



# Immigration Relief for Victims of Abuse and Serious Crimes

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## Catholic Charities Immigration Legal Services

This project was supported by Grant No. 2011-WR-AX-0004 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



# Catholic Charities Immigration Legal Services

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## Catholic Charities Immigration Legal Services

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Our services include consultations and legal representation to low-income immigrants, focusing on the most vulnerable populations.

We take many different types of cases, the most common being:

- U Visas for Victims of Serious Crimes,
- Family-Based Petitions,
- Adjustment of Status to Lawful Permanent Residence,
- Consular Processing,
- Self-petitions under the Violence Against Women Act,
- Deferred Action for Childhood Arrivals, and
- a small number of Removal Defense cases.

We provide frequent, free community education outreach. During the last year, we served more than 4,500 people with outreach and direct legal services.



# Department of Homeland Security

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- In March 2003, INS functions were transferred to the Department of Homeland Security (DHS)
- Three different agencies under DHS handle immigration:
  - USCIS: Citizenship & Immigration Services
  - USCBP: Customs & Border Protection
  - USICE: Immigration & Customs Enforcement



# Other Agencies Involved

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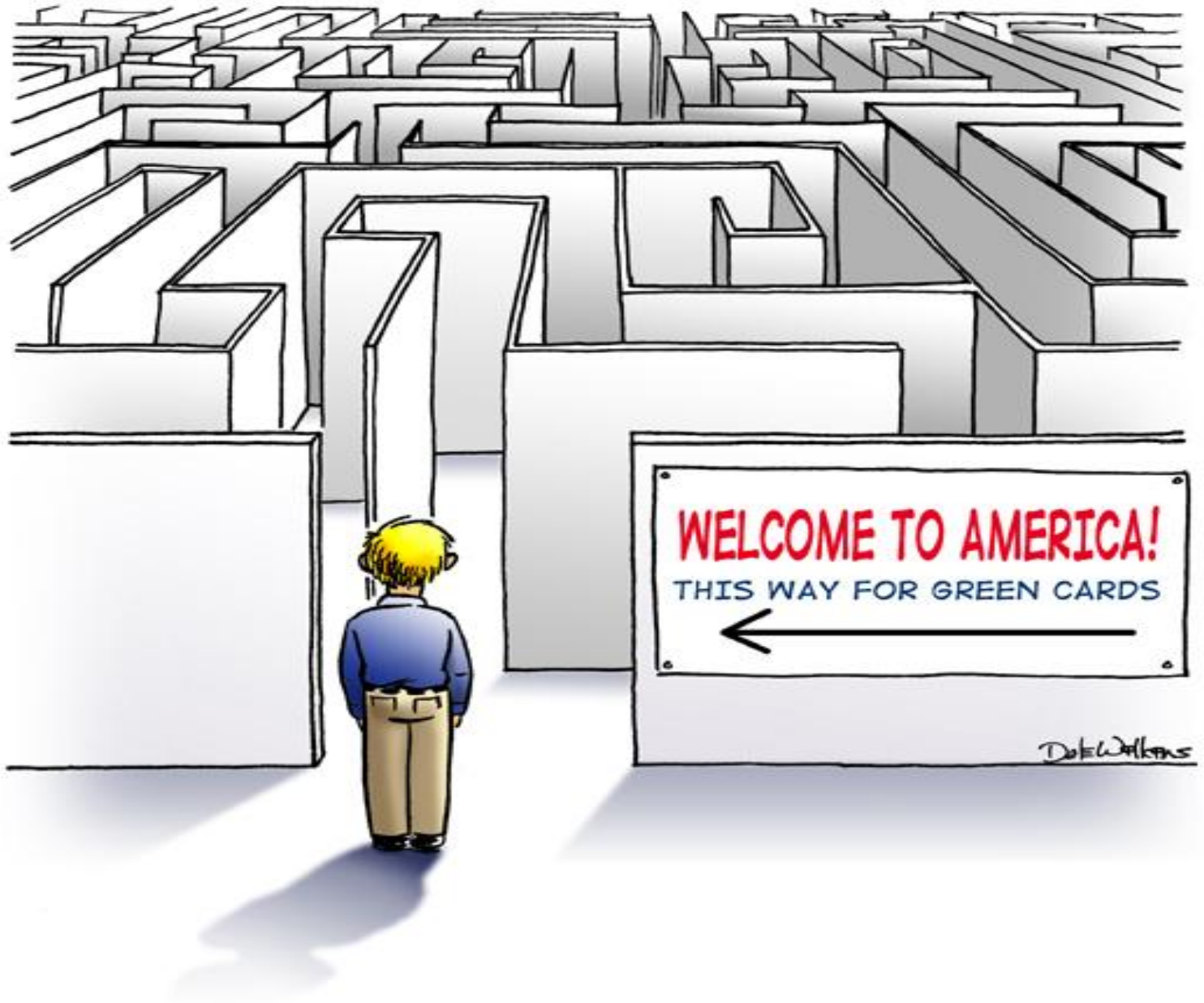
- Department of Justice: Executive Office for Immigration Review (EOIR)
- Department of State (incl. U.S. Consulates)
- Department of Labor
- Department of Health and Human Services

# Ways to Immigrate to the U.S.

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Includes:

- Family-Based Immigration Petitions
- Political Asylum
- Petitions under the Violence Against Women Act
- Special Immigrant Juvenile Status
- U Visas for Victims of Certain Crimes (10,000)
- Temporary Visas (e.g. Employment, Student, Visitor)
- "EWI" (Entry without inspection)
- Certain Defenses from Removal



# Categories of persons in the U.S.

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- **United States Citizens (USCs)**
  - By birth in the U.S. or to U.S. parent
  - By naturalization or parent's naturalization
- **Immigrants**
  - Lawful permanent residents (green card holders)
- **Nonimmigrants**
  - Asylees and refugees
  - Tourists, students, U and T visa holders, and other temporary stay visas
  - Persons here without authorization through unlawful entry or overstay of nonimmigrant status



# Differences between USC and LPR

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- USCs can vote; LPRs cannot
- USCs can live outside the U.S.; LPRs must live within the U.S. at least 6 months out of every year to retain residency (with exceptions)
- LPRs can be deported; USCs cannot
- USCs can petition for more family members than LPRs. Certain family members of USCs get visas faster than family members of LPRs.



# Family Based Immigration

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- There are 480,000 visas available each year

## Basic Terms:

- Petitioner—USC or LPR
- Beneficiary—person seeking to immigrate

# Family Definitions

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- Spouse—valid marriage (as recognized by current federal law)
- Parent—includes step-parent or adoptive parent
- Brother/Sister—at least one parent in common
- Child—unmarried and under 21
  - Biological
  - Stepchildren (under 18 when parents marry)
  - Adopted (adopted before 16 and legal custody and shared residence for 2 years after adoption)

## Update: Same Sex Marriages Now Valid for Immigration

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- 1/26/2013: Supreme Court decision in *United States v. Windsor* found the Defense of Marriage Act (DOMA) unconstitutional.  
→ Legally married same-sex spouses qualify as spouses under immigration law.  
(Currently CA, CT, DE, IA, MA, MD, ME, M, NH, NY, RI, VT, WA and the District of Columbia., as well as fifteen countries, allow same-sex marriage.)

**Impact: Every aspect of immigration law in which a marital relationship has significance, including family-based processing and waivers, VAWA, U Visa and T Visa**

# Family Based Immigration (cont.)

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## ○ **USCs May Sponsor:**

- Spouse
- Parents
- Children  
(unmarried, under 21)
- Adult Sons and Daughters (married or 21 or older)
- Siblings

## ○ **LPRs May Sponsor:**

- Spouse
- Unmarried children  
(any age)

# Family Based Immigration

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- Family visa process is a 2-step process:
  - First step: USC or LPR relative (petitioner) files I-130 petition for foreign family member (beneficiary)
  - Second step: Beneficiary applies to immigrate either in U.S. through adjustment of status or at U.S. consulate in home country through consular processing

I-130



I-485

- The time between the first and second step will vary depending on several factors

# Preference System

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- Congress has designated those groups to whom it gives preference in immigrating to the U.S.
  - A beneficiary is given preference depending on his/her familial relationship to the petitioner, the country of origin, and the status of the petitioner

# Preference System

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- Immediate Relatives
    - spouse of USC
    - parent of USC (if child over 21)
    - unmarried child under 21 of USC
  - 1st = unmarried child over 21 of USC
  - 2A = spouse or unmarried child under 21 of LPR
  - 2B = unmarried child 21 or over, of LPR
  - 3rd = married child of USC
  - 4th = sisters/brothers of USC
- \*If NOT an immediate relative, must wait in line until priority date current and must maintain relationship with petitioning family member



# State Department Visa Bulletin

## Visa Bulletin December 2013

	<b>Other Countries</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
F1	15NOV06	15NOV06	15NOV06	22SEP93	01JUL01
F2A	08SEP13	08SEP13	08SEP13	01SEP13	08SEP13
F2B	01MAY06	01MAY06	01MAY06	01APR94	22MAR03
F3	08MAR03	08MAR03	08MAR03	01JUN93	22JAN93
F4	08SEP01	08SEP01	08SEP01	22OCT96	01JUN90



# Other Recent Developments

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1. Provisional Waivers of Unlawful Presence
2. Violence Against Women Act (VAWA) Reauthorization 2013
3. Deferred Action for Childhood Arrivals (DACA)
4. Comprehensive Immigration Reform and S.744
5. Oregon: Tuition Equity, Driver Card



# VAWA Reauthorization 2013

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- Maintains protections to immigrants
- U Status
  - Age-out protection
  - New covered crimes: Stalking, Fraud in Foreign Labor Contracting
- VAWA
  - 204(I) coverage
- Both
  - Public charge ground not applicable



# VAWA Reauthorization 2013

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- Bigamy exception applies to I-751 waivers based on battery/extreme cruelty
- Fiancée petitioners subject to criminal penalty for intentional failure to make background disclosures, which now include additional violent history info

# What is DACA?

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- Deferred Action for Childhood Arrivals: DACA
  - June 15 2012: The Obama Administration announced a new policy to stop deporting individuals who arrived in the United States as children.
  - August 15: USCIS began accepting requests for DACA through a discretionary process by which eligible applicants may receive deferred action and work authorization, valid for two years and granted on a case-by-case basis.

# Eligibility Requirements

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- At least 15 years old;
- Born on or after 6/16/1981;
- Came to the United States before age 16;
- Continuously resided in the U.S. since 6/15/2007;
- Physically present in the U.S. on 6/15/2012;
- Unlawful status as of 6/15/2012;
- Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors; and
- Do not otherwise pose a threat to national security or public safety.



# Important Points

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- Deferred Action = A discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.
- Does not confer lawful status.
- Eligible for a **work permit**.
- Discretionary: DHS can terminate or renew deferred action at any time at the agency's discretion.
- Temporary: Does not provide a path to citizenship. Only Congress, acting through its legislative authority, can confer these rights.



# USCIS Data on DACA Sept. 2013

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- 455,455 Approved
- 9,578 Denied
- 6,660 approved DACA applicants from Oregon; also ranking Oregon as fourteenth.



# CIR Legislative Overview

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- 4/17/13, Senate Bill 744 introduced
- 5/21/13, Senate Judiciary Committee completed markup/amendments and successfully voted the final bill as amended to the floor of the Senate – major provisions retained.
- 6/27/13, Passed by Senate with a vote of 68 to 32
  - Corker/Hoeven Amendment – doubles number of border agents (for total of 40K) and adds \$30 billion for border security and fencing



# CIR Continued

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- House must also act
- Conference Committee
- Back to House and Senate
- President signature
- One year for regulations to be written



# Oregon Updates

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- Oregon Tuition Equity
- Oregon Senate Bill 833- Granting driving privileges (driver “card”) to people who cannot prove legal status, must meet other criteria- up for vote in November 2014

# (Back to Family-Based) Important Points

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- There is no benefit to a pending I-130
  - It does not provide legal status
  - It does not provide work authorization
  - Just holds beneficiary's place in line for a visa

# Power and Control in the Immigration Process

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- I-130 belongs SOLELY to the petitioner
  - Petitioner can withdraw the I-130 at any time
  - Relationship must be intact at the time that the beneficiary applies for residency

# Domestic Violence is...

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- A pattern of behavior used to establish power and control over another person through fear and intimidation, often including the threat or use of violence
- We use the term “child victimization” to refer to child victims of domestic violence.
- Immigration defines domestic violence as battery or extreme cruelty.



# Forms of Abuse

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- Emotional
- Physical
- Sexual
- Economic
- Intimidation and Threats
- Social
- Stalking
- Manipulation of Children
- Many more



# Obstacles for Immigrant Victims

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- Language and cultural barriers
- Resources do not meet their cultural needs
- Cultural isolation and outcasting
- Perception of law enforcement and legal system
- Fear of deportation and/or returning to home country
- Fear of losing children



# Immigration Remedies for Victims of Abuse and Crime

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*Include:*

- **VAWA self-petitions**
- **U visas for victims of serious crimes**
- **T visas for victims of trafficking**
- **Special immigrant juvenile status (SIJS)**
- **Gender-based asylum**
- **Cancellation of removal under VAWA**
- **I-751 Waiver based on Abuse**

# The Violence Against Women Act (VAWA) 1994, 2000, 2005 and 2013

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- Congress recognized that immigration laws were being used as tools of power and control over immigrant victims of domestic violence
  - Under traditional family-based immigration laws, immigrant victims' status often depends on their relationship to their USC or LPR abuser
- The I-360 VAWA self-petition takes the place of the I-130

# Who Qualifies for VAWA Self-Petitioning?

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- Abused spouse of USC or LPR
- Non-abused spouse of USC or LPR whose child has been abused by the USC or LPR spouse, even if child not related to abuser
- Abused child of USC or LPR
- Abused parents of adult USC son or daughter



# VAWA Requirements

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- Battery or Extreme Cruelty;
- Qualifying Relationship (Abuser is Spouse, Adult USC Child, Parent);
- Abuser is LPR or USC;
- Joint Residence;
- Good Faith Marriage (for spouses)
- Good Moral Character (assumed under age 14)

# VAWA Exceptions

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You can still self-petition up to 2 years after:

- Death of USC abuser
- Termination of marriage if connection between termination and abuse
- Loss of immigration status of LPR abuser, if loss related to domestic violence
- Child victims can self-petition up to age 25 if abuse was a central reason for failure to file before age 21
- Victim of bigamous marriage may self-petition



# Documentation is Required for Each Element

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- Any credible evidence standard
  - How would you document “Battery or Extreme Cruelty”?
  - How would you document a good faith marriage and joint residence?



# VAWA- Important Points

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- Confidentiality of VAWA self-petitions
- There are no immigration or criminal consequences to the abuser by filing a VAWA self-petition
- The relationship between the immigrant and the abuser does not need to (but may) be intact during the application process
- Denied cases are generally not forwarded to ICE

# Benefits of VAWA Approval

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- Limited Public Benefits (\*incl. applicants with a finding of Prima Facie eligibility)
- If otherwise eligible, ability to adjust status to lawful permanent resident by herself (husband does NOT go to interview)
- Children are included on parent's self-petition (no separate petition is required)
- Deferred Action



# Deferred Action Status

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- Generally protects an individual from being placed in removal proceedings
- Does NOT mean LPR status yet and travel outside the U.S. is risky because the person does not have permission to re-enter the U.S.
- Qualifies approved self-petitioner for employment authorization

# After the I-360 is Approved

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- PERMANENT RESIDENCE *IF ELIGIBLE*
- Remember that the I-360 takes the place of the I-130 – therefore:
  - For spouses & children of USCs (immediate relatives) & derivatives – there is no waiting period before they may file for permanent residence
  - For spouses & children of LPRs and their derivatives – must wait until priority date is current to file for permanent residence

# What is the U Visa?

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- A temporary form of legal status available to victims of certain serious crimes who have cooperated with law enforcement and suffered as a result of the crime
- INA section 101(a)(15)(U)

# U Visa Purposes

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- Public Safety:
  - Encourage reporting and other cooperation
  - Assist law enforcement in the investigation and prosecution of serious crimes
- Humanitarian: help domestic violence and other crime survivors

# Eligibility Requirements

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- Victim of Qualifying Crime
  - Includes immediate relative of deceased victim of manslaughter or murder
  - Includes parent of a USC victim
- Has information about the crime
- Helpful in the Investigation AND/OR Prosecution
- Substantial suffering as result of crime
- Law enforcement must certify helpfulness
  - Not responsible for determining suffering or other eligibility for the U-Visa

# How the U Visa is Different from VAWA

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- There is no requirement of an intimate or familial relationship between the perpetrator and the victim
- There is no requirement that the perpetrator be a USC or LPR

# Criminal Activity for U Visas

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- Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, FGM, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law.

# Helpful to Law Enforcement

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- Victim **has been, is being, or will be helpful** to a law enforcement agency
  - Helpfulness can be at any point in the investigation and/or prosecution
- Under 16 (on date of qualifying criminal activity), incompetent, or incapacitated: parent, guardian, or “next friend” may provide the assistance



# Certifying Agency

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- Federal, state or local law enforcement agency, prosecutor, judge, or other authority w/responsibility for investigation or prosecution of qualifying crimes.
- Child Protective Services, Equal Employment Opportunity Commission, and Dept. of Labor may also certify

# Benefits of the U Visa

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- Nonimmigrant status in U.S. for up to 4 years
- Waiver for (majority) inadmissibility issues available for U Nonimmigrants under INA 212(d)(3)- discretionary
- Employment authorization
- Possibility of nonimmigrant status for family members
- Possibility of applying for permanent residence under INA 245(m)

# Derivative Beneficiaries

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- Adult U Visa applicant may include:
  - Spouse (not abuser)
  - Children (unmarried, under 21 at time of filing I-918)
- Minor (under 21) applicant may include:
  - Spouse (not abuser)
  - Parent (not abuser)
  - Siblings (under 18 at time of filing)
- Derivatives may be living outside of U.S.



# T Visa

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- A form of temporary immigration relief available to victims of severe forms of human trafficking.
- INA section 101(a)(15)(T)

# Definition of a Severe Form of Trafficking

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- Sex trafficking: a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such act is under 18
- Labor trafficking: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery



# Requirements for Eligibility

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- Victim of either Sex or Labor Trafficking
- Physically present in the U.S. on account of trafficking
- Complied with reasonable requests for assistance in investigation or prosecution
- Would suffer extreme and unusual hardship if returned to home country



# Special Immigrant Juvenile Status

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- A federal law to help certain undocumented children in the state juvenile system obtain lawful immigration status.
- INA 101(a)(27)(J)

# SIJS Requirements

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- **To qualify for this visa, the child must be/become a dependent of the state court where he/she lives. The child must have been abused, abandoned or neglected by one or both parents.**
- Requires an order by a state juvenile court judge, then an application process with Immigration (USCIS):
  - The juvenile court must find eligibility for “long term foster care” (meaning that family reunification is no longer an option). The juvenile court must base its findings on the child having suffered abuse, abandonment or neglect by one or both parents.
  - The juvenile court must also find that it is in the child’s best interest to remain in the United States
  - The juvenile court must maintain jurisdiction over the case until approval.





# Gender-Based Asylum

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- Refugee status or asylum may be granted to people who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion
- Gender-related persecution may include: female genital mutilation, rape, domestic violence, or persecution due to belief's regarding women's rights



# VAWA Cancellation

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A form of relief available under VAWA, to eligible persons who are in Removal Proceedings with the Immigration Court

INA 240A(b)(2)



# I-751 Waiver Based on Abuse

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- Conditional Permanent Residents may be able to file for a waiver of the joint petition requirement where the conditional permanent resident spouse or child has been battered or was the subject of extreme cruelty during the marriage
- INA 216(c)(4)(C)



# For More Information

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- U.S. Citizenship & Immigration Services: <http://uscis.gov>
- CLINIC: CLINIC:  
<http://cliniclegal.org/>
- Immigrant Legal Resource Center:  
<http://www.ilrc.org/>

# RESOURCES

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## **Directory Information:**

- EOIR website: <http://www.justice.gov/eoir/probono/states.htm>
- Legal Momentum: <http://www.legalmomentum.org/our-work/immigrant-women-program/directory.html>
- CLINIC: <http://cliniclegal.org/>
- National Domestic Violence Hotline: 1-800-799-7233



# RESOURCES

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- AILA Lawyer Search
- Oregon State Bar Attorney Referral



# Our Services

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- Rural Program: To schedule a free and confidential consultation, contact us by phone at (503) 542-2855 X9
- General Program: Consultations \$50, call on the first Tuesday of the month starting at 9:00 am (503) 542-2855