

U VISAS: Immigration Relief

for Victims of Certain Crimes

FREQUENTLY ASKED QUESTIONS

The following provides brief answers to frequently asked questions about U visas. This is only a general summary of information about U visas. If you are considering submitting a request for U visa relief, please visit the National Immigration Project of the National Lawyers Guild website: at www.nationalimmigrationproject.org.

► What is a U Visa?

The U visa was created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. It is available to noncitizens who 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) have been helpful, are being helpful or are likely to be helpful with the investigation or prosecution of the crime. The U visa provides eligible immigrants with authorized stay in the United States and employment authorization.

► Are U Visas Available?

Not exactly. U visas cannot be issued until the Department of Homeland Security (DHS) issues regulations making them available. Until then, no one is receiving an actual U visa. However, in the meantime, the DHS has made an interim form of relief available. It is referred to as "U nonimmigrant status interim relief" or "U visa interim relief." Eligible individuals who request U visa interim relief can receive deferred action, which would also allow them to obtain employment authorization.

► Who Is Eligible For U Visa Interim Relief?

There are four basic eligibility requirements for U visa interim relief:

- The immigrant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- The immigrant possesses information concerning that criminal activity;
- The immigrant has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution the criminal activity; and
- The criminal activity described violated the laws of the United States or occurred in the United States.

► Who Is NOT Eligible For U Visa Interim Relief?

Currently, the guidance from DHS states that the Vermont Service Center (VSC) cannot grant interim relief to noncitizens in immigration proceedings. The guidance also suggests that noncitizens with "aggravated felonies," as defined in immigration law, also are not eligible, nor are "absconders" (noncitizens with a final removal order.) Also, if a noncitizen is currently in a valid non-immigrant status, she is not eligible for deferred action unless she relinquishes her existing status.

Please contact Sally Kinoshita (sally@nationalimmigrationproject.org) or Gail Pendleton (gail@nationalimmigrationproject.org) if you have clients in these categories to discuss strategies for helping your clients!

► What Criminal Activities Are Covered By the U Visa Interim Relief?

In order to qualify for U Visa interim relief, the immigrant must be the victim of one or more of the following crimes or any similar activity in violation of Federal State, or local criminal law: 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.

? What Kind of Documents Should Be Submitted With A U Visa Interim Relief Request?

As there is no official "form" for requesting U Visa interim relief, each U visa interim relief application will look different and must be tailored to each individual case. However, each application should include the following elements (* = mandatory):

NOTE: ALWAYS KEEP A COPY FOR YOUR FILE.

- Cover letter*

Every application should include a cover letter summarizing everything included in the application. The cover letter should act as a road map to the entire application.

- Applicant's Declaration*

Declarations should be detailed, describing the abuse and how the applicant meets each U visa requirement. IT DOES NOT NEED TO BE NOTARIZED.

- Personal Information*

The application should include some form of personal identification (such as translated copy of a birth certificate, an I-94 etc.)

- Documentation Regarding Criminal Activity*

- U Visa Certification Form* (sample form at www.nationalimmigrationproject.org, go to U Visa section).
- Police report of crime
- Copy of the crime as stated in applicable penal code.
- Restraining Order and related declarations used to obtain the restraining order.

- Documentation of Substantial Physical and/or Mental Abuse*

- Detailed in the applicant's declaration*
- Declarations of witnesses to abuse
- Declarations of police, health care workers etc.
- Medical reports documenting the effects of physical or mental abuse to applicant
- Reports or evidence of appointment with counselors, shelters etc.
- Photographs that document the abuse

► **What is a Law Enforcement Certification?**

The law enforcement certification is essential to the U visa application. It is best to obtain the certification during the investigation or prosecution of the criminal activity while the evidence is fresh. The certification must come from a Federal, State, or local law enforcement official, prosecutor, judge investigating or prosecuting the criminal activity. There is no official certification form. The certification, which may come in the form of a letter or other form created by the applicant's representative, must be signed by the law enforcement official within the past six months and include the following information:

- it must state that the immigrant was a victim of one or more crimes protected under U visa;
- it must identify the crime(s); and

- it must verify the victim is, has been, or is likely to be helpful to the prosecution or investigation of the criminal activity.

The National Immigration Project of the National Lawyer's Guild has made a sample certification form available online along with an explanation for law enforcement officers of the form and its purpose at www.nationalimmigrationproject.org. Click on U visa.

► **Where Do I Send My Request for U visa Interim Relief?**

Requests for U visa interim relief should be sent to:

U.S. C.I.S. Vermont Service Center
VAWA Unit, Box 1000
75 Lower Welden Street
St. Albans, VT 05479-0001

All Requests Should Be Clearly Marked In Large Letters: DO NOT OPEN IN THE MAILROOM.

► **What Form Do I Use To File A U Visa Interim Relief Request?**

There is no official form to apply for U visa interim relief. For a summary of what a U visa interim relief application should include, please see the section above entitled, *What Kind of Documents Should Be Submitted With A U Visa Interim Relief Request?*

► **Is There A Filing Fee For Requesting U Visa Interim Relief?**

No. A filing fee has not been assigned to the U visa interim relief request.

► **Can I Qualify For U Visa Interim Relief If I Was A Victim Of A Past Crime?**

Yes. Victims of past crimes are still eligible for U visa interim relief, assuming that the applicant meets the U visa requirements.

► **Will I Be Eligible For a Work Permit/Employment Authorization If I Am Approved for U Visa Interim Relief?**

Yes. If a U visa interim relief request is approved and deferred action is granted, the applicant will be notified that s/he may submit an I-765, Application for Employment Authorization. The I-765 should be filed with VSC with proof that the applicant has an economic need for employment. The applicant will be required to renew the employment authorization each year. An I-765 may be filed

concurrently with the request for U visa interim relief. An applicant must submit the appropriate filing fee with the I-765, unless an appropriate request for a fee waiver accompanies the application.

► Will U Visa Interim Relief Make Me Eligible For Lawful Permanent Residency Status (a Green Card)?

Not yet, possibly in the future. The U visa interim relief is not an *actual* U visa, it is only *interim relief* until the U visa regulations are written and U visas are issued. Therefore, a U visa interim relief holder is not eligible to apply for lawful permanent residency/green card.

Once the regulations are written and actual U visas are issued, a U visa holder may become eligible for lawful permanent residence. After three years, a U visa holder may apply for lawful permanent residence, if s/he has maintained continuous residence in the U.S. for at least three years, and if it is determined that his/her continued presence in the U.S. is justified on humanitarian grounds, ensures family unity, or is otherwise in the public interest. The adjustment application will be denied if it is determined that the U visa holder unreasonably refused to assist with a criminal investigation or prosecution.

► If I am Granted Deferred Action Through a Request for U Visa Interim Relief, Will My Deferred Action Last Indefinitely?

No. Deferred action is valid for a period of one year unless it is terminated earlier for reasonable cause and upon appropriate notice. A request for an extension of deferred action must be submitted every year before its expiration.

► If I have a pending or approved application for deferred action through a request for U visa interim relief, may I travel outside of the United States?

Not advisable. Travel is always risky. There is no procedure in place at this time for U visa interim relief applicants or recipients to receive advance parole or some other permission to travel. If someone leaves and comes back, they may not be able to get back into the country.

► Am I at Risk for Deportation or Removal if I Submit a Request for U Visa Interim Relief?

Maybe. Anyone who is not in valid status in the United States, who submits an application or request to the DHS, runs the risk of being placed in removal proceedings if they are not eligible for any form of immigration relief.

Those at greatest risk are individuals requesting U visa interim relief who are clearly ineligible for a U visa and individuals with aggravated felonies. Those

cases will be referred to Immigration and Customs Enforcement and a possible "Notice to Appear" for removal proceedings may be issued.

In addition, U visa applicants must show they are not "inadmissible." DHS may deny status to applicants who have committed visa fraud, made false claims to United States citizenship, or been convicted of a crime. These are only examples of things that make applicants inadmissible. Even though there is a waiver, you should not file applications in such cases without consulting an experienced U visa mentor. Again, please contact Sally Kinoshita (sally@nationalimmigrationproject.org) or Gail Pendleton (gail@nationalimmigrationproject.org) with these questions.

FINALLY, UNTIL WE KNOW WHAT THE REGULATIONS SAY, ANY APPLICATION FOR INTERIM RELIEF MAY EXPOSE AN APPLICANT TO EVENTUAL REMOVAL. ALTHOUGH WE WILL CHALLENGE THE REGULATIONS IF THEY DENY STATUS TO PEOPLE CONGRESS INTENDED TO HELP, DHS MAY REMOVE NONCITIZENS BEFORE WE SUCCEED.

► Can a U Visa Interim Relief Recipient Obtain Relief For His/Her Family Members?

Possibly. An immigrant who receives U visa interim relief may be able to obtain relief for his/her spouse, children, and parent (in the case of a child applicant under the age of 16). However, the eligible family member must prove extreme hardship if removed from the United States and provide a certification that states the investigation or prosecution would be harmed without their assistance.

► Are U Visa Interim Relief Requests Confidential?

Yes. Information included in the U visa interim relief request may not be disclosed or used by anyone other than sworn officers of the Department of Homeland Security (DHS). Furthermore, determination of a U visa interim relief request cannot be based solely on information provided to the DHS by someone who has battered or abused the applicant.