

Chapter 6: U Visa Relief {83}

DISCLAIMER

This chapter is provided for informational purposes only, and does not constitute legal advice of any kind. Before proceeding with any legal matters under U.S. immigration law, please consult, as needed, both the primary source documents referenced in this chapter (statutes, regulations, cases, etc.) and your KIND pro bono coordinator.

U visas are for victims of crimes who have suffered substantial mental and physical abuse.

What are the eligibility requirements for a U visa?

Practice Pointer:

It is helpful to illustrate, wherever possible, how a grant of a U visa in a particular case will aid in fulfilling law enforcement objectives.

At every stage of the U visa application process, it is always the noncitizen seeking a U visa who bears the burden to prove to USCIS that she meets the following requirements, which are set out in INA § 101(a)(15)(U)/8 U.S.C. § 1101(a)(15)(U).¹

It should be noted that the statute sets out the requirements only in a skeletal fashion; in order to fully understand these requirements, it is critical that the practitioner become very familiar with the U visa regulations, codified at 8 C.F.R. § 214.14 and referenced throughout this segment.²

- The child has suffered substantial physical or mental abuse as a result of having been a victim of one of the kinds of "criminal activity" enumerated under INA § 101 (a)(15)(U)(iii)/ 8 U.S.C. § 1101(a)(15)(U)(iii).
- The noncitizen child possesses information concerning the criminal activity.
- The noncitizen has been helpful, is being helpful, or is likely to be helpful to any federal, state, or local law enforcement official, judge, prosecutor, or other such authority which is investigating or prosecuting the criminal activity.

Child Practice Pointer:

If the person applying for a U visa is a minor under the age of 16, then a "parent, guardian, or next friend" can possess the information and provide the required assistance in place of the minor.³ A "next friend" is one who:⁴

- Appears in a lawsuit to act for the benefit of a noncitizen under 16 years of age.
- Has himself/herself suffered substantial physical or mental abuse as a result of being a victim of "qualifying criminal activity."
- Is neither a party to the legal proceeding nor appointed as a guardian.

AND the criminal activity either:

- Violated the laws of the United States.
- OR occurred in the United States, on an Indian reservation, on a military installation, or in any territory or possession of the United States.

What does it mean to suffer "substantial physical or mental abuse"?

"Physical or mental abuse" is injury or harm to the victim's person, or harm to or impairment of the emotional or psychological soundness of the victim.⁵

Substantiality of the abuse: In evaluating whether the abuse was substantial, USCIS considers a number of factors, including (but not limited to):⁶

- Nature of the injury inflicted or suffered.
- Severity of the perpetrator's conduct.
- Severity of the harm inflicted.
- 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 pre-existing conditions.

No single factor is a prerequisite to establish that the abuse suffered was substantial.

Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.⁷

Who is a "victim" of "qualifying criminal activity"?

Under the regulations, a qualifying "victim" is one who "has suffered direct and proximate harm as a result of the commission of qualifying criminal activity."⁸ Mere allegations that the child was subject to, for example, "false imprisonment" are not enough; rather, the child should supply evidence and specific facts from which the decision-maker at USCIS may reasonably conclude that she "has suffered direct and proximate harm as a result of the commission of qualifying criminal activity."⁹

Does the principal U visa petitioner always need to be the direct victim of the underlying criminal activity?

Not always. The regulations provide that the following family members of the direct victims of criminal activity are still considered primary "victims" for U visa purposes, thus enabling them to apply directly for U visa relief, even though the underlying criminal activity was not perpetrated directly upon them. These persons are often referred to as "indirect victims."¹⁰

- A noncitizen spouse of the direct victim
- A child of the direct victim who is under the age of 21
 - The child must also be unmarried¹¹
- If the direct victim is under 21 years of age
 - A parent of the direct victim
 - A sibling of the direct victim who is
 - Unmarried and
 - Under 18 years of age.

Can any family member of the direct victim be a "victim" for U visa purposes?

Family members of the direct victim may only be "indirect victims" when the direct victim is:¹²

Either:

- Dead due to murder or manslaughter (i.e., homicide).
- Or incompetent or incapacitated for any reason.

And is by reason of such death or incapacity unable to:

- Provide information concerning the criminal activity.
- Or be helpful in the investigation or prosecution of the criminal activity.

Can a bystander ever be the indirect victim of "criminal activity", even if unrelated to the direct victim?

Yes. USCIS may treat as indirect victims, on a case-by-case basis, bystanders who suffer unusually direct injuries, such as a pregnant bystander who suffers a miscarriage for fright over witnessing a violent crime.¹³

When is a U visa petitioner a victim of witness tampering, obstruction of justice, or perjury?

Sometimes, criminals victimize noncitizens in order to interfere with the investigation or prosecution of crimes that may fall outside the statutory list of "criminal activities" which can underlie a U visa application. So that the U visa provisions can cover these situations, the regulations provide that a U visa petitioner is a victim of witness tampering, obstruction of justice, perjury (or attempt, solicitation, or conspiracy to commit these criminal activities) if:¹⁴

- The petitioner has been directly and proximately harmed by the perpetrator of the criminal activity (i.e., by the would-be witness-tamperer), and
- There are reasonable grounds to conclude that the perpetrator committed the criminal activity (i.e., harmed the petitioner), at least in principal part, as a means to:
 - Avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity (i.e. criminal activity other than the witness tampering, obstruction of justice, or perjury of which the petitioner was a direct victim).
 - Or further the perpetrator's abuse or exploitation of, or undue control over, the petitioner through manipulation of the legal system.

What kinds of activities constitute "criminal activity" for U visa purposes?

Under the U visa statute: "criminal activity" includes only one or more of the following enumerated criminal acts, or any similar activity, which must violate federal, state, or local criminal law:¹⁵

- Rape
- Torture¹⁶
- Trafficking¹⁷
- Incest
- Domestic violence
- Sexual assault
- Abusive sexual contact
- Prostitution
- Sexual exploitation
- Female genital mutilation
- Held a hostage
- Peonage¹⁸
- Involuntary servitude¹⁹
- Involvement in slave trade²⁰
- Kidnapping
- Abduction
- Unlawful criminal restraint

- False imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Attempt, conspiracy, or solicitation to commit any of the above.

For U visa purposes, no one actually needs to be officially charged with committing any of these crimes.²¹ The criminal activity also does not need to be the subject of any active investigation or prosecution at the time the U visa petition is filed.²² A plain reading of the statute and regulations seems to require that the petitioner be the victim of some unlawful activity, which amounts in substance to one of the criminal activities listed in INA § 101 (a)(15)(U)(iii).²³

Must the U visa applicant obtain any certification from law enforcement or similar personnel?

INA § 214(p)/8 U.S.C. § 1184(p) requires that the U visa petition contain a certification from a federal, state, or local²⁴ law enforcement official who is investigating or prosecuting the criminal activity; the certification must state that the noncitizen has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity.²⁵

A certifying official can also include a federal, state, or local judge.²⁶

The certifying official must complete USCIS Form I-918, Supplement B. The regulations set out further requirements of both the certifying official and of the corresponding law enforcement agency.

Agencies whose law enforcement officials may provide the required certification include those agencies which have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, Child Protective Services, the Equal Employment Opportunity Commission, and the Department of Labor.²⁷ (These may also include any local district attorney's office or police office, or the state police, for example).²⁸

The official providing the certification must be:

- Head of the certifying agency, or
- An official in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or
- A federal, state, or local judge.²⁹

Moreover, the decision of whether to certify helpfulness is solely at the discretion of law enforcement, which may deny certification for any reason or no reason at all. No court can compel law enforcement to certify helpfulness.³⁰

Practice Pointer:

The law enforcement certification is an absolute prerequisite for U visa eligibility, one on which USCIS will not budge. Obtaining the certification is often the single most difficult part of the U visa application process, such that many practitioners do not even start the application process until they have already secured the certification.

Often, the single biggest obstacle to gaining law enforcement certification is unfamiliarity on the part of law enforcement with both the existence and nature of the U visa. This highlights the need for you to work closely with law enforcement and to educate them about this important tool in their own crime-fighting arsenal. For instance, the practitioner might proactively work with a law enforcement agency's leadership in order to help them implement an institutional U visa certification protocol, if none exists.

It is important to remind law enforcement officials that they are only certifying helpfulness, and the noncitizen has many other requirements to meet before obtaining a U visa.

Also, in the interest of maintaining a favorable disposition on the part of law enforcement towards granting certifications, it is often better to go to the law enforcement agency or the district attorney first, and to use a judge as a last resort.

If you must resort to going to a judge, make sure that the judge from whom the certification is sought actually has "law enforcement" authority, as some courts, such as certain family courts, may lack such jurisdiction.

When does a crime "occur in" or "violate the laws of" the United States?

A crime occurs "in the United States" if it occurs in any of the 50 states, or in "Indian country", military installations, or territories and possessions of the United States.³¹

If the underlying "criminal activity" did not occur in the United States, then the regulations require that the criminal activity violate a federal law that provides for extraterritorial jurisdiction to prosecute the offense in a federal court.³²

Admissibility: Must my client be admissible to the United States in order to receive a U visa?

Yes. All U visa applicants must either be admissible to the United States or receive a waiver of inadmissibility, which the Secretary of Homeland Security may grant in most cases if the Secretary considers it to be in the public or national interest; it is important to understand that each and every ground of inadmissibility is potentially in play in the U visa context.³³ While thorough treatment of the grounds of inadmissibility is beyond the scope of these materials, for more information, see generally INA § 212/8 U.S.C. § 1182 and 8 C.F.R. § 212.17.³⁴

Who else besides the victim of "criminal activity" is eligible for a U visa?

Derivative applications

Certain family members of the U visa applicant are eligible for "derivative" relief, meaning that they get U-nonimmigrant status because of their relationship to the principal applicant. Be careful not to confuse "derivative" applicants with the "indirect victims" who may apply for U visas on their own. Eligible family members include:³⁵

If the applicant is under the age of 21:

- Spouse

- Children
- Siblings who are
 - Unmarried, and
 - Under 18 years of age on the date that the victim noncitizen applies for U nonimmigrant status
 - For purposes of this determination, USCIS will continue to consider the principal victim to be under 21, and the sibling to be under 18, even if either or both grow older than these ages before or during the adjudication of the petitions, so long as they were under the age limits when the principal U visa application was filed³⁶
- Parents.³⁷

The regulations classify applicants for U visas in the following ways, depending on the applicant's relationship with, or status as, the principal victim of the underlying criminal activity:³⁸

- U-1 is the principal petitioner, the direct or indirect victim of the criminal activity³⁹
- U-2 is the spouse of a U-1 petitioner
- U-3 is the child of a U-1 petitioner
- U-4 is the parent of a U-1 petitioner
- U-5 is the unmarried, minor sibling of a U-1 petitioner under age 21.

The regulations expound upon when the necessary relationship must exist between the "derivative" petitioner and the principal victim.

The family relationship must exist when the principal and family member petitions are filed, and must continue to exist until the family member's ultimate admission to the United States.⁴⁰

If the principal petitioner proves that she became a parent of a child sometime after the filing of the petition, the child is eligible for derivative relief.⁴¹

Who is not eligible for a U visa?

The perpetrator of the underlying criminal activity is ineligible.

A noncitizen is not eligible for a U visa if she is culpable for the qualifying criminal activity being investigated.⁴²

Persons subject to un-waived grounds of inadmissibility to the United States are ineligible.

All U visa applicants must either be admissible to the United States or receive a waiver of inadmissibility, which the Secretary of Homeland Security may grant in most cases if the Secretary considers it to be in the public or national interest.⁴³

Is there a limit to the number of U visas that can be granted in a given year?

Yes. The number of noncitizen victims who may receive U visas in any fiscal year is limited to 10,000. However, that limitation does not apply to family members who attain derivative U visas, but only to principal victims, including indirect victims.⁴⁴

If the number of approvable U visa applications in a given year exceeds 10,000, then the regulations prescribe a waiting list from which the excess applicants are officially granted U visas in subsequent years, with priority going to those who filed their applications the earliest. Applicants on the waiting list in any year are approved before any new applications are approved. The applicant on the waiting list must remain admissible to the United States throughout this process.⁴⁵

How does my client apply for a U visa?

A U visa applicant should send a completed application packet to the USCIS Vermont Service Center, 75 Lower Welden St., St. Albans, VT 05479.

Filing Pointers:

- Always include any necessary fees or a corresponding request for a fee waiver, lest the application be rejected before it even gets to the adjudicators.

- The applicant's original signature (no photocopies) is needed on the application, or that of a parent if the child is under age 14.
- To make it easier for USCIS to verify that the signature is original, have the applicant/parent sign in blue ink.
- If, after sending the application, you feel additional evidence or documentation is needed, wait until USCIS sends a Request for Evidence before sending any additional materials. This makes it easier for USCIS to keep the client's file organized.
- Never tab your files on the sides - that just makes more work for USCIS.
- Include the child's name and date of birth on the back of any photographs submitted.
- Use a two-hole punch on the top of every piece of paper submitted. This makes it easier for USCIS to assemble the applicant's file.

If I have questions about my application, can I contact the Vermont Service Center?

Yes. There are two ways you can communicate with the Vermont Service Center if you have questions regarding filing or other case-related matters. You can call the Center's VAWA Hotline at 1-802-527-4888. They ask that you leave a detailed message, and someone will call you back.

Questions with detailed specifics can also be sent via email to Hotlinefollowup19181914.vsc@uscis.dhs.gov. Email turnaround time is typically 72 hours. It is requested that you use only one of the methods.

What must the application packet contain?

Although links to the most important forms are provided, bear in mind that USCIS often updates its forms and instructions. It is important to use the most current version when submitting any application for immigration relief, often by clicking a button provided on the form for the purpose (online version only).

The regulations require that the application packet contain the following:

- [Completed Form I-918 Petition for U Nonimmigrant Status](#).
 - NOTE: There is currently no application fee for Form I-918.⁴⁶
 - It is of critical importance that the practitioner pay exacting attention to the official instructions for Form I-918, as they contain a wealth of vital information, including examples of relevant initial evidence and guidance on personal narrative statements.
- Form I-918 Supplement B, U Nonimmigrant Status Certification (law enforcement certification) (Included online with the full Form I-918).
- Initial evidence, including:⁴⁷
 - Relevant documents in support of the child's claims that she was a victim of "criminal activity" under INA § 101(a)(15)(U)(iii)/8 U.S.C. § 1101(a)(15)(U)(iii).
 - A personal narrative statement from the child describing the criminal activity.
 - The statement should be signed by the child.⁴⁸
 - The statement may also contain information supporting any of the eligibility requirements for U nonimmigrant status.⁴⁹
 - If the child is under 16 years of age, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on the child's behalf.⁵⁰

While biometrics (fingerprints, etc.) are required,⁵¹ USCIS charges no biometric fee for U visa applications.⁵²

- Form I-918 Supplement A (if applying for derivative status on behalf of a qualifying family member)(included online with full Form I-918).
- [Form I-192 Application for Advance Permission to Enter as Non-Immigrant](#), as necessary.⁵³
- [Form I-601 Application for Waiver of Grounds of Inadmissibility](#), as necessary.⁵⁴
- [Form I-193 Application for Waiver of Passport and/or Visa](#), as necessary.⁵⁵
- [Form G-28, Notice of Appearance](#), to let USCIS know that you are the attorney for your client.

- Your client must sign the form.
- If your client is under 14, generally the parent or guardian (or other legal representative) must sign the form.⁵⁶
- [Form I-912, Request for Fee Waiver](#), as necessary. This is the "global" fee waiver form, which can be used to request a waiver for all USCIS filing fees. Be sure to keep abreast of any updates or changes to this form.

Any other evidence that the petitioner would like for USCIS to consider, in order to establish eligibility for U-1 nonimmigrant status.⁵⁷

Practice Pointer:

You should physically accompany your client through the biometrics process to ensure that your client has all the necessary identification and other documents.

How does my client apply for a U visa on behalf of family members?

Generally, only either successful or pending principal U visa applicants may apply for "derivative" U visa status on behalf of family members, either contemporaneously with the initial U visa application or sometime later.⁵⁸ Application packets for family members must contain generally the same materials as the application for the principal victim, plus a separate Form I-918 Supplement A for each family member for whom derivative U visa status is sought.⁵⁹

The initial evidence submitted with the application for a relative must include:⁶⁰

- Evidence which demonstrates that the (derivative) applicant bears the relationship of a "qualifying family member" to the principal applicant.
- If the qualifying family member is inadmissible, Form I-192 "Application for Advance Permission to Enter as a Non-Immigrant" in accordance with the rules outlined in 8 C.F.R. § 212.17.

What if my client is already in removal proceedings?

If your client is already in removal proceedings,⁶¹ the client must still file the application directly with

USCIS. The government lawyer seeking your client's removal, exclusion, or deportation before the immigration judge (IJ) or the Board of Immigration Appeals (BIA) may, but need not, join you in a motion to terminate the removal proceedings without prejudice, in order to give USCIS time to decide whether to grant your client a U visa.⁶² Alternatively, you may move the IJ/BIA to grant your client a continuance, which effectively pauses the proceedings long enough for USCIS to decide the application.⁶³

If a family member seeking a derivative U visa is in removal proceedings, the procedure is generally the same, except that the principal petitioner, not the family member, must still file the Form I-918 Supplement A directly with USCIS.⁶⁴

If the U visa application is ultimately denied, the government can put your client (or family members, as the case may be) back into removal proceedings.⁶⁵

What happens if my client has already been ordered removed or deported from the United States?

If your client has already been ordered removed from the United States, he or she still may file a U visa application directly with USCIS, and may also file with DHS a request for a (non-automatic) stay of removal under the rules spelled out in 8 C.F.R. § 241.6(a) and 1241.6(a). If the request is granted, then DHS will hold off on removing your client from the United States while USCIS adjudicates the U visa application.⁶⁶

Granting the stay is not mandatory; DHS has discretion to grant the stay if the applicant establishes prima facie eligibility for U visa status to the USCIS, and DHS will "consider favorably any humanitarian factors" related to either the noncitizen or to any close relatives who rely on the noncitizen for support.⁶⁷ If the U visa application is ultimately denied, then the stay will be lifted once the denial becomes administratively final, i.e., when all administrative appeals are exhausted.⁶⁸

If the application is ultimately approved, the outcome depends on which government agency initially ordered your client to be removed.⁶⁹

If DHS issued the order of removal, the removal order is deemed cancelled by operation of law upon approval of the U visa petition.

If the removal order was issued by an IJ or the BIA, then the petitioner may file, with the IJ/BIA, a motion to reopen and terminate removal proceedings. ICE counsel may, but need not, join this motion

to overcome certain time and numerical limitations under 8 C.F.R. § 1003.2 and 1003.23.

Again, these procedures are generally the same for family members seeking derivative U visas, except that here, unlike in other cases, the regulations seem to allow a derivative applicant who has been ordered removed to file an application directly with USCIS.⁷⁰

How will I know whether USCIS has granted my client's U visa application?

USCIS will issue a written decision either approving or denying both the principal application and any derivative applications by sending notice of the decision to the child and/or her attorney.⁷¹

Can a U visa denial be appealed? If so, how?

U visa denials can be appealed only to the Administrative Appeals Office (AAO) of USCIS; the procedures for the appeal are set forth in 8 C.F.R. § 103.3.⁷²

How long does U visa status last, if approved?

Generally, the maximum duration of U visa status is four years from the date of approval. A qualifying family member may not be approved for derivative U status for any period that extends beyond the expiration date of the principal's status.⁷³ U visa status may be extended past four years under certain very specific circumstances.⁷⁴

Can U visa status be revoked once approved? If so, under what circumstances?

Yes. USCIS may revoke an approved U visa petition for any of the following reasons:⁷⁵

- The official certifying "helpfulness" pursuant to INA § 214(p)(1)/8 U.S.C. § 1184(p)(1) either withdraws the certification or disavows the contents in writing.
- Approval of the petition was in error.

- There was fraud in the petition.

If a qualifying family member has obtained derivative U status, that family member's status may also be revoked for any of the above reasons, and also if either of the following apply:⁷⁶

- The relationship to the principal U visa recipient has terminated (e.g. by divorce).
- The principal U visa recipient's U visa status is revoked (e.g. because the law enforcement officer withdrew the initial certification of helpfulness).

How can I check the status of my client's case while it is pending?

You can check the status of your client's case once your client receives a "Notice of Action" from USCIS, which will contain a 13-digit "receipt number". Once you have the receipt number, you may go to the USCIS website, enter the receipt number in the designated field, and then you will be able to see the status of your client's case.⁷⁷ You can also call the USCIS Vermont Service Center's VAWA Hotline at 1-802-527-4888. Questions can also be sent via email to HotlinefollowupI918I914.vsc@uscis.dhs.gov. Email turnaround time is typically 72 hours.

How long should the U visa application/adjudication process take? Is expedited adjudication available under any circumstances?

As of this writing, the application/adjudication time frame for a U visa application is not posted on the USCIS website. Expedited processing for U visa applications is available based on humanitarian conditions involving exceptional circumstances; to request expedited adjudication, call USCIS Vermont Service Center's VAWA Hotline (1-802-527-4888).⁷⁸ Otherwise, average processing time has tended to be around six months or so, according to USCIS.⁷⁹ Experts in the field have found that, depending on the complexities of a particular case, including Requests for Evidence, the adjudication process can take anywhere from six months to one year.

What are the benefits of being granted a U visa?

Several very important benefits accrue to those who are granted U visas, including:

- Lawful presence in the United States.⁸⁰
- Eventual eligibility to apply for Lawful Permanent Residence (LPR) status under the conditions in INA § 245(m)/8 U.S.C. § 1255(m) and 8 C.F.R. § 245.1, 245.24, 1245.1.
- Employment authorization.⁸¹
- Ability to apply for derivative relief on behalf of certain family members, including the parents of U visa recipients who are children.⁸²

Citations

¹INA § 101 (a)(15)(U)(i)(I-IV); 8 U.S.C. § 1101 (a)(15)(U)(i)(I-IV).

²On September 17, 2007, USCIS issued long-awaited interim regulations implementing the U visa legislation. In the 7-year absence of such regulations, immigration officials developed a deferred-action system to benefit noncitizens who established prima facie qualification for U visa status; this system was termed "U interim relief". With the issuance of the new interim regulations, USCIS no longer considers applications for interim relief, but has indicated that there is no deadline for those granted interim relief to apply for "official" U-nonimmigrant status.

³INA § 1101 (a)(15)(U)(i)(II-III); 8 U.S.C. § 1101 (a)(15)(U)(i)(II-III).

⁴8 C.F.R. § 214.14 (a)(7).

⁵8 C.F.R. § 214.14 (a)(8).

⁶8 C.F.R. § 214.14 (b)(1).

⁷8 C.F.R. § 214.14 (b)(1).

⁸8 C.F.R. § 214.14 (a)(14).

⁹See *In re Petitioner (name redacted)*, No. EAC 09 080 50515, 2010 WL 4088659 (Administrative Appeals Unit, March 3, 2010).

¹⁰For example, a living child might be an "indirect victim" of manslaughter if his parents were killed by vehicular homicide; the child would thus be able to apply directly for a U visa, as a principal petitioner, instead of a derivative one, even though the child was not the direct victim of the manslaughter.

¹¹New Classification for Victims of Criminal Activity; Eligibility for U Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,017 at n.5 (Sept. 17, 2007).

¹²8 C.F.R. § 214.14 (a)(14)(i).

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New Classification for Victims of Criminal Activity; Eligibility for U Nonimmigrant Status, 72 Fed. Reg. at 53,016-53,017.

¹⁴See 8 C.F.R. § 214.14 (a)(14)(ii)(A-B). An example of such a situation is if the perpetrator committed a bank robbery where the U visa applicant somehow saw the perpetrator's face, and where the perpetrator later threatened to kill or harm the applicant if the applicant ever told anyone the perpetrator's identity. The "criminal activity" creating U visa eligibility here would be the later threats, which would amount to witness tampering, etc. under the statute.

¹⁵INA § 1101 (a)(15)(U)(iii); 8 U.S.C. § 1101 (a)(15)(U)(iii).

¹⁶Defined for federal criminal purposes at 18 U.S.C. § 2340 (1-2). See also United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, § 1, Jun. 26, 1987, 1465 UNTS 85.

¹⁷Defined and criminalized at 18 U.S.C. § 1582, 1590.

¹⁸Federally criminalized at 18 U.S.C. § 1581. "Peonage" essentially means a condition where a debtor is compelled to work for a creditor in order to pay off his debt to the creditor. *Bailey v. Alabama*, 219 U.S. 219 (1911).

¹⁹Defined at 22 U.S.C. § 7102 (5).

²⁰See generally 18 U.S.C. § 1581-1596.

²¹*Sanchez v. Mukasey*, 508 F.3d 1254 (9th Cir. 2007).

²²See Charles Gordon, et. al., *Immigration Law and Procedure* ¶ 28.02 (2)(a)(ii), Matthew Bender & Co. (rev. ed. 2010) (hereinafter *Immigration Law and Procedure*) (citing *Garcia v. Audubon Cmty. Mgmt.*, LLC, No. 08-1291 (C), 2008 U.S. Dist. LEXIS 31221, at *9 (E.D. La. April 15, 2008)).

²³See *New Classification for Victims of Criminal Activity; Eligibility for U Nonimmigrant Status*, 72 Fed. Reg. at 53,018. A crime can be the subject of an investigation before any charges are filed, and investigation alone will suffice for U visa purposes. See INA § 101 (a)(15)(U).

²⁴This is an important contrast to the T visa requirements; in the T visa context, any law enforcement endorsement must come only from a federal agency. See 8 C.F.R. § 214.11 (a).

²⁵INA § 214 (p)(1); 8 U.S.C. § 1184 (p)(1).

²⁶8 C.F.R. § 214.14 (a)(3)(ii).

²⁷8 C.F.R. § 214.14 (a)(2).

²⁸See INA § 214 (p)(1); 8 U.S.C. § 1184 (p)(1).

²⁹8 C.F.R. § 214.14 (a)(3)(i-ii).

³⁰See, e.g., *Ordonez Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010).

³¹INA § 101 (a)(15)(U)(i)(IV); 8 U.S.C. § 1101 (a)(15)(U)(i)(IV). The term "United States", when used in a geographical sense, generally includes Guam and the Commonwealth of the Northern Mariana Islands, as well as Puerto Rico and the Virgin Islands. INA § 101 (a)(38); 8 U.S.C. § 1101 (a)(38).

³²8 C.F.R. § 214.14 (b)(4).

³³INA § 212 (a)(3)(E), (d)(14); 8 U.S.C. § 1182 (a)(3)(E), (d)(14).

³⁴There is no appeal of a decision to deny a waiver of inadmissibility for a U visa petitioner, but an applicant may re-file a request for waiver in "appropriate cases". 8 C.F.R. § 212.17 (b)(3). Moreover, in cases involving "violent or dangerous crimes or inadmissibility based on the security and related grounds in section 212(a)(3) of the (INA), USCIS will only exercise favorable discretion (i.e., will only waive the ground of inadmissibility) in extraordinary circumstances." 8 C.F.R. § 212.17 (b)(2).

³⁵INA § (a)(15)(U)(ii); 8 U.S.C. § 1101 (a)(15)(U)(ii).

³⁶8 C.F.R. § 214.14 (f)(4)(ii).

³⁷INA § (a)(15)(U)(ii); 8 U.S.C. § 1101 (a)(15)(U)(ii).

³⁸8 C.F.R. § 214.14 (f)(1).

³⁹Immigration Law and Procedure § 28.02 (2)(a)(i).

⁴⁰8 C.F.R. § 214.14 (f)(4).

⁴¹8 C.F.R. § 214.14 (f)(4)(i).

⁴²See 8 C.F.R. § 214.14 (a)(14)(iii). Note: This exclusion does not apply to a noncitizen who has committed a crime other than the one underlying the U visa application. See 72 Fed. Reg. 53,018. However, bear in mind that certain crimes can render a noncitizen inadmissible to the United States. See generally INA § 212/8 U.S.C. § 1182.

⁴³INA § 212 (a)(3)(E), (d)(14); 8 U.S.C. § 1182 (a)(3)(E), (d)(14). Thorough treatment of the grounds of inadmissibility is beyond the scope of these materials; for more information, see generally INA § 212 (a), (d). See also, [Form I-192 Instructions](#); and [Form I-918 Instructions](#).

⁴⁴See INA § 214 (p)(2)(A-B); 8 U.S.C. § 1184 (p)(2)(A-B).

⁴⁵8 C.F.R. § 214.14 (d).

⁴⁶Check Filing Fees, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=b1ae408> (last visited Apr. 16, 2011) (hereinafter USCIS Fee Webpage).

⁴⁷8 C.F.R. § 214.14 (c)(1).

⁴⁸8 C.F.R. § 214.14 (c)(2)(iii).

⁴⁹8 C.F.R. § 214.14 (c)(2)(iii).

⁵⁰8 C.F.R. § 214.14 (c)(2)(iii).

⁵¹8 C.F.R. § 214.14 (c)(1). The regulations require that "(a)ll petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918." 8 C.F.R. § 214.14 (c)(3).

⁵²USCIS Fee Webpage.

⁵³8 C.F.R. § 214.14 (c)(2)(iv). Form I-192 is not useful in most immigration cases where the applicant is physically present in the United States. However, in the context of applications for U and T visas

approval by USCIS of Form I-192 allows applicants who are physically present in the United States but subject to un-waived grounds of inadmissibility to remain in the United States. See I-192, Application for Advance Permission to Enter as Nonimmigrant, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a> (last visited Apr. 16, 2011).

⁵⁴Cf. 8 C.F.R. § 214.11 (j). The function of the I-601 in the U visa context, in practice, is to allow U visa applicants who are outside the United States to obtain waivers of the various grounds of inadmissibility and thus enter the United States.

⁵⁵Immigration Law and Procedure § 28.02 (3)(b). This will be necessary if the applicant is inadmissible for lack of a valid passport or visa.

⁵⁶See Signature Requirements for USCIS Forms, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59a> (last visited Apr. 16, 2011).

⁵⁷8 C.F.R. § 214.14 (c)(2)(ii). Petitioner bears the burden to demonstrate eligibility for U-1 nonimmigrant status, and may submit all credible evidence relating to the petition for USCIS' consideration. USCIS conducts a de novo review of submitted evidence and may investigate any aspect of the petition as it chooses. USCIS determines the evidentiary value of all evidence, including the law enforcement certification, at its own sole discretion. 8 C.F.R. § 214.14 (c)(4). In the event that the decision-maker at the Vermont Service Center concludes that additional evidence would be helpful in adjudicating the application, he or she may send a Request for Evidence, or RFE, to the petitioner. See *In re: Petitioner (name redacted)*, No. EAC 08 098 51148, 2010 WL 4088040 (Admin. App. Office, April 15, 2010).

⁵⁸8 C.F.R. § 214.14 (f)(2).

⁵⁹8 C.F.R. § 214.14 (f)(2).

⁶⁰8 C.F.R. § 214.14 (f)(3).

⁶¹Proceedings for deportation, exclusion, ie., or removal.

⁶²8 C.F.R. § 214.14 (c)(1)(i).

⁶³*Sanchez v. Mukasey*

, 508 F.3d 1254 (9th Cir. 2007).

⁶⁴See 8 C.F.R. § 214.14 (f).

⁶⁵8 C.F.R. § 214.14 (c)(5)(ii).

⁶⁶8 C.F.R. § 214.14 (c)(1)(ii).

⁶⁷See USCIS, Adjudicator's Field Manual, Appendix 39-1, Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-Visa) Applicants, Memorandum from David J. Venturella, Acting Director, ICE (Sept. 24, 2009) (hereinafter Venturella Memo). According to this Memorandum, upon receiving the stay request, ICE will contact its local OCC to request a prima facie determination from the USCIS Vermont Service Center; if USCIS determines that prima facie eligibility exists, USCIS will notify ICE, which will grant the stay of removal unless "serious adverse factors" are present. The stay may remain effective for up to 180 days, but if at the end of that time USCIS has not finished adjudicating the U visa application, and no new adverse factors have emerged, ICE will extend the stay as needed for USCIS to finish adjudicating the petition.

⁶⁸8 C.F.R. § 214.14 (c)(5)(ii).

⁶⁹8 C.F.R. § 214.14 (c)(5)(i).

⁷⁰See 8 C.F.R. § 214.14 (f).

⁷¹8 C.F.R. § 214.14 (c)(5), (f)(6).

⁷²8 C.F.R. § 214.14 (c)(5)(ii).

⁷³See 8 C.F.R. § 214.14 (g)(1). If this rule has the effect of limiting the derivative's initial approved period to less than four years, then she may file Form I-539 Application to Extend/Change Nonimmigrant Status to request an extension of U nonimmigrant status for a period up to four years total. Approval may extend beyond the expiration date of the U-1 principal's status, but only if: 1. The derivative cannot enter the United States in a timely way because of delays in consular processing; 2. The extension is necessary to assure that the derivative can attain at least 3 years in nonimmigrant status for purposes of adjusting status under INA § 245 (m)/8 U.S.C. § 1255 (m). 8 C.F.R. § 214.14 (g)(2)(i).

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8 C.F.R. § 214.11 (g)(2)(ii), explaining that "(e)xtensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539."

⁷⁵8 C.F.R. § 214.14 (h)(2)(i)(A-C). Revocation of a U-1 nonimmigrant's approval results in both termination of status for the principal and any derivatives, and in denial of any pending derivative petitions for the U-1's qualifying family members (but revocation of a derivative's approval only results in termination of status for the derivative). 8 C.F.R. § 214.14 (h)(4). Revocations, like denials, can be appealed to Administrative Appeals Office.

⁷⁶8 C.F.R. § 212.14 (h)(2)(i)(A-E).

⁷⁷USCIS website, My Case Status, <https://egov.uscis.gov/cris/Dashboard.do>.

⁷⁸USCIS, Questions and Answers: Filing U, T, and VAWA Petitions with USCIS (Aug. 3, 2009) http://www.uscis.gov/USCIS/Office%20of%20Communications/Community%20Relations/t_u_faq_final_for_w

⁷⁹USCIS, Question and Answer: USCIS National Stakeholder Meeting (Rev. Apr. 3, 2008), <http://www.uscis.gov/files/natedocuments/MARCBOQA.pdf>.

⁸⁰See INA § 101 (a)(15)(U); 8 U.S.C. § 1101 (a)(15)(U).

⁸¹8 C.F.R. § 274a.12 (a)(19-20). A noncitizen who is granted U-1 nonimmigrant status does not need to apply for employment authorization, nor pay a fee for the initial EAD (Employment Authorization Documents), but if the U-1 nonimmigrant is outside the United States, then he or she must request EAD on admission to the United States and file the appropriate documentation. 8 C.F.R. § 214.14 (c)(7). In any case, the derivative U nonimmigrant must file an I-765 Application for Employment Authorization in order to receive his/her EAD. 8 C.F.R. § 214.14 (f)(7).

⁸²See INA § 101 (a)(15)(U); 8 U.S.C. § 1101 (a)(15)(U).