



Effectively Serving Immigrant Survivors

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Resources to Accompany this Presentation

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Learning objectives

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By participating in this session, attendees will be better able to:

- Identify immigration statuses a survivor may hold
- Predict how an abuser may use a survivor's immigration status against them
- Recognize how immigration intersects with the criminal, family, employment, and public benefits systems
- Implement best practices to help immigrant survivors secure and make the most of competent immigration representation

Agenda

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1. Introduction to immigrant statuses most relevant to survivors
2. Intersection of immigration and:
 - Criminal law
 - Family law
 - Employment
 - Public benefits
3. Assisting immigrant survivors



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Are you serving immigrant survivors?

Poll 1

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How many of you regularly serve noncitizens in your work?

Poll 2

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How many of you already have immigration law training or familiarity with different legal aspects of serving immigrant survivors?

Poll 3

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Why is a survivor's immigration status relevant?

- **Fear of immigration enforcement** keeps survivors from leaving
- Status affects **eligibility** for many public benefits
- Adverse party may **use immigration status against survivor** in...
 - Criminal Court
 - Family Court
 - Employment
 - Public Benefits
- The civil law system may be able to **expand immigration options**

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Intro to Immigration Statuses

Poll 4

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What immigration statuses have you heard of?



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Common Immigration Statuses

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Citizenship

Green Card

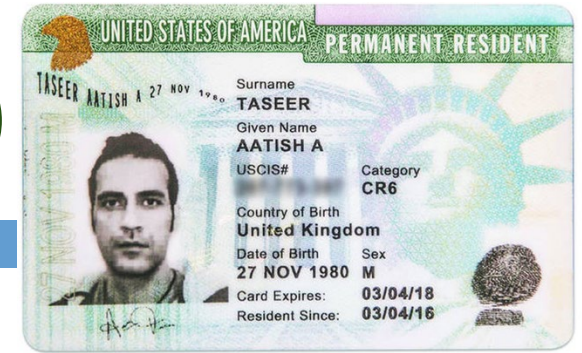
Asylum

Short-Term
“visa” or
“deferred action”

Undocumented

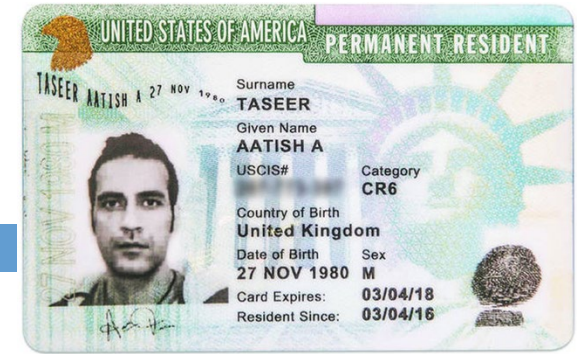
Lawful Permanent Resident (LPR)

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- Can live and work in US permanently
- Can sponsor certain relatives for immigration
- Can access most public benefits (at least after 5 years)
- Can be deported for certain crimes or unlawful activities

Routes to LPR Status



Family Petition Process



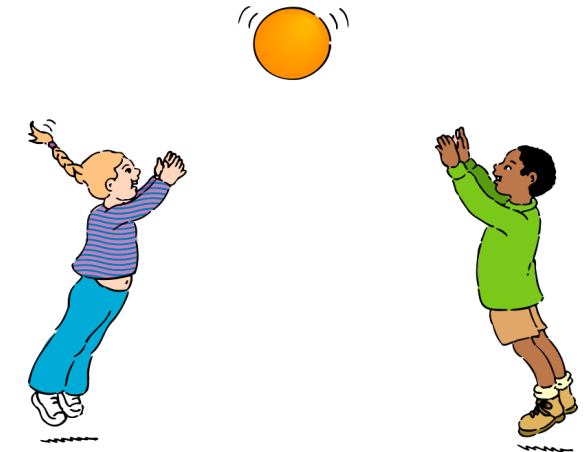
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Violence Against Women Act (VAWA) Self-Petition Process



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Special Immigrant Juvenile (SIJ) Petition Process



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Asylum/Refugee Status

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Unable or unwilling to return to home country due to **well-founded fear of persecution based on race, religion, nationality, political opinion or “membership in a particular social group”**

- Can live and work in US permanently
- Can access most public benefits
- Can be deported for certain crimes or unlawful acts

U Nonimmigrant Status (“U visa”)

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Victim of a **qualifying crime** in the U.S.

> Includes domestic violence, sexual assault, and stalking

And police/sheriff, prosecutor, judge, or other authority **certifies** survivor was **helpful** in investigation/prosecution

- Can live and work in US for 4 years
- Must leave or apply for new status when U visa expires
- Can be deported for crimes or unlawful activity

T Nonimmigrant Status (“T visa”)

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Physically present in U.S. because of **sex or labor trafficking**

- Trafficking may occur in domestic violence relationships

Helpful in investigation or prosecution of the trafficking

- (Exceptions for age/trauma)

- Can live and work in US for 4 years
- Must leave or apply for new status when T visa expires
- Can be deported for crimes or unlawful activity



Undocumented

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No **valid** status but may have previously had a status.

They **can be deported at any time**, but usually have the **right to defend themselves** in immigration court first.

Survivors may **fear disclosing** to you that they are undocumented.

- Can go to public school as a child
- Can generally access emergency healthcare/shelter/crisis help
- Cannot work lawfully
- Cannot get driver license in many states
- Cannot receive most public benefits or student aid
- Cannot get loans or even bank accounts in many banks
- Can be deported without committing any crimes

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Key Immigration Concepts

No INS anymore! What's in its place?

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- U.S. Citizenship and Immigration Services (**USCIS**)
 - Decides most applications for status in the U.S.
 - Interacts with survivors mostly by mail, some interviews
- Immigration and Customs Enforcement (**ICE**)
 - Immigration police, prosecutors, detention and parole officers
- **Immigration Judge/Immigration Court** (part of DOJ)
 - Determines if survivor is removable and whether to grant defense against removal
 - Survivor must attend court or can be ordered removed *in absentia*

What happens while a survivor waits for status?

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Varying ability to support selves by **work** or **public benefits**.

Generally **no formal protection** from removal based on pending application!

Elevated Enforcement Risk	Lower Enforcement Risk
Serious/recent criminal history	No convictions (ideally no arrests)
Prior deportation or immigration court	No contact with ICE/deportation in past
Last entered US within past two years	In country at least 2 years (10 is better)
Fraud in prior immigration papers	Current valid status
Few/no close USC/LPR relatives	Young citizen children or pregnant
Lives in “287(g)” community	Lives in “sanctuary” community

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Criminal Law and Immigrant Survivors

Immigration Status as Abuser's Tool

Abusive partners commonly use immigration status and fear of immigration enforcement against partner

- Promise to sponsor for green card but do not follow through
- Threaten to call ICE for disobedience
- Threaten police, others in community will call ICE if survivor goes to them
- Assert police will not help survivor because of immigration status
- Exploit lack of English/interpretation to conceal acts or isolate survivor
- Exploit lack of driver license or work authorization to control survivor

Immigrant Survivors in Criminal Legal System

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As Victim

- Must report crime to get U or T visa (usually) (not for VAWA/SIJ petition)
- Must cooperate with all reasonable requests for LEA assistance to get U or T visa (usually) (not for VAWA/SIJ)
- *If survivor wants U or T visa, help get them to a place where they feel safe reporting/cooperating*

As Defendant

- Conviction may make survivor ineligible for immigration status or removable, depending on crime's elements, facts in record, sentence
- Must know client's imm. status/goals
- Dismissal may still count as conviction if guilt acknowledged
- *Consult immigration law expert!*

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Family Law and Immigrant Survivors

How Abusers Try to Use Immigration Status

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- Exploit misunderstandings to present immigration status as negative factor in family court proceedings (e.g., falsity that if noncitizen has custody, child cannot get public benefits)
- Appeal to adjudicator biases against immigrants
- Use survivor's immigration status against them outside the courtroom, in pushing for settlement agreements
- Seek protection order against survivor to harm immigration prospects

Legal Relevance of Immigration Status

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Immigration status NOT legally relevant to determination of rights in family law or order of protection proceedings

BUT immigration status may be relevant behind the scenes to:

- Whether/when to pursue divorce vs. separation vs. annulment
- What special findings and orders are sought
- Subconscious or implicit decision-making by parties and judge

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Workplace and Immigrant Survivors

Noncitizens' Workplace Rights

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- Right to submit **valid**, eligible work authorization documents of their choice: might be work permit but might not be (see 8 CFR § 274a.12(a))
- Even undocumented workers generally covered by **Fair Labor Standards Act** (“FLSA”) (wages and hours), **National Labor Relations Act** (“NLRA”) (unions, protected concerted activity, right to strike), **Occupational Safety and Health Act** (“OSHA”), and **Title VII of the Civil Rights Act of 1964** (anti-discrimination)

Assorted Practice Pointers

- If you suspect violation of workplace rights, contact DOJ Immigrant & Employee Rights Division (**1-800-255-7688**), and consider referral to immigration lawyer
- Unemployment benefits generally require noncitizen to have work authorization
- Falsely claiming U.S. citizenship on Form I-9 in the workplace can create permanent immigration ineligibilities
- Survivors can take steps to prepare themselves and their families for workplace raids and possible detention

Basic Rights and Immigrant Survivors

Everyone Has Rights



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- ❑ Right to access **services protecting life or safety**, like DV services, shelter for the homeless or abused, crisis intervention, emergency medical treatment
- ❑ Right to have a **lawyer** if accused of a crime, and to remain **silent** and insist on **warrants**
- ❑ Right to travel domestically, own property, make purchases

Public Benefits: Limited, but Some Availability

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- ❑ Public benefits generally unavailable without certain status
- ❑ Complex rules about eligibility/prudence of applying turn on:
 - ❑ Benefit type (cash vs. housing vs. food vs. health insurance, etc.)
 - ❑ Benefit agency (federal vs. state – and which state!)
 - ❑ Immigration status held
 - ❑ Immigration status hoping to hold
- ❑ See [NIWAP map](#), resources in index



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Assisting Immigrant Survivors

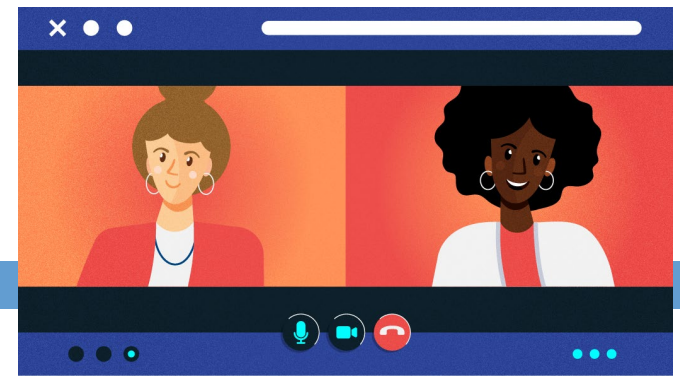
Best Practices with Immigrant Survivors

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- Help them find an immigration lawyer!
- Cultural humility/familiarity
- Language access plan
- Packet of referrals for help with legal and holistic needs
- Accompany clients to any benefits or government office, if possible, with evidence of eligibility printed out

Request TA from ASISTA

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ASISTA offers **live, individualized assistance** on a particular question/case

- **OVW grantees:** immigration case must relate to or arise from **domestic violence, dating violence, sexual assault, or stalking**

To schedule an appointment:

- Log into ASISTA account
- Go to “What would you like to do” → “TA appointment system” → “Click here to schedule your TA appointment”
- Select the form that applies to your request
- Select your time zone to see available appointment times
- Fill out intake form & attach any applicable documents. Click SUBMIT.
- You will receive a confirmation email with a link to join your appointment



Takeaways

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- Survivors can hold **any immigration status**, and sometimes being a survivor presents special immigration opportunities
- Immigrant survivors face unique hurdles in the realms of **criminal defense, family law, workplace rights, and public benefits access** – depending on their exact status
- If your organization cannot navigate or meet immigration needs directly, have **resources, referrals, and relationships** ready to deploy, including accessing ASISTA TA!

THANK YOU!

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- For individual technical assistance: http://www.asistahelp.org/en/technical_assistance/
- To get on our listservs (U visa Litigation/ASISTA Experts/ASISTA VAWA Updates (distribution list), email questions@asistahelp.org



Index of Presentation Resources



www.asistahelp.org



How to Access ASISTA TA