

## Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach<sup>1</sup>

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A survivor's story<sup>3</sup> is one of the key pieces of evidence submitted with VAWA, U, and T visa applications, which makes these victim based remedies different from many other immigration applications. This is an opportunity for Department of Homeland Security (DHS) adjudicators to hear directly from the survivor, in her or his own voice. When reading the survivor's story, the reader – ultimately, the DHS adjudicator – should be able to know and feel what the survivor felt after being subjected to abuse or crime victimization.

During this initial phase of developing a survivor's story, it is important to let the survivor tell her story uninterrupted. As advocates and attorneys, our role is to empathically listen and be aware of trigger points. There will be an opportunity during the structured interview session to ask follow-up questions in order to gather more details. There will be some survivors who are comfortable with speaking freely about their experiences and others who may not. For those that are not, we may want to guide them along this process by asking open-ended questions that prompts an open dialogue. This tool provides general questions that you can use to guide survivors in the story developing session. These questions also can be utilized as guide as for the listener to circle and follow up on during the structured interview session. Remember to focus on the survivor's verbal and non-verbal cues to determine what the best approach is for each unique survivor of trauma.

### **Emotional Safety Plan**

- It is important to develop an emotional safety plan before asking someone to write their story – either with you or, especially, if they opt to do it alone at home. An emotional safety plan should include recognition of “triggers” for getting emotionally upset, a set of strategies to help oneself calm (victim or advocate) and a plan for reaching out for help, as needed.<sup>4</sup>
- Generally, it is far better to develop the story with an advocate/attorney who can provide support and witness the process.
  - Clients should be told ahead of time what the goals of the session are and be warned about the sensitive nature of some of the questions. Remind clients that they are not required to answer questions that make them uncomfortable. The advocate or attorney may want to tailor the questions to the client's situation.
  - During the development of the client's story, advocates and attorneys can check the client's feelings by asking: how did you feel about this?

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<sup>3</sup> We will not be referring to them as affidavit, but rather “stories” of the survivor's experience.

<sup>4</sup> Advocates and attorneys following these trauma informed strategies can receive technical assistance from trauma experts by contacting NIWAP at (202) 274-4457; niwap@wcl.american.edu or info@niwap.org NIWAP staff can also arrange a conversation with trauma experts for you.

- Use this tool in conjunction with crisis intervention techniques and be mindful of your own self-care needs during this session. Allow time for breaks and “check-ins” with your client.

### **Preparing for Story Developing Session**

- Being present when your client writes her story is important and is the preferred approach. However, some victims will feel strongly about wanting to write their stories alone. It is important to respect your client’s decision about how he or she wants to undertake the difficult process of writing his or her story.
- If your client decides that he or she needs your assistance, then talk with your client before the story collection session and let your client know ahead of time what your goals are for the session.
- Do your homework by reading police reports, requests for protection orders, court records and medical records whenever they are available.
- Make sure both you and your client have set aside the adequate time required for the session, taking into account the use of interpreters and/or translators.
- You may prefer not to use the word “affidavit;” instead, refer to it as his or her “story.”

### **Getting Your Client’s Story on Paper**

- Remember, your client is the expert of his or her experience.
- Keep in mind that your assistance is crucial to help your client tell their story with your support and listening/witnessing their story with empathy that validates their experience and sympathizes with the trauma they experienced and helps to minimize re-traumatization.
- Create an environment in which the client tells her story uninterrupted to a listener who cares.
- Consider your client’s ability to read and write.
- The story could be written in her native language and translated later to English.
- For the first draft, chronology, spelling and grammar are not important. What is most important is getting what the client remembers on about their story on paper.

### **Structured Interview Session**

- After your client has had an opportunity to tell his or her story you will then proceed to the next step, the structured interview session. During the structured interview, you will review with your client a series of additional questions in order to further clarify and document your client’s story as needed to strengthen his or her immigration application. (See the “Trauma Informed Structured Interview Questions.”<sup>5</sup>) These questions are designed to obtain more complete information about your client, their case, experiences, and the impact of these events on your client and their children.
- The structured interview will be the appropriate time for you to ask follow-up questions to obtain more details or clarifications about events raised by your client in the story developing session.

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<sup>5</sup> Available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/webinar-5-trauma-informedcare/Trauma-Informed-Structured-Interview-Q.pdf/view>.

### **Integrating the Story**

- After you have obtained the story your client wrote/told you, and conducted the follow up the trauma informed structured interview session, you (as the advocate/attorney) may elect to mold the story into a cohesive whole; however keep in mind that Immigration officials have shared with the field that it is important for them to hear directly from the survivor. Integrating the story is an opportunity to:
  - Organize the story chronologically,
  - Correct grammar, and spelling, and
  - Ensure that the client’s story remains primarily in her words – not yours.
- Once you have compiled the information from both sessions into one cohesive story, review the story with your client one last time before obtaining the client’s signature and submitting it as evidence in his or her immigration case.

### **Getting the Survivor’s Story on Paper for the VAWA Self-Petition**

The VAWA declaration should be as detailed as possible, but in their own words. Advise your client that it may be difficult to share what happened, but the immigration officer (who will read and evaluate his/her application) needs to understand why the survivor qualifies for the VAWA immigration protections.

Tell your client that in their story, an immigration officer will be looking for the following details and they will need to:

1. Show that their relationship with the abuser is in good faith or that their marriage to the abuser was genuine.
2. Show that they lived together with the abuser (e.g. spouse, former spouse, parent, stepparent, or child who is over 21 years old) at some point in time.
3. Describe the abuse and the abusive periods in detail, stating what specifically the abuser did to them. Describe any physical, sexual, psychological, or emotional abuse or injury they have suffered. State specifically how the abuse has changed them or has changed the way they live, including the impact of the abuse on their children or their relationship or interactions with their children.
4. Show that your client is a person of good moral character and ask for immigration relief.

If your client hits a roadblock while writing or telling her story, you can use the above-mentioned points as guideposts to get the story-writing process back on track. However, do not coach your client during the initial process; allow him or her to write freely. As an advocate or attorney, you should sit back and listen. Do not interrupt and remind your client of the four main elements only if necessary.

As your client shares her story with you, keep the following questions in mind for the structured interview. The questions are grouped by the four requisite elements of the VAWA self-petition. Do not ask these questions at the initial story developing stage, instead you may want to circle the relevant questions you will want your client to elaborate on during the structured interview.

1. **Relationship** – Mark the questions that you will want to ask to further elicit answers demonstrating the relationship between your client and his/her U.S. Citizen or Legal Permanent Resident abuser.
  - a. If the abuser is your client’s spouse or ex-spouse:
    - i. When and where did you and your spouse meet?
    - ii. What made you fall in love with your spouse?
    - iii. When and where did you get married?
    - iv. Do you and your spouse have children together?
    - v. What was the marriage like at the beginning?
    - vi. Were there good times before the abuse started?
    - vii. What were your future plans together?
  - b. If the abuser is your client’s step-parent:
    - i. How did your parent and stepparent meet?
    - ii. When and where did your parent and stepparent get married?
    - iii. In addition to you, do your parent and stepparent have any children?
    - iv. Were you ever adopted by your stepparent?
    - v. Do you remember any special occasions from the good times you spent with your parent and stepparent?
  - c. If the abuser is your client’s parent:
    - i. How did your parents meet?
    - ii. Did they ever get married? If so, when and where?
    - iii. When and where were you born?
    - iv. Do you have any siblings or half-brothers or half-sisters from this parent?
    - v. If your parents divorced or separated, did the abusive parent have custody of you? Did the abusive parent have to pay child support?
    - vi. Do you remember any special occasions from the good times you spent with your abusive parent?
  - d. If the abuser is your client’s U.S. citizen son or daughter who is over 21 years old:
    - i. When was your son or daughter born?
    - ii. Did you live with your son or daughter as he or she was growing up?
    - iii. When did your son or daughter come to the U.S.?
    - iv. Do you remember any special occasions from the good times you spent with your son or daughter?
2. **Cohabitation** – Mark the questions that you will want to ask to further elicit answers establishing that your client and his/her U.S. Citizen or Legal Permanent Resident abuser resided together at some point in time.
  - a. Did you ever live in the same place with the abuser?
  - b. When you were living together with your abuser, did anyone else live with you (children, parents, siblings, or friends)?
  - c. Were you allowed to have friends visit you at your home? Did you have parties or receptions?

3. **Abuse** – Mark the questions that you will want to ask to further elicit answers describing how the abuse started, recounting specific instances of abuse, and demonstrating how the abuse affected the client and his or her family members.
- a. When did the abuse begin and where were you at the time?
  - b. Did it escalate into physical violence?
  - c. After the initial mistreatment, how frequent were the abusive episodes? Did your abuser get more and more violent?
  - d. Did your abuser also hurt your children? How?
  - e. Did your abuser forbid you to communicate with family or friends?
  - f. Did your abuser ever threaten to kill or hurt you, your children, or family members?
  - g. Did your abuser threaten to have you deported or take your papers away?
  - h. Did your abuser threaten to take your children away?
  - i. Did you seek medical assistance because of the abuse?
  - j. Did you call the police because of the abuse?
  - k. Did you ever get a restraining order?
  - l. After your abuser’s violent periods, did you make up? Did your abuser apologize?
4. **Good Moral Character** – Mark the questions that you will want to ask to further elicit answers demonstrating that your client is a responsible parent, hardworking employee, law-abiding person, and that he/she is involved in his/her community.
- a. Do you work long hours or overtime to support your family? Do you work several jobs to make ends meet?
  - b. Describe your role in taking care of your children.
  - c. Describe your favorite activities with your children.
  - d. Do you go to church regularly?
  - e. Do you volunteer your time or donate?

<b>Adding to Your Client’s Story for VAWA Cancellation of Removal</b>
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Explain to your client that two additional requirements must be satisfied to qualify for VAWA Cancellation of Removal protection. Tell your client that in his/her story, he or she should also:

1. Demonstrate that he or she lived in the U.S. for 3 years.
2. Describe the hardship your client and your client’s family would face if they had to leave the U.S.

Once again, allow your client to develop his or her story on their own. Do not interrupt and remind him or her of the two additional elements only when your client hits a roadblock.

## Getting the Survivor's Story on Paper for the U Visa Application

The U visa story should be as detailed as possible, but in your clients own words. Advise your client that it may be difficult to write about what happened, but the immigration officer (who will read and evaluate his/her application) needs to understand why the survivor qualifies for the U visa immigration protections.

Tell your client that in their story, they should:

1. Describe the criminal activity or criminal activities that their U visa is based on.
2. Write about the physical, sexual, and/or psychological harm they suffered (or their children suffered) because of the criminal activity (or criminal activities) and how they feel as a result.
3. Describe how they helped or are willing to be helpful law enforcement and/or prosecutors.

If your client hits a roadblock while writing their story, you can use the above-mentioned points as guideposts to get the story-writing process back on track. However, do not coach your client during the initial process; allow him or her to talk or write freely. As an advocate or attorney, you should sit back and listen. Do not interrupt and remind your client of the four main elements only if necessary.

As your client tells and writes their story to you, keep the following questions in mind for the structured interview. The questions are grouped by the three requisite elements of the U Visa application. Do not ask these questions at the initial story developing stage, instead, circle/highlight/underline the relevant questions you will want your client to elaborate on during the structured interview.

Guide your client to talk about the relationship, if any, between him/her and the perpetrator. If the perpetrator was an acquaintance, tell your client to share how he/she knew the perpetrator. If the perpetrator was a stranger or someone your client never had a relationship with, skip to discuss the criminal activity.

- Is the perpetrator a relative or family member?
- Is the perpetrator your spouse, former spouse, or significant other? If so, you could write about how you met and what your relationship has been like.
  - How long were you in a relationship?
  - Did you have children from a previous relationship? Did you have children with the perpetrator?
- Is the perpetrator someone who stalked you or tried to go on dates with you?
- Is the perpetrator your boss, manager, co-worker, customer, or client?
- Is the perpetrator your teacher or classmate?
- Is the perpetrator your neighbor or family friend?
- Is the perpetrator your clergy member or someone from your faith community?

1. **Qualifying criminal activity** – Mark the questions that you will want to ask to further elicit answers on the qualifying criminal activity or criminal activities.

- a. If your client was a victim of abuse by his/her spouse, partner, or parent:
  - i. When and how did your abuser start mistreating you?
  - ii. How often did your abuser do this?

- iii. Did your abuser do it in front of others? Who?
  - iv. How did it make you feel?
  - v. Did you ever call the police?
- b. If your client was the victim of a criminal activity or criminal activities by a stranger:
- i. Where were you and what were you doing right before the crime?
  - ii. How and where did the perpetrator hurt you?
  - iii. Did anyone see what happened?
2. **Physical, physiological, and emotional harm** – Mark the questions that you will want to ask to further elicit answers about how the criminal activity has affected your client physically and/or emotionally. *Use the following questions to guide your client:*
- a. Have you suffered any physical injury?
  - b. Have you suffered any psychological injury because of the criminal activity?
  - c. How has the victimization from the crime changed your physical or emotional energy?
  - d. How has being a victim of this crime your ability to work or be productive?
  - e. Are you more fearful and mistrusting of people?
  - f. Were your children affected in any way?
  - g. Have you received any kind of counseling or psychological therapy as a result of the incidents that occurred with your perpetrator?
3. **Helpfulness to Law Enforcement**– Mark the questions that you will want to ask to further elicit answers about how your client was helpful to law enforcement in the detection, investigation, prosecution or in the sentencing of the criminal activity. *Use the following questions to guide your client:*
- a. Did you call the police?
  - b. Did they arrest the perpetrator?
  - c. How were you and the police officers able to communicate?
  - d. Did the police officers take any photos of your injuries or of the place where the criminal activity occurred?
  - e. Did the police ever call you to follow-up or ask you more questions?
  - f. Did anyone else call you to ask you about the incident?
  - g. Was the perpetrator charged with a crime?
  - h. Did you receive any correspondence or calls from the Court?
4. **Asking for Immigration Relief** – Prompt your client to tell you why they want immigration relief.

<b>WAIVER OF INADMISSIBILITY</b>
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Waivers of past conduct are available for VAWA, U and T Visa applicants. Generally, applicants waive their unlawful entry and/or unlawful presence in the U.S.

Usually, waivers are approved, but your client must honestly disclose all past conduct that may apply, no matter how serious. It is important to explain to your client that as part of the VAWA, U and T Visa



application process his/her fingerprints will be taken by DHS. Consequently, DHS will find out about any criminal history your client may have, including any arrests where nothing came of it, such as: where your client paid a fine, the charges were dropped, your client never went to court, your client completed community service, or he/she was told that the charges would be removed from the record. Regardless the outcome of the unlawful conduct, DHS will be able to see it. Therefore, it is paramount to emphasize to your client that he/she must tell you about any contact he/she had with police, immigration and the court system. Tell your client that knowing about this information early on will help you (as his/her advocate or attorney) to make sure that these types of experiences that occurred in the past will not hurt his/her immigration case. Stress to your client that being truthful with you about these issues will in fact help you to prepare his/her case in a way that can be successful, despite their history.

Explain your client that he/she will need to ask for waivers for the following unlawful conducts:

- Unlawful entries;
- If you made a misrepresentation on official;
- Orders of removal or deportation;
- Convictions for some criminal activity;
- Assisting their children to enter the U.S. unlawfully.

*Use the following questions to guide your client:* Mark the questions that you will want to ask to further elicit answers about your clients inadmissibility, mitigating circumstances surrounding the activity, details about their good moral character, hardship to herself or her children if returned to their home country and any other humanitarian factors would encourage a favorable exercise of discretion.

- a) What was the unlawful activity that you committed? What or who made you do it?
  - Did you enter the U.S. as a minor?
  - Did you enter unlawfully to reunite with your family?
  - Were you trying to escape abuse, physical or sexual violence, or extreme poverty?
- b) What were the consequences of the unlawful activity?
  - Did you resolve the matter by paying a fine?
  - Did you have to go to court?
- c) Do you understand that the activity you committed was unlawful? Do you feel sorry for what you did?
- d) Encourage and guide your client to tell you about positive characteristics regarding the kind of person they are? Often survivors may overlook this part of their character. You may want to ask if they consider themselves:
  - A good person, and ask for an examples.
  - Responsible parent? Hardworking Employee? Law-abiding person?
  - Do you work long hours or overtime to support your family?
  - Describe your role in taking care of your children.
  - Describe your favorite activities with your children.

*To show that your client is a good member of his/her community, you may ask:*

- Do you go to church regularly?
- Are you an active member in your faith community?
- Do you volunteer your time or donate?
- Do you help out your neighbors, friends, or other family members?



*Use the following questions to guide your client:* What would happen to you or your family if you were to return to your country of origin? Are you afraid of returning to your country of origin?

- Are you afraid that your abuser would take action against you in your country?
- Why do you want to stay in the United States?
- Are there services that you have in the U.S. that you wouldn't have if you were deported (for example social workers, medical help, counseling, government benefits like WIC, etc.)?
- Do your children speak the native language of your country?
- What hopes do you have for the future, for you and for your children?
- Is there anything else you would like to mention or tell the Immigration officer about you or your family?