

A U-Visa Factsheet for Advocates

This U-Visa factsheet is not intended as a substitute for reading the regulation and preamble OR for seeking legal counsel if you or someone you are working with decides they want to apply for a U-Visa. If you are an advocate, attorney, service provider or work in the justice system and you have any further questions or would like to be connected with someone who can help you file a U-visa for your client, please call Legal Momentum at 202-326-0040 or ASISTA at 515-244-2469 for technical assistance. These numbers are for assistance to professionals helping victims. Victims with questions about who can help them in their community should be directed to the National Domestic Violence Hotline 1-800-799-SAFE of the Rape, Abuse and Incest Network Hotline at 1800-656-HOPE.

What is the U-visa?

The U-visa was created in the Violence Against Women Act (VAWA) of 2000. It is a visa for victims of criminal activity that occurred within the United States or that violated the laws of the United States. For seven years, there were no regulations to allow victims to apply for the U visa. On September 17, 2007, U-visa regulations were published. Immigrant crime victims will be able to file U-visa applications after October 17, 2007.

Why are U-visas important to stopping violence against women?

Often perpetrators of criminal activity, such as sexual assault or domestic violence, will tell their victims that they cannot report the violence to the police because they will be deported and nothing will happen to the perpetrator. This visa was created so that victims of criminal activity feel safe reporting criminal activity against them without fear of deportation. If victims come forward, report and cooperated with law enforcement they can potentially qualify for a U-visa, a form of legal immigration status.

Who is eligible for a U-visa?

To be eligible the applicant must prove that s/he:

- ◆ Is a victim of at least one of the approved list of criminal activity (INA 101(a)(15)(U)(iii) including, but is not limited to: rape, torture, trafficking, incest, domestic violence (including mental abuse), sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation and other listed crimes. Emotional abuse by itself does not typically rise to the level of any of the enumerated crimes. The qualifying criminal activity does not need to be the criminal activity that is eventually prosecuted.
- ◆ Suffered *substantial physical or mental abuse* as a result of the criminal activity.
- ◆ Is helpful in investigating or prosecuting the criminal activity. There is no requirement on how long ago the criminal activity took place or how long after it was reported. There is also no requirement that the case be prosecuted or that the prosecution secure a conviction. The U-visa applicant must continue to be helpful through the duration of the U-visa. The application must include a certification from a federal, state or local government agency. The agency must be law

enforcement, a prosecutor, judge or an agency with criminal investigative jurisdiction (e.g. child abuse the Employment Opportunity Commission, the Department of Labor). A 'certifying official,' must be the head of the certifying agency or any one of a number of supervisors that the agency may designate as certifying officials.

- ◆ The criminal activity occurred in the U.S. (including Indian lands and U.S. territories) or violated the laws of the U.S. (includes federal laws that extend criminal jurisdiction for certain criminal activity beyond the U.S.)

What type of immigration status should a victim have to be eligible for a U-visa?

There is no requirement that a U-visa applicant have a certain immigration status. An applicant may be undocumented. She might also have a different type of legal immigration visa. Victims who entered the country unlawfully are also eligible.

What if the victim has a criminal record?

Consult with an immigration attorney to ensure eligibility. In general, waivers are available for U-visa applicants with criminal convictions. It is very important that advocates identify as early as possible whether immigrant victims have any criminal record. When working with immigrant victims it is exceptionally important to counsel them about the immigration consequences of their own violent acts, which could result in making them ineligible to receive U visa or other VAWA related immigration relief.

How does one apply for a U-visa?

The victim, with the assistance of an immigration attorney, should fill out the immigration petition, called Form [I-918](#) and U-status government certification and file it with the VAWA Unit of the Vermont Service Center. There are no fees for filing a U-visa petition, although there are fees associated with related forms.

How long does the visa last? What happens after it expires?

The visa lasts for four years. After three years, many U-visa holders may be eligible to apply for lawful permanent resident status (commonly referred to as a green card) provided they can demonstrate eligibility based upon humanitarian need, family unity or public interest and demonstrate that they did not unreasonably refuse to cooperate in the investigation or prosecution of criminal activity.

Will the information on a victim be confidential?

The U visa application is subject to VAWA confidentiality provisions. This means that the contents of the application will be protected in most circumstances.

Where can I get more information on U-visa regulations?

The U-visa regulations are at

http://www.dhs.gov/xlibrary/assets/uscis_u_nonimmigrant_status_interimrule_2007-09.pdf.

A summary of the regulations and information for legal practitioners is available at

<http://www.legalmomentum.org/IWPpubs/nnuvisaregs9-11-07.pdf>