



Intro to Immigration Law

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Part 1: Overview

Immigration Overview

What do Immigration Lawyers Do?

- 1. Visas
- 2. Green Cards
- 3. Asylum
- 4. US Citizenship
- 5. Removal Defense
- 6. Other Random Things



1. Visas

- What are they?
- How do I get one?
- Which one is right for me?



The visas (most of them)

- A visas: Ambassadors and Diplomats
- B visas: Visitors for Business or Pleasure
- E visas: Traders and Investors
- F visas: Students
- G visas: International Orgs and NATO
- H visas: Temporary Employees
- I visas: Journalists and Media Workers
- J visas: Exchange Visitors
- K visas: Fiance(e)s
- L visas: Intercompany Transferees
- M visas: Non-academic Students
- O visas: Extraordinary Ability “Superstars”
- Q visas: International Cultural Exchange Visitor
- R visas: Religious Workers
- S visas: “Snitch” visas
- T visas: Trafficking victims
- U visas: Crime victims
- VAWA: Domestic Violence victims.

3. Asylum

- What is it?
- What do you need to get it?
 - “Well-founded FEAR”
 - Of “Persecution” on account of your:
 - Race,
 - Religion,
 - Nationality
 - Political Opinion,
 - Particular Social Group
- Beware of the Bars!
 - One-Year Deadline.
 - Other Bars.



4. US Citizenship

- Who can apply?
- How do you get it?
 - Must have valid green card for 5 years.*
 - Must take and pass citizenship test.
 - Must have “good moral character.”
 - Must speak basic English.
 - Must swear loyalty to the US.



5. Removal Defense

- What is it?
- More people were deported during fiscal year 2011 than in any year in US history. (396,906)
- If detained by ICE, find a lawyer immediately!



6. Other Random Things:

1. DACA (Deferred Action):

- For youth to apply for work authorization if they:
 - 1. Arrived before they were 16.
 - 2. Have lived in the US at least the past 5 years.
 - 3. In school or graduated.
 - 4. No Criminal / Gang / Bad history.

2. Work Authorization.

3. FOIA Requests.

4. Prosecutorial Discretion:

To help people in Removal Proceedings with no other good form of relief.

5. Bond Hearings:

- For detained individuals to get out of custody if:
 - 1. Eligible for Bond;
 - 2. They are not a flight risk; and
 - 3. They are not a danger to the community



Part 2: U-Visas

The Visa for Victims

U-Visa: The Visa for Victims

- 1. Visa for victims of qualifying crimes in US,
- 2. Who are “helpful” to law enforcement,
- 3. Who possess information about the crime,
- 4. Who suffer “substantial physical or mental abuse” through their victimization, and
- 5. Who are “admissible” to the US (or eligible for a waiver).

U-visa: The point

- 1. To protect the immigrants who have the courage to come forward and report and assist in the prosecution of crimes.
- 2. To enhance law enforcement's ability to investigate and prosecute crimes.

1. Qualifying Crimes

- Abduction, Abusive Sexual Contact, Blackmail, **Domestic Violence**, Extortion, Female Genital Mutilation, **Felonious Assault**, Hostage, Incest, **Involuntary Servitude**, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trader, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, **Attempt, Conspiracy or Solicitation**; and **Other Related Crimes**

2. Qualifying Victims

- Direct vs. Indirect Victims:
 - Direct Victims: people who are actually the victims of crimes.
 - Indirect Victims: Spouses, Kids (under 21), Parents (if victim is a child), and Siblings (if victim is a child) if they meet all the other requirements.
 - But: can't be the perpetrator (e.g. an abusive spouse cannot be eligible).
- Remember to ask potential clients about everyone in their family!

3. Helpfulness (the Cert.)

- Must have a law enforcement official certify that the victim:
 - Has been helpful,
 - Is being helpful, or
 - Will likely be helpful...
- In the investigation and prosecution of the crime.
 - Form I-918 Supplement B

4. Substantial Abuse

- Victim must have suffered “substantial physical or mental abuse.”
- In their declaration, explain:
 - The nature of the injury;
 - The severity of the criminal act;
 - The severity of harm suffered;
 - The duration of the harm felt;
 - Any permanent or serious harm;
- Get medical records, psychological evaluations, affidavits from friends, and other evidence to show the harm suffered.

5. Admissibility (or Waiver)

- Remember: to be eligible for any visa you must be “admissible.”
- Look to INA § 212 for all grounds of inadmissibility including:
 - Immigration Violations including (1) being present in the United States without permission or parole (also known as entering without inspection or EWI), (2) failure to attend removal proceedings, (3) misrepresentation or fraud for an immigration benefit, (4) alien smuggling, (5) civil document fraud, (6) prior removals, and (7) unlawful presence,
 - Health Related Issues including (1) communicable diseases, (2) physical or mental disorders that may pose a threat, and (3) drug abuse or drug addiction,
 - Criminal Issues including (1) crimes involving moral turpitude, (2) drug convictions, (3) a reason to believe the applicant trafficked (sold or transported) drugs, (4) prostitution,
 - Other: (1) security or terrorism issues, (2) public charge, (3) false claims to U.S. citizenship, (4) polygamy, (5) unlawful voting.
- The U-visa can waive all of these (except terrorism, extrajudicial killings, and nazi genocide)... but be careful! You must convince CIS that waiving the grounds is “in the national or public interest of the United States,” and the waiver is discretionary!
- Fill out Waiver on I-912.

6. How to Apply?

- Step One: The Certification.
 - What you need?
 - Form I-918 Supp B (to be signed).
 - Police Report.
 - Medical Records.
 - Cover Letter
- Step Two: The Visa.
 - Everything above (including the signed I-918 Supp B);
 - A long detailed declaration of everything;
 - All the U-visa forms + waivers of all grounds of Inadmissibility;
 - Mail to Vermont Service Center.

7. Other options:

- VAWA: Violence Against Women Act
 - Don't need the Police Certification.
 - Need abuse from a USC or LPR spouse, parent or child.
 - Subjected to “battery or extreme cruelty” by USC or LPR.
 - Lived together w/ abuser.
 - Married abuser in “good faith.”
 - Good moral Character.
 - Note! – VAWA can't waive as many grounds of inadmissibility as the U-visa can. Specifically, VAWA can't waive the Permanent Bar, unless the trip(s) outside the US were “substantially related” to the abuse.

- T-visas: For Victims of Employment related or Sex related Human Trafficking.



Part 3: Asylum

Asylum, Withholding of Removal, and CAT

The Point:

- To protect refugees fleeing persecution.
- What is a “refugee”?:
 - any person who is outside [their] country [...] and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.
 - INA § 101(a)42
- Historical Context?

Questions for my lawyer:

- Am I eligible for Asylum?
- What are the risks?
- What are the benefits?
- What are the costs?
- What would you recommend?
- How do I apply?

Asylum Eligibility

I am a “refugee” if:

- 1. I have a “Well Founded Fear”
- 2. of “Persecution”
- 3. “On Account of”
- 4. my Race, Religion, Nationality, Political Opinion or my membership in a Particular Social Group.

1. Well-Founded Fear

- Burden of proof on Applicant. (If applicant can show “Past Persecution” the burden shifts).
- Subjective Component: Applicant must actually fear going back. Shown through “applicant’s credible testimony that he/she genuinely fears harm.”
 - Tip: Beware of your client’s credibility! A negative credibility finding can kill your case. Practice before your interview! If you don’t believe your client, don’t take the case!
- Objective Component: Applicant’s fear must be objectively “reasonable.” Established by documented evidence of country conditions.
- Must show at least a 10% chance of persecution (*INS v. Cardoza-Fonseca*).

2. Persecution

- Tip: Persecution is very fact-specific. Read caselaw and review facts carefully before submitting borderline claims!

- These likely are Persecution:
 - Physical Violence like Rape, Torture, Assault, Beatings etc.
 - Threats of serious harm or death.
 - Detention.
 - Severe psychological / emotional harm.
 - Severe discrimination / harassment.
 - Substantial economic deprivation.

- These likely are NOT persecution:
 - Threats that are anonymous.
 - Property Damage.
 - Legitimate Prosecution.
 - Non-severe harassment, discrimination, or economic deprivation.

3. “On Account of”

- The persecution must be “on account of” one of the 5 grounds.
 - Ground must be “at least one central reason” for persecuting the applicant.
 - REAL ID Act §101(a)(3)
- “Nexus.”

4. The Five Grounds:

- Race,
- Religion,
- Nationality,
- Political Opinion,
 - First, prove you have the opinion. Second prove that you were persecuted because of it.
 - “Imputed Political Opinion” = OK.
 - “Neutrality” / refusing to take sides, potentially works as political opinion.
- Membership in a Particular Social Group:
 - See Next Slide

5. Particular Social Group

- PSG Requirements:
 - Group must be based on an “immutable characteristic” which is so “fundamental” to the applicant’s identity or consciousness that he /she should not be required to change it.
 - See *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)
 - So it can’t be a voluntary association w/ the group.
 - Particularity Requirement: Group must be “particular” or “sufficiently distinct” from society as a whole that the group is recognizable. (also called “social visibility requirement.”)

6. Examples of PSG:

- Family.
- Sexual Orientation / Sexual Identity.
 - See *Hernandez-Montiel* 225 F.3d 1084. (9th Cir. 2000)
- Former occupation / status.
- Gender based claims e.g.
 - Female Genital Mutilation cases,
 - Domestic Violence cases:
 - “Mexican woman who are viewed as property by virtue of their positions within a domestic relationship” can form a cognizable social group.
- Young men who have been subjected to gang recruitment and have refused gang membership is NOT a social group.

7. BARS to Eligibility

I am NOT eligible for Asylum if:

1. I failed to apply within one year of my last arrival into the US.*
 - Unless I can show that either a “material change in circumstances” or “extraordinary circumstances” caused the delay in filing.
2. I have acquired legal residence or citizenship in another safe country.*
3. I have participated in the persecution of others...
4. I was convicted of a “Particularly serious crime.”
5. I “materially supported” a terrorist activity / organization.
6. I am a risk to the security of the United States (a terrorist).
7. I previously submitted a “frivolous” asylum application.

1. *These are NOT bars to Withholding of Removal.

8. Withholding and CAT

- Withholding of Removal:
 - Higher burden of proof.
 - Must show “clear probability” that “life or freedom is threatened” on account of R,R,N,PSG, or PO.
 - Means greater than 50%.
 - Not as good as asylum, b/c never get green card. Can’t travel, can’t petition family members etc.
 - Can apply for work authorization.
 - Some bars still apply.
- Convention Against Torture:
 - If you can show it is “more likely than not” that you’ll be tortured, you cannot be removed to your home country.
 - No Nexus required.
 - No Bars.

9. Asylum Process.

- Step One: Affirmative Application
 - Send the complete asylum application (form I-589 and all other evidence), to USCIS.
 - USCIS will send interview notice and a fingerprints appointment.
 - Interview at SF Asylum Office.
 - If AO grants application you win! If not, you'll be referred to Immigration Court.
- Step Two: Defensive Application in Immigration Court
 - Talk to someone w/ experience in Immigration Court.
 - Prepare a brief, and prepare your client for oral testimony including cross-examination. Consider calling expert witnesses or submitting any additional evidence.
 - If you win, you get asylum. If you lose, you will be ordered deported.
 - You may appeal the decision to the BIA. (and later to the 9th Circuit).

10. Risks vs. Benefits

- If you lose, you'll be ordered deported (to a country where you face danger).
- If you win, you'll be able to apply for:
 - work authorization,
 - Social Security card,
 - Drivers License
 - spouse + children under 21 can join you, and
 - Green Card after one year.

11. Should I apply?

- Only if you have a winnable case!
- Only if you are within the 1 year filing deadline, or you have an exception to the rule.
- Only if you understand the risks.
- Only if you're not eligible for another, less risky form of immigration relief (e.g. a U-visa or a green card).



Q & A

Thanks everybody!

Extremely Helpful Resources:

- Center for Gender and Refugee Studies at UC Hastings
 - www.cgrs.uchastings.edu
- Ninth Circuit Immigration Outline
 - www.ca9.uscourts.gov
- AILA
 - www.aila.org
- The Immigrant Legal Resource Center
 - www.ILRC.org