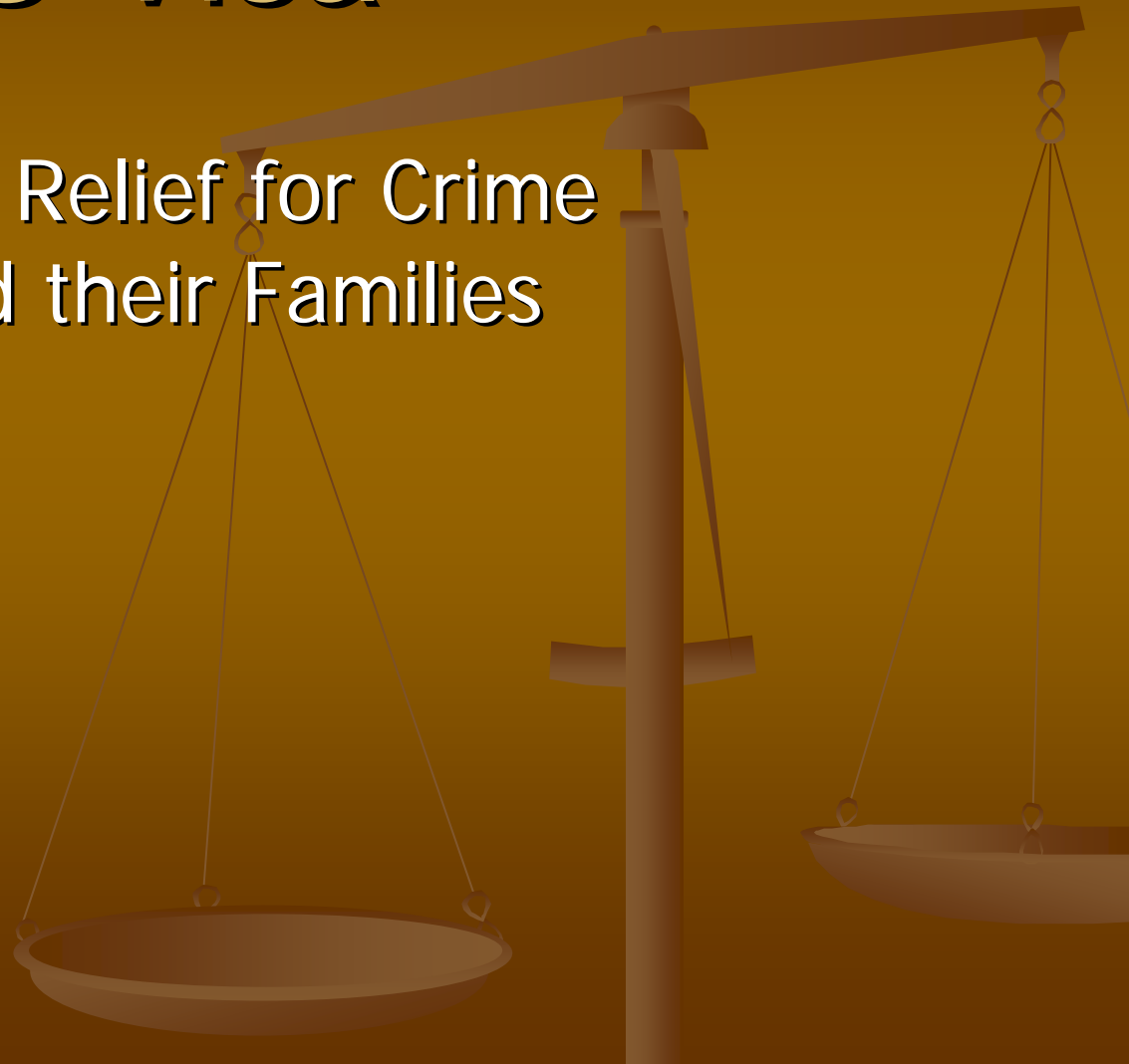


The U Visa

Immigration Relief for Crime
Victims and their Families

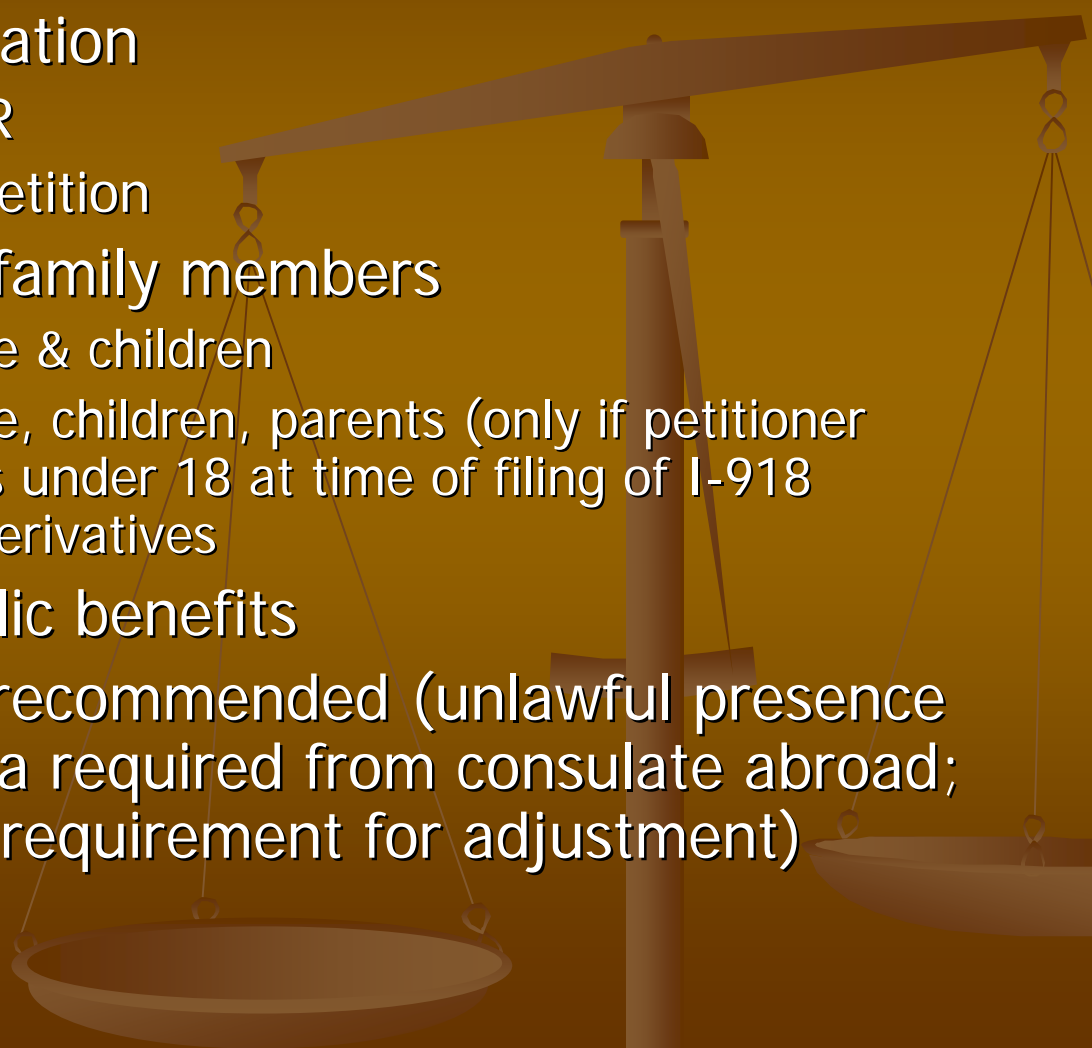


What is a U visa?



- Provides immigration relief to victims of certain criminal activity who:
 - suffered substantial harm as a result of crime
 - who have been or are likely to be helpful to law enforcement
- Purposes:
 - Encourage law enforcement to work with and protect immigrant crime victims
 - Encourage immigrant crime victims to report crimes and cooperate with law enforcement

Benefits

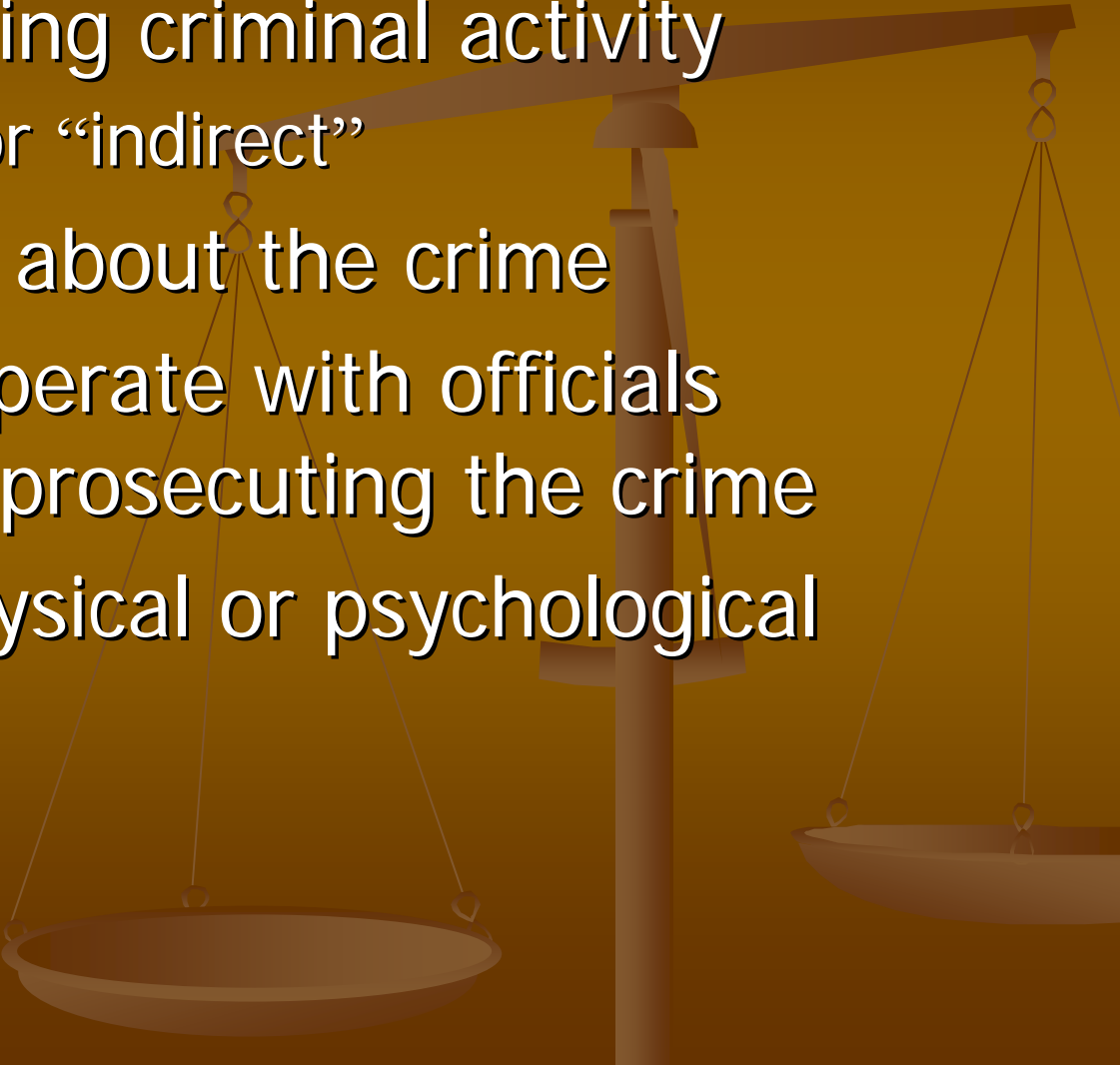
- Nonimmigrant status & path to permanent residence
 - Employment authorization
 - Approved petition OR
 - Pending, bona fide petition
 - Derivative status for family members
 - Petitioner >21, spouse & children
 - Petitioner <21, spouse, children, parents (only if petitioner unmarried), & siblings under 18 at time of filing of I-918
Batterers cannot be derivatives
 - Eligible for some public benefits
 - Travel allowed. Not recommended (unlawful presence issues; re-entry U visa required from consulate abroad; continuous presence requirement for adjustment)
- 

Limits

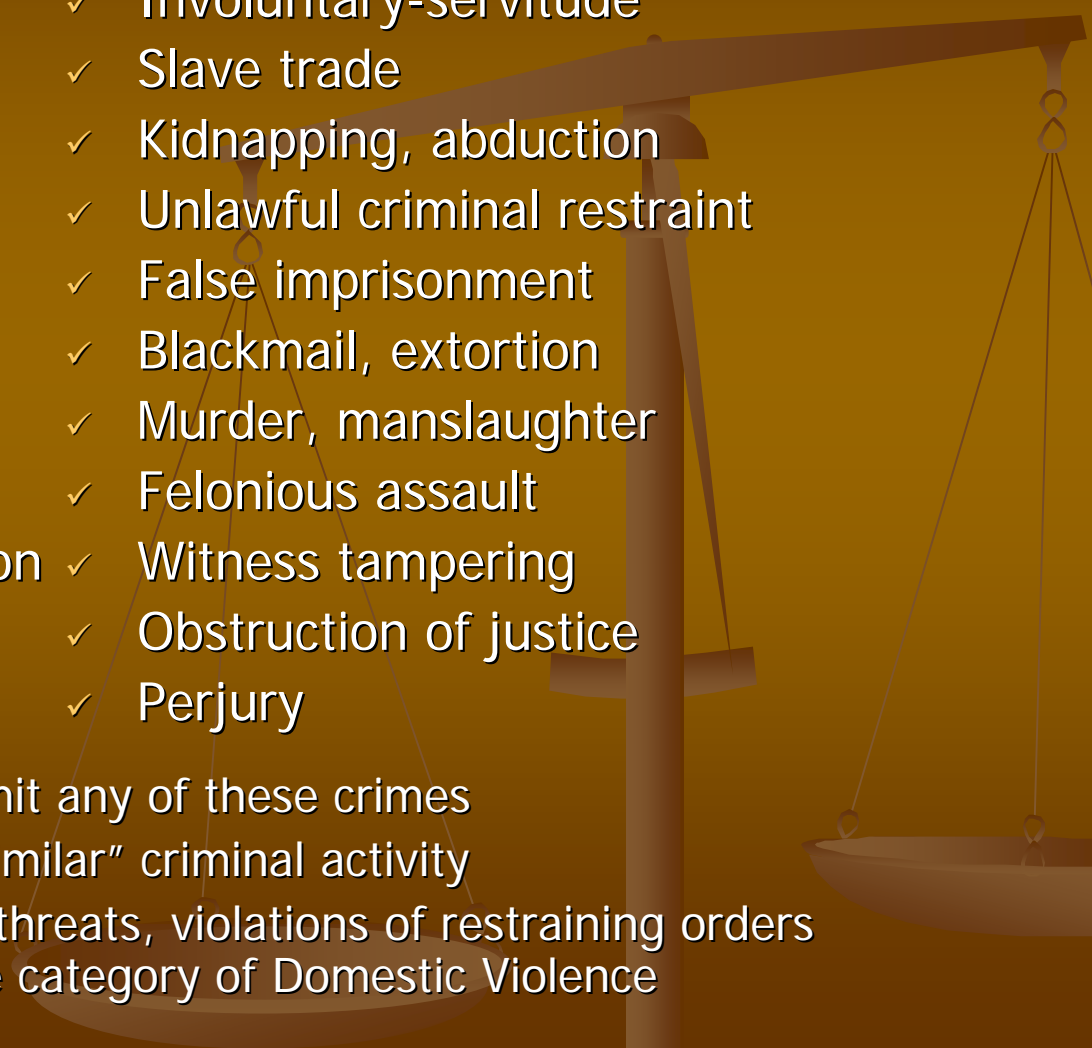


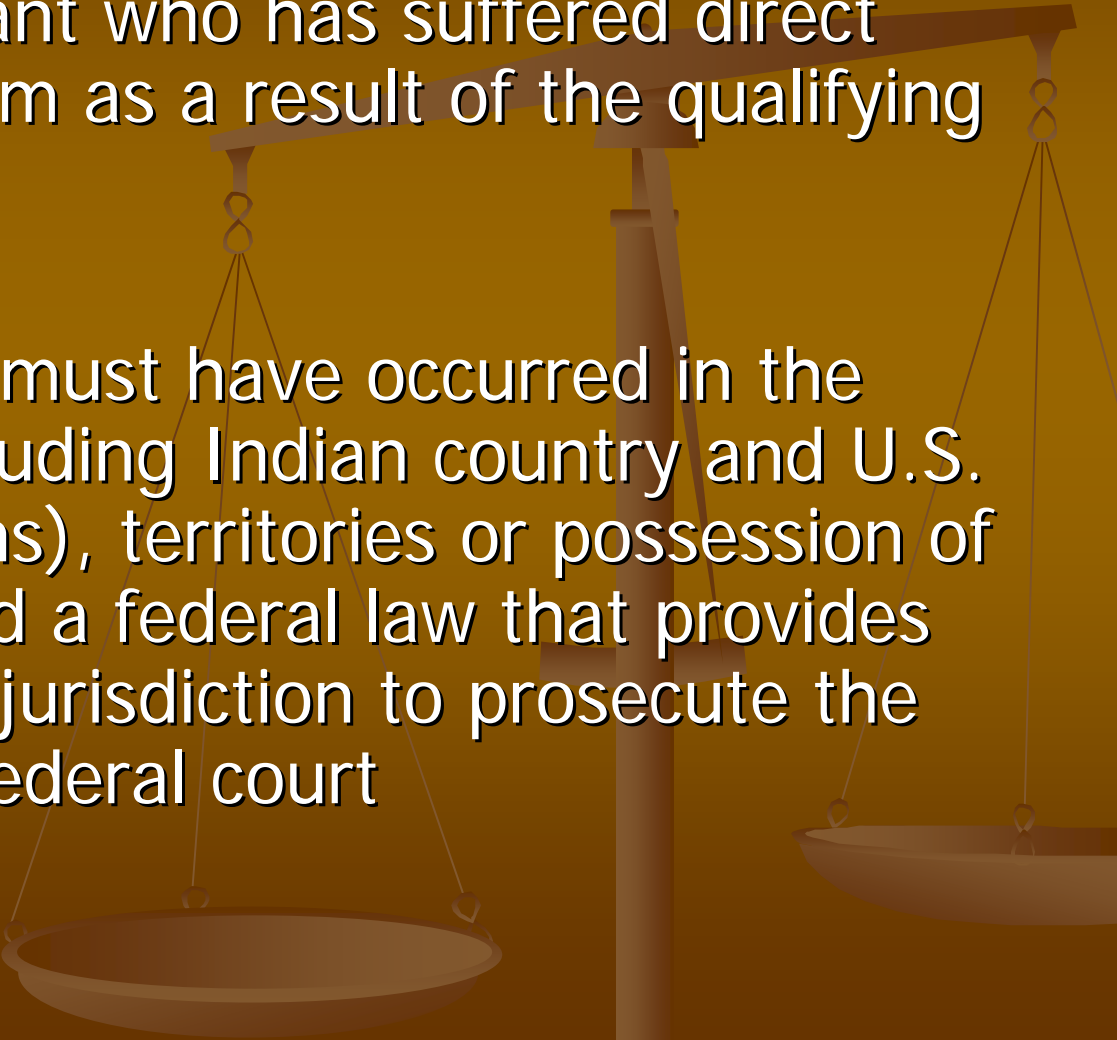
- 10,000 annual limit
 - Waiting list for those eligible for U status if beyond limit
 - Cap was reached 7/15/2010; however, 10,000 available first week of October 2010
 - Benefits of waiting list: deferred action for U petitioners and derivatives; EAD
- Status valid only for 4 years
 - Renewable with re-certification
 - Extended during pendency of adjustment application or in cases of exceptional circumstances
 - Derivatives' status expires with principal's. But extensions available to ensure derivatives are able to attain 3 years continuous presence in the US for adjustment purposes

Statutory Eligibility for a U visa

- Victim of qualifying criminal activity
 - Either “direct” or “indirect”
 - Has information about the crime
 - Is willing to cooperate with officials investigating or prosecuting the crime
 - Has suffered physical or psychological trauma
 - Is admissible
- 

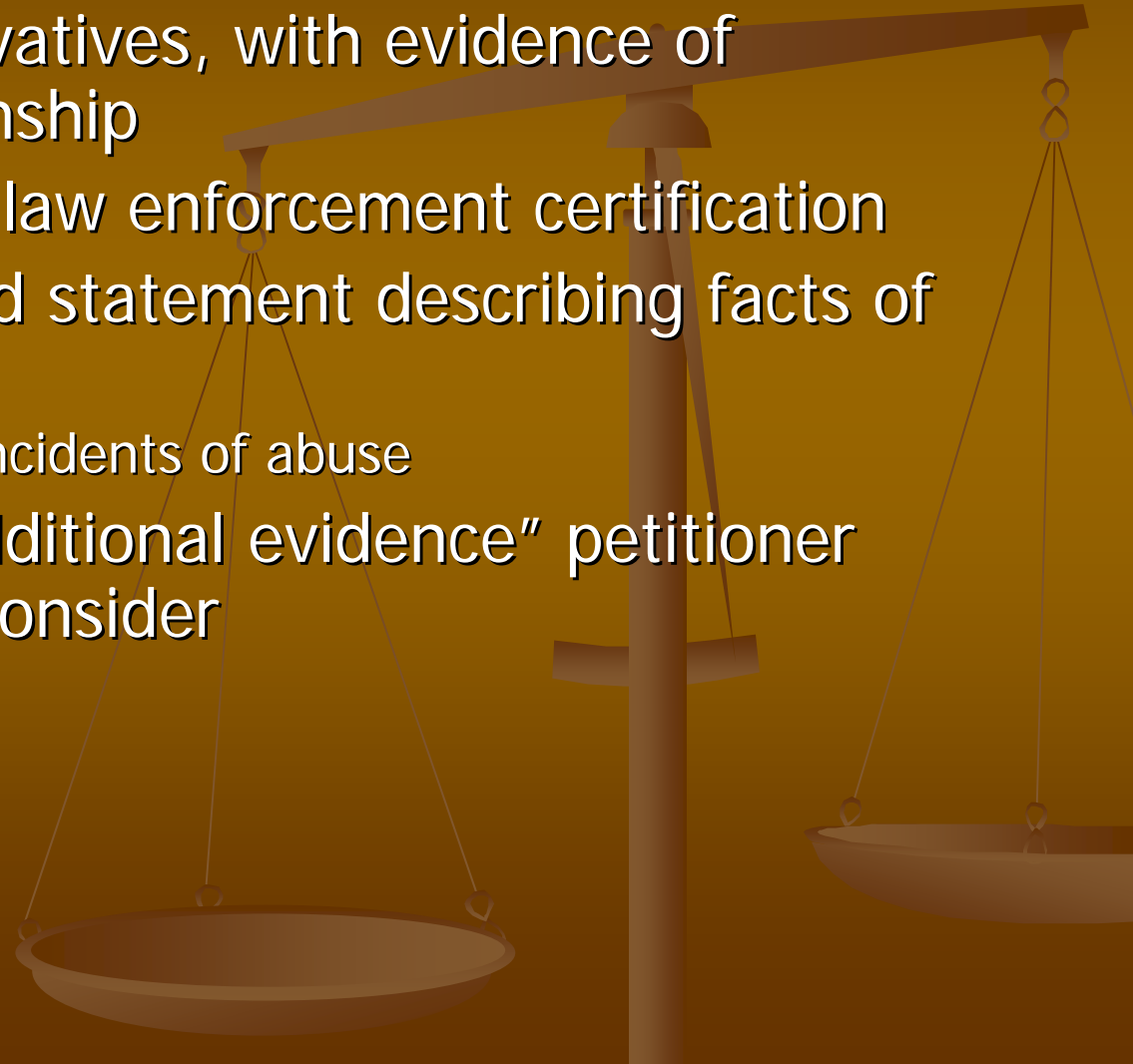
U Visas Available To Direct and Indirect Victims of:

- 
- ✓ Rape
 - ✓ Torture
 - ✓ Trafficking
 - ✓ Incest
 - ✓ Domestic violence
 - ✓ Sexual assault
 - ✓ Prostitution
 - ✓ Sexual exploitation
 - ✓ Female genital mutilation
 - ✓ Being held hostage
 - ✓ Peonage
 - ✓ Involuntary-servitude
 - ✓ Slave trade
 - ✓ Kidnapping, abduction
 - ✓ Unlawful criminal restraint
 - ✓ False imprisonment
 - ✓ Blackmail, extortion
 - ✓ Murder, manslaughter
 - ✓ Felonious assault
 - ✓ Witness tampering
 - ✓ Obstruction of justice
 - ✓ Perjury
- ✓ An attempt to commit any of these crimes
 - ✓ Any "substantially similar" criminal activity
 - ✓ Harassment, terror threats, violations of restraining orders can qualify under the category of Domestic Violence

- 
- Victim: an immigrant who has suffered direct and proximate harm as a result of the qualifying criminal activity
 - Qualifying activity must have occurred in the United States (including Indian country and U.S. military installations), territories or possession of the U.S. or violated a federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court

Overview of Filing Requirements

- I-918
- I-918A – for derivatives, with evidence of qualifying relationship
- I-918B – original law enforcement certification
- Petitioner's signed statement describing facts of victimization
 - First/Worst/Last incidents of abuse
- Optional: "any additional evidence" petitioner wants USCIS to consider



Law Enforcement Certifications

(I-918, Supplement B)

- Certification that individual has been, is being, or is likely to be helpful in the investigation and/or prosecution of criminal activity
- From: Federal, State, or local law enforcement official, prosecutor, judge or other Federal, State, or local authority investigating qualifying criminal activity
 - e.g. NYPD, DA's Offices, Criminal Court Judge, ACS, ICE, US Attorney's Office, etc.

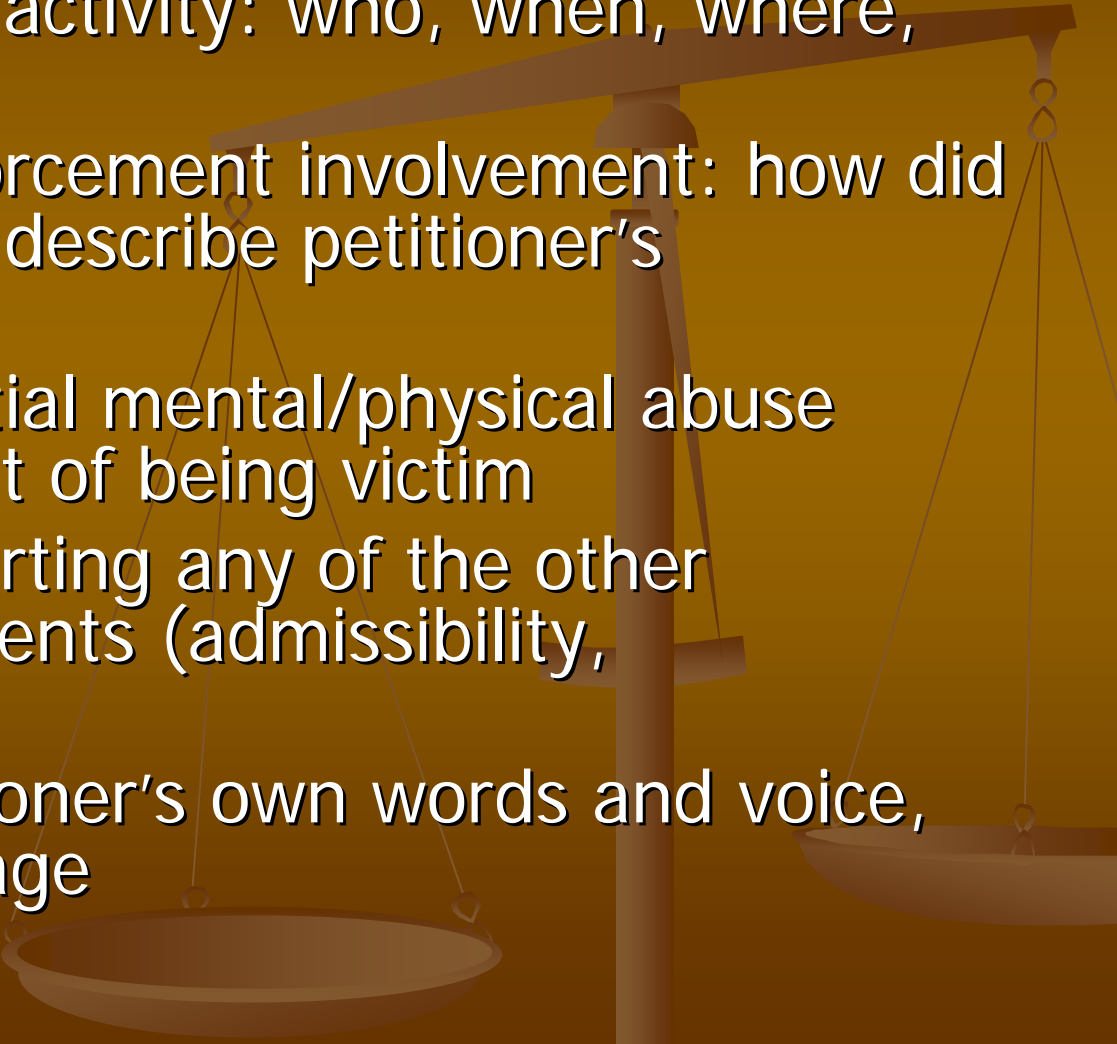
Law Enforcement Certifications

(continued)

- Authorized signers: heads of certain agencies; individuals in supervisory positions specifically designated by head of agency; judges
 - Part 6 of Form I-918B is certification that person signing has appropriate authority
- Valid only for 6 months from date signed
- ★ **Practice Pointer: Your first step should be lining up the I-918, Supp B from an LEA**

Petitioner's Statement

Detailing Victimization & Eligibility Requirements

- Details of criminal activity: who, when, where, circumstances
 - Details of law enforcement involvement: how did they get involved, describe petitioner's cooperation
 - Details of substantial mental/physical abuse suffered as a result of being victim
 - Information supporting any of the other eligibility requirements (admissibility, helpfulness, etc.)
 - Should be in petitioner's own words and voice, no lawyerly language
- 

Interviewing Victims



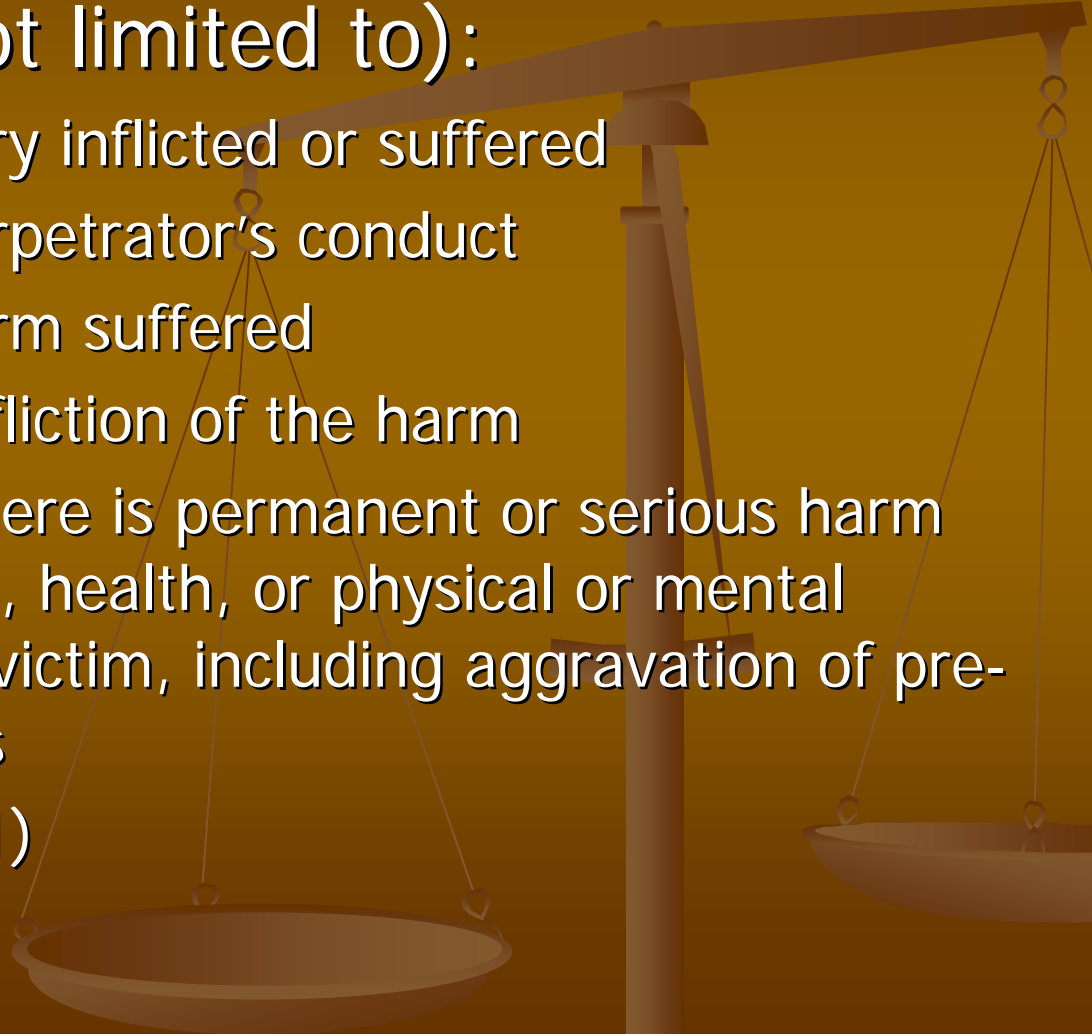
- First meeting with client crucial to establish rapport – use the form as guide to getting out the details and red flags
- Be sensitive to the client's circumstances
- USCIS does not need to know every gory detail
 - First/worst/last
- For good tips, read “Interviewing Battered Women” in Lawyers Manual on Domestic Violence, available at <http://www.probono.net/ny/family/library/>

Substantial Mental/Physical Abuse



- Definition of physical or mental abuse:
 - “Injury or harm to the victim’s physical person, or harm or impairment of the emotional or psychological soundness of the victim.” 8 CFR 214.14(a)(8)
 - Draws upon Violence Against Women Act definitions. VAWA regulations use terms “abuse” interchangeably with “battery” and “extreme cruelty”
- “Substantial” undefined

Factors of Mental/Physical Abuse

- Include (but not limited to):
 - Nature of the injury inflicted or suffered
 - Severity of the perpetrator's conduct
 - Severity of the harm suffered
 - Duration of the infliction of the harm
 - Extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions
 - 8 CFR 214.14(b)(1)
- 

Inadmissibility Waivers



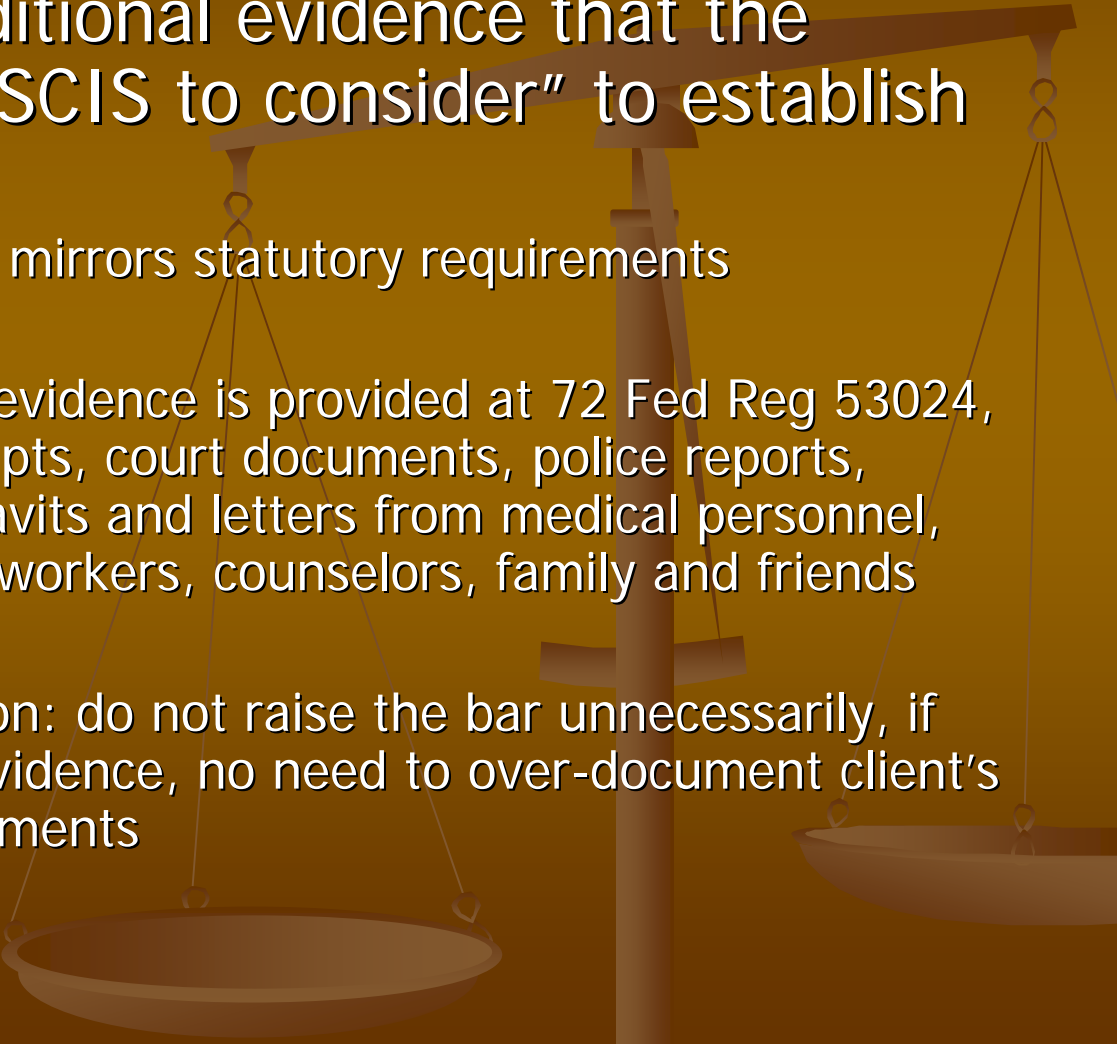
- All inadmissibility grounds in INA 212(a) apply
 - Such as: Criminal convictions, entry without inspection, unlawful presence, fraud or misrepresentation in obtaining immigration benefits, etc.
- May seek waiver per INA 212(d)(14)
 - On form I-192
 - Cost: \$545 per person per waiver form. Fee waiver available
 - However, no waiver for Nazi persecution, genocide, torture/extrajudicial killings (INA 212(a)(3)(E))
 - VSC announced that U visa petitions can be submitted without the I-192 and wait for RFE if adjudicator decides it is necessary (strategic decision – in some cases, clearly necessary, i.e., for clients with criminal issues).
- Waivers are Discretionary

Inadmissibility Waivers

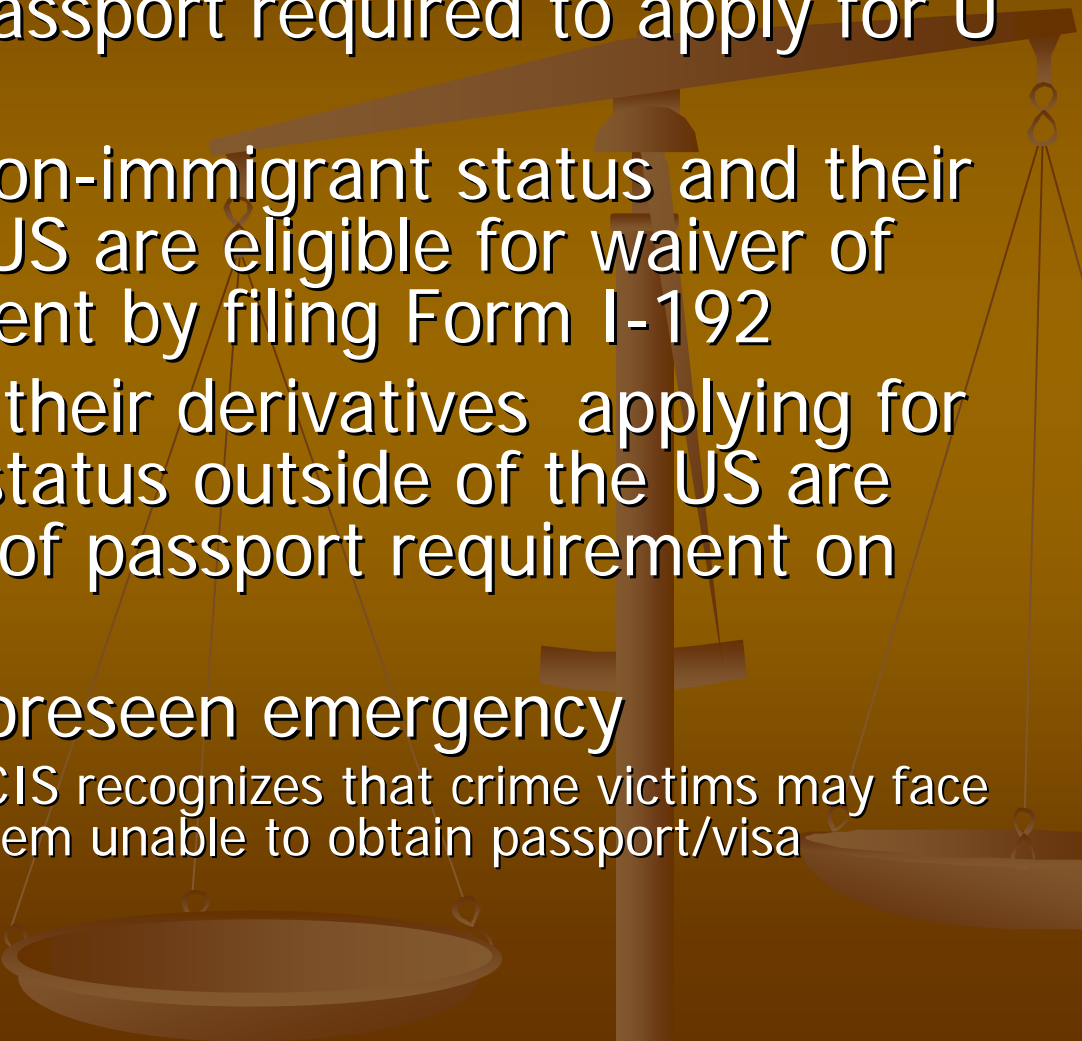
(continued)

- Basis of discretion: is a favorable exercise of discretion in the public or national interest? (8 CFR 212.17)
 - Balance the adverse factors of inadmissibility with the social and humanitarian considerations presented
 - include an affidavit outlining circumstances for favorable exercise of discretion (e.g., reasons person wants to stay in (or enter) the US; any sympathetic factors that explain the issue giving rise to the inadmissibility)
 - If inadmissibility based on violent or dangerous crime, DHS will only exercise favorable discretion in extraordinary circumstances
- If waiver denied, can re-file waiver application
- If waiver granted but later revoked, no appeal

Optional: “Any Additional Evidence”

- Optional: “Any additional evidence that the petitioner wants USCIS to consider” to establish eligibility.
 - 8 CFR 214.14(c)(2)(ii) mirrors statutory requirements
 - Examples of type of evidence is provided at 72 Fed Reg 53024, including: trial transcripts, court documents, police reports, medical records, affidavits and letters from medical personnel, school officials, social workers, counselors, family and friends
 - Important consideration: do not raise the bar unnecessarily, if have required initial evidence, no need to over-document client’s case with excess documents
- 

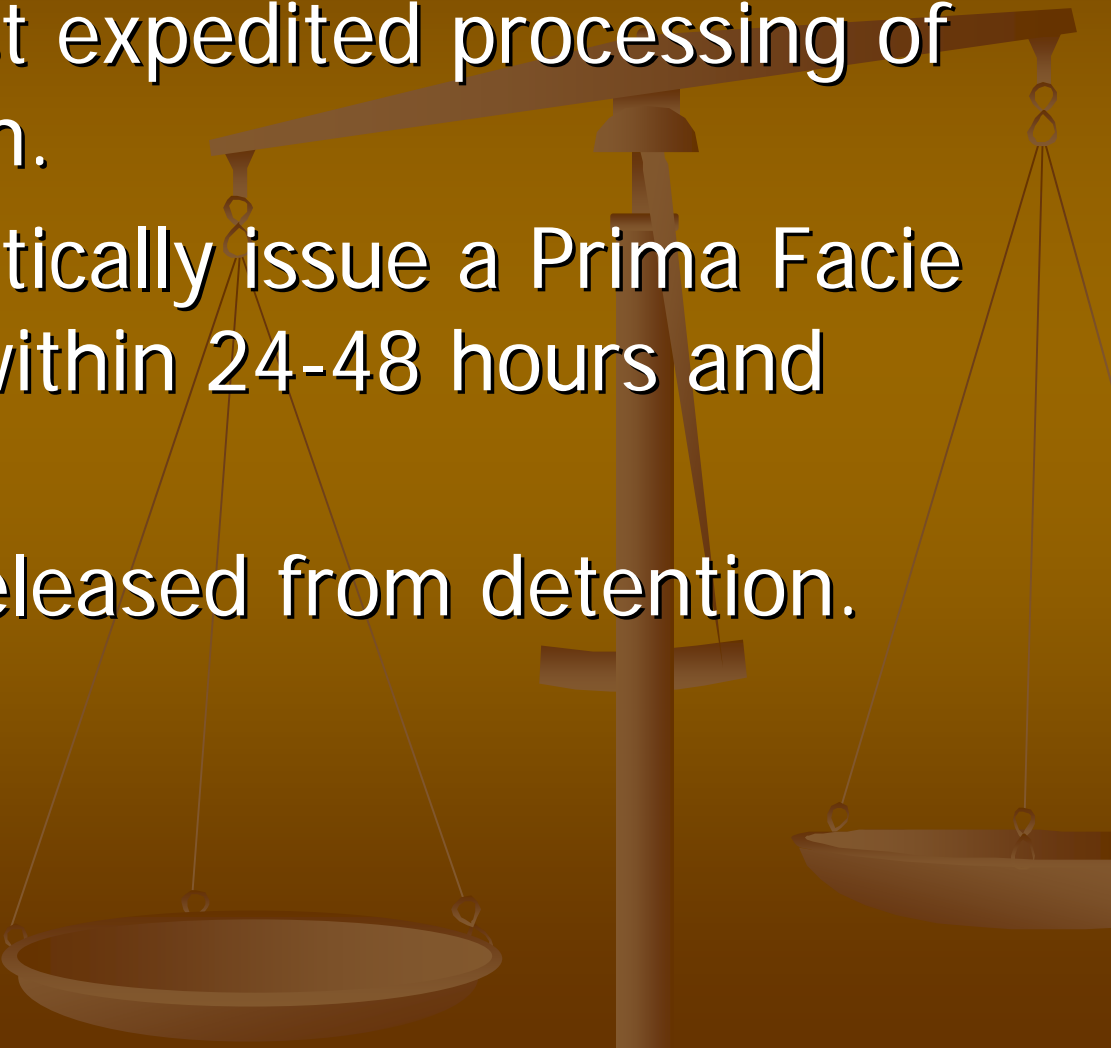
Passport

- Valid, unexpired passport required to apply for U visa or for travel
 - Petitioners for U non-immigrant status and their derivatives in the US are eligible for waiver of passport requirement by filing Form I-192
 - Petitioners and/or their derivatives applying for U non-immigrant status outside of the US are eligible for waiver of passport requirement on Form I-193
 - Must show an unforeseen emergency
 - Underlying policy: USCIS recognizes that crime victims may face threats which make them unable to obtain passport/visa
- 

U Visa in Removal Proceedings

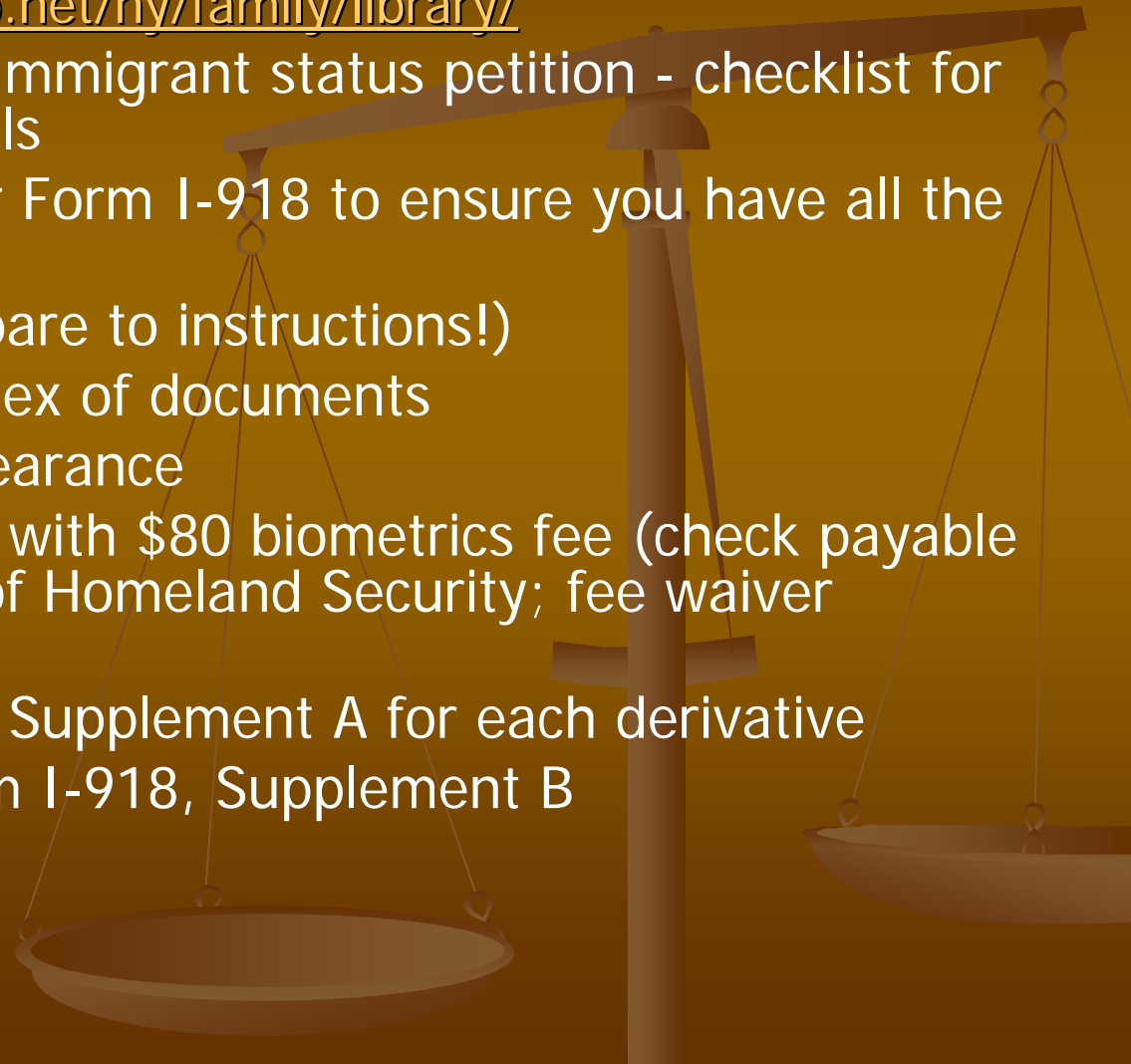
- Available, must be filed with USCIS not immigration court
- Filing does not stay removal proceedings – separate application required, Form I-246 (no fee waiver available)
- Upon filing, removal proceedings can be adjourned or administratively closed to allow for adjudication
- Must have agreement of ICE to file a joint motion to terminate removal proceedings without prejudice when U application pending or approved. 8 CFR 214.14(c)(1)(i) & (f)(2)(i)
- Joint motion filed with Immigration Court or BIA
- Grant results in cancellation of the order of removal, exclusion, or deportation as of date of grant. 8 CFR 214.14(c)(5)(I) & (f)(6)
- *Note* that VSC's policy is not to refer denied U cases to ICE for proceedings

U Visas and Detained Clients

- You may request expedited processing of the U application.
 - VSC will automatically issue a Prima Facie Determination within 24-48 hours and notify ICE .
 - Client may be released from detention.
- 

What Exactly Do I Need to File?

- See <http://www.probono.net/ny/family/library/>
- U visa folder for U nonimmigrant status petition - checklist for attorneys and paralegals
- Review Instructions for Form I-918 to ensure you have all the documents required
- Checklist (always compare to instructions!)
 - Cover letter and index of documents
 - G-28 Notice of Appearance
 - Signed Form I-918, with \$80 biometrics fee (check payable to US Department of Homeland Security; fee waiver available)
 - Signed Form I-918, Supplement A for each derivative
 - Signed original Form I-918, Supplement B

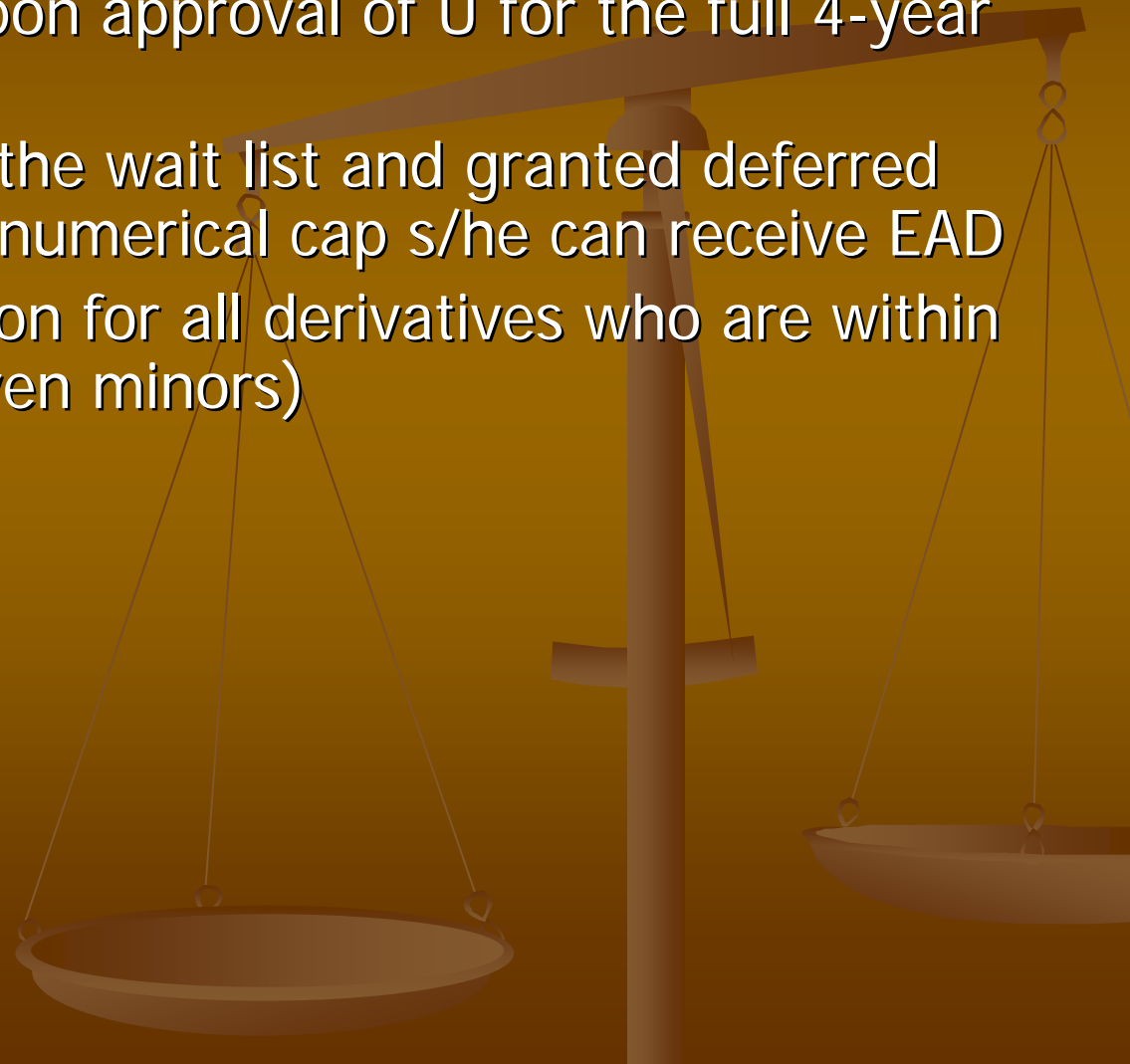


What Exactly Do I Need to File?

- Copies of identity documents (passport, birth certificate, marriage certificates, etc.)
- I-94 or other docs showing lawful entry (if any)
- Signed statement by U visa petitioner
- Supporting documentation
- 2 passport photos for principal petitioner (needed for work permit)
- Signed Form I-765 (for work permit) with 2 passport photos for each derivative in the US with \$340 check or money order (or fee waiver request) to US Dept of Homeland Security for each I-765 applicant
- I-192 with \$545 fee (or fee waiver request) for inadmissibility issues + evidence to establish circumstances for favorable exercise of discretion

Employment Authorization

- EAD will be issued upon approval of U for the full 4-year period
- If client is placed on the wait list and granted deferred action due to the FY numerical cap s/he can receive EAD
- Submit EAD application for all derivatives who are within the United States (even minors)

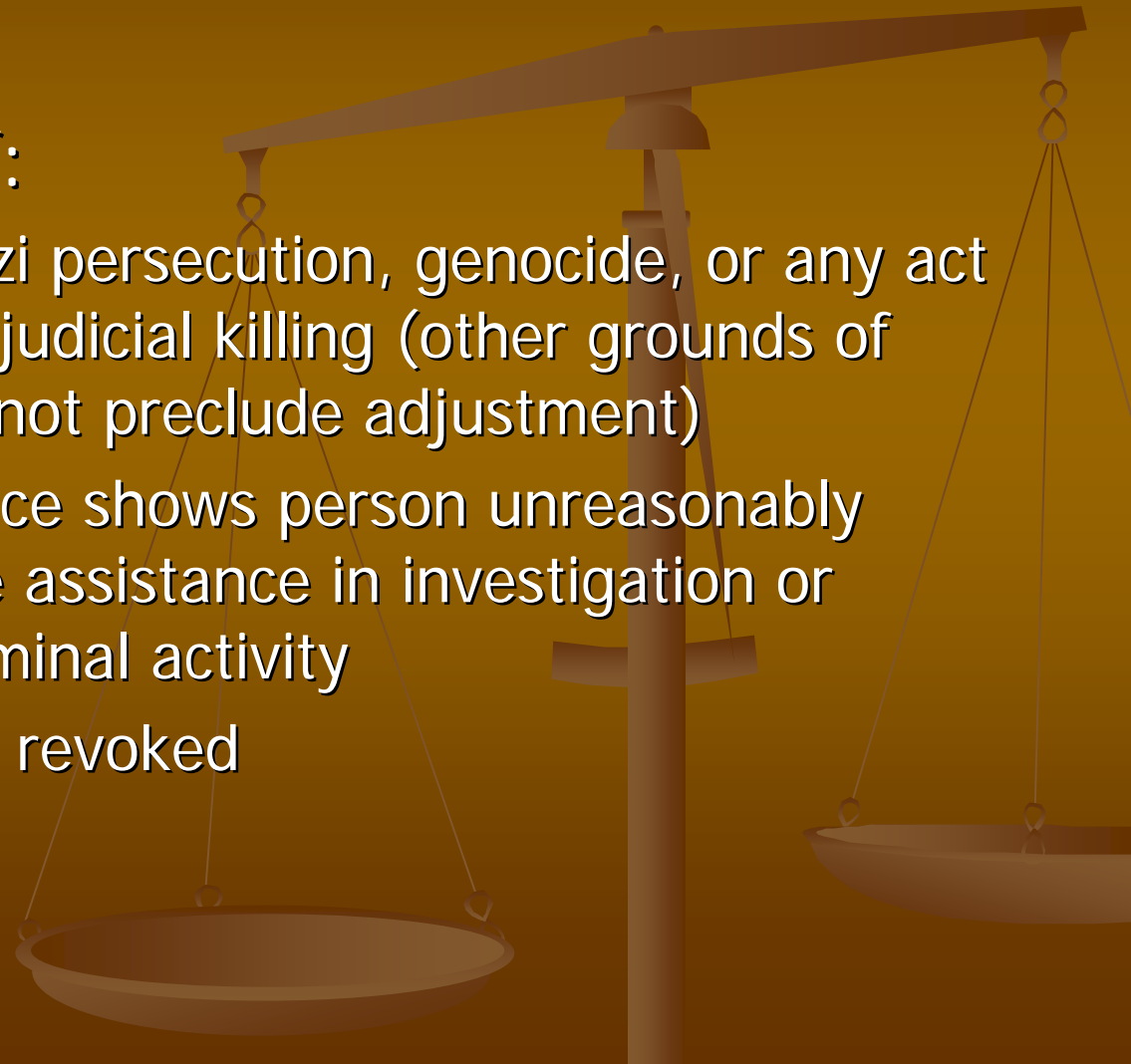


Completed Applications

- Completed applications should be two-hole punched through the top of the pages, and fastened with a two-hole fastener – do not bind!
- A cover letter with road map and index are helpful.
- G-28 printed on blue paper
- Tabs to locate supporting documents should be attached at the bottom only
- Write Attention:U visa on the front of the envelope.
- Send the application Certified, Return Receipt Requested or via FedEx so that you will have proof that USCIS received it and so you may be able to track the application.
- You should receive receipts in about 3 weeks. You can track your receipt numbers at www.uscis.gov, as well as sign up for email updates at that website.

Adjustment of Status

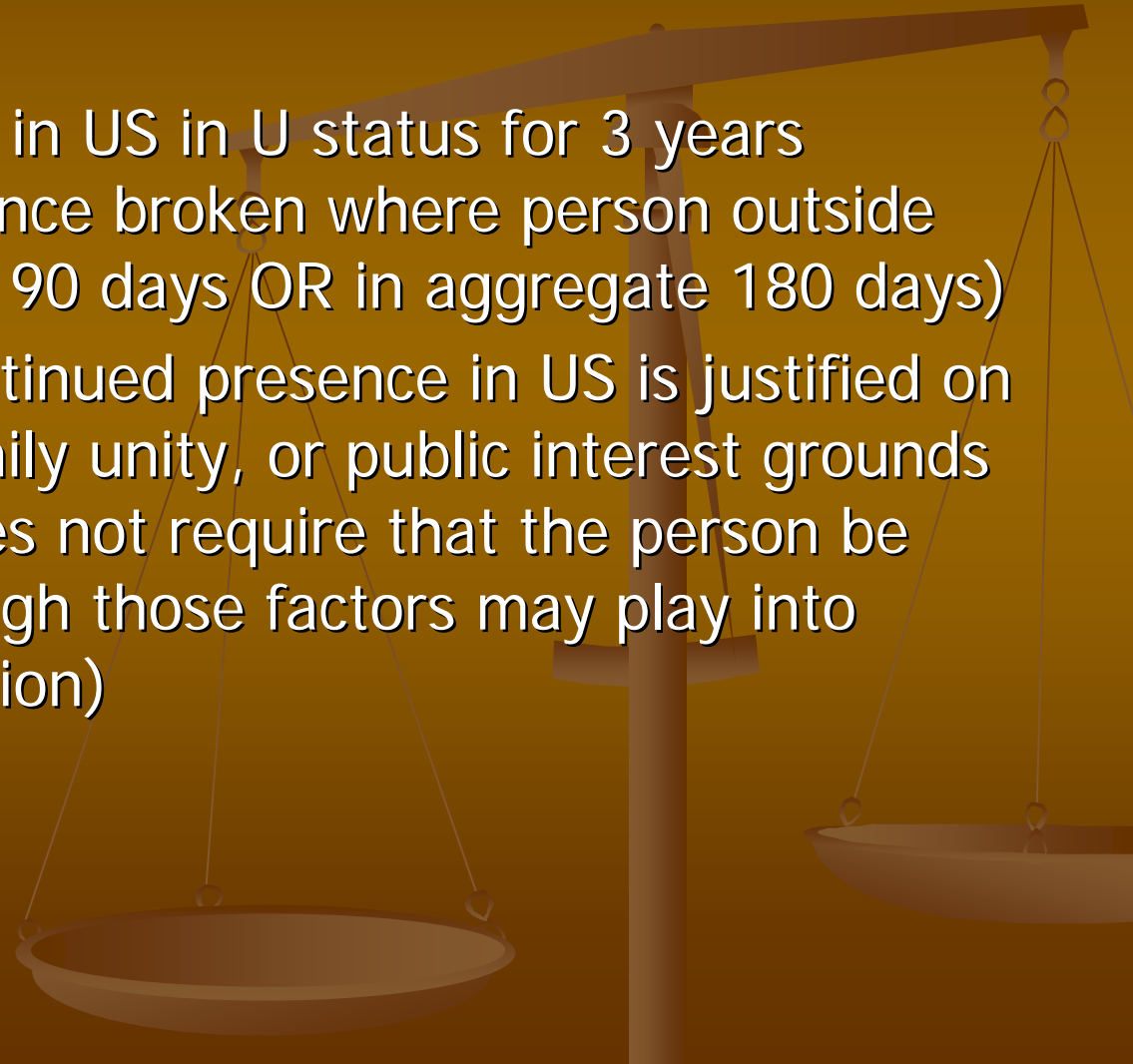
- Individuals in U status may adjust under INA 245(m)
- May not adjust if:
 - participated in Nazi persecution, genocide, or any act of torture or extrajudicial killing (other grounds of inadmissibility do not preclude adjustment)
 - Affirmative evidence shows person unreasonably refused to provide assistance in investigation or prosecution of criminal activity
 - U status has been revoked



Adjustment of Status

■ Requirements:

- Physically present in US in U status for 3 years (continuous presence broken where person outside US for a period of 90 days OR in aggregate 180 days)
- Discretionary: continued presence in US is justified on humanitarian, family unity, or public interest grounds (Note: statute does not require that the person be "admissible", though those factors may play into exercise of discretion)



Contacting the Vermont Service Center

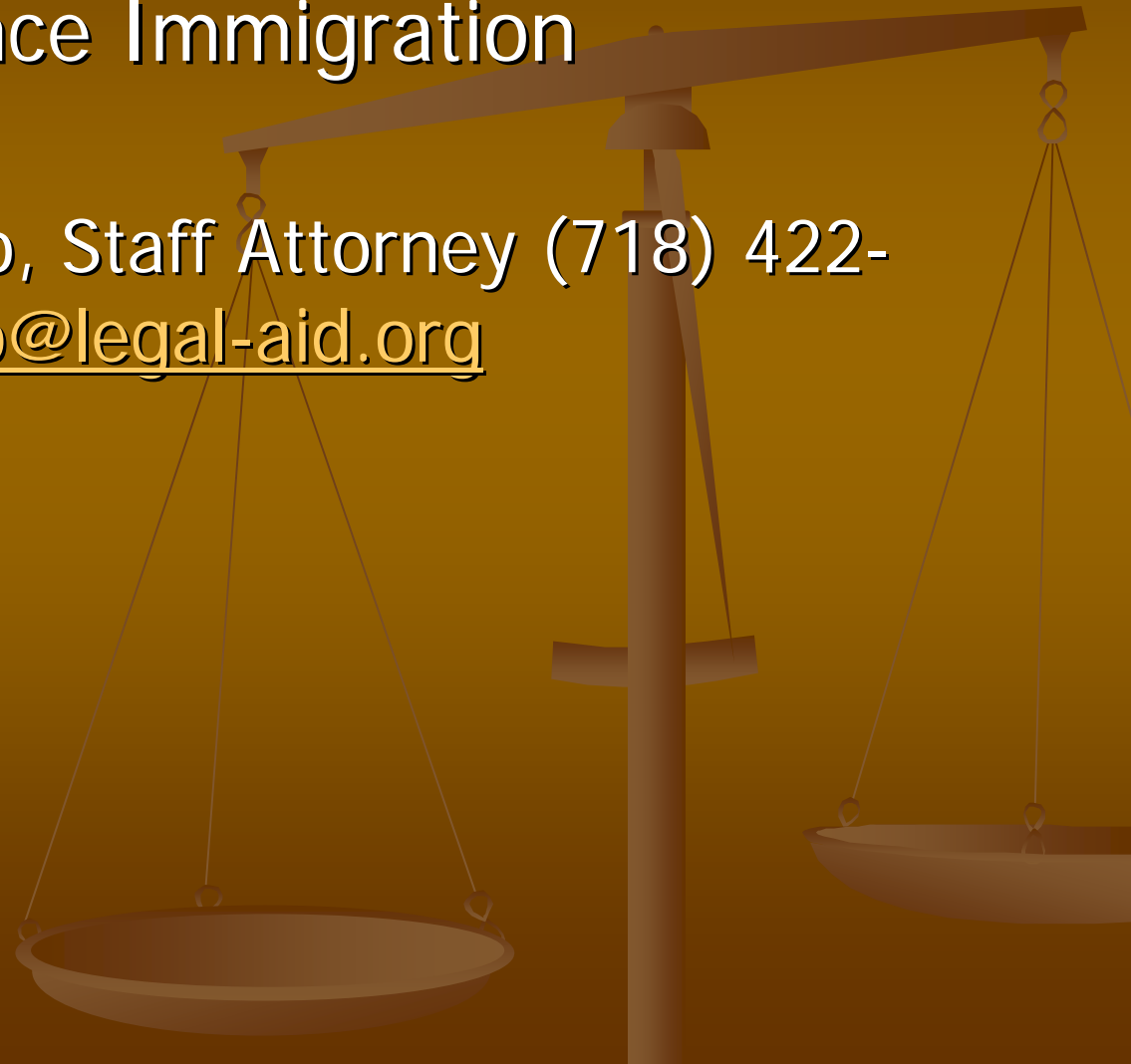
- Please contact our office first!
- VSC Hotline – (802) 527-4888
 - Attorney of record must leave message and VSC will return call within 72 hours
 - Include the client's A# and Receipt Number found on the I-918 Receipt Notice
- VSC Email –
hotlinefollowupi918i914.vsc@dhs.gov

Immigrant Women & Children Project

- The New York City Bar Justice Center, 42 W. 44th St., New York, NY 10036 (by appointment only)
- Suzanne Tomatore, Esq., Program Director, (212) 382-6717, stomatore@nycbar.org
- Robert O'Leary, Fellow, (212) 382-6621, ro'leary@nycbar.org
- Eleanor Broh, Program Coordinator, (212) 382-4711, ebroh@nycbar.org

Legal Aid Society

- Domestic Violence Immigration Project
 - Hannah Shapiro, Staff Attorney (718) 422-2861, hrshapiro@legal-aid.org



THANK YOU!

