

Improve Immigrant Victim Safety, Gain Protection From Deportation: Practice Tip - File Now, Get RFE-d Later

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June 19, 2014

Advocates and attorneys can enhance immigrant survivors' safety and independence by filing skeletal VAWA self-petitions and U visa applications with the United States Citizenship and Immigration Service (USCIS)-Vermont Service Center's Violence Against Women Act Unit (VAWA Unit) as soon as possible after determining an immigrant victim is eligible for VAWA or U visa immigration relief. This improves safety by allowing immigrant victims to gain earlier access to the protections that are associated with VAWA or U visa immigration relief including immediate protection from deportation.

Advocates and attorneys working with immigrant victims can then use the Request for Further Evidence (RFE) process to complete and supplement the client's application. The RFE process allows for submission of a more complete affidavit and/or additional documentary evidence after filing a basic VAWA self-petition or U visa application. The RFE process also helps the victim and the advocate/attorney better understand which eligibility criteria have been sufficiently met by the skeletal application and what additional proof is needed to win approval of the victim's application. The RFE serves as a point of reference by narrowing the advocate's or attorney's focus, so they can invest their time and resources on collecting the exact information that the VAWA Unit needs to approve the victim's application.

Benefits of Filing Early

- **Protection from deportation:**
 - *If the client is in removal proceedings*, the victim's attorney can file the copies of USCIS receipts with immigration court in order to stay, continue, or administratively close the removal proceedings. The filing of a VAWA self-petition or U visa application with USCIS enters the victim's case into the special VAWA confidentiality computer system managed by DHS, which protects against disclosure of any information about the case to anyone, with very limited exceptions.²
 - *If the client is not in removal proceedings*, his/her application will be entered into a special computer system that is managed by DHS, which protects the client from future immigration enforcement actions and protects the information contained in the file from disclosure.³ This is particularly crucial in cases where the advocate or attorney is concerned that the client's perpetrator may retaliate against the client for seeking an order

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² Leslye E. Orloff, *VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, Chapter 3 in *EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT MANUAL*, NIWAP (July 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/vawa-confidentiality/vawa-confidentiality-chapters/Ch3-SA-Man--Confidentiality-MANUAL-ES.pdf/view>.

³ *Id.*

of protection, child support, custody, etc., by triggering an immigration enforcement action against the client.⁴

- **Protect qualifying relatives who are in danger of aging out:** Children who will turn 21 will maintain their eligibility if the U visa application is filed before their 21st birthday.
- **Earlier access to work authorization:** VAWA self-petitioners, who have concurrently filed applications for lawful permanent residency and who have been found by USCIS to have presented a prima facie case, will be granted work authorization as soon as 3 months after filing their VAWA self-petition.
- **Earlier priority date for VAWA self-petitioners who are or were married to a Legal Permanent Resident.** For VAWA self-petitioners whose abuser is a Legal Permanent Resident (LPR), the date on which their self-petition is received by USCIS becomes the “priority date” assigned to their immigration case. For these VAWA self-petitioners with LPR abusers, once their cases are approved, the victims must wait in line to file for lawful permanent residency based on the approved VAWA self-petition. The victim’s place in this line is set by the date on which the VAWA self-petition was filed, the priority date. Therefore, the sooner the victim files the VAWA self-petition, the earlier the victim’s application for lawful permanent residency can be filed.
- **Obtain a driver’s license or state identification card (depending on the state).**⁵ In most states, VAWA self-petitioners and U visa applicants gain access to documentation needed to apply for a driver’s license when they receive deferred action status and work authorization, or once their VAWA self-petition or U visa case has been approved. The earlier the victim files an immigration case, the sooner the victim will receive an approval, deferred action status and work authorization. In at least one state, Maine, a victim can obtain a driver’s license upon receiving notice from USCIS that the victim has established a prima facie case.
- **Access to health care and/or other public benefits depending on the state in which the victim resides.** Filing a case in which the victim is seeking immigration relief sets the victim on a path to lawful presence or to becoming a qualified immigrant, which increases their access to federal and state funded public benefits.
 - VAWA *self-petitioners* and their children included in the self-petition become qualified immigrants eligible for public and assisted housing, post-secondary educational grants and loans, and other federal public benefits. Child VAWA self-petitioners and children included in their parent’s self-petition also become eligible for food assistance through SNAP. In addition many states provide qualified immigrants access to prenatal care and child health care.⁶

⁴ Krisztina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014), available at <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf> (When victims with pending VAWA and U visa cases are subjected to immigration enforcement the percent of the cases in which the perpetrators are involved in triggering these enforcement actions against victims is 38.3% for VAWA self-petitioners and 26.7% for U visa applicants).

⁵ Angela Baker & Leslye Orloff, *Acceptable Forms of Identification for State Driver’s License/Identification Card*, NIWAP (March 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>.

⁶ See Cecilia Olavarria, Amanda Baran, Leslye Orloff & Grace Huang, *Public Benefits Access for Battered Immigrant Women and Children*, Chapter 4.2 in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS*, NIWAP (2013), available at http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf/view.

- *U Visa applicants* and their children included in their application become lawfully present for purposes of accessing prenatal care and child health care when their U visa application is conditionally approved and they receive deferred action status.⁷
- **Improved outcomes in the victim’s family law cases** – For victims seeking remedies in family court cases (e.g. protection orders, custody, child support), best practices for successful case strategy is as follows:
 - Prior to serving the perpetrator with court papers in the family court case, the victim files a skeletal VAWA self-petition or U visa application, so that the victim’s case is entered into the special VAWA confidentiality computer system managed by DHS, which protects him/her from DHS enforcement actions.
 - If there is a likelihood of a contested family law case, the ideal case posture would be to have received DHS approval of the victim’s VAWA self-petition or conditional (wait-list) approval of the victim’s U visa application before the case goes to trial. As of December 2013, the wait times from filing to approval is approximately 7 months, which includes the time provided for the victim to respond to RFEs. With approval, the victim receives deferred action status and is able to obtain work authorization.
 - Once a victim receives a prima facie determination or approval of a VAWA self-petition or receives conditional approval of a U visa application, the victim’s family law attorney is in a better position to counter the various strategies perpetrators use in family court proceedings, such as raising the immigration status of the victim to gain advantages in custody, protection order, divorce, maintenance, or child support issues.⁸
 - Expediting Immigration Case Adjudications: Perpetrators in custody and other family court cases can be extremely aggressive in using the victim’s lack of legal immigration status to bias courts against the victim. In some cases, these tactics escalate into a crisis that places the victim and/or her children in jeopardy (e.g. in one case, a trial court ordered the victim and her children with pending U visa applications to self deport). When the victim swiftly filed a VAWA or U visa immigration case and when counsel has already responded to any RFEs issued and the case is awaiting adjudication, it is possible in some circumstances to seek an expedited adjudication of the VAWA or U visa case. The VAWA Unit expedite factors are as follows:
 - Severe financial loss to company or individual;
 - Extreme emergent situation;
 - Humanitarian situation;
 - Department of Defense or national interest situation;
 - USCIS error; and
 - Compelling interest of USCIS.

⁷ For a state by state information on immigrant access to public benefits and health care see Leslye Orloff, Aditi Kumar & Krisztina Szabo, *Public Benefits Toolkit*, NIWAP (March 2014) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/Public%20Benefits%20ToolKit%20FINAL%203%2024%2014%20leo.pdf/view>.

⁸ For detailed information on best practices and strategies representing immigrant victims in custody cases see Carole Angel, Soraya Fata, Rocio Molina, Benish Anver & Leslye E. Orloff, *Justice for All: How Attorneys Can Successfully Win Custody Cases for Immigrant Survivors When There is a Clash of Laws, Cultures, Custody and Parental Rights*, pending publication as a chapter in: CIVIC RESEARCH INST., DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY LEGAL STRATEGIES AND POLICY ISSUE, VOL. 2 (Mo Therese Hannah, Ph.D. & Barry Goldstein, J.D., eds., 2014) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/family-law-for-immigrants/custody/Obtaining-Custody.pdf/view>; Soraya Fata, Leslye E. Orloff, Andrea Carcamo-Cavazos, Alison Silber & Benish Anver, *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 FAMILY LAW QUARTERLY 191 (Summer 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/ABAFLO-Mixed-Status-Custody.pdf/view>; Leslye E. Orloff & Andrea Carcamo Cavazos, *Family Court Bench Card on Issues That Arise in Custody Cases Involving Immigrant Parents, Children and Crime Victims*, NIWAP (Oct. 13, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Custody-Issues-Bench-Card.pdf/view>.

- **Opportunity to establish rapport with the client and have a more complete victim’s affidavit** – Often times, clients are reluctant to disclose detailed information about all of the forms of abuse the victim has suffered. This can happen because: the client may not understand why sensitive information is needed by DHS; the client may be too embarrassed to reveal the information; the client may struggle to overcome or may be violating significant cultural or religious taboos, norms, or customs; and/or because the client has not yet developed a trusting relationship with the advocate or attorney. Using the RFE process helps because advocates and attorneys can:
 - Show the RFE to the client to help the client understand what information is needed by DHS and why.
 - Gain more time between the date of filing though the time they respond to any RFEs, and build a trusting relationship so that the client feels comfortable to share needed information.⁹
 - Use this time to implement a trauma-informed approach when working with the client, especially in drafting the client’s affidavit.¹⁰

The RFE Process in Detail – How to Use the RFE Process to Your Client’s Benefit

1. File a skeletal application and keep USCIS receipt notices
 - a. Skeletal application must include:
 - i. The completed and signed USCIS forms
 1. The VAWA self-petition, Form I-360
 2. The U visa application, Form I-918, Form I-918A (if the victim is including children in the application) AND the I-918B certification form,¹¹
 - ii. Fees or fee waivers (if applicable),¹²
 - iii. Some evidence in the victim’s affidavit or documentary evidence including in the application to preliminarily satisfy each element of proof that is required to win approval of the application.¹³ At this stage, the victim’s affidavit can be very short and basic, as a more complete and detailed affidavit can be provided later.
 - b. It is good practice for the attorney or advocate to enumerate in the cover letter what is missing (such as police reports, identity documents, evidence of residence/good faith marriage/good moral character/harm, etc.) and to note that these documents are forthcoming.
2. After the application has been filed, continue working with the client to complement the skeletal application. It is important for attorneys and advocates to anticipate the RFE and work on gathering the necessary evidence or materials in advance, so that the RFE can be answered as soon as it is received.

⁹ For tips and tools to create strong affidavits and applications while helping clients heal, see *Trauma-Informed Care: Promoting Healing While Strengthening Survivors’ Immigration Case*, NIWAP (2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/webinar-5-trauma-informed-care>; *Trauma-Informed Care, Part 2: The Nuts and Bolts of Immigration Story Writing Intervention*, NIWAP (2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/march-19-2014-trauma-informed2>.

¹⁰ *Id.*

¹¹ U visa applications without Form I-918B will be returned as denied.

¹² Keep in mind that neither U visa or VAWA forms have fees. Only Form I-765, Application for Employment Authorization, and Form I-485, Application to Register Permanent Residence or Adjust Status have fees and fee waivers.

¹³ For a full discussion of application requirements for VAWA self-petitions, see Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, & Alicia (Lacy) Carra, *Preparing the VAWA Self-Petition and Applying for Residence*, Chapter 3.3 in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS*, NIWAP (2013), available at <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/articles/CH3.3%20BB%20VAWA%20self-petition%20with%20disc%207.10.13.pdf/view>. For a full discussion of application requirements for the U visa application see, Leslye Orloff, Carole Angel & Sally Robinson, U-Visas: Victims of Criminal Activity, Chapter 10 in *EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT*, NIWAP (2013), available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view.

- a. RFEs have 90 days response times from the time they are issued and extensions are not available. Therefore, it is important for the advocate or attorney to proactively continue working on the client's case after the skeletal application has been filed.
3. Once the RFE arrives from USCIS, attorneys and advocates have 90 days from the RFE's issue date to answer it by sending in the missing information. Advocates and attorneys should aim to respond RFEs as soon as possible instead of waiting out the 90 days to avoid unnecessary delays in adjudication. The more swiftly the attorney or advocate is able to complete the response to the RFE the more quickly the victim will receive a final adjudication of the VAWA self-petition or U visa application. If the attorney is able to respond to the RFE within 30 days of receiving it, as opposed to 90 days, the victim could receive an approval in 5 months instead of 7 months.