

## Let's Talk About Victims at the Gate

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While economic migration is usually presented as a "choice" in the press, we know firsthand that, for many coming to the United States, such migration is instead a last-ditch act of desperation. This practice advisory will delve into the various groups seeking refuge in the United States and identify the remedies potentially available to them as victims.

### **CREDIBLE FEAR INTERVIEW (CFI) PROCESS, REASONABLE FEAR INTERVIEW (RFI) PROCESS & PAROLE OPTIONS**

What are the reasonable fear and credible fear interview processes and when do they arise? A credible or reasonable fear interview occurs when an individual expresses intent to apply for asylum or fear of returning to their country upon apprehension at the U.S. border or have been ordered removed and express a fear of returning to the country they have been ordered removed to. The individual is referred to an asylum officer for a credible fear interview if they have not been ordered removed before and for a reasonable fear interview if they are attempting to enter the U.S. after a removal order or have committed a certain crime. A credible fear and a reasonable fear interview both try to assess how likely (significant possibility for credible fear and reasonable possibility for reasonable fear) an individual has been persecuted or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion if returned to their country. If an asylum officer finds that the individual has reasonable or credible fear, their case is referred to an Immigration Judge for a full hearing

What factors does an asylum officer consider when deciding if an individual has established credible or reasonable fear? If past persecution, the reason an individual has been persecuted and

where, when, how, and by whom they were persecuted. To qualify for asylum, the persecutors must have been a government actor, or actors acting in their official capacity, or part of a group the government is unwilling or unable to control (ex. guerilla or rebel groups). If persecutors were not government officers, individual will need to explain why it is not safe or possible for them to relocate to another part of the country. If future persecution, individual will need a strong, detailed explanation of why it is reasonable for them to fear persecution if they returned to their country

When preparing a client for a credible or reasonable fear interview, follow the following tips:

- Recommend that client write their story first focusing on who, what, where, when, and why.
- Tell the story in chronological order.
- Avoid redundancies and generalities; answer questions directly and to the point.
- Speak slowly to allow for accurate interpretation.
- Address inconsistencies and weaknesses in story proactively.

## **HUMANITARIAN PAROLE**

Humanitarian parole is granted to an individual by the U.S. Department of Homeland Security (DHS) to allow them to enter and remain in the U.S. for a finite period of time without having legal admission. Section 212(d)(5) of the Immigration and Nationality Act allows persons to be paroled into the United State for “humanitarian reasons” or for “significant public benefit.”

Examples of humanitarian reasons for granting parole include:

- Medical reasons such as:
  - Medical treatment in the United States
  - Serving as an organ donor in the United States
  - Need to care for a seriously ill family member in the United States
- Family reasons such as:
  - Reunification with family to attend a funeral or settle the affairs of a deceased relative in the United States
  - Family member outside of the United States is particularly vulnerable because of age, disability, or living circumstances.

## **REPRESENTING UNACCOMPANIED IMMIGRANT CHILDREN**

An unaccompanied immigrant child is a child who: 1) lacks lawful immigration status in the United States; 2) is under the age of 18; and 3) lacks a parent or legal guardian in the United States who is available to provide care and physical custody.<sup>1</sup> Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),<sup>2</sup> an unaccompanied child must be transferred to the custody of the Office of Refugee Resettlement (ORR) within 72 hours of being designated

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<sup>1</sup> 6 USC §279(g)(2).

<sup>2</sup> Pub. L. 110-457, 122 Stat. 5044 (2008).

unaccompanied.<sup>3</sup> Once in ORR custody, ORR works to reunify the child with a sponsor in the United States, typically a parent or family member.

## **COMMON FORMS OF RELIEF AVAILABLE TO UNACCOMPANIED IMMIGRANT CHILDREN**

The forms of relief typically available to unaccompanied immigrant children are protection-based, such as asylum, Special Immigrant Juvenile Status (SIJS), T visas, and U visas.

Under the TVPRA, unaccompanied children are issued a Notice to Appear (NTA) and placed in 240 removal proceedings.<sup>4</sup> Despite being in removal proceedings, the TVPRA allows unaccompanied children to apply for asylum affirmatively before the Asylum Office.<sup>5</sup> Additionally, unaccompanied children are exempt from the one-year-deadline for asylum.<sup>6</sup>

Special Immigrant Juvenile Status (SIJS) is a form of relief available to children who have been abused, abandoned, or neglected by one or both of their parents and for whom it is not in their best interest to return to their home country.<sup>7</sup> Obtaining SIJS is a three-step process that involves: 1) obtaining a state court order containing special findings; 2) filing the Form I-360, Petition for Special Immigrant with USCIS; and 3) applying for adjustment of status after the I-360 is approved and once a visa is available. There is currently a growing visa backlog for applicants from Mexico and Northern Triangle countries, so SIJS applicants from those countries can expect a wait of at least several years before a visa becomes available to them for adjustment of status.

## **TIPS FOR WORKING WITH UNACCOMPANIED CHILDREN**

When working with unaccompanied immigrant children, or any client who has experienced past trauma, it is important for practitioners to adopt a trauma-informed approach, to the extent possible. Recognizing that past trauma has affected your client and that many of their reactions or behaviors may be rooted in this past trauma is central to trauma-informed representation. It is also crucial for practitioners to work on building rapport with children and young clients, as this helps clients become more comfortable discussing difficult experiences as you work to prepare their immigration case.

When meeting with your client to discuss sensitive topics, such as meeting to work on a child's asylum affidavit, practitioners should attempt to create a space that feels safe to the client. For example, when the client arrives, provide them with options on where to sit. Framing the discussion at the beginning of the meeting is also helpful so that the child understands what topics will be covered and in what order. When possible, practitioners should provide the child with the opportunity to select in advance what topics will be covered on a particular day, as this provides the client with a degree of control in a process that is largely in the hands of the agency that will adjudicate their immigration case. Finally, building a transition period at the end of client meetings,

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<sup>3</sup> 8 USC §1232(b)(3).

<sup>4</sup> 8 USC §1232(a)(5)(D).

<sup>5</sup> 8 USC §1158(b)(3)(C).

<sup>6</sup> 8 USC §1158(a)(2)(E).

<sup>7</sup> INA §101(a)(27)(J).

where you and the child discuss less sensitive topics, provides them with a chance to mentally and emotionally return to the present after delving into past traumatic experiences.

## **U VISAS FOR MATERIAL WITNESSES**

The U visa was created by the Victims of Trafficking and Violence Protection Act (VTVPA)<sup>8</sup> of 2000. Its goal was to encourage undocumented crime victims to come forward and cooperate with law enforcement. Applicants may be eligible both if they are direct victims or indirect victims. A direct victim is one who was “directly and proximately harmed by qualifying criminal activity.”<sup>9</sup> In certain circumstances, individuals other than the victim can apply for a U visa; these are called indirect victims.<sup>10</sup> Moreover, derivatives can apply for U visa status whether in the United States or abroad. If abroad, the visa will be forwarded to a U.S. consular post, and the derivative can use the visa to travel to the United States. If the principal applicant is under 21, the following relatives may qualify: principal’s spouse, children, unmarried siblings under 18 (on filing date of principal’s petition), and parents. If the principal applicant is over 21, the following relatives may qualify: principal’s spouse and children.

Under INA §101(a)(15)(U)), an applicant is eligible if s/he “has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity..., possesses information concerning criminal activity..., has been helpful, is being helpful, or is likely to be helpful to Federal, State, or local authorities in the investigation or prosecution of the crime..., [and] the criminal activity ... violated the laws of the United States or occurred in the United States...” Qualifying crimes include: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; 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” also encompassed by statute for related, non-enumerated crimes.

U visa certifications may be issued by police officers, prosecutors, judges, or by a state or federal agency employee with criminal investigative capacity. Collaboration with the above agencies is key to achieve U visa certification.

## **T VISAS FOR VICTIMS OF HUMAN TRAFFICKING**

The T visa was also created by the VTVPA.<sup>11</sup> T nonimmigrant status is a temporary immigration benefit that enables certain victims of a severe form of trafficking in persons to remain in the U.S. This stay is for an initial period of up to 4 years if they have complied with any reasonable request for assistance from law enforcement in the detection, investigation, or prosecution of human trafficking or qualify for an exemption or exception. T nonimmigrant status is also available to

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<sup>8</sup> Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>9</sup> INA §101(a)(15)(U).

<sup>10</sup> For example, where the victim is an alien child under 16, the parent, legal guardian, or other family member, may apply for principal U visa status.

<sup>11</sup> Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464.

certain qualifying family members of trafficking victims. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers use force, fraud, or coercion to compel individuals to provide labor or services, including commercial sex. T visas offer protection to victims and strengthen the ability of law enforcement agencies to detect, investigate and prosecute human trafficking. Under federal law, a “severe form of trafficking in persons” is:

- Sex trafficking: When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or
- Labor trafficking: When someone recruits, harbors, transports, provides, or obtains 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.

Applicants are eligible for a T visa if they:

- Are or were a victim of a severe form of trafficking in persons;
- Are physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
- Have complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (unless the applicant was under the age of 18 at the time at least one of the acts of trafficking occurred or is unable to cooperate due to physical or psychological trauma; if either case applies, they may not need to show that they complied with reasonable requests from law enforcement); and
- Can demonstrate that they would suffer extreme hardship involving unusual and severe harm if s/he was removed from the United States.