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USCIS Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status

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Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status

The U nonimmigrant status (U visa) is set aside for victims of crimes who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity. Below are Questions and Answers pertaining to U nonimmigrant visas.

Background

Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, offer protection to victims of such crimes. The legislation also helps law enforcement agencies to better serve victims of crimes.

Q: How Does One Become Eligible for U Nonimmigrant Status?

A: There are four statutory eligibility requirements. The individual must:

- The individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity.
- The individual must have information concerning that criminal activity.
- The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
- The criminal activity violated U.S. laws

Q: What Qualifies as "Criminal Activity"?

A: Qualifying criminal activity is defined as being an activity involving one or more activities that violate U.S. criminal law, including

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- Abduction
 - Abusive Sexual Contact
 - Blackmail
 - Domestic Violence
 - Extortion
 - False Imprisonment
 - Genital Female Mutilation
 - Felonious Assault
 - Hostage
 - Incest
 - Involuntary Servitude
 - Kidnapping
 - Manslaughter
 - Murder
 - Obstruction of Justice
 - Peonage
 - Perjury
 - Prostitution
 - Rape
 - Sexual Assault
 - Sexual Exploitation
 - Slave Trader
 - Torture
 - Trafficking
 - Witness Tampering
 - Unlawful Criminal Restraint
 - Other Related Crimes

Q: What are the Procedures to Request U Nonimmigrant Status?

A: Foreign national victims of crime must file a, Form I-918, Petition for U Nonimmigrant Status [2]. The form requests information regarding the petitioner's eligibility for such status, as well as admissibility to the United States. Currently, USCIS has designated its Vermont Service Center as the centralized location to receive all U nonimmigrant petitions.

Q: Is There a Fee for Applying for U Nonimmigrant Status?

A: No. The program involves the well being of petitioners and USCIS' decision to waive the petition fee reflects the humanitarian purposes of the law.

Petitioners for a U nonimmigrant status are entitled to request a fee waiver of any form associated with the filing for the U nonimmigrant status.

If you are unable to pay the filing fee, you may submit a Request for Fee Waiver, Form I-912 [3] (or a written request).

Q: What Prevents Any Foreign National From Claiming This Status By Saying They Were a Victim of a Crime?

A: A petition for U nonimmigrant status must also contain a certification of helpfulness from a certifying agency. That means the victim must provide a U Nonimmigrant Status Certification (Form I-918, Supplement B), from a U.S. law enforcement agency that demonstrates the petitioner "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity.

Q: What Qualifies as a "Certifying Agency"?

A: Certifying agencies can be Federal, State or local law enforcement agencies, prosecutors, judges or other authority that investigates or prosecutes criminal activity.

Other agencies such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor also qualify as certifying agencies since they have criminal investigative jurisdiction within their respective areas of expertise.

Q: How Long Can One Maintain the U Nonimmigrant Classification?

A: U nonimmigrant status cannot exceed four years. However, extensions are available upon

certification by a certifying agency that the foreign national's presence in the United States is required to assist in the investigation or prosecution of the qualifying criminal activity.

Q: Can a Foreign National Petition for U Nonimmigrant Status From Outside the United States?

A: Yes. USCIS has determined that the legal framework for U nonimmigrant status permits foreign national victims of criminal activity to petition for such status either inside or outside the United States.

If not admissible to enter the United States as a foreign national, an applicant for a U visa must obtain a waiver of inadmissibility through submission of a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant. This waiver is adjudicated by the Vermont Service Center of USCIS on a discretionary basis, allowing the petitioner to continue with the U nonimmigrant visa process.

Q: Is There a Cap on The Number of U Nonimmigrant Status Grants?

A: Yes. USCIS may grant no more than 10,000 U-1 nonimmigrant visas in any given fiscal year (October 1 through September 30). This does not apply to derivative family members such as spouses, children or other qualifying family members who are accompanying or following to join the principal foreign national victim.

If the cap is reached in any fiscal year before all petitions are adjudicated, USCIS will create a waiting list that will provide a mechanism by which victims cooperating with law enforcement agencies can stabilize their immigration status. Further, U nonimmigrant visa petitioners assigned to the waiting list will be given deferred action or parole while they are on the waiting list. This means they will be eligible to apply for employment authorization or travel until their petitions can be adjudicated after the start of the following fiscal year.

Q: Can Family Members of the Petitioner Receive U Nonimmigrant Status?

A: Family members who accompany the petitioner can, under certain circumstances obtain a U nonimmigrant derivative visa. The U nonimmigrant visa principal must petition on behalf of qualifying family members.

If the principle of petitioner is...	Then...
Under 21 years of age	They may petition on behalf of spouse, children, parents and unmarried siblings under age 18.
21 years of age or older	They may petition on behalf of spouse and children

The principal petitioner needs to file a Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient, on behalf of their qualifying family members.

Q: Can an Individual Who Has Held U Nonimmigrant Status Eventually Apply for a Green Card (Permanent Residence)?

A: Yes.

? The individual must have been physically present in the United for a continuous period of at least three years since the date of admission as a U nonimmigrant,

? The individual must not have unreasonably refused to provide assistance to law enforcement since receiving a U nonimmigrant visa.

? The certifying agency must determine that the individual's continued presence in the country is justified on humanitarian grounds to ensure continuation of a cohesive family, or is otherwise in the national or public interest.

Q: Can Qualifying Family Members Apply for Permanent Residence (a Green Card)?

A: Yes. There are two ways family members of a U nonimmigrant visa holder can apply for a green card. First, family members who hold a derivative U nonimmigrant visa themselves may be eligible for a green card. Second, certain family members who have never held a derivative U nonimmigrant visa may be eligible for a green card.

Q: What are the Eligibility Requirements for Qualifying Family Members Who Have Never Held U Nonimmigrant Status to be Granted Permanent Resident Status?

A: The law allows USCIS to extend these benefits to spouses, children, and parents based upon their relationship to the principal U ("U-1") nonimmigrant if:

- The qualifying family member was never admitted to the United States in U nonimmigrant status, and
- It is established that either the family member or the U-1 principal applicant would suffer extreme hardship if the qualifying family member is not allowed to remain in or be admitted to the United States.

Q: What are the Procedures for Qualifying Family Members to Apply for Permanent Residency?

A: Family members with derivative U nonimmigrant visas may apply for green cards if the U-1 has met the eligibility requirements for permanent residence and the U-1's application for adjustment of status was approved, is currently pending, or is filed at the same time.

To apply for a green card, qualifying family members with a derivative U nonimmigrant status must file a Form I-485, Application to Register Permanent Residence or Adjust Status. For detailed instructions and requirements about filing for a green card please refer to special instructions on Form I-485, Supplement E.

To apply for permanent residence for family members who have never held a derivative U nonimmigrant visa, the U-1 status holder must file an immigrant petition on Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant, concurrently or subsequent to filing their Form I-485, Application for Adjustment of Status. If the Form I-929 is approved, qualifying family members in the United States may file a Form I-485. Qualifying family members outside the United States may visit a U.S. embassy or consulate to obtain their immigrant visas.

Q: Can a U-1 Nonimmigrant File a Form I-929, Petition For Qualifying Family Member of a U-1 Nonimmigrant, on Behalf of a Sibling?

A: No, only the spouse, children, and parents (if the petitioner is under 21) of a U-1 nonimmigrant are eligible.

Q: When Can a U-1 Nonimmigrant File a Form I-929 on Behalf of a Qualifying Family Member?

A: U-1 nonimmigrants may file the Form I-929 concurrently with, or at any time after they have filed, their Form I-485 based upon their U status.

Q: Can a Family Member File Their Form I-485 Concurrently With the Form I-929?

A: No. Only the U-1 principle can file their Form I-485 concurrently with the Form I-929.

Q: Can the Form I-929 Be Approved Before the Petitioner's I-485 Is Approved?

A: No. The petitioner's I-485 must be approved prior to the approval of the I-929. If the petitioner's Form I-485 is denied, the Form I-929 will automatically be denied.

Q: Is a Biometric Fee Required for the Form I-929?

A: No. The only fee required is the filing fee.

Q: Can the Filing Fee Be Waived?

A: Yes. If you are unable to pay the filing fee, you may submit a Request for Fee Waiver, Form I-912 (or a written request). For more information about fee waiver guidance, see the fee waiver guidance ^[4] page.

Q: If the Petition is Approved, What Status Is Given To The Qualified Family Members (Beneficiary)?

A: Approval of the I-929 petition does not confer status upon the beneficiary.

Q: Does Approval of the I-929 Petition Grant Employment Authorization?

A: No. Approval of the petition only makes the beneficiary eligible to apply for adjustment of status.

Q: Is There an Annual Limit on the Number of I-929 Beneficiaries Who Can Be Approved?

A: No. There is no numerical limitation.

Q: Can a T Visa Holder File A Form I-929 on Behalf of His or Her Family Members?

A: No, Form I-929 may only be filed by a U-1 status holder on behalf of eligible family members.

Nonimmigrant Visas:

U Visa ^[5]

Agency:

USCIS ^[6]

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[1] <https://immigration.com/news/u-visa/uscis-questions-answers-victims-criminal-activity-u-nonimmigrant-status>

[2] <http://www.uscis.gov/node/41213>

[3] <http://www.uscis.gov/node/41162>

[4] <http://www.uscis.gov/node/44213>

[5] <https://immigration.com/visa/nonimmigrant-visas/u-visa>

[6] <https://immigration.com/agencies/agency/dhs/uscis>