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# IMMIGRATION LAW CONFERENCE

May 17–18, 2019

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## FLAGGING FOR RELIEF

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## Poll 1

Have you conducted a client intake/consultation meeting in which you gathered facts and discussed possible forms of benefits/relief?

- Yes, more than 100
- Yes, between 20-100
- Yes, less than 20
- No

Go to <https://pollev.com/FBA2019> to submit your response!



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## LOGISTICS OF THE INTAKE/CONSULTATION

- Who is conducting it? Attorney or Staff?
- How is it done? In person/phone/skype?
- Does the potential client complete a form?
- Duration? Attorney vs. administrative time?
- Consulting with colleagues?
- Communicating with the client?
- Reviewing Strategy as facts change and time passes?



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Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date of First Entry to the U.S.: \_\_\_\_\_

Referred By: \_\_\_\_\_

Date Authorized Stay Expires: \_\_\_\_\_

Prior Status: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Current Status: \_\_\_\_\_

Country of Nationality/Citizenship: \_\_\_\_\_

GOAL: \_\_\_\_\_

- ☐ Family Information (Parents / Siblings / Spouse / Kids):
  - ☐ Any USC/LPR Relatives? (Under 18 when they NATZ'ed or derive thru grandp)
- ☐ DACA (entry age); Victim or Crime/Trafficking – EWI not bar to U Visa? Family member of victim? Abuse by USC/LPR? Family in military? Asylum – fear? Non-LPR Cancellation – 10 years pre NTA (false claim is not a bar)? 245(i) (~2001)?
- ☐ Educational History
- ☐ Employment History
- ☐ Immigration History / Statuses – Applications (CIS/DOS), Denials, Immigration Court?
  - ☐ G-4 status? J Status? H status? C status? Prior Deportation?
- ☐ Criminal History – ANY INTERACTIONS WITH CRIMINAL SYSTEM ANYWHERE?
- ☐ Warnings: Taillights, Get USC Kids a Passport, etc.
- ☐ Discretion: Work without auth., taxes, property own, USC kids, medical conditions,



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## **HYPO:**

Elvira, who was assaulted by the father of her child (a U.S. Citizen), just got bad news from you regarding her potential U visa: the Conroe Police Department will not certify her, so you cannot proceed. Elvira breaks down and tells you how unfair this feels because she has suffered so much at the hands of her “esposo”.

How do you start the consultation with Elivira? What could Elvira be eligible for? What is your next question to Elvira?



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## THINGS TO WATCH OUT FOR:

- Be careful with phrasing and terminology;
- Screening for eligibility AND ineligibility;
- Screen for inadmissibility (and waivers);



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## Hypo/Poll - THINGS TO WATCH OUT FOR:

Hypo 1: Jose consults with you about eligibility to adjust status through his USC wife. He tells you he entered "illegal."

Is he eligible to adjust?

- A. Most likely, yes
- B. Probably not
- C. Need to know more



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## Hypo/Poll - THINGS TO WATCH OUT FOR:

Hypo 2: Rosa is reviewing her criminal history with you in a consultation and tells you her case is "erased."

What does "erased" mean?

- Convicted
- Dismissed
- Expunged
- Who knows?



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## Hypo/Poll - THINGS TO WATCH OUT FOR:

Hypo 3: Clare tells you her husband was in the US for a few years but left and came back.

What else do you need to know?



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## THINGS TO WATCH OUT FOR:

- Pay attention to detail AND focus on the big picture;
- Re-screen at every step of the process;
- Screen for alternative relief (your Plan B and Plan C);
- Screen for derivative status.



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## FLAGGING FOR RELIEF – THINGS TO WATCH OUT FOR:

Hypo 1: Rodolfo wants to petition for his mom and dad now that he's 21. Mom entered EWI and dad's most recent entry was with an H-2B.

What do you do?

- A. Open an adjustment for dad and nothing for mom
- B. Do a FOIA on dad
- C. Clarify dad's history
- D. Open an adjustment for dad and an I-130 for mom



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## **FLAGGING FOR RELIEF – THINGS TO WATCH OUT FOR:**

**Hypo 2: You are starting a provisional waiver for a client whose I-130 is approved. She asks you if her husband can also petition for her child.**

**What do you do?**

**A. Start an I-130 for the child**

**B. Find out about the child's father and if he's out of the picture, go forward**

**C. Stop mom's case**



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## FLAGGING FOR RELIEF – THINGS TO WATCH OUT FOR:

Hypo 3: Mario is requesting cancellation of removal  
and is married to a USC.

What should you do for plan B?



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## FAMILY-BASED & CITIZENSHIP CASES

- Look beyond petitioner-beneficiary family relationship;
- Focus on immigration & criminal history;
  - Review all entries & departures from U.S.



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## Hypo/Poll

Emelio is applying for adjustment through his wife. You get RFE based on good faith marriage but they have a child.

What do you do?

- A. Resubmit the shared child's birth certificate
- B. Have both clients in for a discussion about their marital history



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## Hypo/Poll

Hypo 2: Lucia has prepare her consular processing case with a notario but comes to you before she goes to the consulate. She had a border apprehension in 2005 and was not admitted at that time, but she used the same visa to come in at another port of entry.

Should you be concerned?

A. YES

B. NO



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## FAMILY-BASED & CITIZENSHIP CASES

- Pay attention to dates;
- Don't forget to screen the petitioner!



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## Hypo/Poll

- **Ulises wants to adjust status through his son. Was in the US in the mid-90's and later got a visa to enter.**
- **What else do you need to know?**



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## Hypo/Poll

John wants to bring his fiancé to the US from Thailand. John has a criminal record.

Do you need to investigate further?

A. YES

B. NO



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## SCREEN FOR LESS-COMMON SCENARIOS

- Relief for members of the military and their family;
- Derivative/acquired citizenship and expedited citizenship;



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## SCREEN FOR LESS-COMMON SCENARIOS

Hypo: Pritesh is a USC who wants to petition for his pregnant wife to come to the US from India. He has only been a citizen for 2 years.

What do you do?

- A. Bring baby over as a follow-to-join
- B. File for report of citizen born abroad
- C. File an I-130 for the baby once baby is born



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## SCREEN FOR LESS-COMMON SCENARIOS

- Protections for surviving relatives (ie – Special Immigrant widow(er)s, humanitarian reinstatement, INA 204(I))
- Existing protections for now-closed programs (ie – INA 245(i), Western Hemisphere Priority Dates, NACARA]

AND MORE...



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## SCREEN FOR LESS-COMMON SCENARIOS

Hypo 1: Luis petitioned for his wife and sons to adjust status. His oldest son Oscar gets arrested for marijuana possession and doesn't get his greencard with his mom and brothers. Luis is tragically murdered before Oscar's case is resolved.

Can you continue the case?

A. YES

B. NO



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## EMPLOYMENT-BASED CASES – Part 1:

- Explore education/training background;
- Ask for a CV/resume and discuss work history;
- Ask about long-term plans (and family members);



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## EMPLOYMENT-BASED CASES – Part 2:

- Keep inadmissibilities in mind;
- When NIV is not possible, look into permanent residence options, and vice versa.
- INA § 245(k)



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## Screening for asylum and/or withholding of Removal:

- Fear of going back to country of origin
  - Firm resettlement
- One year deadline
- Requesting a CFI/RFI
- Risks of applying for asylum affirmatively
- Bars to Asylum and withholding of Removal
  - Material Support
  - Relief under CAT

INA § 101(a)(42)—Refugee definition    INA § 208—Asylum (eligibility and procedures)

INA § 235—Expedited removal  
removal

INA § 241(b)(3)—Withholding of



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## Hypo/Poll:

Veronica is consulting with you about her son, Cristobal, who just arrived to the United States as an accompanied minor nine months ago. Cristobal is 16 and was recently released from ORR detention.

Cristobal fled El Salvador because gang members were threatening him daily and even beat him up a few times. They initially made fun of him for going to church and leading the church youth group. Once they realized that the church youth group had a positive influence on the neighborhood children, they began to threaten Cristobal, seeing him as a rival. Cristobal was so afraid that he stopped going to school. Going to school was extremely important to him and he states that being able to go to school was the main reason for his wanting to join his mother in the US. Veronica arranged for and paid a coyote to safely bring Cristobal to the US border.

Should Cristobal apply for Asylum?

- Yes
- No



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## Hypo/Poll:

Veronica left El Salvador when Cristobal was about 8 years old. Her partner, was extremely abusive to her and she felt she had no choice but to leave. After she left, Cristobal's father threatened Veronica's family for a few months, but he eventually left town, never to be heard of again. Neither Veronica, nor Cristobal know where he is or have spoken to him in several years.

Veronica was apprehended by CBP almost immediately after crossing the border. At the time, Veronica did not have an address to go to in the US, but she had a cousin who lived in Chicago. She gave her cousin's address, but never went to Chicago. She was given a "paper" that said that she would have to go to court, but it did not specify a date or time.

Should Veronica apply for Asylum?

- Yes
- No



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## The T Visa: Helping Some Victims of Trafficking

- Severe form of human trafficking (sex and labor trafficking)
  - Force, fraud, or coercion
- Law enforcement cooperation but not necessarily certification
  - Continued Presence
- In the US on account of trafficking
- Inadmissibly – waiver under INA § 212 (d)(13)
  - Some grounds do not apply (e.g.: Public Charge)
- Derivatives – Screen for derivative status!!!
  - Spouses and children
  - Parents and minor siblings for applicants under 21
  - Children of derivatives if they face danger due to the trafficking
- Non-immigrant visa with a path to LPR status (INA § 245(m))!

**\*\*The regulations are actually helpful and up to date\*\***

8 CFR § 214.11

INA § 101(a)(15)(T)



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## **HYPOTHESIS/POLL:**

As she is about to leave your office, Veronica asks you to help her son because she does not want him to go through what she has gone through. You ask Veronica to elaborate. She explains that she left El Salvador when Cristobal was about 8 years old to escape an abusive relationship. She confided in Olga, an older woman who often bought pupusas from Veronica. Olga told her that her cousin, Oscar, owned a restaurant in Houston and could give her job there. Oscar would pay for her passage to the US and she could pay him back as she worked at his restaurant. Veronica saw this as the opportunity of a lifetime.

As soon as Veronica arrived in Houston, she met Oscar and his wife, who took her to a house where she was to share a room with several other young women. She was given revealing clothes to wear and taken to the restaurant which turned out to be a cantina.

Veronica was expected to entertain customers and eventually engage in commercial sex acts. She, and the other women, were watched constantly and when not working, they were in the house, under lock and key.

After being a prisoner for about a year, one of her customers, John, fell in love with her. Veronica also liked John because, although he paid for time with her, he was nice and talked with her. She eventually confided that she was not working at the cantina of her accord. John devised a plan to rescue her and a few days later helped her escape.

Is Veronica eligible for a T visa? What about Cristobal? Inadmissibility?

- Veronica is eligible
- Veronica is not eligible



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## Eligibility for Relief under the Violence Against Women Act

- **Marriage to a USC or LPR**
  - Common law marriage
  - Bigamy
  - Divorce
  - Loss of status
- **Don't forget Parents of USCs**
- **Children are eligible as principals and as derivatives**
- **Inadmissibility**
  - **EWI is an exception**
    - Found in INA § 245(a) AND in in INA § 212(a)(6)
  - **Special waivers**
  - **Inadmissibility linked to the abuse**

INA § 204(a)(1)(D)(v)



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## Eligibility for Relief under the Violence Against Women Act

- Abuse/extreme cruelty means:
  - Physical
  - Mental
  - Financial, etc...
- Joint residence and abuse can be abroad
- Standard of proof: any credible evidence
  - 8 CFR § 204.2(c)(2)(i)

**\*\*generally, do not trust the regulations! They have not been properly amended to reflect changes made over the years\*\***



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## **HYPOTHESIS #:**

After he helped her escape, Veronica chose to stay with John and they eventually got married.

John is a USC. After their first daughter, Yadira, was born, John and Veronica consulted with a “notario” who told them that Veronica would have to go back to El Salvador to become a legal resident. They decided to not take the risk. Veronica was terrified of going back to El Salvador.

John and Veronica’s relationship deteriorated and eventually John became abusive and hit Veronica. One night, a few days after Cristobal had arrived, John hit Veronica and injured Cristobal as he tried to defend his mother. Yadira called 911 and the police came. John was arrested and charged with family violence for hitting both Veronica and Cristobal.

Is Veronica eligible for relief under VAWA? What about Cristobal? Any inadmissibility? What about adjustment?



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## The U Visa: Protecting Victims of Crime

- **Law Enforcement Certification**
  - Qualifying crime
  - Discretion
- **Inadmissibly – generous waiver under INA § 212(d)(14)**
- **Derivatives – Screen for derivative status!!!**
  - Spouses and children
  - Parents and minor siblings for applicants under 21
- **Non-immigrant visa with a path to LPR status (INA § 245(m))!**
  - Family members (after acquired spouse) with the I-929
- **Downsides**

**\*\*The regulations are actually helpful and up to date\*\***

INA § 101(a)(15)(U)  
8 CFR § 214.14



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## **HYPO #:**

John and Veronica's relationship deteriorated and eventually John became abusive and hit Veronica. One night, a few days after Cristobal had arrived, John hit Veronica and injured Cristobal as he tried to defend his mother. Yadira called 911 and the police came. John was arrested and charged with family violence for hitting both Veronica and Cristobal.

Is Veronica eligible for a U visa? What about Cristobal?



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## Special Immigrant Juvenile Status

- Children – path to citizenship
- Abuse, abandonment, or Neglect by one or both parents
- State Court Order
  - Jurisdiction
    - Age
    - Other courts
- Inadmissibility applies
  - Special exemptions
- Inability to later petition for parents, even non-abusive parent
- Area of law in flux

INA § 101(a)(27)(J) INA § 245(h)

8 CFR § 245.1 (e)(3)



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## **HYPO/POLL:**

When she fled El Salvador, Veronica left Cristobal in the care of her mother. After that, Cristobal's father threatened Veronica's family for a few months, but he eventually left town, never to be heard of again. Neither Veronica, nor Cristobal know where he is or have spoken to him in several years.

Is Cristobal eligible for SIJ?

- Yes
- No



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**COMMENTS?  
QUESTIONS?**



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