

### Pro Bono Training: VAWA Self-Petition Nuts & Bolts, Plus Late-Breaking Updates



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#### PRO BONO BRIEFING & TRAINING

### Today's Agenda

- Brief latest updates on
  - Presidential Proclamation related to health coverage
  - USCIS fee and fee waiver changes
  - Other new editions of immigration forms
  - Proposed changes to asylum EADs
  - New rules concerning safe-third-country agreements
  - *Matter of A-B* litigation
- Walk through the nuts and bolts of filing a VAWA self-petition
- Questions



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#### PRO BONO BRIEFING & TRAINING

### Presidential Proclamation

- Temporary restraining order by federal judge on November 2, 2019, halting implementation for 28 days.



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*USCIS Fee Waiver Changes*

- Current edition (10/24/2019) eliminates “receipt of means-tested public benefits” as a basis for fee waiver.
- Prior editions of I-912 no longer accepted as of December 2, 2019.
- Leaves only two grounds for fee waiver
  - < 150% federal poverty line in household income
  - Financial hardship




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*Further Proposed Fee & Fee Waiver Changes*

- New, unwaivable \$50 fee for affirmative asylum applications
- New, unwaivable \$275 DACA renewal fee
- Various substantial fee increases (including AOS, naturalization, U non-derivative family members)
- Fee waivers no longer available for EADs, AOS, naturalization
- Income ceiling for waivers lowered to 125% of federal poverty guidelines
- Asylum seekers, those granted withholding must now pay EAD fee




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*Proposed Changes to Asylum EADs*

- Bars EADs for, among others, asylum seekers
  - Who entered between ports of entry;
  - Who did not satisfy one-year deadline (UACs exempt);
  - Who are not in the United States
  - With certain convictions, including “serious non-political crimes outside the US” and DV or child abuse
  - Who have “applicant-caused delay” on date of application




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*Proposed Changes to Asylum EADs*

- Waiting period extended to 365 days after asylum application
- The EAD clock is eliminated
- EADs valid for no more than two years; USCIS has discretion to set shorter period
- EADs require biometrics and fee
- Automatic termination after denials, not renewable if proceedings pending in federal court of appeals
- No more parole-based EADs for those with positive credible-fear findings
- Elimination of requirement that USCIS make EAD decisions within 30 days




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**PRO BONO BRIEFING & TRAINING**

*Proposed Changes to Asylum Procedures*

- USCIS will no longer issue recommended approvals
- USCIS no longer required to return incomplete applications within 30 days or deem them complete




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**PRO BONO BRIEFING & TRAINING**

*Other USCIS Form Updates*

Form	Edition Date	Date Prior Editions No Longer Accepted
AR-11	9/10/19	12/30/19
I-929	9/17/19	12/23/19
I-589	9/10/19	12/23/19




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Safe Third Country IFR

- Earlier this fall, DHS signed safe-third-country agreements with Guatemala, Honduras, and El Salvador
- New Interim Final Rule implementing those agreements applies to everyone who arrives at the border on or after November 19




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Safe Third Country IFR

- Gives those conducting CFIs and IJs the ability to determine whether asylum seekers are removable pursuant to safe-third-country agreements with Northern Triangle countries
- Agreements apply to everyone except nationals/residents of the other country and UACs
- To avoid removal, must affirmatively raise fear of that country and show more likely than not to be subject to persecution on account of a protected ground or torture
- If do not meet that bar, immediate removal to Guatemala, Honduras, or El Salvador




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Other Litigation Updates

- *Matter of A-B* - again before the BIA; briefing in December/January
- *Grace v. Barr* to be argued before the D.C. Circuit on December 9
- *Moreira v. Attorney General* (11th Cir. Oct. 9, 2019) - unpublished, non-precedential opinion agreeing with the circularity analysis and nexus analysis in *A-B*.
- *Al Otro Lado v. McAleenan* (S.D. Cal. Nov. 19, 2019) - district court issues preliminary injunction prohibiting those who arrived at border before July 16 from being subject to third-country-transit asylum ban




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### Filing a VAWA Self-Petition: Nuts & Bolts




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**PRO BONO BRIEFING & TRAINING**  
*VAWA Self-Petition Eligibility Review*

- **Status of the Abuser:** US Citizen or LPR
- **Good Faith Marriage:** Evidence that the couple married for purposes other than immigration status
- **Shared Residence:** Evidence that the couple cohabitated during the marriage
- **Battery or Extreme Cruelty:** Evidence of physical, mental and/or sexual abuse
- **Good Moral Character**




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**PRO BONO BRIEFING & TRAINING**  
*Evidentiary Standard & Burden of Proof*

-  • **Burden of proof** is a preponderance of the evidence
-  • **Standard of evidence** is "any credible evidence," an intentionally lower threshold that USCIS must consider any credible evidence.
- Promulgated by Congress with the knowledge that survivors of domestic and sexual violence, among other trauma survivors, may not have access to traditional sources of primary evidence




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*Establishing Abuser Status*

- Birth certificate
- US passport
- Other immigration documentation (I-94 card, green card, naturalization certificate)
- Other official documents (Social Security card, voting reg., check stubs with SS#, etc.)
- Voter records
- Financial, medical, insurance, court, or other records that show status or place of birth
- As last resort, a detailed affidavit of petitioner and request verification by DHS
  - In cover letter, cite to 8 CFR §103.2(b)(17)(ii)




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*Establishing Good Faith Marriage*

- Marriage certificate
- Wedding invitation and photos
- Children-in-common's birth certificates
- Affidavits or letters from friends and family about courtship and marriage
- Correspondence jointly addressed to couple
- Letters, cards, emails, texts sent from one spouse to the other
- Joint mortgage or lease
- Joint insurance policies
- Joint bills
- Joint tax returns
- Joint bank accounts




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*Establishing Shared Residence*

- Much of the same evidence used to demonstrate a good faith marriage can establish shared residence
  - Rental leases or titles to a home
  - Joint tax returns, bills, bank accounts, etc.
  - Letters, cards, emails, showing a joint residence
  - Affidavit of petitioner
  - Affidavits of neighbors and others who visited the couple in the shared home




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Establishing Battery and/or Extreme Cruelty

- Declaration of applicant
- Photographs of injuries or damaged property
- Affidavit of others who saw/heard abuse
- Criminal court records if abuser was arrested or convicted
- Restraining, stay away, or exclusion orders, plus accompanying documents
- Domestic violence shelter record or affidavit
- Police reports/affidavit of police officer(s)
- Medical records, even if self-petitioner's behavior is related to abuse
- Letter/notes from abuser and/or abuser's history of drug/alcohol abuse




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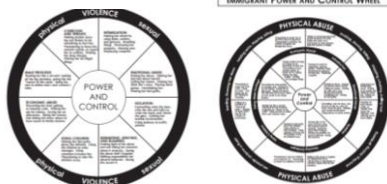
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Establishing Battery and/or Extreme Cruelty

Tips:

- Don't overthink it, look to 8 CFR 204.2(c)
- Use the Domestic Violence Power and Control Wheel to unpack dynamics and tactics in affidavits




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Establishing Good Moral Character

- Inquiry period is the immediately preceding three years
- But USCIS may investigate character beyond the three-year period when there is reason to believe that the self-petitioner may not have been a person of good moral character during that time.
- INA 101(f) lists bars to good moral character finding
- But also looks to "standards of average citizen in the community."
- Waivers may be available (consult with your mentor attorney)




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Establishing Good Moral Character

If you were describing why your friend was a person of good moral character, what would you point to?

- Lack of criminal history
- Employment
- Caretaker and involvement in children's schools
- Faith community involvement
- Volunteer service
- Paying taxes
- Helping friends and family




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PRO BONO BRIEFING & TRAINING

Establishing Good Moral Character

- Tax returns
- Employer letters
- School records
- Letters from faith community, friends, neighbors, community members




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One Step or Two?



- If the abusive spouse is a U.S. citizen, your client can file the I-360 self-petition and subsequent adjustment (green card) application in **one step**.
- If the abusive spouse is an LPR (green card holder), your client can only file the I-360 self-petition, and then must wait for their priority date to be current to file an adjustment application.




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PRO BONO BRIEFING & TRAINING

VAWA Filing Contents

- (1) **Concise** cover letter.
  - Do not brief unless there is a particularly nuanced issue.
  - Use cover letter as a roadmap that is centered on a table of exhibits going to each eligibility element.
  - Adjudicators are typically not attorneys and are comparing your filing against a USCIS file checklist.
- (2) All forms
- (3) Evidence
  - No need to include tabs. USCIS removes them. Consider divider pages instead.



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PRO BONO BRIEFING & TRAINING

VAWA Forms

- (1) G-28, preferably on blue paper.
- (2) I-912, Request for Fee Waiver (if a one-step application)
- (3) I-360, Self-Petition
- (4) I-485, Application for Permanent Residence (if one-step application)
- (5) I-765, Application for Employment Authorization (if one-step application)
- (6) 4 passport photos (if one-step application)
  - Last name and A number (if there is one) or DOB on back and on photo bag.

Tips

- Complete all fields, using N/A and addendums as needed.
- Sign in **blue ink**.



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PRO BONO BRIEFING & TRAINING

Where to file

Send with delivery confirmation/tracking number to:

USCIS  
 Vermont Service Center  
 Attn: VAWA Unit  
 75 Lower Welden Street  
 St Albans, VT 05479

Keep 3 copies: (1) your file, (2) client, (3) Tahiri mentor attorney.



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**PRO BONO BRIEFING & TRAINING**  
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**PRO BONO BRIEFING & TRAINING**  
*When You File*

- 2-6 weeks after filing, you'll receive
  - Receipt Notice (I-360 and, if applicable I-485 and I-765)
  - Notice of Prima Facie Determination or Non-Determination
- If one-step, about 3 months after filing you'll receive
  - I-765 Approval Notice and EAD (work card)



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**PRO BONO BRIEFING & TRAINING**  
*When You File*

- 18-24 months after filing, you'll receive either
  - I-360 Approval
  - Request for Additional Evidence
  - Notice of Intent to Deny I-360
- If approved and a one-step filing, a few months after I-360 approval you'll receive
  - Transfer Notice
- Between 10 months to 33 months after transfer, you'll receive local office I-485 interview notice (if one-step filing)



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Reminders

- Keep a copy of all filings and all USCIS correspondence and notices in your file
- Provide a copy of the same to client, unless they request that you retain for them
- Provide a soft or hard copy of the same to Tahirih mentor attorney promptly




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PRO BONO BRIEFING & TRAINING

Questions?

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A recording of this briefing will be posted on Tahirih's Pro Bono E-Library at [www.tahirih.org](http://www.tahirih.org)

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PRO BONO BRIEFING & TRAINING

How You Can Help

- Co-counseling all types of cases
- Litigation or research matters
- Advocacy alerts, including submitting comments to proposed rules
- Encourage your colleagues to join Tahirih's Pro Bono Network:  
<https://www.tahirih.org/get-involved/our-pro-bono-network/join-our-network/>




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