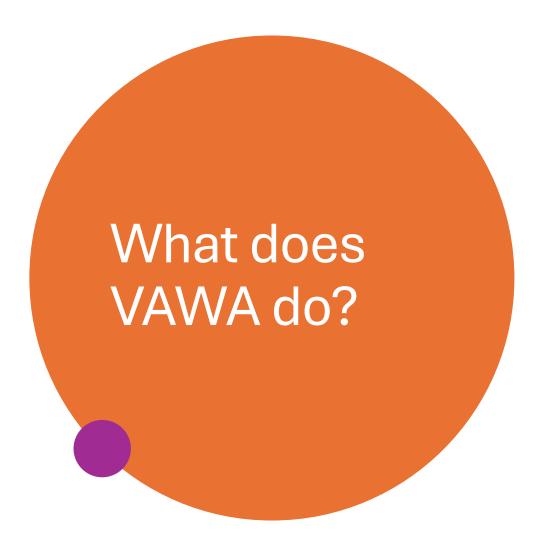


Can a green card be revoked?

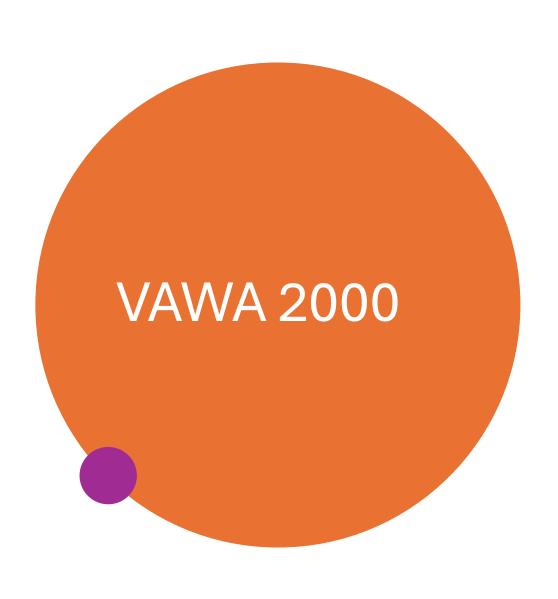


- VAWA creates a special route to lawful immigration status for victims of domestic abuse who normally must rely on their abusers to file for status for them.
- VAWA self-petitioning allows victims of abuse who are close relatives of US citizens and lawful permanent residents to file for status on their own.

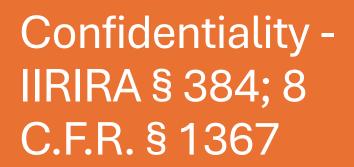


Under the federal Violence Against Women Act (VAWA), individuals may be eligible to become a lawful permanent resident (get a Green Card) if they are the victim of battery or extreme cruelty committed by:

- A U.S. citizen spouse or former spouse;
- A U.S. citizen parent;
- A U.S. citizen son or daughter;
- A lawful permanent resident (LPR) spouse or former spouse; or
- An LPR parent.
- A person who files a VAWA self-petition is generally known as a VAWA self-petitioner.



- U-visa immigration protections for immigrant victims left out of VAWA 1994
- Help for immigrant sexual assault victims
- T visa for victims of human trafficking



 Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 prohibits all Department of Homeland Security (DHS) employees from providing information about a selfpetitioner to 3rd parties.

• Section 384 prohibits DHS from making removability decisions based solely on information provided by the abuser.

Battered Spouse, I360 Petition

- Show either battered or subjected to extreme cruelty, including psychological or economic abuse
- Familial relationship must exist between the parties
- Abuser must be USC/LPR spouse, son, daughter, or parent
- If parties are divorced, did abuse take place less than two years ago?

Battered Spouse I-360 Petition

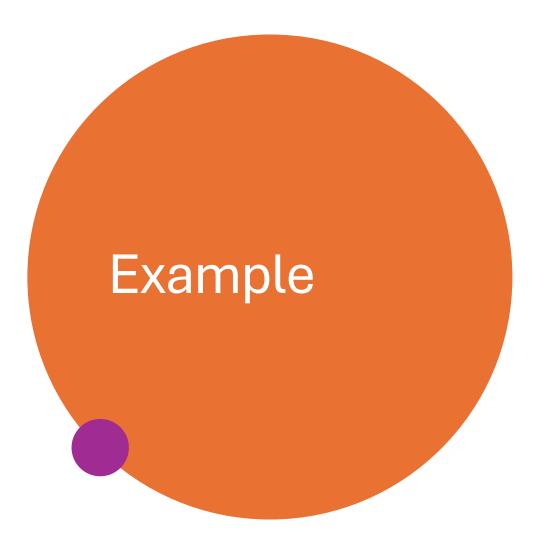
Residing in U.S.

Resided in U.S. with abuser at some point

Person of good moral character

Battered Spouse I-360 Petition

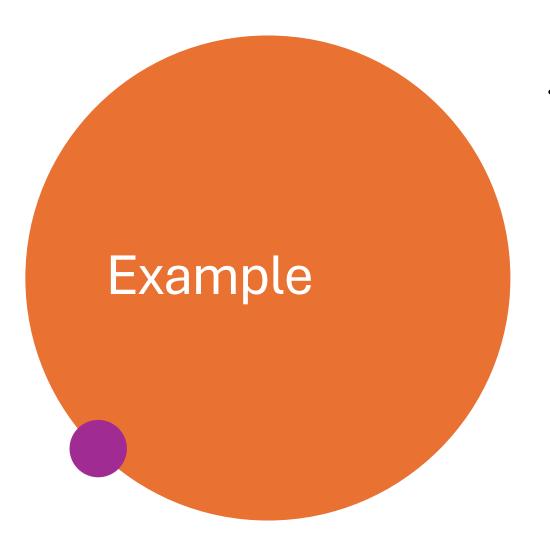
- "Good faith marriage"
 - Self-petitioner cannot have entered into a marriage for the primary purpose of circumventing the immigration laws.
 - 8 C.F.R. § 204.2(c)(1)(ix).
 - Did she intend to establish a life with spouse at the time of marriage.
- Requires "battery or extreme cruelty":
- defined broadly to include "being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury."



Angeline and her husband Daniel are both citizens of Colombia. They have two children. Throughout the duration of the relationship in Colombia, Daniel and his family have abused Angeline, physically and mentally, often leaving her with broken ribs and bruises. Angeline told only her family about this but there was nothing they could do to help her. Daniel receives an offer of a great job in technology from a small startup company in California and obtains an H-1B visa. Eventually he sends for Angeline and their children to join him as H-1B dependents. The couple wants to decide whether to stay married. They agree that Angeline and the children should stay with her relatives initially because Daniel has been staying with friends and has not yet organized a place to stay with his family. Before they are able to live together as a family unit, Daniel receives his LPR status. Angeline would now be eligible to file for VAWA benefits, even though she has not lived with her husband in the United States.

Example

John is a U.S. citizen enlisted in the army, stationed at a base in Germany. He is married to Gretchen, a citizen of Germany. She has never left her country. In the beginning of their relationship, John was attentive and kind. However, over time, he has become physically and mentally abusive towards her. She has called the military police on several occasions, therefore documenting the abuse. Even though Gretchen has never entered the United States, she can file a petition as an abused spouse that will allow her to immigrate here.



Mai, who is from Cambodia, is in the United States as a B-2 overstay. Recently, she called the police because her husband, a U.S. citizen, held a knife to her throat and threatened to kill her because his dinner was not ready when he returned home from a long day at work. The police advised her to apply for a protection from abuse order, or PFA. Mai sought advice on this from a women's rights organization. One of the lawyers there has agreed to accompany Mai to the court hearing where a decision on whether or not to issue a final PFA order will be determined. The lawyer 391knows that Mai has no immigration status, and so has sought advice from an immigration attorney on the best way to assist Mai in legalizing her status. Because she knows one type of immigration application Mai can apply for requires Mai to prove that her husband is a U.S. citizen, the lawyer can consider asking the family court judge to include ordering him to produce evidence of his citizenship as part of the overall PFA order.

Battered Spouse I-360 Petition

- Ways to show relationship between parties:
 - Marriage certificates from any/all marriages of both spouses
 - Death Certificates, if applicable
 - Divorce records, including those from any prior marriages of either spouse, if possible
 - Birth certificates of any children of the relationship
 - Copies of wedding photos

Battered Spouse I-360 Petition

- Ways to show residence with abuser
 - Lease or Rental Agreement
 - Utility bills
 - Any other bills
 - Children's school records
 - Bank statements

I-360 Petition, Evidentiary Standard

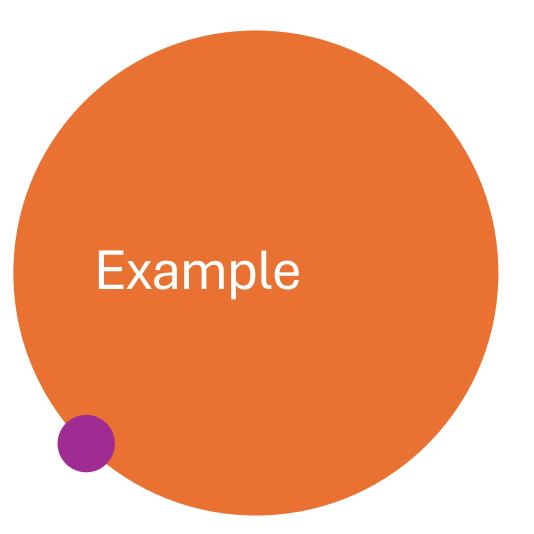
- Ways to show abuse: any credible evidence
 - Statement of petitioner
 - Affidavits from friends
 - Police and medical records
 - 911 Transcripts
 - Photographs of any bruising
 - Court documents, i.e. PFA Orders
 - Psychosocial assessments
 - Counseling records, if they can be disclosed
 - Shelter records, where appropriate

Benefits Available

- Affirmative application for self petition; access to some public benefits from the time prima facie application received by USCIS
- Permanent residency status leading to citizenship
- Deferred action status where no visa immediately available
- Employment authorization
- Similar deferred action status for eligible children
- Application for derivative children who live abroad

Derivative Children Who Live Abroad

- Once the principal applicant has LPR status, unmarried children under 21 can enter the U.S.
- If abuser was a U.S. citizen, the child's date freezes at the filing of the Form I-360 by the child's parent. If abuser is LPR, a more complicated formula is used.
- Derivative must show proof of the principal's approval and proof of their relationship to the principal
- Derivative must apply to enter the U.S. on DS 260 immigrant visa and complete all requirements EXCEPT the Affidavit of Support



 Violet is a citizen of Jamaica. She came to the United States on a B-2 visa, leaving her fouryear-old son in the care of her mother. Even though she overstayed her leave, she was recently granted status as an LPR because she had been severely abused by her U.S. citizen husband, Cedric. Violet wants desperately to reunite with her son, who she has not seen for over ten years. Friends have told her that she cannot file for her son because he is still in Jamaica.

Is this true?

Discussion

- Nicolette comes to see you because she wants to legalize her immigration status. She tells you that her husband has been abusing her. He is an LPR and regularly beats her. On one occasion, he smashed a bottle over her head, creating a huge gash that needed several stitches. She tells you that his violence terrorized her so much that she was too afraid to disobey any of his orders. At one point, Nicolette explains, her husband became a pimp to several women and forced her to engage in prostitution along with them. She did not want to do this, but believed her husband when he said that he would kill her if she did not comply. Nicolette has several arrests for prostitution and served time in prison for this offense. She tells you that she was only able to break free from her husband after he was also imprisoned, which is where he still is.
- Are there any impediments to Nicolette demonstrating that she is a person of good moral character?
- If so, is there anything she can do to overcome them?

VAWA Cancellation

- Defensive application for cancellation of removal before immigration judge.
- Similar application to self-petition, except for someone in removal proceedings.
- Show, in addition:
 - Three years physical presence in U.S., even after commencement of proceedings
 - Extreme hardship to applicant if removed from U.S.

Removal of Conditional Residence for Abused Spouses

- A person is granted conditional residency if they are married less than two years at the time they enter the U.S. with an immigrant visa or receive LPR status while here.
- Conditional residency is granted for two years.
- The couple must file a joint petition, Form I-751, Petition to Remove conditions on Residence, prior to the 2-year expiration date.
- A waiver of the joint filing requirement is available for abused spouses and can be filed at any time.

U Visas for Crime Victims

- Available to victims of specific criminal activity
 - who have been, are being, or will be helpful in an investigation or prosecution of that activity,
 - And have suffered substantial physical or emotional abuse from that criminal activity.
- Criminal activity must be in U.S. or otherwise violate U.S. law.
- Familial relationship with crime perpetrator not required.
- Used when neither party has lawful or permanent immigration status.



- Abduction
- Abusive sexual contact
- Being held hostage
- Blackmail
- Domestic violence
- Extortion
- False imprisonment
- Female genital mutilation
- Felonious assault
- Fraud in foreign labor contracting

- Incest
- Involuntary servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of justice
- Peonage

Qualifying Criminal activity

- Perjury
- Prostitution
- Rape
- Sexual assault
- Sexual exploitation
- Slave trade

- Stalking
- Torture
- Trafficking
- Witness tampering
- Unlawful criminal restraint
- Other related crimes*†

*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.



U visa protection available even when:

- Investigation does not result in prosecution
- Victim helpful in investigation does not testify at trial
- Abuser eludes arrest
- Criminal case dismissed



U visa protection available even when:

- Victim comes forward to make report and police or prosecutors decide not to prosecute
- Prosecution but no conviction
- Victim of listed criminal activity but another crime prosecuted
- Prosecution cannot take place (diplomats, no extradition)

Discussion

Mario, an undocumented Peruvian national, survived a robbery at gunpoint and is now suffering from post-traumatic stress disorder, or PTSD. He cannot get out of bed and is afraid to leave his home. The police have caught the perpetrator and have subpoenaed Mario to appear in court to testify. He is afraid to do so because he does not want to come face-to-face with his attacker again. However, he is willing to give a written statement.

- Has Mario been a victim of an enumerated crime and if so, which?
- Assume that the crime does qualify him for relief. Can he demonstrate his willingness to assist in the investigation of a crime by providing a written statement instead of testifying in court as he has been asked to do?

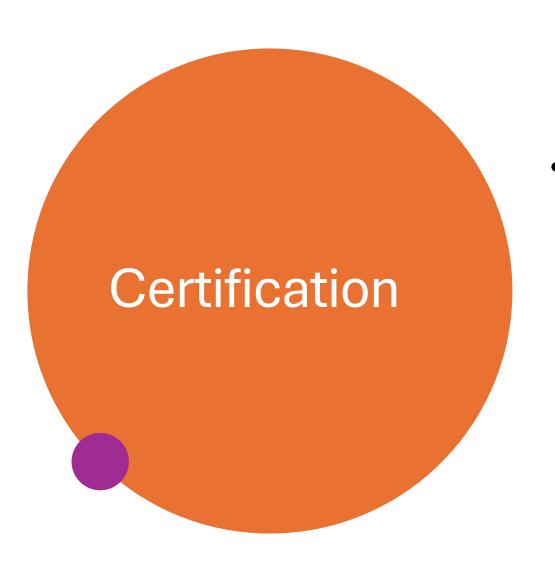
Certification Form I-918 Supplement B

- Can be completed by:
 - Police officer
 - Prosecutor
 - Judge
 - Immigration officer
 - Other authority with responsibility for investigation or prosecution of criminal activity
 - Agencies with criminal investigative jurisdiction
 - In areas of expertise

Certification Form I-918 Supplement B

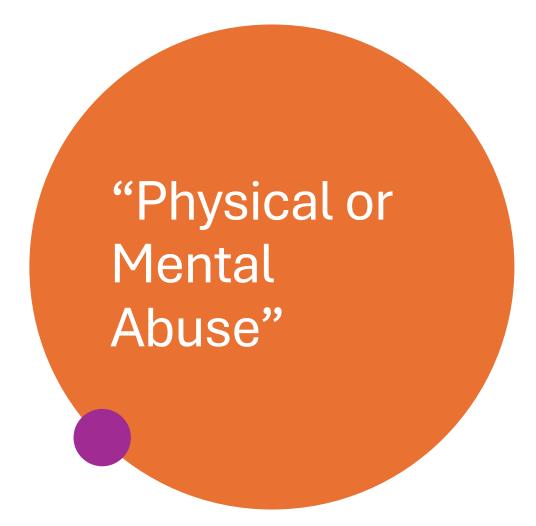
Including but not limited to

- Child Protection Services worker
- EEOC
- Department of Labor

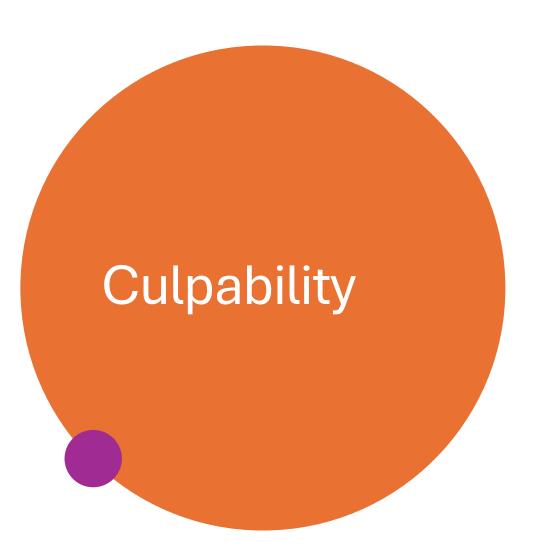


• Investigation includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing



- Injury or harm to the victim's physical person
- Impairment of the emotional or psychological soundness of the victim
- Case-by-case determination using these factors:
 - nature of the injury inflicted or suffered;
 - severity of the perpetrator's conduct;
 - severity of the harm suffered;
 - · duration of the infliction of harm;
 - permanent or serious harm to victim's
 - appearance,
 - health,
 - physical and mental soundness



- Victims cannot be culpable for the same incident of criminal activity being investigated or prosecuted for which they are seeking U-visa protection.
- "This exclusion does not apply to an alien who committed a crime other than the one under investigation or prosecution, even if the crimes are related."



- As a result of U-visa listed criminal activity
 - Person has suffered direct harm
 - Person is proximately harmed
- Bystanders can qualify only if
 - Suffered unusually direct injury as a result of a U-visa listed crime (e.g. miscarriage)
 - Decided on case-by-case basis
 - Can include family members of citizen or lawful permanent resident crime victims
- Victims can offer U-visa protection for certain family members



- Murder, manslaughter
- Incompetent or incapacitated victim
- Indirect victim of an adult:
 - spouse
 - children under 21 years of age
- Indirect Victim of an under-21-year-old victim at the time of the crime:
 - parents and
 - siblings under age 18

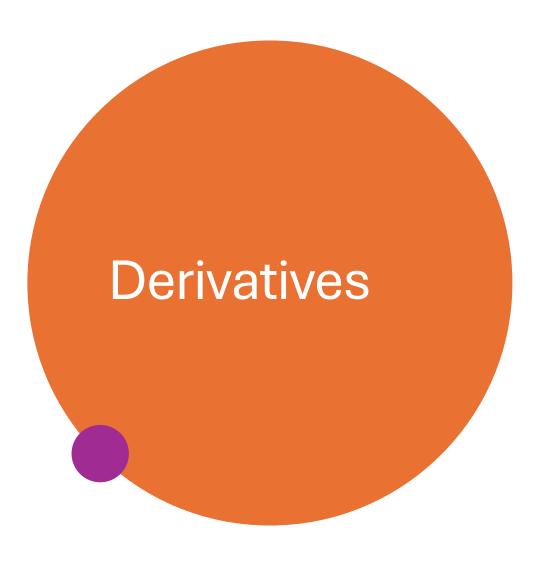
Discussion Question

Laila's husband was murdered during a burglary in his store that went horribly wrong. She is devastated because he was the only one working while she stayed at home to take care of their two young children. She does not want to return to her family in Iran because there are fewer freedoms for women there.

Can she qualify for a U Nonimmigrant Status visa based on these facts

Derivatives Use Form I-918 Supplement A

- Adult victims:
 - Spouse
 - Children
- Victims under 21 at time of criminal activity
 - Spouse
 - Children
 - Parents
 - Unmarried siblings under 18 (at the time of filing)



 Children include those born after Uvisa approval

Cannot include the perpetrator

No need to show extreme hardship

No need for separate certification from prosecutor



- Additional Documentation Regarding Eligibility
 - Victim's Statement describing facts of the victimization, written in petitioner's own words, to include:
 - The nature of the criminal activity;
 - When the criminal activity occurred;
 - Who was responsible for the criminal activity;



- The events surrounding the criminal activity;
- How the criminal activity came to be investigated or prosecuted;
- What substantial physical and/or mental abuse was suffered as a result of the criminal activity; and
- Any other information supporting any of the other eligibility requirements.



- Granted for 4 yrs. leading to LPR after 3 yrs.
- Employment authorization eligible
- 10,000 annual cap
- Derivatives:
 - Spouse
 - Parent
 - Child
 - Sibling < 18yrs
 - Principal <21yrs? Spouse and child only



- Subject to "severe trafficking": 22 U.S.C. §7102
- Physically present in U.S.
- AG and Sec of DHS agree applicant has complied with reasonable request to assist in investigation/prosecution of such trafficking or crime from federal, state or local law enforcement or federal agency with responsibility and authority to detect, investigate, or prosecute, where trafficking is one central reason for the crime.



 Minors under 18 are not required to assist

 Applicants must show they would "Suffer extreme hardship involving unusual and severe harm upon removal."



- Severe forms of trafficking in person's
 - Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion; or
 - Person induced to perform such acts is <18yrs of age; or
 - Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through use of fraud or coercion for purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

Trafficking: Evidentiary Standard

- Form I-914: filed with Vermont SC
- Any "credible evidence" is the standard
- Statement describing nature and scope of force, fraud or coercion used
- Statement with acts of victimization or
- Law Enforcement Agency (LEA) endorsement on Supplement B
- Evidence of physical presence
- Proof no "clear chance to leave"

Discussion Question

An Nguyen, from Vietnam, signed a contract with the owner of a garment company and the Vietnamese government to travel to American Samoa and work in a clothing factory. She borrowed money and paid the Vietnamese government \$8,000 American dollars for the position. She planned to repay her lenders through her wages. When she arrived at her destination, she was sent to live in crowded barracks with other workers. The living area and factory were surrounded by razor wire and there were guards at the factory with plastic pipes. An and other workers were subject to strict curfews and worked 12- to 16-hour days, six days a week. There were inadequate sanitary facilities shared by male and female workers. The foreman engaged in sexually inappropriate behavior with many of the women, and in An's case often groped her while she worked. He told her she would be fired if she complained. An had to pay rent and buy food from the employer and this money was deducted from her wages each week. Her supervisor told her that if she complained, she would be sent home to Vietnam, would have to pay a fine, and would be out of favor with the Vietnamese government because she broke the contract.

Is An a survivor of human trafficking?

T Visa: Extreme Hardship Factors

- The extreme hardship-related factors USCIS should take into account include but are not limited to the following:
 - The applicant's age and personal circumstances
 - Any serious physical or mental illness from which the applicant suffers and whether treatment for such illness is "reasonably available" in the applicant's country of origin
 - The nature and extent of any physical or psychological consequences of the applicant's having been the victim of a severe form of trafficking in persons.

T Visa: Extreme Hardship Factors

• The impact on the applicant of losing access to the U.S. courts and criminal justice system, including access to criminal and civil redress for trafficking crimes of which the applicant was a victim.

• "The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons."

T Visa: Extreme Hardship Factors

- The likelihood that the applicant would again become the victim of trafficking, including whether the government of the applicant's country of origin could or would protect the applicant from being revictimized.
- The likelihood that the trafficker or the trafficker's agents would harm the applicant once the latter is back in his or her country of origin.
- The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict in the applicant's country of origin.

Trafficking: Benefits

Granted for 4 yrs, leading to LPR after 3 yrs

• Employment authorization eligible

• 5,000 annual cap

Trafficking: Benefits

- Derivatives:
 - Spouse
 - Parent
 - Child
 - Sibling under 18yrs
 - Principal over 21yrs? Spouse and child only

Similarities and Differences for U and T Adjustment of Status Applications

Issue	U Nonimmigrant Status	T Nonimmigrant Status
Inadmissibility	Only applicable inadmissibility grounds are participation in Nazi persecution or genocide, commission of acts of torture or extrajudicial killing	Apply for waiver during adjustment process
Eligibility criteria	Has not unreasonably refused to assist law enforcement; presence is justified on humanitarian grounds, to ensure family unity, or is in the public interest	Good moral character; complied with reasonable request for assistance from law enforcement or would suffer extreme hardship akin to unusual and severe harm upon removal