



ASISTA NEWSLETTER



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No one should feel like they should do everything themselves.

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Introduction & U Visa Basics

First Steps in U Visa Prep

1. Introduction

U nonimmigrant status is the result of the Victims of Trafficking and Violence Prevention Act of 2000, Pub. Law 106-386 §§1513 and is codified at 8 USC §1101(a)(15)(U). When Congress enacted the law that created the U Visa and U nonimmigrant status, they addressed a serious problem that effects not only immigrants, but our communities in general.

The unfortunate reality has historically been that undocumented immigrants are often hesitant to report crimes. The fear may arise out of general distrust of authority, or more practically, the concrete fear of being deported. Whatever the reasons, the end result is a threat not only to our immigrant neighbors, but our neighborhoods in general where undocumented individuals are seen as easy targets.

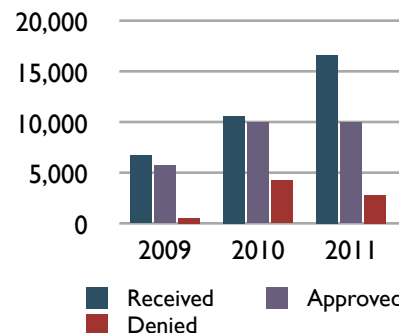
To address this issue, U status affords benefits and protections to undocumented victims of certain crimes for up to 4 years that encourage them to report crimes and cooperate with law enforcement in the investigation and prosecution of criminal matters. U status, therefore, was created to assist law enforcement as well as to help vulnerable immigrants.

While the terms U visa and U nonimmigrant status are often used interchangeably, these terms actually refer to two distinct but related processes. Therefore, it's useful at the outset to clarify the distinction between U nonimmigrant status and the U visa. U nonimmigrant status is the lawful status that is granted once a petition for U Nonimmigrant Status is approved. For an applicant who is inside the United States, once the application is filed and

approved, that is the end of the process. However, for an applicant who's petition is approved while they are outside the United States, there is an additional step. After U status is granted, the applicant must then go to the U.S. consulate and apply for U visa in order to enter the United States.

The U visa has become increasingly important in encouraging the reporting of crimes. This fact is reflected in the steady increase in the number of U status cases filed with the United States Citizenship and Immigration Services in recent years.

U Visa Statistics 2009-2011



On it's face, U nonimmigrant status seems fairly straight forward. However, like most things related to immigration law, there is a great deal of complexity beneath the relatively simple surface.

This series of newsletters from Asista will help new and experienced advocates navigate the issues they confront in the course of assisting victims of crime through this process. This first installment will introduce new advocates to the process and fundamentals of U nonimmigrant status. Subsequent newsletters will address more advanced issues involving inadmissibility, removal proceedings and consular processing.

U Basics

In order to qualify for U status an applicant must:

1. Be the victim of a qualifying crime.
2. Possess information about the criminal activity.
3. Have helped, is helping or is likely to be helpful in the investigation or prosecution of the crime.
4. Suffered substantial physical or mental abuse as a result of being the victim of the crime.

When it comes to satisfying the first requirement of being a victim of a qualifying crime, not all crimes are created equal. Because congress wanted to extend U status to the victims of only the most serious crimes, the statute enumerates the following categories of crime that allows applicants to qualify:

- ◆ 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
- ◆ Other related Crimes

◆ Attempt, Conspiracy or Solicitation to commit a any of these crimes.

This list of crimes is not strictly exhaustive. Rather, the list denotes categories of crimes that qualify. Similar crimes where “the nature and elements of the offense are substantially similar” to an enumerated crime also qualify. Finally, the qualifying crime must either violate U.S. law or have occurred in the United States.

In order to be considered a victim, one need not only be the actual direct victim of the crime. The law allows for direct as well as indirect victims.

Direct victims are include the intended target of the criminal activity as well as bystanders who suffer unusually direct injuries. The classic example of this is the pregnant witness who is so traumatized as a result of the incident that she suffers a miscarriage.

Indirect victims are those who are the family members of direct victims who are deceased, incompetent or incapacitated. either incapacitated and therefore not able to give information regarding the qualifying crime.

Finally, a victim who is culpable for the crime along with the perpetrator may not benefit from being a victim.

The helpfulness requirement is critical to qualifying for U status. This requirement applies to past, present or future helpfulness. So an applicant who was previously helpful in the investigation of a crime that occurred years ago would qualify. There is no requirement that the investigation or prosecution is still ongoing. An applicant who is currently being helpful also qualifies as does an applicant whom law enforcement believes will be helpful in the future. Perhaps the most important thing to keep in mind is that the helpfulness requirement is ongoing. This means that the certifying agency may withdraw it’s certification if the victim unreasonably refuses to assist in the investigation or prosecution.

The requirement that the victim suffer substantial physical or mental abuse

encompasses a wide range of harm. While the statutory provision do not make it clear whether the standard of “substantial” physical or mental abuse is intended to address the severity of the injury suffered by the victim, or the severity of the abuse inflicted by the perpetrator, it is reasonable to consider both. The determination of what constitutes “substantial” harm is made on a case-by-case basis using numerous factors. These factors are: The nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Through these factors , USCIS will be able to evaluate the kind and degree of harm suffered by the individual applicant based upon that applicant’s individual experience. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

Of course, some victims will already suffer from pre-existing physical or mental injury or condition at the time of the abuse. In this cases, the question becomes the extent to which any such conditions were aggravated.

Finally, it’s important to appreciate that in some cases a single criminal incident may not by itself have brought about substantial harm. However, if the crime is part of a pattern of abuse or a series of acts occurring over a period of time, the requirement of substantial harm can still be met.

It’s clear from this basic overview of U status that, congress intended this law to be expansive and encompass a broad range of victims. Likewise, we are only scratching the surface of this area of immigration law. Subsequent installments we’ll explore more advances issues.

Q&A

Frequently Asked and Answered

What is a U Visa Certification?

This is the certification by law enforcement that the applicant has been the victim of a qualifying crime and has been, is being or is likely to be helpful in the investigation or prosecution of the crime. This certification is a requirement of applying for U nonimmigrant status and is executed on form I-918B.

What types of agencies are able to provide a U certification?

In general, any Federal, State or local agency charged with investigating or prosecuting crime qualifies. This means that Police and prosecutors are not the only potential certifiers. Judges can also certify. Other agencies that have criminal investigative jurisdiction in their respective areas of expertise can also certify. This includes child protective services, the equal opportunity commission and the department of labor among others.

Can anyone at a qualifying agency provide the certification?

The certifying official must be either the head of the qualifying agency, someone in a supervisory role at the qualifying agency who is designated by the head of the agency to issue U nonimmigrant certifications, or Federal, State or local judges.

How long is the period of U nonimmigrant status

U nonimmigrant status may be granted for a maximum period of four years. Extensions beyond 4 years may be approved if the certifying agencies requires the applicant to remain in the United States to assist with the investigation or prosecution.

What are some of the benefits of U nonimmigrant status?

- The right to remain lawfully in the United States
- The right to work lawfully in the United States
- The right to petition for qualifying family members for derivative U status.
- The chance to apply for permanent residence after 3 years in U status.

Are there an unlimited number of U Visas available?

No, USCIS can grant up to 10,000 U nonimmigrant petitions in any given fiscal year (October 1, through September 30). This limitation only applies to the principle applicant and not to derivative family members.

If the cap limit is reached, USCIS will create a waiting list that will provide a mechanism by which victims cooperating victims can stabilize their immigration status. Such applicants will be given deferred action or parole while they are on the waiting list. This allows them to obtain employment authorization while they wait for their application to be adjudicated.

How much does it cost to apply for U nonimmigrant status?

There is no application fee for the U nonimmigrant status petition. Further, any filing fee for an application that needs to be filed along with the U petition may be waived.

What are the requirements for someone with U status to apply for permanent residence?

An applicant must have held U status for 3 years, must have not unreasonably refused to assist law enforcement and must establish that their presence in the United States is justified on humanitarian grounds, to ensure family unity or is in the public interest.

Quiz

Test Your “U” Smarts

1. Why did congress create the U visa and U nonimmigrant status?

- A. To help law enforcement investigate and prosecute crime
- B. To help undocumented victims of crimes
- C. Both A& B

2. The law enforcement certification is:

- A. Required
- B. Helpful but optional because you can show helpfulness in other ways.

3. The crime certified by law enforcement must:

- A. Have the same name as a crime listed in the statute
- B. Fit under one of the U crime categories based on the elements of the statute, even if it doesn't have the same name.
- C. Any crime certified by law enforcement qualifies

4. Who can be considered a victim for U visa purposes?

- A. Someone who suffered direct harm
- B. Someone who suffered proximate harm
- C. a parent of a child who suffered proximate harm
- D. All of the above

5. What is the best proof of substantial harm?

- A. The applicant's declaration
- B. Supporting declaration from a counselor
- C. documents from systems the applicant used
- D. All of the above

6. Which of the following victims cannot qualify for a U visa?

- A. Someone who suffered from pre-existing physical or psychological conditions
- B. A applicant who is badly beaten up in the course of committing a burglary.

- C. The victim of a series of minor assaults, none of which alone caused substantial harm
- D. All of the above

7. Which of the following is not required for a U application?

- A. Certification by law enforcement
- B. A declaration by the applicant
- C. An application fee
- D. All of the above

8. Which of the following crimes allow a victim to qualify for U nonimmigrant status?

- A. Larceny
- B. Identity Theft
- C. Domestic Violence Assault
- D. All of The Above

9. Which of the following is a benefit of U nonimmigrant status?

- A. The right to live in the United States
- B. Employment Authorization
- C. Opportunity to apply for permanent residence
- D. None of the above
- E. All of The Above

10. Which of the following is not requirement of applying for permanent residence based on U status?

- A. Having U status for 3 years.
- B. Providing assistance to law enforcement
- C. Law enforcement certification
- D. None of the above
- E. All of The Above

See Answers on Following Page



Helpful Resources

The Asista Clearinghouse & Technical Assistance Service - asistahelp.org

Our website contains a variety of training, educational and advocacy resources to help attorneys and advocates make sense of complex immigration law.

You can find practice advisories and other materials relating to:

- U visa filing
- VAWA Petitions
- Inadmissibility
- Deportation proceedings
- Consular processing
- Much more

Technical assistance is available to OVW Grantees. Please see asistahelp.org for details.

The VAWA Experts Listserve

Share ideas and ask questions with peers and mentors. This immensely valuable resource provides a vibrant and lively discussion of cutting edge legal and practice issues.

Immigration Advocates Network - immigrationadvocates.org

Our partner site includes not only helpful resource such as checklists and practice advisories but also training videos by experts and highly qualified practitioners.

Quiz Answers:

1. C. The U visa wasn't created just to help victims. It's purpose also included helping law enforcement reach and work with undocumented victims of crimes who otherwise might be too afraid to access our justice system due to the fear of being deported.

2. A. The certification is required.

3. B. the U list is a set of "categories" of crimes, so sometimes the crime may have the same name and sometimes it may not. For instance, choking, stalking, and strangulation MAY be domestic violence crimes if the relationship and the facts fit the domestic violence context.

4. D. All of the above

5. D. All of the above should be used

6. B. Would not qualify because they are culpable in the crime

7. C. There is no application fee

8. C. Unlike domestic violence crimes, theft and fraud are not qualifying crimes.

9. E.

10.C. A law enforcement certification may, but is not necessarily required. For example, in a closed case where there was a conviction, a new certification is not needed.

THE ASISTA MISSION

Our purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault.

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