



# Obtaining U Nonimmigrant Status (“U Visas”) for Immigrant Victims and Survivors of Crimes

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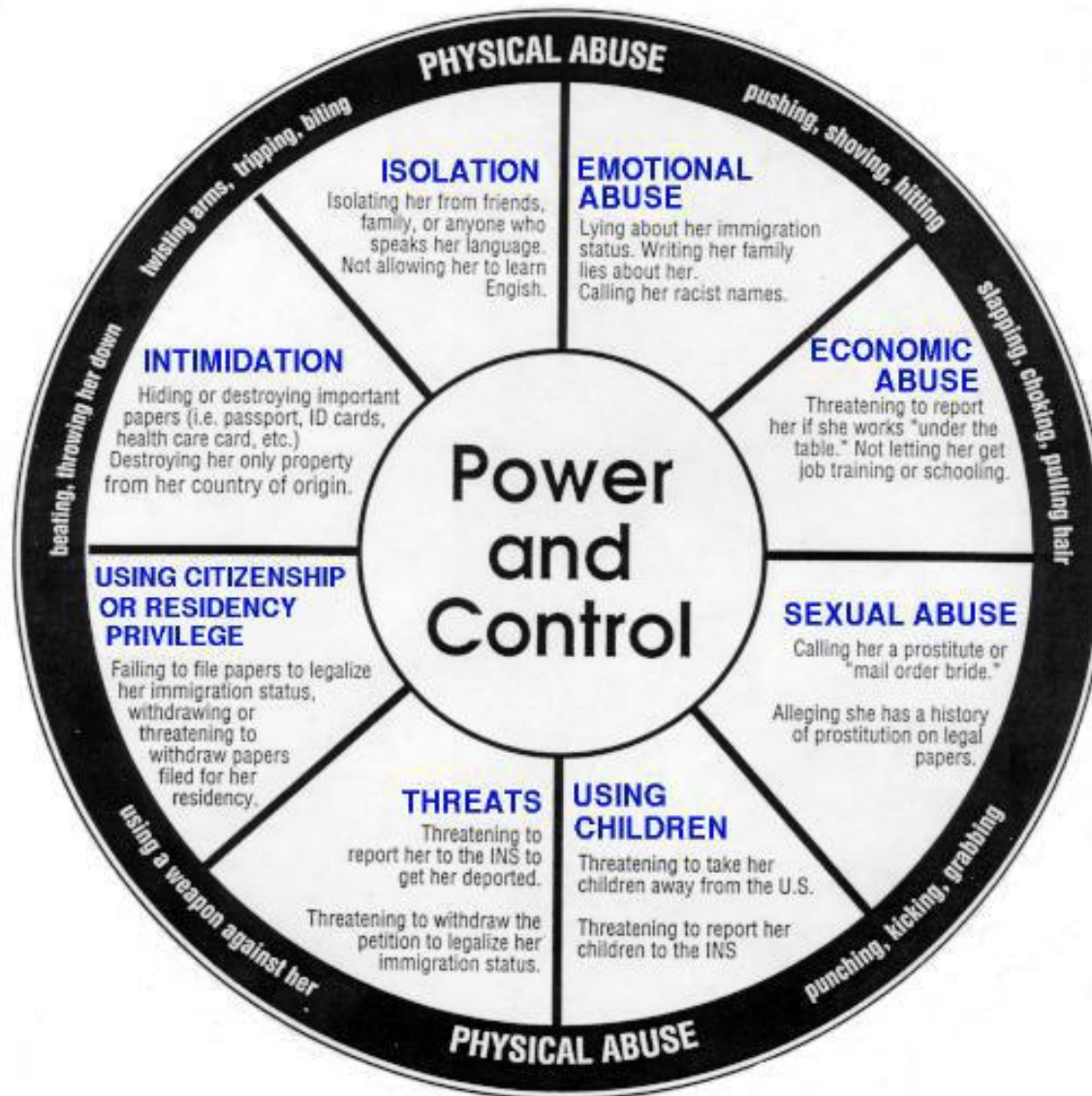
June 9, 2021



# TODAY'S OBJECTIVES

- Become familiar with dynamics of domestic violence and unique obstacles faced by immigrant DV victims/survivors
- Become familiar with general concepts in immigration law
- Review statutory and regulatory background of U nonimmigrant status
- Understand eligibility requirements of U nonimmigrant status
- Discuss best practices for representing immigrant victims/survivors of serious crimes

# WHAT IS DOMESTIC VIOLENCE?



# BARRIERS FACED BY VICTIMS OF VIOLENCE



- Fear
- Abuser's control
- Economic dependence
- Shame/guilt/embarrassment
- Different cultural norms
- Mistrust of law enforcement & mass incarceration



# BARRIERS FACED BY IMMIGRANT VICTIMS OF VIOLENCE

- Fear, control of abuser, economic dependence, embarrassment, shame, guilt, etc. PLUS.....
- Lack of access to information about the legal system
- Fear of police and judicial system
- Fear of deportation
- Language and cultural barriers
- Inadequate shelter and other social services





# IMMIGRATION LAW OVERVIEW

## Immigration Laws

- Immigration and Nationality Act (INA)
- Title 8 of the Code of Federal Regulations (CFR)
- Board of Immigration Appeals (BIA) and Administrative Appeals Office (AAO) decisions
- Federal court decisions
- Agency memoranda





# IMMIGRATION LAW OVERVIEW

## Immigration Agencies

- Department of Homeland Security (DHS)
  - US Citizenship and Immigration Services (USCIS)
  - Immigration and Customs Enforcement (ICE)
  - Customs and Border Protection (CBP)
- Department of State
  - Embassies and consulates
- Department of Justice
  - Executive Office for Immigration Review (EOIR)
  - Board of Immigration Appeals (BIA)



# IMMIGRATION STATUSES

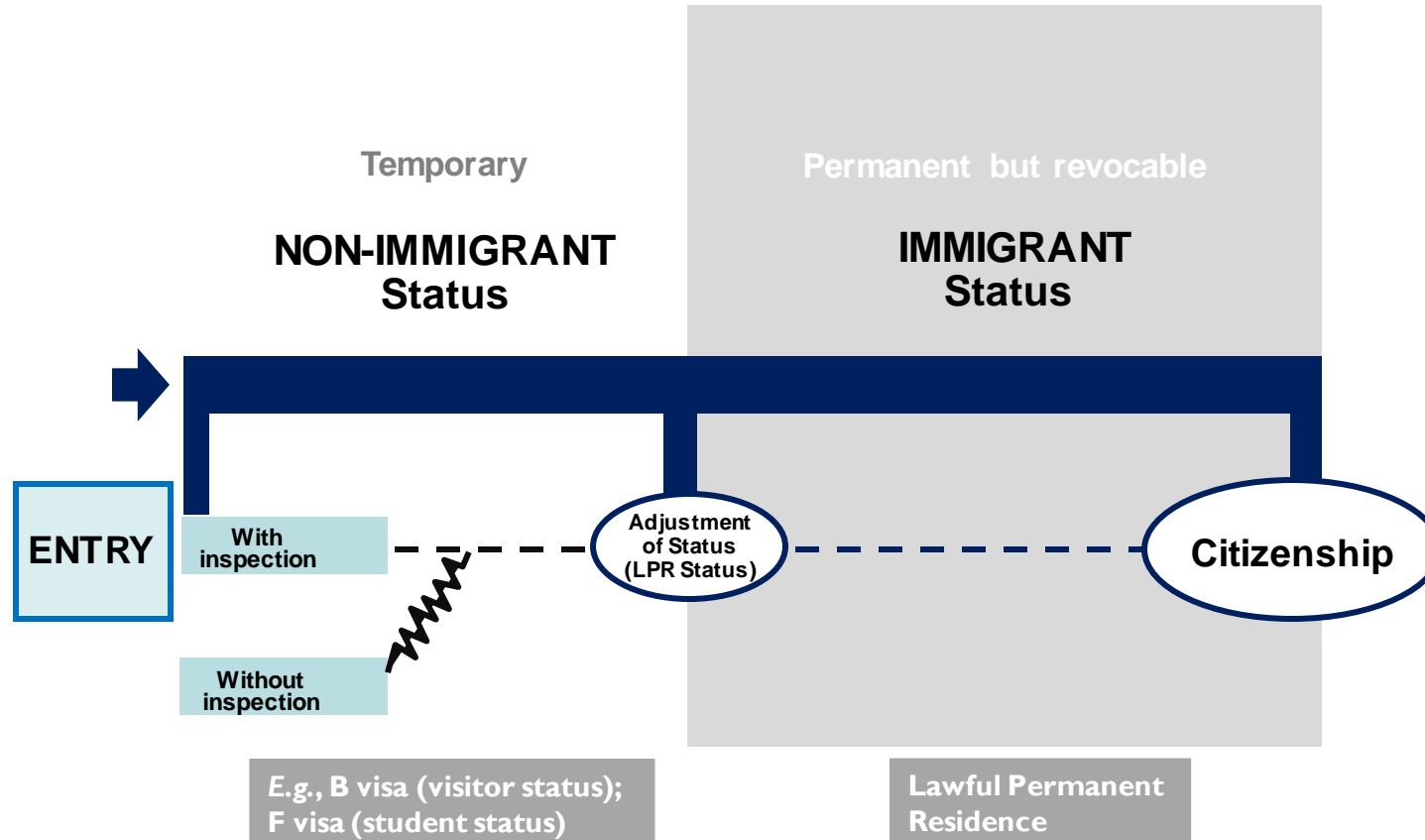


- U.S. Citizen
- Lawful Permanent Resident (LPR or “green card holder”)
- Temporary visitors
  
- Over 60 different kinds of visas that a non-citizens might have
- “Undocumented” immigrants





# IMMIGRATION LAW OVERVIEW





# U NONIMMIGRANT STATUS OVERVIEW

- **What is U nonimmigrant status?**
  - Available to noncitizen victims of certain crimes
  - Lasts 4 years
  - Provides work authorization
  - Allows family reunification
  - Creates pathway to lawful permanent residence after 3 years of having nonimmigrant status

# U OVERVIEW



## Upsides: The Many Benefits of U Status

### Benefits of U Visa

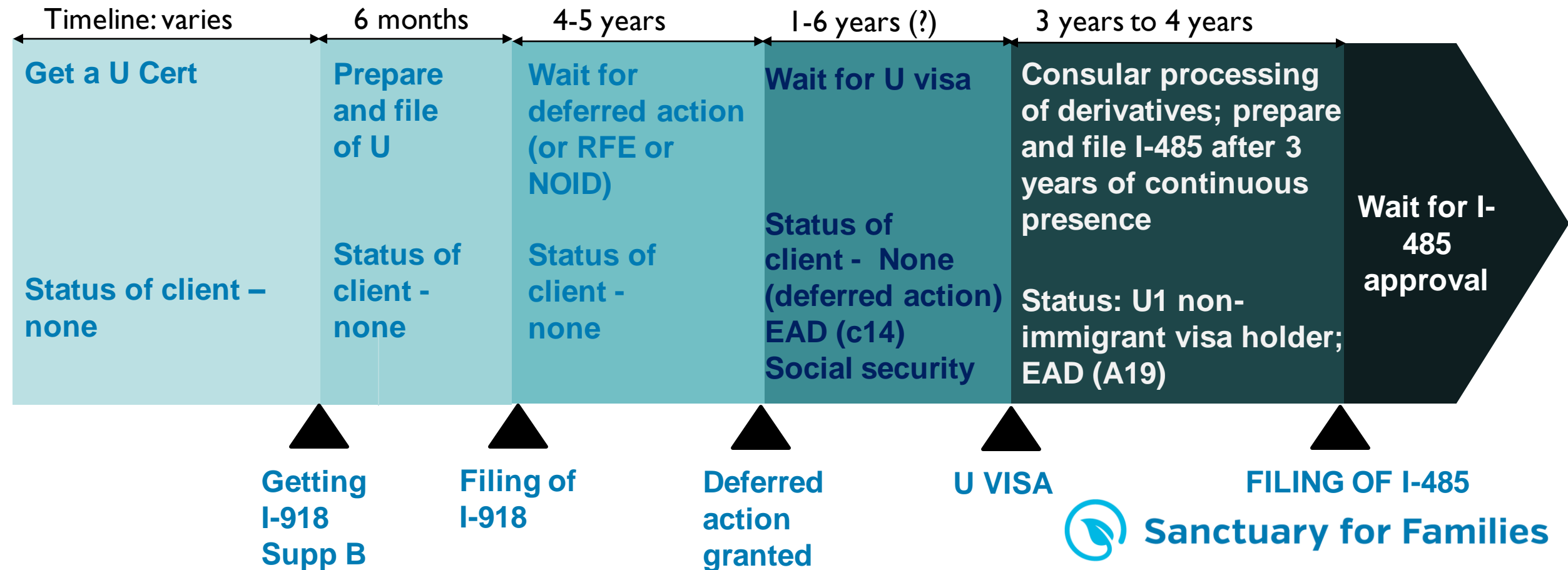
-  Help Family Members
-  Path to Citizenship
-  Path to Green Card
-  Social Security Number
-  Travel
-  Work

### PLUS,

- Fewer grounds of inadmissibility
- Broad waivers for inadmissibility
- Fee waivers are generally available
- Almost no bars

# U OVERVIEW

## Downsides: TIME!



# U OVERVIEW



## The Long Road Toward U Status

Number of Form I-918, Petition for U Nonimmigrant Status  
By Fiscal Year, Quarter, and Case Status  
Fiscal Years 2009-2020



**U.S. Citizenship  
and Immigration  
Services**

Period	Petitions by Case Status											
	Victims of Criminal Activities <sup>1</sup>				Family Members <sup>1</sup>				Fiscal Year Total			
	Petitions Received <sup>2</sup>	Approved <sup>3</sup>	Denied <sup>4</sup>	Pending <sup>5</sup>	Petitions Received <sup>2</sup>	Approved <sup>3</sup>	Denied <sup>4</sup>	Pending <sup>5</sup>	Petitions Received <sup>2</sup>	Approved <sup>3,7</sup>	Denied <sup>4</sup>	Pending <sup>5</sup>
<b>Fiscal Year - Total<sup>6</sup></b>												
2009	6,850	6,045	661	11,740	4,102	2,838	158	9,275	10,952	8,883	819	21,015
2010	9,657	10,015	3,995	7,480	6,418	9,315	2,576	6,242	16,075	19,330	6,571	13,722
2011	14,647	10,025	2,007	10,250	10,033	7,602	1,645	8,329	24,680	17,627	3,652	18,579
2012	21,141	10,031	1,684	19,824	15,126	7,421	1,465	15,592	36,267	17,452	3,149	35,416
2013	25,486	10,022	1,840	33,409	18,266	7,724	1,234	24,480	43,752	17,746	3,074	57,889
2014	26,089	10,077	3,662	45,814	19,297	8,457	2,655	32,948	45,386	18,534	6,317	78,762
2015	30,129	10,060	2,440	63,779	22,636	7,649	1,754	46,507	52,765	17,709	4,194	110,286
2016	34,797	10,019	1,761	87,290	25,469	7,624	1,257	63,616	60,266	17,643	3,018	150,906
2017	37,287	10,011	2,042	112,272	25,703	7,628	1,612	79,971	62,990	17,639	3,654	192,243
2018	34,967	10,009	2,317	134,714	24,024	7,906	1,991	94,050	58,991	17,915	4,308	228,764
2019	28,364	10,010	2,733	151,758	18,861	7,846	2,397	103,737	47,225	17,856	5,130	255,495
<b>Fiscal Year 2020 by Quarter</b>												
Q1. October - December	5,882	3,605	854	153,319	3,948	2,539	734	104,518	9,830	6,144	1,588	257,837
Q2. January - March	3,737	3,933	860	153,274	2,126	2,739	764	103,830	5,863	6,672	1,624	257,104
Q3. April - June	5,325	2,095	498	156,098	3,140	1,524	473	105,032	8,465	3,619	971	261,130
Q4. July - September	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total</b>	<b>14,944</b>	<b>9,633</b>	<b>2,212</b>	<b>156,098</b>	<b>9,214</b>	<b>6,802</b>	<b>1,971</b>	<b>105,032</b>	<b>24,158</b>	<b>16,435</b>	<b>4,183</b>	<b>261,130</b>



**Sanctuary for Families**

# U-CERTIFICATION



- Agencies that commonly issue:
  - District Attorney's Office
  - Administration for Children's Services
  - NYPD
  - Family Court
- Specific instructions for each are in the G-drive
  - G:\SHARE\Legal\Immigration Project\U nonimmigrant status and U visas\Certifying Agencies





# U OVERVIEW

- **Deferred Action:**

- Number of petitioners greatly exceeds number of available U visas
- For petitioners for whom a U visa is unavailable upon filing:
  - USCIS reviews case; if approvable, USCIS places case on waitlist and grants petitioner and derivatives in the U.S. deferred action
  - Deferred action is not a status, but:
    - Principal and any derivatives in the U.S. can obtain **work authorization** and
    - Derivatives abroad may be able to gain lawful entry to the U.S.



## U ELIGIBILITY

- **Statutory elements (INA § 101(a)(15)(U))**
  - (1) Victim of a qualifying criminal activity
  - (2) Crime occurred in the U.S. or violated U.S. law
  - (3) Possesses information about criminal activity
  - (4) Helpful to law enforcement agency in investigating or prosecuting criminal activity
  - (5) Suffered substantial physical or mental abuse as a result of qualifying crime; and
  - (6) Not inadmissible







# U ELIGIBILITY

- **(1) Victim of a Qualifying Criminal Activity:**
  - 28 enumerated crimes (e.g., domestic violence, rape, incest, abusive sexual contact, sexual assault, felony assault, female genital mutilation, kidnapping, child abuse, etc.)
  - Or “any similar activity in violation of Federal, State, or local criminal law...”



# U ELIGIBILITY

- **(1) Victim of a Qualifying Criminal Activity:**

- Direct Victim: Directly and proximately harmed by the crime
  - Morris decision – direct victim even if not physically present
- Indirect Victim (8 CFR 214.(a)(14)(i)): Helped investigate or prosecute the crime when the direct victim is:
  - Deceased
  - Incompetent or incapacitated
- Bystander: Suffered unusually direct harm





# U ELIGIBILITY

- **(3) Possesses information:**
  - Has knowledge of specific facts that assisted, are assisting, or will assist law enforcement in an investigation or prosecution



## U ELIGIBILITY

- **(4) Helpful to Law Enforcement in Investigation or Prosecution:**
  - Prosecutor
  - Judge
  - Police Department
  - Other agency charged with investigating qualifying crimes/criminal activity (ACS, City Law Department, etc.)



## U ELIGIBILITY

- **(4) Helpful to Law Enforcement in Investigation or Prosecution:**
  - No unreasonable refusal to cooperate in investigation or prosecution
  - Must establish cooperation via I-918B Law Enforcement Certification
    - Valid only for 6 months after signing
    - Must be submitted in the original



# U ELIGIBILITY

- **(5) Suffered substantial physical or mental harm from the crime:**
  - **Physical or mental harm:** “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))
  - **Whether “substantial”** (8 CFR § 214.14(b)(1))
    - Nature of injury
    - Severity of perpetrator conduct
    - Severity of harm
    - Duration of harm
    - Pattern of harm
    - Existence of permanent or serious injury (aggravation of previous condition can suffice)



## U ELIGIBILITY

- **(5) Evidence of substantial harm:**
  - Petitioner's affidavit
  - Medical records
  - Letters of support from professionals
  - Copies of police reports
  - Copies of orders of protection



# U ELIGIBILITY

- **In Crimes of Domestic Violence:**
  - Establish power and control dynamic by perpetrator against the petitioner victim
  - Address crime described on Form I-918B and establish how it constitutes a crime of domestic violence
  - In the petitioner's [brief] affidavit, describe the first, worst and last incident of domestic violence and how, in the aggregate, they affected the petitioner





# U ELIGIBILITY

- **(6) Not inadmissible under INA § 212(a):**
  - When seeking admission to the U.S., an individual must meet all applicable statutory requirements and demonstrate that s/he is not inadmissible
  - Common grounds of inadmissibility include:
    - Entry without inspection
    - Criminal convictions
    - Lack of passport
    - False claim to U.S. citizenship
    - Misrepresentations to immigration officials
    - Prior removal



# U ELIGIBILITY

- **Is client inadmissible:**
  - Does ground in INA § 212(a) apply?
  - If so, can it be waived?
  - In the context of U visas, DHS may waive grounds of inadmissibility if such waiver is in the public or national interest (INA § 212(d)(14); 8 CFR § 212.17)
    - Exception: Participants in Nazi persecution, genocide, torture, or extrajudicial killing



## U ELIGIBILITY

- **Considerations for Waiver of Inadmissibility:**
  - Risk of harm to society
  - Hardship to USC or LPR family members
  - Evidence of rehabilitation
  - Seriousness of conviction or violation of law
  - Community ties





## U ELIGIBILITY

- **I-192 Waiver of Inadmissibility Evidence:**
  - Statement from client
  - Documents showing rehabilitation
  - Letters of support from family members
  - Letters of support from community members





# U ELIGIBILITY

- **Qualifying Family Members:**

- For petitioners 20 and under, the spouse (U-2), unmarried children (U-3), parents (U-4), and unmarried siblings under 18 (U-5) on the date on which the petitioner applied for status
- For petitioners 21 or older, the spouse and unmarried children under age 21
- Family member cannot receive U nonimmigrant status until the principal petitioner does
- Principal petitioner may file I-918, Supplement A at the same time or after the I-918 is filed





# U ELIGIBILITY

- **Qualifying Family Members Must Establish:**

- Relationship

AND

- Not Inadmissible



# U FILING OVERVIEW - PRINCIPAL

## Form I-918

- G-28
- Two passport photos
- Supporting evidence, including:
  - Original certification
  - Affidavit explaining “yes” answers on Form I-918
  - Affidavit describing substantial harm
  - Biographic page of passport or I-192

## Form I-765 (8 CFR § 274a.12(c)(14))

- G-28
- fee or fee waiver
- Two passport photos
- Copy of government-issued ID
- Form I-765WS

## Form I-192 (if required)

- G-28
- fee or fee waiver
- Affidavit and other evidence addressing ground(s) of inadmissibility and hardship





# U FILING OVERVIEW - DERIVATIVES

## All Derivatives

### **Form I-918, Supplement A**

- G-28
- Affidavit explaining “yes” answers on Form I-918, Supplement A
- Documents establishing relationship

### ***Form I-192 (if required)***

- G-28
- fee or fee waiver
- Affidavit and other evidence addressing ground(s) of inadmissibility and hardship

## Derivatives in U.S.

### **Form I-765 (8 CFR § 274a.12(c)(14))**

- G-28
- fee or fee waiver
- Two passport photos
- Copy of government-issued ID
- Form I-765WS

### **Form I-765 (8 CFR § 274a.12(a)(19))**

- G-28
- fee or fee waiver
- Two passport photos
- Copy of government-issued ID







# RED FLAGS

- TIGHT DEADLINES
  - How to ensure U-Certs don't expire
  - Potentially file I-918 first, then additional forms
- Other types of cases – multiple filings (VAWA/T/Asylum/SIJS)
  - Consular processing for derivatives
- Conflicts of interest (changing interests) within family
  - Discuss in retainer
  - U Cases with several potential petitioners



# RED FLAGS CONTINUED

- Affidavit writing
  - Multiple applications
- Case management needs (LONG term clients)

# THANK YOU!



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