

IMMIGRATION LAW BASICS for Service Providers

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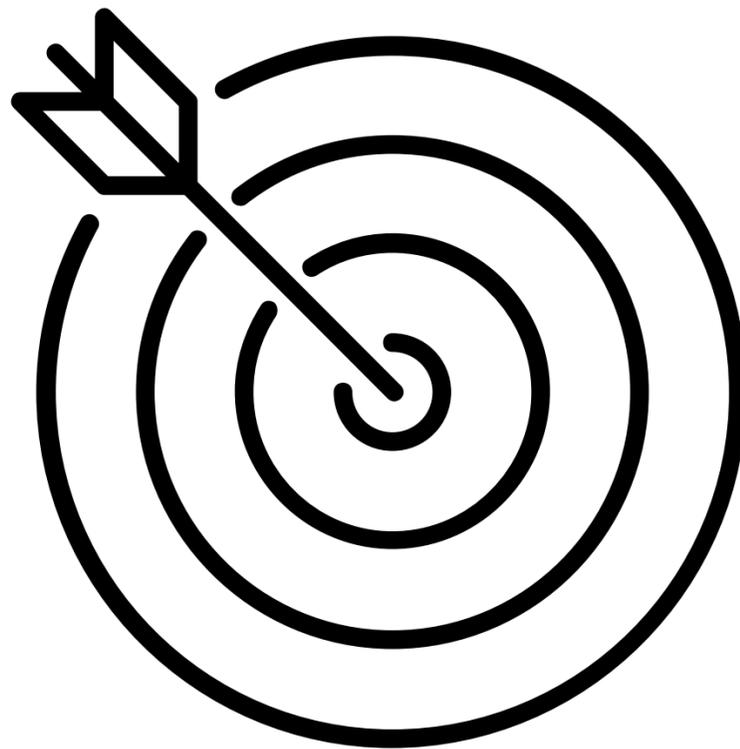
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TODAY'S GOALS

- Enhance your understanding of U.S. Immigration Law
- Learn to spot potential eligibility for common types of immigration relief for communities you serve

TODAY'S AGENDA

OVERVIEW OF IMMIGRATION RELIEF

- History of U.S. immigration law & our current landscape
- Different types of immigration status
- Common forms of relief and their criteria
- Cultural competency & trauma-informed interviewing
- Flags that a situation is urgent
- Information Security
- Q&A

This presentation is NOT legal advice

The information shared in this presentation is for educational and informational purposes only.

It is not legal advice and should not be relied upon as such. Attendees are encouraged to exercise discretion in how they use this information.

Always consult with a qualified immigration attorney for case-specific legal guidance, and refer clients to licensed immigration attorneys for any legal advice or representation.

Please do not share personal immigration details or client information during this presentation.

The Unauthorized Practice of Law

We will sometimes get a little detailed with the criteria of different types of relief, but we aren't asking you to completely evaluate eligibility!

We want you to look out for red flags that someone should have a more detailed consult with an expert.

When in doubt, refer!

Manage expectations.
Don't guarantee outcomes to community members.



BRIEF HISTORY OF U.S. IMMIGRATION LAW

WHEN WAS THE AGENCY
IMMIGRATIONS & CUSTOMS
("ICE") ENFORCEMENT CREATED?

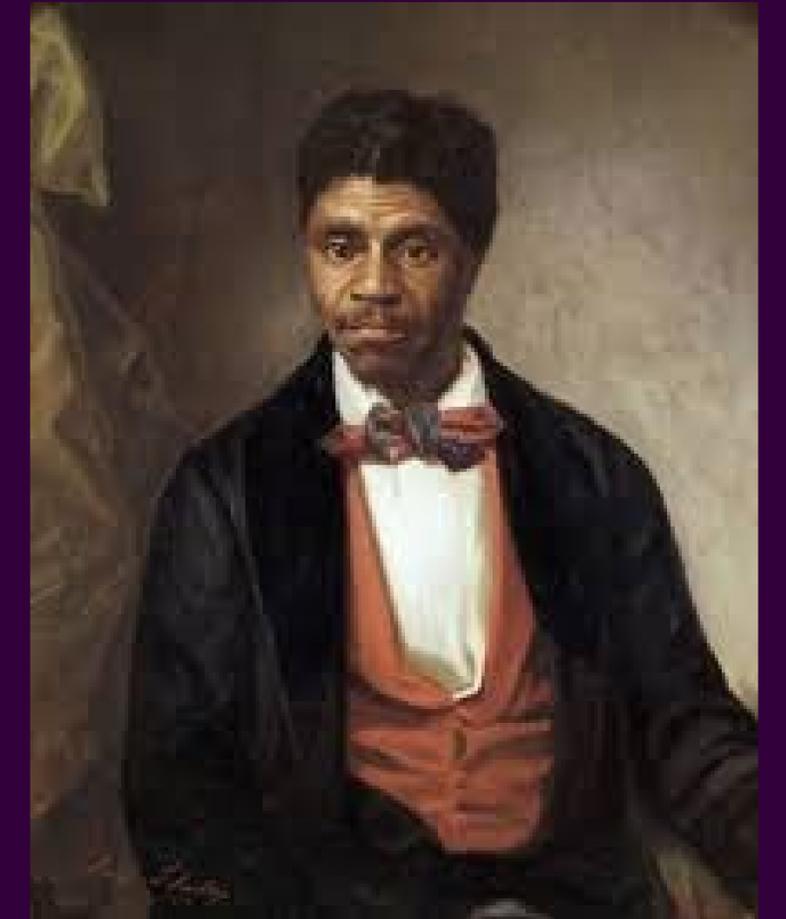
WHO GETS TO BE A CITIZEN?

July 4, 1776: Declaration of Independence

1790: Naturalization Act restricted citizenship to “free whites”

Naturalization required about five years’ residence

Dred Scott v. Sanford (1857): Supreme Court rules 7-2 that people of African descent were not citizens of the U.S. and not entitled to rights and privileges under the Constitution since the founders considered them “inferior and subordinate” and “unfit to associate with the white race” . . .



PORTRAIT OF DRED SCOTT, AN ENSLAVED MAN WHO SUED IN 1846 FOR HIS FREEDOM BASED ON HIS RESIDENCY IN “FREE” U.S. TERRITORY

1865: Civil War ends, 13th Amendment formally bans slavery

1868: 14th Amendment grants citizenship to “all persons born or naturalized in the United States”, including formerly enslaved people

1870 Act: extends naturalization to “aliens of African nativity and to persons of African descent”

WHO GETS TO BE A CITIZEN? CONT'D

Gold rush in 1850s spurs influx of Chinese immigrants;
Chinese Exclusion Act of 1882: prohibited Chinese immigration and naturalization for 10 years, later extended to be indefinite-- until its repeal in 1943.

1898: Wong Kim Ark decision clarifies birthright citizenship extends to children of noncitizens

1924: Indian Citizenship Act grants citizenship to Native Americans

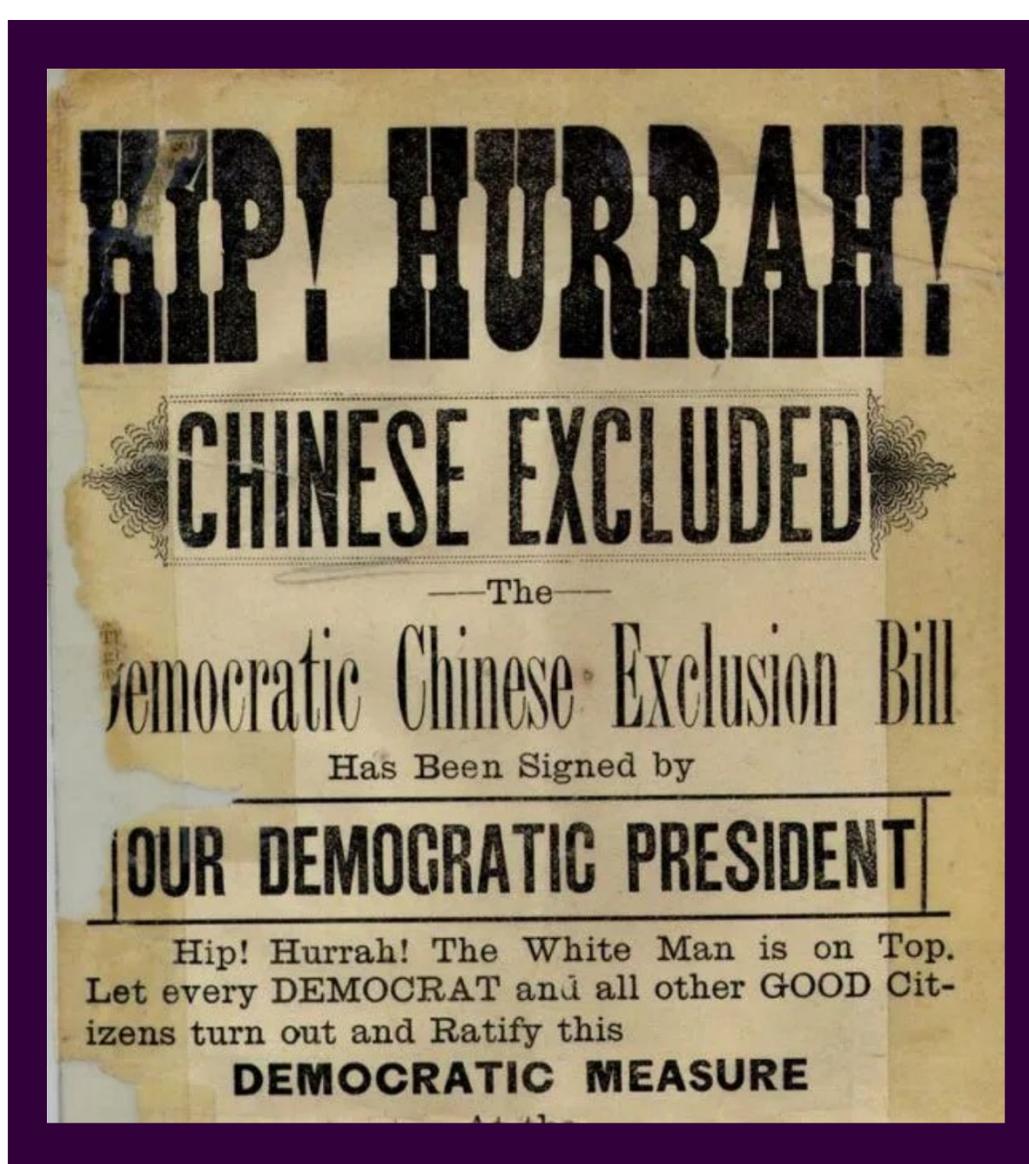


IMAGE FROM MAGAZINE "THE WASP"

MORE MODERN TIMES: BRACERO PROGRAM & SEASONAL MIGRATION

Bracero Program (1942): series of agreements between U.S. and Mexico permitting Mexican nationals to serve as temporary agricultural workers during WWII labor shortages, in effect until 1964

With this program, we see a large shift in agricultural work towards temporary, seasonal immigration. To this day, our agricultural workers are largely here on temporary visas, and agricultural work is primarily performed by immigrants.

MODERN TIMES: INA

Immigration and Nationality Act of 1952: comprehensive law revising U.S. immigration laws, is basis of what we have today. Formally removed race as an exclusion for immigration/naturalization and granted Asian countries a minimum quota of 100 visas per year.

Amended in 1965 to repeal national origin quotas that put preference on Western European immigrants

ENFORCING THE BORDER: MODERN ERA

Immigration Reform and Control Act of 1986: criminalized employment of undocumented workers, and increased policing of borders

Illegal Immigration Reform and Immigrant Responsibility Act of 1996: instituted harsh consequences on immigrants who allegedly violate immigration or criminal laws, including minor offenses

Homeland Security Act of 2002: creates DHS, CBP, ICE, and USCIS

OUR CURRENT LANDSCAPE OF IMMIGRATION LAW

The 3 Branches of Government



LEGISLATIVE



makes laws



EXECUTIVE



carries out laws



JUDICIAL



evaluates laws

High school civics would have us thinking that most immigration law comes from Congressional statute

However, we currently have a complex patchwork of laws, coming from a lot of sources, which can change at a moment's notice. Some of these sources include:

- Executive agency regulations
- Executive Orders
- Guidance from agencies
- Board of Immigration Appeals decisions
- Federal court decisions reviewing the above actions and interpreting statutes



USCIS

United States
Citizenship and
Immigration Services



CBP

United States Customs
and Border Protection



ICE

United States Immigration and Customs Enforcement



EOIR

Executive Office for
Immigration Review
(Immigration Court)

IMMIGRATION AGENCIES SINCE 2002

IS IT A CRIME TO BE PRESENT IN THE U.S. WITHOUT IMMIGRATION STATUS?

WHAT IS “ILLEGAL,” ANYWAY?

It is important to note that our immigration system is for the most part “civil” (as opposed to criminal). Different aspects relating to lacking status have been criminalized (for example, entering without inspection became a crime in 1929). But the simple fact that you are unlawfully present or don’t have status (for example, overstaying a visa) is not a crime.

“Illegal” does not necessarily mean criminal or harmful. That said, language matters, and we try to use terms such as “undocumented,” “without legal status,” or “sin papeles” to build trust with & avoid stigmatizing communities we serve.

However, because of the vast powers that our courts have given the federal government to enforce immigration, many people end up in jail-like “civil detention” centers.

WHY DON'T PEOPLE JUST COME
HERE LEGALLY?



“WHY DON'T THEY JUST COME HERE LEGALLY?”

Hopefully, we are beginning to understand just how complicated immigration law is. Status is also fluid, a person can come with status, lose it, and then gain a different type of status, or be eligible for a lawful status without realizing it.

Relief is limited and can take many years, while many people are under urgent pressure to migrate because of their country's conditions. There are only four main paths that exist for a noncitizen to gain permanent residence in the U.S.:

Family sponsorship, which is only prioritized for spouse/parents/children under 21 of a green card holder

Employer sponsorship
(not available for people with any period of “unlawful presence”)

Visa lottery, awarded randomly to people in other countries with historically low immigration rates

Humanitarian protections with limited bases & confusing requirements

TYPES OF IMMIGRATION STATUS

- Citizenship
- Lawful permanent resident (green card holder)
- Humanitarian protection
- Temporary Status (such as visas)
- Deferred action
- Undocumented (a.k.a., no lawful status)



CITIZENSHIP & LEGAL PERMANENT RESIDENTS

Flags that someone might be a citizen or eligible for naturalization

- Born in U.S. or U.S. territories (birthright citizenship)
- Before 18th birthday, at least one parent was a U.S. citizen (derivation of citizenship)
- Person served/is serving in military, or is a military spouse

Family-based green cards:

- Priority for people who are spouses, parents, or children (under 21) of U.S. citizens or legal permanent residents
- Adult children and siblings are also possibly eligible



HUMANITARIAN RELIEF

What are some types of humanitarian immigration relief you've heard of?

BREAK

VAWA (VIOLENCE AGAINST WOMEN ACT) (1994)

Under the Violence Against Women Act (VAWA), if a noncitizen is the victim of abuse (including emotional abuse) by certain U.S. citizen or lawful permanent resident family members, the noncitizen and victims may be able to apply for lawful permanent residence and all the benefits that come with it.

ELIGIBILITY

LEGALLY MARRIED SPOUSE OR CHILD OF A U.S. CITIZEN/PERMANENT RESIDENT OR PARENT OF ADULT U.S. CITIZEN

WERE ABUSED BY THE CITIZEN/PERMANENT RESIDENT

LIVED WITH THE ABUSER AT SOME TIME

WITH SOME EXCEPTIONS, LIVING CURRENTLY IN U.S.

VAWA (VIOLENCE AGAINST WOMEN ACT) CONTINUED

Types of abuse: The person must have suffered “battery or extreme cruelty,” but this can include a lot of things

THREATENED/ACTUAL VIOLENCE

EMOTIONAL ABUSE

SEXUAL ABUSE

**CONTROLLING WHERE YOU GO/
WHAT YOU DO/
WHO YOU CAN SEE**

**THREATENING TO DEPORT/
TURN OVER TO IMMIGRATION
AUTHORITIES**

SPECIAL IMMIGRANT JUVENILE STATUS (1990)

SIJS

ALLOWS YOUNG PEOPLE TO APPLY FOR A GREEN CARD UNDER CERTAIN CIRCUMSTANCES

Unlike other forms of relief, these findings must be made by a Family Court. Once the “predicate orders” are issued by family court, you apply with USCIS. The process usually involves appointing a legal guardian or custodian. Eligibility can be affected by state laws and precedents.

In New York:

1. Does not require abuse/neglect/abandonment from both parents; and
2. Death of parent can count (is considered like abandonment)

Eligibility:

1. Individual is unmarried and under age 21 (in NY; 18 or 19 in some states)
2. Child experienced parental abuse, neglect, or abandonment & it would not be in their best interest to return to their home country



T VISA (2000): SURVIVORS OF TRAFFICKING IN PERSONS

T visa is a nonimmigrant status allowing noncitizens to legally live and work in U.S. for four years.

After 3 years visa holders can apply for a green card.

Eligibility:

1. survivor of a “severe form of trafficking persons” (or their family members)
2. present in U.S. “on account of” the trafficking
3. would suffer “extreme hardship involving unusual and severe harm” if removed from U.S.
4. if 18 or older, generally must have complied with any reasonable law enforcement request for assistance with investigation/prosecution of the trafficking

Case study:

Jorge entered the United States without inspection 3 years ago. He came by himself, the rest of his family is in Mexico, and he came hoping to make more money to send to his family.

Last year, he got a job renovating a hotel. The job promised to provide him housing and \$100 a day for construction work in the hotel. He left his apartment and traveled four hours to work at this hotel. When he arrived, he realized he'd be staying in unrenovated hotel rooms with multiple other workers. The hotel was in a remote location on a highway and far from any grocery stores, and Jorge did not have a car.

Jorge and the other workers were not paid, and when they would ask about their money their crew leader would yell at them and tell them that they'd be paid later, note that he had a friend in immigration enforcement, and tell them that "if they don't like it, they are free to leave." They were provided meals by the hotel.

Jorge finally stopped believing he would ever be paid. He walked to a bus station several miles away and returned to his prior city, where he is now working. He says he has a lot of anxiety about what happened.

He never reported it because he is afraid of immigration consequences and is insistent that he does not want to contact the police.

Is Jorge a possible candidate for a T visa?

T VISA: SURVIVORS OF TRAFFICKING IN PERSONS

Can be either sex or labor trafficking. Trafficking can show up in many ways. Here are some things to look out for:

- Commercial sex acts (even if “voluntary”) for minors
- Sex work or other work with coercive attributes
 - Sex work in exchange for things like promises of safety, work authorization, or immigration status
 - Unpaid work/wage theft
 - High degree of control over workers and their movements
 - Isolation from outside world
 - Fraud or misleading statements about nature of the work, work conditions
 - Taking passports/money/identification
 - Violence/abusive behavior
 - Insisting someone needs to work to pay off a debt
 - Inhumane working conditions
 - Threats, such as immigration enforcement, blacklisting, blackmail, or violence to individual or family



WHAT DO THESE CRITERIA MEAN? TRAFFICKING IS NOT LIMITED TO THE SORT OF THING YOU SEE ON TV.

The other criteria can often be shown with assistance from a lawyer, including being present on account of trafficking. The main thing you should be looking for as a service provider is if there was possible trafficking, and then referring to an immigration lawyer and if possible someone with experience in labor & employment enforcement.

U-Visa (2000): Survivors of Crime Who Assist Law Enforcement

U visa provides temporary lawful status and a path to a green card to survivors of certain crimes who are/were/will cooperate in investigating or prosecuting the offense.

There is a very long wait list for U-visas because the applications far outpace the annual cap.

Eligibility:

1. victim of a qualifying crime
2. suffered “substantial physical or mental abuse” as a result of being a victim of the crime
3. can obtain certification from authorities that they have been, are being, or are likely to be helpful in investigating or prosecuting the crime

The police and prosecutors’ office are not the only options when it comes to getting a U-visa certification.

U-VISA:

SURVIVORS OF CRIME WHO ASSIST LAW ENFORCEMENT

Common types of crimes to look out for:

- Domestic violence
- Sexual assault
- Stalking
- Trafficking (can get you a U-visa as well as a T-visa)
- “Felony” assault (definition differs by state)
- Fraud in foreign labor contracting (look out for shenanigans in how the person was brought here if brought here for work)
- Abduction

Don't write off cases where someone made a police report and the police/district attorney didn't do anything with it. Skilled advocacy may still be able to secure certification; law enforcement doesn't have to prosecute for U-visa eligibility.

ASYLUM

IMPORTANT: There is a one-year time limit for applying for asylum once you turn 18. There are some limited ways to get around this, so you can still refer to a lawyer if there is a fear of return, but if it looks like someone is about to reach the deadline this is a sign that they need to talk to an immigration lawyer urgently.

ASYLUM, WITHHOLDING OF REMOVAL, CONVENTION AGAINST TORTURE (CAT)

THESE ARE TYPES OF RELIEF, SOMETIMES PROVIDING THE POSSIBILITY OF PERMANENT STATUS, TO THOSE WHO FEAR PERSECUTION IF RETURNED TO THEIR HOME COUNTRY.

Must have experience past persecution, or have a reasonable fear (can even be just a 10%+ chance) of future persecution.

Generally must be a “nexus” between the persecution and the person’s race, religion, national origin, political views, or social group (There doesn’t have to be a “nexus” under CAT, but there must be a 50%+ likelihood of facing torture on return).

Sometimes people who are victims of gender-based violence, domestic or family violence, or gang violence will fit into the “social group” category, and these are common reasons people flee their home country.

FLAGS THAT SOMEONE MIGHT QUALIFY:

- They or their family members have been harmed, threatened, extorted, displaced.
- The conditions of their country or region are volatile or dangerous

Case study:

Lucia left for the United States from Guatemala five years ago with her mother, fleeing gang violence that had killed her brother and father. She entered through the desert and never talked to an immigration official. Lucia just turned 18 six months ago. She tells you that she's scared to go home because the local gang is still threatening the family she has left in Guatemala.

Lucia also lets you know that she's had a difficult relationship with her boyfriend, who is pressuring her to move in with him. She loves him, but mentions that he can be "angry" and "unpredictable" and he wants her to stop living with her mom because her mom doesn't like him.

1. What types of relief could Lucia potentially be eligible for?
2. What are some important aspects of this story to ask additional questions about?
3. Is there an aspect of Lucia's case that might be particularly urgent? If so, what?

Temporary Protected Status (TPS) (1990+)

Noncitizens from certain countries who have experienced a devastating natural disaster, civil war, or other unstable circumstances may be able to obtain TPS if their country has been designated for TPS by DHS, and they meet other requirements.

Not necessarily a path to green card; if TPS status is terminated can lead to deportation so immigration counseling is important about upsides and downsides of applying.

Where to find current countries:

<https://www.uscis.gov/humanitarian/temporary-protected-status>

Current countries :

- [Burma \(Myanmar\)](#)
- [El Salvador](#)
- [Ethiopia](#)
- [Lebanon](#)
- [Somalia](#)
- [Sudan](#)
- [Ukraine](#)
- [Yemen](#)

(Eliminated in 2025) :

- [Afghanistan](#)
- [Cameroon](#) (litigation pending)
- [Haiti](#) (ends 2/3/26, extended by court)
- [Honduras](#)
- [Nepal](#)
- [Nicaragua](#)
- [South Sudan](#) (ends 1/5/26)
- [Syria](#)
- [Venezuela](#) (ends 10/2/26 or sooner)

DEFERRED ACTION

What is Deferred

Action?

- Government is exercising prosecutorial discretion
- Currently not a direct path to legal permanent residence, but often work authorization

Two types we will discuss today:

DACA (Deferred Action for Childhood Arrivals) (2012)

- Currently under litigation and initial applications aren't being approved at the moment. Still worth referring to immigration attorney.
- Flag that someone might be eligible if they meet following criteria:
 - came to U.S. before their 16th birthday and continuously resided in U.S.
 - in school, graduated high school, received GED, or military veteran

Deferred Action for Labor Enforcement (2023)

- Technically still exists but applications aren't being processed
- At this time, service providers typically only apply if someone is in removal proceedings
 - Flag that someone might be eligible if they are a victim or witness of a labor or employment violation that has been reported to a governmental enforcement agency, like the Department of Labor

Cultural Competence & Trauma-informed interviewing:

Unfortunately, trauma is a very common experience and most grounds for humanitarian relief relate to some sort of traumatic circumstance. This trauma can interact with cultural factors and present challenges in providing high quality services.

Some things to keep in mind:

- The terms we use legally are not always how people will recognize their experience. It can take some time to help people see that what they experienced might be considered something like trafficking, a serious crime, or persecution on the basis of a social group they are a part of.
- Be aware that some people, especially men, may not want to identify with terms like “afraid” or “victim” and you may have to ask more factual questions, like “has anyone threatened you or your family in your home country?”

- Some people may qualify based on sexual orientation or gender identity, but not be “out” or still discovering themselves. Stigma can make this very hard to talk about.
- A common nexus for asylum is someone’s indigenous background, but a lot of people feel stigma about indigenous heritage and may not even admit initially they speak another language.
- Some people will be hesitant to indicate past cooperation or participation with criminal or gang activity in their home country, even if coerced.
- People often feel shame and humiliation about being the victims of violence, such as sexual assault. They also may love the people who harmed them and not want to get them in trouble.

TIPS & BEST PRACTICES

- Go slowly to build trust and rapport with the individual. It is important to be affirming, validating, and nonjudgmental. Sometimes you'll get info after a few visits with someone when they decide to trust you. Be patient.
 - i.e. “that sounds very difficult” or “nobody deserves that,” rather than “why didn't you just leave?”

Make sure you are talking to people about sensitive topics in a quiet, safe, private place

Allow the person you are talking to to guide the conversation and respect their autonomy about what they want to discuss and actions they want to take.

TIPS & BEST PRACTICES

People will struggle to remember exact dates and trauma can impact memory. It can help to ask questions like “was it cold outside?” or “was your youngest born by then?” Inconsistencies in their story does not mean that they are not telling the truth.

Open ended questions that allow them to tell a story will often be more helpful than direct or leading questions.

TIPS & BEST PRACTICES

Children often qualify for immigration relief but their situation may be extra delicate because they can't live independently and might live with people harming them.

Be cautious about using language villainizing a person's abuser when that person may be close to the survivor, and keep in mind that a victim of abuse might have a hard time with words like "domestic violence" or "abuse."

TIPS & BEST PRACTICES

Do not pressure people into taking actions such as reporting things to the police, leaving an abusive partner, etc. If a situation is dangerous or delicate it might be good to consult with someone experienced in the dynamic you are encountering.

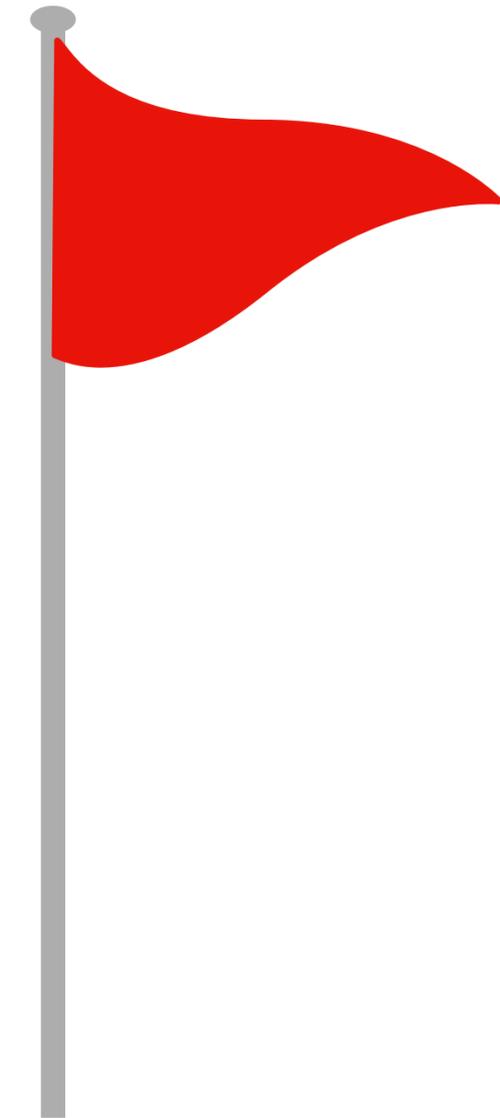
If you are talking to people in a group setting, like an entire family, know that you may be missing key details that people don't want to share in front of everybody else. People won't disclose abuse in front of their abusers, and many people keep experiences like sexual violence secret from their families.

Prioritize self-care after difficult interviews. Take time to decompress, talk with a trusted friend or colleague, and be kind to yourself.

THE PERSON IS A HIGH-PRIORITY FOR MEETING WITH AN ATTORNEY (AND THE ATTORNEY SHOULD BE NOTIFIED OF THESE FACTORS) IF ANY OF THE FOLLOWING APPLY:

- Has been served with a notice to appear by ICE, detained, or is otherwise unrepresented and facing immigration enforcement
- Has been arrested or is facing criminal charges
- Is facing threats of immigration enforcement from someone, such as an employer or intimate partner
- May be eligible for SIJS but at risk of aging out: meaning, close to turning 21 (in NY) or 18/19 in other states, which may be relevant if they have family in other states
- Is close to the one-year bar for asylum
- May be eligible for TPS (there are often tight time limits for applying)
- Has a visa but their period of authorization is about to expire, or it is about to be either 180 days or one year since their authorization expired (at which point additional penalties may apply)
- Is considering leaving the country in the near future but wants to stay in the U.S. long term

HIGH-PRIORITY FLAGS



Data security & protecting confidentiality

Service providers are at increased risk of government surveillance and hacking.

Be careful about how, where, and whether you document or transmit sensitive immigration information such as someone lacking status, entering without inspection, being accused of/arrested for/committing a crime, or overstaying a visa.

Follow your employer's policies regarding data security and confidentiality.



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THANK YOU!



QUESTIONS?