



# Immigration Relief for Crime Victims: The U Visa Manual

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**The New York Anti-Trafficking Network has provided direct services to over 450 survivors of human trafficking (NYATN)**, including most of the major trafficking cases prosecuted in New York City, and advocated on issues of trafficking in persons since 2002. As the first network in New York to engage in advocacy on issues relating to trafficked persons in New York, the NYATN aims to bring together the voices of those who have first-hand experience of the injustices of human trafficking, who work consistently to meet the needs of trafficked persons, and who advocate for a more humane and responsive policy towards trafficked persons. Our membership includes many organizations and individuals advocating on behalf of survivors of trafficking and other forms of violence.

The NYATN is a group of diverse service providers and advocates in New York dedicated to ending human trafficking and coordinating resources for trafficked persons. It seeks to establish dialogue and discuss service options in a range of cases and enable cross-communication regarding each agency's work with trafficked persons. We provide direct services to trafficked persons; technical assistance to attorneys, case managers, and other service providers who work with trafficked persons; train law enforcement and non-governmental organizations on issues relating to trafficking in persons; outreach in communities to provide resources and information on trafficking in persons; and engage in policy advocacy on these issues.

NYATN members played a key role in the passage of the New York Anti-Trafficking law as well as reauthorizations of the federal Trafficking Victims Protection Act. We continually advocate for legislation that promotes the rights of trafficked persons at the state and federal levels.

**The New York Anti-Trafficking Network is guided by the following principles:**

- Recognizing that sustainable change and improved response to trafficked persons requires increased capacity of network partners working in concert to support trafficked persons.
- Developing new ways of working together to deliver services, share information, identify resources, and advocate, is pivotal to an effective response to trafficked persons.
- Educating service providers, law enforcement, governmental entities and the general public is critical to reaching trafficked persons.

Also see <http://nyatn.wordpress.com> for additional information, events and resources including our *Identification and Legal Advocacy for Trafficking Survivors* manual which can be downloaded from our website.

For more information contact a NYATN Steering Committee Member or visit us at <http://nyatn.wordpress.com>.

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## Introduction

The U visa was established under the Trafficking Victims Protection Act of 2000 (TVPA),<sup>1</sup> and was subsequently reauthorized in 2003, 2005, and 2008 (Trafficking Victims Protection Reauthorization Act, or TVPRA).<sup>2</sup> It was created as humanitarian relief for a vulnerable population, most of which do not have lawful status in the United States. It provides legal status to victims of certain serious crimes who have suffered substantial physical or mental harm and can document cooperation with law enforcement. If favorably adjudicated, the U visa grants permission to remain and work in the U.S. for up to four years, and allows beneficiaries to eventually apply for permanent resident status.

The U visa is a new and somewhat untested visa classification. After its initial passage, it languished due to a lack of implementing Federal Regulations. In the absence of regulations, United States Citizenship & Immigration Services (USCIS) offered “interim relief” to those who established prima facie eligibility for the U visa classification. As the name suggests, interim relief is only a temporary fix, offering no long term benefits. For permanent benefits, those holding interim status were required to re-apply for U status following publication of the interim final rule seven years later. While the interim final rule went into effect on October 17, 2007,<sup>3</sup> a majority of the U petitions continued to be held in abeyance pending clarification on filing fees associated with waiving grounds of inadmissibility for the visa (Form I-192). This was later clarified by regulations that came into effect on January 12, 2009.<sup>4</sup> As a result, most petitions for U status first began to be adjudicated in January 2009.

Congress allocated 10,000 U visas to be issued each year, not including spouses and other derivative family members.<sup>5</sup> Once the annual cap of 10,000 is reached, applicants for U status will be placed on a waitlist and will be issued deferred action,<sup>6</sup> the same benefit that was offered under interim relief. As with interim relief, those on the waitlist are eligible to receive employment authorization and deferred action status for U derivatives.<sup>7</sup>

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<sup>1</sup> Pub. L. No. 106-386, 114 Stat. 1464 (2000). The U visa was incorporated in the section of the TVPA known as the Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1518 (2000).

<sup>2</sup> Pub. L. No. 108-193, 117 Stat. 2875 (2003), Pub. L. No. 109-164, 119 Stat. 3558 (2006), Pub. L. No. 110-457, 122 Stat. 5044 (2008); Immigration & Nationality Act (INA) § 101(a)(15)(U).

<sup>3</sup> 8 CFR § 214.14; USCIS Interim Final Rule: New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007). Effective October 17, 2007.

<sup>4</sup> 8 CFR § 103.7(c)5(iii); USCIS Interim Final Rule: Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540 (Dec. 12, 2008). Effective January 12, 2009. Pursuant to 8 CFR 103.7(c)(5) fee waiver requests will now be accepted by applicants for T or U nonimmigrant status.

<sup>5</sup> 8 CFR § 214.14(d)(1).

<sup>6</sup> 8 CFR § 214.14(d)(2).

<sup>7</sup> *Id.*

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Like the T visa manual,<sup>8</sup> this manual aims to provide guidance to lawyers on issues that arise in the context of representing U visa applicants. It is designed for practitioners who are familiar with basic immigration terms and legal concepts. The manual is not meant to be an exhaustive source of the law; it is not meant to provide instruction on every aspect of representation, nor is it meant to take the place of direct legal advice, advocacy, or a practitioner's own research and evaluation of the case.<sup>9</sup> It also does not address in detail other avenues of immigration relief that may be available to crime victims. Practitioners should always consider other avenues for status or relief, such as asylum, a petition under the Violence Against Women Act (VAWA), the T visa, petitions for Special Immigrant Juvenile Status (SIJS), Cancellation of Removal, and other family- and employment-based petitions. We encourage practitioners to be creative in exploring other possibilities for immigration relief on behalf of victims.

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<sup>8</sup> “Identification and Legal Advocacy for Trafficking Survivors” (3<sup>rd</sup> Ed., Jan 2009) by NY Anti-Trafficking Network Legal Subcommittee. This manual can be found online at [http://www.ny-anti-trafficking.com/assets/docs/t\\_vis\\_a\\_manual\\_3rd\\_edition\\_2009.pdf](http://www.ny-anti-trafficking.com/assets/docs/t_vis_a_manual_3rd_edition_2009.pdf).

<sup>9</sup> An excellent source of relevant legal documents can be found at [www.asistaonline.org](http://www.asistaonline.org). Also, materials can be found on the [probono.net/ny/family](http://www.probono.net/ny/family) website (registration is free) in the library under immigration, which is available at: <http://www.probono.net/ny/family/library/folder.21203-Immigration>.

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## Part A: Determining if U Visa Is Appropriate for Your Client

### I. What is a U Visa?

The U visa is a nonimmigrant status that, according to the statute,<sup>10</sup> may be available when:

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of the following qualifying crimes or substantially similar criminal activity:<sup>11</sup>
  - 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
  - Murder, manslaughter
  - Felonious assault
  - Witness tampering
  - Obstruction of justice
  - Perjury
  - Attempt, conspiracy, or solicitation to commit any of the above
  
- (II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning the criminal activity;

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<sup>10</sup> INA § 101(a)(15)(U)(i); 8 USC § 1101(a)(15)(U)(i).

<sup>11</sup> 8 USC § 1101(a)(15)(U)(iii); 8 CFR § 214.14(a)(9).

- (III) the alien (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to USCIS, or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and
- (IV) the criminal activity violated the laws of the U.S. or occurred in the U.S. (including in Indian country and military institutions) or the territories and possessions of the U.S.

In general, the U visa is meant to protect a vulnerable population from being targeted for crimes, by providing those who cooperate with law enforcement the ability to remain lawfully in the U.S. and eventually gain permanent residency.

## A. Benefits

- U visa nonimmigrant legal status for four years, which may, under certain circumstances, be extended.<sup>12</sup>
- Opportunity to seek permanent residency (“green card”) after three years in U status.<sup>13</sup>
- Employment authorization for the principal applicant.<sup>14</sup>
  - Living in the U.S.
    - For the principal applicant applying in the U.S., USCIS will automatically issue an initial Employment Authorization Document (EAD) to applicants granted U-1 nonimmigrant status.
    - Applicants with a pending, bona fide application for U status may also be eligible for an EAD. However, as of the drafting of this manual, USCIS had not issued a bona fide standard.<sup>15</sup>
  - Living Outside the U.S.

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<sup>12</sup> 8 CFR § 214.14(g).

<sup>13</sup> INA § 245(m), 8 USC § 1255(m).

<sup>14</sup> 8 CFR § 214.14(c)(7).

<sup>15</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 08), P.L. 110-457, 122 Stat. 5044-5091, (2008).

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- Principal applicants who apply from outside the U.S. will not be issued an EAD until the applicant has been granted U status. After admission, the applicant may receive an initial EAD upon request.
- Derivative status for family members.<sup>16</sup>
  - If petitioner is under 21, then spouse, children, parents (only if petitioner is unmarried) and siblings under 18 at the time of filing I-918 (not time of interim filing) can apply for derivative status.
  - If petitioner is over 21, then spouse and children can apply for derivative status.
  - Derivatives may apply for EAD either as part of the initial submission, or after receiving U status.
- Eligibility for certain public benefits.
- Travel outside the U.S., but note potential risks.<sup>17</sup>

## **B. Initial Considerations in Case Evaluation**

### **1. Immigration Status**

Applicants for U status may have problems with the validity of their immigration status. The most common issues include the following:

- Entering the U.S. without passing through a border post or port of entry (known as “entry without inspection” or “EWI”);
- Entering on a tourist visa (B1/B2) and engaging in unauthorized employment. This is considered a violation of that particular status;
- Entering on a tourist visa (B1/B2) but overstaying the authorized period of stay on the I-94 Departure Record. Once an individual overstays the I-94 card by even one day, they are considered “unlawfully present.” There are serious and permanent consequences associated with unlawful presence;<sup>18</sup>
- Entering on a fraudulent passport or using another person’s passport. This constitutes visa fraud, and does not confer a valid nonimmigrant status.

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<sup>16</sup> 8 CFR § 214.14(f).

<sup>17</sup> See Section IV, “After Issuance of U Status,” Part B “Travel Overseas.”

<sup>18</sup> INA § 212(a)(9)(B)(i).

However, if the individual did not overstay the I-94 (even though fraudulently issued), s/he is not considered to be unlawfully present.

The validity of a U applicant's status is important because if an applicant is not in valid status, and s/he is being brought to the attention of USCIS or Immigration & Customs Enforcement (ICE), the applicant could be issued a Notice to Appear (NTA) at Immigration Court, and removal (deportation) proceedings may be commenced.

Another important consideration with violations of status or unlawful presence is that it may interfere not only with the U application, but also with the applicant's eligibility for future immigrant benefits (such as obtaining legal permanent resident status – the “green card”). A waiver of “inadmissibility” may remedy these status violations and are granted at the discretion of the USCIS. To request a waiver of inadmissibility on the above grounds, Form I-192 and the accompanying fee (or request for fee waiver) should be filed concurrently with the I-918.<sup>19</sup>

## 2. Liability for Criminal Behavior

All criminal acts, even minor ones, should be disclosed to the attorney and the applicant should provide certificates of disposition for each act and/or a certificate of good conduct. If the applicant is not sure of this history, a good place to start is the Federal Bureau of Investigations (FBI), which will provide a copy of the applicant's ‘rap sheet’ for informational purposes. Complete information on requesting an FBI Identification Record can be found at <http://www.fbi.gov/hq/cjisd/fprequest.htm>.

Attorneys and advocates should be wary of any prior arrests or convictions that may come back to haunt the client. If the applicant was arrested, it is critical to engage in aggressive advocacy that avoids a conviction, even if it involves only a low-level offense. As noted above, a criminal conviction may impact the client's ability to stay in the U.S. and/or obtain legal permanent residency. ICE and USCIS will take into consideration if the conviction was caused by, or incident to, the victimization. However, it is better to advocate for an appropriate disposition.

## 3. Privilege<sup>20</sup>

The attorney-client privilege is an established principle of law that protects communications between attorneys and their clients, when such communication is for the purpose of requesting or receiving legal advice. This privilege encourages openness and honesty between attorneys and their clients by prohibiting attorneys from revealing (and being forced to reveal) attorney/client communications. The privilege belongs to the client, meaning that only the client may waive the privilege to give consent to reveal the protected communications. However, certain situations

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<sup>19</sup> This is outlined in more detail in Part B.

<sup>20</sup> We are grateful to Dechert LLP for researching and evaluating this important, yet complex issue. This section provides only a cursory review of the memoranda provided to us by Dechert LLP. These memoranda are available for review at [www.ny-anti-trafficking.com](http://www.ny-anti-trafficking.com), under the publications link.

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may “break” the privilege, even if the client did not have the intention to reveal the communications. This includes the presence of a third party in attorney-client communication.

In the U visa application context, the presence of a social worker in the interview process or throughout the representation may break privilege. Once privilege is broken, the communication may no longer be kept private, and defense attorneys or prosecutors may be able to access the client’s statements. Limited exceptions to this rule include where the social worker, or other assistant, is acting solely in the context of an interpreter or translator, or where the social worker is there solely to facilitate the provision of legal services.<sup>21</sup>

Generally speaking, communications between a lawyer and her client made in the presence of a known third party are not privileged. The theory is that such communications could not have been intended to remain confidential.<sup>22</sup> Nevertheless, in circumstances where a client can demonstrate that she had a reasonable expectation of confidentiality and the communications were “made to [or in the presence of] agents of an attorney ... hired to assist in the rendition of legal services,” the attorney-client privilege is not broken.<sup>23</sup> This holds even where such communications were made entirely outside the presence of the attorney so long as the communications were made to the third party in order to facilitate the attorney’s representation of her client.<sup>24</sup> The federal courts have applied the privilege to diverse professionals working with attorneys, including “a psychiatrist assisting a lawyer in forming a defense.”<sup>25</sup> However, it is important to remember that this jurisprudence protects communications made to an attorney or on behalf of the services provided by an attorney; it does not extend beyond the scope of representation provided by an attorney.

A separate question is whether there is a privilege protecting communications between a social worker and a client made pursuant to providing other services, such as counseling, assisting with housing, medical assistance, et cetera. This is not as well-established in the law. In very broad terms, the issue seems to turn on the professional level of the social worker, i.e. licensure or certification, the expectations of the client as to confidentiality of the communications, and the purpose of the communications. For example, the Supreme Court recognizes “the ability to

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<sup>21</sup> See e.g., *United States ex rel. Edney v. Smith*, 425 F. Supp. 1038, 1046 (E.D.N.Y. 1976). Although such “exceptions” may not break the privilege, it is extremely important that where a social worker is playing such a role, his or her function is fully documented as limited to that role. Should the social worker’s role go beyond translating or facilitating the provision of legal services, it may blur the line, making the privilege easier to pierce. Moreover, such exceptions are not absolute, and both the attorney and social worker should ensure that any communications are made in a setting most conducive to protecting the communications.

<sup>22</sup> See *Weatherford v. Bursey*, 429 U.S. 545, 554 (1977).

<sup>23</sup> *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. N.Y. 1989), *cert. denied*, 502 U.S. 810 (1991).

<sup>24</sup> Note that this privilege applies to both the testimony and records of the third party. See e.g., *Federal Trade Commission v. TRW, Inc.*, 628 F.2d 207, 212 (D.C. Cir. 1980)(citing *United States v. Kovel*, 296 F.2d 918 (2d Cir. N.Y. 1961)) (Finding the reports prepared by a third party privileged where report was prepared at request of attorney and “the purpose of the report was to put in usable form information obtained from the client”).

<sup>25</sup> *Occidental Chemical Corp. v. OHM Remediation Services Corp.*, 175 F.R.D. 431, 437 (W.D.N.Y. 1997).

communicate freely without the fear of public discourse [as] the key to successful treatment” in psychotherapy and clinical social workers.<sup>26</sup> However, it is not clear how far this privilege extends. Moreover, in state courts, privilege is adjudicated under state law, and each state has different rules regarding this matter.<sup>27</sup> Therefore, social workers and social services organizations need to take every precaution to protect clients’ communications, and/or to advise clients that such communications may not be confidential.<sup>28</sup>

## C. Legal Assessment

### 1. Screening Clients

The following are some suggested questions that may facilitate initial screening and evaluation of potential U applicants. These questions were drafted to elicit information relevant to the regulatory criteria, but are not exhaustive. Practitioners should be mindful of their client’s specific circumstances, and to direct their questions accordingly.

#### i. Background Immigration Information

- When did you enter the U.S.? List every place, date, and type of entry.
- For each time that you entered the U.S., did you enter with a valid passport and visa? *Check passport and I-94 card.*
- If you did not enter with a valid passport and visa, did you have any contact with an official, immigration, or other agent, during the entry?
  - Were you detained?
  - Were your fingerprints or photograph taken?
  - Did you claim to be someone else?
  - Did you claim to be a U.S. Citizen?
- Have you filed any immigration papers? If so, do you have a copy of those papers?
- Have you ever been ordered removed, excluded, or deported from the U.S.?

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<sup>26</sup> *Jaffee v. Redmond*, 518 U.S. 1, 6, 15 (1996).

<sup>27</sup> As of this writing, Dechert LLP has researched social worker privilege in New York, New Jersey, Florida, Texas, and Arizona. This research is available at [www.anti-nyc-trafficking.com](http://www.anti-nyc-trafficking.com) under the link to publications.

<sup>28</sup> Legal Aid Foundation of Los Angeles (LAFLA) has also done substantial research on the social worker privilege issue. Information can be found on their website at [www.lafla.org](http://www.lafla.org).

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ii. Information on Crime

- Do you know the perpetrator? If so, how?
- Name of perpetrator/abuser, if known;
- Information on where perpetrator/abuser is residing, if known;
- Provide details of the crime (when, where, what occurred);

iii. Cooperation with Certifying Agency<sup>29</sup>

- Have you spoken to law enforcement about this crime?
- Did you assist law enforcement in their investigation?
- Do you have contact information/address for the law enforcement official with whom you spoke?

iv. Harm Suffered

- Are you experiencing any lasting physical or mental effects as a result of the crime? Do you have any medical conditions that have worsened since the crime?
- Have you spoken to a therapist, case manager, or counselor about the harm you have suffered?
- Are there any other effects that you have suffered as a result of the crime that you can describe?<sup>30</sup>
- Can you provide medical reports?

v. Inadmissibility and Good Moral Character

- Have you ever been arrested, including any time you were detained by immigration?

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<sup>29</sup> Under 8 CFR § 214.14(a)(2), the term “Certifying Agency” is defined broadly to include any authority “that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” Common examples include, but are not limited to local, State and Federal law enforcement, prosecutors, judges, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

<sup>30</sup> Many types of evidence may be available to support the harm suffered by a victim of a crime. Evidence could include official medical reports, formal statements by a case manager or counselor attesting to the harm suffered, and letters of support by people close to the victim, including neighbors, family, and employers.

- Detailed information about circumstances of each arrest/conviction;
- Have you ever used drugs?
- Have you ever helped someone cross the border without a visa?
- Have you ever pretended to be a U.S. citizen?
- Do you have a disease, such as tuberculosis, which could be considered a public health concern?

## 2. Choosing a Remedy<sup>31</sup>

Many victims of crime have a history of abuse that may or may not be related to the most recent crime committed against them. Based on this history, the applicant may have different options for types of relief under U.S. immigration law. During the initial screening, it is important to pay attention to any red flags in the story, and to ask questions beyond the specific crime the client is reporting. Asking basic questions about a person’s family history, life in their home country, arrival into the U.S., and conditions under which they have lived in the U.S. will provide a more complete picture of the individual’s options for relief.

A chart outlining some options to consider is at A11, and may include the following:

### i. Violence Against Women Act (VAWA)<sup>32</sup>

The Violence Against Women Act (VAWA) was passed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault, and stalking in the U.S. Under VAWA, victims of domestic abuse may apply for permanent resident status. A petition under VAWA basically requires the following:

- The perpetrator/abuser is a U.S. Citizen or Lawful Permanent Resident;
- The perpetrator/abuser is a spouse, parent, or, in the case of the elderly, a U.S. Citizen child;
- The abuse committed amounted to battery or extreme cruelty.

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<sup>31</sup> A chart, “Basic Comparison of U Visa, VAWA Self-petitions, T Visas, and Asylum,” is included with these materials and outlines some options to consider when choosing a remedy for your client.

<sup>32</sup> Pub.L. No. 103-322, 108 Stat. 1796 (Sept. 13, 1994); *see also* “U Visa Regulations Fact Sheet,” Legal Momentum: Advancing Women’s Rights, *available at* <http://www.legalmomentum.org/news-room/press-releases/u-visa-regulations-released.html>.

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A VAWA petition may be more advantageous because:

- 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.<sup>33</sup> VAWA self-petitioners can obtain lawful permanent residency once a visa becomes available.
- U visa applicants have to rely on the I-918 Supplement B certification from law enforcement. VAWA applicants may self-petition and prove their entitlement to the remedy without any mandatory cooperation from law enforcement.

## ii. Asylum

Asylum is a form of protection that may be an option for those who have suffered, or are likely to suffer, persecution in their home country. Often, victims of violence in their home country will have experiences of violence during their travel to the U.S., or following their arrival in the U.S. A client may initially present as a potential U-visa holder, but careful questioning regarding his/her history may also demonstrate eligibility for asylum.

The rules surrounding an application for asylum can be complicated and require a great deal of documentation. To be eligible for asylum, a person must be in the U.S. and meet the definition of a refugee.<sup>34</sup> Under this definition, a person must have been persecuted, or fear the possibility of persecution if returned to their home country, on account of their race, religion, nationality, membership in a particular social group, or political opinion.

General points regarding eligibility for asylum:

- An application must be submitted within one year of arrival in the U.S., or within one year of expiry of lawful status. If an application is not timely submitted, an applicant must show “either the existence of **changed circumstances** which materially affect the applicant’s eligibility for asylum or **extraordinary circumstances** relating to the delay in filing the application...”<sup>35</sup> (emphasis added).
- The persecution suffered by the applicant may be at the hands of the government, or an entity that the government is unable or unwilling to control.<sup>36</sup>

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<sup>33</sup> 8 CFR § 245.24(b)(6).

<sup>34</sup> A refugee is defined as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A), 8 USCS § 1101(a)(42)(A).

<sup>35</sup> INA § 208(a)(2)(B), (D).

<sup>36</sup> *Nabulwala v. Gonzales*, 481 F.3d 1115 (8th Cir. 2007).

- An applicant may be eligible for asylum if persecuted because of the persecutor's erroneous belief that they held an unpopular political opinion, religious view, or were members of a particular social group. While substantial case law supports the idea of persecution based on an "imputed" ground, it is important to document these cases thoroughly and be creative in the argument in favor of granting their application.

An asylum petition may be more advantageous because:

- The asylum application, while burdensome, may be preferred because it does not require applicant cooperation with, or certification by, law enforcement.
- An asylee is able to apply for lawful permanent residency one year after their asylee status was approved, while a U visa holder must wait three years.

iii. T Visa<sup>37</sup>

The T visa was initially created by the Trafficking Victims Protection Act (TVPA) of 2000<sup>38</sup> and further defined in subsequent reauthorizations. Under the TVPA, a person is eligible to apply for a T visa if s/he is a survivor of a severe form of trafficking. In many instances, a trafficking survivor may also have been a victim of another crime. Depending on the severity of the trafficking situation and the identity of the trafficker, the survivor may be more willing to report another crime to law enforcement, and apply for the U visa in lieu of the T visa.

However, it is not necessary to choose between filing for a T visa and filing for a U visa; it may even make sense to file both types of petitions so that USCIS may review the facts under both standards. If it turns out that the applicant is eligible for both the U visa and the T visa, USCIS will probably ask that one petition be withdrawn since a foreign national can only hold one nonimmigrant status at a time. In making this type of decision, practitioners may want to consider the benefits available under each visa category.

Important considerations in deciding between the T visa and the U visa are:

- Those in T status are eligible for more public benefits than those in U status. Applicants approved for T status receive a Certification Letter from the Department of Health and Human Services, given them access to benefits.
- Those in T status are eligible to adjust status to permanent residence before three years if they document that the investigation and prosecution against the trafficker is complete.
- A T visa holder must only be "willing to cooperate" with a law enforcement investigation or prosecution against the trafficker.

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<sup>37</sup> T Visa Manual, *supra* n. 8.

<sup>38</sup> Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000).

**DISCLAIMER**

**Basic Comparison of U Visa, VAWA Self-petitions, T Visas, and Asylum**

The purpose of this chart is to provide a general comparison of the possible options for humanitarian forms of immigration relief for crime victims. It is not meant to be exhaustive, or to replace a complete of the case specifics. Note that an applicant may apply for more than one relief at a time, but can only hold one status at a time. Please refer to the actual law and regulations when making a determination for your client.

	<b>U Visa</b>	<b>VAWA Self-petition</b>	<b>T Visa</b>	<b>Asylum</b>
<b>Qualifying Criminal Activity</b>	Must be a victim or the attempted victim of one of the enumerated crimes.	Battering or extreme cruelty;	Labor or sex trafficking	Persecution or well-founded fear of persecution based upon one of five factors.
<b>Does crime have to have happened inside the U.S.?</b>	Yes, or U.S. territories and possessions	Yes, or U.S. territories and possessions	Yes. Must be physical present on account of trafficking	No, events occurred in country of nationality or last country of residence.
<b>Cooperation with law enforcement required?</b>	Yes	No	Must demonstrate reasonable efforts to cooperate	No
<b>Familial relationship to abuser?</b>	No	Yes	No	No
<b>Timeframe to apply</b>	Within 180 days of the certification	No limit, unless qualifying relationship is terminated, abuser deported, or children aging out.	Must demonstrate physically present in U.S. on account of trafficking.	Within one year of expiry of lawful status, unless country conditions changed or extraordinary circumstances can be documented..
<b>Extreme hardship upon removal?</b>	No	No	Yes	No
<b>Derivatives which can be included?</b>	May include spouse children, parents, and siblings depending on the principal's age when the victimization occurred.	Children under 21.	May include spouse children, parents, and siblings depending on the principal's age when the victimization occurred.	Spouses and children under 21.
<b>Point at which application for permanent residency, aka a green card?</b>	Can apply after 3 years in U status.	Immediately if married to or formerly married to a USC.	After T visa if investigation complete. Otherwise, after 3 years in T visa status.	Can apply after one year in asylee status

## II. Elements of a U Visa

In order to qualify for the U visa, a person must establish the following:

### A. Information about Criminal Activity

The applicant must possess information about the criminal activity of which s/he has been a direct or indirect victim. It must be established that the criminal activity either violated the laws of the U.S. or occurred within the U.S., its territories, or possessions. The U visa is available to victims who have suffered from any of the following qualifying crimes or substantially similar criminal activity:<sup>39</sup>

- 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
- Murder, manslaughter
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Attempt, conspiracy, or solicitation to commit any of the above

It is important to note that this list is not exhaustive, and practitioners should advocate if their client is a victim of ‘substantially similar’ crimes, particularly those that target vulnerable immigrant populations.<sup>40</sup>

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<sup>39</sup> 8 USC § 1101(a)(15)(U)(iii); 8 CFR § 214.14(a)(9).

<sup>40</sup> USCIS Fact Sheet, “USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity,” dated Sep. 7, 2007, available at [http://www.uscis.gov/files/pressrelease/U-VisaFS\\_05Sep07.pdf](http://www.uscis.gov/files/pressrelease/U-VisaFS_05Sep07.pdf).

**DISCLAIMER**

## B. 'Direct' or 'Indirect' Victim of the Crime

Both direct and indirect victims are eligible to apply for U status. A **direct victim** is a person who has suffered direct harm or who is directly or proximately harmed as a result of the commission of a criminal activity.

USCIS also has the discretion to consider bystanders as direct victims, if they suffered unusually severe harm as a result of having witnessed the criminal activity. The example given in the comments to the interim final rule was of a woman who miscarries after witnessing such activity.<sup>41</sup> Another example of a bystander-victim is a **witness** who suffers a heart attack after witnessing a murder.

An **indirect victim** may include any of the following:

- Qualifying family members of murder victims, manslaughter victims, and victims who are incapacitated or incompetent;<sup>42</sup>
  - **Practice Pointer:** During a Vermont Service Center (VSC) USCIS Stakeholder's Meeting, VSC stated that parents of sexually abused U.S. Citizen children qualify as indirect victims of someone who is incompetent/incapacitated. VSC recommends completing the I-918 listing the parent as the victim.<sup>43</sup> In these situations, it is not clear if the substantial harm must only be to the U.S. Citizen child, or if it must also be to the parent. The affidavit should address all the harm suffered by the family.
    - **Example:** In May 2009, Ms. OH's five-year old U.S. Citizen son, J, told her that he was molested by a neighbor, Mr. ID. Ms. OH immediately took J to the hospital and the police were called. Based on Ms. OH's statements, Mr. ID was arrested and charged with predatory sexual assault and endangering the welfare of a child. Mr. ID's spouse was angry with Ms. OH, and continued to harass her in the building. Ms. OH and J had to move to another neighborhood, where J is seeing a counselor at his new school. Ms. OH is eligible to petition for a U visa based on her minor U.S. Citizen son's victimization of a qualifying crime, her cooperation with the police and the District Attorney's office, and the substantial harm her son suffered as a result of the crime.

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<sup>41</sup> USCIS Interim Final Rule, 72 Fed. Reg. 53014 (2007), *supra* n. 3.

<sup>42</sup> 8 CFR § 214.14(a)(14)(i).

<sup>43</sup> AILA VSC Liaison Committee's Minutes of VSC Stakeholders Meeting (August 20, 2009) available at [www.aila.org](http://www.aila.org). AILA InfoNet Doc. No. 09090265. (Posted 9/2/09).

- “Next friend”<sup>44</sup> a person who appears in a lawsuit to act for the benefit of an immigrant victim:
  - who is incapacitated, incompetent, or under the age of 16, and
  - who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity.

Note: The next friend is not a party to the legal proceeding and is not appointed as a guardian.<sup>45</sup>

- An indirect victim can also qualify for a U visa as a victim of witness tampering, obstruction of justice, or perjury, if the perpetrator committed the offense:
  - to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity committed against the direct or indirect victim, or
  - to further the perpetrator’s abuse, exploitation of, or undue control over the U Visa applicant through manipulation of the legal system.<sup>46</sup>

### C. Cooperation with Law Enforcement

Eligibility for U nonimmigrant status requires certification that the applicant was helpful, is being helpful, or is likely to be helpful in the criminal investigation or prosecution of the crime.<sup>47</sup> The applicant must obtain a “U Nonimmigrant Status Certification,” on Form I-918, Supplement B, from a federal, state or local law enforcement official, or a judge investigating or prosecuting the criminal activity.<sup>48</sup>

Although not required by the statute, federal regulations require the applicant to continue to cooperate in the investigation or prosecution even after receipt of U status. The applicant must not refuse or fail to provide information and assistance “reasonably requested.”<sup>49</sup>

Under the interim final rule, authorization to issue certification is limited to “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically

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<sup>44</sup> 8 CFR § 214.14(a)(7).

<sup>45</sup> *Id.*

<sup>46</sup> 8 CFR § 214.14(a)(14)(ii)(B). Petitions have been filed on the basis of perjury for an applicant who was the victim of immigration fraud. The perpetrator knowingly filed incorrect immigration forms for thousands of people, and applicant was one of the first people to come forward and report the perpetrator to the authorities.

<sup>47</sup> 8 USC § 1101 (a)(15)(U)(i)(III).

<sup>48</sup> 8 CFR § 214.14(c)(2)(i); Form I-918, Supplement B is discussed in Part B.

<sup>49</sup> 8 CFR § 214.14(b)(3).

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designated by the head of the certifying agency.”<sup>50</sup> Examples of agencies and certifying officials at those agencies include the following:

- Investigating agency;
  - Local police department
  - U.S. Marshal
  - Victim witness coordinator, Federal Bureau of Investigation
  - Victim witness coordinator, Immigration and Customs Enforcement
  - Federal or state Department of Labor
  - Equal Employment Opportunity Commission
- Federal Administration for Children and Families or state or local equivalent;
- Prosecutor;
  - District Attorney
  - State Attorney General
  - Victim witness coordinator, U.S. Attorney
- Federal, state, or local judge.

Some agencies may not have a designated signatory. In fact, some agencies may lack understanding about U visas and the role of certification. In such a situation, it is important for advocates to collaborate with the agency to establish a protocol and procedures to certify cooperating victims.

- **Practice Pointer:** The applicant may cooperate with several agencies in the investigation and prosecution of a qualifying crime. Talk to the official with whom the applicant has had the most contact, and advocate to that official’s agency that certification would most properly come from them. If the agency does not have a designated signatory or is unaware of U visas, you should be prepared to educate them on the law, the needs of the victim as a cooperating witness, and the importance of certification.

## D. Substantial Physical or Mental Abuse

The applicant must document substantial physical or mental abuse as a result of being a victim of an enumerated crime or substantially similar criminal activity.<sup>51</sup> The regulations define physical or mental abuse as “injury or harm to the victim’s physical

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<sup>50</sup> 8 CFR § 214.14(c)(2)(i).

<sup>51</sup> 8 USC § 1101(a)(15)(U)(i)(I).

person, or harm or impairment of the emotional or psychological soundness of the victim.”<sup>52</sup>

The term “substantial” is used in both the definition of severity of the injury to the victim and the severity of the abuse inflicted by the perpetrator. The regulations indicate “no single factor is a prerequisite to establish that the abuse suffered was substantial.”<sup>53</sup> A series of acts taken together may constitute substantial physical or mental abuse, even when no single act alone rises to that level.<sup>54</sup> Some examples include:

**Example #1:** An applicant who was assaulted and held at gunpoint, and beaten with a blunt object. He sustained injuries that left him hospitalized for a week and had to go to physical therapy for three months. He continues to have back pain and was forced to quit his job as a delivery worker. He has trouble sleeping at night because of his pain and nightmares from the incident.

**Example #2:** An applicant who was a victim of domestic violence, abused over period of two years. She did not report this abuse to the authorities or seek medical assistance until she left her partner. She filed a disorderly conduct report with the police. She has trouble holding on to a job for longer than a few months, has difficulties with concentrating on tasks, and exhibits signs of depression.

**Example #3:** An applicant who was stalked by her ex-boyfriend for more than six months. He sat in a car outside her house three or four nights a week, called her office and hung up on her and her coworkers on a daily basis, and sent unsolicited letters, gifts, and emails to her constantly. He told her that they were destined for each other and no one can come between them. He followed her when she tried to go out on dates. She developed a fear of being alone at night because she constantly feels watched. She moved in with her parents and had two deadbolt locks installed at each of the entrances.

The petition should include an explanation/documentation of how the applicant suffered substantial injury both subjectively and objectively. The applicant’s own statement is critical to establishing the subjective nature of the injury, and may include issues pertaining to that applicant’s particular vulnerability.<sup>55</sup> The regulations state that aggravation of preexisting conditions will be considered.<sup>56</sup> Moreover, it is not necessary to support the subjective elements with a professional evaluation. The victim’s statement in his or her own words outlining the injury that resulted from the criminal activity may be sufficient.

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<sup>52</sup> 8 CFR § 214.14(a)(8).

<sup>53</sup> 8 CFR § 214.14(b)(1).

<sup>54</sup> *Id.*

<sup>55</sup> 8 CFR § 214.14(c)(2)(iii).

<sup>56</sup> 8 CFR § 214.14(b)(1).

If there are medical reports, they may certainly be included as they provide useful objective evidence of physical injuries and harm. If the applicant seeks counseling, consider including a psychological evaluation. A description of how the physical and mental abuse constitutes substantial harm as defined by the regulations should be addressed in the application cover letter.

## **E. Admissible to the U.S.**

The applicant must be admissible for nonimmigrant status to obtain U visa status. “Admissibility” is the legal standard for all foreign nationals applying for a legal status to either enter or extend their stay in the U.S.<sup>57</sup> Common grounds of inadmissibility include:

- Entry without inspection
- Criminal convictions
- Unlawful presence
- Previously lying to federal immigration authorities (i.e., submitting applications with false information or presenting false documents)
- Unlawful voting
- Claiming to be a U.S. Citizen

Many, but not all, grounds of inadmissibility may be waived at USCIS’s discretion. Those seeking a waiver must file Form I-192 with accompanying fee or request for a fee waiver. In adjudicating the waiver, USCIS will balance the adverse factors of inadmissibility against the social and humanitarian considerations presented.<sup>58</sup> If the inadmissibility is based on violent or dangerous crime, then the Department of Homeland Security (DHS) will exercise favorable discretion only in extraordinary circumstances.<sup>59</sup>

- **Practice Pointer:** In the affidavit, outline the circumstances that warrant favorable exercise of discretion, such as reasons the applicant wants to stay in/enter the U.S. and any sympathetic factors that explain the issue giving rise to the inadmissibility.

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<sup>57</sup> INA § 212; 8 USC § 1182.

<sup>58</sup> 8 CFR § 212.17(b)(1).

<sup>59</sup> 8 CFR § 212.17(b)(2).

### III. Special Considerations

#### A. U Interim Relief

Approximately 7,000 individuals received provisional – or interim – relief prior to the release of U visa regulations. With no regulatory guidance, these applications tracked the language of the statute, and would include a letter from law enforcement documenting cooperation, the applicant’s biographic information, a copy of the passport information page, documentation that the applicant was a victim of qualifying criminal activity, and documentation of the harm suffered. Based on the presentation of a prima facie case, USCIS would generally grant deferred action status, which qualified the applicant for employment authorization.

While those with U interim relief were required to apply for U status by April 14, 2008, on December 18, 2009 USCIS extended that deadline to February 1, 2010.<sup>60</sup> USCIS notified those individuals potentially affected by termination of interim relief status on November 9, 2009, advising them of this change. U interim relief recipients who miss this new deadline *may* qualify even after February 1, 2010 if they can establish exceptional circumstances for failing to meet the deadline. Exceptional circumstances may include the applicant’s incapacitation or incompetence during the relevant time period. Consult an immigration attorney immediately, as the period of time from the filing deadline to the time of application for full U status may trigger inadmissibility issues.

Those granted U interim relief are exempt from providing a newly executed Form I-918, Supplement B certification, and if approved, the U status will be retroactive to the date of initial interim relief approval.

#### B. Derivative Family Members

Certain family members may accompany or follow to join the U principal applicant, whether in the United States or overseas.<sup>61</sup> Family members are considered “qualified” as derivatives depending on their relationship to the principal, the age of the principal at the time of filing, and the age of the derivative.<sup>62</sup> U principals over 21 years of age at the time of filing may include as derivative applicants their spouse and unmarried children under the age of 21. Applicants under 21 years of age at the time of filing may include

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<sup>60</sup> “U Nonimmigrant Relief Final filing Date Extended” USCIS Update, Dec. 18, 2009, [www.uscis.gov](http://www.uscis.gov); [www.aila.org](http://www.aila.org) doc. 09221223

<sup>61</sup> INA § 101(a)(15)(U)(ii); 8 USC § 1101(a)(15)(U)(ii).

<sup>62</sup> An eligible qualifying member will be admitted in one of the following U nonimmigrant statuses; U-2 spouse, U-3 child, U-4 parent of a U-1 holder who is a child under 21 years of age, or U-5 unmarried sibling under the age of 18. 8 CFR § 214.14(f).

their spouse, children, parents, and unmarried siblings under the age of 18.<sup>63</sup> Note that a qualifying family member who is the perpetrator/abuser cannot apply for derivative status.<sup>64</sup>

The relationship between the U applicant and the qualifying family member must exist at the time of filing and continue to exist at the time of adjudication.<sup>65</sup> The regulations protect applicants and derivatives that ‘age out’ during the adjudication process. If the U principal was under 21 at the time of filing for an unmarried sibling, USCIS will continue to consider the sibling a qualifying family member even if at the time of adjudication the U principal is no longer under 21 and/or the sibling is no longer under 18 years of age.<sup>66</sup>

Derivatives must be able to document their qualifying relationship to the principal applicant, with a birth or marriage certificate, and must be admissible to the U.S.<sup>67</sup> Qualifying family members who may be inadmissible may file a waiver on Form I-192.<sup>68</sup> To apply for derivative status on behalf of qualifying family members, a U principal must submit Form I-918, Supplement A, “Petition for Qualifying Family Member of U-1 Recipient” for each family member. The U principal may apply on behalf of the qualifying family member either at the same time as their U visa application, or at a later date. All Form I-918, Supplement A’s must be accompanied by initial evidence<sup>69</sup> and the required biometrics fees (or fee waiver).<sup>70</sup> If represented by counsel, a separate Form G-28 for each derivative should also be included.

Derivatives presently in the U.S. are eligible to apply for employment authorization concurrently with Form I-918, Supplement A, or at any time thereafter.<sup>71</sup> Derivative family members that live abroad may apply for employment authorization following their entry into the U.S. in derivative U status.<sup>72</sup>

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*Id.*

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8 CFR § 214.14(f)(1).

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8 CFR § 214.14(f)(4).

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8 CFR § 214(f)(4)(ii).

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8 CFR § 214.14(f)(1).

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8 CFR § 214.14(f)(3)(ii).

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Initial evidence includes evidence demonstrating the qualifying relationship, and if the derivative is inadmissible, a Form I-192 waiver of inadmissibility. If the Form I-918, Supplement As are not filed at the same time as Form I-918 but are filed at a later date, they must be accompanied by a copy of the Form I-918 that was filed on behalf of the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U status. 8 CFR § 214(f)(2).

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*Id.*

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8 CFR § 214.14(f)(7).

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*Id.*

## C. If Your Client Was or Is in Deportation Proceedings

### 1. Victims in Removal Proceedings

- An individual in removal proceedings may apply for U status, by filing the I-918 with USCIS, not with Immigration Court.
- An applicant in proceedings must file a joint motion with ICE to terminate removal proceedings if U status is granted.<sup>73</sup>
- Derivative family members in proceedings may also seek a joint motion with ICE to terminate if Form I-918, Supplement A was approved on their behalf.
- The motion should be filed with the Immigration Court or Board of Immigration Appeals (BIA).
- A grant of the motion results in cancellation of the order of removal, exclusion, or deportation as of the date of grant.<sup>74</sup>
- File Form I-918 at Vermont Service Center (VSC). If proceedings were terminated, and the U visa is denied, then DHS can issue a new Notice to Appear (NTA).

**Practice Pointer:** If applicant is detained or in removal proceedings, expedited processing of the U petition may be requested. To request expedited processing, the U application must already be submitted to the VSC with a G-28. VSC may be reached at (802) 527-4888. You will need to leave a message, including the client's Alien Registration number (A-number)<sup>75</sup> and the Receipt number found on the I-918 Receipt notice. It usually takes up to 72 hours for the call to be returned.

Upon confirming that the applicant is detained, VSC will notify ICE and issue a bona fide determination. This determination is not predictive of adjudicative outcome, but is meant to notify ICE that the person has submitted a complete application and may be eligible for U status.<sup>76</sup>

**Practice Pointer:** While the regulations<sup>77</sup> suggest that the motion can be filed while the I-918 is pending, in practice ICE

<sup>73</sup> 8 C.F.R. § 214.14(c)(1)(i), 8 C.F.R. § 214.14(f)(2)(i).

<sup>74</sup> 8 C.F.R. § 214.14(c)(5)(I), 8 C.F.R. § 214.14(f)(6).

<sup>75</sup> The Alien Registration number, otherwise known as the A-number, is assigned by the DHS. If your client entered the U.S. without permission or inspection at a border point, it is likely s/he will not have an A-number. In this case, simply leave the I-918 Receipt number with the VSC Hotline. On applications, "none" or "n/a" should always be used instead of leaving the box blank.

<sup>76</sup> VSC Stakeholders Meeting, *supra* note 43.

<sup>77</sup> 8 CFR 214.14c1(i) and (ii)

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will not join a motion until the I-918 is approved. This may vary among the different immigration districts.

## 2. Prior Final Orders of Removal<sup>78</sup>

- Form I-918 should be filed at VSC.
- If the U visa is approved, then an order of removal, deportation, or exclusion by the Secretary (i.e., expedited removals, old INS exclusion orders) will be cancelled effective the date of the U visa approval.
- Orders of exclusion, deportation, or removal issued by an Immigration Judge or the BIA must be reopened and terminated to be cancelled.

**Practice Pointer:** When reviewing prior final orders of removal, first call the EOIR Hotline at 800-898-7180 to determine if the Motion to Reopen should be filed with the Immigration Court that issued the order or with the BIA. The Hotline has an automated system that, with the victim's A-number, will indicate if an appeal was made in the prior case.

If an appeal is on file, a Motion to Reopen with the BIA will need to be filed with the Immigration Court. The Office of the Chief Counsel should be contacted to determine if it would be willing to join the motion to reopen and terminate the prior order.

- If the U visa is denied, the stay will automatically terminate on the date of the denial.

## IV. After Issuance of U Status

### A. Employment Authorization

The Employment Authorization Document (EAD) issued to the U-1 principal should be for the full four-year period, allowing for one-year extensions if law enforcement certifies that continued cooperation is necessary. If the EAD is not granted for the full period, there may be an error. In this situation, contact VSC at 802-527-4888. If it was not an error, a renewal can be filed by submitting Form I-765, proof of identity, two passport photos, and appropriate filing fee<sup>79</sup> (or fee waiver). Those applying for U derivative status within the U.S. will need to apply for the EAD

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<sup>78</sup> "U Visa Interim Regulations Fact Sheet and Guidance," National Network to End Violence Against Women, *available at* [www.immigrantwomensnetwork.org](http://www.immigrantwomensnetwork.org).

<sup>79</sup> USCIS filing fees can be found at [www.uscis.gov](http://www.uscis.gov). As of the time of writing, the filing fee for an I-765 was \$340.00 (payable to **Department of Homeland Security**), but since filing fees are subject to change, the amount should be verified prior to filing.

by submitting Form I-765 along with the Form I-918, Supplement A, and include proof of identity, two passport photos, and appropriate filing fee (or fee waiver).

## B. Travel Overseas

Technically, individuals in U status are eligible to apply for a U visa at a U.S. consulate, and may use that visa to reenter the U.S. after a trip abroad. However, overseas travel raises a number of concerns in this context, and it may be wise to err on the side of caution and consider advising clients against overseas travel. For example:

- There is no guarantee that the visa will be issued;
- If the applicant accrued “unlawful presence,”<sup>80</sup> departure from the U.S. may trigger a three- or ten-year bar to future immigration benefits in the U.S.<sup>81</sup>
- Individuals in U status applying for adjustment of status to permanent residency must demonstrate continuous physical presence in the U.S.<sup>82</sup> The regulations state that “an alien shall be considered to have failed continuous physical presence...if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days.”<sup>83</sup>

## C. Adjustment of Status to Permanent Residency

### 1. Eligibility to Adjust Status

Under INA § 245(m), a U visa holder may be eligible to adjust status to that of a lawful permanent resident. In order to adjust, U nonimmigrants must demonstrate:

- (1) Lawful admission to the U.S. as a principal or derivative in U status (U-1, U-2, U-3, U-4, or U-5 nonimmigrant status);<sup>84</sup>
- (2) U status at the time of application, OR accrual of at least 4 years in U interim relief status;<sup>85</sup>
- (3) Continuously presence in the U.S. for three years;
- (4) Is not inadmissible;<sup>86</sup>

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<sup>80</sup> Discussed at length in Part A, section I.B.1 “Immigration Status.”

<sup>81</sup> INA § 212(a)(9)(B), 8 USC § 1182(a)(9)(B).

<sup>82</sup> 8 CFR 245.24(a)(1).

<sup>83</sup> *Id.*

<sup>84</sup> Derivatives of the principal U nonimmigrant (U-2, U-3, U-4, and U-5) are able to submit an application to adjust status independently from the principal U-visa holder, unlike derivatives of a T nonimmigrant who must file at the same time or wait until after the principal T-1 has submitted an application to adjust status. See 8 CFR § 245.23(b)(1).

<sup>85</sup> U interim relief status is discussed at length in Part A, section III.A “U Interim Relief.”

<sup>86</sup> Grounds of inadmissibility are listed at INA § 212(a)(3)(E).

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- (5) Has not “unreasonably refused to provide assistance to an official or law enforcement agency...after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence;”<sup>87</sup> and
- (6) That a favorable exercise of discretion is “justified on humanitarian grounds, to ensure family unity, or is in the public interest.”<sup>88</sup>

An applicant may not adjust if:

- (1) They participated in Nazi persecution, genocide, or any act of torture or extrajudicial killing (other grounds of inadmissibility do not preclude adjustment).
- (2) Affirmative evidence shows that the person unreasonably refused to provide assistance in investigation or prosecution of criminal activity.
- (3) U nonimmigrant status has been revoked.<sup>89</sup>

## 2. Inadmissibility and Discretion

The regulations clearly state that INA § 245(m) is a distinct form of adjustment, and therefore does not have the admissibility requirements detailed in 8 CFR §§ 245.1 and 245.2.<sup>90</sup> The only bar to adjusting U nonimmigrants is INA §212(a)(3)(e), which makes inadmissible those “[p]articipating in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.”<sup>91</sup> This ground is not waivable, so there would be no basis to file Form I-601, Application for Waiver of Ground of Inadmissibility.

However, U adjustment is a discretionary benefit, and the burden is on the applicant to show that a favorable exercise of discretion is merited. Since adverse factors often overlap with inadmissibility grounds, it may be necessary to overcome those factors in advocating for a favorable exercise of discretion. For example, applicants who have been convicted of a crime may not be able to adjust, absent a showing of exceptional and extremely unusual hardship.<sup>92</sup> Given that the regulations are so new, it is unclear at this point if a denial of adjustment by USCIS will survive judicial review.

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<sup>87</sup> 8 CFR § 245.24(b)(5).

<sup>88</sup> 8 CFR § 245.24(b)(6).

<sup>89</sup> 8 CFR § 245.24(c).

<sup>90</sup> 8 CFR § 245.24(l).

<sup>91</sup> *Id.*

<sup>92</sup> Preamble, *supra* n. 53, at 33; *See Matter of Jean*, 23 I&N Dec. 373, 383-384 (A.G. 2002), *aff’d* *Jean v. Gonzales*, 452 F.3d 392 (5<sup>th</sup> Cir. 2006). USCIS Interim Final Rule, 72 Fed. Reg. 53014 at 53021 (2007), *supra* n. 3.

### 3. Documenting U-Based Adjustment Applications

The application to adjust status must contain the following documents:<sup>93</sup>

- Form I-485, Application to Register as a Permanent Resident (including the additional instructions listed in Form I-485, Supplement E);<sup>94</sup>
- Form G-325A, Biographic Information, if you are between the ages of 14 and 79;
- Form G-28, if represented by counsel;
- Appropriate filing fees or request for fee waiver;
- Photocopy of the applicant’s I-94, Arrival-Departure Record;
- Proof of applicant’s U status (Copy of Form I-797, Notice of Action, granting U nonimmigrant status);
- Photocopy of all pages of applicant’s passport(s) that was valid during the period of U status. If applicant does not have a passport or equivalent travel document, an explanation should be included in the affidavit;
- Dates of any departure from the U.S. as well as the “date, manner, and place of each return;”
- Sealed medical exam, including vaccinations.

**Practice Pointer:** The medical examination is typically required to determine if the applicant would be ineligible based on medical grounds. However, since those grounds are not at issue in a U visa adjustment, it is unclear if the medical exam should be required in these cases. This is an important issue, given the expense of the medical exam and concerns some individuals may have with the necessary vaccinations. As of the time of writing, USCIS indicated that it would issue a Request for Evidence (RFE)<sup>95</sup> if it is determined that such a medical exam is required. However, if the medical exam is submitted with the adjustment of status, it will facilitate adjudication.

- Evidence that the applicant has not been absent from the U.S. for any period greater than 90 days, or any periods in the aggregate of 180 days or more.

**Practice Pointer:** An exception is if the absences “were necessary to assist in the investigation or prosecution of the criminal activity or were otherwise justified.”<sup>96</sup>

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<sup>93</sup> 8 CFR § 245.24(d).

<sup>94</sup> As of this writing, Form I-485, Supplement E contains only instructions and can be found at [www.uscis.gov](http://www.uscis.gov).

<sup>95</sup> For more information on this issue, refer to “Practice Pointers and Guidance: Medical Examination for U Adjustment Applicants,” August 2009. National Network to End Violence Against Women, available at [www.immigrantwomensnetwork.org](http://www.immigrantwomensnetwork.org).

<sup>96</sup> 8 CFR § 245.24(d)(5)(iii).

**DISCLAIMER**

- Evidence that the applicant did not unreasonably refuse law enforcement requests for cooperation. This requirement may be met with a newly signed Form I-918, Supplement B, “U Nonimmigrant Status Certification” or an affidavit explaining any requests for assistance by law enforcement and the applicant’s response.<sup>97</sup>

**Practice Pointer:** At the time of this writing, the regulations require a written certification form from law enforcement that the applicant has not unreasonably refused to cooperate. However, it is unclear that USCIS will require this element once the regulations are final.

**Practice Pointer:** Regardless of whether a certification from law enforcement will be required, information about the victim’s willingness to cooperate, or that s/he did not unreasonably refuse to cooperate with law enforcement, should be included in the sworn affidavit.

**Practice Pointer:** If the victim was unable to cooperate, an affidavit from the victim explaining why the refusal was reasonable should also be included. Other evidence to establish that the refusal was reasonable may include statements by a therapist and others close to the victim, explaining the victim’s inability to cooperate.

- Evidence that applicant has at least three years of continuous physical presence. Examples include, but are not limited to, taxes, lease agreements, rent receipts, utility bills, school records, credit card statements, birth and/or marriage records, hospital records, and the applicant’s sworn statement.

**Practice Pointer:** While it is not necessary to prove physical presence for every day of the three years, it must be established that a person did not leave the U.S. for more than 90 days at one time, or an aggregate of 180 days. If a person has traveled substantially during the three years, take care to include enough documentation to prove the days do not add up to more than 180 days.

- Evidence establishing that approval is warranted as a matter of discretion on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

**Practice Pointer:** Evidence can include family ties (including U.S. Citizen children), community ties and volunteer work, any medical needs that the victim or victim’s family is experiencing (especially if related to the crime), length of residency in the U.S., and access to the U.S. court system. Additionally, country conditions from the victim’s home

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<sup>97</sup> 8 CFR § 245.24(e)(2).

country that would adversely affect him/her can also be included to show the importance of favorable discretion on humanitarian grounds.

- Evidence relating to discretion, listed above and including any and all mitigating equities, which might offset any adverse factors. Where adverse factors are extreme, a showing of exceptional and extremely unusual hardship in the case of denial may be required. Adverse factors may include, but are not limited to, crimes, drug use, and instances of fraud.

#### 4. Transition Rule

The transition rule applies to applicants that have accrued 4 years or more in U interim relief status. In general, U nonimmigrant status cannot be extended beyond 4 years, and applicants must be in valid U status at the time of filing for adjustment.<sup>98</sup> However, given the delay in promulgating the U regulations, there are many who have accrued 4 years or more in U interim relief status. According to TVPRA 2008, applicants who have accrued more than 3 years in U interim relief will remain in valid U nonimmigrant status for one year from the date of approval of Form I-918.<sup>99</sup>

**Practice Pointer:** If at the time of filing the Form I-918 the applicant has been in U interim relief status for 4 years, the adjustment application can be concurrently filed with the Form I-918. The adjustment will remain pending until the Form I-918 is adjudicated.

#### 5. Adjustment of Status for U derivatives

Derivatives (i.e. those who hold U-2, U-3, U-4, U-5 status) are eligible to adjust status; however, the regulations as written present a conundrum:

- Derivative not continuously present in the U.S. for three years are not eligible to adjust. If the principal U holder adjusts to permanent residency, the U derivatives have no basis to extend their status. U derivatives who gain U status after the principal are in essence precluded from fulfilling three years in U status.
- At the time of writing, USCIS has not issued guidance on how a U derivative who gains U status after the principal will be able to remain in U status to be eligible to adjust. The most likely solution will be to file Form I-539 requesting extension of U nonimmigrant status.

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<sup>98</sup> INA § 214(p)(6), 8 USC § 1184(p)(6).

<sup>99</sup> TVPRA 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); *See* USCIS Interoffice Memorandum From Carols Iturregui and Donald Neufeld, “Guidance Regarding Petitioners for U Nonimmigrant Status with More Than 3 Years in U Interim Relief Status” (Jan. 15, 2009).

**Practice Pointer:** While this form is not explicitly eligible for a fee waiver, under INA § 245(1)(7), all filings related to VAWA, T visas, or U visas are eligible for a fee waiver.

## 6. Petitioning for a “Qualifying Family Member”<sup>100</sup>

There is a separate process for family members that have never held U status. In these cases, the U principal may petition for a “qualifying family member” (QFM) to directly adjust status to permanent residency by submitting the new Form I-929. The Form I-929 may be filed concurrently with, or subsequent to, the principal’s adjustment application. However, the Form I-929 will not be adjudicated until the U-1 principal’s adjustment is adjudicated.

NOTE that family members who hold derivative U status (i.e. U-2, U-3, U-4, and U-5) are not considered to be QFMs for purposes of the I-929. The following eligibility requirements must be met to be recognized as a QFM:<sup>101</sup>

- The QFM never held U nonimmigrant status;
- The qualifying family relationship<sup>102</sup> exists at the time of the U-1’s adjustment and continues through the adjudication of the QFM’s adjustment;
- Either the QFM or the U-1 applicant would suffer extreme hardship if the qualifying family member is not allowed to remain in or enter the U.S.;
- Principal U-1 applicant has adjusted status, has a pending application, or is concurrently filing an application for adjustment of status.

## 7. Travel Issues after Filing an Adjustment Application:

As discussed above, while individuals in U status may travel outside of the U.S., issues relating to potential inadmissibility should be discussed before departing the U.S. Such issues are a concern even if the U nonimmigrant received advanced permission to travel through Form I-131, Application for Travel Document (advanced parole). Most disconcerting of these is the risk that if a U nonimmigrant accrued “unlawful presence,” departure from the U.S. may trigger a three- or ten-year bar to future immigration benefit.<sup>103</sup>

**U nonimmigrants pending adjustment of status must also be aware of these reentry issues.** In addition to these issues, an applicant pending adjustment of status must obtain

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<sup>100</sup> A “qualifying family member” should not be confused with a family member who was originally included in the U visa petition, and currently holds U-2, U-3, U-4, or U-5 status. These derivative U visa holders follow the same procedures to adjust status to permanent residence as the principal U visa holder.

<sup>101</sup> 8 CFR § 245.24(g).

<sup>102</sup> 8 CFR § 245.24(a)(2). Includes the U-1 principal applicant’s spouse or child, or, if the principal applicant is a child, a parent.

<sup>103</sup> INA § 212(a)(9)(B), 8 USC § 1182(a)(9)(B).

advanced parole through filing Form I-131, which must be obtained prior to departing the U.S., otherwise the adjustment application will be deemed abandoned by USCIS. Note that the U nonimmigrant's prior unlawful presence will not preclude issuance of the advance parole, nor will it impede re-entry into the U.S. However, it may nevertheless trigger a denial of the adjustment of status. Once USCIS makes this determination, the immigrant will be treated as an applicant for admission, subject to all grounds of inadmissibility.<sup>104</sup>

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<sup>104</sup> 8 CFR § 245.24(j).

**DISCLAIMER**

These materials are provided solely for informational purposes and are not legal advice. Transmission of these materials is not intended to create, and receipt does not constitute, an attorney client relationship. This matter should not be pursued further without contacting an attorney or legal representative.

## Part B: Preparing the U Nonimmigrant Visa Application Package

### I. The Basics of the Application

Crime victims who have suffered substantial physical or mental abuse and cooperated with law enforcement officials to investigate or prosecute the crime may apply directly to USCIS for U status. A petition is made by submitting Form I-918; Form I-918, Supplement B, Form G-28 and supporting documentation to the Vermont Service Center.<sup>105</sup> If filing for a waiver of inadmissibility, Form I-192 should be filed concurrently with the Form I-918.<sup>106</sup> A request for fee waiver should cover the fees for both Form I-192 and biometrics.

**The basic documents to include in the application package are:**

- a brief cover letter acting as a roadmap to the evidence included.
- a duly signed and executed Form G-28 (on blue paper);
- filing fees or request for fee waiver; Form EOIR 26A<sup>107</sup> may be used for this purpose;
- duly signed and executed Form I-918, with copy of applicant's birth certificate and identify document (biographic page of passport or other government issued ID);
- duly signed and executed Form I-918, Supplement B, or proof of previous grant of deferred action pursuant to interim U relief;
- duly signed and executed Form I-918, Supplement A for each derivative family member (if appropriate) and documents establishing derivative's identity and relationship to primary applicant (birth certificate, marriage certificate, etc.);
- duly signed and executed Form I-765, for each derivative physically present in the U.S. applying for employment authorization. The principal applicant is not required to file a Form I-765.
- 2 passport photos of each applicant requesting employment authorization (including principal U applicant and derivative family members);<sup>108</sup>

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<sup>105</sup> ATTN: U VISA UNIT; U.S. Citizenship and Immigration Services, Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

<sup>106</sup> All immigration forms can be downloaded off the internet, available at [www.uscis.gov](http://www.uscis.gov).

<sup>107</sup> This is not a required form, and an affidavit by the applicant is also acceptable. Note that at the time of this writing, USCIS is in the process of creating a new fee waiver request form.

- a duly signed and executed Form I-192, if waiver of inadmissibility is being sought; and
- evidence supporting the claim (personal statement/affidavit, documentation of facts surrounding the crime, documentation of substantial harm suffered).

## II. Preparing and Drafting the U Visa Application Package

### A. Completing the Forms

#### 1. Form G-28

The Form G-28, or notice of appearance of an attorney or representative, designates the attorney or representative of a religious, charitable, social service, or similar organization as the representative on behalf of a person involved in a matter before USCIS. There is no filing fee associated with the Form G-28, but it should be on blue paper.

#### 2. Form I-918

##### Part 1. Information

- Complete basic background information about the applicant.
- Make sure to put dates in the U.S. format (Month/Day/Year) as opposed to the European format (Day/Month/Year) followed by many countries.
- **Safe Mailing Address:** This is the address to which USCIS will send notifications. It is a good idea to include the practitioner's address to ensure that the case is properly processed.
- **Date and Place of Last Entry into US:** This should be taken from the current I-94 card, or stamp in the passport. If neither passport nor I-94 are available, make an estimate and note on the form that it is an estimate.
- **Passport Information:** If passport is not available, write "N/A." An attempt to obtain one should be made, but if it is not possible, then file Form I-192.

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<sup>108</sup>

Standards for the photographs can be found at [www.travel.state.gov/passport/pptphotos/composition\\_checklist.html](http://www.travel.state.gov/passport/pptphotos/composition_checklist.html).

**DISCLAIMER**

- **Current Immigration Status:**<sup>109</sup> Check client's current I-94 card (this will usually be a white card stapled into the passport). It is the I-94, and NOT the visa stamp in the passport, that denotes status and authorizes length of stay. The individual's status is noted by a letter, hyphen, and number (usually "B-1 or B-2" or "A-3" or "G-5"), and the expiration of that status is noted below.

#### Part 2. Additional Information/Specific Questions

- **Q4. Law Enforcement Certification.** If the applicant was not previously granted interim U relief, then check "Yes." If the applicant was previously granted interim U relief, then check "No."
- **Q6. Under the Age of 16.** This question refers to the applicant's age at the time of the crime.
- **Q7. Employment Authorization.** Check "Yes." Principal applicants do not have to file any additional applications to obtain employment authorization. Derivatives must file their own Form I-765 to receive work authorization. This can be filed concurrently with the Form I-918 if they are within the U.S.
- **Q8. Immigration Proceedings.** This question refers to Deportation or Removal Proceedings, only. Check "Yes" if the applicant was ever ordered to appear before an Immigration Judge in the U.S.
- **Q9. Place of entry and status.** This information should be taken from the visa in the passport. If neither the visa nor passport is available, make an estimate and note on the form that it is an estimate.
- **Q10. Consulate notification.** This only applies if the principal applicant or derivative is abroad.

#### Part 3. Processing Information

These questions are to determine "admissibility," a legal standard required for all foreign nationals applying for a legal status to either enter or extend their stay in the U.S. It is also very important to the ultimate "green card" application. Be sure that clients answer each question truthfully, especially questions about criminal conduct in the U.S. If the answer to ANY of the questions is "Yes," the applicant will have to file a Form I-192, Waiver of Inadmissibility.

- **Q1. Criminal History.** You may want to check the immigration regulations and statutes to make sure that the applicant's admission to a criminal act does not subject

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<sup>109</sup> Filing a petition for someone who is not eligible could result in a Notice to Appear (NTA) before an Immigration Judge (IJ) and subsequent removal (deportation) from the U.S.

him or her to a permanent bar from immigration benefits. However, the U visa allows most criminal acts to be waived.

- **Q2. Public Charge.** If the applicant has received any cash assistance from the U.S., state, or local government, answer “Yes” and complete a Form I-192 Waiver.<sup>110</sup>
- **[Q3, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22.]** Answering “Yes” to these questions should not bar U status, but consult an immigration attorney to make sure that the applicant is eligible for a waiver. Filing an application for someone who is not eligible could result in applicant being placed in “deportation” or “removal proceedings” before an Immigration Judge.

#### Part 4. Information about spouse and/or children

Fill in information as completely as possible. This section should contain all children, including U.S. citizens.

#### Part 5. Filing on Behalf of Family Members

Check “Yes” or “No,” depending on whether the applicant is petitioning for family member(s). If “Yes,” a separate Form I-918, Supplement A must be completed and included for each family member.

#### Part 6. Attestation, Release, and Signature

Signature by the applicant certifying that everything is true and correct under penalty of perjury, and that the applicant understands that the USCIS can and may share this information with other government agencies.

#### Part 7. Signature of Person Preparing Form, If Other Than Above

Should be completed by the attorney or advocate who assisted in preparing the forms. This is a normal part of any immigration petition or application.

### 3. Form I-918, Supplement B

Except for those granted interim U relief,<sup>111</sup> a law enforcement certification is required of all principal U applicants. The Form I-918, Supplement B is the law enforcement certification (“LEC”), which can only be signed by:

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<sup>110</sup> In addition, if an applicant has received public benefits in the name of a U.S. Citizen child, s/he may answer “No” to this question. An answer of “Yes” only applies where the cash assistance was received in the applicant’s name.

<sup>111</sup> If the Applicant was previously granted interim relief on a pre-10/17/2007 application, the applicant does not need to submit Form I-918, Supplement B. Such an applicant must provide proof of previous grant of interim relief.

#### **DISCLAIMER**

- A judge;
- The head of the certifying agency;<sup>112</sup> or
- A specified designee of the certifying agency appointed by the agency head.

**Practice Pointer:**

- Your first step in the U visa process should be arranging the Form I-918, Supplement B from a law enforcement agent.
- Law enforcement certifications are only valid for 6 months. As indicated in the Federal Register, this compulsory time limit aims to prevent the submission of “stale” certifications and to preclude “the situation where petitioners delay filing...and they cease to be helpful to the certifying agency.”<sup>113</sup>

#### 4. Form I-918, Supplement A

A separate Supplement A, G-28, and filing fee, or a request for fee waiver, must be included for each family member being sponsored. Derivatives who are applying from outside the U.S. will undergo an interview at the appropriate consular post. Attorneys should examine whether derivative applicants face inadmissibility issues, such as unlawful presence, issues around unlawful entry, or prior criminal convictions.

##### Part 1. Relationship

Check the appropriate relationship.<sup>114</sup> Applicants over 21 can file for their spouse and unmarried children under 21. Applicants under 21 can file for their spouse, children, parents and unmarried siblings under 18 at the time of filing of Form I-918 (not at time of interim filing).

##### Part 2. Information about the Main Applicant

If the Supplement A is filed together with the original Form I-918, check “Pending” for the last question in this section.

##### Part 3. Information about Derivative Applicant

Be sure to answer all questions. Answer “None” or “N/A,” but do not leave blanks.

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<sup>112</sup> The Act does not define law enforcement agency nor does it specify which law enforcement agencies are qualified to provide the needed law enforcement certification to U visa applicants. The interim regulations identify the head of the certifying agency or a designated official as the appropriate person to sign the LEC

<sup>113</sup> USCIS Interim Final Rule, 72 Fed. Reg. 53014 at 53023 (2007), *supra* n. 3.

<sup>114</sup> Perpetrators/abusers can not be a qualifying family member.

Part 4. Additional Information

**Q1. Immigration Status.** This question is the same as the immigration status portion of Part I of Form I-918.

**Q4.** Same as Part 2, Question 10 of Form I-918.

**Q5. Immigration Proceedings.** This question refers to Deportation or Removal Proceedings. Check “Yes” only if the Family Member has been ordered to appear before an Immigration Judge.

**Q6. Employment Authorization.** Note that family members already living in the U.S. are eligible to receive employment authorization. Derivatives must file Form I-765 accompanied by Form G-28, if represented by counsel, two passport photos, appropriate filing fee (or fee waiver), and for Q16 on Form I-765, indicate ‘a20’ as the eligibility category.

**Q8-23.** As with Part 3 on the Form I-918, these questions are to determine “admissibility.” Be sure to answer truthfully to each question. If the answer to any question is “Yes,” a Form I-192 with filing fee or request for fee waiver will need to be filed for each applicant. Consult an immigration attorney to determine eligibility for a waiver and/or risk of deportation or removal.

Part 5. Attestation and Release.

This is similar to Part 6 on the Form I-918. If the family member is in the U.S., s/he should sign. If the family member is NOT in the U.S., only the principal applicant needs to sign.

Part 6. Signature

The same as Part 7 on Form I-918.

5. Form I-192

This two-page form should be signed and submitted for the applicant and each derivative family member who is inadmissible under INA § 212(a), along with.<sup>115</sup>

- Supporting statement and other evidence, if any, requesting favorable exercise of discretion (may describe sympathetic circumstances that gave rise to inadmissibility and/or the reasons why the applicant or derivative seeks to stay/enter the U.S.);

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<sup>115</sup> Even though the applicant may be physically in the U.S., in order to permit them to be “entered” into a legitimate status, the Form I-192 must be filed.

**DISCLAIMER**

- A check or money order for \$545 payable to the **U.S. Department of Homeland Security**, or a request for fee waiver, must be included for each Form I-192.<sup>116</sup>

Completing the form

- **Q1-6.** Self-explanatory.
- **Q 7. Desired Port of Entry into US.** Enter “Vermont Service Center” and the city of the nearest District Office. For example: “VSC/New York, NY.”
- **Q 8. Means of Transportation.** Enter “N/A.”
- **Q 9. Proposed Date of Entry.** Enter the date on which you are filling out the form.
- **Q10. Approximate Length of Stay in the US.** Enter “Indefinite.”
- **Q11. Purpose for Entering the US.** Enter “Obtain U nonimmigrant status.”
- **Q12. I Believe I May be Inadmissible.** List any and all of the issues to which applicant answered “Yes” to in Part 3 of the Form I-918. Consult someone with expertise in this area to make sure the ground is eligible for a waiver. It should be a brief explanation. The most common are, “I may be inadmissible because I . . . .”
  - “entered the U.S. on a fraudulent visa.”
  - “violated my nonimmigrant status.”
  - “entered the U.S. without inspection.”
- **Q13.** If applicant previously filed I-192, answer “have.” If applicant has never applied to enter the U.S., s/he would never have filed this form, and can answer “have not previously filed.”
- **Q14-17.** Applicants for T and U nonimmigrant status do not need to answer these questions, so response should be only “Applicant for U Status.” No other details need to be provided.
- **Q18. Applicant’s Signature and Attestation.** The applicant should sign and date the form.
- **Q19. Preparer’s Signature and Certification.** This should be completed by attorney or advocate who assisted in the preparation of the petition. This is a normal part of any immigration petition or application

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<sup>116</sup> Pursuant to 8 CFR § 103.7(c)(5), applicants for T and U nonimmigrant status may submit fee waiver requests for I-192 applications.

## 6. Fee Waiver Request

- Fee waivers are available at the sole discretion of the USCIS.
- Note in the cover letter if a fee waiver request is being included with the application.
- Form EOIR-26A may be used for this purpose. The fee waiver lists the applicant's assets, income, and expenses, to show that the applicant does not have sufficient funds to pay the application fee.<sup>117</sup>
- Applying for a fee waiver will not prejudice the applicant.
- Only one fee waiver per applicant needs to be filed to cover all applications submitted together.

## 7. Photographs and Filing Fees

- Applicant must include two (2) passport photographs (for work authorization), with name and A# (if available) written on the back of each photo in pencil
- There is no filing fee for the I-918. However, there is a biometric fee of \$80, as well as filing fees for the I-765 (\$340) and the I-192 (\$545).<sup>118</sup> Fees may be paid with check or money order, and should include applicant's name.<sup>119</sup>

## B. **Preparing the Supporting Documentation**

### 1. Personal Statement/Affidavit

The personal statement/affidavit must be in the applicant's own voice (i.e., no legal jargon). Applicant should submit a detailed personal statement or affidavit addressing each element required for U status:

- Details of Criminal Activity:
  - Explain who, when, and where and the circumstances of the crime
  - Indicate whether specific records of the crime are available

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<sup>117</sup> Gail Pendleton, National Immigration Project, *Practice Pointers on Filing with VSC*, Feb. 27, 2002. In addition, as indicated in *supra* n. 107, USCIS is in the process of developing a form to request a fee waiver, please check [www.uscis.gov](http://www.uscis.gov) prior to filing.

<sup>118</sup> USCIS fees increase often. Always check [www.uscis.gov](http://www.uscis.gov) for current fee schedule.

<sup>119</sup> It is helpful to pay by check, because the cancelled check will have applicant's case number on it and is also proof of filing if USCIS misplaces the file.

#### DISCLAIMER

- Details of Law Enforcement Involvement:
  - Describe how law enforcement became involved
  - Name the responsible law enforcement agent
  - Describe Applicant's cooperation in the process
- Details of Substantial Physical and/or Mental Abuse:
  - State circumstances surrounding the victimization, including, but not limited to:
    - Nature of the injury inflicted or suffered
    - Severity of the perpetrator's conduct
    - Severity of the harm suffered
    - Duration of the infliction of the harm
    - Extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim (including aggravation of preexisting conditions)
  - Letter from a nongovernmental organization or clinical social worker affidavit may be helpful to describe the situation and the trauma experienced
- Information Supporting any of the Other Eligibility Requirements:
  - If there is any additional information (i.e., admissibility, helpfulness, etc.) that the applicant wants USCIS to consider in order to establish eligibility, describe in the affidavit.

If possible, provide the applicant with a translation of the document (if the applicant is not fluent in English). If a written translation is not possible, orally translate the Personal Statement, giving the applicant the chance to make edits and corrections.

## 2. Supporting Documentation/Exhibits

- Any document not in English must contain a certified translation
  - must include a signed and dated statement of accuracy by the translator, i.e. - "This is to certify that I am competent to translate from [insert language] into English and that the attached translation is accurate."
  - translated document should be on top of the foreign language document to allow the Adjudicator to see the English version first.

- Applicant's Marriage Certificate. If applicant is filing for her/his spouse, a copy of the marriage certificate with translation, must be included. If either the principal applicant or the spouse was previously married, include proof of the termination of all previous marriages (death certificate or divorce decree with translation);<sup>120</sup>
- Birth Certificates.
  - If applicant is filing for children, provide a copy of the child's birth certificate. If the child was adopted, include official copy of certificate or record of adoption.<sup>121</sup>
  - If applicant is filing for parents, the principal applicant's birth certificate must be included. If both parents are not listed on the birth certificate, also include the parent's marriage certificate.
  - If applicant is filing for siblings, the principal applicant's birth certificate and the derivative applicant's birth certificate should both be included to demonstrate the relationship.
- General Exhibits. Try to submit at least one document, in addition to the Personal Statement, that addresses each element. Examples of general exhibits include:
  - Witness affidavits (counselors, case managers, shelter workers, family members, friends, ministers, etc);
  - Trial transcripts;
  - Court documents;
  - Police reports;
  - Hospital and other medical records;

**Practice Pointers:**

- Double-sided copies are acceptable, and copies do not have to be notarized or certified;
- VSC suggests highlighting key portions of exhibits;

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<sup>120</sup> USCIS recognizes marriages as valid based on the laws of the country where the marriage took place. This may be an issue with tribal, dowry, or other non-state marriages, so you may need to supplement the documentation with evidence demonstrating the validity of the marriage. The Library of Congress is an excellent resource for research on this subject.

<sup>121</sup> Note that not all countries recognize adoption, including several Muslim countries. You may want to consult with an attorney familiar with local laws regarding adoption in that country.

**DISCLAIMER**

### 3. Application Checklist

- **Cover letter** printed on your agency's letterhead.<sup>122</sup>
- **Form G-28** (if applicable).
- **Filing Fees or EOIR-26A, Fee Waiver Affidavit.**
- **Form I-918**, with
  - applicant's birth certificate
  - applicant's identity document.
- **Form I-918, Supplement B**, or proof that applicant was previously granted U interim relief.
- **Form I-192 Waiver** (if applicable) for principal applicant.
- **Form I-918, Supplement A and I-765 (if applicable) for each family member.**
  - two (2) photos;
  - identity documents for each derivative;
  - documents establishing relationship to the principal;
- **Filing Fees or EOIR-26A, Fee Waiver Affidavit**
- **Form I-765** for each derivative, if applicable
- **Form I-192** for each derivative, if applicable
- **Tabbed Exhibits:**
  - Personal Affidavit
  - Witness affidavits
  - Court documents/transcripts
  - Medical documents
  - Any other documents relevant to the claim

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<sup>122</sup> See "Cover letter accompanying U petition submission" on the [probono.net/ny/family](http://www.probono.net/ny/family) website (registration is free) in the library under immigration, which is available at: <http://www.probono.net/ny/family/library/folder.21203-Immigration>. The cover letter indexes the documents included with the application, providing a roadmap for the adjudicator and provides a summary of how the evidence addresses the required elements.

## 5. Finalize and Submit Application

- **Hole punch and fasten the original application.** Use a two-hole punch and punch through the top of the pages. Fasten the entire packet with a metal fastener.
- **Make two (2) copies of the complete packet.** Give one to the applicant and keep one for your files.
- **Submit via courier,** or other traceable service
- **Mark Envelope in Bold Ink, Attn: U Visa Unit,** and send to:

U Visa Unit  
United States Citizenship & Immigration Services  
Vermont Service Center  
75 Lower Welden Street  
St. Albans, VT 05479-0001

## 6. Follow Up

- Receipt Notice(s) and Application Support Center (ASC) biometric/fingerprint appointment(s) should arrive within three weeks of submission.<sup>123</sup>
  - **Practice Pointer:** Ask client to provide the stamped ASC notice to evidence attendance at appointment
- Track status with receipt notice number, in the upper left hand corner of the receipt notice, at [www.uscis.gov](http://www.uscis.gov).
- If there is Request for Additional Evidence (RFE) or a Notice of Intent to Deny (NOID), note the due date, this is the date the response was be received by VSC.
- If approved, check the validity dates; U nonimmigrants can apply to adjust status after three years in U status.
- Approval validity dates for family members: U derivatives must also be in U status for three years to be eligible to adjust.

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<sup>123</sup> Note that biometric appointment is not an indication of approval

### DISCLAIMER