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Feature

The U Visa

An Effective Resource for Law Enforcement

By Stacey IVIE, M.Ed., and Natalie Nanasi, J.D.



Law enforcement personnel strive for strong connections with all citizens. In pursuit of this goal, striking an appropriate balance—one that punishes wrongdoers while protecting victims—can present a challenge. One way that officers not only can foster better relationships with immigrant communities but also increase offender accountability, promote public safety, and help ensure that crimes translate into convictions is to promote awareness of the U visa, which provides important immigration benefits to cooperating crime victims.

The authors believe that the fear of deportation has created a class of silent victims and undermined officers' attempts at community-oriented policing among immigrant populations. They opine that the U visa helps improve relations with these communities, increase the reporting of criminal activity, enable provision of services to victims, and enhance the prosecution of violent perpetrators. Also, the authors feel that officers may have misconceptions about the U visa and not recognize its effectiveness as a tool. They hope that this article will help clarify the intent, purpose, and benefits of the U visa to the law enforcement community.

DESCRIPTION OF THE U VISA

Congress created the U visa—available to immigrant victims of a wide range of serious crimes—as part of the Victims of Trafficking and Violence Protection Act of 2000, recognizing that many of these individuals, with temporary or no legal status, fear that assisting law enforcement could lead to deportation.¹ By providing noncitizen victims a means of stabilizing their legal status, the U visa encourages them to report the crimes. It helps to curtail criminal activity, protect the innocent, and encourage victims to “fully participate in proceedings that will aid in bringing perpetrators to justice.”² The U visa also can promote contact with law enforcement officers within isolated communities, which provides valuable assistance to individuals at heightened risk of victimization.

The U visa provides an avenue to legal status for immigrant crime victims who 1) have suffered substantial physical or mental abuse as a result of victimization; 2) possess information regarding the activity; and 3) offer a source of help in the investigation or prosecution.³ The incident in question

must have violated U.S. law or occurred within the nation's borders (including Indian country and military installations) or one of its territories or possessions. The qualifying criminal activities covered by the U visa include a long list of serious offenses or the attempt, conspiracy, or solicitation to commit any of them. Unlike other protections available to battered immigrants (such as those provided under the Violence Against Women Act), eligibility for a U visa does not depend on a marriage between the victim and abuser or the legal status of the perpetrator.⁴

To obtain a U visa, victims must demonstrate to the U.S. Citizenship and Immigration Services (USCIS) their willingness to cooperate in a qualifying investigation or prosecution by law enforcement entities, such as federal, state, or local police agencies; prosecutors; judges; or any other appropriate authority. This definition includes organizations with criminal investigative jurisdiction in their respective areas of expertise (e.g., Child Protective Services, the Equal Employment Opportunity Commission, and the Department of Labor).⁵

BENEFITS FOR VICTIMS

Approved U-visa petitioners receive temporary legal status and work authorization, which allows these victims to support themselves and rebuild their lives in safety while assisting law enforcement.⁶ After 3 years, they may gain eligibility for lawful permanent resident status (i.e., a Green Card). Such benefits make the U visa an effective tool for bringing victims, particularly those of domestic violence who may depend on the perpetrator for legal status or economic support, out of the shadows. Research shows that "immigrant battered women want...the violence to stop, but culture, lack of support and immigration status limit their ability to deal with the violence and make them particularly vulnerable to failure in their attempts to escape a battering relationship."⁷ Often, these victims find it difficult to break free as social "isolation, exacerbated by lack of social contacts, geographic isolation, and limited mastery of English or cultural alienation...interferes with detection and accountability, makes it easier for the batterer to ignore social sanctions, promotes increased marital dependence, and increases intrafamilial exclusivity and intensity."⁸ The prospect of a U visa may eliminate the person's fear of calling the police for help, and, once connected to legal and social service systems (e.g., victim-witness advocates, battered-women's shelters, health- and child-care programs), some of the pressures that discourage victims of domestic violence to leave a relationship may be alleviated, allowing them to ultimately break the cycle of abuse.



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Moreover, financial concerns pose significant barriers that prevent victims of crimes, such as domestic violence, from leaving and attaining economic self-sufficiency. Because battered immigrant women are not eligible for many work opportunities and public benefits, they and their children must choose between remaining in a violent situation or facing starvation and poverty. The U visa, therefore, can afford noncitizen victims of domestic violence the same opportunities as survivors with U.S. citizenship and allow them to obtain the resources crucial in helping them escape from abusive situations.⁹

ADVANTAGES FOR LAW ENFORCEMENT

Cooperative Victims

With immigrant victims no longer afraid to cooperate with the police, the subsequent increase in reporting will ensure the identification and apprehension of more violent criminals. Additionally, victim participation in the investigation or prosecution of cases increases the likelihood of convictions. The resulting accountability of offenders can lead to defendant rehabilitation, which, in turn, ultimately may increase the number of productive members of society, reduce crime rates, and promote public safety for all members of a community.

Use of the U visa also may cause a decline in recidivism, or the repetition of certain crimes, thus decreasing the frustration of officers and the loss of financial assistance and other services needed

by victims. These issues prove particularly prominent in domestic violence cases. Statistics show that “on average, women...leave and return to an abusive relationship five times before permanently leaving...”¹⁰ Those five incidents may have involved law enforcement responding to the scene and spending numerous hours on a case, thereby decreasing officers’ availability to other crime victims. Perhaps, the prosecutor spent time and financial resources to create an evidence-based prosecution with a limited chance of conviction. In such instances, the U visa can increase the likelihood of victim cooperation, thereby eliminating these wasted hours.

Moreover, recidivism rates logically will decrease when public service resources are provided to undocumented victims of certain pattern crimes. The ability to earn an income and receive financial assistance may drastically change the outlook of victims who had no prospect for life modification prior to the availability of the U visa, allowing them to leave a violent relationship.

Last, use of the U visa also can eliminate the current conflict faced by officers who respond to domestic violence scenes. Like many other states, the commonwealth of Virginia mandates public assistance for victims of domestic abuse. The Virginia Code requires that the officer “provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available...”¹¹ However, this directive conflicts with the prohibition against immigrant victims receiving public benefits, creating a confusing situation for first responders. Putting noncitizen victims of domestic violence on the path to legal status can resolve this inconsistency.

Offenses Covered by the U Visa

To obtain a U visa, the immigrant must be the victim of one or more qualifying crimes; the attempt, conspiracy, or solicitation to commit any of the acts; 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

8 U.S.C. 1101(a)(15)(U)(iii)

Community-Oriented Policing

Community-oriented policing “promotes and supports organizational strategies to address the causes and reduce the fear of crime and social disorder through problem-solving tactics and police-community partnerships.”¹² In short, this law enforcement model is based on the principle that only the partnership of police and citizens can successfully address the problem of crime in communities. The U.S. Department of Justice promotes community-oriented policing as a highly effective problem-solving model.

Fear of deportation breaks down the ties that bind the police and the community, and, without a joint venture involving both participants and the trust that must exist between the two parties, community-oriented policing will not work. Use of the U visa can address this fear, giving victims more confidence about calling the police and increasing trust between community members and those sworn to protect and serve.

FREQUENTLYASKED QUESTIONS

Although the U visa can provide substantial benefits to both victims and officers, the authors recognize that valid questions and concerns exist that may limit its acceptance and effectiveness in the law enforcement community. The answers to some frequently asked questions can help address

these issues.

What role do law enforcement agencies have in the application process? Agencies only complete the 3-page Form I-918 Supplement B, U Nonimmigrant Status Certification (i.e., the "law enforcement certification form"), which simply requires the department's information; the details of the crime; and the victim's personal data, knowledge of the incident, and helpfulness to the investigation or prosecution. Signing the form does not indicate sponsorship of the immigrant. Although the form bears significant weight because it demonstrates that the individual has met several of the eligibility criteria, the USCIS decides whether to grant the U visa only after evaluating the totality of the circumstances. However, a U visa will not be issued without a signed law enforcement certification.

Who can sign the law enforcement certification form? Heads of certifying agencies or any supervisory employee they appoint (i.e., a designated certifier) can sign the form. A designated certifier should know the certification requirements thoroughly and be readily identifiable and accessible to immigrant crime victims; this simplifies the process for applicants, serves as a quality control measure, and prevents abuse of the U visa.

What if the victim stops cooperating? Certifying departments may notify USCIS if victims do not meet their ongoing responsibility to cooperate with law enforcement officers. However, agencies should recognize when a victim may have suffered abuse-related trauma (e.g., post-traumatic stress disorder or other debilitating emotional or physical condition) or legitimately fear retaliation from perpetrators; in such situations, agencies should be mindful of withdrawing or refusing certification. Departments also should remember that issuance of a U visa does not require any case outcomes or milestones; a victim must only be helpful.¹³ Last, USCIS assumes "an ongoing need for the applicant's assistance"; if authorities no longer need help, the victims have fulfilled their obligation to law enforcement.¹⁴

Is there a quid pro quo? No. The U visa is not given in exchange for filing a police report or for testimony at trial.

Are some eligible victims criminals due to their illegal presence in the United States? The Immigration and Nationality Act (INA) determines an individual's legal status. In enacting the Victims of Trafficking and Violence Prevention Act and creating the U visa, Congress modified the INA. The federal government weighed all of the interests involved and ultimately created a legal status for cooperating crime victims, regardless of their means of entry into the country, based on the determination that "the purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States."¹⁵

Will U visas increase the filing of false police reports? To combat false reporting, law enforcement officials should conduct a thorough investigation of any alleged crime to determine its authenticity. Concerning a false allegation, not only should officers not sign the U-visa certification form but they should initiate a criminal charge for the filing of a false police report. However, no evidence indicates that an agency's use of the U visa will lead to the filing of false claims. The U visa covers crimes that are serious, predominantly violent, difficult to fabricate, and that carry dire legal consequences for the perpetrator. Additionally, immigrants hesitant to contact authorities regarding a real crime because of their fear of deportation probably would not do so to report a false one. Moreover, U-visa regulations protect against its abuse in this way. First, they specifically exclude "a person...culpable for the qualifying criminal activity" from U-visa eligibility.¹⁶ Further, if applicants cannot demonstrate a true crime's occurrence, their suffering from the incident, or their cooperation with law enforcement, they cannot obtain a U visa.

Do law enforcement agencies have to sign U-visa certification forms? The federal government does not mandate that law enforcement agencies implement a U-visa certification process. It only serves as a resource designed to augment the effectiveness of a criminal investigation or prosecution. However, departments that decline participation may prevent the identification and punishment of violent perpetrators. Moreover, refusing to certify a qualifying victim not only undermines the purpose of the federal law but decreases an agency's ability to combat crime, apprehend perpetrators, foster relationships within immigrant communities, and provide crucial assistance to victims of violent crime.

CONCLUSION

The fear of deportation can cause immigrant communities to cut themselves off from police and not offer information about criminal activity, even when victimized. Consequently, predators remain on

the street, emboldened because they know they can strike with a degree of impunity. As a result, societies face increased crime, including serious offenses, and the perpetrators victimize and endanger everyone, not just illegal immigrants.¹⁷

The U visa can alleviate the concerns of immigrant communities, open lines of communication, and enhance public safety for all. It then helps law enforcement officers fulfill their ultimate goal of ensuring the well-being of those they serve.

Endnotes

¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, Background and Legislative Authority, retrieved from <http://bibdaily.com/pdfs/E7-17807.pdf>. See also <http://www.ilrc.org/resources/U%20Visa/Frequently%20Asked%20Questions.html>.

² http://www.uscis.gov/files/pressrelease/U-visa_05Sept07.pdf

³ The U visa is available to individuals with temporary immigration status (e.g., student, employment-based, and tourist visas or Temporary Protected Status), as well as undocumented persons with no legal status.

⁴ Because of their experience and expertise, the authors use examples of domestic violence and other crimes against women throughout the article. However, the U visa is available to both men and women and serves as a useful tool against a wide range of violent crimes.

⁵ 8 C.F.R. §214.14(a)(2) (defining a "certifying agency" for U-visa purposes).

⁶ Pursuant to 8 U.S.C. 1184(p)(2), the maximum number of issued U visas may not exceed 10,000 per fiscal year.

⁷ M.A. Dutton and G.A. Hass, "The Use of Expert Testimony Concerning Battering and Its Effects on Immigrant Women"; retrieved from <http://www.legalmomentum.org/site/DocServer/wwwappendixesperttestimonyconcerningbattering.pdf?docID=631>.

⁸ Joyce Nielson, Russell Endo, and Barbara Ellington, "Social Isolation and Wife Abuse: A Research Report," in *Intimate Violence: Interdisciplinary Perspectives*, ed. Emilio C. Viano (Bristol, PA: Taylor and Francis, 1992); and Bruce Rounsaville, "Theories in Marital Violence: Evidence from a Study of Battered Women," *Victimology: An International Journal* 11 (1978): 21.

⁹ National Immigration Law Center Fact Sheet on the Women Immigrants Safe Harbor Act; retrieved from http://www.nilc.org/immspbs/cdev/wish/WISH_2-pgr_3-26-04.pdf.

¹⁰ http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_domestic_violence.html

¹¹ VA Criminal Procedure Code §19.2-81.3.

¹² U.S. Department of Justice, Office of Community Oriented Policing Services, "What Is Community Policing?" retrieved from <http://www.cops.usdoj.gov/Default.asp?Item=36>. See also David Allender, "Community Policing: Exploring the Philosophy," *FBI Law Enforcement Bulletin*, March 2004, 18-22; Clyde Cronkhite, "Fostering Community Partnerships That Prevent Crime and Promote Quality of Life," *FBI Law Enforcement Bulletin*, May 2005, 7-10; John Ellison, "Community Policing: Implementation Issues," *FBI Law Enforcement Bulletin*, April 2006, 12-16; and Carl Peed, "The Community Policing Umbrella," *FBI Law Enforcement Bulletin*, November 2008, 22-24.

¹³ U visa regulations broadly define the concept of helpfulness, to include victims who have been helpful in the past, are currently being helpful, or are likely to be helpful in the future. 8 CFR 214.14(b)(3).

¹⁴ 8 C.F.R. §214.14(a)(2).

¹⁵ U Visa Regulations, Document Summary, 8 C.F.R. § 214.14.

¹⁶ 8 C.F.R. §214.01(a)(14)(iii).

¹⁷ David Harris, "Avoidable Disaster: Police Enforcing U.S. Immigration Law"; retrieved from <http://jurist.law.pitt.edu/forumy/2006/10/avoidable-disaster-police-enforcing-us.php>.

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