

## **U-visas: Victims of Criminal Activity**

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## U-visas: Victims of Criminal Activity

### Introduction

Some immigrant victims of sexual assault and other crimes may not qualify for VAWA self-petitioning relief for several reasons. The VAWA self-petition requires the abusive party to be the spouse, parent or the adult son or daughter of the victim. Many sexual assault assailants are strangers to their victim. Many more are acquainted but may not be married. A VAWA self-petitioner's abuser must also be a U.S. Citizen or a Lawful Permanent Resident and many sexual assault assailants, even if married to the victim, may not be a Lawful Permanent Resident (commonly referred to as a greencard holder) or U.S. Citizen. Immigrant victims who do not qualify for relief under VAWA may still qualify for other types of immigration relief such as a U-visa, a visa created to provide immigration status to crime victims. This chapter contains an overview U-visa and lists the requirements for eligibility. A battered immigrant who possibly qualifies for either a U-visa or other VAWA immigration relief should be referred to an immigration attorney or advocate with knowledge and experience with these types of cases to assess eligibility.

### *The Violence Against Women Act of 2000*

The Violence Against Women Act of 2000 (VAWA 2000)<sup>1</sup> created the U-visa for immigrant victims of criminal activity. This visa offers temporary lawful status to victims of certain criminal activity if the victim has suffered substantial physical or mental abuse as a result of the crime.<sup>2</sup> The victim must have information about the crime and a law enforcement official (e.g. police, prosecutor) or a judge must certify that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.<sup>3</sup> The purpose of this legislation was to:

create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes ... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.<sup>4</sup>

This form of relief gives the applicant temporary legal immigration status and the possibility of lawful permanent residence. The maximum number of U-visas for available in any one year is 10,000 for the primary applicants. Spouses and children of U-visas applicants, as well as parents of applicants who are under 16, may also qualify for a U-visa under certain circumstances. There is no limit on the number of visas available for these qualifying relatives.<sup>5</sup>

### *U-visa Interim Relief*

The U-visa regulations were published on September 17, 2007 and went into effect October 17, 2007. For nearly seven years preceding the publication of these regulations, eligible immigrant victims had no means to apply for U-visas. However, the Department of Homeland Security created a temporary application process for such eligible immigrants.<sup>6</sup> A memorandum on *interim*

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<sup>1</sup> Violence Against Women Act of 2000 (hereinafter "VAWA 2000"), enacted as div. B of the Victims of Trafficking and Violence Protection Act of 2000, Pub.L. No. 106-386, §§ 1501–1513, 114 Stat. 1464 (hereinafter VAWA 2000).

<sup>2</sup> INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

<sup>3</sup> INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

<sup>4</sup> The Violence Against Women Act of 2000 Section by Section Summary, Vol 146, No. 126, Congressional Record, 106<sup>th</sup> Congress Second Session, Wednesday October 11, 2000, S10196.

<sup>5</sup> INA § 214(o)(3); 8 U.S.C. § 1214(o)(3).

<sup>6</sup> See *generally* Memorandum from Michael D. Cronin, Acting Executive Associate Commissioner, Office of Programs, INS, to Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, INS (Aug. 30, 2001) (on file with Legal Momentum and the National Immigration Project of the National Lawyer's Guild) (hereinafter Interim Guidance).

*relief* instructed DHS<sup>7</sup> to grant work authorization and protection from being removed from the U.S. (*deferred action*).<sup>8</sup> As a result, many advocates are familiar with the U-visa as interim relief but unaware of the new application process for the U-visa. It is critical that advocates understand the difference and not rely on materials about U-visa interim relief anymore. According to the regulations, DHS was to adjudicate the last interim relief applications on October 17, 2007, thirty days after the new U-visa regulations were published.<sup>9</sup>

The purpose of this chapter is to assist advocates in identifying sexual assault, domestic violence, and other crime victims who may be eligible for U-visa status and to direct them to resources that can help them prepare their cases. **If a potential U-visa applicant is identified, she should be referred promptly to an immigration attorney or advocate who has experience in these types of cases.** The suggested evidentiary documents in this chapter are meant to be guidelines and not an exhaustive description of the types of evidence that may be offered to support an application for a U-visa.

## BENEFITS OF THE U-VISA

The U-visa is a four year non-immigrant visa, which means that it is a visa of a limited duration not intended as permanent status to remain in the U.S. However, Congress also created a provision allowing certain U-visa holders<sup>10</sup> to apply for Lawful Permanent Resident Status (LPR or green card folder) allowing an immigrant to remain permanently in the United States. This visa creates an opportunity for immigrant crime victims who may not have any other immigration relief to remain permanently in the United States.

The U-visa has some critical benefits including allowing those approved to lawfully accept employment in the United States.<sup>11</sup> U-visa holders are automatically granted an employment authorization document that allows them to accept employment. This ensures immigrant victims the ability to provide for themselves and safely remain in the United States after being victimized.

U-visa applicants may also include their family members in their application and help them obtain U-visa status. It allows families to remain together in the United States rather than be separated as crime victims participate in a criminal investigation process. U-visa applicants may also obtain U-visas for family members abroad. Beyond family reunification, this may be extremely useful for women whose family members will assist her in child care and support so that she can economically empower herself and her family. It may also be an urgent safety precaution as many immigrant crime victims face threats to their family members in their home country if they cooperate with law enforcement officials in the United States.

## WHO IS ELIGIBLE TO APPLY FOR THE NONIMMIGRANT U-VISA?

In order to be eligible for U-visa status, the immigrant victim must:

1. Have suffered substantial physical or mental abuse as a result of having been a victim of the one or more of the criminal activities listed under INA § 101(a)(15)(U)(iii);<sup>12</sup>

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<sup>7</sup> These adjudications occur at the VAWA unit of the US Citizenship and Immigration Services, Vermont Service Center. CiteYates, William R., "Centralization of Interim Relief for U Nonimmigrant Status Applicants" Department of Homeland Security, October 8, 2003.

<sup>8</sup> Forms of temporary status include deferred action, parole and stays of removal.

<sup>9</sup> U.S. Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant status, DHS Docket Number UCIS-2006-0069, page 10.

<sup>10</sup> In order to be eligible for lawful permanent residence, a U-visa holder must prove that she has been physically present for three years and that her presence is justified "on humanitarian grounds, to ensure family unity, or is in the public interest." INA § 245(m); 8 U.S.C. § 1255(m).

<sup>11</sup> 8 C.F.R. § 214.14(c)(7).

<sup>12</sup> INA § 101(a)(15)(U)(i)(I); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

2. Possess information concerning the criminal activity;<sup>13</sup>
3. Obtain a certification from a law enforcement official, prosecutor, judge, Immigration official, or other federal or state authority that he or she is being, has been, or is likely to be helpful to a federal, state, or local investigation or prosecution of a form of listed criminal activity;
4. The criminal activity violated the laws of or occurred in the United States.<sup>14</sup>

### **Substantial Physical or Mental Abuse**

In order to be eligible for U-visa status, an applicant must have suffered substantial physical or mental abuse as a result of being a victim of the criminal activity.<sup>15</sup> In determining whether the abuse is *substantial*, DHS will consider:

- The nature of the injury;
- Severity of the perpetrator's conduct;
- The severity of the harm suffered;
- The duration of the infliction of harm;
- Permanent or serious harm to appearance;
- And health, physical, and mental soundness.<sup>16</sup>

DHS will take into account any of all of these factors but no one factor is required.<sup>17</sup> DHS has discretion to include pre-existing conditions as well to consider the severity of the perpetrator's conduct even if the actual impact may have been less than intended by the perpetrator. Advocates and case workers can play a critical role in assisting victims to collect documentation to support this requirement.

### **Victim of an enumerated criminal activity**

Congress created an extensive list of criminal activities that qualify under the U-visa.

#### Crimes Covered:

Rape	Kidnapping
Torture	Abduction
Trafficking	Unlawful criminal restraint
Incest	False imprisonment
Domestic violence	Blackmail
Sexual assault	Extortion
Abusive sexual contact	Manslaughter
Prostitution	Murder
Sexual exploitation	Felonious assault
Female genital mutilation	Witness tampering
Being held hostage	Obstruction of justice
Peonage	Perjury
Involuntary servitude	Slave trade

This enumerated list provides federal, state, and local officials with guidelines on the types of federal, state, or local crimes for which victims should be provided certifications. These crimes are broadly described in order to capture the diversity of state and federal criminal violations. As such,

<sup>13</sup> INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II).

<sup>14</sup> NA § 101(a)(15)(U)(i)(IV); 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

<sup>15</sup> INA § 101(a)(15)(U)(i)(I); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

<sup>16</sup> 8 C.F.R. § 214.14(b)(1).

<sup>17</sup> 8 C.F.R. § 214.14(b)(1).

this list is not an exclusive list and CIS will consider substantially similar criminal activity to fall within the activity covered.<sup>18</sup>

The regulations incorporate a broad framework for how a victim can satisfy the requirement that she be a victim of an enumerated criminal activity. The applicant may be a direct victim or an indirect victim of the criminal activity. Direct victims include those who are proximately harmed by the criminal activity.<sup>19</sup> This means that a bystander of a criminal activity who is harmed in the process is also eligible as a direct victim of the criminal activity.<sup>20</sup>

Indirect victims may also apply for U-visa in specific circumstances. If the criminal activity renders the primary victim deceased (e.g. murder, manslaughter) or incompetent or incapacitated, the Spouse, Children under 21 years of age,<sup>1</sup> and if the direct victim is under age 21, the parents and siblings under age 18 qualify as victims.<sup>21</sup>

Indirect victims are eligible to file their own applications for a U-visa when the crime is murder or manslaughter or when the primary victim is under age 16, incapacitated, or incompetent.<sup>22</sup> This provision will allow eligible indirect victims to apply even when the primary victim is or was a U.S. Citizen or Lawful Permanent Resident (LPR or green card holder) and not in need of her own U-visa.

Victims must also show that they are not also culpable of the same criminal activity.<sup>23</sup> Some U-visa victim applicants may have previous criminal convictions unrelated to the U-visa qualifying criminal activity.<sup>24</sup> In such cases, the applicant will not be disqualified from applying but may be inadmissible, or not allowed to be admitted into the United States. If an applicant is inadmissible, she may qualify for a waiver of inadmissibility. That waiver may be granted with or without a formal request. Attorneys should file U-visa applications without the waiver of inadmissibility and wait for DHS to request the waiver. This will allow applicants to avoid additional filing fees when not required.

### **Possess Information**

The U-visa was enacted to encourage victims of criminal activity to feel safe in reporting crimes against them without adverse immigration consequences. U-visa applicants must prove that they possess information about the criminal activity.<sup>25</sup> Their knowledge of the criminal activity against them is a critical component of the U-visa application. Applicants who were under 16 when the criminal activity occurred or lack the capacity or competence do not have to prove that they possess information if a parent, guardian, or next friend possesses that information.<sup>26</sup> The *next friend* is a person who acts in a legal proceeding on behalf of an individual who is incompetent or incapacitated.<sup>27</sup>

### **Obtain certification**

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<sup>18</sup> 8 C.F.R. § 214.14(a)(9).

<sup>19</sup> 8 C.F.R. § 214.14(a)(14).

<sup>20</sup> U.S. Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant status, DHS Docket Number UCIS-2006-0069, page 12.

<sup>21</sup> 8 C.F.R. § 214.14(a)(14)(i).

<sup>22</sup> 8 C.F.R. § 214.14(a)(14)(i).

<sup>23</sup> 8 C.F.R. § 214.14(a)(14)(iii).

<sup>24</sup> 8 C.F.R. § 214.14(a)(14)(iii).

<sup>25</sup> INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II).

<sup>26</sup> 8 C.F.R. § 214.14(b)(2).

<sup>27</sup> 8 C.F.R. § 214.14(a)(7).

DHS requires all applicants to provide certification from a state, local, or federal agency (Form I-918 Supplement B) in order to grant U-visa status.<sup>28</sup> The form requires the law enforcement official, judge, or other authorized state, local, or federal employee to certify that the applicant has been, is being, or is likely to be helpful and that the applicant is a victim of a qualifying criminal activity. The certification form also requires the government signatory to demonstrate their authority as a supervisory or designated agent to sign on behalf of their department and that their agency is eligible to certify.<sup>29</sup>

The requirement that an applicant “has been helpful, is being helpful or is likely to be helpful”<sup>30</sup> includes past, present, and future helpfulness. Congress adopted this approach to ensure that certifications were not limited to cases in which prosecutions were underway. Prosecution could not occur if victims were not given protection from deportation and intimidation by crime perpetrators that kept victims from reporting crimes and participating with investigations of criminal activity whether or not the case was ultimately prosecuted or a conviction obtained. For this reason, victims were granted access to U-visa protection very early after reporting crimes. The U-visa is available to an individual crime victim who is “helpful, was helpful, or will be helpful” in the investigation or in the prosecution of criminal activity. Whether or not cases move forward in the criminal justice system is complex. A key congressional goal is to encourage victims to come forward and report crimes and to secure their assistance in criminal investigations, not only prosecutions. For this reason, U-visas are available to victims regardless of whether he or she serves as a witness, whether the investigation or prosecution results in a conviction, when there is an investigation of criminal activity that has not yet or does not result in a prosecution, when the criminal case is dismissed, and when the case is initiated and the perpetrator evades services.

In assessing how helpful one has to be, advocates should understand some critical clarifications.

- ▶ The criminal activity does not have to be prosecuted.
- ▶ If prosecuted, there is no requirement that the prosecuted criminal activity is a qualifying criminal activity enumerated for U visa applicants
- ▶ The perpetrator need not be convicted of any criminal activity.

Though it is not required that the case be prosecuted, the applicant must continue to cooperate through the duration of the U-visa status.<sup>31</sup> If the case is prosecuted and the victim is perceived not to be helpful, the law enforcement agent may contact DHS with this information and the U-visa may be revoked. It is critical for victims who are reporting criminal activity to understand that although they can obtain U-visa status based on reporting criminal activity, their helpfulness does not end with the initial report of the criminal activity.

Though the certification is mandatory in U-visa applications, many different agencies qualify as certifying agencies eligible to sign the certification form. The eligible agencies and individuals include<sup>32</sup>:

- ▶ Federal, state, and local law enforcement agencies (e.g. police, sheriffs, Assistant U.S. attorneys, federal marshals)
- ▶ Federal, state, and local prosecutors
- ▶ Federal, state, and local judges
- ▶ Child Protective Services
- ▶ Equal Employment Opportunity Commission
- ▶ Department of Labor

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<sup>28</sup> 8 C.F.R. 214.14(c)(2)(i).

<sup>29</sup> 8 C.F.R. 214.14(c)(2)(i).

<sup>30</sup> INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III).

<sup>31</sup> 8 C.F.R. 214.14(b)(3).

<sup>32</sup> 8 C.F.R. 214.14(a)(2).

► Other Federal, state, and local Investigative Agencies

The certification must be signed by a supervisor or a person designated by the supervisor.<sup>33</sup> There are very few jurisdictions that had any established protocol at the time the U-visa regulations were issued. As a result, the initial applicants may encounter law enforcement or other government agencies that lack the understanding or protocols to respond to certification requests. It will be critical for advocates to work with law enforcement, prosecutors, and other government agencies (e.g. EEOC, labor or child abuse investigators) to understand the role of the certification and help them to establish procedures and protocols that encourage signing of certifications.

**Violated the laws of or occurred in the United States**

The final requirement is that the criminal activity either violated the laws of the United States or occurred in the United States.<sup>34</sup> DHS has defined the United States broadly to include all of the following:

- Indian land including any Indian reservation within United States jurisdiction, dependant Indian communities, and Indian allotments<sup>35</sup>
- Military installations including transportation (vessels, aircrafts) under Department of Defense jurisdiction or military control or lease<sup>36</sup>
- United States territories including American Samoa, Swain Islands, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra atoll, Seranilla Bank, and Wake Atoll.<sup>37</sup>
- U.S. territories include Guam, Puerto Rico, and the U.S. Virgin Islands<sup>38</sup>

Criminal activity violating the laws of the United States occurring outside the United States include any criminal activities described in federal statutes that extend extraterritorial jurisdiction.<sup>39</sup> Any activity that would violate the laws of the United States but that takes place abroad would not satisfy this requirement.

**U VISAS FOR CERTAIN FAMILY MEMBERS OF THE CRIME VICTIM**

U-visas are also available for family members of the direct or indirect victims of the criminal activities. A U-visa victim applicant can include or later add to the U visa application, petitions for her family members. For those over age 21, family members include the spouse or children.<sup>40</sup> For victims under age 21, family members include the spouse, children, parents, and unmarried siblings under age 18.<sup>41</sup>

Spouses and children of U-visa applicants as well as parents of U-visa applicants who are under the age of 16 can also receive U-visas if:

- they can demonstrate that receipt of the visa is necessary to avoid extreme hardship; or
- a government official certifies that the investigation or prosecution would suffer without the assistance of the spouse, child, or parent.

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<sup>33</sup> 8 C.F.R. 214.14(a)(3).

<sup>34</sup> INA § 101(a)(15)(U)(i)(IV); 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

<sup>35</sup> 8 C.F.R. 214.14(a)(4).

<sup>36</sup> 8 C.F.R. 214.14(a)(6).

<sup>37</sup> 8 C.F.R. 214.14(a)(11).

<sup>38</sup> INA § 101(a)(38); 8 U.S.C. § 1101(a)(38).

<sup>39</sup> 8 C.F.R. 214.14(b)(4).

<sup>40</sup> INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

<sup>41</sup> INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

There is no cap on the number of U-visas that can be issued to the spouses, children or parents of U-visa recipients.<sup>42</sup> A sibling's age is determined as of the date when the sibling's U-visa application is filed.<sup>43</sup> Family members who received interim relief and are no longer meet the age criteria, are still eligible under the U-visa statute and should apply based on those requirements.<sup>44</sup> Family members who are perpetrators of the crime are not eligible. Family members also include children who are born after the application is approved as long as an additional application is filed on their behalf.<sup>45</sup>

### **Interim Relief Holders**

Many victims who filed for and were eligible for U-visas were granted interim relief prior to the release of U-visa regulations. Those with interim relief will need to supplement their U-interim relief application by filing the U-visa application form and any additional evidence they may have by April 14, 2008.<sup>46</sup> DHS has the discretion to reevaluate the status of any interim relief holders if they do not apply for a U-visa by this deadline.<sup>47</sup> Interim relief holders are not required to provide a new certification. The certification filed along with the victim's interim relief request is deemed to meet the certification requirement under the U-visa regulations.<sup>48</sup> Previously submitted certifications from interim relief applications will qualify for those who file by April 14, 2008.<sup>49</sup> For the purposes of applying for Lawful Permanent Resident status (green card), an interim relief holder's U-visa status once approved will be retroactive to the grant of interim relief.<sup>50</sup> Once regulations governing access to lawful permanent residency for U-visa holders are issued, victims with U interim relief or a U-visa for over three years will be immediately eligible to apply for permanent residence.

### **Removal Proceedings**

Many potential U-visa applicants may be or have been in immigration removal proceedings, which take place in immigration court. They begin with a document called a *Notice to Appear*. This form if in the applicant's possession will help advocates to identify for a victim's immigration attorney that a potential applicant has had a case in removal proceedings. It is critical that any attorney working with the victim know this information.

Victims who are currently still in removal proceedings or in detention may apply for a U-visa. An attorney can assist an applicant in applying for a motion to terminate removal proceedings<sup>51</sup> that would end the applicant's case in removal proceedings. Family members who are eligible to apply for U-visas are also eligible to terminate their removal proceedings.<sup>52</sup> Those who already have a final removal order may file a motion to stay their removal.<sup>53</sup> This would prevent them from being removed from the United States while their U-visa application is pending. After the U-visa is approved, any final order the U-visa holder has will be effectively cancelled.<sup>54</sup> However, if a U-visa

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<sup>42</sup> INA § 214(o); 8 U.S.C. § 1214(o).

<sup>43</sup> 8 C.F.R. 214.14(f)(4).

<sup>44</sup> INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

<sup>45</sup> 8 C.F.R. 214.14(f)(4)(i).

<sup>46</sup> U.S. Department of Homeland Security, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant status*, DHS Docket Number UCIS-2006-0069, page 12.

<sup>47</sup> U.S. Department of Homeland Security, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant status*, DHS Docket Number UCIS-2006-0069, page 12.

<sup>48</sup> 8 C.F.R. 214.14(c)(1).

<sup>49</sup> U.S. Department of Homeland Security, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant status*, DHS Docket Number UCIS-2006-0069, page 10.

<sup>50</sup> 8 C.F.R. 214.14(c)(6); 8 C.F.R. 214.14(f)(6)(i).

<sup>51</sup> 8 C.F.R. 214.14(c)(1)(i); 8 C.F.R. 214.14(f)(2)(i).

<sup>52</sup> 8 C.F.R. 214.14(c)(1)(i); 8 C.F.R. 214.14(f)(2)(i).

<sup>53</sup> 8 C.F.R. 214.14(c)(1)(ii); 8 C.F.R. 214.14(f)(2)(ii).

<sup>54</sup> 8 C.F.R. 214.14(c)(5)(i); 8 C.F.R. 214.14(f)(6).

is denied, the applicant may be reissued a *Notice to Appear* and once again placed in removal proceedings.<sup>55</sup>

## CONFIDENTIALITY AND CREDIBLE EVIDENCE STANDARD

Confidentiality: As with other types of cases under the Violence Against Women Act, DHS is required to keep all information about U-visa applications confidential.<sup>56</sup> They cannot release information about the existence of a case to any person who is not authorized to access that information for a legitimate law enforcement purpose. Furthermore, if the perpetrator of the crime or any of his or her family members provides information to DHS about the crime victim, DHS cannot rely solely upon that information to make an adverse decision or any other case the victim may be involved in (e.g. removal action). Further, DHS is precluded from relying on information provided by the abuser or his family members to initiate or take any part of an enforcement action against the victim<sup>57</sup> on the victim's U-visa case.

Credible Evidence Standard: As with petitions filed under VAWA, DHS is required to consider "any credible evidence" when deciding U-visa cases and applications for adjustment of status<sup>58</sup> (permanent residence) based on the U-visa provisions. DHS is prohibited from requiring one specific type of evidence in support of the application and must accept "any credible evidence" submitted to support each requirement. The credible evidence standard was first created by the Violence Against Women Act for battered spouse waiver, VAWA self-petition and VAWA cancellation of removal cases recognizing that victims of domestic violence and other violent crimes may have difficulty obtaining certain types of evidence.<sup>59</sup>

## WAIVER OF INADMISSIBILITY

There are several red flag issues that can make an applicant for any immigration application inadmissible into the United States. It is extremely important that all victims who may qualify for a U-visa or another form of immigration relief be screened as early as possible to identify red flags. Any red flags could complicate their immigration case and therefore require representation by an immigration attorney experienced in working on violence against women cases. However, the U-visa application process allows various waivers for these inadmissibility factors. The U-visa provisions include several waivers for inadmissibility. Waivers are not available for those who have committed Nazi genocide, torture, or extra judicial killings.<sup>60</sup> Those who have committed violated or dangerous crimes and security-related crimes will only be granted waivers for extraordinary circumstances.<sup>61</sup> For all other grounds of inadmissibility, including those who enter the U.S. unlawful, waivers are available if it is the public or national interests for DHS to grant a waiver to the U-visa victim.<sup>62</sup>

## ADJUSTMENT OF STATUS

If a U-visa holder has been physically present in the United States for three years after being granted U-status, he or she may apply for adjustment of status to lawful permanent residence (a "green card").<sup>63</sup> The applicant must demonstrate that lawful permanent residency is justified on humanitarian grounds, to ensure family unity, or because it is in the public interest.<sup>64</sup> Applicants

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<sup>55</sup> 8 C.F.R. § 214.14(c)(5)(ii); 8 C.F.R. § 214.14(f)(6)(iii).

<sup>56</sup> IIRAIRA of 1996 § 384, 8 U.S.C. § 1367 (2001).

<sup>57</sup> For full discussion, see Confidentiality chapter.

<sup>58</sup> 8 C.F.R. § 214.14(c)(4); 8 C.F.R. 214.14(f)(5).

<sup>59</sup> See INA § 204(a)(1)(J); 8 U.S.C. § 1154(a)(1)(J).

<sup>60</sup> INA § 212(d)(14), 8 U.S.C. § 1182(d)(14).

<sup>61</sup> 8 C.F.R. § 212.17(b)(2).

<sup>62</sup> 8 C.F.R. § 212.17(b)(1).

<sup>63</sup> INA § 245(m)(1), 8 U.S.C. § 1255(m)(1).

<sup>64</sup> INA § 245(m)(1), 8 U.S.C. § 1255(m)(1).

may be required to file for waivers of inadmissibility. Because fee waivers are not currently being accepted, applicants may want to wait for DHS to request the submission of the inadmissibility waiver. If inadmissibility red flags occurred after obtaining a U-visa the victim can apply for an inadmissibility waiver under INA Section 212(d)(14). DHS also has the discretion to adjust the status of a spouse, child, or parent<sup>65</sup> of a U-visa holder whose status has been adjusted if it is necessary to avoid extreme hardship.<sup>66</sup> This applies to family members who were not originally granted U-visa relief. If these family members are outside the United States, they may obtain an immigrant visa abroad at a U.S. Consulate.<sup>67</sup> Applications for lawful permanent residency cannot be filed by U-visa holders until U-visa adjustment regulations are published.

## **DOCUMENTARY EVIDENCE FOR U VISA APPLICATIONS**

- ❑ “A Cover Letter: *“The letter should explain how the applicant meets the requirements for the U-Visa. The letter should be a roadmap to the exhibits filed in support of the requirements. It should also provide necessary identification information, including applicant’s full name and date and place of birth. If the applicant’s spouse, child, or, parent, will also be seeking interim relief, the cover letter should state this and should list information such as the family members’ names, dates of birth, and relationship to the principal applicant.*”
- ❑ Signed statement from the applicant: *A detailed declaration should describe the crime victimization and how the applicant meets each U-Visa requirement*
- ❑ The Applicant’s Personal Identification Information
- ❑ Form I-918 *Application for U Nonimmigrant Status*
- ❑ Form I-918 Supplement B *U Nonimmigrant Status Certification*
- ❑ Additional evidence to support the requirements
- ❑ Form I-918 Supplement A *Petition for Qualifying Family Member of a U-1 Recipient* for any family members included (may be added later)
- ❑ Form I-765 *Application for Work Authorization* is not required for principal applicants but is required for all family members.
- ❑ Form I-192 *Application for Advance Permission to Enter as a Non-Immigrant* if the applicant is inadmissible
- ❑ Fees: There are no filing fees associated with the form I-918. However, a biometrics (fingerprinting) fee is required but applicants may qualify for a fee waiver. In addition, the I-765 and I-192 requiring filing fees.

The following is a list of suggested documents that may be submitted to prove each element of a U-visa case. This list is meant to serve as a guide, and additional types of evidence may also be submitted in support of the application. Furthermore, not all documents listed below will be available in every case.

**In addition to a signed statement and Supplement B law enforcement certification, an application for U non-immigrant status should include evidence of the following:**

### **Evidence of Substantial Physical and Mental Abuse as a Result of the Criminal Activity:**

- ❑ Records from a health care provider documenting the diagnosis and treatment of physical injuries or a psychological condition resulting from the criminal activity
- ❑ Affidavits from victim advocates, shelter workers, counselors, or mental health professionals, detailing any physical and mental abuse or harm that the applicant has experienced and the effect that the abuse has had on the applicant and the applicant’s family

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<sup>65</sup> The U-visa holder must be a “child” under immigration law (unmarried and under 21 years old) for the parent to qualify.

<sup>66</sup> INA § 245(m)(3); 8 U.S.C. § 1255(m)(3).

<sup>67</sup> INA § 245(m)(3); 8 U.S.C. § 1255(m)(3).

- Affidavit of the applicant detailing the substantial physical and mental abuse or harm suffered as a result of the criminal activity
- Copies of any police/ incident reports on domestic violence or sexual assault or listed criminal activity
- Copies of any protection orders/ restraining orders against the perpetrator
- Affidavits and certifications from neighbors, landlords, friends, or family who witnessed the criminal activity or harm or injuries that resulted
- Affidavits from police officers or prosecutors describing the violence that the applicant has experienced
- Photographs showing injuries, damage from the criminal activity (e.g. torn clothing, broken door, etc.)
- Records of any 911 calls

**Evidence that the Victim Possesses Information Concerning the Criminal Activity:**

- Affidavits and certifications from police officers, prosecutors, EEOC investigators, judges, child abuse investigators, Department of Labor investigators detailing the applicant's knowledge of the criminal activity
- Copies of any police reports or statements that the applicant has made to a law enforcement agency
- Copies of claims for Victims of Crime Act ("VOCA") assistance filed as a result of the criminal activity
- Copies of reports filed with state child abuse investigators
- Transcripts of testimony that the applicant has given to a state, local, or federal law enforcement agency or court
- Affidavits from witnesses that may place the applicant at the scene of the criminal activity or attest to the applicant's knowledge of the criminal activity
- Copies of reports made to sexual assault health professionals and law enforcement with regard to evidence collection in rape cases.

**Evidence That The Crime Victim Has Been Helpful, Is Helpful, or Is Likely to Be Helpful to a Federal, State, or local Investigation or Prosecution:**

- Copies of any police reports or complaint reports made to law enforcement officials.
- Certifications and affidavits from police officers and prosecutors detailing the applicant's helpfulness
- Copies of any police reports or statements that the applicant has made to a law enforcement agency
- Copies of reports filed with state child abuse investigators

- Transcripts of testimony that the applicant has given to a state, local, or federal law enforcement agency or court
- Copies of reports made to law enforcement with regard to evidence collection in rape cases.

**Evidence That Criminal Activity Violated the Laws of the United States or Occurred in the United States or its Territories:**

- Copies of any police reports or statements that the applicant has made to a law enforcement agency
- Copies of claims for Victims of Crime Act (“VOCA”) assistance filed as a result of the criminal activity
- Copies of reports filed with state child abuse investigators
- Transcripts of testimony that the applicant has given to a law enforcement agency
- Copies of any arrest warrants, police reports, or domestic violence incident report

**APPLICANT PROCEDURE**

All U visa applicants should be filed with Vermont Service Center.<sup>68</sup> Applications filed by victims outside of the United States must also be filed with the Vermont Service Center following the same process as all other U-visa applicants. Once an application is approved, Vermont Service Center will notify the applicant and grant employment authorization. If the applicant is abroad, Vermont Service Center will contact the appropriate consular agency to grant the applicant entry into the United States as a visa holder.<sup>69</sup>

When Congress created the U-visa, they also capped the number of U-visas that could be issued in a year. DHS will only grant 10,000 principal U visas pr year. Once the cap is met, DHS will grant deferred action, which is a temporary status with employment authorization, and place the applicants on a waitlist for the actual U-visa. The cap does not count towards family members who are included in an application. However, DHS will not grant U-visa status to family members before the main victim applicant receives U-visa status. Therefore, if a family member’s principal applicant is placed on the waitlist, the family members will too be placed on the waitlist and all cases of the victim and each of his or her family members will be processed together.<sup>70</sup>

**CONCLUSION**

It is important to note that the U-visa can help several groups of victims of violence against women, including victims of sexual assault and battered immigrants who were not covered by the original VAWA self-petition or cancellation of removal provisions. Immigrants who are abused by a boyfriend or another person who is not a spouse or parent or by a spouse or parent who is not a U.S. citizens or permanent resident can obtain U-visas. The U-visa will also help non-citizen victims of other crimes, including victims of rape or sexual assault who may not know or be related to the perpetrator and domestic workers who are abused or held hostage in the home by their employers.

The standard for being granted a U-visa is in some ways more difficult than for self-petitioning under VAWA. To qualify, the battered immigrant must suffer substantial physical or emotional

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<sup>68</sup> 8 C.F.R. § 214.14(c)(1).

<sup>69</sup> 8 C.F.R. § 214.14(c)(1).

<sup>70</sup> 8 C.F.R. § 214.14(d)(2).

abuse and must cooperate with law enforcement. If an immigrant victim has never called the police and reported the abuse and is afraid or unwilling to do so, it will not be possible to apply for a U-visa.

No one should apply for a U-visa without the assistance of an immigration advocate or attorney who has experience in working with immigrant victims.<sup>71</sup> This chapter serves only as a basic introduction and should not be relied upon to apply for U relief without first consulting an attorney. Attorneys undertaking their first U-visa cases should consult with national experts involved who are technical assistance providers.<sup>72</sup> Because the U-visa is relatively new and regulations were published in September 2007, few immigration practitioners or advocates will be familiar with U-visa relief. Attorneys helping immigrant victims should be encouraged to consult technical assistance providers.

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<sup>72</sup> <sup>72</sup> The following organizations can provide information and technical assistance on U visa cases: Immigrant Women Program, Legal Momentum -- telephone: (202) 326-0040, fax: (202) 589-0511, E mail [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org); Address: 1101 14th Street, N.W., Suite 300, Washington, D.C. 20005; ASISTA telephone: (515) 244-2469; Email: [questions@asistaonline.org](mailto:questions@asistaonline.org); Address: 515 28th Street, Des Moines, Iowa 50312