

U Visas: Complex ▶ Issues and Waivers

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What is a U Visa?

- ▶ Congress capped number of available visas to 10,000 per fiscal year
- ▶ Adjudications currently at August 25, 2014
- ▶ 4 year visa, get green card in third year
- ▶ Factors
 - ▶ Victim of qualifying criminal activity
 - ▶ Suffered substantial physical or mental abuse
 - ▶ Have information about criminal activity
 - ▶ Was helpful or is likely to be helpful to law enforcement in investigation OR prosecution
 - ▶ Is admissible to the United States (if not, will not a waiver)

Police reports

- ▶ First step to see if your client has a claim - BE CREATIVE AND FORM A LEGAL ARGUMENT!
- ▶ Think of crimes as categories
 - ▶ Example: Domestic violence does not always have to be listed as domestic battery. Look for language about stalking, harassment, withholding visitation from a parent, and make your arguments that it is in a domestic violence context
- ▶ Can't find your report?
 - ▶ Do multiple FOIA's
 - ▶ Look to the sheriff's department in that county
 - ▶ Look for an order of protection

Certifications

- ▶ Completely discretionary form listing qualifying crimes for a U Visa
 - ▶ Used to say “other”
- ▶ In 2016, California passed S674 - mandating all law enforcement agencies to process certification requests within 90 days
 - ▶ Also created a rebuttable presumption that a victim has been or will likely be helpful to law enforcement
- ▶ Cannot apply for a U Visa unless you have a signed certification
- ▶ Valid for six months from the date of signature
- ▶ Must send original signature

What happens if my certification gets denied?

- ▶ Send written reconsideration request addressing certifier's concerns
- ▶ Common reasons for denial
 - ▶ Helpfulness
 - ▶ Victim is only required by the regulations to be helpful in the investigation OR the prosecution, not both.
 - ▶ Chicago Police Department? Call Sergeant Deborah Molloy and get the name of the detective!
 - ▶ Crime is too old
 - ▶ There is no statute of limitations
 - ▶ Not a qualifying crime listed on the 918 B form
 - ▶ Ask another law enforcement agency to certify

Issues with Substantial Abuse Factor

- ▶ You must show a nexus between the crime and the abuse suffered. Many times your client's affidavit is NOT enough.
- ▶ Physical abuse
 - ▶ Police report
 - ▶ Witness statements
 - ▶ Medical records and photos
- ▶ Emotional and Mental Abuse
 - ▶ Detailed affidavit with examples
 - ▶ Witness statements
 - ▶ Psychological evaluation is crucial

Waivers of Inadmissibility

- ▶ Form I-192 Application for Advance Permission to Enter as a Nonimmigrant
 - ▶ Fee is \$930
 - ▶ Can request a fee waiver
- ▶ INA Section 212(d)(14) explains that all inadmissibility grounds can be waived for U Visa applicants
 - ▶ Except national security grounds and terrorism grounds
 - ▶ Standard for waiver: in the public and national interest
 - ▶ Always argue your client deserves a positive exercise of discretion
 - ▶ Most generous waiver that exists in immigration law right now

Waivers... continued

- ▶ Tailor your arguments in proportion to how many issues your client has.
- ▶ If only ground of inadmissibility is EWI - keep it concise, do not need 5 pages of arguments.
- ▶ Example:
 - ▶ It is in the public or national interest to waive the applicable grounds of inadmissibility, and Mr. Garcia is deserving of a positive exercise of discretion. Mr. Garcia requires a waiver of inadmissibility under INA 212(a)(6) because he entered the United States without inspection in July 2011. Mr. Garcia has been gainfully employed since he entered the United States. He has depression and anxiety, and takes anti-depressants to help him deal with his mental illness. He has never been arrested, and has good moral character. He attends church every Sunday.

Common grounds for a waiver

- ▶ Prior order of deportation
- ▶ False claim to US citizenship
- ▶ Fraud/misrepresentation (including marriage fraud)
- ▶ Criminal convictions
 - ▶ CIMT's, drug convictions, multiple convictions
- ▶ Entry without inspection, INA 212(a)(6)
- ▶ Unlawful presence, INA 212(a)(9)(B) look for multiple entries
- ▶ No valid passport, INA 212(a)(7)

How do I overcome my client's areas of inadmissibility?

- ▶ Always have clients talk about it in the personal statement, especially criminal history
- ▶ They must be forthcoming about their mistakes and show rehabilitation.
- ▶ Rehabilitation documents - church records, letters, certificates for classes taken, work history, taxes
- ▶ Family ties
- ▶ Final dispositions for criminal offenses
- ▶ Medical issues
- ▶ Country conditions
- ▶ Extreme hardship on family members

Negative Factors	Positive Factors
Conviction for Conspiracy	U.S. Citizen husband
	Rehabilitation: No other criminal convictions
	Rehabilitation: Converted to Christianity and involved in church
	Rehabilitation: Gainful employment as hairstylist Rehabilitation: Pays taxes
	History of domestic abuse and severe mental health issues
	Rehabilitation: Completed probation and shows remorse for conviction
	Rehabilitation: Completed domestic violence training and assists victims of DV

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