

## **National Network to End Violence Against Immigrant Women --- Co-chaired by:**

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## **U Visa Interim Regulations Fact Sheet and Guidance**

This analysis is intended to amplify your reading of the regulations and statute. It is not a substitute for reading the regulation and the preamble. This document is a summary for those with immigration practice background. If you are an advocate or filing this petition on your own behalf, we recommend you consult with an attorney or accredited representative who is familiar with the statute and regulations. If you don't know such a person, the Network may be able to connect you with someone. If you qualify for technical assistance from our agencies, you may consult with one of our attorneys. Technical assistance is available through ASISTA and Legal Momentum's Immigrant Women Program using the contact information above. You can find the regulations at [http://www.dhs.gov/xlibrary/assets/uscis\\_u\\_nonimmigrant\\_status\\_interimrule\\_2007-09.pdf](http://www.dhs.gov/xlibrary/assets/uscis_u_nonimmigrant_status_interimrule_2007-09.pdf) More detailed guidance is forthcoming as are informational materials for advocates.

### **Petitioner's immigration status and history**

#### **If Interim Relief is pending**

- ▶ DHS<sup>1</sup> will not consider interim relief applications after rule becomes effective October 17, 2007.
- ▶ Persons granted interim relief by the effective date of the regulations must file the Form I-918 (Petition for U Nonimmigrant Status) within 180 days from the effective date of the regulations. A new certification, Supplement B of the Form I-918 (U Nonimmigrant Status Certification), will not be required. (See section below on "If Interim Relief has already been granted")

#### **If Interim Relief has already been granted**

- ▶ Petitioners should file Form I-918 (Petition for U Nonimmigrant Status) with Vermont Service Center within the first 180 days of implementation of regulations.
- ▶ DHS will reevaluate and terminate any cases of those approved for interim relief who have not filed Form I-918s during the 180 days after the effective date of the regulations.

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<sup>1</sup> When this document uses the term DHS it refers to the VAWA Unit of the Vermont Service Center which is the unit trained and delegated by DHS the responsibility for adjudicating VAWA, T and U visa applications.

- ▶ DHS may extend interim relief if a Form I-918 is filed before initial 180 days regulations implementation period but not yet approved.
- ▶ Petitioners may rely on supporting documents previously filed with interim relief applications and are not required to submit initial evidence with the new I-918 (including Supplement B certification).
- ▶ Petitioners must file a waiver of inadmissibility (if needed) using Form I-192 (Application for Advanced Permission to Enter as a Nonimmigrant). A list of inadmissibility red flags is attached to the end of this document.
- ▶ U visa approval will be retroactive to the date of initial interim relief approval.
- ▶ The regulations do not mention “age out” issues. Further clarification is needed for those who are now over age 21.
- ▶ Victims who received U visa interim relief more than three years ago are statutorily eligible to apply for lawful permanent residency but cannot apply until U visa adjustment regulations are issued.

#### **Victims In Removal Proceedings**

- ▶ Petitioners may seek a joint motion to terminate, which ICE may join at its discretion.
- ▶ File Form I-918 at Vermont Service Center. If proceedings were terminated, and the U visa is denied, DHS can issue a new Notice to Appear.
- ▶ Family members in proceedings may also seek a joint motion to terminate if a Supplement A (Petition for Qualifying Family Member of U-1 Recipient) has been filed.

#### **Final Orders of Removal**

- ▶ Petitioners should apply for a stay of removal if they are currently in the United States.
- ▶ Petitioners should file Form I-918 at Vermont Service Center.
- ▶ If the U visa is approved, 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.
- ▶ If the U visa is denied, the stay will automatically terminate on the date of the denial.

#### **Post-Order Detention**

- ▶ An order of stay will extend the petitioner or petitioner’s family member’s time in detention necessary to effect the removal.

#### **Immigrants In another Form of Immigration Status**

- ▶ Petitioners may apply for a change of status to U visa status.

#### **Filing from abroad**

- ▶ Petitioners should file Form I-918 with Vermont Service Center.
- ▶ Upon approval, DHS will forward for consular processing.

### **Leaving the United States**

- ▶ U visa holders are allowed to leave the U.S. but must apply for a reentry visa.
- ▶ Unlawful presence bars apply to time accrued prior to U visa approval but an applicant may apply for a waiver.

## **U Visa Requirements to Prove**

### **Victims**

#### **Direct victims of enumerated criminal activity**

- ▶ A victim is defined as a person who has suffered direct harm or who is directly or proximately harmed as a result of the commission of a criminal activity.
- ▶ DHS has discretion to grant U visas for victim bystanders who suffer unusually direct injury as a result of a qualifying crime (i.e. someone who miscarries after being frightened from witnessing criminal activity).

#### **Indirect victims of enumerated criminal activity**

- ▶ Family members (spouses, unmarried children under 21, and for victims under **21** their parents and unmarried siblings under age 18) of murder victims, manslaughter victims, victims who are incompetent or incapacitated.
- ▶ Next friend: Someone who is assisting a direct victim who is incompetent, incapacitated, or under 16. Must appear in a lawsuit to act for the benefit of the direct victim. There is some confusion around whether persons who are legal guardians were meant to be excluded. Nevertheless, under the statute guardians should qualify even if they do not also qualify as “next friends.”
- ▶ For witness tampering, obstruction of justice, perjury a victim can qualify for U relief if the perpetrator committed the offense: 1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice for the criminal activity, or 2) to further his or her abuse or exploitation or undue control through manipulation of the legal system.
- ▶ Witness tampering, obstruction of justice, or perjury, do not have to be connected with any other enumerated criminal activity.
- ▶ The regulations state clearly that family members of alien victims are also victims however, family members of US Citizen victims may have to try to qualify as indirect victims or bystanders or show vicarious victimization resulting from witnessing or having knowledge of the criminal activity.

#### **Culpability**

- ▶ Victims applying for U visa relief based on incidents of criminal activity cannot have been found culpable for that criminal activity and still apply.
- ▶ Victims are eligible to apply for a U visa even if they have prior criminal convictions but must apply for a waiver of inadmissibility. (See waivers section below).

### **Family Members Who May Also Benefit Under a U Visa (Derivative Family Members)**

- ▶ For Victims 21 years of age or older, derivative family members include the spouse or children.
- ▶ For Victims under 21 years of age, derivative family members include the spouse, children, parents, and unmarried siblings under age 18.
- ▶ A petitioner must prove the family relationship, which must exist at filing and through final adjudication of the petition and family member's admission into the U.S.
- ▶ The family member must be admissible (see inadmissibility red flags).
- ▶ Children born to the petitioner after approval are also eligible.
- ▶ Sibling age is based on relationship and age of victim and sibling at the time of the filing of Form I-918.
- ▶ Perpetrators of the crime cannot be included as derivatives.

### **Admissibility**

- ▶ Generally, waivers are available for grounds of inadmissibility if it is in the public or national interest to grant the waiver.
- ▶ Waivers are available for INA 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), or (3)(C) (Security related grounds) only in extraordinary circumstances (although the language is slightly unclear).
- ▶ Waivers in cases of violent or dangerous crimes will only be granted in extraordinary circumstances.
- ▶ No waiver is available for INA 212(a)(3)(E) (Nazi persecution, genocide, torture, or extrajudicial killing).

### **Substantial Physical or Mental Abuse**

#### **Abuse**

- ▶ Mental Abuse is defined as impairment of emotional or psychological soundness.
- ▶ DHS will consider the severity the injury suffered and the abuse inflicted.

#### **Substantial**

- ▶ Substantial factors include: the nature of the injury; severity of perpetrator's conduct; severity of harm suffered; duration of infliction of harm; permanent or serious harm to appearance; health, physical or mental soundness.
- ▶ DHS can take into consideration aggravation of a victim's pre-existing conditions.
- ▶ No single factor is determinative or a prerequisite.

### **Qualifying Criminal Activity**

#### **Criminal Activities that are covered**

- ▶ Criminal activities covered are "rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female

genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;” INA 101(a)(15)(U)(iii).

- ▶ Criminal activities where the nature and elements of the offenses are substantially similar to criminal activity on the list may also be included (the enumerated crimes is non-exclusive).

### **Possess Information**

- ▶ The petitioner must have knowledge of the details that would assist in investigation or prosecution.
- ▶ For children under 16, the exception to possess information is triggered by the date of the criminal activity, not the date of filing.

### **Helpful**

#### **Continuum of Cooperation**

- ▶ The petitioner cannot refuse to provide reasonably requested assistance through the duration of U visa status.
- ▶ There is an ongoing responsibility to cooperate. Good advocacy will be needed to establish that survivors who recant did not “unreasonably refuse to cooperate.”
- ▶ Those under age 16 on the day of the criminal activity are exempted from cooperating if a parent, guardian or next friend provides that information.
- ▶ DHS may contact certifying official for more information.
- ▶ The certifying official can withdraw certification at any time while U visa is pending and after it has been approved until such time as the victim receives lawful permanent residency.

#### **Certifying Agency**

- ▶ The agencies include federal, state or local law enforcement agency, prosecutor, judge, Child Protective Services, Equal Employment Opportunity Commission, Department of Labor, and other investigative agencies.
- ▶ The certifying official must be the head of the agency or must have been one of what can be several supervisors at the certifying agency designated to by the agency to sign certifications. The agency can have more than one certifying official.
- ▶ Law enforcement agencies and other certifying agencies are encouraged to create certification protocols and advocates and attorneys are encouraged to work with local certifying agencies and provide training.

#### **Mandatory Certification Form (Supplement B)**

- ▶ The form must be signed no more than 6 months before filing.
- ▶ Requirements of the form include the following: 1) signed by the appropriate person 2) from the appropriate agency 3) the petitioner is a victim 4) the petitioner possesses

information 5) the petitioner has been, is being, or is likely to be helpful 6) the activity is a qualifying criminal activity.

- ▶ The certifying official must be the head of the agency or any supervisor designated by the agency to sign certifications.

## **Violated Laws of or Occurred in the U.S.**

### **In the United States**

- ▶ Indian lands include any Indian reservation within U.S. jurisdiction, dependant Indian communities and Indian allotments.
- ▶ Military installations include any location including transportation (aircrafts, vessels) under Department of Defense jurisdiction or military control or lease.
- ▶ U.S. territories include American Samoa, Swains Island, Bajo Nuevo, (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, Wake Atoll.
- ▶ U.S also includes Guam, Puerto Rico, and the U.S. Virgin Islands.

## **Immigration Filing Procedures**

### **Filing Process**

#### **Fees**

- ▶ There is no fee for the Form I-918 (Petition for U Nonimmigrant Status) or Supplement A (Petition for Qualifying Family Member of U-1 Recipient). There is conflicting information in the preamble and new C.F.R. but it seems clear that DHS intended not to charge fees.
- ▶ Forms I-192 (Application for Advanced Permission to Enter as a Nonimmigrant) and I-765 (Application for Employment Authorization) when needed still require filing fees.

#### **Filing Packet**

- ▶ All U visa applications including those from abroad should be filed at Vermont Service Center.
- ▶ The packet should include Form I-918, Supplement B (U Nonimmigrant Status Certification), additional evidence supporting the requirements, signed statement from the direct or indirect victim, biometric fees or a fee waiver.
- ▶ Supplements A for any family members can be filed with the Form I-918, while the petition is pending, or after the petition has been approved (if filed later, resubmit Form I-918 for reference).
- ▶ Any petitioner with inadmissibility issues should also file Form I-192 with appropriate fees.
- ▶ Principal applicants do not need to file Form I-765s to receive an employment authorization document. They will be issued automatically upon approval. Subsequent replacement, renewals will require filing of Form I-765.

- ▶ Derivative family members must file Form I-765s to receive employment authorization.

### **Approval and Duration**

- ▶ The visa has a four-year duration.
- ▶ A derivative family member will not be issued a visa with a duration longer than the primary applicant.
- ▶ If visa holder has been in U visa status for less than four years, the visa holder can file a Form I-539 to extend status (helpful to family members who arrive significantly later and have not yet met the three year eligibility to adjust his or her status to lawful permanent residency).
- ▶ Once the cap of 10,000 per year is reached, victims requesting U visas applications will be placed on a consecutive waitlist (family members are based on their principal visa holder's place in line) and will be issued deferred action. Though there are no caps for family members, DHS will not approve a family member until the primary victim U visa petitioner's petition is approved.
- ▶ A U visa petitioner can file other applications but DHS will cancel all subsequently adjudicated after the first one approved.
- ▶ A denied U visa allows DHS to issue Notices to Appear and to lift orders of stay, removal, deportation, or exclusion.

### **Consideration of Evidence**

- ▶ The standard of proof is any credible evidence.
- ▶ The U visa application is subject to VAWA Confidentiality provisions.