



PROGRAM MATERIALS

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U Visa Petitions: Leveraging Psychosocial Evaluations to Document Victimization and Harm

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Reading Recommendations

Handbook of Mitigation in Criminal and Immigration Forensics: Humanizing the Client Towards a Better Legal Outcome. SEVENTH EDITION 2021.

Chapter 16 – Spousal Abuse Cases

Chapter 21 – U Visa Cases

Psychosocial Evaluations and Consultation in Civil Litigation: Strategies to Understand and Humanize the Client. 2021.

Chapter 2 – The Psychosocial Evaluation

Chapter 4 – Client Interviews: Techniques to Elicit Information

Chapter 5 – Harm Analysis: Broadly Conceptualizing Harm

APPENDIX A – Spousal Abuse Case Sample

The Arranged Marriage: My Kalpa. (2017) – spousal abuse novella.

Handbook of Mitigation in Criminal and Immigration Forensics

Humanizing the Client
Towards a Better Legal
Outcome

SEVENTH EDITION

MARK S. SILVER
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**PSYCHOSOCIAL
EVALUATIONS AND
CONSULTATION IN
CIVIL LITIGATION:**

*Strategies to Understand
and Humanize the Client*

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OUTLINE

SECTION I: LEGAL BACKGROUND TO U VISA

SECTION II: T VISA COMPARISON

SECTION III: CONCEPTUALIZING HARM

SECTION IV: PSYCHIATRIC ISSUES

SECTION V: SPOUSAL ABUSE QUESTIONNAIRE

**SECTION I:
LEGAL BACKGROUND TO U VISA**

Background

- **The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, offer protection to victims of such crimes.**
- **Victim must provide a U Nonimmigrant Status Certification (Form I-918, Supplement B), from a U.S. law enforcement agency that demonstrates the petitioner "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity.**
- **Trafficking and Violence Protection Act. Pub. L. No. 106-386, 114 Stat. 1464 (2000) (including the Battered Immigrant Women's Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1518 (2000)). Regulations for granting U visas were not published until 2007.**

Eligibility

- The applicant must have been a victim of a qualifying criminal activity.
- The applicant must have suffered substantial physical or mental abuse as a result of having been a victim of these criminal activities.
- The applicant must have information concerning that criminal activity.
- The applicant must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
- The criminal activity occurred in the United States or violated U.S. laws.
- The applicant is admissible to the United States under current U.S. immigration laws and regulations; those who are not admissible may apply for a waiver.

Certifying Agency

- Certifying agencies can be Federal, State or local law enforcement agencies, prosecutors, judges or other authority that investigates or prosecutes criminal activity.
- Other agencies such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor also qualify as certifying agencies since they have criminal investigative jurisdiction within their respective areas of expertise.

Extension Beyond Four Years

U nonimmigrant status cannot exceed four years. However, extensions are available upon certification by a certifying agency that the foreign national's presence in the United States is required to assist in the investigation or prosecution of the qualifying criminal activity.

Adjustment to LPR

- After three years of continuous physical presence in the United States while in U nonimmigrant status, a U visa holder may be eligible to adjust status and become a lawful permanent resident if certain requirements are met.
- The individual must not have unreasonably refused to provide assistance to law enforcement since receiving a U nonimmigrant visa.

Criminal Activity Defined

- Abduction
- Blackmail
- Extortion
- Genital Female Mutilation
- Hostage
- Involuntary Servitude
- Murder
- Peonage
- Prostitution
- Sexual Assault
- Slave Trader
- Trafficking
- Unlawful Criminal Restraint
- Abusive Sexual Contact
- Domestic Violence
- False Imprisonment
- Felonious Assault
- Incest
- Kidnapping
- Manslaughter
- Obstruction of Justice
- Perjury
- Rape
- Sexual Exploitation
- Torture
- Witness Tampering
- Other Related Crimes

Challenges

- U visa law is mandated federally, but implemented inconsistently by local law enforcement
- Limited number of U visas issued each year
- Get it in writing
- Support from Forensic Evaluator

**SECTION II:
T VISA COMPARISON**

T Visa

- To be eligible for a T visa, the victim must have traveled to the United States recruited, forced, abducted, or deceived by the perpetrator of human trafficking and the victim would not otherwise have been present in the U.S. if it were not for the actions of that person.
- Human trafficking under U.S. law is defined based on the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. The elements of the crime fall into three categories:

Elements of T Visa

- **Process:** recruitment, transportation, transferring, harboring, or receiving of a person.
- **Ways and Means:** threat, coercion, abduction, fraud, deceit, deception, or abuse of power.
- **Goal:** prostitution, pornography, violence and sexual exploitation, forced labor, involuntary servitude, debt bondage, or slavery
- Adult victims of human trafficking must prove that the crime involved at least one element from each of the above three. Child victims of human trafficking need only show an element from the Process and Goal categories.

No “Certification of Helpfulness” Requirement in T Visa

- T visa applicants are not required to obtain a “Certification of Helpfulness” from a qualifying agency
- T visa applicants are strongly encouraged to obtain a declaration from a law enforcement officer as primary evidence that they were a victim of human trafficking crime to submit with their application

T Visa: Extreme Hardship

T visa applicants will need to show that their removal from the U.S. would cause “extreme hardship involving unusual and extreme harm.”
Factors:

- medical needs (due to the trafficking crime or for other reasons) cannot be met in home country because of a lack of medical or psychological services
- government will not protect her from further harm or prosecute the trafficking offenders
- would be stigmatized in home country as a result of being a trafficking victim (for example, if you were identified as a female victim of sex trafficking, you would be unable to obtain employment or get married or may be vulnerable to further victimization), or
- any other factors particular to your case

**SECTION III:
CONCEPTUALIZING HARM**

Conceptualize Harm Broadly

- Harm to self - dignity, identity, and self-worth
- Quality of life issues – sense of security, safety, stability
- Deficits / losses in everyday activities, such as work
- Loss of hobbies, activities, interests
- Cognitive loss – memory and processing information
- ADL'S (activities of daily living) – crucial to personal dignity
- Interpersonal friction, such as marital dissolution
- Lifestyle changes – the little things matter
- Community loss / isolation
- Socialization loss
- Change of residence

Broadly Conceptualize Harm: Psychosocial Evaluation

- Family-Systems Analysis
 - Childhood Development
 - Social Skills & Peer Rejection
 - Sexual Development
 - Hobbies & Interests
 - Community Ties, Friends
 - Education & Employment
 - Finances & Poverty
 - Military Service
 - Self-care (ADL's)
 - Drug & Alcohol History
- Violence, Abuses, Trauma, War
 - Volunteer Community & Charity
 - Arrests & Criminal History
 - Languages - spoken/written
 - Role & Communication
 - Legal Issues
 - Religious Devotion
 - Support System/Caregivers
 - Cultural Issues & Role Models
 - Mental (DSM) & Medical Health
 - Racism & Prejudice

Egg Shell Rule

- “Take your plaintiff as you find him”
- Predisposition to psychiatric issues due to past trauma is a crucial starting point in U Visa evaluations
- Vulnerabilities
- In what ways is the individual fragile?

HARM: DIRECT AND CONSEQUENT

- Direct = Immediate
- Consequent = on-going?
- How attenuated can it be?
- Is it better or worse to wait for an evaluation

Types of Harm

- Physical - direct (hitting), sequestering, objects
- Psychological - control, coercion
- Emotional - mental harm
- Verbal - racial slurs, threats, expletives
- Sexual - unwanted sexual touching
- Financial - loss (direct or indirect)

CAVEATS

- SEVERITY OF A SINGLE INCIDENT CAN BE SYSTEMICALLY DAMAGING
- MICRO-AGRESSIONS ADD UP TO SYSTEMICALLY DAMAGING ABUSE
- PEOPLE PERCEIVE AND ARE EFFECTED BY ABUSE (AND HARM) IN IDIOSYNCRATIC WAYS
- RESILIENCE – AN INDIVIDUAL'S ABILITY TO OVERCOME ADVERSITY

Relationship to Defendant

- Professional or personal or both (employer?)
- Betrayal of trust
- How does client understand or perceive his relationship and connection to the defendant

Unrecognized Harms

- Client may have suffered various harms as a result of the injury that he is not aware of
- Similar to physical injuries that are only revealed after radiographic assessment

Harm Suffered to Family Members

- directly or indirectly
- children's issues: school, academic, socialization, interests, community
- Assess the whole family

No Cycle of Abuse

(similar to spousal abuse cases)

- A pattern may not exist
- Criminal may act without reason
- Arbitrary
- Blind hatred / Psychopathy
- Absence of patterns leads to greater psychological harm

Who Should Evaluate a U Visa?

- Experts only
- General mental health practitioners may not have the sensitivity or training, and may therefore miss out on key issues
- An evaluation is not therapy and must aggressively target all areas of possible harm

Detailed Memories

1. Outrageous: an occurrence that is exceptionally out of the ordinary
2. Qualified: qualified by the shame or guilt that the client feels
3. Impossible to forget: retaining a scar due to violence

Over & Under Exaggeration

- Client's may over exaggerate narratives in an effort to bolster a weak claim and under exaggerate a narrative because he fears the truth is simply too terrible to relate or to be believed
- Correcting for one or both will make the narrative clearer, particularly as extraneous material tends to denigrate the underlying narrative of the petitioner's claim

**SECTION IV:
PSYCHIATRIC ISSUES**

PTSD

Criterion A: stressor

The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: (1 required)

- Direct exposure.
- Witnessing, in person.
- Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.
- Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

PTSD Con't

Criterion B: intrusion symptoms

The traumatic event is persistently re-experienced in the following way(s): (1 required)

- Recurrent, involuntary, and intrusive memories. Note: Children older than 6 may express this symptom in repetitive play.
- Traumatic nightmares. Note: Children may have frightening dreams without content related to the trauma(s).
- Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness. Note: Children may reenact the event in play.
- Intense or prolonged distress after exposure to traumatic reminders.
- Marked physiologic reactivity after exposure to trauma-related stimuli.

PTSD Con't

Criterion C: avoidance

Persistent effortful avoidance of distressing trauma-related stimuli after the event: (1 required)

- Trauma-related thoughts or feelings.
- Trauma-related external reminders (e.g., people, places, conversations, activities, objects, or situations).

PTSD Con't

Criterion D: negative alterations in cognitions and mood

Negative alterations in cognitions and mood that began or worsened after the traumatic event: (2 required)

- Inability to recall key features of the traumatic event (usually dissociative amnesia; not due to head injury, alcohol or drugs).
- Persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g., "I am bad," "The world is completely dangerous.").
- Persistent distorted blame of self or others for causing the traumatic event or for resulting consequences.
- Persistent negative trauma-related emotions (e.g., fear, horror, anger, guilt or shame).
- Markedly diminished interest in (pre-traumatic) significant activities.
- Feeling alienated from others (e.g., detachment or estrangement).
- Constricted affect: persistent inability to experience positive emotions.

PTSD Con't

Criterion E: alterations in arousal and reactivity

Trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event:
(2 required)

- Irritable or aggressive behavior
- Self-destructive or reckless behavior
- Hypervigilance
- Exaggerated startle response
- Problems in concentration
- Sleep disturbance

Depression

depressed mood nearly every day, as indicated by subjective feelings of sadness and emptiness and crying

- hopelessness / helplessness
- low energy
- anhedonia (crucial)
- low self-esteem
- psychomotor retardation / agitation
- fatigue or loss of energy

Depression Con't

- feelings of worthlessness or excessive or inappropriate guilt (which may be delusional)
- poor or erratic appetite
- significant difficulty staying or falling asleep / nightmares
- diminished ability to think or concentrate, or indecisiveness

Suicidality

Overwhelming psychological pain and helpless feelings of deep despair

- Active suicidality occurs when the person has a plan to end her own life, such as by the ingestion of medications. Active suicidality most often is characterized by deep psychological pain or despair and a hopeless belief that nothing in the person's life can improve in any meaningful way.
- Passive suicidality concerns thoughts of death or dying and may include the person stating that they wonder what it would be like never having to wake up so that their pain would vanish. Passive suicidality is usually more ideational, while active suicidality is often accompanied by a thought out plan that may or may not be realistic or even coherent.
- Self-hatred, useless burden, lack of reciprocal connection
- habituated w pain

Panic Attacks - recurring and unexpected

- Palpitations, pounding heart, or accelerated heart rate
- Sweating
- Trembling or shaking
- Sensations of shortness of breath or smothering
- A feeling of choking
- Chest pain or discomfort
- Nausea or abdominal distress
- Feeling dizzy, unsteady, lightheaded, or faint
- Feelings of unreality (derealization) or being detached from oneself (depersonalization)
- Fear of losing control or going crazy
- Fear of dying
- Numbness or tingling sensations (paresthesias)
- Chills or hot flushes

Learned Helplessness

A condition in which a person suffers from a sense of powerlessness, arising from a traumatic event or persistent failure to succeed. It is thought to be one of the underlying causes of depression.

- Shame / humiliation
- worthless and unloved
- Self-blame
- Guilt
- Concern for other family members

Psychosis

- Hallucinations (False perceptions): auditory and visual hallucinations. Rooted in hypersensitivity to real or perceived dangers of the surrounding environment. Auditory (the client may hear his name being called and when he turns around no one is there). Others include: olfactory, visual, tactile, gustatory
- Delusion (False belief): Adaptive paranoia for self-protection (PPD). Person is guarded, suspicious, or has low trust in others.

Dissociative Disorder

When flight or fight are not available then the only option is to psychologically / emotionally remove yourself from that situation and place your self somewhere else. (versus fawning or freezing).

Dissociative disorders are conditions that involve disruptions or breakdowns of memory, awareness, identity, or perception. People with dissociative disorders use dissociation as a defense mechanism, pathologically and involuntarily.

Alcohol / Drug History

- Use
- Abuse
- Addiction
- Non-traditional substances (house hold products)

Atypical Presentation

- Subclinical Issues
- Atypical Presentation
- Cultural sensitivity

Getting Help

- Mental health clinic with full resources are best b/c it tends to be psychiatrically holistic
- Support Groups
- Psychiatric Care
- Psychotherapy
- Spiritual / Religious Support
- Self Support
- Friends / Family
- Leave Well Enough Alone

Failure to Seek Mental Health Assistance

- Ignorance / Shame
- Lack of financial resources
- Fear of authority or government workers
- Survivors may feel that people who did not experience what they did simply would not understand or believe the experiences.
- It may be the first time that the client has spoken about his experiences
- Anathema / Stigma

V. Spousal Abuse Questionnaire

Physical Abuses

- Did he ever hit, slap, or punch you?
- Did he ever grab, push, or shove you?
- Did he ever kick, knee, or elbow you?
- Did he ever pull your hair?
- Did he ever scratch or pinch you?
- Did he ever strangle or choke you?
- Has he ever hurt you with any kind of object?
- Has he ever thrown objects at you?
- Did he ever force you to take drugs or any food that you did not want?
- Has he ever damaged the home or your property by violence?

Physical Abuses con't

- Did he ever take your belongings?
- Has he ever threatened you in any way with a gun or knife?
- Have you ever suffered major or even minor physical injury, such as bruising or cuts?
- Did he ever physically isolate you or force you from the home or lock you out or inside your room?
- Did he ever prohibit you from communicating with others, such friends or family?
- Did he have a criminal record and he has ever been arrested?
- Has he ever been violent with anyone else in the home or community?
- Did you ever call the police or did he ever call the police and what were the results?
- Did he ever stay out of the home all night or even for a few days? And, did this cause you anxiety and/or fear?
- Did he ever show up at your place of work or home unexpectedly?
- Does he treat you as a personal servant?
- Did he stalk you or harass you after your break-up?

Drug Abuse

- Does he abuse, sell, or own drugs and if so does this harm you in any way?
- Does he become more aggressive or violent because of alcohol or drugs?
- Does he often waste money on buying drugs?
- Does he blank out when using drugs and become remorseful the next day because he can't remember hurting you?
- Does he show symptoms of intoxication and/or withdrawal?
- Does his mood and/or behavior change in a negative way when he uses alcohol or drugs?
- Is he unable to take responsibility for his behavior because of the alcohol or drug abuse?
- Does he repeatedly refuse drug rehabilitation or counseling?

Sexual Abuse

- Did he ever touch you sexually or non-sexually in an unwanted way?
- Did he force you to have sex—physically or psychologically? That is, did you feel coerced or manipulated into have sex?
- Did he force you to engage in oral or anal sex? On you or your partner or both?
- Did he ever harm you sexually with objects?
- Did he force you to touch him or do things to him that you did not want?
- Did he force you to do things to you sexually or otherwise?
- Did he insist on sexual intercourse when you are frightened?
- Did you feel hypervigilant about when you would be attacked?
- Did he violently pull or squeeze you or cause you physical harm such as bruises?
- Did you generally suffer pain during sex?
- Did you suffer medical or physical issues because of these abuses?
- Did he force you to watch pornography?
- Did he have sex with other men or women?
- Did you have STDs from him?
- Did he force you to abort a pregnancy?

Emotional Abuse

- Does he cause you emotional or psychological pain?
- Does he cause you to feel humiliation or degradation?
- Does he cause you mental cruelty?
- Does he isolate you so you feel you are alone in the world?
- Does he taunt or tease you?
- Does he not allow you to express yourself as you wish?
- Does he manipulate, control, or coerce you?
- Does he lie?
- Is he cold, distant, and uncaring?
- Does he provoke fear to better assert control over you?
- Do you perceive him as threatening?
- Does he minimize your abilities?
- Do you suffer relentless criticism?

Emotional Abuse Con't

- Does he intentionally destroy the relationship between you and your family or friends?
- Does he try to control your social interactions by opening mail (for immigration material), monitoring telephone calls, and screening who you could see or speak to?
- Does he prevent you from speaking about his dangerous behavior?
- Does the anxiety over his controlling actions mean that you could not think clearly or behave in a way that is healthy for you?
- Do you feel unable to extricate yourself from this destructive relationship?
- Do you suffer intimidation or does he try to elicit fear?
- Does he threaten to hurt himself if you do not comply with his demands?
- Does he influence your behavior through emotional manipulation, such as crying or yelling?
- Does he threaten to harm you or family or friends?
- Does he sabotage your personal accomplishments, such as destroying a completed project or product?
- Does he pressure you to make a serious commitment such as living together or getting engaged after a short period?
- Does he show glibness about the harm he causes or act with superficial charm?
- Is he overly jealous or possessive?
- Does he question you about every person you interact with?
- Does he accuse you of flirting with others without justification?
- Does he interrupt you or your time by calling or dropping by without notice?

Verbal Abuse

- Did you suffer negative or derogatory words, including disguised jokes, accusing or blaming, judging and criticizing, trivializing, undermining, disgusting expletives, threatening words, name-calling, or demeaning terms?
- What are examples of those expletives?
- Did he yell and scream in a harsh and loud tone?
- Did he insult your ethnicity and the fact that you are a recent immigrant to the United States?
- Did he verbally abuse you in front of others, such as friends and the children making the pain all the worse?
- Did he assert that you had no value as a person in his absence?
- Did the verbal abuse cause you to feel badly about yourself and question your sense of self-worth even believing the derogatory language used?
- Did he threaten your safety directly or indirectly?
- Would he often interrupt you, especially when others are present?
- Did he deflate you by spreading rumors?
- Did he issue actual or implied threats verbally or written form?
- Did he threaten to damage your property?
- Did he note that he could arrange for others to harm you?
- Did he spread rumors about you or otherwise defame or slander you?

Technology Abuse

- Did he share your personal information with others, such as on the Internet?
- Did he intend to harm, threaten, intimidate, control, stalk, harass, impersonate, or monitor you by technology?
- Did he initiate unwanted, repeated telephone calls, text messages, instant messages, or social media posts?
- Did he initiate non-consensual accessing of e-mail accounts, texts or instant messaging accounts, social networking accounts, or cellular telephone logs?
- Did he initiate controlling or restricting your ability to access technology with the intent to isolate you from support and social connection?
- Did he initiate tracking devices or location tracking software for the purpose of monitoring or stalking your location?
- Did he impersonate you (including through the use of spoofing technology in photo or video or the creation of accounts under a false name) with the intent to deceive or cause you harm?
- Did he initiate, share, or urge or compel the sharing of your private information, photographs, or videos without their consent?

Financial Abuse

- Did he ever prevent you from getting a job or maintaining your job?
- Did he ever misuse funds from a joint bank account?
- Did he ever impermissibly use your ATM card?
- Did he ever directly steal from you?
- Did he ever extort money from you?
- Did he ever demand that you give over your paycheck to him?
- Did he ever prevent you from giving money to family members who need it?
- Did he ever neglect giving proper financial support to the children?
- Did he ever spend money in an irresponsible manner, such as on drugs?
- Was he in debt?
- Did he gamble?
- Did he assume control over your resources and assets?
- Was he often out of work or did he stop working because he assumed that you would support him?

Cultural and Religious Abuse

- Did he ever ridicule your religion or ethnic background, or cultural customs?
- Did he ever prevent you from religious practice and/or religious expression of your faith?
- Did he ever force you to do anything that was contrary to your religious beliefs?

THANK YOU