

Implementing the U Visa Views of the National Network on Behalf of Battered Immigrant Women

I. U Visa Approach: Who Benefits and Why

The Violence Against Women Act 2000 (VAWA 2000) created a new nonimmigrant visa for some battered noncitizens and other crime victims not protected by the original Violence Against Women Act of 1994. 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. Congress recognizes with the U visa that it is virtually impossible for state and federal law enforcement, justice system, and government enforcement agency officials to punish and hold perpetrators of crimes against noncitizens accountable if abusers and other criminals can avoid prosecution by having their victims deported. Few crime victims are willing to assist in prosecutions without some form of immigration status that protects them from such retaliation.

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.

The law targets "criminal activity" as opposed to "crimes" because prosecutors and other criminal investigators must obtain witness help and cooperation at every stage of a criminal investigation. The law is available to those who are "helpful" regardless of whether they serve as witnesses or whether the investigation or prosecution results in a conviction. The language also encompasses situations where crime victims may be better served by remedies other than those provided by the criminal justice system. For instance, a victim of workplace rape may accomplish more through an enforcement action filed by the Equal Employment Opportunity Commission (EEOC) than through a criminal complaint filed with a local police force that routinely fails to respond to rape complaints. The U visa allows the noncitizen to help the EEOC investigation into the criminal activity without fear of deportation. The law, in turn, would give the EEOC leverage to sanction criminal activity against noncitizens that goes uninvestigated by local law enforcement.

II. U Visa Application Procedure

Ease, swiftness, and control by the victim should be the most prominent features of the process. Those applying for U visas need not be outside the United States,¹ and the Immigration and Naturalization Service (INS), as well as the Department of State (DOS),

¹ See Victims of Trafficking Act § 1513(f) (hereinafter "VTA"), creating new 245(l) ("The Attorney General may adjust the status of an alien admitted in to the United States (**or otherwise provided nonimmigrant status**). . .) (emphasis supplied).

may adjudicate U visa applications.² Although the new visa may bear some superficial similarities to S visas, one significant distinction is that the victim, not a prosecutor, is the applicant controlling the process.³ Although a government official must provide a certificate to support the application, this official does not otherwise guide or influence that application.⁴

We strongly encourage the Attorney General to designate the Vermont Service Center (VSC) VAWA unit as the place for filing all U visa applications. This unit has the most experience dealing with domestic violence issues. Its staff and supervisors are excellent, and the Network has worked with it closely over the years to ensure the original VAWA provisions were implemented as Congress intended. Unfortunately, the Network knows of numerous instances of battered women and children who experience significant difficulties and are traumatized by their encounters with other parts of the agency less familiar with the dynamics of domestic violence and the Violence Against Women Act. A single, centralized, well-trained unit must be charged with making decisions that will affect victims seeking safety through the U visa process.

We also suggest that INS add a U visa section to the new form, tentatively designated as the I-911, being developed for VAWA self-petitioners. While this form is being developed and implemented, we suggest that INS designate for immediate use as an interim form either the OF-156 nonimmigrant visa application or the I-539 nonimmigrant change of status application (or both). On the one hand, the OF-156 form is less likely to confuse and deter applicants because it doesn't assume applicants are currently in status. On the other hand, INS may be unwilling or unable to use a DOS form (although, obviously, applicants abroad could use it).

As with early VAWA self-petitions, where some of either form's questions are irrelevant, applicants may simply write N/A.⁵ Should applicants supply information not required to qualify for the visa, Vermont may ignore the information, unless it raises an inadmissibility issue (see below). As with VAWA applicants, U visa applicants who fear reprisals for filing should be allowed to supply their advocate's or attorney's address instead of their own. Finally, U visa applicants should be allowed to file an accompanying I-765 to obtain work authorization, and to note information on any derivative children, spouses or parents. Obviously, it is imperative that INS (and DOS) prepare and distribute as quickly as possible supplemental information for the forms describing how to file and which questions to answer.

III. Prima Facie Applications (pending regulations)

² See, e.g., VTA § 1513(c), creating new INA § 214(o)(4) ("In acting on any petition filed under this subsection, the consular office **or the Attorney General, as appropriate.** . .") (emphasis supplied).

³ New INA § 214(o)(1) ("The petition **filed by an alien** under section 101(a)(15)(U)(i) **shall contain a certification** from [a list of qualifying officials]. . .") (emphasis supplied).

⁴ *Id.*

⁵ Note that U visa applicants need not show the intent to return to the homeland required of many other nonimmigrants by INA § 214(b) because the new 101(a)(15)(U) section specifically references new section 214(o) as governing its application.

We understand that INS and DOS may be reluctant to implement the law before regulations have been issued. They must overcome this reluctance. Both the statute and the situation of many crime victims dictate immediate access. We suggest that those eligible now be allowed to file simple applications with VSC VAWA, which will screen them for prima facie eligibility and grant Deferred Action and work authorization.

Not surprisingly, many advocates for people who would qualify for U visas already have contacted us to find out how they may file. In many cases, the situation is urgent because their clients are in danger and need the security, protection and independence afforded by the new law to overcome barriers to participating in investigations and prosecutions of criminal activity. Armed with Deferred Action and work authorization, these victims could escape criminals' threats to expose them to deportation and further physical and mental harm. They also will be willing and able to cooperate more readily in the prosecution of those who have victimized them.

Those who meet a "prima facie" standard for eligibility should gain work authorization, based on deferred action. This system would parallel that used for self-petitioners otherwise ineligible for work authorization (e.g., those not immediately eligible to adjust). VSC VAWA should adjudicate the prima facie applications and grant deferred action and work authorization to those who meet the prima facie standard. Fee waivers for work authorization should be readily available, based on a showing of economic necessity.

This prima facie process would benefit both U visa applicants and INS. The applicants could obtain immediate, life-saving help in the forms of economic security and protection from deportation while their applications are pending. The INS VAWA unit could use a familiar mechanism for making such decisions that has proven swift and efficient.

The prima facie standard should be parallel to that used for VAWA assessments. We understand this is: "A statement of facts which, if substantiated, would lead to approval." A prima facie application for a U visa should:

- 1) Allege that the applicant is a victim of one of the forms of specific criminal activity listed in subsection (iii) or of "any similar activity;"
- 2) Allege that the criminal activity took place in the United States or, if not, that it violated U.S. law;
- 3) Allege that the applicant possesses (or if a child is the victim, the child's representative possesses) information concerning the criminal activity alleged;
- 4) Provide a letter from a federal, state, or local law enforcement official, prosecutor, judge, or authority (including INS) 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. The letter also may address elements (1) - (3) above and, if it does, should satisfy the prima facie standard for those elements. A signed statement should suffice. It should include contact information for the official completing the certification. No separate affidavit from the official should be required.

- 5) Allege that the applicant has suffered "substantial physical or mental abuse" as the result of this criminal activity;
- 6) List any derivative children, spouses, or parents, and whether they need work authorization; and
- 7) Demonstrate economic necessity for work authorization under deferred action, 8 C.F.R. § 274a.12(c)(14), by providing a simple list of the applicant's assets, income, and expenses.

IV. Visa Application Contents

U visa applicants must show that they have suffered "substantial physical or mental abuse" as a result of criminal activity (or similar activity) listed in the statute and that the activity either took place in the United States (including outlying areas) or took place outside the United States but violated U.S. law. They also must show that they possess information concerning the criminal activity and are being, have been or will be helpful to an official or authority investigating or prosecuting that activity. Note, especially, that noncitizens that have helped in the past may qualify for a visa.

We suggest streamlining as much of this proof as possible by placing all the elements concerning the criminal activity and its investigation or enforcement into the certificates to be signed by the officials listed in the statute. Since these officers possess experience and expertise in investigating, enforcing, and reviewing U.S. criminal laws, INS should not look behind their affirmations. Instead, INS should focus its inquiry on the remaining proof element: whether the applicant has suffered substantial physical or mental abuse. As noted previously, the VSC VAWA personnel have developed expertise in making such determinations. The similar determinations for U visas should be entrusted to them as well.

A. Certification by Investigating and Prosecuting Officials and Authorities

The word "certification" indicates that a boilerplate "certificate" is not only a reasonable, but appropriate form. Since the statute does not say "affidavit" or "declaration" no notarization is required. This approach is less burdensome on prosecutors and other enforcement officials, enhancing their ability protect witnesses and other noncitizens helpful to investigations and prosecutions. A simple certificate⁶ also

⁶ INS must avoid a process that is onerous, either for crime victims or the government officials supplying the certificates. We suggest the regulations simply describe the contents required for a certificate. The

will help INS make uniform and swift decisions, which may be essential to protecting noncitizen crime victims.

The certificate should include affirmation that:

- 1) The person signing the certificate is a federal, state, or local law enforcement official, prosecutor, judge, or authority (including INS) investigating criminal activity designated in the statute;
- 2) The applicant* has been, is being, or is likely to be helpful to an investigation or prosecution of criminal activity designated in subsection (iii) of the statute (which includes "any similar activity" to the specified crimes);
- 3) The criminal activity occurred either (a) outside the United States but violated U.S. law or (b) occurred in Indian country, the United States, its territories, its possessions or at military installations abroad; and
- 4) The applicant* possesses information concerning the criminal activity.

Since the certifier must know enough about the criminal activity to affirm that the statutory designation encompasses it, he or she also should know enough to affirm where the criminal activity took place, and whether it violated U.S. law if it took place outside the United States. Although it is possible that an official would be willing to certify to an applicant's helpfulness to an investigation or prosecution without knowing what information the applicant possesses, it seems unlikely. Most officials and authorities will need some evidence that the applicant possesses helpful information before asserting that the applicant is willing to be helpful. Thus, including this affirmation in the certificate should not pose a burden to either applicant or certifier and places this determination in the hands of people better equipped than INS to make such decisions.

1. The Certifier

The statute does not require that the person providing the certificate be primarily responsible for investigating or prosecuting the specific criminal activity that victimized the applicant. Instead, it states that the certification shall be from an official or authority "investigating criminal activity" described in the statute. This distinction is important because, in some jurisdictions, prosecutors and police may not effectively investigate or prosecute crimes against women, noncitizens or both. Other officials charged with investigating the crimes in question, such as judges, federal agencies, or INS, may feel

Network is now working with several prosecutors experienced in domestic violence cases involving noncitizens; we will supply our sample as soon as possible.

* If the applicant is under 16, the official should certify that the applicant's parent, guardian, or next friend possesses information concerning the criminal activity and is being helpful to a federal, state or local law enforcement official, prosecutor, judge, or authority (including INS), investigating or prosecuting this criminal activity.

strongly that the applicant could and is willing to be helpful to investigating or prosecuting such crimes.

The law purposefully avoids shackling applicants to the whims of local authorities by allowing them to provide a certificate from anyone who investigates and prosecutes the criminal activity in question. For instance, local law enforcement officials may fail to act on a reported workplace rape, but an official at the Equal Employment Opportunity Commission (EEOC) who received a complaint based on the same crime may investigate the incident for enforcement action under laws that protect workers against such criminal activity. A certificate from the EEOC official will satisfy the statute's requirements.

Similarly, police sometimes refuse to process domestic violence cases in the criminal justice system, shuttling them instead to the family court system. Although disfavored, this is common practice in many parts of the country. Family court judges who hear such cases may complete the required certificate. The affirmation about qualifying criminal activity should not pose a problem, since most family courts cannot issue protections order unless they believe the applicant has been the victim of crime.⁷

Whoever the certifier is, he or she must have enough information about the situation to affirm the applicant's helpfulness to the investigation or prosecution of the designated criminal activity. The statute does not dictate a measure of involvement or helpfulness, and whether local authorities choose to pursue an investigation or prosecution is irrelevant.

PRACTICE POINTER: Get letters or affidavits NOW that contain the affirmations listed in the proposed certificate. Don't wait for INS to issue regulations or guidance, when the information may be old and the certifier otherwise engaged.

B. INS Determinations

A certificate containing all three affirmations should satisfy the "any credible evidence" standard for all proof requirements except the substantial harm requirement. In most cases, INS should determine only whether someone has suffered "substantial physical or mental abuse." The VSC VAWA unit is familiar with making such determinations under the "any credible evidence" standard. If applicants submit certificates that lack all the affirmations except that concerning helpfulness, INS must entertain any credible evidence supporting the other requirements and determine questions in favor of applicants wherever possible. Congress clearly intended to benefit,

⁷ Not all protection order recipients will qualify for U-visas. Applicants also must demonstrate their willingness to cooperation in an investigation or prosecution of criminal activity. They may, for example, satisfy this requirement if they filed a police report, called the police or talked with a prosecutor, even if the police or prosecutor chose not to act on the complaint. In addition, state courts may issue protection orders where the applicant has not showed substantial physical or mental harm. Such applicants must independently meet this test to qualify for the visa.

not harm or further penalize, victims of criminal activity. INS must view the statute's requirements and an individual's attempts to meet them through this positive lens.

1. Grounds of Inadmissibility and Their Waiver

New INS § 212(d)(13) governs admissibility of all U visa applicants, giving broad discretion to INS to waive almost any ground⁸ if it deems it is in the public or national interest.⁹ While applicants may file only skeletal forms revealing little about inadmissibility, they should be given the opportunity to submit whatever evidence is necessary to identify and overcome any known grounds of inadmissibility. If the initial application raises inadmissibility issues but fails to request or adequately show reason for a waiver, VSC VAWA should issue a Notice of Action requesting more information, as it does in VAWA self-petitions. (This general rule should apply to any problem with a U visa application).

In addition, VSC VAWA should consider the context of inadmissibility: the crime victim's experience, including substantial abuse, the applicant's willingness to help investigate or prosecute criminal activity, and the ameliorative intent of the statute. Absent overriding reasons for wishing the applicant removed from the United States, INS should find a waiver in the national or public interest. Note, moreover, that INS must entertain any credible evidence in making this waiver determination.¹⁰ A generous interpretation ensures that noncitizen crime victims with potential inadmissibility problems will not be reticent to come forward and cooperate in a prosecution or investigation.

Practice Pointer:

Make sure applicants address and request waivers AT THE VISA APPLICATION PHASE, however, because we can't guarantee the generous waiver will be available at adjustment.

C. U Visa Duration

The statute refers to those with approved U visa applicants as in "lawful temporary resident status,"¹¹ a term which has only been used once before, for the legalization program. Although this law does not create an immediate route to adjustment, as did the legalization program, the use of this phrase indicates that Congress intended a stable status for those who received these visas. The only way to accomplish this stability is to grant visas that last until recipients become eligible to file for

⁸ INA § 212(a)(3)(E) governing Nazi persecutors and other perpetrators of genocide is the only ground that INS may not waive.

⁹ Prima facie applicants should not be required to show they are admissible, however, since section 214(o) does not list admissibility as a basic eligibility requirement. To obtain a visa, those who receive prima facie approval must show they are admissible.

¹⁰ Victims of Trafficking Act § 1513(c), adding new INA § 214(o)(4) ("In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.")

¹¹ New INA § 214(o)(3)(B).

adjustment. Any shorter time frame would undermine the dual purpose of the statute: to assist law enforcement efforts and to provide humanitarian relief to those who willing to assist them¹².

The visas must assure protection to crime victims before, during and after the investigations or prosecutions stemming from the crimes committed against them. Repeated renewal requirements will discourage victims from requesting U visas because safety will be elusive until they become eligible to obtain lawful permanent residence. Fear of removal is one of the primary weapons used by criminals to ensure their victims' silence; noncitizens will not help criminal investigations and prosecutions if they expose themselves to removal by doing so. Of equal concern, officials may be loath to assist U visa applicants in the first place, if they expect to be repeatedly pestered by applicants to supply re-certification.

The statute balances the interest of applicants in secure visa duration with the INS interest in ensuring that U nonimmigrant visas are not permanent. As noted below, adjustment is neither pro forma nor automatic. Some U visa applicants may be unable to meet the adjustment requirements. Without hope that they may do so, however, there is little incentive for them to risk removal by assisting enforcement officials and agencies. Such a deterrent effect would undermine Congress' intent and purpose.

D. 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 INS must determine that the qualifying relative would suffer extreme hardship if he or she does not receive a U visa. We suggest that the certificate noted above contain a section where designated officials may make the required affirmation. INS should apply the special VAWA factors, as well as traditional hardship factors, in a "totality of the circumstances" analysis of whether the qualifying relative will suffer extreme hardship.

¹² See Victims of Trafficking Act § 1513(a)(2)(B) (Purposes of the Act).

V. Adjustment of Status to Lawful Permanent Residence

The U visa provision creates a special avenue of adjustment for those approved, INA § 245(l).¹³ Like the earlier S visa, which also created its own adjustment provision at 245(j), this new adjustment section contains different criteria for U visa holders than those that apply to applicants for adjustment under 245(a). Thus, the limits and bars contained in sections 245(a) and (c) do not apply to U visa applicants. For instance, manner of entry into the United States is irrelevant;¹⁴ and overstaying a visa and working without authorization pose no bar.

A. Procedure

We suggest that U visa holders file I-485 adjustment applications with the VSC VAWA unit. As noted above, INS centralizes adjustment adjudications for other classes of nonimmigrant visa holders; it also centralizes adjustment claims for asylees and refugees. Should VSC VAWA believe an interview is required, it could refer the case to a local office for such an interview. In other visa categories where INS adjusts on the papers, it checks for fraud by conducting random audit. It could employ a similar procedure for U visa adjustment decisions.

B. Adjustment Requirements

Applicants for adjustment under the U visa provision must show that:

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

Requirements (1) and (2) are straightforward. People who did not obtain U visas may not adjust under this section. Since U visa applicants "inadmissible" under 212(a)(3)(E) will have been screened out at the application phase, it is unlikely any residual class of persecutors "described" by that section will have obtained visas. (Note,

¹³ Note that the T visa's adjustment provision has the same designation. The T visa also creates a similar but not identical new INA § 212(d)(13) admissibility waiver provision for the visa application stage. Presumably Congress must enact a technical correction, changing the U visa's adjustment and inadmissibility waiver sections to 245(m) and 212(d)(14), respectively.

¹⁴ Note the U adjustment provision explicitly acknowledges this, allowing the Attorney General to adjust those admitted and those "otherwise provided nonimmigrant status" under 101(a)(15)(U).

however, that the adjustment section explicitly does not use the word "inadmissible," supporting our contention that the admissibility grounds do not apply generally, see below.)

Requirements (3) and (4) are familiar concepts for INS whose proof is readily accomplished. For instance, refugees, asylees and those adjusting under the Cuban Adjustment Act must show they have been in the United States continuously for one year to adjust status, see, e.g., INA §§ 209(a)(1) & (b). Similarly, the language of requirement (4) is the same as that for waivers of inadmissibility for asylees seeking adjustment of status.¹⁵

1. Absences and Continuous Presence

Like VAWA cancellation and suspension applicants, U visa adjustment applicants must show continuous presence, and certain absences beyond the statutory limits are allowed.¹⁶ 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."¹⁷ A certificate from one of the officials designated in the U visa definition affirming either of these reasons for an absence should suffice. Applicants who cannot obtain certificates should supply proof that any absences beyond those statutorily allowed were "in order to assist" in an investigation or prosecution.

2. "Affirmative Evidence that Unreasonably Refused"

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. "Affirmative evidence" means evidence that appears in the file, not evidence that INS seeks out in each case. It should consist **only** of evidence submitted by the law enforcement official who signed the certificate (or subsequent official on the same case). INS is not equipped to decide whether someone has "unreasonably refused" to provide assistance in a criminal investigation or prosecution; only professionals who conduct such investigations and prosecutions should make that decision. It would be unwieldy, moreover, for INS to seek out such confirmation in every case.

C. Admissibility Grounds

As noted earlier, the statute provides a generous waiver for all grounds of inadmissibility because U visa recipients are cooperating in the investigation and prosecution of criminal activity. This both frees crime victims to cooperate and encourages them to do so. Inadmissibility grounds should not hamper enforcement

¹⁵ See INA § 209(c), 8 C.F.R. § 209.2(b).

¹⁶ Compare new INA § 245(l)(2) with INA § 240A(d)(2) and new 240A(b)(2)(B) (absences greater than 90 day/180 day aggregate limits do not count if "connection" between absence and domestic violence).

¹⁷ New INA § 245(l)(2), added by Victims of Trafficking Act § 107(f).

efforts by precluding otherwise eligible applicants from obtaining U visas. Only those U visa holders who show that humanitarian grounds, family unity or the public interest justify their continued presence qualify to adjust status to lawful permanent residence. A strict application of the admissibility grounds to bar adjustment to those who have made this showing would thwart the goals of the statute. If U visa holders must address admissibility grounds at all at the adjustment phase, they must be able to avail themselves of the generous waiver the statute created for those grounds.

The new U visa adjustment provision makes no mention of applicants showing they are admissible. Other applicants for lawful permanent residence who must overcome admissibility grounds do so pursuant to specific statutory instruction, either requiring them to overcome all grounds of inadmissibility, or exempting them from some.¹⁸ Moreover, the new T visa holders, in contrast to U visa holders, are specifically required by the new T visa adjustment provision to overcome the grounds of admissibility twice.¹⁹

A standard tenet of statutory construction should apply here: Congress knows what it is doing, and when it fails to include language that it includes in parallel sections, that failure means something. Since Congress explicitly requires other applicants for adjustment of status to overcome at least some designated inadmissibility grounds, its failure to explicitly include similar language for U visa holders means that they should not be forced to overcome those grounds. Under this reading, the U visa provisions require that applicants overcome the grounds of inadmissibility ONLY at the visa application phase, not at the adjustment phase.

If INS insists on applying the admissibility grounds at adjustment, the waiver created by the U visa provision should apply. When humanitarian grounds, the public interest or family unity justify the applicant's continued presence, INS should not remove that person for the lack of an admissibility waiver. Either INS should find that admissibility problems are grave enough to undermine the initial finding that the applicant's presence is justified, or it should waive them under the U visa admissibility waiver.²⁰

Applying stringent admissibility requirements would entrap crime victims, luring them with the promise of U visas to help investigate and prosecute criminal activity, and then removing them for admissibility problems at a later stage. Such a system seems designed to discourage crime victims from using the U visa, a result Congress could not have intended.

¹⁸ See, e.g., adjustment under 245(a) ("... (2) the alien is . . . admissible to the United States for permanent residence, . . ."); asylees and refugees, INA § 209(2) ("to be admissible. . ."); special immigrant juveniles, 245(h)(2) ("in determining the alien's admissibility as an immigrant--"); 245(i)(2)(A) ("... and is admissible to the United States for permanent residence . . ."), legalization applicants, 245A(b)(C)(i) ("is admissible. . ."); registry, INA § 249 ("is not inadmissible. . .").

¹⁹ See Victims of Trafficking Act § 107(f), adding new INA § 245(l)(2), limiting adjustment to those who either admissible or obtain a waiver under this section of certain inadmissibility grounds.

²⁰ Patently, no U visa holder who applied for and received a waiver at the visa application phase must be denied adjustment for the same conduct or condition underlying the initial inadmissibility.

D. Derivative Adjustment

Spouses and children of all U visa adjustment applicants and parents of child adjustment applicants may adjust or follow to join the principal adjustment applicant if they did not independently obtain a U visa when the principal filed for his or her visa.²¹ Presumably, these applicants must overcome the grounds of inadmissibility since they have not done so at an earlier stage. The special waiver in the U visa provision should apply to these adjustment applicants.

1. Extreme Hardship

Derivative applicants also must show "extreme hardship" if INS fails to grant them adjustment or immigrant visas. Since the statute does not specify to whom the applicant must show extreme hardship, we suggest INS consider extreme hardship to the applicant, to the principal, or the applicant's U.S. citizen, lawful permanent resident, or "qualified alien" spouses, children or parents. This category parallels the set of qualifying relatives to whom those seeking fraud waivers under INA § 212(i) may show extreme hardship.²²

We also strongly urge INS to apply the VAWA extreme hardship factors,²³ as well as traditional extreme hardship factors, in a totality of the circumstances test.

V. Conclusion

We hope you find this memorandum helpful. We will forward to you a sample certificate that INS could suggest applicants use as noted above. In addition, we expect to soon send you memoranda on other new provisions affecting applicants under the Violence Against Women Act, as well as the new T visa applicants. The Network wishes to thank you again for all your work on behalf of battered immigrants and other noncitizen victims of crime.

Sincerely,

For the National Network on Behalf of Battered Immigrant Women*
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²¹ New INS § 245(l)(3).

²² Victims of Trafficking Act § 1505(c) ("extreme hardship to the alien or the alien's United States citizen, lawful permanent residence, or qualified alien parent or child.")

²³ See 8 C.F.R. § 240.58.

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