

**U VISAS FOR VICTIMS OF CRIMES**  
**as of June 24, 2003**  
**by Gail Pendleton<sup>1</sup>**



This article is for those working with noncitizens who may be eligible for U visas because they are victims of crimes. It is a work in progress, as is access to the status itself. Please check the National Immigration Project website for more recent information, details on how and what to file, background information, and sample materials.

## **I. U VISA ELIGIBILITY**

The U visa is designed for noncitizen crime victims who have suffered substantial physical or mental abuse flowing from criminal activity and who have mustered the courage to cooperate with government officials investigating or prosecuting such criminal activity. The statute has a dual purpose: “strengthen[ing] the ability of law enforcement agencies to detect, investigate and prosecute cases” and “offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”<sup>2</sup> It should both help law enforcement serve immigrant communities and provide safety to undocumented victims who otherwise might be deported if they reported the perpetrators.

Victims of a broad range of criminal activity listed in the legislation may qualify for U visas. Many of these victims will be women and children and include, but are not limited to, victims of domestic violence, nannies subjected to abuse from their employers, trafficking victims, and victims of rape in the workplace.

To qualify for a U visa, a noncitizen must:

\* Show that she has suffered “substantial physical or mental abuse”<sup>3</sup> as the result of one of the following forms of criminal activity (or “similar” activity):

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;<sup>4</sup>

\* Show that she possesses information concerning the criminal activity;<sup>5</sup>

*and*

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<sup>2</sup> *Id.*

<sup>3</sup> Immigration and Nationality Act (INA) §101(a)(15)(U)(i)(I).

<sup>4</sup> INA §101(a)(15)(U)(iii).

<sup>5</sup> INA §101(a)(15)(U)(i)(II).

\* Provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating criminal activity designated in the statute that states that the U visa applicant is being, has been or is likely to be helpful to the investigation or prosecution of designated criminal activity.<sup>6</sup>

#### A. Children of Principal Applicants

Spouses, children, and parents, if the applicant is a child, of principal applicants mentioned in §101(a)(15)(U)(ii) are not derivatives as that term is generally used. They are, instead, individual self-petitioners facing a slightly higher standard for approval. A designated government official must certify that an investigation or prosecution would be harmed without the assistance of the qualifying relative, and the Department of Homeland Security (DHS) must determine that the qualifying relative would suffer extreme hardship if he or she does not receive a U visa.<sup>7</sup>

#### B. Adjustment of Status to Lawful Permanent Residence

The U visa provision creates a special avenue of adjustment for those approved: INA §245(l).<sup>8</sup> Applicants for adjustment under the U visa provision must show that:

- \* They were admitted “or otherwise [were] provided nonimmigrant status” under §101(a)(15)(U);
- \* They are not “described in” §212(a)(3)(E), *i.e.*, they neither participated in Nazi persecution nor engaged in genocide;
- \* They have been physically present in the United States for at least three years since receiving their U visas; and
- \* Humanitarian grounds, family unity, or the public interest justify their continued presence in the United States.<sup>9</sup>

Absences greater than 90 days or an aggregate of 180 days will not terminate continuous presence if (a) “the absence is in order to assist in the investigation or prosecution” or (b) an official involved in the investigation or prosecution certifies that it is “otherwise justified.”<sup>10</sup> Other than failure to meet the criteria above, the only ground for denying adjustment to a U visa holder is that the applicant “unreasonably refused to provide assistance” to a criminal investigation or prosecution.<sup>11</sup>

<sup>6</sup> INA §101(a)(15)(U)(i)(III) & INA §214(o)(1).

<sup>7</sup> INA §101(a)(15)(U)(ii), added by VTVPA §1513(b).

<sup>8</sup> VTVPA §1513(f).

<sup>9</sup> INA §245(l)(1), added by VPVPA §1513(f).

<sup>10</sup> INA §245(l)(2), added by VPVPA §1513(f).

<sup>11</sup> INA §245(l)(1), added by VPVPA §1513(f).

### C. Inadmissibility

The Trafficking Act provides a generous waiver for all grounds of inadmissibility, with the sole exception of the nazi and genocide grounds pursuant to §212(a)(3)(E).<sup>12</sup>

Inadmissibility for all other grounds may be waived in the “public or national interest.” It appears that no other grounds of inadmissibility should apply to “U” visa holders upon application for adjustment of status.<sup>13</sup>

## II. INTERIM RELIEF

In the absence of regulations, DHS decided to allow noncitizens eligible for U visas to obtain “interim relief.” This comes in the form of “deferred action” which, in turn, allows for work authorization. The Vermont Service Center VAWA unit (VSC) currently decides whether applicants merit “interim relief” and, we believe, will ultimately adjudicate U visa applications, as it does T visas. Advocates pressed hard for this assignment because of our positive experience with the VAWA unit at the Vermont Service Center.

Two DHS memos guide VSC and other parts of the agency in their treatment of noncitizens eligible for U interim relief. The first one, dated October 6, 2003, assigns to the special VAWA unit the tasks of deciding all requests for interim relief.<sup>14</sup> Since it did not address what happens to noncitizens who are in immigration proceedings, on May 6, 2004, it issued another memo establishing the process to follow for these noncitizens eligible for interim relief.<sup>15</sup>

### A. *Interim Relief Packet*

The best way to show a noncitizen is eligible for the interim relief is to prepare a brief packet to submit to VSC. The most important document you must obtain is the “certificate” or letter from a federal, state or local law enforcement officer (including DHS), prosecutor, judge or agency charged with investigating or prosecuting the crimes listed at 101(a)(15)(U)(iii). Use the sample certificate on the National Immigration Project website, or something similar that contains the information in the certificate. In addition, the packet should include a one-page cover letter describing why the noncitizen meets the basic requirements for the U visa:

\* What is the criminal activity that victimized the applicant and did it take place in the United States or violate the laws of the United States? The following forms of criminal activity (or “similar” activity) are covered by the U visa:

<sup>12</sup> INA §212(d)(13). added by VTVPA §1513(e).

<sup>13</sup> INA §245(l) as amended by VTVPA, § 1513(f).

<sup>14</sup> Yates, Associate Director of Operations, Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003).

<sup>15</sup> Yates, Associate Director of Operations, Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings, HQOPRD (May 6, 2004).

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;<sup>16</sup>

\* Has the applicant suffered “substantial physical or mental abuse” resulting from the criminal activity?

\* Does the applicant possess information concerning the criminal activity?

\* Does the applicant have a certificate or other affirmation by a designated official that she “has been helpful, is being helpful, or is likely to be helpful” to an investigation or prosecution of the criminal activity?

Read the Centralization memo carefully; note that, although it says adjudicators should use a “liberal” standard in determining “substantial physical or mental abuse” you should provide some supporting documentation for this requirement. The applicant’s own affidavit will be key; an affidavit from you or another person who has worked with the survivor will also be very helpful.

### **Your Affidavit**

Your affidavit should do several things.

\* Explain your background in sexual assault (or in counseling victims of crime or trauma);

\* Recount what the applicant told you she experienced;

\* Say why you believe this is credible, in your experience as an expert on sexual assault (or other trauma);

\* Explain how the consequences of this experience for your client. Do not just say “she suffered substantial physical or mental abuse.” Instead, explain how traumatic the experience was for her, why the experience itself was traumatic (abusive), and why it had a “significant” impact on her.

### **Start Now**

Even if your client is afraid of applying for interim relief Strike while the iron is hot. Get certificates *now* for anyone who is being or was helpful or who is interacting now with the criminal justice system in a helpful way. Similarly, start corroborating *now* the mental and physical abuse suffered by the applicant and the information she possesses that concerns the criminal activity. Corroboration by a counselor or other expert may be extremely helpful. Corroborating affidavits or declarations should recount in detail the mental and physical abuse the victim suffered and explain why this is credible from the viewpoint of someone who interviews hundreds of victims. Even if your client decides not to file for interim relief, the process of evaluating eligibility and marshalling documentation will help ensure she ultimately receives a visa.

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<sup>16</sup> INA §101(a)(15)(U)(iii).

### III. NETWORKING, TRAINING MATERIALS AND UPDATES

In addition to providing training to a wide variety of advocates, attorneys and system personnel, the we work closely with the DHS personnel charged with implementing relief for noncitizen survivors of sexual assault, domestic violence, trafficking and other crimes. Please contact us for more information.<sup>17</sup>

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<sup>17</sup> To reach Gail iPendleton, send an email to [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org). Sally Kinoshita works closely with Gail to monitor and ensure the law is implemented the way Congress intended. To reach her, send email to [sally@nationalimmigrationproject.org](mailto:sally@nationalimmigrationproject.org).