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Fact Sheet

USCIS PUBLISHES RULE FOR NONIMMIGRANT VICTIMS OF CRIMINAL ACTIVITY

U.S. Citizenship and Immigration Services is publishing an interim final rule that grants immigrant benefits to certain victims of crimes who will assist government and law enforcement officials in investigating or prosecuting the criminal activity.

“U” Nonimmigrant Status is set aside for victims of crimes who have suffered mental or physical abuse because of the crime and who not only have information regarding the activity, but also are willing to assist government officials in the investigation of the criminal activity. USCIS can grant up to 10,000 U-visas each year authorizing the holder to remain in the United States for up to four years.

BACKGROUND

Congress created the “U” nonimmigrant classification with passage of the *Victims of Trafficking and Violence Protection Act* (including the Battered Immigrant Women’s Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, offering protection to victims of such crimes. The legislation also helps law enforcement agencies to better serve immigrant crime victims.

QUESTIONS AND ANSWERS:

Q: How does one become eligible for U nonimmigrant status?

A: There are four statutory eligibility requirements: (1) the individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; (2) he/she has information concerning that criminal activity; (3) he/she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and (4) the criminal activity must have violated the laws of the United States or occurred in the U.S.

Q: What qualifies as a “criminal activity?”

A: Qualifying criminal activity is defined by statute as that being an activity involving one or more of a long list of activities that violate Federal, State, or local criminal law – from murder, rape, torture, sexual exploitation, and extortion to witness tampering, obstruction of justice, false imprisonment, etc. This is not an exclusive list – in fact, the list of qualifying crimes represents the myriad types of behavior that can constitute domestic violence, sexual abuse, trafficking, or other crimes which vulnerable immigrants are often targeted.

Q: What are the procedures to request U Nonimmigrant status?

A: Alien victims of crime must file a Petition for U Nonimmigrant Status (Form I-918). The form requests information regarding the petitioner's eligibility for such status, as well as admissibility to the United States. Currently, USCIS has designated its Vermont Service Center as the centralized location to receive all U Nonimmigrant petitions. Such centralization will allow USCIS officials to develop expertise in handling U nonimmigrant petitions.

Q: So, you're saying that any alien can say they're a victim of a crime and apply for this special status?

A. Not quite. The petition for U nonimmigrant status must be filed by the alien victim and also contain a certification of helpfulness from a certifying agency. That means the victim must provide a U Nonimmigrant Status Certification (Form I-918, Supplement B) from a federal, state, or local law enforcement official that demonstrates the petitioner "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity. Further, either the head of the agency or a supervisor designated with the authority to issue certifications on behalf of the agency must sign the certification.

Q: What qualifies as a "certifying agency"?

A. Certifying agencies include federal, state, or local law enforcement agencies, or a prosecutor, judge, or other authority that has responsibility for the investigation or prosecution of the criminal activity. The rule also includes other agencies such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor, since they have criminal investigative jurisdiction within their respective areas of expertise.

Q: What makes this any different from the other nonimmigrant classifications, such as T immigrant?

A. Other nonimmigrant classifications such as "T," require an alien's physical presence in the United States as a condition of eligibility. USCIS has determined that the statutory framework for U nonimmigrant status permits alien victims of qualifying criminal activity to apply for such status from inside or outside the U.S.

Q: Can family members of the petitioner apply for U Nonimmigrant status?

A. While family members who accompany the petitioner can, under certain circumstances, obtain U nonimmigrant status, they cannot apply on their own behalf. The principal petitioner (alien victim) must petition on behalf of qualifying family members. If the principal petitioner is less than 21 years of age, qualifying family members include the principal's spouse, children, unmarried siblings under 18, and parents. If the principal is 21 or older, qualifying members include the spouse and children of the principal. In order for a family member to obtain U nonimmigrant status, they must (1) be a qualifying family member (as described above), and (2) must be admissible to the U.S.

The principal petitioner can file Form I-918, Supplement A, on behalf of their qualifying family members.

Q: Is there a cap on the number of U Nonimmigrant Status grants the agency can approve?

A: USCIS may grant not more than 10,000 principal aliens U nonimmigrant status in any given fiscal year (October 1 through September 30). This limitation, however, does not apply to spouses, children,

parents, and unmarried siblings who are accompanying or following to join the principal alien victim.

If the cap is reached in any fiscal year before all petitions are adjudicated, USCIS will create a waiting list that the agency believes will provide a stable mechanism by which victims cooperating with law enforcement agencies can stabilize their immigration status. Further, petitioners assigned to the waiting list, will be given deferred action – that is, they will be eligible to apply for employment authorization or travel – until their petitions can be adjudicated after the start of the following fiscal year.

Q: How long can one maintain the U nonimmigrant classification?

A: U nonimmigrant status cannot exceed four years; however, extensions are permitted upon certification from a certifying agency that the alien's presence in the United States is required to assist in the investigation or prosecution of a qualifying criminal activity.

Q: Can an individual who has held U nonimmigrant status, eventually apply for permanent resident status?

A: Yes. The individual must have been physically present in the U.S. for a continuous period of at least three years since the date of admission as a U nonimmigrant, and the agency must determine that the individual's continued presence in the country is justified on humanitarian grounds to ensure continuation of a cohesive family, or is otherwise in the best interest of the public.

Q: Is there a deadline for submitting U nonimmigrant status petitions?

A: No; however, USCIS encourages petitioners who have already been granted interim relief (see next answer for 'interim relief' explanation) to file Form I-918 within six months of the effective date of this rule. Quite simply, after this rule's effective date, the interim relief process will no longer be in effect – the agency will not consider initial requests for interim relief. But, if a petitioner has properly filed a Form I-918, and the agency has not yet rendered a decision, interim relief will be extended until USCIS adjudicates the petition.

Q: Are there fees associated with this new classification?

A: No. This program involves the personal well being of a few applicants and petitioners and USCIS' decision to waive the petition fee reflects the humanitarian purposes of the statutes. Therefore, no fee will be charged for filing Form I-918 or for derivative U nonimmigrant status for qualifying family members. Petitioners must, however, pay the established fee for biometric services for each person ages 14-79 included with each petition. The biometric fee is currently \$80 per person. Petitioners who are financially unable to pay the biometric services fee may submit an application for a fee waiver.

Q: Absent the regulation, how many people would have received a U visa? And what is the status of those individuals?

A: We have received roughly 7,000 requests for U nonimmigrant status; of those, about 5,800 were approved. (These numbers include principal petitioners and their family members). USCIS developed a formal, centralized system for interim relief. Simply stated, eligible petitioners were granted deferred action. That action allows the petitioner to apply for work and travel authorization. And, during January 2006, the agency issued guidance stating that petitioners granted deferred action and whose petitions for U visas are ultimately approved, will have that status recorded as of the date the request for interim relief was approved. This is important should the petitioner later request to adjust to lawful permanent resident status.

Q: You're issuing an "interim final rule," but still seeking public comment. Please explain.

A. The Administrative Procedure Act (APA) allows for exceptions to the requirements for soliciting public comment before a proposed rule takes effect. USCIS believes that delaying the implementation of this rule any longer would be contrary to the public interest because further delay could expose nonimmigrant victims of criminal activity to continued danger while leaving their immigration status in limbo. Public comment, however, is important; therefore, comments received will be addressed in the final rule. Nonetheless, because USCIS is publishing this as an "interim" final rule, it will take effect 30 days after publication in the *Federal Register*.

Q: Congress passed legislation nearly six years ago. Why has USCIS delayed in issuing the regulations?

A. The U visa provisions are complex; many difficult legal and policy issues required resolution. For example, we needed to define "victim" and then give meaning to "qualifying criminal activity." Such issues led to intricate and often complicated discussions among the many agencies with which we needed to coordinate.

The administration of U visa provisions are markedly different from any other found in the immigration laws, such as the fact that the statute provides that the "qualifying criminal activity" must violate the laws of the United States or occur in the U.S. (including Indian country and military installations) or the nation's territories and possessions.

Keep in mind that the former Immigration and Naturalization Service drafted the regulations prior to the creation of the Department of Homeland Security (DHS). Once USCIS was transitioned into DHS, the draft rule was re-circulated among its newly created components.

Q. How can I formally comment on this proposal?

A. To comment on the proposed rule, please submit written comments on or before 60 days after publication in the *Federal Register* by one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529.

Please reference DHS Docket No. USCIS-2006-0069 in your correspondence. This address can be used for paper, disk, or CD-ROM submissions.

- **Hand Delivery/Courier:** Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529
Contact Phone: (202) 272-8377