

Showing Substantial Physical or Mental Abuse (Harm) By Gail Pendleton¹

The regulations provide a broad definition of substantial abuse: impairment of emotional or psychological soundness.² While your client's declaration will be the first document the unit reviews, other documentation of your client's suffering should be included where at all possible.

Advocates who work with victims of crimes may be extremely helpful: they are considered "experts" by CIS.³ (See guidelines for advocates writing declarations on this section of the website.) They can "interpret" and frame what your client says in her declaration from the perspective of someone who has seen a lot of victims and knows when they are suffering. Asking the advocate to explain your client's declaration, putting it into a victim-of-crime context, can be very helpful. Most crime victims will not self-describe as suffering from trauma, for instance, or as having grave difficulties coping with basic life functions.

Advocates can explain harm objectively, based on work with your client or review of the client's declaration. This is especially important if the client has no physical impairment. In order to help an advocate and/or your client with beginning to write a statement, you might ask her/him to address the list of factors cited in the regulations, which include:

- the nature of the injury,
- the severity of the perpetrator's conduct,
- the severity of the harm suffered,
- the duration of the infliction of harm,
- any permanent or serious harm to appearance,
- health and physical or mental soundness, and
- any aggravation of a victim's pre-existing conditions.⁴

Ask them to identify and explain any other "impairment" of your client's emotional or psychological soundness.

The Subjective Perspective

CIS will evaluate the kind and degree of harm suffered by the applicant "based upon that applicant's individual experience."⁵ This last factor demonstrates that CIS is looking at U visas through their experience with domestic violence survivors and trafficking victims. They have seen that victims of such abuse are

¹ This is a compilation of excerpts from articles by the author.

² 8 C.F.R. § 214.14(b)(1).

³ Author's discussions with VAWA unit adjudicators and supervisors during trainings at VSC and for the field.

⁴ 8 C.F.R. § 214.14(b)(1).

⁵ New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, Interim Rule (USCIS), 72 Fed. Reg. 53013 (9/17/07, effective 10/17/07) at A(1)(b).

often severely traumatized by acts that would have little or no effect on a non-victim. They understand that, given a history of violence for individuals, perceptions of actions or threats can be very different. Perpetrators and abusers use this history/developed perception to threaten victims with acts that may seem innocuous to others.

Both your client and any corroborating declarations should explain this subjective context, as well as highlight how your client's experience objectively meets the eligibility requirements.