

U Nonimmigrant Visas for Victims of Criminal Activity

Reference Document: STATE 011736, 02/10

1. SUMMARY: 9 FAM 41.85 has been updated to provide guidance about processing nonimmigrant visas in the U category. The U visa classification is available to qualified alien victims of designated criminal activities who assist with the investigation or prosecution of the qualifying criminal activities. Individuals self-petition USCIS directly, and U nonimmigrant status is granted by USCIS through an approved petition. Both U visa principal and derivative petitioners, granted U status, may apply for U visas in consular sections overseas. An individual may be both the petitioner and the applicant, because individuals may self-petition for U nonimmigrant status, as well as apply for a U nonimmigrant visa. In addition, consular officers at posts without a DHS presence may be approached to collect biometric information for security checks performed by DHS prior to petition approval. END SUMMARY.

2. The U nonimmigrant visa classification is for qualified alien victims of certain criminal activities who assist a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority with responsibility for the investigation or prosecution of the qualifying criminal activities. Qualifying aliens physically present in the United States, as well as aliens petitioning from overseas, are granted U nonimmigrant status by USCIS. If the qualifying alien is overseas, the alien needs a U nonimmigrant visa in order to enter the United States. U visas are a petition-based classification. U nonimmigrant visa petitions are filed using Form I-918 (principals) and Form I-929 (derivatives seeking U nonimmigrant status). Aliens petitioning for U nonimmigrant status either in the United States or from overseas must provide certification to USCIS from a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority with responsibility for the investigation or prosecution of the qualifying criminal activities, demonstrating that the petitioner "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the qualifying criminal activity. This certification is only provided to USCIS and is required as part of the petition. Consular officers are not required to evaluate whether a petitioner is helpful in a law enforcement investigation or prosecution.

3. Although aliens may not file a Form I-918 or I-929 with a consular officer, there are five instances in which a U nonimmigrant visa applicant or a petitioner for U nonimmigrant status may require processing in a consular section overseas: 1) principal aliens abroad, who were accorded U nonimmigrant status by USCIS, applying for U nonimmigrant visas; 2) principal aliens accorded U nonimmigrant status in the United States who traveled abroad, applying for U nonimmigrant visas; 3) derivative aliens abroad, who were accorded U nonimmigrant status by DHS, applying for U nonimmigrant visas; 4) derivative aliens accorded U nonimmigrant status in the United States who traveled abroad, applying for U nonimmigrant visas; and 5) biometric collection, fingerprints, for principal and derivative aliens pending USCIS petition approval.

4. U nonimmigrant visa applicants should have an approved petition that is verifiable in the Petition Information Management System (PIMS). U visa applicants are required to pay the MRV fee and any applicable reciprocity fees. U visas will be issued for multiple entries, valid for four years, until the petition expiration date, or based on reciprocity, whichever is less.

5. Aliens who were accorded U nonimmigrant status in the United States by USCIS are not required to obtain advance parole before traveling outside of the United States. In order to return to the United States in U nonimmigrant status, such aliens must obtain a U nonimmigrant visa. Aliens who were accorded U nonimmigrant status in the United States will have an I-918, I-929, I-797, or CLAIMS printout entered into PIMS and present Form I-94, "Arrival-Departure Record" indicating valid U nonimmigrant status. Only the I-918 and I-929 will be entered into PIMS. These documents constitute evidence that these applicants have been granted U nonimmigrant status.

6. An alien who has petitioned for or has been granted U-1 nonimmigrant status (principal alien) may petition for certain qualifying family members, including a spouse (U-2) and children (U-3). U-1 nonimmigrants who are under 21 years of age may petition for the parents (U-4) and unmarried siblings under the age of 18 (U-5). These derivative aliens can accompany or follow to join the principal alien if otherwise admissible to the United States.

7. All petitioners for U nonimmigrant status, both principal and derivative, aged fourteen and over, who apply from overseas receive a Notice of Action instructing them to report to the nearest overseas USCIS office, U.S. Consulate, or U.S. military installation in order to have fingerprints taken for the FBI criminal record check. USCIS cannot adjudicate any U visa petition from abroad without first receiving the petitioner's biometric information. At overseas posts with no DHS presence that offers counter service (see 9 FAM Appendix N, 102), consular sections should take the fingerprints with ink and card. The consular officer shall not create a "dummy" case in the NIV system to transmit the fingerprints. Until CA develops a stand-alone system to take biometric fingerprints and submit them to DHS, the consular officer shall take the fingerprints with ink and card. There is no charge for the ink and card service. If there is a DHS presence at a post that offers counter service, the petitioner should be directed to that office for service. (Redacted)

The procedures for taking ink fingerprints are described in 9 FAM Appendix N, 102 and will be updated with the information in this cable. Once the prints have been taken, the card should be forwarded to the USCIS Vermont Service Center/Attn: VAWA Unit for processing. USCIS will then continue with adjudication of the petition.

8. Waivers of ineligibility for U nonimmigrant visa applicants are not processed through the Admissibility Review Office (ARO). Applicants for U nonimmigrant visas who are ineligible under Section 212(a) of the INA file Form I-192 directly with USCIS Vermont Service Center. If the I-192 is approved, the consular officer should issue the visa for the duration stated on the approval.

9. Please refer to 9 FAM 41.85, <http://arpsdir.a.state.gov/fam/09fam/0941085N.html>, for more detailed guidance and forward further questions on U nonimmigrant visa processing to [redacted] CA/VO/F/P.
