

**Representing Immigrant Survivors of Domestic
Violence and Other Qualifying Crimes:
U Nonimmigrant Visa**

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DLA Piper LLP

About the National Immigrant Justice Center

The National Immigrant Justice Center (NIJC), a program of Heartland Alliance for Human Needs & Human Rights, promotes human rights and access to justice for immigrants, refugees, and asylum seekers through legal services, policy reform, impact litigation, and public education. Throughout its 30-year history, NIJC has been unique in blending individual client advocacy with broad-based systemic change.

- NIJC serves more than 10,000 immigrants annually with the support of a professional legal staff and a network of over 1,500 pro bono attorneys.
- NIJC maintains a 90 percent success rate in representing asylum seekers and immigrant survivors of domestic violence.
- NIJC represents individuals from over 95 different countries.
- All NIJC clients are at or below 200% of the Federal Poverty Guidelines

Agenda

- NIJC's *Pro Bono* Projects
- U Nonimmigrant Visas
- Working with Survivors of Domestic Violence
- Preparing a U visa Case
- Reference Sources and Contact Information

Pro Bono Opportunities with NIJC

- Asylum
- Detention
- Unaccompanied Minors
- VAWA
- U visas
- Citizenship
- DACA
- I-730s & Asylee Adjustments

NIJC's Pro Bono Projects

NIJC's Role:

- Provide outreach to domestic violence shelters and organizations
- Case screening, assessment and acceptance
- Provide *pro bono* training and materials
- Placement with *pro bono* attorneys
- Case management
- Attorney support and technical assistance
- Provide malpractice insurance coverage

Pro Bono Attorney's Role:

- Attend training and review training manual
- Conflicts Check
- Schedule initial interview with client within 1-2 weeks of case acceptance
- Prepare and file applications as soon as possible (recommend 8-12 weeks preparation and filing time)
- Represent client for duration of process or obtain substitute counsel within firm
- Provide for interpreters for client interviews and translation of foreign documents
- Keep NIJC informed of filing dates, requests for evidence, and case decisions
- Contact NIJC with any questions or concerns about case
- Provide NIJC with copy of filing and notices from USCIS

U Nonimmigrant Visa

What is the U Nonimmigrant Visa?

- The U Visa for non-citizen victims of crime was created in October 2000 as part of the Victims of Trafficking and Violence Prevention Act “VTVPA” See *INA § 101(a)(15)(U)*
- Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.
- The U visa was created to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering humanitarian protection to victims of such crimes.
- Provides a mechanism to remain in the United States to assist in an investigation/prosecution of those who have perpetrated crimes against them.

Benefits/Limitations

- **Non-immigrant legal status for up to 4 years (possible extensions)**
- **Path to citizenship**
- **Family members may also be eligible to apply for the U visa as a derivative of principal applicant.**
 - Derivative relationship must exist at the time I-918 filed, at time adjudicated, and at time of admission.
 - Victim prohibited from petitioning for derivative U status for family member who committed battery, extreme cruelty or trafficking against victim which established eligibility for U status
- **Annual cap of 10,000 U visas per fiscal year**

U Visa Derivatives

- Derivatives may be in the United States or abroad
- If the victim is under 21 (at time of filing):
 - Parents
 - Siblings under 18
- If the victim is over 21 (at the time of filing):
 - Spouses
 - Unmarried children (must be under 21 and unmarried at time of filing)
 - **BE AWARE OF AGE-OUT ISSUES!**

Principal U Visa

Applicants Must Prove:

- Immigrant suffered substantial mental or physical abuse as a result of having been a victim of **certain criminal activity**; and
 - Immigrant (or in the case of a child under 16, the parent or guardian) possesses information concerning that criminal activity; and
 - The criminal activity violated U.S. law or occurred in the U.S.; and
 - The immigrant has been helpful, is being helpful, or is likely to be helpful to a Federal, State or local authority investigating or prosecuting the crime
- INA § 101(a)(15)(U); 8 CFR § 214.14

Standard of Proof

- “Any credible evidence” standard applied to U visa applications

8 C.F.R. § 214.14(c)(4)

Qualifying Criminal Activity

Involves one or more of the following or any similar activity in violation of U.S. Federal, State, or local criminal law:

Rape
Torture
Trafficking
Incest
Domestic violence
Sexual assault
Abusive sexual conduct
Prostitution
Sexual exploitation
Female genital mutilation
Being held hostage
Peonage
Stalking
Fraud in foreign labor contracting

Involuntary servitude
Slave trade
Kidnapping
Abduction
Unlawful criminal restraint
False imprisonment
Blackmail
Extortion
Manslaughter/Murder
Felony assault
Witness tampering
Obstruction of justice
Perjury

***Includes attempts, conspiracy, or solicitation to commit any of the above.

Definition of Victim

(1 of 3)

Direct Victim

- **Generally defined as one who is directly and proximately harmed by qualifying criminal activity**
- **Can include bystanders**
- **Those who witness violent crime and suffer unusually direct injury. (Ex. Pregnant woman who witnesses violent crime and miscarries.)**

Definition of Victim

(2 of 3)

Indirect Victim

- If actual victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, then direct victim can also include:
 - Alien spouse
 - Children under 21 years of age
 - Parents (if direct victim is under 21)
 - Siblings (if direct victim is under 21 and sibling is under 18)

- Victim of witness tampering, obstruction of justice, or perjury.

- “Next Friend” – a person who appears in a lawsuit to act for the benefits of an immigrant victim who is incapacitated, incompetent, or under age of 16 and who suffered substantial harm as a result of qualifying criminal activity.

Definition of a Victim

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Other Considerations for Indirect Victims

- **What is the age of competence?**
 - **No clear answer – varies under immigration, state, and federal laws**
 - **For U visa purposes we typically look for victims under 16; however, could potentially make argument of incompetence for 16 or 17 year old**
- **To whom must harm be shown in case with indirect victim?**
 - **Good practice to show harm to both direct and indirect victims**

Possession of Information

- Must have knowledge of the details (specific facts) of the qualifying criminal activity that would assist in the investigation or prosecution
- If victim less is than 16 years or incompetent/incapacitated, a parent, guardian, or next friend may possess info
 - Look at age of victim on date qualifying criminal activity first occurred to determine whether exception triggered

Substantial Physical or Mental Abuse

DEFINITION

- Physical or mental abuse is defined as “injury or harm to the victim’s physical person, or harm or impairment of the emotional or psychological soundness of the victim.” 8 *CFR* § 214.14(a)(8)
- **No single factor is prerequisite** – a series of acts taken together may constitute substantial abuse even where no single act alone arises to that level.
- **USCIS will consider (but not limited to):**
 - Nature of injury inflicted or suffered
 - Severity of perpetrator’s conduct
 - Severity of harm suffered
 - Duration of the infliction of harm
 - The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including the aggravation of pre-existing conditions.

Cooperation with Law Enforcement

- **Helpful means:** assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim.
 - For those under 16, or incompetent or incapacitated, then parent, guardian, or next friend may provide that information
- **Requires an ongoing responsibility** on the part of the victim to be helpful, assuming there is an ongoing need for the victim's assistance
- USCIS excludes from eligibility those victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested. See 8 C.F.R. 214.14(b)(3)

*****CAREFULLY REVIEW I-918, SUPPLEMENT B AND ALL POLICE/COURT DOCUMENTS*****

U Visa Certification (Form I-918, Supplement B)

- **Original** certification required – without it there is no U visa case
- Must be completed and signed by the head of the certifying agency or any person specifically designated by the head of the agency to sign such certifications, or a Federal, State, or local judge
- **Certification must have been signed within 6 months immediately preceding the submission of the petition**
- Will not be conclusive evidence of any of the eligibility requirements.

Admissibility

(1 of 3)

- **“Admissibility” is the legal standard for most foreign nationals applying for a legal status to enter or extend stay in U.S.**
- **Must be “admissible” to the U.S. in order to be granted a U visa**
- **Grounds of inadmissibility are found at INA § 212; 8 USC § 1182 include:**
 - ❖ Health-related grounds
 - ❖ Criminal and related grounds
 - ❖ Security and related grounds
 - ❖ Public charge
 - ❖ Illegal entrants and immigration violators
 - ❖ False claim to U.S. citizenship
 - ❖ Persons previously removed
 - ❖ Aliens unlawfully present
 - ❖ *****Visa overstay does not require waiver of inadmissibility for U visa**

Admissibility

(2 of 3)

- **All U visa principal and derivative applicants must demonstrate admissibility or seek a waiver of inadmissibility**
- **U visa applicants may apply for a waiver of inadmissibility for most, but not all, grounds found under INA § 212(a).**
 - See INA § 212 (d)(14); 8 CFR § 212.17
 - Cannot waive INA § 212(a)(3)(E) – participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killing)
 - Administrative removal orders are cancelled by operation of law upon U visa approval
- **Applicant must demonstrate that it is in the “national or public interest” for waiver to be granted.**

Admissibility

(3 of 3)

WAIVERS

- **Waiver request is made on Form I-192 which costs \$585.00 or request fee waiver.**

- **USCIS has stated it will consider (but is not limited to) the following evidence demonstrating that a favorable exercise of discretion is warranted:**
 - Evidence of rehabilitation, if applicable
 - Reasons for wishing to remain in US
 - Any mitigating factors in applicant's favor (i.e. family ties, financial impact of departure on others, contributions or ties to the community)
 - Affidavit of applicant explaining the specific circumstances surrounding the act or conviction that gave rise to ground of inadmissibility
 - Loss of access to U.S. criminal justice system as it relates applicants claim of victimization (or if a derivative, the impact of departure on the principal's access to criminal justice system)
 - Any physical, medical, mental health or social services that applicant requires but is not readily available in home country

Confidentiality Provisions

- **Section 384** of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 prohibits all DHS and DOJ employees from providing information about a U visa applicant to 3rd parties
- **Section 384** similarly prohibits DHS from making any decisions about removability based solely on information provided by the abuser
- 8 U.S.C. § 1367; 8 C.F.R. § 214.14(e)

Case Example

Ana is a Mexican citizen who entered the United States without inspection in 2000. In 2002, Ana married Juan who is undocumented, and the couple later had two U.S. citizen children. During the marriage, Juan did not let Ana leave the house without his permission. He controlled all the money, and often threatened to have her deported. On one occasion, Juan repeatedly hit Ana and she called the police. Juan fled before the police arrived, however Ana still filed a police report. Thereafter, she took her children to a domestic violence shelter and obtained a civil order of protection. She is seeking a divorce. Juan continues to call her and threaten her.

Case Example

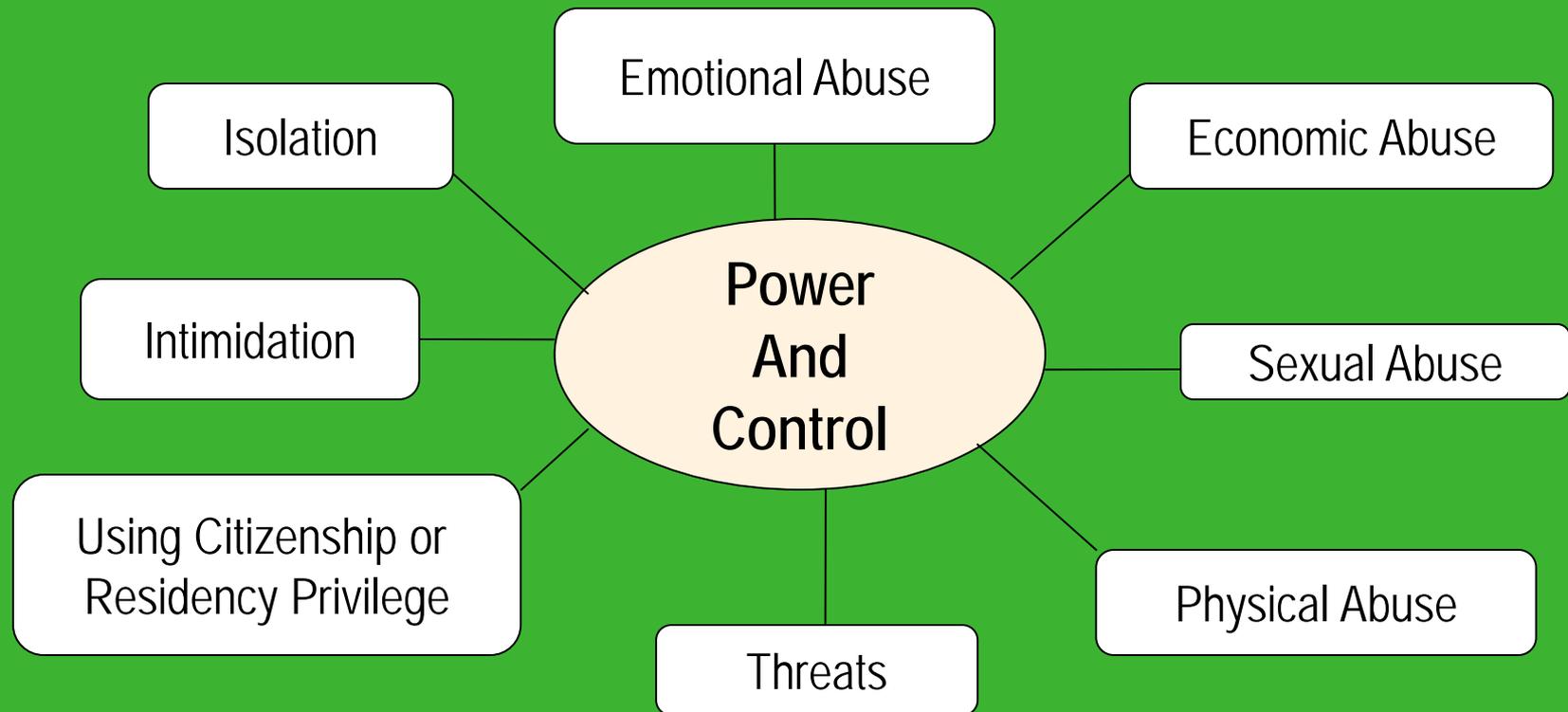
- U Visa Eligibility
 - Victim of qualifying crime
 - Substantial physical/mental harm
 - Crime occurred in United States
 - Cooperation with law enforcement
 - Derivatives?
- Inadmissibility
 - Entry without inspection

Working with Survivors of Domestic Violence

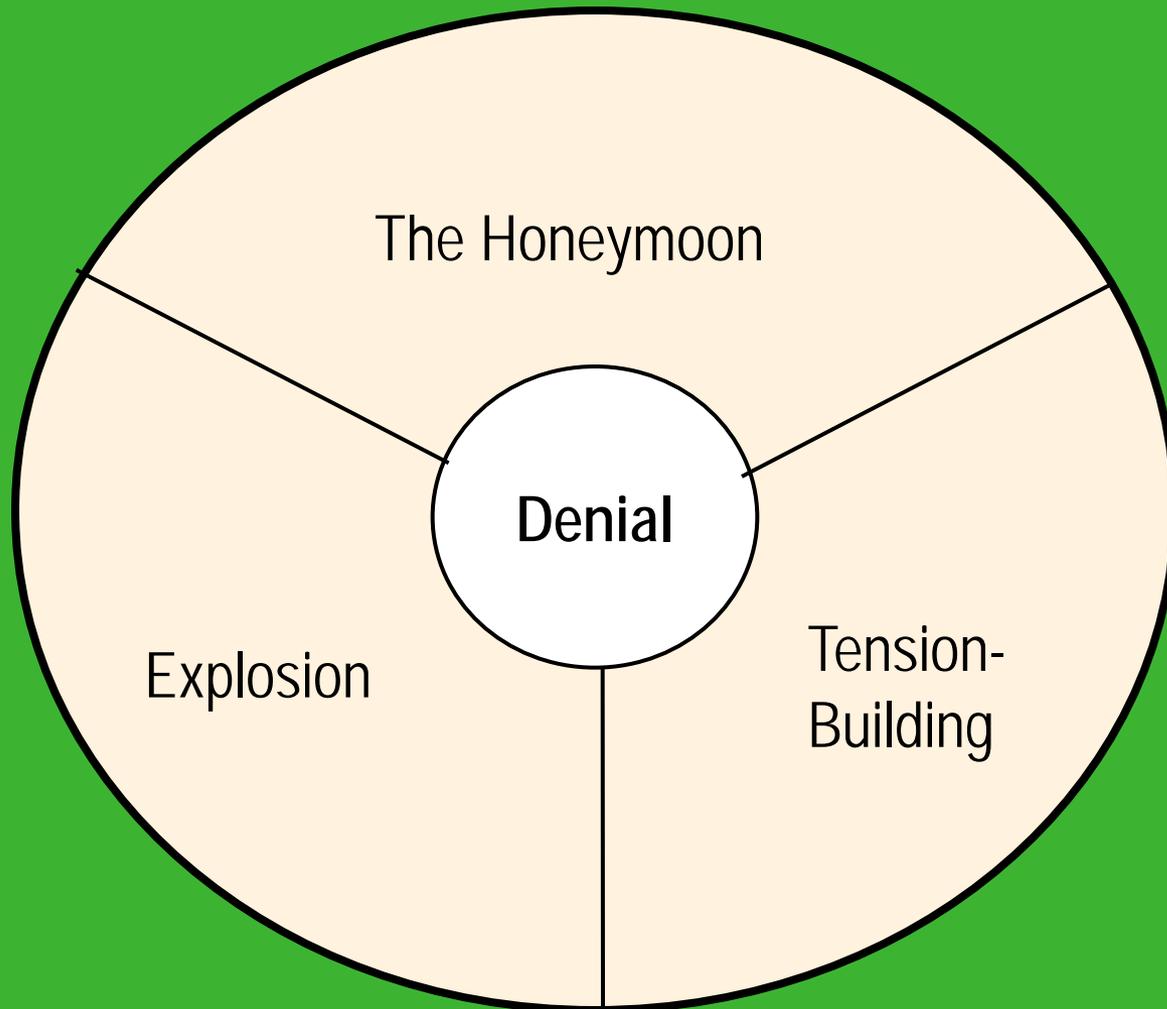
Cultural Barriers Facing Immigrants

- Language limitations
- Extreme isolation
- Cultural ideas of abuse
- Cultural ideas of family shame and honor
- Close-knit communities
- Role of religion

Domestic Violence Tactics Used by Abusers to Exert Power and Control



The Cycle of Abuse



Preparing a U Visa Case

Interviewing Your Client

- Find volunteer interpreter, if necessary
- Safety check
- Stress confidentiality
- Refer to counseling or other services, as needed
- Sign Release of Information and Retainer Agreement
- Build a relationship of trust
 - Physical and emotional space
 - Avoid legalese
- Explain domestic violence using P&C wheel
- Explain application process, fees/fee waivers and processing times
 - Review list of documents that will be needed for filing
- Initial meeting: learn client story, begin filling out application forms, make copies of documents
- Subsequent meetings: prepare affidavit, supplement documentary evidence, finalize forms

Gathering Information

(1 of 2)

- Review requirements for U visa eligibility
- Immigration history (A number, prior deportation, all entries, exits)
- Prior applications with USCIS
- Criminal history, including arrests or detentions by police or immigration officials
- Use of false immigration documents? If so, when and for what reason?

Gathering Information

(2 of 2)

- Did the client ever call the police or obtain an order of protection against the abuser?
- Was the abuser ever convicted for domestic violence or another similar offense?
- Is the client in counseling for domestic violence?
- Does client have any qualifying derivatives? (children in the United States or in home country)
- Review inadmissibility grounds at INA §212(a)
- *Make no assumptions – ask questions!*

Evidence

(1 of 3)

AFFIDAVIT

- **Should be in applicant's own words, signed, and notarized**
 - It is acceptable for the client to write the affidavit in their own native language and have it translated
- **Client's domestic violence counselor can be a good resource for help in drafting affidavit**
- **Must address key issues**
 - Applicants and derivatives' names, dates and places of birth
 - Entry to the United States and any exits
 - Substantial physical/mental abuse
 - Knowledge and Information about the crime
 - Cooperation/helpfulness with law enforcement/prosecution
 - Explanation of circumstances giving rise to any grounds of inadmissibility (i.e. criminal history, entries/exits, misrepresentation)
 - Reasons why a grant of waiver of inadmissibility is in national or public interest

Evidence

(2 of 3)

- **Identity of applicant (and qualifying derivatives: children, non-abuser spouse, parent)**
 - Birth certificates
 - Passports and visas/I-94 cards
 - Waiver of passport requirement available on Form I-192
 - Any documentation from USCIS
- **Proof that client is victim of substantial physical/mental abuse; assisted law enforcement**
 - Applicant's affidavit
 - Photos
 - Police reports
 - Protective/restraining orders
 - Medical records/psychological evaluation
 - Letter from counselor
 - Intake records from shelter
 - CPS reports
 - Affidavits from secondary sources

Evidence

(3 of 3)

- **Derivative applicants**
 - Proof of qualifying relationship
 - Passport and visas/I-94 cards
 - Must be admissible to the U.S. or file a waiver of inadmissibility

Filing Procedures for U Visa Applicants

(1 of 2)

File necessary applications and supporting evidence:

- Detailed cover letter/legal memo and index of documents
- G-28, Representation form (on blue paper)
- Form I-918, U visa application
- Signed I-918, Supplement B (certification form)
- Form I-918A for Derivatives
 - Proof of qualifying relationship
 - Valid passport and visas/I-94 cards
 - I-192, Waiver of inadmissibility and supporting documents, if necessary

Filing Procedures for U Visa Applicants

(2 of 2)

- Signed and notarized affidavit from victim
- Documentary evidence supporting U visa requirements
 - All U visa applicants must also submit evidence of identity/nationality and a copy of the biographic page of currently valid passport
- Form I-192, Waiver of inadmissibility, if necessary
 - Additional evidence that supports “national or public interest”
- Form I-765, Employment Authorization Application (for derivatives only)
 - Two passport photos
- Fees or fee waiver request

Filing Fees for U Visa Cases

- Forms I-918 and I-918A (\$0)
- Form I-192 (\$585)
- Form I-765 (\$380) – filed for derivative applicants only
- All fees should be in form of money order and payable to “Department of Homeland Security”
- A fee waiver request can be included with the application (Form I-912)

Fee Waivers

- USCIS routinely grants fee waiver requests for U visa applicants

- Request is made on Form I-912 and is included with application packet
 - USCIS will exercise its discretion to grant a fee waiver in the case of an applicant who:
 - a) is receiving a means-tested benefit,
 - b) has a household income of 150% or below of the poverty guidelines, or
 - c) can demonstrate financial hardship.
 - An applicant may claim eligibility for a fee waiver on more than one ground

- Should submit substantiating documents such as means-tested benefits statements, taxes, pay stubs, utility bills, rent receipts, medical bills, etc.

See 8 CFR § 103.5(c)

Filing Tips

- All foreign documents must be translated by a translator who certifies that he/she is competent in both languages.
- Two-hole punch at top of application packet and bind with metal prong fasteners or binder clip
 - DO NOT use spiral binding
- Do not use tabs or other exhibit markers. Use page numbers instead.
- Confirm that you are using the most recent version of USCIS forms; USCIS updates their forms regularly.
- Separate derivative applications and supporting documents from that of principal; prepare separate cover letter and index for derivatives
- Place all application packets into one mailing envelope.
- Send via certified mail or overnight delivery.

Where to File

Mail U visa application and all accompanying applications and documents to:

USCIS

Vermont Service Center

Attn: U Visa

75 Lower Welden Street

St. Albans, VT 05479-0001

What Happens Next?

- You will receive Form I-797, Notice of Action, indicating Receipt of all applications filed within approximately 2-4 weeks.
- Client and derivatives in the U.S. will receive a biometrics appointment (only for applicants between the age of 14-75)
 - *Applicants must bring original biometrics appointment and government issued photo ID*
 - *For clients with derivatives out of U.S. → Client will receive RFE with FBI print card to send to derivative. Derivative can get prints taken at U.S. embassy and embassy officials will process the prints and send to VSC.*
- Processing times for the Vermont Service Center are published at www.uscis.gov. Currently, the processing time is approximately 14 months.
- **USCIS may issue “RFE” (Request for Evidence)**
****Please contact NIJC if you receive an RFE!***

U Visa Approval!

➤ **Approval Notices:**

- I-918 approval notice with attached Form I-94 Record of Departure
- I-765 approval notice and actual EAD (work permit) issued for duration of status
- I-192 approval notice, if filed.

**May not receive all notices and EAD at the same time – may arrive separately and with time in between.*

**Please notify NIJC when you receive any notices in your case*

➤ **Travel Issues**

- U Nonimmigrants inside the United States
- Derivatives outside of the United States

➤ **Adjustment of Status**

Employment Authorization (EAD)

- USCIS will automatically issue an initial EAD valid for duration of status upon grant of U visa for principal U applicant living in U.S.
- Derivatives, and principals abroad, must file Form I-765 in order to obtain EAD
 - May apply in conjunction with U visa application (I-918, Supplement A), or upon grant of status
- 8 C.F.R. § 274a.12:
 - (a)(19) – approved U principal applicant
 - (a)(20) - approved U derivative applicant
- With an EAD, foreign national can apply for a social security number to work lawfully.
- With a social security number, the foreign national may qualify for an Illinois state identification document.

Reference Sources and Contact Information

Laws and Reference Sources

- Immigration & Nationality Act (Title 8 of U.S. Code)
- Title 8 of Code of Federal Regulations
- USCIS Policy Memoranda and Guidance
- Board of Immigration Appeals and Federal Circuit Case Law
- Kurzban's Immigration Law Sourcebook
- USCIS website (www.uscis.gov)
- National Immigrant Justice Center, www.immigrantjustice.org
- American Immigration Lawyers Association (AILA), www.aila.org
- Immigrant Legal Resource Center, www.ilrc.org
- National Immigration Project, www.nationalimmigrationproject.org
- ASISTA, www.asistahelp.org

Other Resources

- Vermont Service Center (for representatives only):
 - (802) 527-4888
 - hotlinefollowup1360.vsc@dhs.gov
 - hotlinefollowup19181914.vsc@dhs.gov
- Chicago Domestic Violence Helpline (for counseling referrals): (877) 863-6338
- Chicago Abused Women Coalition (for counseling referrals): 773-278-4566
- National Domestic Violence Helpline: (800) 799-7233 or www.ndvh.org
- Immigration Court: (800) 898-7180

NIJC Staff Contacts

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Contact NIJC

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NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Thank you to DLA Piper LLP for hosting this training and providing the materials.

