

Representing Immigrant Parents in CHIPS Proceedings

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Holistic Representation

- Stabilizing immigration status for one or all family members can provide numerous benefits including: a sense of security in the present, the ability to plan for the future, access to better jobs and education, and access to public benefits and services

Case Example - Ivan

- Ivan is married to a U.S. citizen. He and his wife are separated and have three children together.
- Ivan's wife, is an active drug addict and has abused and neglected their children when they are in her care.
- Ivan now has primary custody of their children and his wife is only allowed supervised visits.

Case Example - Ivan

- Ivan may be eligible to submit a VAWA petition to gain status in the United States
- Ivan may also be eligible to submit a U Visa application
- With legal status, Ivan will have:
 - Ability to work legally in the United States and provide for himself and his family;
 - Access to programs such as food, medical, and general assistance; and
 - Stability in the present and the ability to plan for future for himself and his family.

Immigration Benefits Available to Parties in Some CHIPS Proceedings

- ❖ Violence Against Women Act (“VAWA”)
- ❖ U Visa for victims of qualifying crime
- ❖ Family-based petitions, derivative citizenship
- ❖ Special Immigrant Juvenile Status (“SIJ”)

Violence Against Women Act (“VAWA”)

VAWA assists women, men, and children victims of domestic violence

VAWA

- ◉ *Who can potentially qualify for this immigration benefit?*
 - Spouses of U.S. citizens or Lawful Permanent Residents who are abused by their spouse with status
 - Spouses of U.S. citizens or Lawful Permanent Residents whose *children* are abused by their spouse with status
 - Parents of adult U.S. citizen children who are abused by their U.S. citizen child

VAWA

- ◉ *Requirements for Immigrant Parent (Spouse) to Apply for VAWA Benefit*
 - Legal, good faith marriage to U.S. citizen or LPR abuser with cohabitation, or within 2 years of divorce
 - Battery, cruelty, abuse by U.S. citizen or LPR spouse
 - A parent or child may be the victim of this abuse for the immigrant parent to qualify
 - Good moral character of the Immigrant Parent applicant

VAWA Case Example

- Anna has been living in the United States for more than 20 years without status. She is currently married to a U.S. citizen. She recently discovered that her U.S. citizen husband had been sexually abusing her children. From the moment of learning of this abuse, Anna has complied with CHIPS proceedings and supported her children in getting whatever help they needed.

VAWA

- ◉ *Requirements for Immigrant Child to Apply for VAWA Benefit*
 - Qualifying legal parent/child relationship to U.S. citizen or LPR parent
 - Battery, cruelty, abuse by U.S. citizen or LPR parent
 - Good moral character
 - Note, children under age 14 are presumed to have good moral character

VAWA

◉ *Requirements for Immigrant Parent to Apply for VAWA Benefit*

- Parent of a U.S. citizen son or daughter who is 21 years old at the time of filing
- Parent suffered abuse, battery, cruelty by U.S. citizen child
- Parent and abusive child lived together
- Parent is a person of good moral character

VAWA

● *Developing the Record for a VAWA Application*

- CHIPS proceeding records can provide evidence of battery or abuse suffered by an immigrant spouse, child, or parent
- Psychological assessments or other medical reports can also document abuse and extreme cruelty
- Compliance and active participation of the parent applicant in CHIPS proceeding can help demonstrate good moral character and can provide evidence toward positive discretion for immigration purposes

U VISAS

Immigration status for victims of qualifying crimes

U VISA

- ◉ *Applicant for a U Visa must*
 - Be a victim of a *qualifying crime*
 - Demonstrate that they suffered substantial physical or mental abuse as a result of the crime
 - Have information about the criminal activity
 - Be helpful in *detection, investigation, or prosecution* of the crime

U VISA, Qualifying Crimes

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Murder
- Rape
- Sexual Assault
- Sexual Exploitation
- Stalking
- Torture

U VISA

- ◉ Who may apply as the “victim” of the qualifying crime?
 - The *child victim* may directly apply and include their parent and siblings under 18 years old in their petition
 - The *parent of the child victim* may directly apply if the child is unable to assist the detection and investigation of the crime
 - The *parent victim* may directly apply and include their spouse and children in the petition

U VISA

- Before a victim of a crime can apply for a U Visa, the victim must have a signed form from a law enforcement official prosecutor, judge, or other federal or state authority
 - A judge in CHIPS proceedings may sign a certification allowing a parent or child to apply for a U Visa
 - A county Child Protection Department may sign a certification allowing a parent or child to apply for a U Visa

https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/U_Visa_Law_Enforcement_Resource_Guide.pdf

U VISA Case Example

- Julia's partner Roberto, to whom she is not legally married, has physically abused her for years. Together, they have two children. In the past, Julia has called the police to report the abuse. The abuse has been the subject of a CHIPS proceeding. Julia has worked hard to comply with the CHIPS proceeding and Roberto's abuse is well-documented in the record.

Derivative Citizenship

Citizenship through parents

Derivative Citizenship Case Example

- Ismail, who is now 16 years old, came to the United States as a refugee under his mother's status. He and his mother are lawful permanent residents and are eligible to become citizens.
- Ismail lives with his mother, who has sole custody.
- Lately, Ismail has been getting into a lot of trouble at school and has had a juvenile adjudication for theft.

Derivative Citizenship

◉ *Legal Requirements*

- Child is under 18 years old
- Child resides with parent
- Child is a lawful permanent resident
- Parent has legal and physical custody of child
- Parent is a U.S. citizen

Derivative Citizenship Case Example

- If Ismail's mother applies to become a U.S. citizen and it is approved before his 18th birthday, Ismail will become a citizen at the same time as his mother.
- If Ismail is a citizen, his status in the United States is secure. His mother will never need to fear they will be separated or forced to return to the country from which they fled.

Special Immigrant Juvenile Status (“SIJS”)

SIJS

◉ *Legal Requirements*

- Child is dependent on the court or legally placed with a state agency, a private agency, or a private person
 - E.g. on probation for juvenile adjudication
- It is not in child's best interest to return to home country
- Child cannot be reunited with one or both parents due to abuse, abandonment, or neglect

SIJS

- ⦿ Judges in juvenile court proceedings may issue a predicate order for a child to apply for SIJS
- ⦿ A child SIJS applicant cannot share his immigration status with his parents!

Other

Considerations

Public Charge

- A determination made by immigration that someone likely to be partially or completely dependent on government benefits in the future
- Can affect eligibility for certain types of immigration status
- DOES NOT APPLY to the types of status discussed today, or for benefits taken for US citizen children
- Lots of misinformation – call (800) 292-4150 for advice

Avoiding Pitfalls

- If you believe your client may need help with an immigration matter, contact an immigration attorney to consult with them.
 - Ask your client, “Where were you born?” If they were born outside the United States, there is a chance they need to speak to an immigration attorney.
- Immigration law is complicated and assessing an individual’s eligibility for various programs requires experience, investigation, and research.
- You can find attorneys in your region who may be able to advise you or assist your client. Please see the next page.

Resources

- Law Help MN: <https://www.lawhelpmn.org/>
 - Helpful fact sheets
 - Attorney referrals
- Find an Immigration Attorney
 - Hennepin County Bar Association (612-752-6666)
 - Minnesota State Bar –
<http://msba.mnbar.org/member-directory/find-a-lawyer>
 - American Immigration Lawyers Association (AILA) –
www.ailalawyer.com