

The U Visa

Training for Law Enforcement

Prepared by the
International Institute of the Bay Area





OVERVIEW

- U VISA PURPOSE AND SOURCES
- BRIEF HISTORY
- BENEFITS
- REQUIREMENTS
- CERTIFICATION OF HELPFULNESS



U VISA PURPOSES

- Law Enforcement: Overcome victim fear of detection; encourage reporting and other cooperation
- Humanitarian: protect vulnerable victims; assist domestic violence and other crime survivors
 - Goes beyond more limited T or S visa purpose of keeping alien in U.S. to cooperate

SOURCES

- INA 101(a)(15)(U)
 - Created by Victims of Trafficking and Violence Prevention Act Sec. 1513.
 - Amended by Violence Against Women and Department of Justice Reauthorization Act of 2005
- Interim Regulation Effective October 17, 2007
 - 53014 Federal Register Vol. 72, No. 179
- USCIS Memoranda



BENEFITS

- Lawful U Visa status for 3 years
 - Longer if victim help still required and has not applied for permanent residence
- Employment Authorization
- May apply for permanent status after 3 years



BRIEF HISTORY

- U Visa Created in 2000, but no regulations until 2007.
- Until Regulations of 10/07USCIS granted “interim relief” to prima facie eligible applicants
- Only U visa itself available now



REQUIREMENTS

- Victim of designated crime
- Suffered substantial abuse as result of crime
- Applicant determined “admissible” to U.S.
- Was/Is/Will Be helpful in:
 - Investigation OR
 - Prosecution
- Can’t unreasonably refuse to help
- Law Enforcement must certify helpfulness

VICTIM SPECIFICS

- Has to be a victim, not a witness
 - Victim must suffer direct or proximate harm
 - Witness may be victim of threats, tampering
- Can't be culpable in qualifying crime
 - Victim ineligible for U visa if threat to public safety
 - Other crimes not absolute bar
- Child or incompetent victim
 - Guardian may provide helpfulness...
 - But only the victim gets the U visa
- Homicide or Manslaughter
 - Child, parent or spouse = "victim"



STATUTORY LIST OF CRIMES

INA 101(a)(5)(U)

Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, hostage taking, peonage,

Involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury ...



LIST OF CRIMES, continued

PLUS:

attempt, conspiracy, or solicitation to commit any of the above-listed crimes, or any similar activity in violation of federal, state or local criminal law

SUBSTANTIAL ABUSE

I-918 Requests Showing Of:

- Nature and Severity of Injury Inflicted
- Severity of Harm Suffered
 - includes aggravation of existing condition
- Severity of Perpetrator's Conduct
- Duration of Infliction of Harm
- Extent to Which There is Permanent or Serious Harm to Appearance, Health, Physical or Mental Soundness
- Includes Pattern of Abuse (esp. DV)



ADMISSIBILITY

- USCIS Determines whether applicant is “inadmissible” to U.S.
- Applicants submit fingerprints
- Inadmissibility Grounds in Immigration Act:
 - Criminal Violations
 - Immigration Violations
 - Threat to Public Health or Security
- Applicant may seek discretionary waiver
 - USCIS weighs positive/negative factors



ROLE OF LAW ENFORCEMENT

- ROLE OF LAW ENFORCEMENT
 - Determine crime occurred
 - Determine applicant was victim
 - Certify whether victim was, or is, or is likely to be helpful
- ROLE OF USCIS
 - Determine eligibility for U visa, including
 - Other evidence of helpfulness
 - Substantial Harm
 - Whether on balance applicant deserves legal status



LAW ENFORCEMENT AGENCY CERTIFICATION

- Before October 17: Brief signed form
 - Signed by any official
- After October 17: I-918 Supplement B
 - May only be signed by Agency Head OR
 - Officer(s) with supervisory authority designated by Agency Head to sign Supplement B



HELPFULNESS IS CERTIFIED BY LAW ENFORCEMENT

- Law Enforcement Agency makes initial determination whether victim:
 - Is Helpful, or Was Helpful, or Is Likely to Be Helpful
 - In Investigation
 - OR Prosecution
 - Has not refused reasonable request for cooperation (if criminal case still current)
- Compare S or T Visa “cooperation” standard



Certifying Law Enforcement Agencies

- Any agency with power to investigate or prosecute listed crimes may certify helpfulness
- Certifying agencies include:
 - Police and Sheriff
 - Prosecuting Attorney (Local, State, Federal)
 - Criminal court judge
 - Child Protective Services
 - Department of Labor
 - Equal Employment Opportunities Commission
 - Labor Commissioner

Helpfulness: What it ISN'T

- U Visa Regulations define helpfulness by defining what is NOT helpful:
 - Victim only reports crime and is not willing to provide information to allow investigation to move forward; or
 - Refuses to continue to provide assistance
- That is: active failure to cooperate - not simply that investigate did not go forward



CONTINUING HELPFULNESS?

- Applicant may not refuse reasonable request for information before or after U visa grant.
 - Law Enforcement Agency must inform USCIS if refusal after U visa grant
 - There is no affirmative requirement of continuing assistance
- Ongoing helpfulness requirement only relevant if still needed for investigation or prosecution.
 - If investigation/prosecution closed, continued helpfulness not required.



BROAD INTERPRETATION OF HELPFULNESS PERMITTED

- Some parameters set by Statute, Regulations and USCIS Memoranda
 - Requirement that applicant may “have been helpful in investigation” specifically envisions both current and past investigations and current and past prosecutions.
 - U visa available to victims of past crimes - even before 2000
 - USCIS will grant visa even where perpetrator not caught (or identified) if applicant gave as much information as possible.



CONSIDERATIONS IN CREATING CERTIFICATION POLICY

- U Visa Can Be Used as Tool to:
 - Identify and prosecute criminals
 - Encourage reporting of crime
 - Discourage criminals who believe they can target undocumented victims with impunity
 - Overcome obstacles to victim cooperation
 - Provide humanitarian relief
- Law Enforcement Agency Decides How to Use It



ADVANTAGES OF BROAD USE OF CERTIFICATIONS

- U Visa Helps victims rebuild lives like District Attorney Victim Services
 - Might decide to limit to certain types of victims
- Track record of U visa certifications creates community confidence in police services and ambient climate of cooperation



Scope of I-918 Supplement B Law Enforcement Certification

Certifying Officer is NOT required to include all relevant evidence in the I-918 Supplement B: only what is known to his/her agency. May so specify in form, for example: "Ms. G was the victim of domestic violence. Please see attached police report for information known to the reporting officer at the time the report was taken."



Content of I-918 Supplement B

- Basic Information about agency and crime
- Briefly describe investigation and victim's role in it
- Describe known or documented injury to victim
- Briefly describe victim helpfulness in investigation
- Signed by designated supervisory official



PARTNERSHIPS FOR EFFECTIVE USE OF U VISA

- Law enforcement confidence in system is key
- Nonprofits want to guard against abuse of system.
- Working through nonprofits may reduce opportunities for “notarios” and/or bad attorneys to submit fraudulent applications
- Nonprofits can facilitate communication between applicant and law enforcement



PARTNERSHIPS, continued

- Nonprofits prefer established communication process regarding helpfulness determinations generally, and in some individual cases
- Nonprofits would like to be involved throughout policy development and implementation



LOGISTICAL ISSUES

- Some departments prefer that requests come from advocate, not directly from applicant
- Police reports should be included with Certification Request, or explain why not
- Need to figure out how to minimize burden on Certifying officer(s)
 - Recommendations by investigators?
 - Some departments ask trusted nonprofits to pre-complete form
- Nonprofits can train officers and community groups



U Visa Resources

Department of Homeland Security Sources

- Contact Scott Whelan at scott.whelan@dhs.gov
- Contact Thomas Pearl at thomas.pearl@dhs.gov
- USCIS U Visa Fact Sheet “Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status” at www.uscis.gov
- Instructions to I-918
- Instructions to I-918 Supplement B

Law Enforcement and Academic Sources

- [October 2009 | FBI Law Enforcement Bulletin: The U Visa: An Effective Resource for Law Enforcement](#);
- [U. North Carolina School of Government Immigration Law Bulletin Number 2, June, 2009](#)