

Nuts and Bolts of U Visa for Undocumented Victims of Crime: A Case Study

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Minneapolis, MN

NIWAP

National Immigrant Women's Advocacy Project at the
American University Washington College of Law

Introductions

- Officer Michael LaRiviere
 - Salem, MA Police Department
- Benish Anver
 - Policy Staff Attorney, NIWAP

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Learning Objectives

By the end of this session, you will:

- Have a working knowledge of the process of a U visa certification
- Have an understanding of the importance of a U visa certification policy
- Have an understanding of the limited but important role law enforcement has in assisting an undocumented crime victim who seeks a U visa through USCIS (DHS)

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Purpose

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

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U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency- no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

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U Visa Basics

- Law enforcement certification is just one part of the overall process, it does not = Citizenship
- Meant to promote reporting of crime
- Targets offenders who prey on most vulnerable victims
- Can be "revoked"
- Increases immigrant victim participation in criminal justice system

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How will a U visa certification request come to you?

- From victim advocate or immigration attorney
- As a police officer you are the first responder
- As a prosecutor you might have continued contact with the victim and might be first to identify a victim's U visa eligibility

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Qualifying Criminal Activity

- | | | |
|-----------------------------|---|--------------------------|
| > Domestic violence | > Kidnapping | > False Imprisonment |
| > Sexual assault | > Abduction | > Blackmail |
| > Rape | > Trafficking | > Extortion |
| > Incest | > Involuntary servitude | > Witness tampering |
| > Prostitution | > Slave trade | > Obstruction of justice |
| > Torture | > Being held hostage | > Perjury |
| > Female genital mutilation | > Peonage | > Stalking |
| > Felonious assault | > Fraud in Foreign Labor Contracting | |
| > Manslaughter | | |
| > Murder | | |

*Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

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U Visa Criminal Activities (2/2014 data*)

- Domestic violence **45.9%**
- Human Trafficking **49.2%**
- Rape, sexual assault, or incest **9.3%**
- Felonious assault, murder, manslaughter **9.9%**
- Kidnapping, being held hostage, unlawful criminal restraint, torture **8.47%**
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation **5.3%**

*Kristina E. Szabo, David Stauffer, Benish Anver, & Leslye E. Orloff, Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants (Feb. 12, 2014)

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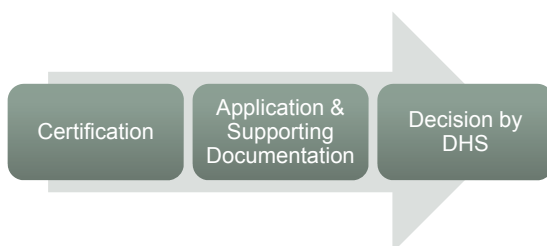
Things to Know About Certifying

- "Do I believe this person was a victim of a qualifying crime?"
- "Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?"
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor's office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

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The U Visa Application Process



Typical length of process = 9 -12 months

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DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

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Please Read Part 1: The Request for Certification

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Please Read Part 2: Responding to a DV Call

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Please Read Part 3: Follow-Up Investigation

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Evidence Photos

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

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Handout: U visa Model Policy

- Highlights of Policy

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Technical Assistance and Materials

- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu



Questions

