

U VISA FACT SHEET¹

I. U Visa Approach: Who Benefits and Why

The Violence Against Women Act 2000 (VAWA 2000) created a new nonimmigrant visa for certain battered noncitizens and other crime victims not protected by the original Violence Against Women Act of 1994. The law went into effect on October 28, 2000. The goal of the legislation is to offer relief in cases of “certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.”² These new U-visa protections offered much needed help for immigrant victims of crime including a broad range of gender-based crimes.

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 recognized 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 noncitizen crime victims are willing to assist in prosecutions without some form of immigration status that protects them from such retaliation.

In enacting the U visa Congress found that

“Immigrant women and children are often targeted to be victims of crimes committed against them in the United States.... All women and children who are victims of these crimes ... must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.... The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes ... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. The new visa will encourage law enforcement officials to better serve immigrant crime victims and prosecute crimes committed against aliens... Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized and abused aliens who are not in lawful immigration status.”³

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² The Violence Against Women Act of 2000 Section by Section Summary, Vol 146, No. 126 Congressional Record, 106th Congress Second Session, Wednesday October 11, 2000, S10196.

³ See Violence Against Women Act of 2000 (hereinafter "VAWA 2000") in the Victims of Trafficking Act § 1513(a)(1) and (2). Pub. L. No. 106386 as of 10/28/00

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. This new U-visa for the first time will offer access to legal immigration status for some battered immigrants who had been left out of VAWA's protections. Battered immigrants who can benefit include those abused by their citizen or lawful permanent resident boyfriends, wives and children of diplomats, work-visa holders, and students. Other victims who can receive this protection include: but not limited to nannies subjected to abuse from their employers, nannies held hostage by diplomats, victims of trafficking or forced prostitution, victims of FGM committed in the United States, non-citizens subject to slave labor, victims of rape and sexual assault including incidents that occur in the workplace, immigrant victims of child abuse who were abused by someone other than a citizen or lawful permanent resident parent, and victims of other listed violent crimes.

II. Crimes Covered

Victims qualify for a U visa only if they have been a victim of a crime covered by the Section 1513(b)(3) , INA Section 101(a)(15)(U)(iii).⁴ Crimes that qualify include::

- 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
- Any similar activity in violation of federal, state, or local criminal law.

The law targets "criminal activity" as opposed to "crimes" because prosecutors and other criminal investigators must be able to 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

⁴ 8 U.S.C. 1101(a)(15)(U)(iii).

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, in some cases 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 may fail to respond appropriately to rape complaints. The U visa allows the non-citizen 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 whether or not the rape is investigated by local law enforcement. A second example would be a child abuse case in which child protective services chooses to initiate a family court child abuse case rather than bring a criminal action against the child abuser.

III. Who Qualifies

In order for an applicant to be eligible for a U Visa they must first meet the following five conditions:

- (1) they must have suffered substantial physical or mental abuse as a result of having been a victim of the one or more of the criminal activities described above and listed in Section 1513(b)(3) of the VAWA 2000, INA Section 101(a)(15)(U);⁵
- (2) they must possess information concerning the criminal activity;
- (3) they must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local investigation or prosecution of a form of listed criminal activity;
- (4) they must obtain a certification from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities investigating or prosecuting any of the criminal activities defined in Section 1513(b)(3); and
- (5) the criminal activity described violated the laws of the United States or occurred in the United States or the territories and possessions of the United States.

IV. Who May Certify

To obtain the visa, a police officer, a prosecutor, a judge, or other state or federal government official must certify that the immigrant visa applicant has been helpful, is being helpful or is likely to be helpful to an the investigation or prosecution of criminal activity. Other government officials who may certify include but are not limited to: the officers of the Equal Opportunity Employment Commission (EEOC), state child abuse workers, an INS officer, or an FBI agent.

V. Some Family Members of the Crime Victim May Be Protected

⁵ 8 U.S.C. 1101(a)(15)(U)(iii).

Spouses, children and parents of children under the age of 16 who are U visa eligible noncitizens can also receive U visas if: (1) they can demonstrate that receipt of the visa is necessary to avoid extreme hardship; or (2) a government official certifies that investigation or prosecution would suffer without the assistance of the spouse, child, or parent of non-immigrant child. There is no cap on the number of U visas that can be issued to the spouses, children or parents of U visa recipients.

VI. Procedures

The maximum number of U-visas in any one year is 10,000 for the primary applicants. There is no limit on the number of visas available for qualifying spouses, children or parents of U-visa applicants.

If a nonimmigrant is identified a possible victim of any of the criminal activities defined in Section 1513(b)(3), they must be given the opportunity to avail themselves of the VAWA 2000 U visa provisions.⁶ Immigration and Naturalization Service (INS) personnel have been instructed to use mechanisms such as parole, deferred action, and stays of removal in order to avoid the removal of those who have been identified as possible victims of these crimes. INS personnel are also instructed to broadly interpret guidelines that would allow possible victims to temporally remain in the country until there is a determination of whether a potential applicant has been a victim of one of the listed crimes.

VII. Work Authorization, Confidentiality and Credible Evidence Standard

Crime victims receiving U visas and those receiving parole, deferred action, and stays of removal while their U visa application is pending can receive legal work authorization from INS. U visa recipients, however, do not qualify for public benefits.

In addition as with cases under the Violence Against Women Act, INS and the Department of Justice are required to keep all information about U visa applications confidential.⁷ They cannot release any information about the existence of a case to any person who is not authorized to access that information for a legitimate law enforcement purpose. Further, if the abuser of the person who perpetrated the crime against the U visa victim or any of his family members tries to supply INS adverse information about the crime victim, INS cannot rely solely on that information to make any adverse decision in the victim's U visa case.

In deciding applications submitted by immigrant crime victims for U visas and for discretionary adjustment of status under the U visa provision, the INS is required by statute to apply the credible evidence standard. This approach prohibits INS from requiring any particular piece of evidence in support of the U visa applicant's visa or adjustment application. Instead, applicants are allowed to submit any credible evidence to support each element of proof that they are required to show to be granted the U visa. By including the credible evidence standard of proof in U visa cases Congress was recognizing the difficulty battered immigrants and immigrant crime victims may have in proving that they have been victims of a crime and obtaining the other forms of proof they may need to win their immigration case. This credible evidence standard was first incorporated as part of the Violence Against

⁶ Memorandum to the Field from Michael D. Cronin, Acting Executive Associate Commissioner for Programs of the Immigration and Naturalization Service.

⁷ IIRAIRA Section 387(a) as amended by Section 1513 (d) of the Violence Against Women Act of 2000, Division B of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106386.

Women Act to difficult evidentiary barriers effectively precluded many battered immigrants from receiving approvals of battered spouse waivers. Congress stated:⁸

“This legislation also clarifies that the VAWA evidentiary standard under which battered immigrants in self-petition and cancellation proceedings may use any credible evidence to prove abuse continues to apply to all aspects of self-petitions and VAWA cancellation as well as to the various domestic violence discretionary waivers in this legislation and to determinations concerning U visas.”

VII. Discretionary Adjustment to Permanent Resident Status.

In the Attorney General’s discretion, a U-visa holder who has been physically present in the U.S. for three years may adjust their status to that of a permanent resident when such adjustment is justified on humanitarian grounds, to ensure family unity or when it is otherwise in the public interest. U-visa holders who have unreasonably refused to cooperate in an investigation or prosecution of criminal activity will not be able to adjust. INS has the burden of proving by affirmative evidence that the U-visa holder’s unwillingness to cooperate the investigation or prosecution was unreasonable. The Attorney General also has the discretion to waive virtually all grounds of inadmissibility (except nazi’s) in granting adjustment to a U-visa recipient. Generally, inadmissibility issues should be addressed at the time the immigrant crime victim seeks the U-visa. At adjustment the Attorney General would only consider any new inadmissibility issues that arose since the U-visa was issued. The Attorney General also has the discretion to issue a visa to or adjust the status of the spouse, child or parent of a child if necessary to avoid extreme hardship.

U visa recipients, both the original crime victim and any relatives granted U visas, who have been continuously present in the United States for three years can apply for lawful permanent residency. The Attorney General, in the Attorney General’s discretion may grant lawful permanent residency to U visa recipients who can prove that their continued presence is justified on humanitarian ground, to ensure family unite or because it is otherwise in the public interest. U visa recipients whom INS can prove based on affirmative evidence have unreasonably refused to provide assistance in a criminal investigation or prosecution may be denied lawful permanent residence.

Spouses, children and parents of children under the age of 16 may be adjusted along with the principle U-Visa applicant even if they were not granted a U-Visa in order to avoid extreme hardship.

⁸ The Violence Against Women Act of 2000 Vol 146, No. 126 Congressional Record, 106th Congress Second Session, Wednesday October 11, 2000, S10192.

VIII. Comparison of VAWA 2000 and U Visa Options

Filing a U-visa is appropriate when:

- The abuser/criminal is not a U.S. citizen or lawful permanent resident;
- The abuse/criminal is not a spouse or parent;
- The violence is another form of violence that would not be considered domestic violence, but is a crime or form of sexual violence covered by the U visa.
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The U visa may also help battered immigrants who may have difficulty qualifying under VAWA.

- The battered immigrant was divorced from her citizen or lawful permanent resident spouse more than two years ago.
- Broader range of criminal offenses are waivable.
- Helps battered immigrants with approved self-petitions who may have problems proving that they are admissible. Waivers of inadmissibility are broader for U visa cases than for VAWA cases.

A VAWA case may be more advantages for battered immigrants who can qualify because:

- Currently there are no regulations for the U-Visa.
- U-Visa applicants have a 3-year continuous presence requirement before they can apply for lawful permanent residency
- U-visa recipients can only obtain lawful permanent residency if they can prove humanitarian need, family unity or public interest. VAWA self-petitioners can obtain lawful permanent residency once a visa becomes available
- U-Visa applicants have to rely on a prosecutor/government official to write a “certification.” VAWA applicants may self-petition and prove their entitlement to the remedy without any mandatory cooperation from law enforcement or any government official.
- Spouses, children and parents of children under the age of 16 who apply for a U-Visa under a principle applicant are required to show extreme hardship. VAWA applicants can automatically include any children they have who are under the age of 21 in their self-petition.

For further information on the U visa and technical assistance on cases of victims who may qualify for the U visa contact: Immigrant Women Program, Legal Momentum (202) 326-0040, iwp@legalmomentum.org or Gail Pendelton, National Immigration Project of the National Lawyer’s Guild (617) 227-9727, gail@nationalimmigrationproject.org.