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## **9 FAM 41.85 NOTES**

*(CT:VISA-1374; 11-13-2009)*  
*(Office of Origin: CA/VO/L/R)*

### **9 FAM 41.85 N1 U NONIMMIGRANT VISA**

*(CT:VISA-1084; 10-20-2008)*

- a. The U nonimmigrant classification was created 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.
- b. The U nonimmigrant classification is available to qualified alien victims of certain criminal activity, without regard to gender, who assist government officials in investigating or prosecuting such criminal activity.
- c. The Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) can only grant U nonimmigrant status to 10,000 principal aliens in each fiscal year.

#### **9 FAM 41.85 N1.1 Benefits to Certain Victims of Criminal Activity**

*(CT:VISA-1084; 10-20-2008)*

The U nonimmigrant classification provides temporary immigration benefits to certain victims of criminal activity who:

- (1) Have suffered substantial mental or physical abuse as a result of having been a victim of criminal activity;
- (2) Have information regarding the criminal activity; and
- (3) Assist government officials in the investigation and prosecution of such criminal activity.

#### **9 FAM 41.85 N1.2 Qualifications For U Nonimmigrant Classification**

*(CT:VISA-1084; 10-20-2008)*

In order to qualify for the U nonimmigrant classification:

- (1) The alien must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
- (2) The alien must be in possession of information about the criminal activity of which he or she has been a victim;
- (3) The alien must be of assistance to a Federal, State, or local law enforcement official or prosecutor, a Federal or State judge, the Department of Homeland Security (DHS), or other Federal, State, or local authority investigating or prosecuting criminal activity; and
- (4) The criminal activity must have violated U.S. law or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States.

## **9 FAM 41.85 N1.3 Qualifying Criminal Activity**

*(CT:VISA-1084; 10-20-2008)*

Qualifying criminal activity is defined by statute to be an "activity involving one or more of the following 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes."

## **9 FAM 41.85 N1.4 Benefits Extend to Certain Family Members**

*(CT:VISA-1084; 10-20-2008)*

- a. If the alien victim is under 21 years of age, the victim's spouse, children, unmarried siblings under 18 years of age, and the victim's parents may qualify for U nonimmigrant status. (See INA section 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).)
- b. If the alien victim is 21 years of age or older, his or her spouse and children may also qualify for U nonimmigrant status. (See INA section 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).)

## **9 FAM 41.85 N1.5 Certification Required**

*(CT:VISA-1084; 10-20-2008)*

Aliens applying for U nonimmigrant status must provide a certification from a Federal, State, or local law enforcement official demonstrating that the applicant "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the qualifying criminal activity.

## **9 FAM 41.85 N2 ELIGIBILITY REQUIREMENTS FOR U NONIMMIGRANT STATUS**

*(CT:VISA-1084; 10-20-2008)*

There are four statutory eligibility requirements for U nonimmigrant status. The alien must demonstrate that he or she:

- (1) Has suffered physical or mental abuse as a result of having been a victim of certain criminal activity;
- (2) Possesses information concerning such criminal activity;
- (3) Has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and
- (4) The criminal activity violated the laws of the United States or occurred in the United States.

### **9 FAM 41.85 N2.1 Possession of Information Concerning the Qualifying Criminal Activity**

*(CT:VISA-1259; 07-29-2009)*

U.S. Citizenship and Immigration Services (USCIS) will consider an alien victim to possess information concerning qualifying criminal activity of which he or she was a victim if he or she has knowledge of the details (e.g., specific facts) concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity.

### **9 FAM 41.85 N2.2 Definition of the Term "Helpful"**

*(CT:VISA-1084; 10-20-2008)*

"Helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

This does not include alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested. (See 8 CFR 214.14(b)(3).) The statute imposes an ongoing responsibility on the alien victim to provide assistance, assuming there is an ongoing need for the applicant's assistance.

## **9 FAM 41.85 N2.3 Criminal Activity Must Have Violated U.S. Law or Occurred in the United States**

*(CT:VISA-1084; 10-20-2008)*

The qualifying criminal activity must have violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

## **9 FAM 41.85 N3 FILING THE PETITION TO REQUEST U NONIMMIGRANT STATUS**

*(CT:VISA-1084; 10-20-2008)*

Form I-918, Petition for U Nonimmigrant Status, has been designated as the form an alien victim must use to request U nonimmigrant status. (See New 8 CFR 214.14(c)(1).) This provision also requires petitioners to follow the instructions to Form I-918 for proper completion and accompany Form I-918 with initial evidence and the correct fee(s). Form I-918 requests information regarding the applicant's eligibility for U nonimmigrant status and admissibility to the United States. Jurisdiction over all petitions for U nonimmigrant status rests with USCIS.

## **9 FAM 41.85 N3.1 Filing Form I-918, Petition for U Nonimmigrant Status From Either Inside or Outside the United States**

*(CT:VISA-1259; 07-29-2009)*

USCIS has determined that the statutory framework for U nonimmigrant status permits alien victims of qualifying criminal activity to apply for U nonimmigrant status classification from either inside or outside the United States.

## **9 FAM 41.85 N3.2 U.S. Citizenship and Immigration Services (USCIS) Granting U Nonimmigrant Classification**

*(CT:VISA-1259; 07-29-2009)*

- a. If USCIS finds that the petitioner has satisfied the requirements for U nonimmigrant status, it will grant U nonimmigrant status to the petitioner and derivative family members, unless the annual numerical limit applicable to principal petitioners has been reached. (See 8 CFR 214.14(c)(5)(i); new 8 CFR 214.14(f)(6).)
- b. If a number is available for the principal petitioner, USCIS will send a notice of approval on Form I-797, Notice of Action, to the principal petitioner or, if the principal petitioner is overseas, to the Department of State for forwarding to the appropriate U.S. Embassy or Consulate or to the appropriate port of entry (visa exempt alien). (See 8 CFR 214.14(c)(5)(i)(A) and (B).)
- c. For those principal petitioners and derivative family members who are within the United States, a Form I-94, Arrival and Departure Record, indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status. (See New 8 CFR 214.14(c)(5)(i)(A) and new 8 CFR 214.14(f)(6)(i).)

## **9 FAM 41.85 N4 EVIDENCE FORMING BASIS FOR U VISA ISSUANCE**

*(CT:VISA-1374; 11-13-2009)*

- a. Before issuing a visa, posts must use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval. Posts are able to access the details of approved nonimmigrant visa (NIV) petitions through the Consular Consolidated Database (CCD), through the PIMS Report.
- b. When presented at post, a Form I-797, Notice of Action, may be used as sufficient proof to schedule an appointment, but posts should not rely on this form solely for the purpose of U visa issuance. Only PIMS shall provide the evidence forming the basis for U visa issuance.
- c. A valid Form I-797 must include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form. Both confirmation of the information contained in the Form I-797 and initiation of adjudication process may both be accomplished through PIMS. In the event PIMS does not yet

contain the record, send an e-mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. You may not authorize a petition-based NIV without verification of petition approval through PIMS.

## **9 FAM 41.85 N5 SUSPENDING ACTION ON AN ALIEN'S U NONIMMIGRANT VISA APPLICATION**

*(CT:VISA-1374; 11-13-2009)*

A consular officer must suspend action on an alien's application and submit a report to the approving DHS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(U) is not entitled to the classification as approved.

## **9 FAM 41.85 N6 TRAVEL OUTSIDE THE UNITED STATES**

*(CT:VISA-1374; 11-13-2009)*

Aliens with U nonimmigrant status may travel outside the United States. However, in order to return to the United States, such aliens must obtain a U nonimmigrant visa for re-entry to the United States unless they are visa exempt. They also should keep in mind that if they accrued more than 180 days of unlawful presence prior to obtaining U nonimmigrant status, they may be found inadmissible upon their return to the United States. (See INA 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B).)

## **9 FAM 41.85 N7 MAXIMUM STAY IN U NONIMMIGRANT STATUS**

*(CT:VISA-1374; 11-13-2009)*

- a. INA 214(p)(6) limits the authorized period of U nonimmigrant status to not more than four years, but provides for extensions in the following instances:
  1. A federal, state, or local law enforcement official, prosecutor, judge or other authority investigating or prosecuting the qualifying criminal activity certifies that the alien's presence in the United

States is required to assist in the investigation or prosecution of the activity.

2. The Secretary of Homeland Security determines that an extension of stay is warranted because of exceptional circumstances.
  3. The alien is eligible for adjustment of status under INA 245(m) and is unable to obtain such relief because regulations have not been issued to implement the adjustment of status provisions at INA 245(m).
  4. U Nonimmigrant status shall be extended during the pendency of an application for adjustment of status under INA 245(m).
- b. DHS will admit a qualifying family member in U nonimmigrant visa (NIV) status for an initial period that does not exceed the expiration date of the U-1 principal alien's initial period of admission. Because three years of continuous physical presence in the United States is required for adjustment of status under INA 245(m), USCIS may approve an extension of status for a qualifying family member beyond the date of expiration of the U-1 nonimmigrant's status if processing of the derivative alien's visa application was delayed and, without an extension, the family member would be unable to meet the three year requirement under 245(m).

## **9 FAM 41.85 N8 NONIMMIGRANT STATUS TO PERMANENT RESIDENT STATUS**

*(CT:VISA-1374; 11-13-2009)*

Section 1513(f) of the Battered Immigrant Women Protection Act of 2000 (BIWPA) provides DHS with discretion to convert the temporary U nonimmigrant status to permanent resident status if:

- (1) The alien has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant; and
- (2) DHS determines that the "alien's continued presence in the United States is justified on humanitarian grounds, to ensure the family unity, or is otherwise in the public interest."

## **9 FAM 41.85 N9 WAIVER OF INADMISSIBILITY**

*(CT:VISA-1374; 11-13-2009)*

- a. A petitioner must file Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, with USCIS, to apply for a waiver of inadmissibility.
- b. In addition, the BIWPA created a waiver specific to U nonimmigrant status. Under this waiver, the Secretary of Homeland Security has the discretion to waive any ground of inadmissibility with respect to applicants for U nonimmigrant status, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. (See INA section 212(d)(14), 8 U.S.C. 1182(d)(14).) However, the Secretary of Homeland Security first must determine that such a waiver would be in the public or national interest.

## **9 FAM 41.85 N10 REVOCATION OF U NONIMMIGRANT STATUS**

*(CT:VISA-1374; 11-13-2009)*

Department of Homeland Security (DHS) has the authority to revoke its approval of Form I-918, Petition for U Nonimmigrant Status and Form I-918, Supplement A, "Petition for Immediate Family Member of U-1 Recipient," and any waivers of inadmissibility that were granted in conjunction with the petition.

## **9 FAM 41.85 N11 ADMISSION OF QUALIFYING FAMILY MEMBERS**

*(CT:VISA-1374; 11-13-2009)*

- a. An alien who has petitioned for or has been granted U-1 nonimmigrant status (i.e., principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien.
- b. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:



- (1) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member (as defined in 8 CFR 214.14 (a)(10)); and
- (2) The qualifying family member is admissible to the United States.

## **9 FAM 41.85 N12 DERIVATIVE U NONIMMIGRANT STATUS FILING PROCEDURES**

*(CT:VISA-1374; 11-13-2009)*

A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date.

## **9 FAM 41.85 N13 FILING AND BIOMETRIC SERVICES FEES FOR DERIVATIVE U NONIMMIGRANT STATUS**

*(CT:VISA-1374; 11-13-2009)*

U.S. Citizenship and Immigration Services (USCIS) has determined that no fee will be charged for filing Form I-918 or for derivative U nonimmigrant status for qualifying family members. Petitioners must, however, submit the established fee for biometric services for each person ages 14 through 79 inclusive with each U nonimmigrant status petition.