



Immigration-defense law: U nonimmigrant status

COULD YOUR CLIENT BE ELIGIBLE? WHAT IT IS AND HOW TO APPLY

As an immigration-defense practitioner, on a daily basis I consult with non-U.S. citizens who seek to legalize their status in the United States. One of the most challenging parts of my job is informing individuals that they do not qualify for immigration relief – perhaps they have a prior removal order, criminal history, or there is simply no avenue for relief under our complex and harsh immigration laws. However, at the conclusion of every consultation I always ask a very important question: Have you ever been a victim of a crime? For some, this may offer a glimmer of hope – a U nonimmigrant status visa (“U visa”).

So, what exactly is a U visa? The U visa is set aside for victims of certain crimes who have suffered mental or physical abuse and who are or were helpful to law enforcement or government officials in the investigation or prosecution of the criminal activity. Congress created the U visa in 2000, with the passage of the Victims of Trafficking and Violence Protection Act. It was intended to strengthen the ability of law enforcement agencies to investigate crimes while also protecting victims who are willing to cooperate with the investigation and/or prosecution of the criminal activity.

When a U visa is granted, the applicant is granted deferred action status and issued a work permit for a period of four years. Deferred action status protects the individual against deportation and allows them to lawfully work in the U.S. After an individual has been in deferred action status for a period of three years, they may be eligible to apply for lawful permanent-resident status. Moreover, the U visa also allows for derivative visas for qualifying family members.

Eligibility

The first step in assessing whether a potential client is U visa eligible is to inquire whether they have been a victim of a crime and, if so, whether they reported the crime to law enforcement and cooperated during the investigation of the crime. If the individual was a victim of a crime but failed to report it to the authorities, they are not eligible to apply for a U visa.

The U visa application requires law enforcement (or another certifying agency) to complete paperwork certifying the applicant was a victim of the crime and was helpful in the investigation of the criminal activity or in the prosecution of the crime. Unfortunately, I often interview potential clients who have been victims of crimes but who did not report the criminal activity, often because they feared they themselves would face legal repercussions due to their unlawful status in the country.

If your potential client asserts they were a victim of a crime and they did report the activity to the authorities, the next issue is ascertaining what the crime(s) were.

To qualify for the U visa, the criminal activity must be one of the following:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

It is important to note that an individual may be eligible to apply for a U visa even if they were an indirect victim to one of the qualifying crimes. For example, an individual may be eligible to apply if their spouse or minor children were the direct victims of a crime, even when the direct victim has lawful status in the United States.

The “waiver of inadmissibility”

The benefit of being eligible to apply for a U visa is that an applicant can concurrently file a “waiver of inadmissibility.” The waiver application is needed to excuse any potential inadmissibility issues, such as entry without inspection, overstaying a visa, prior deportation orders, past criminal convictions, and more. This is crucial, as many individuals who are ineligible to legalize their immigration status because of their past immigration or criminal history *do* have the opportunity to seek a U visa and have their inadmissibility issues waived. Note there is a \$930-fee for the waiver application.

The application process

So, how does one go about applying for a U visa? The first step is obtaining the U visa certification from the proper

authority. The certification form is a five-page document that must be completed and signed by the law enforcement agency, prosecutor, or a judge or the Department of Child and Family Services. The certifying agency depends on the crime in question.

Keep in mind that without the certification, an individual is ineligible to apply for the U visa. In some instances, the certifying official may decline to certify a request if they determine the individual was unwilling to cooperate in the investigation of the crime.

The certification form is only valid for six months. This means the application must be received by the United States Citizenship and Immigration Services (USCIS) within the six months after the certification was signed.

Aside from the certification form, the applicant will also need to prepare their U visa application form, the waiver form, and all supporting documentation they wish to be considered in support of their application.

The U visa application form is an 11-page document that must be completed and signed by the applicant. The applicant must include evidence they suffered substantial physical or mental abuse, evidence they possess information concerning the criminal activity and that the crime violated

United States law or occurred in the United States. Evidence of being helpful or having helped in the investigation or prosecution of the crime, and a personal statement is also required. These requirements can be met with the submission of copies of police reports, court minute orders, witness letters, medical records, etc.

The applicant can also include qualifying relatives in their application – this includes spouses, unmarried children under age 21, parents of applicants who are under age 21, and unmarried siblings under age 18. A separate application must be completed for each qualifying relative as well. It is important to note that a qualifying relative may be included in the U visa application even if they are not currently residing in the United States.

Finally, do not overlook the *waiver of inadmissibility* application. While there is no fee for the U visa application, there is a \$930-fee for the waiver application. However, a fee waiver is available for those who qualify. Applicants who file a fee-waiver application must also submit supporting documents to demonstrate why a favorable adjudication of their waiver of admissibility is warranted. This can include a personal declaration, evidence of strong family ties to the U.S., evidence of

rehabilitation, letters of support, etc. A waiver application must be submitted for each qualifying family member if applicable.

The completed applications are submitted to USCIS for adjudication. Unfortunately, the processing timeframe for adjudication is extremely long. At the time of the writing of this article, USCIS reports a 61.5-month processing timeframe – *over* five years! Last year, USCIS announced it would exercise its statutory authority to grant work permits to applicants with a pending *bona fide* petition for U nonimmigrant status. This is good news to U visa applicants while they wait for final adjudication of their case.

Victims of crimes are so often neglected, but a U visa presents an opportunity for redemption. Practitioners should always screen their clients for U visa eligibility so that both direct and indirect victims may obtain legal status in the United States.

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