Immigration Psychological Evaluations: Legal and Psychological Considerations

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Statement of Relevance

- The current socio-political climate is one of heightened awareness about immigration-related issues, including the "zero tolerance" policy of the current presidential administration with regard to illegal immigration and undocumented immigrants.
- For better or for worse, psychologists have become involved in the basket of related controversies.
- One area of involvement concerns what is known as immigration evaluations (des las Fuentes, Duffer, & Vasquez, 2013; Evans & Hass, 2018; Prabhu & Baranoski, 2012).

Key Definition

- An **immigration evaluation** is a psychological assessment submitted to an Immigration Court (IC), to help the judge determine whether to protect the individual against deportation from the United States.
- Referrals for such evaluations typically come from attorneys or legal aid organizations representing undocumented immigrants in danger of being deported or representing family members, which may be U.S. Citizens or Lawful Permanent Resident (LPR) of such immigrants (Evans & Haas, 2018; Prabhu & Baranoski (2012).

Key Components

We will focus on four basic types of immigration proceedings for which immigration evaluations are often conducted:

(1) **Trauma victimization evaluations**: immigrant is a victim of certain violent crime(s) (U Visa) or trafficking of a human (T Visa)

(2) **Asylum/refugee claim**: claims of abuse relating to politics, religion, ethnicity, or gender.

(3) **VAWA (Violence Against Women Act) petitions**: perpetration of domestic violence (physical, verbal, sexual, and/or psychological) against an (undocumented) immigrant, by a US Citizen (in this case, the immigrant is the client) (note: currently suspended)

(4) **Hardship evaluations** (I-601/I-601a Waivers): "extreme and unusual hardship" on the citizen if the immigrant were to be deported (sometimes the citizen is the immigrant's US-born child)

(des las Fuentes, Duffer, and Vasquez, 2013; Evans & Hass, 2018; Filone and King, 2015; Prabhu & Baranoski, 2012; USCIS, 2017)

Petition for U Nonimmigrant Status
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-918
OMB No. 1615-0104
Expires 02/28/2019

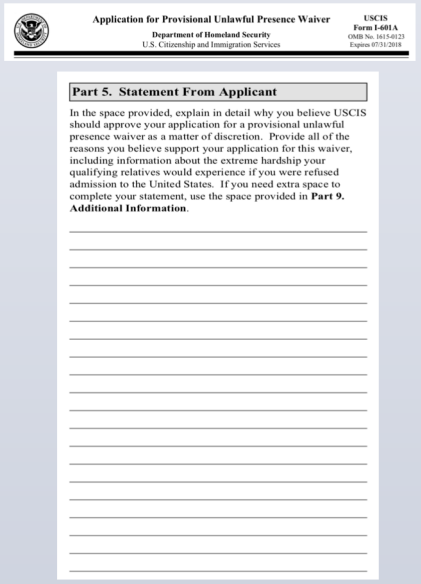
Select "Yes" or "No," as appropriate, for each of the following questions.

1. I am a victim of criminal activity listed in the INA at section 101(a)(15)(U)(iii). ☐ Yes ☐ No
2. I have suffered substantial physical or mental abuse as a result of having been a victim of this criminal activity. ☐ Yes ☐ No
3. I possess information concerning the criminal activity of which I was a victim. ☐ Yes ☐ No

(USCIS, 2017b)

Evaluation Process

- The client could be the immigrant or the immigrant's U.S. Citizen or LPR relative.
- First step is referral (see column 1)
- The psychologist's initial clinical interview with the client is trauma-informed and involves a complete background of personal, family, educational, occupational, legal, medical, mental health, and so on.
- Relevant paperwork and documentation from attorneys, physicians, and hospitals may also be reviewed (Evans & Hass, 2018; Prabhu & Baranoski, 2012).



Application for Provisional Unlawful Presence Waiver
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-601A
OMB No. 1615-0123
Expires 07/31/2018

Part 5. Statement From Applicant

In the space provided, explain in detail why you believe USCIS should approve your application for a provisional unlawful presence waiver as a matter of discretion. Provide all of the reasons you believe support your application for this waiver, including information about the extreme hardship your qualifying relatives would experience if you were refused admission to the United States. If you need extra space to complete your statement, use the space provided in **Part 9. Additional Information**.

(USCIS, 2017a)

Key Issues and Dilemmas

- Key issues and dilemmas faced by psychologists include: ethical obligations, required minimum training and experience, best practices in terms of interacting with clients (trauma-informed & cultural competency), best practices in terms of interaction with attorneys (federal legal system), and potentially unforeseen consequences of involvement with immigration evaluations, including the possibility of being called to testify in court (des las Fuentes, Duffer, & Vasquez, 2013; Evans & Hass, 2018; Filone & King, 2015; Filone & DeMatteo, 2017; Prabhu & Baranoski, 2012).
- Community resource and referral networks; legal, clinical, and culture awareness; and case consultation are essential to provide sound forensic assessments for immigrants, asylum-seekers and refugees, and to present results properly to immigration court (des las Fuentes, Duffer, & Vasquez, 2013; Evans & Hass, 2018; Prabhu & Baranoski, 2012).

References

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