U Visa:

A closer look at “qualifying crimes” and the role of the Department of Labor

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U Visa Statute and Regulations

- Created by the Victims of Trafficking and Violence Prevention Act in October 2000
- Statutory Cites
  - INA § 101(a)(15)(U): eligibility requirements
  - INA § 214(p): miscellaneous requirements
  - INA § 212(d)(14): inadmissibility waivers
- Regulations
  - 8 CFR § 212.17
  - 8 CFR § 214.14
- USCIS Memoranda
  - See www.uscis.gov or www.asistahelp.org
U Visa Purposes

• Public Safety
  – overcome victim fear of detection/deportation
  – encourage reporting and cooperation to create safer communities for everyone

• Humanitarian
  – protect vulnerable victims
  – access to support needed to overcome physical/emotional injuries from criminal activity
What are the Benefits of a U Visa?

- 4-year non-immigrant status
- Possibility to adjust to LPR status after 3 years of U non-immigrant status
- Employment authorization (EAD)
- Can apply for some derivative family members
- Able to obtain a Waiver of Inadmissibility if necessary (not a threat to public health or safety)
Basic Eligibility Requirements

• Suffered substantial physical or mental abuse,
• Is a Victim of a statutorily-listed qualifying criminal activity;
• Possess information about that qualifying criminal activity;
• Helpful in the investigation or prosecution of the qualifying criminal activity.
What Constitutes a “Qualifying Criminal Activity”?

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
Qualifying Crimes for U visas, cont.

USC § 101(a)(15)(U)(iii)

• Or attempt, conspiracy or solicitation to commit any of the above mentioned crimes

• Or any similar activity in violation of Federal, State or local criminal law
How to Analyze Qualifying Crimes

- List is *not* exclusive: List constitutes merely “general categories”

- Crime may be “substantially similar” to crimes on the list

- Qualifying criminal activity may occur during commission of a *non*-qualifying activity

- Prosecution may be for the *non*-qualifying criminal activity alone
U Visa Qualifying Crimes

If possible, urge certifying officials to select one of the listed crimes as opposed to selecting “Related Crimes” or “Other” on Form I-918 Supplement B.
U Visa Qualifying Crimes
Case Example: Robbery by Assault

Luis was attacked by a stranger when sitting in his truck in a parking lot. The stranger punched Luis in the face several times, broke his passenger side window, reached in the car and took his cell phone. Luis started to run after the man and was then struck by a car that had been parked near his truck.

• What crime was listed on the police report?
• What qualifying crime was listed on the certification?
U Visa Qualifying Crimes
Case Example: Robbery by Assault

• Case was investigated by a local police department
• Police report listed crime as Robbery by Assault
• Certifying official marked “Other” and wrote in “Robbery by Assault” on I-918B
U Visa Qualifying Crimes

Case Example: Robbery by Assault

Robbery by Assault is similar to Felonious Assault

• Texas Penal Code § 29.02 Robbery
  – A person commits the offense of Robbery if “in the course of committing theft...he intentionally, knowingly, or recklessly causes bodily injury to another”
  – “An offense under this section is a felony of the second degree”

• TPC § 22.01 Assault
  – A person commits the offense of Assault if the person “intentionally, knowingly or recklessly causes bodily injury to another”

• Include copies of relevant statute in filing and argument in cover letter
U Visa Qualifying Crimes
Case Example: Deprivation of Rights Under Color of Law

Sara, Guadalupe and Patricia were passengers in a car during a traffic stop made by a Deputy Sheriff. As some of the passengers ran away out of fear of being caught by Immigration, the Deputy Sheriff fired several shots at the car and at the fleeing passengers. Guadalupe was hit in the face by one of the shots fired.

- What crime was listed on the police report?
- What qualifying crime was listed on the certification?
U Visa Qualifying Crimes
Case Example: Deprivation of Rights Under Color of Law

- Case was investigated by a local police department
- Police report listed crime as Trafficking of Persons
- Case was also investigated by the FBI and charged as a violation of 18 U.S.C. § 242 Deprivation of Rights Under Color of Law
- Certifying official (FBI Agent) wrote in “Deprivation of Rights Under Color of Law”
  - Application was filed before regulations came out so certification was not submitted on Form I-918B
U Visa Qualifying Crimes
Case Example: Deprivation of Rights Under Color of Law

• Could have been charged as either Assault or Deadly Conduct under Texas State Law, which are similar to Felonious Assault

• 18 U.S.C. § 242 Deprivation of Rights Under Color of Law
  – “Whoever, under color of any law...willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the U.S., or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race...shall be fined under this title or imprisoned...and if bodily injury results from the acts committed...or if such acts include the use, attempted use, or threatened use of a dangerous weapon...or if such acts include...an attempt to kill, shall be fined under this title, or imprisoned...”
U Visa Qualifying Crimes

Case Example: Deprivation of Rights Under Color of Law

• TPC § 22.01 Assault
  – A person commits the offense of Assault if the person “intentionally, knowingly or recklessly causes bodily injury to another” or “intentionally or knowingly threatens another with bodily injury”

• TPC § 22.05 Deadly Conduct
  – A person commits the offense of Deadly Conduct if that person “knowingly discharges a firearm at or in the direction of on or more individuals; or a habitation, building or vehicle”
U Visa Qualifying Crimes
Case Example: Deprivation of Rights Under Color of Law

• Same crime listed on certification, different responses from VSC:
  
  – Sara’s case: RFE for substantial harm, application approved
  – Guadalupe’s case: RFE to show crime is similar to statutorily listed crimes, application approved
  – Patricia’s case: RFE to show crime is similar to statutorily listed crimes, Notice of Intent to Deny based on not being a victim of a qualifying crime, application approved
Law Enforcement Certification

- Required!

- I-918 Supplement B

- Completed by designated official of agency investigating/prosecuting qualifying crime

- Must be signed within 6 months immediately preceding submission of the I-918

- Q&A with USCIS: USCIS will not require proof that the signer is the designated person.
  – Signature will serve as proof.
Certifying Agency

- Federal! State! or Local!

- Authority w/responsibility for investigation or prosecution of qualifying crimes.
  – New 8 CFR 214.14(a)(2)
Certifying agencies

• Federal, State and Local
  ✓ law enforcement agencies;
  ✓ prosecutors’ offices;
  ✓ Judges;
  ✓ Family/Child Protective Services;
• Equal Employment Opportunity Commission;
• Federal and State Departments of Labor;
• and Other investigative agencies.
Certifying Official

• Must be head of certifying agency, or supervisory person specially designated by head of certifying agency
  – New 8 CFR 214.14(a)(3)

• The designated official can be a:
  – Police officer
  – Prosecutor
  – Judge
  – DHS officer
  – Officer of a state or federal law enforcement agency
Overcoming Barriers to Law Enforcement Certification

• Know the politics and history of Law Enforcement Agencies in your area
  – Rural vs. Urban issues
  – Histories of conflict/rivalry
  – Examples:
    • Don’t bring a trainer from one agency to another without knowing the relationship between the agencies
    • Don’t use a cert policy from one agency as an example for another agency if they don’t have a good relationship
Overcoming Barriers

• Work with a team
  – Domestic Violence programs can be good partners for setting up trainings
  – DV advocates can work with LE on non-certification issues like facilitating cooperation, appropriate handling of the case
Overcoming Barriers

• Choose your strategy
  – Build certification relationships through training in advance
    • Helps with case priorities
    • Can save time in jurisdictions where there are a lot of cases
  – Build certification relationships and contacts through individual case advocacy
    • Can be more effective in smaller communities
    • Law Enforcement’s connection to or investment in existing cases can be leveraged
Overcoming Barriers

Be prepared for common Law Enforcement questions, hesitations and misgivings
Does Law Enforcement Grant the U Visa by Certifying?

• No, USCIS grants U Visa
• Law Enforcement only certifies occurrence of crime and helpfulness
• USCIS determines other eligibility:
  – Substantial harm
  – Admissibility to U.S.
Overcoming Barriers

What if the victim stops cooperating after being granted the U Visa?

• LEA can retract certification at any time
• LEA will be asked to re-certify helpfulness when victim applies for LPR status
Overcoming Barriers

Can a U Visa be granted to a crime victim in a case that is already closed?

- Yes – victim was, is, or will be helpful
- No statute of limitations
- Many victims did not know about U Visa when crime occurred
- Assisting past victims in your community will encourage future victims to speak out
Overcoming Barriers

What if the victim commits a crime after obtaining a U Visa?

- A U Visa holder can be deported for committing certain crimes
- Must resubmit criminal record check when applying for LPR Status
- LPRs can be deported for committing certain crimes
Can all immigrant crime victims get a U Visa?

• No—must meet all eligibility criteria.
• Many victims do not qualify if:
  – No substantial harm
  – Inadmissibility issues
  – Did not *fully* cooperate with LEA
Overcoming Barriers

How is helpfulness defined?

• Includes being helpful in investigation OR prosecution
• Is often interpreted to include reporting a crime and cooperating with first responders
• U visa available where perpetrator not caught (or identified)
Overcoming Barriers

- Be respectful and diplomatic even when people say things that upset or offend you
- Don’t discuss broader issues of immigration policy unless appropriate
- Remember that LE in some areas is more used to seeing immigrants as perpetrators rather than victims
- Offer continuing law enforcement education credits when doing a training
Resources

- USCIS
  - [www.uscis.gov](http://www.uscis.gov)
  - Scott Whelan
    - USCIS contact for Law Enforcement
    - scott.whelan@dhs.gov

- ASISTA
  - [www.asistahelp.org](http://www.asistahelp.org)
    - Training and technical assistance
    - Clearinghouse
Questions?

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