U processing time is between 4-5 months, but the Center says that it is only after the application is pending for a year that it will be flagged for being outside of processing times. The next correspondence after the initial receipts usually is a notice for biometrics to be taken at the local CIS office. If the Center feels that there is insufficient evidence to prove an element, they will issue a "Request for Evidence" (RFE), on blue paper and a deadline. CIS cannot grant extensions for RFEs, and it is important to respond to the RFE with evidence, even if the RFE requests evidence that has already been submitted. An approval or denial notice will then be sent out. If the U visa application is approved, the application will often get the work authorization card before the approval notice which contains an I-94, arrival/departure document. The I-94 document should be kept with the U Nonimmigrant's passport and serves as proof of U status.

If the application is denied, a letter explaining why should be issued, and the applicant may appeal to the Administrative Appeals Office. The Vermont Service Center has stated that they are currently not referring denied U applicants to removal proceedings.

AFTER APPROVAL

Noncitizens may want to travel abroad after the approval of their U status, but they should be very careful. In order to adjust status to lawful permanent residence, the applicant must have three years of continuous physical presence in U status, so s/he may not be outside of the U.S. for more than 90 days at a time, or 180 days in total. Traveling abroad may also trigger further inadmissibility grounds, such as unlawful presence bars, and to be able to return, the applicants must submit and be approved for a waiver of inadmissibility for the new ground. Therefore, it is much safer if U Nonimmigrants refrain from traveling abroad until after they become LPRs.

In order to be eligible for adjustment of status, U Nonimmigrants also have an ongoing responsibility to respond to reasonable requests for assistance from the law enforcement officials, regarding their case.

ADJUSTMENT OF STATUS

The law regarding adjustment for U Nonimmigrants is found at INA § 245 and 8 C.F.R. § 245.25. U Nonimmigrants are eligible to adjust status to be LPRs 1) after three years of continuous physical presence, 2) if DHS determines that the nonimmigrant's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or otherwise in the public interest, 3) if they have not unreasonably refused to assist in investigation or prosecution, and 4) if not inadmissible on the grounds of Nazi persecutor, genocide, torture, or extrajudicial killing.

Applications should include:

- Form G-28;
- Form I-485, Application to Adjust Status;
- Filing Fee or fee waiver request, Form I-912;
- Filing Fee for biometrics or a fee waiver request, Form I-912;

- Form G-325A;
- Form I-693, Medical Exam completed by a civil surgeon in a sealed envelope
- Photocopy of U nonimmigrant status approval notice and photocopy of inadmissibility waiver approval, if applicable;
- Photocopy of all pages of applicant's passport valid during the required period;
- Evidence of continuous physical presence, relating to discretion, and that the applicant has not unreasonably refused to cooperate with law enforcement (Applicant's statement can address all of these points); and
- Form I-765, Application for Employment Authorization, under the (c)(9) category with 2 photographs.

4.3 T NONIMMIGRANT STATUS (FOR VICTIMS OF HUMAN TRAFFICKING)

Human trafficking, often referred to as modern day slavery, affects men and women around the world. Traffickers may take many forms and may use fake business schemes to entrap victims, such as educational or work programs, mail-order bride companies, maid and domestic worker programs, and unlawful adoption services. Individuals may believe the schemes are legitimate and enter them willingly but then are forced into various forms of forced labor situations such as sweatshops, sex trade, agricultural labor, and domestic servitude. The Trafficking Victims Protection Act of 2000 and subsequent reauthorization acts have created and developed protection for immigrant victims of a severe form of trafficking in the form of T Nonimmigrant Status. (Note that it is possible for trafficking victims to seek U Nonimmigrant Status, as trafficking is an enumerated crime, and depending on the circumstances they may be eligible for even more forms of immigration relief.)

Another form of interim relief for trafficking survivors is continued presence which allows federal law enforcement to permit the noncitizens presence in the United States if the noncitizen is a victim of a severe form of trafficking and a potential witness. Only federal law enforcement agencies can initiate this process, and once granted it can be issued for up to a one year increment, which may be extended. Once this has been granted, the Office of Refugee and Resettlement generates a letter for adults certifying their status, which allows them to apply for work authorization as well as access to public benefit programs. Those who have been certified can access the level of public benefits as refugees and asylees. The 5-year bar for certain public benefits does not apply to certified victims of human trafficking.

If approved for T Nonimmigrant Status, the individual will be granted four years of status, and after three, the noncitizen can apply for LPR status. Furthermore, during this time period they are eligible to work. They may also be eligible for special federal benefits programs.

ELIGIBILITY

The statutory and regulatory authority for T Nonimmigrant status is at INA § 101(a)(15)(T) and 8 C.F.R. § 214.11. Waivers of inadmissibility for T Nonimmigrant status are found at 8 C.F.R. § 212.16. Statutory and regulatory

authority for adjustment of status under T is INA § 245(l), and 8 C.F.R. 245.23. A relevant CIS Memorandum is “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator’s Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10-38),” (July 21, 2010) (PM-602-0004).

In order to be eligible for T Nonimmigrant Status, also informally called “T Visa,” the applicant must show that s/he

1. is a victim of a severe form of trafficking in persons;
2. is physically present in the United States due to trafficking;
3. has been willing to comply with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, unless the applicant is a minor;
4. would suffer extreme hardship involving unusual and severe harm if removed from the United States
5. has not committed a severe form of trafficking in persons offense; and
6. is not inadmissible under INA § 212 (although there are generous waivers for T applicants).

There are also special provisions for those brought into the country for investigations or as witnesses, for those who are unable to participate in law enforcement interview because of trauma and for the parents or unmarried siblings under 18 who face retaliation as result of their family members’ escape from trafficking; each are allowed to apply for T Nonimmigrant status. TVPRA 2008.

Severe Form of Trafficking

Severe Form of Trafficking is defined statutorily defined as:

- A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 USC § 7102(8).

The component parts of this definition are also listed in the same statutory section.

Physically Present

The applicant must prove physical presence in the U.S., America Samoa or Northern Mariana Island on account of trafficking. If the applicant leaves and returns to the U.S., s/he must show that the return was a result of continued victimization by traffickers or a new incident of trafficking.

Reasonable Request to Assist

Adult applicants must comply with reasonable requests from law enforcement for assistance in the trafficking investigation and prosecution. Law Enforcement Agency (LEA) refers to any federal law enforcement agency

that has responsibility and authority for the detection, investigation or prosecution of severe forms of trafficking in persons, such as U.S. Attorneys, the FBI, CIS, DOJ, ICE, and United States Marshals. The TVPRA has expanded LEA's to include state and local law enforcement, which is reflected in the T application instructions, but not yet in the regulations.

In order to determine if the request for assistance was reasonable, CIS should look at the totality of circumstances including general law enforcement, prosecutorial and judicial practices, the nature of the victimization, specific circumstances of the applicant, and age and maturity of young victims. 8 C.F.R. 214.11(a).

Severe Hardship

This hardship is elevated from "extreme hardship," and refers to the hardship suffered if removed to the home country. Factors to consider can include: applicant's age and personal circumstances; health problems that require attention not reasonably available in the home country; physical and psychological harm caused by the trafficking; impact on applicant including loss of access to U.S. courts and judicial systems for purposes such as protection and redressing effects of trafficking, reasonable expectation that the laws, social practices or customs in an applicant's country would punish applicant for having been the victim of trafficking; likelihood of revictimization; likelihood that the trafficker would severely harm the applicant; and likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict.

PROCEDURE

As with all immigration applications, practitioners should thoroughly read the instructions for filing the application, which are posted on the CIS website at <http://www.uscis.gov/i-914>. All applications for T Nonimmigrant Status are filed with and adjudicated by the Vermont Service Center, at: Attn.: Crime Victim Unit, U.S. Citizen and Immigration Services, Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479-0001.

The application packet should include the following:

- Form G-28, Notice of Entry of Appearance as Attorney;
- Cover Letter explaining eligibility and potential inadmissibility issues;
- Form I-914, Petition for T Nonimmigrant Status with any addendum explanations signed by the applicant, if applicable;
- Form I-914 Supplement A, if applicable, "Petition for Qualifying Family Members of T-1 Recipients, for any derivative applicants;
- Form I-914 Supplement B, "Declaration for Law Enforcement Officer," signed by a certifying official within the past 6 months, if available, but this is not mandatory;
- Three identical, passport-sized color photographs, Name and A-number, if one exists, should be lightly written on the back of the photographs;
- Form I-192, "Application for Advance Parole to Enter as Non-Immigrant," requesting waivers for any ground of inadmissibility, with supporting evidence. (An individual may submit only one waiver to address

multiple grounds of inadmissibility, however if there are derivative applicants, each one of them must submit their own waiver to address their own admissibility issues.);

- Filing Fee for Waiver of Inadmissibility, or Form I-912, “Request for Fee Waiver,” with supporting documents;
- If a derivative is applying, they will also need to submit proof of their relationship to the applicant as well as three, passport-sized color photographs;
- Table of Contents of Supporting Documents;
- Applicant’s signed statement to address eligibility for T status, as well as inadmissibility issues;
- A copy of the identity page of applicant’s valid passport, or a waiver of inadmissibility must be included to waive this requirement;
- If there are family member applications, then they must provide proof of the qualifying relationship, such as marriage certificate, birth certificate, and/or adoption decree; and
- Any supporting evidence in support of I-914 and I-192, which may include police reports; court documents; medical records; letters, statements or reports from other individuals including medical personnel, school officials, clergy, family members or witnesses; news articles; orders of protection; photographs; psychological evaluations; or any other relevant documents.

I-914, Supplement B, Certificate

The Law Enforcement Certificate is primary evidence of the trafficking, although it is not mandatory as in the U context. If the applicant does not provide a completed Form I-914, Supplement B, then s/he should submit an explanation, describing attempts to obtain the certification and why it unavailable, or if s/he did not attempt to obtain the certification, s/he must explain why not. Furthermore if it’s not available, applicant should provide evidence that CIS has arranged for continued presence based off of trafficking or sufficient secondary credible evidence of trafficking. 8 C.F.R. 214.11 (f).

Applicant’s sworn declaration

Applicant’s statement should address all elements of eligibility, including how s/he entered the US, why s/he entered the US, how s/he was recruited into the trafficking situation, when and where the events occurred, who was responsible, length of detention by the traffickers; how and when s/he escaped or departed from the traffickers; what s/he has been doing since the escape; why could not return to home country after escape; future harm or mistreatment feared if s/he is removed from the United States; and why s/he fears this harm.

FEE

There is no fee for filing a T Nonimmigrant Status application, although there is a fee for the waiver of inadmissibility. Currently the fee is \$545, although you can apply for a fee waiver. Furthermore, there is a fee for the work authorization applications, Form I-765, for any derivatives, if they wish to seek permission to work along with T-status. The fee waiver can also be

sought for these filing fees as well. The filing fee request need only include the Form I-912, as well as a short statement from the applicant detailing their financial situation, although other proof of inability to pay may also be included in support of the request.

AFTER FILING

Once you submit an application to the Vermont Service Center, they will promptly issue a receipt of the application to the applicant and applicant's attorney, with a receipt number that can be used to track the case status online through the CIS website. If there is an extremely unusual issue, the attorney may contact the hotline for U & T applications: by calling 802-527-4888 or through the email address, hotlinefollowupI918I914.vsc@dhs.gov.

Average processing times can be found on CIS's website, and currently the T processing time is between 4-5 months, but the Center says that it is only after the application is pending for a year that it will be flagged for being outside of processing times. The next correspondence after the initial receipt usually is a notice for biometrics to be taken at the local CIS office. If the Center feels that there is insufficient evidence to prove an element, they will issue a "Request for Evidence" (RFE), on blue paper and a deadline. CIS cannot grant extensions for RFEs, and it is important to respond to the RFE with evidence, even if the RFE requests evidence that has already been submitted. An approval or denial notice will then be sent out. Often the work authorization card will arrive before the approval notice which contains an I-94, arrival/departure document, that should be kept with the T Nonimmigrant's passport.

If the application is denied, a letter explaining why should be issued, and the applicant may appeal to the Administrative Appeals Office. The Vermont Service Center has stated that they are currently not referring denied T applicants to removal proceedings.

ADJUSTMENT

The law regarding adjustment for T nonimmigrants is at INA § 245(l), and 8 C.F.R. § 245.23. T nonimmigrants are eligible to adjust status to be legal permanent residents 1) after three years of continuous physical presence or physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less, 2) has through that time been a person of good moral character, although exceptions can be made for incidents to the trafficking, 3) if they have not unreasonably refused to assist in investigation or prosecution, although there are exceptions if the victim was a minor or if removal would cause extreme hardship involving severe and unusual harm and 4) is not inadmissible, on a ground not yet waived, although there are a number of exceptions and waivers available.

Applications should include:

- Form G-28;
- Form I-485, Application to Adjust Status;
- Filing Fee or fee waiver request, Form I-912;

- Filing Fee for biometrics or a fee waiver request, Form I-912;
- Form G-325A;
- Form I-693, Medical Exam completed by a civil surgeon in a sealed envelope
- Photocopy of T nonimmigrant status approval notice and photocopy of inadmissibility waiver approval, if applicable;
- Photocopy of all pages of applicant's passport valid during the requirement period;
- Evidence of continuous physical presence, good moral character, and that the applicant has not unreasonably refused to cooperate with law enforcement (Applicant's statement can address all of these points); and
- Form I-765, Application for Employment Authorization, under the (c) (9) category with 2 photographs.

4.4 SPECIAL IMMIGRANT JUVENILE STATUS (FOR CHILDREN WHO HAVE BEEN ABANDONED, ABUSED OR NEGLECTED)

In 1990, Congress created the Special Immigrant Juvenile ("SIJ") status to allow a growing number of undocumented, state-dependent youth a way to self-petition for legal immigration status and seek permanent residence. According to the Federal Registrar, its purpose was to lessen "hardships experienced by some dependents of the United States juvenile courts."

The process for obtaining SIJ status can be divided into two major steps, involving a decision from a state court and then from CIS. First, the youth must obtain an order with certain findings from a "juvenile court," which is defined as any state court having authority over the care and custody of juveniles. 8 C.F.R. 204.11 (a). This order must indicate that 1) the child is dependent on the court or the court has placed the child in the custody of an individual or entity, often through a legal proceeding related to foster care, guardianship or custody, 2) reunification with one or both parents is not viable due to abandonment, abuse, neglect or a similar basis and 3) it is not in the best interest of the juvenile to be returned to their country of origin. INA § 101(a)(27)(J). Once this order is obtained, then the youth can petition CIS for SIJ status. Once a child has been approved for SIJ status, they are immediately eligible to apply for legal permanent residency.

ELIGIBILITY

The statutory authority for SIJ is found in INA § 101(a)(27)(J), and regulations are found at 8 C.F.R. § 204.11, although at the time of this writing, new regulations are under review to be promulgated.

There are a couple memoranda, including "Memorandum #3 — Field Guidance on SIJS Petitions,"² and "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions."³

State law also impacts SIJ determinations, as the court must have jurisdiction over the youth under a state proceeding, such as a Child In Need of

² http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf

³ http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPR_A_SIJ.pdf

Care (CINC), custody, adoption, tutorship, juvenile delinquency, interdiction, or declaratory judgment proceeding.

In order to be eligible for Special Immigrant Juvenile Status, the youth:

- 1) must be under 21 at time of filing;
- 2) unmarried;
- 3) must be declared dependent on a “juvenile court” or such court places the youth under the custody or an entity or individual;
- 4) whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- 5) for whom it has been determined in administrative or judicial proceedings that it would not be in the youth’s best interest to be returned to his/her or a parent’s previous country of nationality or last habitual residence; and
- (6) is not subject to specific consent, or DHS has granted specific consent to the custody of the child.

Note: Special Immigrant Juveniles can have derivatives on their adjustment applications, except they can never confer any immigrant benefit to a natural parent or prior adoptive parent.

Declared Dependent or Placed in the Custody

Under the regulations, juvenile court is defined as court having jurisdiction under State law to make judicial determinations about the custody & care of juveniles. 8 C.F.R. § 204.11(a) In Louisiana, this might be a court of general jurisdiction or it could be called a juvenile court, depending on what kind of proceeding is being brought. The requirement is that the court declare the child dependent on the court OR the court places the child in the custody of an agency of the State (as in a foster care or CINC proceeding), OR places the child in the custody of an entity or individual (such as a custody, tutorship, or adoption proceeding). Some case law from other states suggests that a court can declare the child dependent on the court if the court exercises jurisdiction over the youth.

Reunification with 1 or more parents

The court must also make a finding that reunification with one or both parents is not viable due to abandonment, abuse, neglect or a similar basis found under law. Usually this finding is made based on conduct that occurred in the home country, which may have contributed to the child’s migration to the U.S.

Best Interests

There must be a finding as a result of administrative or judicial proceeding that it is not in the child’s best interest to return to the country of origin. The best interest of the child factors are found in Louisiana Civil Code Article 134. Factors to look at include: 1) emotional ties 2) capacity and disposition to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child 3) capacity and disposition to provide the child with food, clothing, medical care, and other material needs 4) the length

of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment 5) the permanence, as a family unit, of the existing or proposed custodial home or homes 6) the moral fitness of each party, insofar as it affects the welfare of the child 7) the mental and physical health of each party 8) the home, school, and community history of the child 9) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference 10) the willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party 11) the distance between the respective residences of the parties 12) the responsibility for the care and rearing of the child previously exercised by each party.

PROCEDURE

The first step in the process involves requesting that the special findings be made from a court having jurisdiction over the child, which as stated before might be in any number of types of proceedings depending on the child's living situation. Some types of proceedings may include: CINC, custody, tutorship, declaratory judgment, voluntary transfer of parental rights and adoption proceedings. It is highly recommended that an attorney very familiar with juvenile and family court matters be involved in this part of the process.

Some evidence that might be presented to the state court includes identity documents for child, statements from child, current sponsor, and anyone who has knowledge of the abuse, abandonment or neglect of the parent(s), potential witness(es) to testify, school and medical records, country conditions, such as reports and/or news articles, psychological evaluation, any prior documentary evidence of abuse or neglect by parent, such as prior restraining order or police report, and if child was held in immigration custody, portions of the Office of Refugee Resettlement case file.

Once the SIJ predicate-order has been obtained, the child may self-petition to CIS for designation as a Special Immigrant Juvenile. If a SIJ applicant is neither in removal proceedings nor has a prior order of removal, s/he may wish to file for adjustment of status concurrently with the SIJ petition. SIJ applicants in removal proceedings should only submit the self-petition to CIS, as jurisdiction over adjustment of status will generally lie with the Immigration Judge until proceedings are terminated.

In order to apply for designation as a Special Immigrant Juvenile, the applicant must include:

- Cover Letter;
- Form G-28, Notice of Entry of Appearance as Attorney;
- Form I-360, Self-Petition;
- Copy of Birth Certificate with certified translation or other proof of age and identity; and
- Copy of Juvenile Court Order.

The SIJ petition should be filed with the Chicago Lockbox address. For USPS deliveries: USCIS, P.O. Box 805887, Chicago, IL 60680-4120 and for express mail: USCIS, Attn: FBAS, 131 South Dearborn - 3rd Floor, Chicago, IL 60603-5517.

FEE

There is no fee for filing for the I-360 SIJ petition, but regular filing fees apply to any accompanying adjustment of status with biometrics or work authorization applications, although these fees can be waived.

AFTER FILING

CIS will promptly issue a receipt notice after filing of the application. According to statute, the I-360 shall be adjudicated within 6 months. Practices vary by region as to whether an interview is required to adjudicate the I-360, but the New Orleans CIS Field Office practice is to conduct an interview before making a final decision. If the I-360 and I-485 were filed concurrently, there will only be one interview which will review both I-360 eligibility as well as adjustment eligibility. If an applicant is approved for SIJ status they will receive an approval notice. If the petition is denied, they shall receive reasons for the denial, which can be appealed.

ADJUSTMENT

SIJ adjustment provisions are found under INA 245(h). Approved SIJ petitioners are deemed paroled and are now exempted from seven inadmissibility grounds of the INA:

- 212(a)(4) (public charge);
- 212(a)(5)(A) (labor certification);
- 212(a)(6)(A) (aliens present without inspection);
- 212(a)(6)(C) (misrepresentation);
- 212(a)(6)(D) (stowaways);
- 212(a)(7)(A) (documentation requirements); and
- 212(a)(9)(B) (aliens unlawfully present).

Additionally, there are waivers available for most other grounds of inadmissibility for humanitarian purposes, family unity, or otherwise being in the public interest. The only unwaivable grounds of inadmissibility for SIJ petitioners are those listed at INA 212(a)(2)(A)-(C) (conviction of certain crimes, multiple criminal convictions, and controlled substance trafficking (except for a single instance of simple possession of 30 grams or less of marijuana)), and 212(a)(3)(A)-(C), and (E) (security and related grounds, terrorist activities, foreign policy, and participants in Nazi persecution, genocide, torture or extrajudicial killing).

Applications for adjustment should include:

- Form G-28;
- Cover Letter;
- Form I-485, Application to Adjust Status;
- Filing Fee or fee waiver request, Form I-912;
- Filing Fee for biometrics or a fee waiver request, Form I-912;
- Form G-325A;
- Form I-693, Medical Exam completed by a civil surgeon in a sealed envelope;
- Photocopy of SIJ status approval notice;

- 601 Waiver and supporting documents, if applicable;
and
- 2 passport-sized, color photographs.

You may also submit an I-765 application with fee waiver concurrently with the I-485.

4.5 NATURALIZATION

Naturalization is the process by which a Legal Permanent Resident becomes a U.S. citizen. Usually, the noncitizen must be an LPR for 5 years, although only three years if the LPR was married to a U.S. citizen.

ELIGIBILITY

The statutory and regulatory authorities for naturalization are found at INA §§ 316-340 and 8 C.F.R. §§ 306-499. CIS also produces a “Guide to Naturalization,” Form M-476, which is available at <http://www.uscis.gov/files/article/M-476.pdf>. To double check someone’s eligibility to naturalize, you may wish to consult CIS’s eligibility worksheet, available at <http://www.uscis.gov/files/article/attachments.pdf>

In order to be eligible an applicant must:

- be 18 years old or older at the time of filing, unless under an exception for some military and minors being naturalized with a parent;
- be a LPR;
- show continuous permanent residence in the United States for 5 years, or in the case of eligibility based on marriage to a U.S. citizen, 3 years;
- show continuous physically presence in the United States for 30 months, or in the case of eligibility based on marriage to a U.S. citizen 18 months if you are married to a U.S. citizen;
- show lived for at least 3 months in the state or CIS district where claim residence;
- have good moral character for the five or three year period of required continuous presence;
- be attached to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S.;
- have English literacy and knowledge of US government and history, unless an exemption applies due to physical or developmental disability or mental impairment; and
- not be barred from naturalization, because of opposition to government or law, belief in totalitarian forms of government, conviction of draft evasion or military desertion, applied for and obtained exemption or discharge from US military training or service based on alienage unless exemption was due to treaty and noncitizen had previously served in last country of nationality’s military, subject to order of removal or in removal proceedings, or if national or denizen of country at war with U.S., unless loyalty established by DHS investigation.

PROCEDURE

Currently for residents of Louisiana, the N-400 should generally be filed by regular mail to USCIS, P.O. Box 660060, Dallas, TX 75266, or by Express Mail or courier deliveries to USCIS, Attn: N-400, 2501 S State Hwy 121 Business, Suite 400, Lewisville, TX 75067. Military related naturalization applications are sent to Nebraska Service Center, P.O. Box 87426, Lincoln, NE 68501-7426, and for Express Mail or courier deliveries, use the following address: Nebraska Service Center, 850 S. Street, Lincoln, NE 68508. Please always double-check the filing instructions on CIS's website for changes.

An applicant should file:

- Form G-28;
- Cover letter;
- Form N-400, Application for Naturalization;
- Filing and Biometrics fee, or Form I-912, Request for Fee Waiver;
- Copy (front and back) of LPR card (Form I-551);
- 2 passport-sized color photographs;
- If you are applying based on marriage to a U.S. citizen, you must also include proof that your U.S. citizen spouse has been a citizen for the last three years, current marriage certificate, proof of termination of previous marriage, if applicable; and documents referring to noncitizen and spouse such as tax returns, bank statements, or birth certificates of joint children;
- If applying based on military service, a completed original Form N-426, Request for Certification of Military or Naval Service.
- Supporting documents, such as criminal dispositions if applicable, proof of residence and physical presence.

After filing the application, the applicant will promptly receive a receipt of application. Later s/he should receive a biometrics appointment to take fingerprints, and a scheduled interview, where the examiner will go over all the information in the application and administer a test of the applicant's English literacy and basic knowledge of the U.S. history and government. CIS produces study materials for the test that can be found on its website. Applicants have two opportunities to take the English and civics tests per application. If they fail any portion of the test during the first interview, they will be retested only on the portion of the test that they failed. Once the examination takes place CIS must make a decision within 120 days, and if there is no decision, the applicant can seek for a hearing on the naturalization in a federal district court. INA§ 336(b). If the examiner approves the application, the next step is the oath of allegiance ceremony, which can be done at CIS or at a federal court.

If CIS denies the application, it should notify the applicant in writing explaining why. The applicant has the right to appeal within thirty days of the date of the denial notice, by sending a Form N-336 with fee to the denying CIS office. This will result in another interview with another CIS officer. CIS must set that interview within 180 days and complete it using de novo review.

CIS may initiate removal proceedings against someone denied naturalization if they believe there is a ground of deportability. During the naturalization process, CIS will take a very close look at the applicant, including the original application for LPR status. If they believe LPR status was wrongfully granted then they may be able to revoke that status, and put the applicant in removal proceedings. It is very important to do a thorough review of criminal history and previous applicant for LPR status when deciding to apply for naturalization.

FEE

Currently the application fee is \$595, with a \$85 biometric fee for a total of \$680. There is no fee for military applicants filing under INA §§ 328 and 329. Also, applicants 75 years of age or older are not charged a biometric fee. Fee waivers are available for naturalization applications.

4.6 HAGUE CONVENTION CHILD ABDUCTION ACTIONS

Resources & Sources of Law:

- The Hague Convention is found at T.I.A.S. No. 11670, 1343 U.N.T.S. 22514, *reprinted* in Department of State Public Notice 957 at 51 Fed. Reg. 10494, 10498-502 (1986).
- The statute implementing the Hague Convention in the United States is called the International Child Abduction Remedies Act, be found at 42 USC §§ 11601 -10.
- The Department of State's analysis of the Hague Convention is found at Public Notice 957: Hague International Child Abduction Convention: Text and Legal Analysis, 51 Fed. Reg. 10494 (1986).
- The history and commentary by the official reporter at the Fourteenth Session of the Hague Convention on Private International Law is found in a report commonly referred to as the Perez-Vera Report, which is available at http://www.hiltonhouse.com/articles/Perez_rpt.txt.
- Also there is an extensive handbook called "Litigating International Child Abduction Cases under the Hague Convention," available at http://www.missingkids.com/en_US/training_manual/NCMEC_Training_Manual.pdf.
- Furthermore the Department of State has extensive resources and materials: http://travel.state.gov/abduction/abduction_580.html

Overview:

The Hague Convention on the Civil Aspects of International Child Abduction was drafted and signed in 1980, and in 1988, Congress ratified it to provide legal rights and procedures to return children who have been wrongfully removed. 42 U.S.C.S. § 11601(a)(4). The goal is to return children who were under sixteen at the time of abduction to the proper custodian in the proper jurisdiction for custody determination; to prevent wrongful removal of children by eliminating any incentive to shop for more favorable jurisdictions; and to make sure that legal rights of contracting countries are enforced in other contracting countries. Countries that are party to the Convention have agreed that a child who was living in one Convention country and who has been removed to or retained in another Convention

country in violation of the left-behind parent's rights, must be promptly returned. Once the child has been returned, the custody dispute can then be resolved, by the courts of that jurisdiction. The Convention does not address who should have custody of the child, just if there has been a wrongful removal or retention of a child.

There are basically two types of Hague cases—return and access. This section mostly focuses on return. Access cases involve the left-behind parent enforcing visitation rights. Congress gave original jurisdiction to federal and state district courts of the United States as to actions that arise under the Hague Convention. 42 U.S.C.S. § 11603(a). Legal aid attorneys might get involved in a case as they are authorized to help a parent seeking assistance concerning international child abduction under the Hague Convention. 45 C.F.R. § 1626.10(e). Therefore, if the child is located in Louisiana, legal aid can assist foreign nationals in an international child abduction action under the Hague convention, as long as they meet regular income requirements, even if the foreign parents are living abroad. Furthermore, Hague Convention cases can be fee-generating, and pro bono attorneys can obtain these fees. 42 U.S.C. § 11607(b)(3). See, *Cuellar v. Joyce*, 603 F.3d 1142 (9th Cir. 2010), *Haimdas v. Haimdas*, 720 F. Supp. 2d 183 (E.D.N.Y. 2010).

Under the act, Congress delegates to the President to designate a Federal agency to serve as the Central Authority for the United States under the Convention. 42 U.S.C. § 11606. The Department of State has been designated the Central Authority for the United States, and a great deal of materials can be found on their website relating to how to pursue actions under the convention.

Process

The first step in a child abduction case is to determine the location of the child. If the child is in the US and was removed from a country that is also a party to the Hague convention, then the parent can contact the Central Authority for the Hague Abduction Convention in the child's home country, who will help them fill out an application. The Central Authority will then forward the application to Department of State's office to start the process in the United States.

The Department of State will then assign an officer to the case, who will locate the child in the United States, try to resolve the return of the child in a voluntary fashion, help explain the legal process in the United States, help find an affordable attorney; and find support groups and nonprofit organizations to assist. The Department of State will forward the application to the National Center for Missing and Exploited Children ("NCMEC"). This organization was created in 1984 "to provide services nationwide for families and professionals in the prevention of abducted, endangered, and sexually exploited children," and they have an agreement with the Departments of State and Justice to manage international child abduction cases. NCMEC helps locate the child and tries to find an attorney to represent the left-behind parent and litigate the case.

The first decision that the attorney will need to make in a Hague removal case is to decide to apply in federal or state court. While federal courts may be more likely to follow the Hague Convention to the letter of the law, federal courts may take much longer to adjudicate the cases as they apply full-blown civil procedures within the trial. State courts have expertise in adjudicating family and

child custody issues, but may not honor the Hague mandate to determine only the return issue and may instead attempt to address the underlying merits of the custody action. A Hague access case can only be filed in state court.

To establish a *prima facie* case of wrongful removal or retention under the Hague Convention, a petitioner bears the burden of proof to show that:

- 1) the child was habitually resident in a signatory country immediately before the respondent removed them to another country;
- 2) the child's removal was in breach of the rights of custody of a person, an institution, or any other body;
- 3) that those rights were actually exercised at the time of removal or would have been so exercised in the absence of his removal;
- 4) the child was under the age of 16; and
- 5) the petition was filed within one year.

There are some exceptions to obtaining the return of the child, or "affirmative defenses" which include:

- The Article 12 Well-Settled Defense: The Child Has Become Well- Settled In His Or Her New Surroundings;
- The Article 13 Consent Or Acquiescence Defense: Petitioner Consented To Or Acquiesced In The Removal Or Retention;
- The Article 13 Grave Risk Defense: There Is A Grave Risk That The Child Would Be Exposed To Physical Or Psychological Harm Or An Intolerable Situation If Returned;
- The Article 13 Mature Child Objection To Removal Defense: A Mature Child Objects To Being Returned; and
- The Article 20 Public Policy Defense: Returning The Child Would Violate Public Policy.

As these are very specialized proceedings, it is best to not only consult the national resources available on the Department of State website and with the National Center for Missing and Exploited Children, but to contact national experts who are familiar with these cases. There are *pro bono* attorney mentors that are available upon request, through the State Department's Office of Children's Issues. Individual LSC grantees are invited to join the Attorney Network for Hague Abduction Convention cases by contacting the legal assistance coordinator at the State Department (202) 736-9096 or e-mail: hagueconventionattorneynetwork@state.gov.

4.7 SPOUSAL SUPPORT

The law regarding affidavits of support can be found at INA § 213, and 8 C.F.R. § 213a.1. A useful CIS memo is Michael Aytes's *USCIS Memorandum, Consolidation of Policy Regarding USCIS Form I-864, Affidavit of Support*, (AFM Update AD06-20) HQRP 70/21.1.13 (June 27, 2006).

The affidavit of support, Form I-864, is a required part of the adjustment of status application when the application is based on a family petition or some employment based petitions. The Form, which can be found at CIS's website, requires that a U.S. citizen or LPR petitioner agrees to support the immigrant at

125% of the applicable federal poverty guidelines in case the immigrant earns less than that or becomes a public charge. The apparent purpose of this is to prevent immigrants from becoming public charges.

Courts have held that Form I-864 constitutes a binding, enforceable contract. *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005); *In re Marriage of Sandhu*, 207 P.3d 1067 (Kan. Ct. App. 2009); *Cheshire v. Cheshire*, 2006 WL 1208010 (M.D. Fla. 2006); *Shumye v. Felleke*, 555 F. Supp. 2d 1020 (N.D. Cal. 2008); *Younis v. Farooqi*, 597 F. Supp. 2d 552 (D. Md. 2009).

The sponsor submits himself to the personal jurisdiction of any federal or state court where a civil lawsuit to enforce the affidavit has been brought. 8 U.S.C. § 1183a(a)(1)(C). Furthermore, support obligations under the I-864 do not end with divorce, but should last until the sponsored immigrant 1) becomes a U.S. citizen; 2) has worked or is credited with 40 work quarters for Social Security purposes; 3) ceases to be a LPR and departs the U.S.; 4) re-adjusts status in removal proceedings; and/or 5) dies. 8 U.S.C.S. § 1183a(a)(2), (3); *see also* instructions for I-864, <http://www.uscis.gov/files/form/i-864instr.pdf>

The calculation of damages under the I-864 is based upon whether the beneficiary had income that annually reached 125 % of the poverty guidelines. Once the income is over 125%, there should not be liability under the I-864. *Barnett v. Barnett*, 238 P. 3d 594 (Alaska 2010). The court must look at each year to determine whether the beneficiary is under 125%—it cannot be determined in the aggregate. *Naik v. Naik*, 399 N.J. Super. 390 (App. Div. 2008).

Once it is determined that the I-864 is enforceable for support obligations, the next questions to ask are about potential set-offs or mitigation. In *Shumye v. Felleke*, the court found there were certain set-offs when determining the amount of the obligation, including the value of “affordable housing subsidies” and student grants. 555 F. Supp. 2d 1020 (N.D. Cal. 2008). In *Naik v. Naik*, the court found there is a set-off for spousal support, child support, and equitable distribution. 399 N.J. Super. 390 (App. Div. 2008). However in *Younis*, the court found that the purpose of child support is to see that children are provided the same “proportion of parental income” and therefore same standard of living, and therefore it does not benefit the other parent. The court also found that since the federal government does not consider child support, as it does alimony, to be part of someone’s gross income for tax purpose, then it should not count as a mitigation factor. *Younis*, 597 F. Supp. 2d at 555. In *Chesire v. Chesire*, the court found that the obligation “should be reduced by the amount of any income or benefits the sponsored immigrant received from other sources.” 2006 WL 1208010 (M.D. Fla. 2006). However, de minimis gifts should not be counted, and in fact, because gifts are also not taxable income, it is possible that they do not need to be considered even if they were large. *Younis v. Farooqi*, 597 F.Supp.2d 552, 555 n.3 (D.Md. 2009).

Another open question is what constitutes “reasonable efforts” to mitigate one’s damages under the affidavit of support. In *Younis v. Farooqi*, for example, the court found that the beneficiary had made reasonable efforts to find employment and therefore she met any duty that she had. The court also stated that “in the event the plaintiff is unable or even unwilling to attain full-time employment, that does not necessarily relieve the defendant of his liability under the affidavit, as these are not terminating conditions.” *Younis v. Farooqi*, 597 F.Supp.2d 552, 555 n.5 (D.Md. 2009).

5. SUMMARY

As detailed in the introduction, immigration law can be incredibly complicated, as it is constantly changing. For a new practitioner, a best practice is to consult with a seasoned immigration practitioner. Consequences in the immigration context can be dire. A naturalization or adjustment application gone awry may start the deportation process to a country where the noncitizen has a fear of returning. There is a vibrant immigration bar in Louisiana including private and nonprofit attorneys, who may be willing to help. The nonprofit attorneys are currently housed at Catholic Charities of New Orleans and Baton Rouge, LSU Law Clinic and Loyola Law Clinic.

Furthermore, while at first glance it may seem as though Legal Aid attorneys are prohibited from a great deal of immigration and noncitizen practice, there is actually a great deal that legal aid attorneys can do. Considering the vast number of noncitizens in Louisiana and the very few nonprofit immigration attorneys, it is imperative that Legal Services attorneys assist vulnerable, indigent noncitizens when they can.

6. APPENDIX

GLOSSARY OF ACRONYMS

AAO	.....	Administrative Appeals Office
AILA	.....	American Immigration Lawyers Association
BIA	.....	Board of Immigration Appeals
CBP	.....	Customs and Border Protection
CFR	.....	Code of Federal Regulations
CIMT	.....	Crime Involving Moral Turpitude
CIS	.....	Citizenship and Immigration Services
DHS	.....	Department of Homeland Security
DOJ	.....	Department of Justice
EOIR	.....	Executive Office of Immigration Review
ERO	.....	Enforcement and Removal Office
FOIA	.....	Freedom of Information Act
ICE	.....	Immigration and Customs Enforcement
INA	.....	Immigration and Nationality Act
INS	.....	Immigration and Naturalization Service
LEA	.....	Law Enforcement Agency
LPR	.....	Legal Permanent Resident
RFE	.....	Request for Evidence
SIJS	.....	Special Immigrant Juvenile Status
TPS	.....	Temporary Protective Status
TVPA	.....	Trafficking Victims Protection Act
TVPRA	.....	Trafficking Victims Protection Reauthorization Act
USCIS	.....	United States Citizenship and Immigration Services, also known as CIS
VAWA	.....	Violence Against Women Act
VSC	.....	Vermont Service Center

IMMIGRATION

INA CONVERSION CHART

<u>INA</u>	<u>8 U.S.Code Sconversion table</u>
101-106	1101- 1106
201-210	1151-1160
211-219	1182-1189
221-224	1201-1204
231 -224	1221-1204
231-244	1221-1254
245 -258	1255-1288
261-266	1301-1306
271-279	1321-1329
280-293, 294	1330-1363, 1363a
301-309	1401-1409
310-320, 322	1421-1431, 1433
324-329, 329A	1435-1440, 1440 – 1
330-347	1441 - 1458
349, 351	1481, 1483
356-357	1488-1489
358 -361	1501-1504
411-414	1521-1524
501-507	1531-1537

IMMIGRATION

45 C.F.R. § 1626 for “Restrictions on Legal Assistance to Aliens” chart

Alien category	Immigration Act (INA)	LSC regs; 45 CFR§ 1626	Examples of acceptable documents
LAWFUL PERMANENT RESIDENT	INA § 101(a)(20); 8	§1626.5(a) USC § 1101(a)(20)	I-551 or I-151 or I-181 (Memorandum of Creation of Record of Lawful Permanent Residence), with approval stamp; or passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; or order granting registry, suspension of deportation, cancellation of removal, or adjustment of status from the INS, an immigration judge, the BIA, or a federal court; or I-327 Reentry Permit; or I-94 with stamp indicating admission for lawful permanent residence; or any verification from INS or other authoritative document.
ALIEN WHO IS —married to U.S. citizen, or —parent of U.S. citizen, or —unmarried child under 21 of U.S. citizen <i>and</i> —has filed an application for adjustment of status to permanent residency.	INA §§ 208, 210, 244 (replaced by INA § 240A(b) for aliens in proceedings initiated on or after 4/1/97), 245, 245A, 249; 8 USC §§ 1158, 1160, 1254 (replaced by 1229b(b) for aliens in proceedings initiated on or after 4/1/97), 1255, 1255a, 1259	§ 1626.5(b)	Proof of relationship to U.S. citizen* and proof of filing:**I-485 (application for adjustment of status based on family-based visa, registry, or various special adjustment laws) or I-256A or EOIR-40 (application for suspension of deportation) or EOIR-42 (application for cancellation of removal) or I-817 (application for Family Unity Adjustment and Central American Relief Act (NACARA) suspension or special rule cancellation and adjustment) or OF-230 (application at consulate for visa) or I-129F (Petition for Alien Fiancé(e) for spouses and children of USC's applying for K-status)

*Proof of relationship may include: copy of marriage certificate accompanied by proof of spouse's U.S. citizenship; copy of birth certificate, religious archival document such as baptismal certificate, adoption decree or other documents demonstrating parentage of a U.S. citizen; copy of birth certificate, baptismal certificate, adoption decree, or other documents demonstrating alien is a child under age 21, accompanied by proof parent is a U.S. citizen; or in lieu of the above, a copy of INS Form I-130 (visa petition) or I-360 (self-petition) containing information demonstrating alien is related to such a U.S. citizen, accompanied by proof of filing.

**Proof of filing may include a fee receipt or cancelled check showing that the application was filed with the INS or the immigration court; a filing stamp showing that the application was filed; or a copy of the application accompanied by a declaration or attestation signed by the immigrant, or the immigrant's attorney or legal representative for the application, that such form was filed. Proof of filing is also established by: a letter or Form I-797 from INS or the immigration court acknowledging receipt of or approval of one of the above-listed forms.

IMMIGRATION

45 C.F.R. § 1626 for “Restrictions on Legal Assistance to Aliens” chart
(continued from previous page)

Alien category	Immigration Act (INA)	LSC regs; 45 CFR§ 1626	Examples of acceptable documents
			<p>or I-130 (family-based immigrant visa petition)</p> <p>or I-360 (self-petition for widow(er) or abused spouse or child)</p> <p>or I-539 indicating application for V status</p> <p>or I-589 (application for asylum)</p> <p>or I-698 (application to adjust from temporary to permanent residence)</p> <p>or I-730 (refugee/asylee relative petition)</p> <p>or any verification from INS or other authoritative document.</p> <p>or Form I-94 (arrival/departure record) or I-512 (advance parole) indicating entry to pursue an above listed application;</p> <p>or I-688B or I-766 (employment authorization document) coded 8 C.F.R. § 274a. 12(c)(9) (applicant for adjustment), (c)(10) (applicant for suspension or cancellation, (c)(16) (applicant for registry), (c)(21) (S-visa principal or dependent), (c)(20) or (22) (legalization applicant), (c)(24) (LIFE Act legalization applicant), (a)(9) (K-status), (a)(13) (Family Unity), (a)(14) (LIFE Act Family Unity), (a)(15) (V-status), (a)(16) or (c)(25) (T-status) or (c)(8) (asylum applicant).</p>
REFUGEE	INA § 207, 8 USC § 1157	§ 1626.5(c)	<p>I-94 or passport stamped “refugee” or “§ 207”</p> <p>or I-688B or I-766 coded 8 C.F.R. § 274a.12(a)(3) (refugee) or § 274a.12(a)(4) (paroled as refugee)</p> <p>or I-571 refugee travel document</p> <p>or any verification from INS or other authoritative document.</p>

IMMIGRATION

45 C.F.R. § 1626 for “Restrictions on Legal Assistance to Aliens” chart
(continued from previous page)

Alien category	Immigration Act (INA)	LSC regs; 45 CFR§ 1626	Examples of acceptable documents
ASYLEE	INA § 208, 8 USC § 1158	§ 1626.5(c)	I-94 or passport stamped “asylee” or “§ 208” or an order granting asylum from INS, immigration judge, BIA, or federal court or I-571 refugee travel document or I-688B coded 8 C.F.R. § 274a.12(a)(5)(asylee) or any verification from INS or other authoritative document.
GRANTED WITHHOLDING OR DEFERRAL OF DEPORTATION OR REMOVAL	INA § 241(b)(3) or former INA § 243(h), 8 USC § 1251(b)(3) or former 8 USC § 1253(H)	§ 1626.5(e)	I-94 stamped “§ 243(h)” or “241(b)(3)” or an order granting withholding or deferral of deportation or removal from INS, immigration judge, BIA, or federal court. Also acceptable I-688B coded 8 C.F.R. § 274a.12(a)(10)(granted withholding of deportation or removal) or any verification from INS or other authoritative document.
CONDITIONAL ENTRANT	INA § 203(a)(7), 8 USC § 1153(a)(7)	§ 1626.5(d)	I-94 or passport stamped “conditional entrant” or any verification from INS or other authoritative document.
H-2A AGRICULTURAL WORKER	INA § 101 (a)(15)(H)(ii); 8 USC § 1101(a)(15)(ii)	§ 1626.11	I-94 or passport stamped “H-2” or any verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT	INA § 210 8 USC § 1160	§1626.10(d)	I-688, 688A, 688B, or 766 indicating issuance under § 210 (or under 8 C.F.R. § 274a.12(a)(2), with other evidence indicating eligibility under INA § 210) or any verification from INS or other authoritative document.