

July 7, 2009

U.S. Department of State
United States Embassy, Mexico City
Visa Services
Paseo de la Reforma 305
Col. Cuauhtemoc
06500 Mexico, D.F.

**Re: [REDACTED] (A# [REDACTED] [REDACTED] [REDACTED]), Approved U-1
Nonimmigrant Status Holder**

Dear Sir or Madam:

This office represents [REDACTED] [REDACTED] [REDACTED] (“[REDACTED]”) (A# [REDACTED] [REDACTED] [REDACTED]), whose application for U nonimmigrant status pursuant to INA § 101(a)(15)(U) was approved by the Department of Homeland Security (DHS), Citizenship and Immigration Services (CIS) on June 9, 2009 (EAC-[REDACTED]-[REDACTED]-[REDACTED]). This letter explains [REDACTED]’s eligibility for entry to the United States. It includes an explanation of U nonimmigrant status (also known as the “U visa”), DHS’s decision to waive certain grounds of inadmissibility with respect to [REDACTED], and recent guidance issued by DHS regarding U nonimmigrant status holders abroad.

I. [REDACTED] Has Had U Nonimmigrant Status Since June 9, 2009, Which Was Granted by CIS Because She Was a Victim of Domestic Violence and Was Helpful to Law Enforcement in the United States.

[REDACTED] currently holds U-1 nonimmigrant status, which is a form of discretionary humanitarian relief available to certain immigrant crime victims.

In 2000, Congress created U nonimmigrant status through the Battered Immigrant Women Protection Act, noting at the time that “[p]roviding temporary legal status to aliens who have been severely victimized by criminal activity . . . comports with the humanitarian interests of the United States.” *See* 106 P.L. 386 §1513(a)(2)(B), 114 Stat. 1464 (Oct. 28, 2000). U nonimmigrant status is available to persons who (1) are victims of certain criminal activity, including *inter alia* domestic violence, (2) have suffered substantial physical or mental abuse as a result of the criminal activity, (3) were helpful, are being helpful, or are likely to be helpful to Federal, State or local law enforcement officials in the investigation or prosecution of criminal activity that occurred in the United States and violated United States laws, and (4) are admissible to the United States. *See* INA §§ 101(a)(15)(U); 212(d)(14).

DHS promulgated regulations governing the implementation of the U visa less than two years ago, in September 2007. *See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014 (Sept. 17, 2007); and 8 C.F.R. § 214.14(b). CIS adjudicates applications for U nonimmigrant status, prepared on the Form I-918, through the Violence Against Women Act (VAWA) Unit of the Vermont Service Center (VSC).

On June 10, 2008, █████ applied for U nonimmigrant status based on extensive physical and mental abuse she suffered at the hands of her ex-boyfriend, █████ █████, and the extraordinary assistance she provided to law enforcement officials who investigated and prosecuted █████. The underlying incident involved an episode of violence so severe that █████ was hospitalized for three days. █████ reported the incident to the San Jose Police Department, and testified against █████ in the Superior Court of California, San Mateo County, where he was prosecuted for numerous violations of the California Penal Code relating to felony assault, domestic violence, and criminal threats. As a result of █████'s helpfulness, the perpetrator was convicted and sentenced to one year in the county jail, one year of domestic violence counseling, one year of child abuse counseling, and four years of supervised probation. As part of █████'s application for U nonimmigrant status, Deputy District Attorney Karen Guidotti from the San Mateo County District Attorney's Office certified █████'s helpfulness in the criminal investigation and prosecution. *See* Petition for U Nonimmigrant Status on Form I-918 and supporting exhibits (attached).

On June 9, 2009, CIS approved █████'s application for U nonimmigrant status, which is valid until June 8, 2013. *See* Approval Notice and I-94 of █████ █████ █████ █████ (attached). She also has a current Employment Authorization Document, valid until June 8, 2013. If █████ is permitted to enter the United States, she will be eligible to adjust her status to that of a lawful permanent resident in June 2012. *See* INA § 245(m)(1)(A). However, she must enter the United States on or before September 7, 2009 in order to satisfy the statutory requirement that she maintain continuous physical presence prior to applying for adjustment of status. *See* INA §§ 245(m)(1)(A); 245(m)(2).

When █████ filed her application for U nonimmigrant status, she was living in Northern California with her two children, █████ and █████, who are United States citizens. However, in approximately September 2008, due to financial desperation and because she did not wish to violate the laws of the United States by working without authorization, █████ left the United States and returned to Mexico. She now seeks to return to the United States and undergo consular processing prior to her return.

II. █████ Has Received a Waiver of Certain Grounds of Inadmissibility That May Affect Her Ability to Enter the United States

█████ is admissible to the United States because DHS has waived the grounds of inadmissibility that may affect her ability to enter the United States.

When Congress created the U visa, it enacted a waiver specifically for persons eligible for U nonimmigrant status who might otherwise be inadmissible. *See* INA § 212(d)(14); 8 C.F.R. § 212.17. Under this broad waiver, “the Secretary of Homeland Security has the discretion to waive *any* ground of inadmissibility with respect to applicants for U nonimmigrant status, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53021 (Sept. 17, 2007) (emphasis added). Accordingly, almost all grounds of inadmissibility may be waived “if the Attorney General considers it to be in the public or national interest to do so.” INA § 212(d)(14).

On June 10, 2008, ██████ filed an application for a waiver under INA § 212(d)(14) on the Form I-192, Application for Advance Permission to Enter as Nonimmigrant. In the declaration attached to her waiver application, she disclosed facts that could give rise to the conclusion that she triggered the following grounds of inadmissibility under the Act:

- 212(a)(6)(A)(i) (present without admission or parole);
- 212(a)(6)(C) (misrepresentation);
- 212(a)(9)(A)(i) (seeking admission within 5 years after removal under section 235(b)(1));
- 212(a)(9)(B)(i)(II) (seeking admission after accruing one year of unlawful presence);
- 212(a)(9)(C)(i) (entry after either accruing one year of unlawful presence or being removed).

In filing the Form I-192, ██████ sought a waiver of all of the above grounds of inadmissibility on the basis of her extraordinary family and community ties to the United States, which included testifying in the prosecution of her abuser and contributing hundreds of hours of community service to her U.S. citizen children’s school. *See* Declaration of ██████ ██████ in Support of Application on Form I-192 (attached).

On June 9, 2009, CIS granted ██████ application for a waiver on the Form I-192. *See* Approval Notice for I-192 ██████ (attached). Accordingly, the approval of the Form I-192 by CIS waived each of the grounds of inadmissibility listed above.¹ She is therefore admissible to the United States.

¹ The application for a waiver on the Form I-192 was filed while ██████ was still physically present in the United States. Nonetheless, because her application on the Form I-192 included a request for a waiver of INA § 212(a)(9), the grant of the Form I-192 waived the unlawful presence grounds of inadmissibility with respect to ██████ most recent departure from the United States, which occurred in September 2008. In an abundance of caution, we intend to file a second waiver application on the Form I-192 with the Vermont Service Center, in the event that the DHS deems it necessary for ██████ to receive a subsequent waiver for any grounds of inadmissibility triggered by her recent departure from the country.

III. The United States Embassy, Mexico City, Should Grant Rosa a Single-Entry Visa

It is our understanding that DHS and the Department of State are currently developing protocols to permit the entry of approved U nonimmigrant status holders abroad to the United States. On June 30, 2009, CIS held a national stakeholders meeting at which it provided the following draft guidance, which indicated that U nonimmigrant status holders should be permitted to enter from abroad:

U nonimmigrants are not required to file a Form I-131, Application for Travel Document. However, when a U nonimmigrant departs the U.S., he or she must undergo consular processing prior to return. . . We understand that DOS will issue a U visa for a single entry with one month validity upon verification of approval of the visa petition. USCIS will continue to work with the Department of State (DOS) to address this issue.

Draft Questions and Answers, Filing T, U and VAWA Petitions with USCIS at 6 (June 30, 2009) (attached). Accordingly, consular processing is the appropriate mechanism for [REDACTED] to seek admission to the United States. We respectfully request that the Department of State issue [REDACTED] a single entry visa with one month validity so that she can return to the United States with her two U.S. citizen children.

Should you have any questions, please do not hesitate to contact me at (650) 724-6345. Thank you in advance for your consideration.

Sincerely,

Jennifer Lee Koh, Esq.
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