

## Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach<sup>1</sup>

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A survivor's story<sup>3</sup> is one of the most important pieces of evidence submitted with the VAWA, U, and T visa applications, which makes them different from other immigration applications. This is an opportunity for Department of Homeland Security (DHS) adjudicators to hear directly from the survivor, in his or her own voice. When reading the survivor's story, the reader – ultimately, the DHS adjudicator – should be able to know and feel what the survivor felt after being subjected to abuse or crime victimization.

### Preparing for Story Collection

- Do your homework by reading police reports, requests for protection orders, court records and medical records whenever they are available.
- Talk with your client before the story collection session by letting your client know ahead of time what your goals are for the next session.
- Make sure both you and your client have set aside the adequate time taking into account the use of interpreters and translators.
- You may prefer not use the word "affidavit," instead refer to it as his or her "story."

### Getting Your Client's Story on Paper

- Remember, your client is the expert of his or her experience.
- Keep in mind that your assistance is crucial to help your client tell their story with your support listening/witnessing their story with empathy that validates their experience and sympathizes with the trauma they experience to minimize re-traumatization.
- Consider your client's ability and willingness to read and write.
- The story could be written in her native language and translated later to English.
- For the first draft, chronology, spelling and grammar are not important.
- Create an environment in which the client tells her story uninterrupted to a listener who cares.
- Being present when your client writes her story is important and is the preferred approach. However, some victims will feel strongly that they want to write their stories alone. It is important to respect your client's decision about how the client wants to undertake the difficult process of writing her story.

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<sup>3</sup> We will not be referring to them as affidavit, but rather "stories" of the survivor's experience.

### Supplemental Interview

- After your client has had an opportunity to tell her story, you as the client’s advocate/attorney will proceed to the next step of the story development process in which you will review with your client a series of additional questions.
- See the “Trauma Informed Structured Interview Questions”<sup>4</sup>.
- These questions are designed to obtain more complete information about the survivor, their case, experiences, and the impact of these events on the victim and her children.
- The supplemental interview will also be the time when it will be appropriate for you to ask follow-up questions obtaining more detail about events raised in your client’s story.

### Integrating the Story

- After you have obtained the story your client wrote/told you, and held your follow up supplemental questioning session, you as the advocate/attorney will mold the story into a cohesive whole. This is your opportunity to:
  - Organize the story chronologically;
  - Correct grammar, and spelling;
  - Ensure that the story remains your client’s story in your client’s words – not yours.
- Once you have edited the story together you will review it with your client one last time before obtaining her signature and submitting her story as evidence in her immigration case.

<b>VAWA Self-Petition</b>
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Proof requirements for a person applying for a VAWA self-petition. The victim must prove the following:

1. That the victim has a required relationship to the abuser:
  - a) The abuser is the victim’s U.S. citizen or Legal Permanent Resident (green card holder) spouse or former spouse and the marriage was in good faith;<sup>5</sup> or
  - b) The abuser is the victim’s U.S. citizen or Legal Permanent Resident (green card holder) parent or stepparent; or
  - c) The abuser is the victim’s U.S. citizen son or daughter who is over 21 years old.
2. That the victim cohabited with the abuser at some point in time;
3. That the victim experienced battery and/or extreme cruelty;
4. That the victim has good moral character.

### **Guide to Writing Your VAWA Declaration – Writing YOUR Story**

This is the most important part of your application. It should be as detailed as possible, but in your own words. When you write your story, don't worry about spelling or grammar. Remember, you are the expert on your experiences. This is your story about what happened to you and your feelings are important.

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<sup>5</sup> All marriages that are valid in the state where they were performed are valid as a basis for VAWA self-petitioning including marriages between heterosexual and same sex couples.

It may be difficult to write about what happened, but the Immigration Officer (who will read and evaluate your application) needs to understand why you qualify for the VAWA immigration protections. Therefore, in your story, you should:

1. Show that your relationship with the abuser is real or that your marriage to the abuser was genuine.
2. Show that you lived together with your abuser (e.g. your spouse, former spouse, parent, stepparent, or your child who is over 21 years old) at some point in time.
3. Describe the abuse and the abusive periods in detail, stating what specifically he or she did to you. Describe any physical, sexual, psychological, or emotional abuse or injury you have suffered. State specifically how the abuse has changed you or has changed the way you live your life, including the impact of the abuse on your children or your relationship with or interactions with your children.
4. Write about your good moral character and ask for immigration relief.

### Strategies for Advocates or Attorneys

It is important to develop an emotional safety plan before asking someone to do this – either with you or, especially, if they opt to do it alone at home. An emotional safety plan should include recognition of “triggers” for getting emotionally upset, a set of strategies to help calm oneself (victim or advocate) and a plan for reaching out for help, as needed.<sup>6</sup> Generally, it is far better to develop the story WITH an advocate/attorney who can provide support and witness the process.

### Outline and Guiding Questions

The following outline and guiding questions can help you through the process of writing your story. Keep in mind that some of the questions may not apply to your situation and you don’t have to follow the outline exactly.

Part 1 – A good starting point would be to introduce yourself by stating your name. A good example of this is: “I am \_\_\_\_\_(your name) and I live at \_\_\_\_\_(your current address).”

Part 2 – Then, you want to begin to talk about the relationship between you and your U.S. Citizen or Legal Permanent Resident abuser.

If the abuser is your spouse or ex-spouse, remember that you need to show the reader that you got married because you loved each other, and that you lived together at some point. See Trauma Informed SIQI<sup>7</sup> pages 4-5 for relevant questions.

If the abuser is your parent, you will need to show that you had a stepparent-child relationship. See Trauma Informed SIQI page 5 for relevant questions.

<sup>6</sup> Advocates and attorneys following these trauma informed strategies for working with immigrant crime victims can receive technical assistance from trauma experts by contacting NIWAP at (202) 274-4457; [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) or [info@niwap.org](mailto:info@niwap.org). NIWAP staff will arrange a conversation with trauma experts for you.

<sup>7</sup> See “Trauma Informed Structured Interview Questionnaires for Immigration Cases” at <http://niwaplibrary.wcl.american.edu/pubs/trauma-informed-siqi>

If your abuser is your over 21 year old U.S. citizen son or daughter, you will need to show that you had a parent-child relationship. See Trauma Informed SIQI pages 5-6 for relevant questions.

Part 2 – Next, tell the reader about the abuse: how it started, specific instances or stories, how it made you feel, and how it affected your children and your family members. Focus on how the abuse has “changed” you in some way, made things more difficult for you, made you upset, affected how you live your life, including with your children and family. It is useful to use a calendar to remember when certain events occurred. Refer to evidence checklists<sup>8</sup> “Trauma Informed Structured Interview Questions” that your advocate/attorney will review with you that can help you remember particular stories about the abuse that you may have not remembered.

Part 3 – Then, state that you have good moral character. Tell the reader that you are a good person, responsible parent, hardworking employee, law-abiding person, and that you are involved in your community.

## VAWA CANCELLATION OF REMOVAL

Some people, who qualify under VAWA, have been placed in removal (deportation) proceedings. The requirements for VAWA cancellation of removal are very similar to VAWA self-petitioning described above. However, in addition to establishing that the victim meets the criterion for VAWA self-petitioning,<sup>9</sup> a VAWA cancellation of removal applicant must also demonstrate two additional requirements:

- That they lived in the U.S. continuously for 3 years immediately preceding the filing of the application.
  - A single absence from the U.S. of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence, unless the absence was connected to the abuse.
- That they would face extreme hardship if they had to leave the U.S.
  - Economic deprivation, loss of employment, or difficulty readjusting to life in the native country is not enough in themselves to show extreme hardship.
  - The best way to prove extreme hardship is to show how experiencing the abuse has been harmful to the victim and how deportation would impede any progress that he/she has made to overcome the effects of the abuse.
  - Life-time trauma events can be helpful here.

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<sup>8</sup> VAWA Self Petitioning Evidence Checklist available at [http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petitioning-and-cancellation/tools/VAWA\\_Self-Petitioning-Checklist\\_English\\_2008.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petitioning-and-cancellation/tools/VAWA_Self-Petitioning-Checklist_English_2008.pdf/view)

<sup>9</sup> There are several categories of immigrant crime victims who qualify for VAWA cancellation of removal but not for VAWA self-petitioning, these include: the parent of an abused child, regardless of the child’s U.S. citizenship, who was never married to the child’s abusive U.S. citizen or permanent resident parent; The abused spouse of a U.S. citizen or permanent resident spouse who has died or any abused children of a U.S. Citizen or permanent resident parent who has died over 2 years ago; An abused spouse who was divorced for over 2 years from the U.S. citizen or permanent resident abuser spouse; An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years; An abused spouse or child whose citizen or legal permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago; Victims of child abuse or incest abused by a U.S. citizen or permanent resident parent while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and Victims of child abuse who cannot establish that they have resided with the U.S. citizen or permanent resident abuser parent.

## Adding to Your Story to Qualify for VAWA Cancellation of Removal

After you finished writing about your good moral character in Part 3, you need to write about 2 additional things to qualify for VAWA Cancellation of Removal protection. Therefore, in your story you should also:

1. Demonstrate that you lived in the U.S. for 3 years.
2. Describe the hardship you and your family would face if you had to leave the U.S.

The following outline and guiding questions can help you through the process of finishing your story for VAWA Cancellation of Removal. Keep in mind that some of the questions may not apply to your situation and you don't have to follow the outline exactly.

Part 4 – After Part 3, show the reader that you lived in the U.S. for 3 years. See Trauma Informed SIQI page 8 for relevant questions.

Part 5 – Lastly, conclude by explaining how your life would change if you had to leave the U.S. If you have children, also discuss how it would change the lives if you had to return to your native country. See Trauma Informed SIQI page 8-9 for relevant questions.

## U VISA

Proof requirements for a person applying for a U Visa include the following:

1. That they (or their child) have been victim of a qualifying criminal activity.
  - o The parent can be the “indirect” victim if the victim of the criminal activity is a child under 21 years of age, or is a child who was murdered.
2. That they have suffered substantial physical or mental abuse as a result of being a victim of criminal activity.
3. That they possess information regarding the criminal activity.
4. That they have been helpful, are being helpful, or will be helpful in the detection, investigation, prosecution, conviction, or sentencing related to the criminal activity.

## Writing Your U Visa Declaration – Writing YOUR Story

Your story is the most important part of your application. It should be as detailed as possible, but in your own words. When you write your story, don't worry about spelling or grammar. Remember, you are the expert on the events that happened to you or your family--this is your story. Describing your experiences, how the criminal activity affected you or your children, and how you feel is very important for your application.

Remember that what happened and how it made or still makes you feel is very important. It is important to be specific and detailed, although this may make it harder to remember. Refer to the checklist of questions for a U visa case<sup>10</sup> and the *Trauma Informed: Structured Interview Questions*<sup>11</sup> that ask about

<sup>10</sup> U Visa Evidence Checklist is available at [http://niwaplibrary.wcl.american.edu/immigration/u-visa/tools/UVISA\\_Evidence-Check-List.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/u-visa/tools/UVISA_Evidence-Check-List.pdf/view)

your experiences, remind you of how you feel and remind you of stories to illustrate the effects of the abuse on you and your family.

It may be difficult to write about what had happened, but the Immigration Officer (who will read and evaluate your application) needs to know about the criminal activity or criminal activities that happened and how they harmed you, so that they can understand why you qualify for the U Visa. Therefore, in your story, you should:

1. Describe the criminal activity or criminal activities that your U Visa is based on.
2. Write about the physical, sexual, and/or psychological harm you suffered (or your child suffered) because of the criminal activity (or criminal activities) and how you feel as a result of it.
3. Describe how you helped law enforcement or prosecutors.

The following outline and guiding questions can help you through the process of writing your story. Keep in mind that some of the questions may not apply to your situation and you don't have to follow the outline exactly.

Part 1 – A good starting point would be to introduce yourself by stating your name. A good example of this is: “I am \_\_\_\_\_(your name) and I live at \_\_\_\_\_(your current address).”

Part 2 – Next, talk about the relationship, if any, between you and the perpetrator. If the perpetrator was an acquaintance, write about how you knew him or her. If the perpetrator was a stranger or someone you never had a relationship with, you should skip to Part 3 to discuss the criminal activity.

- If the perpetrator is someone you know, you may start by describing your relationship with him/her or explain how you knew him/her. See Trauma Informed SIQI page 9 for relevant questions.

Part 3 – For this part, thoroughly describe the qualifying criminal activity or criminal activities with as much detail as you can remember. Please review the qualifying criminal activities below<sup>12</sup> and then answer the following questions with regard to each of the criminal activities that were committed by the perpetrator.

- If you were a victim of continuous abuse by your spouse, partner, or parent, see Trauma Informed SIQI pages 9-10 for relevant questions.
- If you were the victim of a single criminal activity, see Trauma Informed SIQI pages 9-10 for relevant questions.

Part 4 – After you described the qualifying criminal activity or criminal activities, the next step is to write extensively about the emotional and physical pain that you suffered during and after the criminal act. This part is the most important element in your application and it should be the most detailed. The person reviewing your case will want to know, from your perspective, how the criminal activity has affected you physically and/or emotionally.

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<sup>12</sup> Abduction, Abusive Sexual Content, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, and Unlawful Criminal Restraint.

- You can think about how the abuse affected you while it was happening, right after and many days, months, or years later. Think about how it has affected you physically, emotionally, and spiritually. See Trauma Informed SIQI pages 10-11 for relevant questions.

Part 5 – In this part, describe how you helped the police or the prosecuting attorney. See Trauma Informed SIQI pages 11-12 for relevant questions.

Part 6 – This is where you should conclude your story and ask for immigration relief.

### WAIVER OF INADMISSIBILITY

Waivers of past conduct are available for both VAWA, U and T Visa applicants. Generally, applicants waive their unlawful entry and/or unlawful presence in the U.S.

Usually, waivers are approved, but you must honestly disclose all past conduct that may apply, no matter how serious. It is important to know that as part of the VAWA, U and T Visa application process your fingerprints will be taken by Immigration. As a result of having your fingerprints on file, Immigration will find out about any criminal history you may have, including any arrests where nothing came of it, such as: you paid a fine, the charges were dropped, you never went to court, you completed community service, or you were told that the charges would be removed from your record. Immigration will be able to see all of this. Therefore, it is important and very helpful to your case to tell your advocate/attorney about any contact you had with police, immigration and the court system as early as possible in your case. Knowing this information early will help your lawyer work with you to make sure that these types of experiences that occurred in your past will not hurt your immigration case. If you have any criminal history, immigration history, or other type of experience listed below. Telling your attorney about it can help them ensure that these experiences will not hurt your or your immigration case. It allows them to do what they can to make sure that your case is not denied. On the other hand, being truthful with your advocate and attorney about these issues will help them prepare your case in a way that can be successful, despite your history.

We may have to ask for waivers for the following:

- Unlawful entries;
- If you made a misrepresentation on official;
- Orders of removal or deportation;
- Convictions for criminal activity;
- Assisting your children to enter the U.S. Unlawfully;

### Writing Your Waiver<sup>13</sup>

In your waiver you should:

1. Explain the conduct being waived and say you are sorry for committing the unlawful activity.
2. Write about your good moral character.
3. Describe the hardship you and your family would face if you had to leave the U.S.

Read through the following questions and directions for guidance. Some of the questions may not apply to your situation, but answer the ones that do when you are writing your waiver.

<sup>13</sup> Some practitioners prefer to insert the waiver of inadmissibility at the end of the applicant's personal declaration.

Part 1 – Begin by explaining the conduct being waived and by expressing remorse. See Trauma Informed SIQI pages 12-13 for relevant questions.

Part 2 – Next, describe your good moral character. Tell the reader that you are a good person, responsible parent, hardworking employee, law-abiding person, and that you are involved in your community. See Trauma Informed SIQI pages 13 for relevant questions.

Part 3 – Lastly, conclude by explaining how your life would change if you had to leave the U.S. If you have children, also discuss how it would change the lives if you had to return to your native country. See Trauma Informed SIQI page 13-14 for relevant questions.