

Application for Stay of Deportation or Removal

Fee Stamp

SUBMIT IN DUPLICATE

Read instruction on reverse before filling out application

File No.	A
Date	10/02/2008

1. Name (Family Name in CAPITAL letters, First, Middle) [Redacted]			
2. Present Address (Apt. No.)	(Number and Street)	(Town or City)	(State) (Zip Code)
[Redacted]	[Redacted]	Berkeley	CA 94703
3. Country of Citizenship	4. Date to which passport is valid (Attach passport)		
Mexico	11		
5. Country to which deportation or removal has been ordered	6. Date to which stay of deportation or removal is requested		
Mexico	six months		
7. Reasons for requesting stay of deportation or removal			
<p>I am applying for a U Visa as a victim of violent crime. I need to stay in the United States so that I can testify against my ex-husband, [Redacted] (A07 [Redacted]), in Alameda County. He is currently in jail awaiting trial and the Alameda County District Attorney has said that without my testimony, [Redacted] may not be convicted. I am also requesting this stay in the hopes that I will be allowed to stay in the U.S. until my U Visa application is approved. If it is approved, I will try to reopen my removal proceedings with the cooperation of the government immigration attorney so that I will not have to get the U Visa at a U.S. Consulate in Mexico. Please see the attached</p> <p><i>documentation of my U Visa eligibility and good moral character in support of this request.</i></p>			
8. I certify that the statements I have made in this application are true and correct to the best of my knowledge and belief.			
[Redacted Signature]	Oakland, California	10/02/2008	
(Signature)	(Location)	(Date)	
9. Signature of person preparing form, if other than applicant.			
I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have knowledge. Failure by a preparer to complete this block may result in criminal prosecution and, upon conviction, a fine or imprisonment.			
[Signature]	Andrew Taylor	10/02/2008	
(Signature)	(Printed Name)	(Date)	
APPLICANT: DO NOT WRITE BELOW THIS LINE			
Stay <input type="checkbox"/> Denied <input type="checkbox"/> Granted	_____	at	_____
	(Date)		(Place Where Granted)
By _____	_____	_____	_____
(Signature)	(Title)	(Date)	

Andrew Taylor
Attorney at Law

870 Market Street, Suite 1264
San Francisco, CA 94102

Tel. (415) 434-8474
Fax (415) 434-8473
taylor.w.andrew@gmail.com

VIA PERSONAL DELIVERY

October 3, 2008

Officer Roderick Arce
Office of Detention and Removal Operations
630 Sansome Street, Room 548
San Francisco, CA 94111

COPY

Re: REQUEST FOR STAY OF REMOVAL – FORM I-246

[REDACTED] - Victim, Alameda
AC [REDACTED]

Dear Officer Arce:

I write to request that your office stay the removal of Ms. [REDACTED], who is scheduled to depart the United States on or before October 9, 2008, due to an outstanding order of removal. Enclosed please find an Application for Stay of Removal (I-246), with fee receipt and supporting evidence. Ms. [REDACTED] requests a stay of her removal because she is applying for U Visa status, as a victim of violent crime, and she continues to assist the Alameda County District Attorney to prosecute her ex-husband, [REDACTED] (A [REDACTED]).

Despite her removal order, Ms. [REDACTED] may file for a U Visa because “an alien who is the subject of a final order of removal . . . is not precluded from filing a petition for U-1 nonimmigrant status” and if necessary, “may file a request for a stay of removal.” 8 C.F.R. § 214.14(c)(1)(ii). Prior guidance from former INS also directed that “aliens who are identified as possible victims . . . should not be removed from the United States until they have had the opportunity to avail themselves of the Victims of Trafficking and Violence Protection Act.” Michael D. Cronin, Office of Programs, Immigration and Naturalization Service, Victims of Trafficking and Violence Protection Act of 2000 Policy Memorandum #2 – “T” and “U” Nonimmigrant visas 2 (Aug. 30, 2001) (emphasis in original).

The U Visa has quickly become an effective tool for law enforcement. The Oakland Police Department describes the U Visa as “akin to a form of witness protection.” City of Oakland, Agenda Report, Declaring Support for the United States U Visa Program (Jan. 22, 2008). To be eligible for a U Visa, the applicant must be the victim of a crime of a type

specified by Congress and must assist or be willing to assist in the investigation or prosecution of the perpetrator, in addition to general questions of admissibility. I understand that the Vermont Service Center of USCIS is taking approximately six to nine months to adjudicate U visas.

Ms. Hernandez meets the requirements for a U Visa as shown by the attached arrest reports. Ms. Hernandez was the repeated victim of domestic violence at the hands of her ex-husband, who she has since divorced. Ms. Hernandez has assisted, and continues to assist, law enforcement, as the key witness in the prosecution of her ex-husband. In a letter from Deputy District Attorney for Alameda County Amanda Chavez, which I provided to your office last week, she stated that the DA's office "cannot successfully prosecute this case without the testimony of Ms. Hernandez." Susan Bowyer, of the International Institute of the Bay Area-Oakland, who is filing the U Visa for Ms. Hernandez, and I have left messages with Ms. Chavez asking her to contact your office to discuss Ms. Hernandez with you directly. We will follow up with Ms. Chavez in the hopes that she can speak with you directly.

Thus, the U Visa for Ms. Hernandez, and staying her removal, will serve to encourage other victims of violent crime in the United State unlawfully to contact law enforcement for help. Unfortunately, there likely are victims of violent crimes who do not contact law enforcement due to fears that they will be reported to the Department of Homeland Security for immigration law violations. The U Visa serves to reduce or eliminate that obstacle to effective law enforcement. For these reasons, I believe that Ms. Hernandez's status as victim of violent crime and her active and ongoing assistance to the Alameda County District Attorney merit your discretion to stay her impending removal. However, Ms. Hernandez presents other factors that also support the exercise of your discretion.

Ms. Hernandez is a person of good moral character, as evidenced by the letters of support from the Rev. George E. Crespín and Stephan Kappler of St. Joseph the Worker Church in Berkeley, Belen Pulido Martinez, interim director of Berkeley Organizing Congregations for Action, a nonprofit, faith-based organization, and Rita Kimball, Principal of Washington Communications and Technology Elementary School, who all attest to her active participation in the community. Ms. Hernandez also has strong family ties in the San Francisco Bay Area where her mother and seven siblings, who all are U.S. citizens or permanent residents, reside.

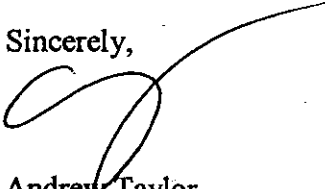
Finally, Ms. Hernandez was previously represented in immigration matters by Walter Pineda, a local immigration attorney who is widely known to have defrauded and inadequately represented many individuals in immigration matters. In fact, while representing Ms. Hernandez, her ex-husband was arrested on domestic violence charges the first time she called the police and the U Visa statute was enacted in 2000. Had Ms. Hernandez been represented by someone other than Walter Pineda, she possibly would have applied for U Visa Interim Relief before she became subject to a removal order and her ex-husband could have come to the attention of your office for his criminal actions six or seven years ago. Walter Pineda resigned from the California State Bar in 2006 with several dozen disciplinary charges pending.

Thank you for your attention to and consideration of this matter. I have attached supporting documentation roughly divided into several categories but cannot provide a detailed

Officer Roderick Arce
DHS/ICE/DRO
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table of contents at this time to assist you in your review. Although USCIS has not yet received the U visa application for Ms. [REDACTED] I respectfully request that you exercise your discretion to stay her removal. As soon as it is filed, and I believe that the International Institute is filing it today, I will forward a copy with proof of receipt to your office promptly. If you have any questions please do not hesitate to contact me at my office telephone number or on my cell phone at (415) 434-8474. Thank you again.

Sincerely,



Andrew Taylor

Encls.

cc:

[REDACTED]
Susan Bowyer, IIBA-Oakland
Jose Avila, ISAP