

# **Representing Immigrant Parents in CHIPS Proceedings**

**Eren Sutherland  
Attorney  
Mid-Minnesota Legal Aid**

# Holistic Representation

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- 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, diminished fear of family separation, and access to public benefits and services

# Immigration Benefits Available to Some Parents in CHIPS Proceedings

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- ❖ 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”)

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# VAWA

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- ◉ *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

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- ◉ *Requirements for Immigrant Parent to Apply for VAWA Benefit*
  - Legal, good faith marriage to U.S. citizen or LPR abuser with cohabitation
  - 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

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- 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 Case Example

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- 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.

# VAWA

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- *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

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- *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
- 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

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# U VISA

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- *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 crime
  - Have information about the criminal activity
  - Be helpful in *detection, investigation, prosecution* of the crime

# U VISA, Qualifying Crimes

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- 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

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- 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

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- 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

# U VISA Case Example

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- 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

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# Derivative Citizenship Case Example

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- Ismail came to the United States as a refugee under his mother's status. He and his mother have their green cards and they are lawful permanent residents. Lately, Ismail has been getting into a lot of trouble at school and has had a juvenile adjudication for theft. Ismail lives at home with his mother. Ismail is sixteen years old.

# Derivative Citizenship

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## ◉ *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

# Special Immigrant Juvenile Status (“SIJS”)

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# SIJS

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## ◉ *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

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

# Questions?

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