

## PRACTICE ADVISORY | 07/02/20

**U VISA APPLICATIONS FOR IMMIGRANT VICTIMS OF CRIME**

In 2000, Congress amended the Immigration & Nationality Act to include a new visa category - the U visa.<sup>1</sup> Qualifying non-citizen victims of certain criminal activity, who cooperate in the investigation or prosecution of the alleged criminal activity, can apply for a U visa.

- A. What are the benefits of U visa?** The benefits of receiving U visa include:
- Provides undocumented people, or those with temporary immigration status, four years of legal (“nonimmigrant”) status;<sup>2</sup>
  - employment authorization;<sup>3</sup>
  - U-visa status for qualifying family members;<sup>4</sup>
  - Opportunity to seek lawful permanent resident status after 3 years in U visa status;<sup>5</sup>
- B. Who is eligible for U nonimmigrant status?** To be eligible for a U visa, a person must:<sup>6</sup>
- Be the victim of “qualifying criminal activity” in the US;
  - Suffered substantial physical or mental abuse as a result;
  - Have information about the crime and have been, currently is or is likely to be helpful to law enforcement in the investigation or prosecution of the criminal activity;
  - Obtain the requisite certification from a federal, state, or local law enforcement authority verifying the U visa applicant’s helpfulness; and
  - Qualify for admission to the US – i.e., not trigger any grounds of inadmissibility under the immigration laws (or be eligible for a waiver of inadmissibility).<sup>7</sup>
- C. What constitutes “qualifying criminal activity”?** The applicant must be a victim of: Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Felonious Assault, Female Genital Mutilation, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation,

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<sup>1</sup> Victims of Trafficking and Violence Prevention Act, Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Congress created the U-visa to protect undocumented crime-survivors who come forward to report and assist in the investigation and prosecution of alleged criminal conduct.

<sup>2</sup> 8 USC 1101(a)(15)(U).

<sup>3</sup> Id.

<sup>4</sup> Id. 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 principal petitioner is 21 years or older.

<sup>5</sup> 8 USC 1255(m).

<sup>6</sup> See 8 USC 1101(a)(15)(U) for U visa requirements.

<sup>7</sup> See the grounds of inadmissibility at 8 USC 1182.

Slave Trade, Stalking, Torture, Trafficking, Unlawful Criminal Restraint, Witness Tampering, or attempt conspiracy to solicitation to commit the above or any similar criminal activity.”<sup>8</sup>

#### D. What is the Requisite Law Enforcement Certification?<sup>9</sup>

- Known as Form I-918B, the certification attests that the applicant has being, is being, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity.
- It can be completed by a Federal, State or local law enforcement official, prosecutor, judge or other authority investigating or prosecuting the criminal activity.
- Immigration officials will only adjudicate a U visa application accompanied Form I-918B.
- Washington State has specific requirements at RCW 7.98 that govern law enforcement process for adjudicating requests from people seeking to apply for a U visa.

#### E. Can A U Visa Lead to Lawful Permanent Resident Status? Yes, if a U visa grantee:

- Lives continuously in the US for three years after granted a U-visa;
- Establishes that their continued presence in the US is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest;<sup>10</sup>
- Continues to cooperate with the investigation or prosecution of the criminal activity.<sup>11</sup>

### Best Practice Steps for Defense Attorneys

- ✓ Eligibility of an alleged victim or witness to file a U visa (or VAWA self-petition) may provide a defense to criminal charges related to bias or prejudice. Defense counsel should interview alleged victims and witnesses and pursue other discovery avenues to determine if eligibility for a U visa (or VAWA self-petition) played a role in contacting law enforcement, making allegations or providing testimony and/or otherwise participating in criminal proceedings against the defendant. Such interviews should be conducted with awareness and careful consideration of the risks and fears undocumented people face and assurances that defense counsel will not contact immigration authorities.
- ✓ Admission of immigration status in criminal proceedings is subject to the requirements of ER 413. See [WDA’s advisory and sample motion on ER 413](#).
- ✓ Consult [WDA’s Immigration Project for assistance in pursuing a defense strategy that involves immigration status and meeting ER 413 requirements](#).
- ✓ Noncitizens who do not qualify for a U visa may be eligible for other forms of immigration relief, such as a VAWA self-petition. See [WDA’s VAWA Self-Petition advisory](#).
- ✓ In addition to identifying clients who are noncitizens to comply with *Padilla* duties, identifying noncitizen victim-defendant clients can be critical to defense decisions as well as connecting them to resources that can provide screening and representation to pursue avenues to lawful status such as self-petitioning or a U visa. The Northwest Immigrant Right Project provides screening and legal assistance – [nwirp.org](#) or (206) 816-3870 (W. Washington), or (509) 579-0054 5 (E. Washington).

<sup>8</sup> 8 USC § 1101(a)(15)(U)(iii).

<sup>9</sup> Federal requirements and process for the law enforcement U visa certification are explained here: [https://www.ilrc.org/sites/default/files/resources/u\\_visas\\_basics\\_for\\_law\\_enforcement.pdf](https://www.ilrc.org/sites/default/files/resources/u_visas_basics_for_law_enforcement.pdf).

<sup>10</sup> See 8 USC § 1255(m)(B); 8 USC § 1101(a)(15)(U)(ii); 8 C.F.R. § 214.14(f).

<sup>11</sup> Id.