

The U Visa: A Potential Immigration Remedy for Immigrant Workers Facing Labor Abuse

What is a U visa?

A “U visa” is a temporary non-immigrant status available to non-citizen victims of certain crimes. Congress created the U visa as part of the Victims of Trafficking and Violence Prevention Act of 2000, in order to strengthen the ability of law enforcement agencies to investigate and prosecute certain crimes against immigrants and to offer protection to victims who fear cooperating with law enforcement due to their immigration status.

What Are the Benefits of a U visa?

U visa holders are eligible for the following benefits:

- Lawful status for up to 4 years;
- Eligibility to adjust status to lawful permanent resident after 3 years;
- Automatic grant of work authorization;
- Derivative visas for qualifying family members.

What are the eligibility requirements for a U visa?

In order to be eligible for a U visa, an immigrant worker must:

- 1) Have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity;
- 2) Possess information concerning the qualifying criminal activity;
- 3) Have been helpful, be helpful, or be likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity;¹
- 4) Show that the qualifying criminal activity violated a local, state, or federal law, or have occurred in the United States.²

What constitutes a qualifying criminal activity?

U visa regulations identify 26 categories of qualifying criminal activity (QCAs) and any other substantially similar criminal activity as eligible for certification.³ Advocates should identify violations of local, state, or federal statutes that may correspond to the qualifying criminal activity when seeking certification. Law enforcement agencies may also certify U visa petitions for attempt, conspiracy, or solicitation of the qualifying criminal activity.

¹ 8 C.F.R. § 214.14(a)(5) defines “investigation or prosecution” of a qualifying crime or criminal activity as referring to “the *detection* or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” *Id.* (emphasis added); see also 8 C.F.R. § 214.14(c)(2)(i).

² 8 C.F.R. § 214.14(b)(4).

³ 8 C.F.R. § 214.14(a)(9).

Qualifying crimes that constitute criminal activity include:

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|---------------------------|------------------------|-----------------------------|
| Abduction | Incest | Rape |
| Abusive sexual contact | Involuntary servitude | Sexual assault |
| Being held hostage | Kidnapping | Sexual exploitation |
| Blackmail | Manslaughter | Slave trade |
| Domestic violence | Murder | Torture |
| Extortion | Obstruction of justice | Trafficking |
| False imprisonment | Peonage | Unlawful criminal restraint |
| Felonious assault | Perjury | Witness tampering |
| Female genital mutilation | Prostitution | |

What are some examples of worker abuse that may constitute qualifying criminal activity?

Below is a list of qualifying criminal activity and corresponding fact patterns that have received certification. Please note that statutory requirements and elements of offenses may vary by jurisdiction.

Felonious Assault

- Abusive touching, battery, beating, or use of a weapon by employer resulting in substantial mental or physical harm.

Involuntary Servitude/Peonage/Labor Trafficking

- Threats of physical, psychological, financial or reputational restraint or harm by employer that compels an individual to continue work;
- Threats to contact local law enforcement or immigration authorities by employer in order to compel continued work;
- Confiscation or withholding of identity documents, passports, or other travel documents by employer;
- Supporting facts could include: wage theft; inadequate food, housing, medical care or clothing; lengthy hours; verbal or physical abuse; restricted contact with others; use of locks and fences to restrict workers' mobility (see also false imprisonment/unlawful criminal restraint).⁴

Obstruction of Justice/Perjury/Witness Tampering

- Evidence of visa fraud, false statements in seeking certification for labor, misuse of visas by employer; fraudulent wage and hour records;
- Instructions to lie to law enforcement investigations by employer;
- Intimidation of workers who seek to comply with law enforcement investigations or affirmative complaints against an employer, including threats to contact local law enforcement or immigration authorities.⁵

Abusive Sexual Contact/Rape/Sexual Assault/Sexual exploitation

- Unwelcome sexual contact, rape, assault, or exploitation by co-workers, employers, or clients.

⁴ Involuntary servitude includes a condition of servitude induced by any scheme "intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; . . . or the abuse or threatened abuse of the legal process." 22 U.S.C. § 7102(5). See also 18 U.S.C. §§ 1589(c)(1)-(2) (definition of serious harm and abuse of the law or legal process).

⁵ 8 C.F.R. § 214.14(a)(14)(ii) specifies that a petitioner may be considered a victim of the crimes of witness tampering, obstruction of justice, or perjury if s/he has been directly and proximately harmed by the perpetrator, and if there are reasonable grounds to conclude that the perpetrator committed the crime as a means to avoid or frustrate investigation or prosecution for other criminal activity, or to further abuse, undue control, or exploitation through manipulation of the legal system.

What government agencies have the authority to certify a U Visa petition?

Federal, state, or local law enforcement agencies, prosecutors, and judges may certify a U visa petition. U visa regulations specify that agencies such as the Equal Employment Opportunity Commission and the Department of Labor, which have criminal investigative jurisdiction in their respective areas of expertise, are valid certifying agencies.⁶ Federal judges have also certified U visa petitions in the context of labor abuse.⁷

Several labor enforcement agencies have released certification protocol for U visas. These agencies include the U.S. Department of Labor (US DOL), the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), as well as the New York Department of Labor (NY DOL), and the California Department of Fair Housing and Employment (CA DFEH). Other agencies, such as the California Division of Labor Standards Enforcement (CA DLSE), have indicated plans to issue certification protocol. In addition, local, state, and federal law enforcement agencies, prosecutors, and judges have certified U visa petitions for workplace-related crimes. Copies of agency protocols are available at <http://www.just-pay.org>.

| Certifying Labor Agency | QCAs Certified | Other Requirements | Requests for Certification |
|----------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U.S. Department of Labor | Involuntary servitude, peonage, trafficking, obstruction of justice, witness tampering | -Authority to certify is limited to Wage and Hour Division (WHD) -Considers whether QCA arises in context of employment and related allegation of violation of law enforced by DOL WHD -In-person interview of applicant required | -Request for certification, including I-918B, detailed description of facts and relevant case law/statutes should be submitted to one of five Regional U Visa Coordinators |
| U.S. Equal Employment Opportunity Commission | All QCAs specified by statute | -QCA must be related to unlawful employment discrimination investigated by EEOC; -In-person interview of applicant required | -Request for certification, including I-918B, detailed description of facts and relevant case law/statutes should be submitted to EEOC Regional Attorney |
| National Labor Relations Board | All QCAs specified by statute | -QCA must be related to an unfair labor practice under investigation by NLRB | -NLRB regional offices should contact Deputy Assistant General Counsel Peter Ohr, peter.ohr@nrlrb.gov if approached with request for certification. |

⁶ 8 C.F.R. § 214.14(a)(2).

⁷ See, e.g. *Garcia v. Audubon Cmty. Mgmt.*, No. 08-1291, 2008 WL 1774584 (E.D. La. Apr. 15, 2008).

| Certifying Labor Agency | QCAs Certified | Other Requirements | Requests for Certification |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| New York Department of Labor | All QCAs specified by statute | -NY DOL must have jurisdiction to investigate case (allegation of NY state labor law violation); -Petitioner must be a victim of a QCA | -Request for certification, including I-918B, NY DOL claim number and names of staff involved in claim, and other relevant information should be submitted to NY Labor Commissioner |
| California Department of Fair Employment and Housing | Sexual assault, sexual exploitation, abusive sexual contact, rape, trafficking, domestic violence, murder, manslaughter, abduction, extortion, torture, incest, prostitution | -DFEH must conduct an ongoing investigation into a FEHA or Ralph Act claim | -Not specified in protocol. |

How do you petition for a U visa?

In order to successfully petition for a U visa, the applicant must first obtain certification from a law enforcement agency stating that he or she is a victim and has been, is currently, or likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity. The certification form, Form I-918 Supplement B, must be signed by a supervisory agent from the certifying agency.

After obtaining certification, the applicant must then submit a complete U visa petition to U.S. Customs and Immigration Services (USCIS), which has authority to grant the U visa. The petition should include:

- Form I-918 “Petition for U Nonimmigrant Status”
- Form I-918B “U Nonimmigrant Status Certification”
- Filing Fee (\$585) and biometrics fee (\$80) or fee waiver
- Supplemental evidence: personal statement, other evidence of abuse/injury
- Copy of identity page of applicant’s passport (or request for waiver)
- Form I-192 “Application for Advance Permission to Enter as Non-Immigrant”
- Form G-28 “Notice of Entry as Appearance of Attorney or Accredited Representative”
- Form I-918A “Petition for Qualifying Family Members of U-I Recipient”

How can U visas affect immigrant worker organizing?

The successful grant of a U visa may support organizing by providing relief to immigrant leaders willing to call attention to workplace abuse, and by strengthening investigation and enforcement of labor laws. Employment authorization gained through a U visa may also provide plaintiffs with eligibility for damages in private lawsuits. However, the highly individualized nature of U visa relief may pose challenges in broader organizing contexts where all workers may not have encountered similar treatment by an abusive employer.

Legislative proposals, including the Protect Our Workers from Exploitation and Retaliation Act (POWER Act) (S 3207), introduced by Senator Robert Menendez in 2010, could provide key labor protections for immigrants who face retaliation by employers. Specifically, the POWER Act expands U visa protections to workers involved in civil workplace claims and who fear or have received threats of force, physical restraint, or harm in retaliation by employers.

Additional resources on U visas:

- To join a national **listserv dedicated to labor-related U visa advocacy**, nelp-laborexploitation@yahoogroups.com, please contact Eunice Cho at echo@nelp.org.
- The Working Hands Legal Clinic and Legal Assistance Foundation of Chicago supports immigrant workers seeking U visas in the Chicago metropolitan area. Contact Anna Lusero at alusero@lafchicago.org.
- **Relevant statutory and regulatory provisions:**
 - Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, div. A § 1513(a), 114 Stat. 1464, 1533 (2000) (detailing Congress’s findings and purpose for U visa statute);
 - New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant status; Interim Rule, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, and 299).
 - Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. § 214.14.
 - Agency certification protocol, including the U.S. DOL, EEOC, NLRB, CA DFEH, and NY DOL are located at the National Wage and Hour Clearinghouse, located at: <http://www.just-pay.org>.
- **U visa practice guides:**
 - Sameera Hafitz, et al., U Visa Certification Tool Kit for Judges and Magistrates (2010), available at: <http://iwp.legalmomentum.org/immigration/u-visa/tools>.
 - Sally Kinoshita, Susan Bowyer, and Catherine Ward-Seitz, THE U VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME (2010). To order, visit: www.ilrc.org.
 - Susana Martinez, et al., *Help for Undocumented Victims of Crime*, 44 CLEARINGHOUSE REV. 129 (2010).
 - Leticia M. Saucedo, *A New “U”: Organizing Victims and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891 (2008).
 - Suzanne B. Seltzer, et al., IMMIGRATION RELIEF FOR CRIME VICTIMS: THE U VISA MANUAL (2010), available at: <http://www.nsvrc.org>.
 - Andrew Turner, et al., *Case of First Impression: Federal Judge in Civil Case May Certify U Visa Applications of Undocumented Immigrant Human Trafficking Victims*, 43 CLEARINGHOUSE REV. 510 (2009).

For more information on U visas for victims of labor abuse, please contact:

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