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U Visa Applications for Immigrant Victims of Crimes

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Since 2000, certain crime victims who are helpful to a police investigation of the crime can apply for a “U-visa” which grants legal immigration status.¹ After 3 years in U-visa status the person can apply to be a lawful permanent resident (LPR). U-visa-holders can get work authorization and are eligible for some public benefits

To qualify for a U-visa, the applicant must satisfy the following criteria:

1. The crime must have occurred in the U.S. or have violated U.S. law.²
2. Applicant must have suffered "substantial physical or mental abuse" as a victim of a “qualifying criminal activity”³
3. The victim must possess information about the criminal activity.⁴
4. He or she must help or have helped with the investigation or prosecution of the crime (or be willing to do so in the future),⁵ and obtain a certification on Form I-918 Supplement B, “U Nonimmigrant Status Certification,” from the law enforcement agency that he or she has cooperated with, signed within six months of filing the U-visa application.
5. The Department of Homeland Security’s (DHS) Citizenship & Immigration Services (CIS) must approve the U-visa application and any waivers of inadmissibility, in the exercise of discretion. There are no appeals of a waiver denial.

The “qualifying criminal activity” of which the person was a victim must be one of the following kinds, in violation of Federal, State, or local criminal law:

¹ 8 USC § 1101(a)(15)(U)

² See 8 USC § 1101(a)(15)(U)(i)(IV)

³ See 8 USC § 1101(a)(15)(U)(i)(I); “Physical or mental abuse means injury or harm to the victims physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 CFR § 214.14(a)(8). For more on the “substantial abuse” definition see 8 CFR § 214.14(b)(1).

⁴ See 8 USC § 1101(a)(15)(U)(i)(II); “The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity.” 8 CFR § 214.14(b)(2)

⁵ See 8 USC § 1101(a)(15)(U)(i)(III); 8 CFR § 214.14(b)(3)

Abduction
Abusive Sexual Contact
Blackmail
Domestic Violence
Extortion
False Imprisonment
Felonious Assault
Female Genital Mutilation
Hostage
Incest
Involuntary Servitude
Kidnapping
Manslaughter
Murder
Obstruction of Justice
Peonage
Perjury
Prostitution
Rape
Sexual Assault
Sexual Exploitation
Slave Trade
Torture
Trafficking
Unlawful Criminal Restraint
Witness Tampering
Or: “any similar activity.

- Attempt, conspiracy, or solicitation to commit any of these crimes count as qualifying activity.⁶
- The perpetrator of the crime need not have had any particular relationship to the victim. Domestic violence is just one qualifying type of criminal activity.

Law Enforcement Certification of Helpfulness to the Investigation of the Crime is a Requirement:

- The certification that the applicant has been helpful, is being helpful, or is likely to be helpful in the investigation of the criminal activity⁷ can come from a Federal, State or local law enforcement official, prosecutor, judge or other authority investigating or prosecuting the criminal activity.⁸
- Charges do not need to be filed nor a conviction obtained in order to receive the certification. No agency is required to do a certification.
- Certification must be submitted as part of the U-visa application. The Department of Homeland Security's (DHS) Citizenship and Immigration Services (CIS) will decide whether to grant a U-visa.
- **Even with a law enforcement certification the decision by DHS is separate and discretionary. Approval is not automatic.** However, the noncitizen will not be eligible for U nonimmigrant status without a certification.

Practice Tip: Defenders should ask non-citizen clients who are undocumented or in need of immigration relief if they have ever been a victim of one of the designated types of criminal activity and if they reported it to the police or had been involved with the investigation of that crime.

If so, seek immigration legal assistance for further U-visa eligibility screening. One agency in Washington that assists some immigrants with U- visas is the Northwest Immigrant Rights Project, (206) 587- 4009 (W. Washington), or (509) 854-2100 (E. Washington.)

People with prior criminal history are not barred from seeking a U-visa, although they may need a discretionary waiver.

and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.”⁸ 8 CFR § 214.14(a)(9).

⁷ See 8 USC § 1101(a)(15)(U)(i)(III).

⁸ See 8 USC § 1184(p).

Additional U Visa Information:

- In addition to the statutory provision at 8 USC § 1101(a)(15)(U), the requirements are spelled out in more detail in the implementing federal regulations at 8 Code of Federal Regulations (CFR) § 214.14.
- A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.⁹
- Some family members may also receive U visa derivative beneficiary status, whether or not they are in the United States.¹⁰ Only 10,000 petitioners can receive U status per fiscal year,¹¹ not including derivative beneficiaries.¹²
- Discretionary waivers for most grounds of inadmissibility, including inadmissibility for criminal convictions, are available if it is in the “public or national interest.”¹³
- Generally, the authorized period of stay for a noncitizen individual in U-visa status is no longer than four years. However the period may be extended if a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting criminal activity certifies that the noncitizen’s presence in the US is required to assist in the investigation or prosecution of the crime.¹⁴

Lawful Permanent Resident Status

- U-visa holders who have three years of continuous physical presence can apply to become lawful permanent residents (LPRs or “green-card” holders), if their continued presence in the United States is justified on humanitarian grounds to ensure family unity, or is otherwise in the best interest of the public.¹⁵

⁹ 8 CFR § 214.14(a)(14)(iii)

¹⁰ See 8 USC § 1101(a)(15)(U)(ii); 8 C.F.R. § 214.14(f). These family members include spouse, children, unmarried siblings under 18, and parents if the principal petitioner is less than 21 years old; and spouse and unmarried children under 21 if the principal petitioner is 21 years or older on the date of application.

¹¹ See 8 USC § 1184(p)(2)(A).

¹² See 8 USC § 1184(p)(2)(B).

¹³ See 8 USC § 1182(d)(14)

¹⁴ See 8 USC § 214(p)(6) and 8 CFR 214.14(g)

¹⁵ See 8 USC § 1255(m)(B)

- To be eligible, the individual must not have declined any reasonable request to continue to cooperate with the investigation or prosecution of the crime committed against them.¹⁶

Confidentiality Provisions Protecting Victims (or Alleged Victims):

- The confidentiality provisions of the Violence Against Women Act, or VAWA, at 8 USC § 1367, generally prohibit third-party disclosure of any information relating to applicants for relief under VAWA, including applicants for U-visa status.¹⁷
- These provisions include prohibiting DHS from using information from the alleged “perpetrator of the substantial physical or mental abuse and the criminal activity” as the sole basis for arresting and charging a noncitizen with removability.¹⁸
- Disclosing to anyone, other than a sworn officer or employee of DHS, DOJ, or DOS for agency purposes, any information which relates to beneficiary of a U visa application is prohibited.¹⁹
- There are various exceptions to these prohibitions, including for law enforcement and judicial review purposes.²⁰
- Although the issue has not been addressed in the Ninth Circuit, the Eighth Circuit has held in dicta that 8 USC § 1367(a)(2) does not provide for exclusion of evidence as a remedy for a violation, at least in criminal cases, and that the statute was not violated by disclosure to the US Attorney for prosecution.²¹ It has been argued²² that this decision conflicts with the goals of VAWA 2000 to help battered immigrants leave abusive relationships and to decrease domestic violence.²³

¹⁶ *Id.*

¹⁷ 18 USC 1367(a)(1)(E).

¹⁸ See 8 USC §1367(a)(1)(E) and 8 CFR § 214.14(e)

¹⁹ See 8 USC § 1367(a)(2) and 8 CFR § 214.14(e).

²⁰ See 8 USC § 1367(b).

²¹ *U.S. v. Maswai*, 419 F.3d 822 (8th Cir. 2005).

²² See Laura Jontz, *Eighth Circuit to Battered Kenyan: Take A Safari-Battered Immigrants Face New Barrier When Reporting Domestic Violence*, 55 Drake L. Rev. 195, 216 (2006).

²³ Victims of Trafficking and Violence Protections Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. at 1518.