

ATTACHMENTS

Considerations for Immigration Programs Working on VAWA Self-Petitions and U Visa Cases

By Gail Pendleton³

Many of you may be doing VAWA self-petitions, U visa petitions, and some human trafficking cases. Working on these cases is significantly different from any other kind of immigration case, with the possible exception of asylum. This article provides only some basic practice pointers for immigration programs working on these cases. At the end you will find resources for exploring more fully how to meet the needs of these clients.

The biggest difference between these and other immigration cases is that your clients' immediate safety may be in jeopardy. To avoid unwittingly increasing the likelihood that they will be harmed or killed, you must address safety concerns and what is happening in the civil and criminal justice system, as well as focus on the requirements for acquiring secure immigration status.

Best Practices

VAWA self-petitioning and the U visa are the product of a collaboration of immigration, domestic violence and family law experts, the National Network to End Violence Against Immigrant Women (National Network), that worked with Congress to create these routes to status in the context of a larger effort to stop violence against women. This same collaborative approach is the best practice model for successfully helping those seeking immigration status under these laws. This is grounded not just in the belief that your clients are better served when you address their needs holistically; it is also based on years of experience, reinforcing that when you partner with domestic violence and sexual assault advocates, you are much more likely to win a self-petition or U visa.

Advocates from these arenas can help you and your client:

- Do the safety planning necessary for each individual case⁴
- Ensure your clients are accessing any civil and criminal remedies they need
- Monitor what is happening in the civil and criminal systems that may affect your client's immigration options
- Provide a "trusted" connection to law enforcement to pursue U visas (they often have existing relationships with allies in the system)
- Help your clients navigate the various systems they encounter, which otherwise may re-victimize them or send them to ICE, and
- Work with your clients to collect and prepare the documentation you need to win a self-petition, U visa, or T visa, and subsequent adjustment to lawful permanent residence.

³ Gail Pendleton is Co-Chair of the National Network to End Violence Against Immigrant Women, which worked with Congress to create VAWA self-petitioning and the U visa. She is also the Co-Director of Asista, the national technical assistance provider on these cases for the federal Office on Violence Against Women of the Department of Justice. From 1985 to 2005, she worked at the National Immigration Project of the National Lawyers Guild.

⁴ ABA Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases (2007), available for free download at www.abanet.org/domviol/docs/StandardsCommentary.pdf. Get the version with Commentary.

This last point is essential for preparing and presenting winning cases. Unless you have received special, in-depth training on working with survivors of violence, you do not have the expertise and experience to collect evidence for these cases by yourself. Based on the author's decade-plus experience, the failure to work collaboratively in collecting such evidence is the most common problem in cases requiring intervention with the special VAWA unit and in appellate cases to the BIA and federal courts.⁵

Referrals are inadequate, and often not particularly helpful. You must work together as partners on the cases to ensure your work compliments each other and that you are addressing your client's most salient needs, as identified by her. Not all domestic violence and sexual assault service providers provide culturally competent services to noncitizens, however. Please contact the National Network to find those in your area who know how to work with noncitizens.⁶ We also can provide you with resources we've used to train such advocates in cultural competency and their role in helping survivors' with their immigration cases.

One thing you may find from working in such partnerships is that more clients qualify for status than you thought. Telling a victim of violence that she doesn't qualify for status when she does may be lethal for her, so please ensure that you double-check with a national technical assistance provider before turning someone away. Provide referrals to others who can handle cases you can't do, either because they are too resource intensive or because you have reached your case limit. Contact the National Network to find others in your area doing this work (see footnote 5).

Confidentiality and Security

You and your office already may have adequate confidentiality and security systems in place, but it's worth double-checking. Savvy abusers and their lawyers may try to access your files through subpoenas. They may use local law enforcement or immigration officers against your clients by claiming that they are fabricating the domestic violence claims just to get immigration status and that they, the abusers, were the victims of marriage fraud. Abusers themselves may show up at your office to try to convince you they are the real victims or to threaten you directly.

- Is your frontline staff trained on how to handle abusers who walk through the door, or law enforcement or ICE officers who want to find clients or review files?
- Are your files secure, so that they may only be accessed pursuant to a subpoena that has withstood a legal challenge by your office?⁷
- Do you have an exit strategy (literally) for you and your clients if abusers appear in your office?
- Do you have a system for identifying cases in which you need to do safety planning for yourself and your office, as well as your client?
- What rules do you have for communication within your office and with partners in other professions about details of client cases?
- If you do intake over the phone, how do you ensure abusers or U/T crime perpetrators are not monitoring it?

⁵ If you are a CLINIC affiliate and need help with the special VAWA unit, please contact Helen Chen at CLINIC, hchen@cliniclegal.org. If you are an OVW grantee, please email questions@asistaonline.org.

⁶ Send an email inquiry to Monica Arenas, monica@endabuse.org, Joanne Picray, Joanne@asistaonline.org, or Ellen Kemp, ellen@nationalimmigrationproject.org.

⁷ You should never hand over documents without a fight; if you need help challenging a subpoena, contact CLINIC, which will work with national organizations with expertise in this kind of legal case

- Is your intake staff asking questions about domestic violence or other crimes? If so, what training have they had on doing this in a way that doesn't re-victimize your client? (one reason to have partners with expertise in doing this)
- What special precautions do you take to ensure your clients are not carrying information that their abusers or U/T crime perpetrators may find?

Given the potential lethality, for both your client and you, make sure your entire office understands why the security and confidentiality systems and rules are necessary and is willing to abide by them.

Taking Care of Yourself

It is important to take care of yourself. Working with those who have experienced violence, especially, may cause "vicarious trauma" which your office and staff should address.

Resources

The recently published *ABA Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking* is designed for lawyers practicing in the civil court system, but many of its rules and suggestions apply with equal force (or by analogy) to immigration attorneys and accredited representatives working on these cases.⁸ You can download a free copy from the website listed in footnote 3; get the version with the "Commentary." Please also share this manual with attorneys and advocates helping your clients in the family court system and use it to monitor whether they are providing adequate services to your clients.

CLINIC has a VAWA/U manual, available at www.cliniclegal.org under publications, and Helen Chen, hchen@cliniclegal.org, provides technical assistance to CLINIC affiliates doing VAWA and U cases. Although Asista's mission is to help those receiving money from the Office on Violence Against Women, the resources on the website are available to all for free, www.asistaonline.org. The National Immigration Project of the National Lawyers Guild continues to provide technical assistance and support to members doing this work, www.nationalimmigrationproject.org. Everyone doing VAWA and U cases should join the one-way VAWA Updates list serve, where we share the latest developments in policy, law and practice. If you do much VAWA/U work, you may also wish to join the interactive VAWA Experts listserv.⁹

The author provides training to civil and criminal courts judges¹⁰ and to law enforcement¹¹ on working with immigrant survivors of crimes. If you would like to see such training in your area, contact the author, gpendleton@earthlink.net, to obtain the curricula, power points and exercises, or for other help in arranging for a local training.

Conclusion

Thank you for your dedication to working with immigrant survivors of violence. Because of your work, tens of thousands of women and children (and some men) are on their way to secure status and lives free from crime and violence. Although this work challenges you to do your job a little differently, we hope the rewards of seeing your clients transform from "victims" to "survivors" and, eventually, to "thrivers" makes it worthwhile for you.

⁸ See especially, sections III.A.12 (knowledge of related legal issues), III.B (competent knowledge of domestic violence, sexual assault and stalking), III.C (culturally competent representation), III.D.2 (physical access to direct representation), III.D.3 (interpreters and other language resources), III.D.4 (confidentiality and third party privilege issues), III.E (client safety: lethality assessment and safety planning; sensitivity to effects of trauma), III.F (scope of representation: client-centered representation; legal capacity and duty of loyalty; scope of representation; case closing and withdrawal; coordination with allied professionals: holistic representation), IV.A (office intake procedures), IV.B (basic procedural obligations of the lawyer), IV.C.8 (rights to other fora).

⁹ Contact Joanne Picray, Joanne@asistaonline.org, or Ellen Kemp, ellen@nationalimmigrationproject.org

¹⁰ Created originally for and sponsored by the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund, funded by the federal Office on Violence Against Women (OVW).

¹¹ Created for and sponsored by Asista, funded by (OVW).