

## ***Immigration Relief for Child Sexual Assault Survivors<sup>12</sup>***

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This chapter provides basic information on various immigration remedies available to child survivors of sexual abuse and/or assault. This chapter will cover: (1) VAWA (“Violence Against Women Act”) self-petitioning; (2) VAWA cancellation of removal and suspension of deportation; (3) Special Immigrant Juvenile status (“SIJ”); (4) U-visas/interim relief; (5) T-visas; and (6) asylum. For purposes of this chapter, a “child” is a person under the age of 21, whether married or unmarried. Please note that this chapter is designed to be a basic primer, and not a comprehensive guide, on immigration relief available to child sexual assault survivors.

### **VAWA SELF-PETITION: IMMIGRATION RELIEF FOR YOUTH SUBJECTED TO PARENTAL ABUSE OR SPOUSAL ABUSE**

VAWA self-petitions are available for children who have been abused by their U.S. citizen or permanent resident parent. The abusive parent<sup>3</sup> can be a biological parent, a stepparent so long as the child was less than 18 at the time

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<sup>2</sup> In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act’s (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim’s gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use “he” in this Manual to refer to the perpetrator and “she” is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.” On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

<sup>3</sup> INA §101(b)(1), 8 U.S.C. §1101(b)(1).

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of the marriage creating the stepparent-stepchild relationship, or an adoptive parent so long as the child was less than 16 at the time of adoption.<sup>4</sup> It is immaterial whether the child was born in or out of wedlock.<sup>5</sup>

The Department of Homeland Security (“DHS”) has interpreted abuse broadly, and has recognized sexual abuse, sexual assault, physical abuse, emotional abuse, mental abuse, financial abuse, or cruelty to constitute abuse.<sup>6</sup> Thus there is no evidentiary requirement of police reports, medical records, or child welfare intervention to demonstrate the abuse. However, while the child’s declaration attesting to the abuse is generally the primary form of evidence, corroborating declarations would strengthen the self-petition.

A child self-petitioner must also demonstrate that he or she lived with the abusive parent.<sup>7</sup> Shared residence includes any periods of child visitation. There is no requirement regarding the duration of cohabitation, and there is no requirement that the child and parent lived together in the U.S. or that they live together at the time of application.

As a general rule, VAWA self-petitioners must currently reside in the U.S. However, several important exceptions exist for self-petitioners residing outside the U.S. A child living outside the U.S. can self-petition if the abusive U.S. citizen parent is a U.S. government employee, a member of the uniformed services, or abused the child in the U.S.<sup>8</sup> Thus, for example, a child who was abused by their U.S. citizen parent who is stationed on a U.S. military base abroad would be eligible to self-petition.

The final eligibility requirement is that the child must be a person of “good moral character.”<sup>9</sup> All children 14 years of age or older must submit a local police clearance or state-issued criminal background check for every area in which he or she has lived for six or more months during the three years immediately preceding the filing of the self-petition.<sup>10</sup> While there is no statutory definition of good moral character, there are actions that presumptively bar an individual from demonstrating good moral character.<sup>11</sup> When a child is placed in delinquency proceedings or criminal proceedings, it is imperative that the child’s attorney consults with an immigration expert immediately. Without appropriate counsel, the child victim could admit to allegations that will render him or her ineligible for VAWA and lead to the child’s deportation.

The general rule is that children must submit a self-petition with United States Citizenship and Immigration Service (CIS) before their 21<sup>st</sup> birthday. However, Congress recently extended the filing deadline to the child’s 25<sup>th</sup> birthday so long as he or she shows that: (1) he or she was abused by his or her parent prior to turning 21; and (2) the abuse was at least one central reason for the filing delay.<sup>12</sup>

Child abuse survivors are not the only children eligible to self-petition under VAWA. Teens married to an abusive U.S. citizen or permanent resident may be eligible to self-petition. In addition to the eligibility requirements mentioned above, teens petitioning as abused spouses must prove that they entered into a good faith marriage, i.e., they did not marry for the sole purpose of obtaining permanent resident status.<sup>13</sup> To make this showing, the teen must submit documentary evidence demonstrating cohabitation with the abusive spouse, commingled finances, and/or shared family connections.

In addition, children who were not directly abused by their parent or spouse may qualify to be included in their parent’s self-petition. If the child has a parent who was abused by the child’s other parent (including stepparents) and the abusive parent is a U.S. citizen or permanent resident, then the abused parent can self-petition under VAWA

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<sup>4</sup> Prior to the enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), children abused by adoptive families had to reside in the adoptive home for at least two years. VAWA 2005 removed this residency requirement, thereby ensuring that children, who are abused by an adoptive parent or by a family member of the adoptive parent residing in the same household, can self-petition under VAWA. See INA 101(b)(1)(E)(i), 8 U.S.C. 1101(b)(1)(E)(i).

<sup>5</sup> INA §101(b)(1), 8 U.S.C. §1101(b)(1); 8 C.F.R. §204.2(e)(1)(v).

<sup>6</sup> 8 C.F.R. §204.2(c)(vi).

<sup>7</sup> INA §204(a)(1)(A)(iv), 8 U.S.C. §1154(a)(1)(A)(iv); 8 C.F.R. §204.2(e)(1)(v).

<sup>8</sup> INA §204(a)(1)(A)(v)(I), 8 U.S.C. §1154(a)(1)(A)(v)(I).

<sup>9</sup> Defined at INA §101(f), 8 U.S.C. 1101(f); 8 C.F.R. §204.2(e)(1)(vii).

<sup>10</sup> 8 C.F.R. §204.2(c)(1)(i)(F).

<sup>11</sup> INA §101(f), 8 U.S.C. §1101(f); 8 C.F.R. §204.2(e)(2)(v).

<sup>12</sup> INA §204(a)(1)(D)(v), 8 U.S.C. §1143(a)(1)(D)(v).

<sup>13</sup> INA §204(a)(1)(A)(iii)(II)(aa)(BB), INA §204(a)(1)(B)(ii)(II)(aa)(BB). 8 C.F.R. §204.2(c)(1)(ix).

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and the child derives the same immigration benefit and can also become a VAWA self-petitioner. In order to be included in an abused parent's VAWA self-petition, the child must be under age 21 at the time the abused parent self-petitions.

The approval of the VAWA self-petition is the first step for the child to attain permanent residency. If the abusive parent is a U.S. citizen or was a U.S. citizen and lost the citizenship due to a domestic abuse incident, then the child can immediately apply for permanent residency. If the abusive parent is a permanent resident or was a permanent resident and was deported due to a domestic abuse incident, then the child will be forced to wait, sometimes many years, before applying for permanent residency. Permanent residency allows the child to remain in the U.S. indefinitely unless he or she commits acts that render him or her deportable or abandons his or her residency. Permanent residency also qualifies the child for federal financial aid, in-state tuition, and many federal and state public benefits. Finally, permanent residency allows the child to work for an employer in any job, subject to child labor laws.

### **VAWA CANCELLATION OF REMOVAL OR SUSPENSION OF DEPORTATION: IMMIGRATION RELIEF FOR CHILDREN SUBJECTED TO PARENTAL ABUSE OR SPOUSAL ABUSE**

Children who are placed in immigration removal or immigration deportation proceedings may be eligible for VAWA cancellation of removal (formerly known as suspension of deportation). VAWA cancellation of removal can only be granted by the Executive Office of Immigration Review which includes the immigration courts and the Board of Immigration Appeals. CIS does not have jurisdiction to adjudicate such cases. Therefore, VAWA cancellation is only available to those people whom the DHS has already initiated removal proceedings.

By law, a child placed in removal or deportation proceedings must have been served with a Notice to Appear or Order to Show Cause charging his or her removability or deportability. The child is guaranteed due process which includes the right to be heard by an immigration judge, the right to counsel (albeit no right to paid counsel), the right to testify and present evidence in support of relief from removal or deportation, and the right to appeal (to the Board of Immigration Appeals).

In order to qualify for VAWA cancellation of removal, the child must demonstrate that: (1) he or she has been abused by a U.S. citizen or permanent resident parent or spouse; (2) he or she has been physically present in the U.S. for a continuous period of at least three years immediately preceding the date of the cancellation application<sup>14</sup>; (3) he or she has been a person of good moral character<sup>15</sup> during the three-year period; and (4) removal would result in extreme hardship to the child, his or her children, or his or her parent. In addition, the child must not be inadmissible under INA 212(a)(2) or 212(a)(3)<sup>16</sup>; not deportable under INA 237(a)(1)(G), 237(a)(2), 237(a)(3), or 237(a)(4),<sup>17</sup> subject to the domestic violence waiver provided under INA 237(a)(7); and must not have an aggravated felony conviction.<sup>18</sup>

Like VAWA self-petitioning, VAWA cancellation of removal and suspension of deportation are available to both children abused by their U.S. citizen or permanent resident parent, and to children abused by their U.S. citizen or

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<sup>14</sup> A single absence from the United States of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence. However, a VAWA cancellation applicant is not considered to have failed to maintain continuous physical presence if the absences from the U.S. States were connected to the domestic abuse. See INA §240A(b)(2)(B), 8 U.S.C. §1229b(b)(2)(B).

<sup>15</sup> Defined at INA §101(f), 8 U.S.C. §1101(f).

<sup>16</sup> These inadmissibility grounds include, but are not limited to, crimes involving moral turpitude, controlled substance violations, prostitution, commercialized vice, religious freedom violations, human trafficking, money laundering, espionage, sabotage, export violations, terrorist activity, totalitarian party membership, Nazi persecution, genocide, torture, extrajudicial killing, overthrow of U.S. government, and association with terrorist organizations. See INA §212(a)(2), 8 U.S.C. §1182(a)(2); INA §212(a)(3), 8 U.S.C. §1182(a)(3).

<sup>17</sup> These deportability grounds include marriage fraud, crimes of moral turpitude, multiple convictions, high speed flight from immigration checkpoint, controlled substance violations, firearm convictions, espionage, sabotage, treason and sedition, failure to file change of address with immigration agency, falsification of documents, falsely claiming U.S. citizenship, export violations, endangering public safety or national security, overthrow of U.S. government, terrorist activities, Nazi persecution, genocide, torture, extrajudicial killing, religious freedom violations, and certain domestic abuse crimes. See INA §237(a)(2)-(4). There is a waiver for certain domestic abuse survivors. See INA §237(a)(7).

<sup>18</sup> INA §240A(b)(2)(A)(iv), 8 U.S.C. §1229b(b)(2)(A)(iv).

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permanent resident spouse.<sup>19</sup> A VAWA cancellation of removal or suspension of deportation applicant cannot include their child in their VAWA cancellation or suspension application. However, a child whose parent is granted VAWA cancellation or suspension shall be granted humanitarian parole into the U.S.<sup>20</sup> Children receiving this VAWA related parole are allowed to remain in the United States while their parent files an application for the child to receive lawful permanent residency through the regular family-based visa system.

Once a child is granted VAWA cancellation of removal or suspension of deportation, he or she becomes a permanent resident and enjoys all the privileges of permanent residency detailed in the previous section.

### **SPECIAL IMMIGRANT JUVENILE STATUS (“SIJ”): RELIEF FOR CHILDREN ABUSED BY A PARENT**

SIJ status is an option for certain children who have been abused by their parents, whether inside or outside the U.S. Congress created SIJ status for undocumented children who have suffered parental abuse, neglect, or abandonment. SIJ status applicants must be under the jurisdiction of a juvenile court. In order to be eligible for SIJ status, a child must be declared a dependent of a juvenile court within the U.S. and be deemed eligible by that court for long-term foster care due to the abuse, neglect or abandonment.<sup>21</sup> The jurisdiction of juvenile courts varies from state to state, but many states limit jurisdiction to children less than 18 years of age. The mechanisms for acquiring juvenile court jurisdiction depend on whether the DHS is already aware of the child’s presence in the U.S. In cases of children who have already been placed in immigration removal proceedings and are in the custody of the Office of Refugee Resettlement, the child’s attorney must obtain advance consent from DHS to bring the child’s case to juvenile court. This special consent requirement and the mechanism to obtain such consent can be burdensome.

In addition, a SIJ status applicant must have been the subject of administrative or judicial proceedings in which it has been determined that it would not be in the child’s best interest to be returned to his or her parent’s previous country of nationality or country of last habitual residence.<sup>22</sup>

Once a child is granted SIJ status, he or she can immediately apply for permanent resident status. The child will, however, be precluded from ever filing a family visa petition on behalf of his or her parents.<sup>23</sup>

### **U-visa: RELIEF FOR CHILD SEXUAL ASSAULT SURVIVORS WILLING TO ASSIST IN CRIMINAL INVESTIGATIONS OR PROSECUTIONS**

The U-visa is available to child sexual assault survivors who are willing to assist U.S. law enforcement in a criminal investigation or prosecution.<sup>24</sup> The investigation or prosecution can be conducted by a federal, state, or local law enforcement official,<sup>25</sup> and there is no requirement that the investigation or prosecution result in a conviction. The child needs to show that he or she suffered substantial physical or mental abuse as a result of having been a crime victim<sup>26</sup> and that he or she possesses information concerning the criminal activity.<sup>27</sup> If the child is less than 16, the latter requirement can be met by the child’s parent, guardian, or next friend.<sup>28</sup>

The child must show that he or she was the victim of one of the following crimes, or of attempt, conspiracy, or solicitation to commit one of the following crimes:<sup>29</sup>

Rape

Kidnapping

<sup>19</sup> INA §240A(b)(2)(A)(i)(II), 8 U.S.C. §1229b(b)(2)(A)(i)(II).

<sup>20</sup> INA §240A(b)(4)(A)(i), 8 U.S.C. §1229b(b)(4)(A)(i).

<sup>21</sup> INA §101(a)(27)(J)(i), 8 U.S.C. §1101(a)(27)(J)(i).

<sup>22</sup> INA §101(a)(27)(J)(ii), 8 U.S.C. §1101(a)(27)(J)(ii).

<sup>23</sup> INA §101(a)(27)(J)(iii)(II).

<sup>24</sup> INA §101(a)(15)(U)(i)(III), 8 U.S.C. §1101(a)(15)(U)(i)(III). 8 C.F.R. §214.14(b)(2) (2007).

<sup>25</sup> INA §101(a)(15)(U)(i)(III), 8 U.S.C. §1101(a)(15)(U)(i)(III). 8 C.F.R. §214.14(c)(2)(i) (2007).

<sup>26</sup> INA §101(a)(15)(U)(i)(I), 8 U.S.C. §1101(a)(15)(U)(i)(I). 8 C.F.R. §214.14(b)(1) (2007).

<sup>27</sup> INA §101(a)(15)(U)(i)(II), 8 U.S.C. §1101(a)(15)(U)(i)(II). 8 C.F.R. §214.14(b)(2) (2007).

<sup>28</sup> INA §101(a)(15)(U)(i)(II), 8 U.S.C. §1101(a)(15)(U)(i)(II). 8 C.F.R. §214.14(b)(3) (2007).

<sup>29</sup> INA §101(a)(15)(U)(i)(I); 8 U.S.C. §1101(a)(15)(U)(i)(I).

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Torture	Abduction
Trafficking	Unlawful criminal restraint
Incest	False imprisonment
Domestic violence	Blackmail
Sexual assault	Extortion
Abusive sexual contact	Manslaughter
Prostitution	Murder
Sexual exploitation	Felonious assault
Female genital mutilation	Witness tampering
Being held hostage	Obstruction of justice
Peonage	Perjury
Involuntary servitude	Slave trade

The crime must have occurred in the U.S. (including Indian country and military installations), territories, or possessions.<sup>30</sup> Alternatively, the crime must violate U.S. federal, state, or local law. Under the regulations, this means that the crime must be one that a U.S. court has jurisdiction to prosecute.<sup>31</sup> For example, under federal law a U.S. tourist who violates a federal sex tourism statute by sexually abusing a child in abroad can be prosecuted in U.S. federal courts and, therefore, if there is a victim of that crime, the person, even if abroad may be eligible for a U-visa.

The scope of U-visa crimes extends beyond rape or sexual assault. Thus, a child sexual assault survivor who is also a victim of one of the other crimes listed in the statute, such as involuntary servitude, may qualify for a U-visa if the child is willing to assist U.S. law enforcement in an investigation or prosecution of the other crime of which he or she was a victim.

Unlike VAWA relief and SIJ status, the U-visa is not limited to children who are sexually assaulted by family members. The U-visa is available to all child sexual assault survivors, regardless of whether they were raped by their relatives, babysitters, nannies, child care providers, teachers, coaches, neighbors, clergy, classmates, boyfriends, girlfriends, or strangers, so long as the crime occurred in the U.S. or violated U.S. law.

For many children, the biggest hurdle to overcome in the U-visa application process is in obtaining a certification from a law enforcement official, prosecutor, judge, immigration official, or other federal or state authority attesting that the child is being, has been, or is likely to be helpful to a federal, state, or local criminal investigation or prosecution.<sup>32</sup> Having contact with law enforcement can be stressful and traumatic for all victims, but especially for child victims. Furthermore, cooperating in a criminal investigation or prosecution may not be in a child's best interests.

Once a child is granted a U-visa, the child's spouse, children, parents, and unmarried siblings under 18 can join him or her in the U.S.

### **T-visa FOR VICTIMS TRAFFICKED INTO THE U.S.**

The T-visa is similar to the U-visa in that both visas were designed to advance two goals: (1) to provide humanitarian protection to victims of serious crime; and (2) to assist U.S. law enforcement in investigating and prosecuting such crime. The T-visa is available to victims of a severe form of human trafficking, which is defined to cover:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

<sup>30</sup> INA §101(a)(15)(U)(i)(IV); 8 U.S.C. §1101(a)(15)(U)(i)(IV). 8 C.F.R. §214.14(b)(4) (2007).

<sup>31</sup> 8 CFR §214.14(b)(4).

<sup>32</sup> INA §214(p)(1), 8 U.S.C. §1184(p)(1). 8 C.F.R. §214.14(c)(2)(i) (2007).

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- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>33</sup>

The “T” visa applicant must also demonstrate that he or she is physically present in the U.S., American Samoa, or the Commonwealth of the Northern Mariana Islands on account of human trafficking.<sup>34</sup> Likewise, the child must show that he or she would suffer extreme hardship involving unusual and severe harm if deported from the U.S.<sup>35</sup>

If the T-visa applicant is 18 or older, he or she must comply with any reasonable request for assistance in the federal, state, or local investigation or prosecution of the trafficking.<sup>36</sup> The applicant can also meet this requirement by complying with any reasonable request for assistance in the federal, state, or local investigation of crime where trafficking acts were at least one central reason for the commission of that crime.<sup>37</sup> Child applicants less than 18 do not have to meet this requirement.<sup>38</sup> If the child is at least 18 and unable to meet this requirement due to psychological or physical trauma, he or she can request that the Secretary of Homeland Security exercise his or her discretion to waive this requirement.<sup>39</sup>

Once a child is granted a T-visa, the child’s spouse, children, parents, and unmarried siblings less than 18 can join him or her in the U.S.

### **ASYLUM: RELIEF FOR CHILDREN SEXUALLY ASSAULTED IN THEIR COUNTRIES OF ORIGIN**

For a child who suffered sexual abuse or assault in his or her country of origin, asylum or withholding of removal may be an option for relief. Asylum has its roots in international law. The child asylum applicant must demonstrate that he or she is unable or unwilling to return to his or her country of origin due to a well-founded fear of persecution on account of one of five grounds: race/ethnicity, religion, nationality, membership in a political social group, or political opinion.<sup>40</sup> Many U.S. federal courts have recognized that sexual abuse or assault constitutes persecution.

As a general rule, all asylum applicants need to file their applications within one year of first entering the U.S.<sup>41</sup> Failure to meet this deadline will result in an automatic denial of the asylum claim, unless there have been (1) “extraordinary circumstances related to the delay in filing,” or (2) “changed circumstances” (e.g. in the applicant’s home country or in his or her own membership in a particular social group) that materially affected the application for asylum.<sup>42</sup>

Unlike VAWA relief and SIJ status, which are available only to children who are abused by family members, asylum is an immigration option available to children sexually assaulted by non-family members. Examples of successful child asylum cases include street children raped by the police, gay or lesbian children raped by homophobic adults, ethnic minority children raped by gangs, and indigenous children raped by the military.

It is not enough for a child to show that he or she was sexually assaulted in his or her country of origin. In order to prevail in an asylum case, the child must show that he or she was persecuted either by the government of his or her country or origin or by others whom the government were unable or unwilling to control. If the child by him or herself did not suffer persecution in the past, the child will need to show that he or she has a well-founded fear of being persecuted in the future if forced to return to his or her country of birth. Examples of persecution involving

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<sup>33</sup> 22 USC §7102(8).

<sup>34</sup> INA §101(a)(15)(T)(i)(II), 8 U.S.C. §1101(a)(15)(T)(i)(II). 8 C.F.R. §214.11(g).

<sup>35</sup> INA §101(a)(15)(T)(i)(IV), 8 U.S.C. §1101(a)(15)(T)(i)(IV). 8 C.F.R. §214.11(i).

<sup>36</sup> INA §101(a)(15)(T)(i)(III), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

<sup>37</sup> INA §101(a)(15)(T)(i)(III), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

<sup>38</sup> INA §101(a)(15)(T)(i)(III)(bb), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

<sup>39</sup> INA §101(a)(15)(T)(iii), 8 U.S.C. §1101(a)(15)(T)(iii).

<sup>40</sup> 8 U.S.C. §1101(a)(2); INA §101(a)(42).

<sup>41</sup> 8 U.S.C. §1158(a)(2)(B); INA §208(a)(2)(B). 8 C.F.R. §208.4(a)(2).

<sup>42</sup> 8 U.S.C. §1158(a)(2)(D); INA §208(a)(2)(D). 8 C.F.R. §208.4(a)(4).

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direct state actors include police, security forces, or military members. Examples of persecution where the state fails to control the persecutors include incidents where gangs, guerillas, or militia members sexually assault children.

In addition to the state action requirement, the asylum applicant must show that the past persecution or well-founded fear of future persecution is on account of his or her race/ethnicity, religion, nationality, political opinion, or membership in particular social group. It is not enough for a child to show that he or she was sexually assaulted by the police or military; the child likewise must prove that he or she was targeted for persecution because of one of those five grounds. Proving the nexus element (“on account of”) can be difficult for many children as they may not know or understand why they were persecuted.

Similarly, a Russian Jewish child who was sexually assaulted by skinheads could argue that the persecution was on account of her religion or race. A gay child who was raped by homophobic adults could argue that the persecution was on account of his membership in a particular social group (gay children). To prove membership in a particular social group, the child will need to show that he or she possesses some trait or characteristic that he or she cannot change (e.g., disability) or should not be compelled to change (e.g., homosexuality).

The state action requirement and the nexus requirement make asylum a difficult option for children who were raped by family members. Many incest cases never come to the attention of state authorities, and the child thus would have difficulty proving that the state failed to protect him or her from persecution. In addition, incest survivors may be unable to prove that the sexual assault was on account of one of the five grounds. Some federal courts, however, have recognized family to constitute a particular social group; therefore, if any other family members were sexually assaulted, the child could argue that he or she was persecuted on account of membership in a particular social group. It is critical to probe all the details and facts surrounding the incest claim, as the child is often unaware of the motivations and dynamics surrounding the incest. For example, a Roma child was raped by her Bulgarian stepfather, who called her “gypsy” and “whore” as he raped her. She was able to argue that he persecuted her on account of her ethnicity.

Children present unique issues, and it is critical that immigration lawyers collaborate with social workers and youth advocates when handling these cases. Below is a list of resources to aid advocates and attorneys working with child sexual assault survivors.

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### IMMIGRATION LEGAL RESOURCES AVAILABLE TO ADVOCATES AND ATTORNEYS WORKING WITH CHILD SEXUAL ASSAULT SURVIVORS

- **National Immigrant Women’s Advocacy Project** provides technical assistance on VAWA, asylum, “U” interim relief, and T-visa cases. 202/326-0040
- **ASISTA** provides technical assistance on VAWA, SIJ status, “U” interim relief, and T-visa cases. [www.Asistaonline.org](http://www.Asistaonline.org)
- **Immigrant Legal Resource Center** provides technical assistance on VAWA, SIJ status, “U” interim relief, and T-visa cases. 415/255-9499 and [www.ilrc.org](http://www.ilrc.org).
- **U.S. Committee for Refugees and Immigrants** provides technical assistance on SIJ status cases. 202/797-2105.
- **Center for Gender and Refugee Studies** at the University of California, Hastings College of Law, monitors domestic violence asylum cases; summarizes current domestic and international case law, regulations, and standards particular to gender asylum; lists contact information for gender asylum experts; and provides individual case support. Phone 415-656-4791 <http://www.uchastings.edu/cgrs>
- Request a free **UNHCR Handbook on Procedures and Criteria for Determining Refugee Status** from UNHCR, 1775 K Street, N.W. Suite 300, Washington, DC 20006, email [usawa@unhcr.ch](mailto:usawa@unhcr.ch) or access the *Handbook* on the Internet at <http://www.unhcr.ch>

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