DACA LEGAL SERVICES TOOLKIT

Practice Advisory 2 of 7

ALTERNATIVE METHODS FOR DACA RECIPIENTS TO LEGALIZE STATUS: FAMILY-BASED PETITIONS, U VISAS, VAWA, K-VISAS, SPOUSE PETITIONS

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A Note from the Executive Director

The Center for Human Rights and Constitutional Law is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional, and human rights of immigrants, refugees, children, prisoners, and the poor. Since its incorporation in 1980, under the leadership of a board of directors comprising civil rights attorneys, community advocates and religious leaders, the Center has provided a range of legal services to vulnerable low-income victims of human and civil rights violations and technical support and training to hundreds of legal aid attorneys and paralegals in the areas of immigration law, constitutional law, and complex and class action litigation.

The Center has achieved significant victories in numerous major class action cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of immigrants and other disadvantaged communities**.**

This practice advisory is part of a *DACA Legal Services Tool Kit* produced by the Center for Human Rights and Constitutional Law including seven practice advisories addressing deportation defense, educational and other government services, employment rights, employment and family-based visa eligibility, individual deferred action status applications, and a potential legislative fix for DACA recipients.

This practice advisory provides an overview of various methods legal services providers may pursue to legalize the status of DACA recipient clients, including: family-based petitions; K-Visas (fiance visas); U-Visas (crime victims); VAWA visas (victims of spousal or parental abuse); Special Juvenile Immigrant status; and asylum.

Manuals prepared by the Center are routinely reviewed for improvements and updates to reflect current policies and practices. This manual was researched and written by Staff Attorney Helene Hoffman. Please feel free to email me at pschey@centerforhumanrights.org to suggest corrections, updates or edits to this practice advisory.

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I. INTRODUCTION

A. RESCISSION OF DACA

On September 18, 2017, President Trump announced that he was revoking DACA. See Notice of Memorandum Of Rescission Of Deferred Action For Childhood Arrivals (DACA), 82 Fed. Reg. 43556 (09/18/2017).

Due to this, those young people who were granted legal status under DACA (referred to as "DACA Recipients") should investigate if they qualify for other categories of legal status. This is because eventually their DACA status will expire, meaning they will not be in the United States legally. In addition, their work authorization will end, prohibiting them from working here legally.

DACA has afforded recipients only a temporary reprieve from deportation, it is not a panacea. What DACA recipients have received, in essence, is a decision by immigration officials that no enforcement action will be taken against them for the two-year duration of their DACA grant, which they were allowed to renew in two-year increments. DACA recipients can no longer file applications for renewal.

In other words, DACA recipients are not to be deported as long as they have DACA. A DACA grant, however, does not lead to any other legal status, such as lawful permanent resident status (also known as a "green card") a path to citizenship, or a visa, and this status can with withdrawn, if a recipient, for example, commits a certain type of crime.

B. NON-DACA PROGRAMS THAT GRANT LEGAL STATUS

There are many other programs in which immigrants may be granted legal status. This Advisory covers many of them: Family-based Petitions; K-Visas (Fiance Visas); U-Visas (immigrants were crime victims); VAWA Visas (immigrants were victims of spousal or parental abuse); Special Juvenile immigrant status, and Asylum.

Programs for legal status are divided between those in which an immigrant may be granted temporary legal status, under which an immigrant is only permitted to be in the U.S. for a limited period of time; or those that grant Permanent Resident Status (commonly called a "Green Card"), which can be renewed, and which permits the immigrant to stay in the U.S. indefinitely, and eventually apply for Citizenship. All the programs covered in this Advisory allow an immigrant to

apply for Permanent Residency Status, or Conditional Permanent Residency Status.

Each program for legal status has strict requirements, and a DACA Recipient would have to fulfill the requirements in order to be granted a particular non-DACA legal status.

Permanent Residency Status

The general requirements for obtaining Permanent Residency Status (also known as Legal Permanent Residency or LPR) Status are laid out in 8 U.S.C. § 1255(a):

The status of an immigrant who has been inspected and admitted, or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted … to that of an alien lawfully admitted for permanent residence if:
1. the alien makes an application for such adjustment,
2. the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
3. an immigrant visa is immediately available to him at the time his application is filed.

8 U.S.C. §1255(a); INA § 245(a).

GROUNDS OF INADMISSIBILITY

To apply for LPR status an individual must be admissible to the United States under section 212(a) of the Immigration and Nationality Act (INA). Some individuals are rendered inadmissible based on their own prior conduct (See e.g., INA §§212(a)(2) (criminal admissibility grounds); (a)(9) (previous removals)) while others may be inadmissible based on their status (See e.g., INA § 212(a)(1)(A)(i) (individuals afflicted with certain communicable diseases)).

The inadmissibility grounds are provisions found in the Immigration and Nationality Act (INA) that identify a wide range of classes of noncitizens ineligible to receive visas and ineligible to be admitted to the United States. Given the substantial implications that falling into one of the classes identified in the inadmissibility grounds may have on an individual hoping to apply for immigration benefits, practitioners should screen their clients for potential inadmissibility before filing any applications or petitions with USCIS.

Notable sections of the INA regarding grounds of inadmissibility include:
- INA Section 212(a) – lists all the grounds of potential inadmissibility
- INA Section 212(d)(14) – All grounds of inadmissibility (except national security grounds) can be waived for U visa applicants

Common Inadmissibility Issues Include:
- Crimes/criminal activity of the applicant, INA 212(a)(2)
– Crimes involving moral turpitude (CIMT's), drug offenses, multiple criminal convictions, etc.
- Immigration violations –
– Entry without inspection (EWI) entry, INA 212(a)(6)
– Unlawful presence (ULP), INA 212(a)(9)(B) – Permanent bar, INA 212(a)(9)(C)
- No passport, INA 212(a)(7)

Cancellation of Removal

In some cases, legal permanent residents (LPR) of the United States are placed into deportation proceedings by ICE after being convicted of crimes or breaking other immigration laws. If this occurs, your client may be able to apply for a one--time--only pardon that allows them to cancel their deportation, known as cancelation of removal.

To be eligible for Cancellation of Removal, your client must be a LPR who (a) is not convicted of an aggravated felony; (b) has been a LPR for at least five years; and (c) has lived in the U.S. for at least seven years since being admitted in any status (e.g. as a tourist, LPR, border crossing card).

In addition to satisfying the three statutory eligibility requirements under INA § 240A(a) which are that the applicant (1) has been an immigrant admitted for permanent residence for not less than 5 years, (2) has resided in the U.S. continuously for 7 years after having been admitted in any status, and (3) has not been convicted of any aggravated felony), an applicant for LPR Cancellation of Removal must establish that s/he warrants relief as a matter of discretion. An Immigration Judge (IJ) has discretion to determine whether a particular applicant should be granted Cancellation of Removal relief. An IJ must balance the adverse factors evidencing the individual's undesirability as a lawful permanent resident with the social and humane considerations presented on his or her behalf to

determine whether the granting of relief appears to be in the best in interest of the United States.

II. FAMILY-SPONSORED IMMIGRANTS

Petitions for Family-Sponsored Immigrants are divided into two different categories:

1. immigrants who are considered "immediate relatives" of citizens:
children, spouses, and parents of a citizen of the United States, except that,
in the case of parents, such citizens shall be at least 21 years of age.
8 U.S. Code § 1151(b)(2)(A)(i)
There are an unlimited number of visas granted in this category.

2. immigrants who are considered "qualified immigrants", related to either Permanent Residents, or more distantly related to citizens. These consist of:
- the unmarried sons or daughters of citizens of the United States;
- the spouses and unmarried sons and unmarried daughters of permanent resident aliens;
- the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence;
- the married sons or married daughters of citizens; or
- the brothers or sisters of citizens, if such citizens are at least 21 years of age.
8 U.S. Code § 1153
There are a limited number of visas granted annually in this category

To immigrate through a family-based petition the person must be "admissible." That means either she must not come within any of the grounds of inadmissibility at INA § 212(a), or if she comes within one or more inadmissibility grounds, she must qualify for and be granted a waiver of the ground(s). One can apply through what is called "consular process" if outside the U.S., or "adjust status" if within the U.S,. and meets the requirements at INA §245. Adjustment can be a defense for LPRs facing deportation, as well as for those that are undocumented and are seeking LPR status.

A. ISSUES FOR DACA RECIPIENTS RE: FAMILY-BASED PETITIONS

DACA Recipients should be aware that they may have to wait a long time if a relative files a Family-based Petition on their behalf. There are processing backlogs, which represent the length of time it takes for USCIS to adjudicate each application or petition, even in the case of one involving an 'immediate relative'. The wait is even longer for a Petition filed for a preference relative, which can take years.

B. FAMILY-SPONSORED PETITION BY MARRIAGE TO A CITIZEN

It is not uncommon for a DACA Recipient to marry a U.S. citizen, and once this is done, the spouse- citizen could file a Family-based petition for the DACA Recipient. However, a DACA Recipient who does so should be on notice that the USCIS is alert for possible fraudulent marriages.

". . . a marriage which was contracted solely for immigration purposes does not confer benefits under the Act. A number of factors may raise questions about the intent of the marriage, and therefore necessitate more in depth questioning. . . . . . or an investigation. . ."
Department of Homeland Security, Adjudicator's Field Manual - Redacted Public Version, Chapter 21 Family-based Petitions and Applications, 21.3 Petition for a Spouse.

C. MARRIAGE BETWEEN TWO MEMBERS OF THE SAME GENDER; TRANSGENDER MARRIAGE

The USCIS has determined that a marriage between two persons of the same sex is valid. "In June 2013, the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA), which had limited the terms "marriage" and "spouse" to opposite-sex marriages for purposes of all federal laws, was unconstitutional." See USCIS Policy Manual, Vol. 12, Part G, Chapter 2, A 1.

A marriage in which at least one of the partners is transgender, is valid according to USCIS, depending on where the marriage takes place. "USCIS accepts the validity of a marriage in cases involving transgender persons if the state or local jurisdiction in which the marriage took place recognizes the marriage as a valid marriage." Id.

III. VIOLENCE AGAINST WOMEN ACT (VAWA) RELIEF

DACA Recipients, or family member/s, are eligible for VAWA Relief if they have been abused (including emotionally abused) by a United States Citizen (USC) or LPR who is their spouse, parent, or adult child. (If abuser is not a USC/LPR, consider U Visa, below.)

8 U.S.C. §1101(a)(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title;

(B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

(C) section 1186a(c)(4)(C) of this title;

(D) the first section of Public Law 89–732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

8 U.S.C. § 1154(a)(1)(A)(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)

(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

8 U.S.C. § 1154(a)(1)(A)(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

8 U.S.C. § 1154(a)(1)(A)(vii)An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 1151(b)(2)(A)(i) of this title (Immediate Relatives) if the alien—
(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;
(II) is a person of good moral character;
(III) is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title (Immediate Relatives);
(IV) resides, or has resided, with the citizen daughter or son; and
(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

Those eligible to self-petition under VAWA are:
- Spouse. The current and, in some cases, former abused spouses of U.S. citizens or LPRs. See 8 U.S.C. § 1154(a)(1)(A)(iii); INA § 245(i); 8 C.F.R. § 245.10.
- Parent.
- The parent of a child who has been abused by the parent's U.S. citizen or LPR spouse.
- The parent of a U.S. citizen where the U.S. citizen child has abused the parent. See INA § 245(i); 8 C.F.R. § 245.10.

• Child. Unmarried children under 21 who have been abused by a U.S. citizen or LPR parent (including certain adoptive parents). See 8 U.S.C. § 1154(a)(1)(A)(iv); INA § 245(i); 8 C.F.R. § 245.10.
• Certain sons and daughters under 25. Individuals between the ages of 21 and 24 who qualified as abused children on the day before they turned 21. INA § 204(a)(1)(D)(v).

Benefits of VAWA Protections
• Deportation: Protection from deportation shortly after filing.
• Immigration Benefits for Children:
– VAWA self-- -petitioners' children receive immigration benefits – no separate petition needed
• Public Benefits: As qualified immigrants (≈ 3 months)
• Employment Authorization:
– Citizen abuser (≈ 6 months);
– Lawful permanent resident abuser (currently ≈ 6 months, past ≈ 15 months)
• VAWA Confidentiality: protections against the release of information and reliance on abuser provided information
• Lawful Permanent Residency:
– Citizen perpetrator apply upon approval (1 year)
– Lawful permanent resident perpetrator (≈ 5+ years-- -depends on when a visa is available)

VII. Special Immigrant Juvenile Status (SIJS)

This category is for juveniles, and they must be able to file immigration process by age 21. Client must be in delinquency, dependency, probate, family court, etc., proceedings and can't be returned to at least one parent due to abuse, neglect or abandonment.
An individual is eligible for SIJS if he or she:
• Is under 21 years of age;
• Is unmarried;
• Is the subject of an order issued by a juvenile court (i.e., juvenile court, probate court, family court) that finds:
• The child is dependent on the court or legally committed to or under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court;
• The child's reunification with his or her parent(s) is not viable due to abuse, neglect, abandonment or a similar basis under State law; and

- It is not in the child's best interest to be returned to his or her country of nationality or last habitual residence or that of his or her parent(s).

See INA § 101(a)(27)(J)

INA § 101(a)(27)(J) An immigrant who is present in the United States—
(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

What Children with SIJ Status Receive
• Protection from deportation and removal • Legal permanent residency • Government issued ID • Legal work authorization • Eligibility for driver's license or state ID and social security number • Eligible for citizenship after 5 years, if at least 18 years old
• SIJS recipient may NEVER file family petition for natural parents

VIII. U VISAS – CRIME VICTIMS ASSISTING LAW ENFORCEMENT

U visas are available to noncitizens who have been the victims of certain crimes, suffered substantial physical or mental abuse as a result of having been victims of such crimes, and cooperated with law enforcement in the investigation or prosecution of those crimes. INA § 101(a)(15)(U).

INA § 101(a)(15)(U)(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--
(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);
(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
INA § 101(a)(15)(U)(ii) if accompanying, or following to join, the alien described in clause (i)--
(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or
(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and INA §01(a)(15)(U)(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;

Must obtain a certification from a law enforcement official affirming that the U visa applicant was indeed the victim of qualifying criminal activity, he or she possesses information about the crime, and has been, is being, or is likely to be

helpful in the investigation or prosecution of the crime, and has not unreasonably refused to provide assistance. 8 C.F.R. § 214.14(c)(2).

The certifying law enforcement official can be a judge, prosecutor, police officer, or an officer with another agency having criminal investigative jurisdiction, such as Child Protective Services, the Equal Employment Opportunity Commission, or the Department of Labor. 8 C.F.R. § 214.14(a)(2).

Why "Criminal Activity" and Not Limited to "Crimes"? The INA provides the statutory list of qualifying criminal activity for U nonimmigrant status. INA § 101(a)(15)(U)(iii). This list, however, is not a list of specific statutory violations, but instead a list of general categories of crime. See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,018 (September 17, 2007). Additionally, this list includes any attempt, conspiracy, or solicitation to commit any of the statutorily listed crimes, including any criminal offense that is substantially similar to one of the listed crimes (8 CFR 214.14(a)(9)), USCIS reviews each U nonimmigrant petition on a case-by-case basis, including all evidence from the victim and law enforcement, to determine whether the criminal activity described in the petition meets the general definition of a qualifying criminal activity.

Who can apply
- Victims of qualifying criminal activity (defined in INA § 101(a)(15)(U)(iii))
- Bystander victimization – very limited. INA §§ 01(a)(15)(U)(i)(I) (U-Visa applicant must have suffered "substantial physical or mental abuse *as a result of having been a victim of criminal activity)* (emphasis added).
- For child victims (under 16) a "next friend" can provide helpfulness. See INA §§ 101(a)(15)(U)(i)(II); (III).

8 C.F.R. § 214.14 - Next friend means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.
- Qualifying Family Members. INA § 101(a)(15)(U)(ii).

Who can certify?
INA § 101(a)(15)(U)(i)(III) states that a U-Visa applicant must receive certification that she "has been helpful, is being helpful, or is likely to be helpful:
- To a Federal, State, or local law enforcement official,

- To a Federal, State, or local prosecutor,
- To a Federal or State judge,
- To the Service, or
- To other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii)

Form I-918, Supplement B, "U Nonimmigrant Status Certification," must be signed by a certifying official within the six months immediately preceding the filing of Form I-918 (Application for U Nonimmigrant Status). 8 C.F.R. § 214.14(c)(2)(i).

- 8 C.F.R. §214.14(a)(3) defines certifying official as, "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency" or "a Federal, State, or local judge."
- 8 C.F.R. § 214.14(c)(2) Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

Survivors with Criminal or Immigration Violation History

- Unlike VAWA, there are more generous waivers available for U visa applicants
- U visa applicants can apply for a waiver of all grounds of inadmissibility except for those who are Nazis or perpetrators of genocide, torture, or extrajudicial killing
- Must show that the waiver should be granted in the national or public interest

The U Visa Process

- Law Enforcement signs certification
- Survivor files U visa application • DHS adjudication – grants/denies U visa
- U visa or wait-- -list approval
- Can apply for lawful permanent residency "green card" after 3 years
- Can apply for U.S. citizenship 5 years after "green card"
- Benefits: – U visa recipients are lawfully present for federal health care purposes – Some states give benefits upon filing of the U visa

U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually – Currently there is a Wait List

• Work authorization (≈ 14-- -18 months) – Via Deferred Action Status
• The U visa grants a temporary 4 year stay
• Limited state benefits in a few states
• Lawful permanent residency after 3 years if:
– Continued cooperation or does not unreasonably refuse to cooperate; and
– humanitarian need, family unity or public interest
• U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character

Which U Visa Recipients Can Obtain Lawful Permanent Residence?
• Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
– Humanitarian need, OR
– Family unity, OR – Public interest
• Department of Homeland Security review of cooperation and the reasonableness of noncooperation is required for lawful permanent residency

IX. T Visa

Client must have been victim of (a) sex trafficking of persons (if under age 18, could have been consensual), or (b) labor trafficking, including being made to work by force, fraud, etc.

Available to a noncitizen who can demonstrate that he or she:
• Is or has been a victim of a "severe form of trafficking in persons," as defined in 22 U.S.C. § 7102(9) (covers the use of fraud, force, or coercion for sex trafficking as well as involuntary servitude, peonage, debt bondage, and slavery.);
• Is physically present in the United States, American Samoa, or the Mariana Islands or at a port of entry on account of trafficking;
• Has complied with any reasonable request for assistance in investigating or prosecuting trafficking (if 18 or older); and
• Would suffer extreme hardship involving unusual and severe harm upon removal.
INA § 101(a)(15)(T).
INA § 101(a)(15)(T)(i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General 4ab3 determines--
(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000; 4ab3

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking; 4ab3 (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local 4ab2 investigation or prosecution of acts of trafficking 4ab2 or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or (cc) has not attained 18 years of age; and (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal;
INA § 101(a)(15)(T)(ii) if accompanying, or following to join, the alien described in clause i)-
(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;
(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and
(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

INA § 214(o)(7) now provides that T nonimmigrant status may be extended if:
- Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the T nonimmigrant in the United States is necessary to assist in the investigation or prosecution of acts of trafficking; or
- USCIS determines that an extension of the period of T nonimmigrant status is warranted due to exceptional circumstances. Amended INA § 214(o)(7) now provides that USCIS must extend T nonimmigrant status:
- During the pendency of an application for adjustment of status under INA § 245(l) (T Visa Adjustment of Status).

A. Requirements for a T Visa

8 CFR 214.11(b)*Eligibility for T-1 status*. An alien is eligible for T-1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if he or she demonstrates all of the following, subject to section 214(o) of the Act:

(1)*Victim*. The alien is or has been a victim of a severe form of trafficking in persons.

(2)*Physical presence*. The alien is physically present in the United States or at a port-of-entry thereto, according to paragraph (g) of this section.

(3*)Compliance with any reasonable request for assistance*. The alien has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, or meets one of the conditions described below.

(i)*Exemption for minor victims*. An alien under 18 years of age is not required to comply with any reasonable request.

(ii)*Exception for trauma*. An alien who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, is not required to comply with such reasonable request.

(4)*Hardship*. The alien would suffer extreme hardship involving unusual and severe harm upon removal.

(5)*Prohibition against traffickers in persons*. No alien will be eligible to receive T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

A Severe Form of Trafficking in Persons Means:
Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or 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 subjection to involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. 214.11(a).

Force, Fraud, or Coercion
• Debt servitude
• Surveillance
• Physical barriers
• Threats to safety
• Physical isolation from protections
• Psychological isolation
• Threats to deport or contact law enforcement

Trafficking v. Smuggling

1. Trafficking
• Crime against a person
• Contains an element of coercion
• Subsequent exploitation
• Trafficked people treated as victims

2. Smuggling
• Unauthorized border crossing
• No coercion
• Facilitated entry by another person
• Smuggled people treated as criminals

T Visa Facts and Benefits
• 5,000 T Visas can be granted annually
• The T visa grants a temporary 4 year stay to live and work in the U.S.
• Work authorization (6 months-- - 2/2014)
• Adult: Can petition for victim's spouse/children
• Under 21 child: Can petition spouse, children, parents + siblings under 18
• Family members can include their children
• Lawful permanent residency after 3 years
• U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character

X. Asylum, Withholding of Removal and Convention Against Torture

If a DACA Recipient fears harm that amounts to persecution or even torture if returned to the home country, consider all above forms of humanitarian protection. Asylum is preferable, because after one year the person can apply for lawful permanent residence. INA §209(b), 8 USC § 1159(b).
An asylum applicant:
1. must submit the application within one year of entering the U.S., absent extraordinary or changed circumstances,
2. faces stricter bars based upon criminal convictions,
3. can be denied asylum as a matter of discretion, and
4. only needs to prove a "well-founded fear" of persecution (interpreted as a 10% likelihood).

There are various bars to asylum and withholding.

XI. Temporary Protected Status (TPS)

Noncitizens from certain countries that have experienced a devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS). See www.uscis.gov/humanitarian/temporaryprotected-status for a list of countries and requirements. There certain crimes would bar issuance of this status, including any two misdemeanors or one felony.

XII. NACARA

Your client might be eligible for a program if he/she (a) is from the former Soviet bloc, El Salvador, Guatemala, or Haiti; and (b) applied for asylum or similar relief in the 1990's or is a dependent of such a person. Certain nationals from El Salvador, Guatemala, or former Soviet bloc countries who applied for asylum or similar relief in the early 1990's are eligible to apply for lawful permanent resident status (a greencard) under the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA). See 8 CFR §240.60-65. They can apply for a special form of suspension or cancellation of removal now, under the more lenient suspension of deportation standards that were in effect before April 1, 1997. Persons who became deportable or inadmissible for a criminal offense more than ten years before applying for NACARA can apply under the lenient rules governing the former "ten-year" suspension, except that an aggravated felony conviction is an absolute bar to NACARA. See 8 CFR §§ 240.60-61, 65. Family members of these persons also may be eligible to apply.