

# Psychological Evaluations: A Critical Tool for Undocumented Immigrants

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A significant focus of immigration law in the United States addresses the issues of family unity and victim protection. If one takes a close look at the different forms of immigration relief (i.e., relief from removal from the United States) available to foreign nationals, one realizes that psychological evaluations often serve as critical evidence in support of an individual's application for relief from removal. In hardship cases in which an applicant must show that if removed, it would pose a substantial hardship on a relative who is a U.S. citizen or lawful permanent resident, the psychological evaluation evidence is vital.

Usually the relative of concern is a parent, spouse or child of the person seeking relief. Mental health assessments will provide the adjudicator the necessary information to determine the impact on the U.S. citizen or lawful permanent resident. In some instances the mental health evaluation is the most important evidence in the case, such as in U nonimmigrant visa cases, where the individual has to show he/she suffered substantial physical or mental abuse as a result of the victimization. The following is a list of the most common forms of relief available to undocumented immigrants where the services of a mental health professional are crucial.

## Hardship Cases –Waivers

Certain foreign nationals are considered inadmissible to the United States. For instance, immigrants who accumulate certain periods of unlawful presence, meaning without permission to remain legally in the United States are subject to three- or ten-year bars of admission if they ever try to re-enter the country lawfully. Other individuals who have committed certain crimes are also considered inadmissible. If the individual has family members living in the U.S., the separation can have negative consequences for the entire family.

The United States Citizenship and Immigration Services (USCIS) has discretion to admit certain otherwise inadmissible individuals into the United States. A waiver may be available if the noncitizen can prove that failing to admit them into the country would result in "extreme hardship" to the applicant's citizen or lawful permanent resident spouse or parent. With few exceptions, hardship to the immigrants themselves, or to their children, is not a considered factor. As mentioned,



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psychological evaluations are routinely submitted in support of these kinds of applications for “extreme hardship” waivers of inadmissibility. In order to demonstrate extreme hardship for the purpose of a waiver application, the foreign national must prove that the denial of a waiver application would cause a qualifying relative to experience a magnitude of hardship that substantially exceeds the hardship an average individual would be expected to suffer if their relative was denied such a waiver. Thus, in all waiver applications, the adjudicator will have to consider what will likely happen to the qualifying relative in the event the waiver is denied? By default, there will be two possibilities for the adjudicator to consider. Since the inadmissible noncitizen will be residing outside the U.S. (that is what inadmissibility entails), the qualifying family members will have to choose whether (1) to remain in the U.S. and thus be separated from the inadmissible family member, or (2) relocate to the foreign country with the noncitizen. A failure to demonstrate hardship on both contingencies would be grounds for denial. Thus, it is important for the mental health professional when evaluating the U.S. citizen or lawful permanent resident individual to confront those questions, exploring how their lives and the lives of their family members would be affected by either leaving or remaining in the United States without the foreign national. Although the mental health evaluation of an individual is relevant to the determination of extreme hardship, it does not imply the diagnosis is conclusive on the two inquiries. The adjudicator is to take into consideration the totality of the circumstances when determining the existence of hardship. However, the evaluation will play a major role in deciding whether to approve it or not.

### **Cancellation of Removal for Non-permanent residents**

Some foreign nationals are eligible for cancellation of removal if they show that they have been living in the United States for 10 years or more, they have been a person of good moral character and their removal would result in exceptional and extremely unusual hardship to their U.S. citizen or lawful permanent resident spouse, parent, or child, and they are deserving of a favorable exercise of discretion on their application. They may also qualify if they have been battered or subjected to extreme cruelty in the United States by their United States citizen or lawful permanent resident spouse or parent, or if the foreign national is the parent of a child of a United States citizen or permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or lawful permanent resident parent. The applicants must be in removal proceedings, meaning he or she must be before an immigration judge to be able to apply for that benefit. As with waivers, a psychological evaluation would be an important piece of evidence that would aid in the decision to grant or deny the benefit. It is important to keep in mind that in such cases, the mental health professional may be called as a witness to testify as to his/her findings.

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## VAWA

The Violence Against Women Act (VAWA) provisions in the Immigration and Nationality Act (INA), Title 8 of the United States Code, allow certain spouses, children, and parents of U.S. citizens and certain spouses and children of permanent residents (Green Card holders) to file a petition for themselves without the abuser's knowledge. The VAWA provisions apply equally to women and men. The qualifying relative has to show in order to obtain that benefit that he/she suffered battery/extreme cruelty at the hands of her U.S. citizen or permanent resident relative with whom he/she has resided. A psychological evaluation will provide the adjudicator the needed information as to the trauma and cruelty that the foreign national experienced and it will assist in determining whether to approve or deny the case.

## U Nonimmigrant Visas

The U Nonimmigrant status (U visa) is set aside for victims of certain crimes, (usually violent crimes), who have suffered mental or physical abuse and are helpful to law enforcement officials in the investigation or prosecution of the criminal activity. It also protects victims of crimes committed at a place of employment. The crime has to be committed within the United States or constitute a violation of a U.S. law. Unlike VAWA, in those kinds of cases reporting the crime is necessary to obtain the benefit.

## Asylum claims

Every year people come to the United States seeking protection because they have suffered persecution, or fear that they will suffer persecution due to race, religion, nationality, membership in a particular social group or political opinion. Asylum-seekers often provide substantial evidence demonstrating either past persecution or that they have a "well-founded fear" of future persecution in their home country. However, the individual's own testimony is usually the most influential in the asylum determination. A psychological evaluation will help corroborate the past or future harm the individual will suffer in case of removal, making the assistance of the mental health professional crucial in the case.

## T visas: Trafficking Victims Protection Act

In October 2000, Congress created the "T" nonimmigrant status by passing the Victims of Trafficking and Violence Protection Act (VTVPA).

Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life. Traffickers often take advantage of poor, unemployed individuals who lack access to social services. The T Nonimmigrant Status (T visa) is a set aside for those who are or have been victims of human trafficking, and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking. To qualify for this benefit, the individual must demonstrate that he/she would suffer extreme hardship involving unusual and severe harm if he/she is removed from the United States. Again, an evaluation will assist the individual demonstrate the required hardship.

Mental health professionals may be required to testify when issuing an evaluation in cases where the foreign national is in immigration proceedings, meaning before an immigration court.

Those are the most common forms of relief available to foreign nationals in which a psychological evaluation can be a crucial factor that will determine whether a petition will be approved or denied. Such evaluations have proven to be useful in thousands of cases that would otherwise have been denied had these reports not been included as a piece of evidence. Psychological evaluations involving in-depth interviews and thorough analysis will definitely add tremendous value to an individual's immigration case. Therefore, the need for mental health professionals to provide those services is absolutely imperative. ■

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