

OPPORTUNITIES AND OBSTACLES IN U VISAS

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Statutory and Regulatory Authority

- INA §§101(a)(15)(U) Status eligibility requirements
- INA §214(p) Nonimmigrant requirements
- INA §212(d)(14) Inadmissibility waivers
- INA §245(m) Adjustment of Status provisions
- 8 CFR § 212.17 Waiver
- 8 CFR §214.14
- 8 CFR §245.24 Adjustment of status



Resources

- Michael Aytes, Interoffice Memo, March 27, 2008 (AILA Doc. No. 08040256)
- assistahelp.org
- legalmomenturm.org
- nationalimmigrationproject.org
- ilrc.org
- cliniclegal.org



U Visa Purpose

- Tool for law enforcement to investigate and prosecute crimes
- Provide humanitarian relief for crime victims and their family members



Requirements

- “Substantial physical or mental abuse” as a result of having been the victim of certain criminal activity.
- Possesses information concerning the criminal activity
- The victim has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution.
- Law enforcement certification
- Overcome inadmissibility

- Form I-918 and Supplement B (certification)



Qualifying Crimes

- 8 CFR §214.14(a)(9)
- Crime violated US law or occurred in the US INA §101(a)(15)(U)(iii)
- 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; "...any similar activities in violation of Federal, State or local criminal law of the United States...in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities;" attempt, conspiracy or solicitation to commit any of the above mentioned crimes
- The crime does not need to be a felony



Obstruction of Justice and Perjury

- “Abuse or exploitation of or undue control over the petitioner through manipulation of the legal system..” warrants approval if the petitioner suffers direct and proximate harm - 8 CFR 214.14(a)(14)(ii)
- 8 CFR 214.14(a)(9): “similar activities” renders relevant definition of obstruction as an aggravated felony at INA 101(a)(43)(S): (1) “either active interference with proceedings of a tribunal or investigation, or action or threat of action against those who would cooperate in the process of justice,” and (2) an intent element defined as a “specific intent to interfere with the process of justice.” In re Espinoza-Gonzalez, 22 I. & N. Dec. 889, 893 (BIA 1999).
- This apt analogy warrants approval under 8 CFR 214.14(a)(14)(ii) for offenses in which a perpetrator intends to evade detection, apprehension or prosecution for another crime in which the petitioner was harmed. In re Joseph, 22 I. & N. Dec. 799 (BIA 1999).

General Categories

- INA §101(a)(15)(U)(iii)
- Crime list are general categories
 - Although California has some statutes specific to DV (Penal Code Section 273.5), often clients are convicted under other type of offenses that are not clearly DV
 - Harassment, misdemeanor assault, stalking are all DV crimes depending on the facts
 - Explain how the facts show that the crime is DV



Substantial Physical/Mental Abuse

- Substantial factors
 - Nature of injury; Severity of the perpetrator's conduct; Severity of harm suffered; Duration of infliction of harm; Permanent or serious harm to appearance, health, physical, or mental soundness
- Consideration of victim's pre-existing conditions
- DHS will consider abuse in its totality and will recognize that abuse may involve a series of acts or occur repeatedly over time.
- Series of acts taken together
- Any credible evidence
 - Petitioner's declaration
 - Medical and mental health reports
 - Photos
 - Police reports



Inadmissibility

- INA 212 (a)
- Form I-192 and supporting documents
 - Personal declaration including hardships if returned to home country
 - Family (Birth certificate of USC children; family photos; mental and physical health evaluation; family/community letters of support
 - Must demonstrate that granting the waiver is in national or public interest.



Overcoming Inadmissibility

- General arguments for undoc grounds
 - Who Congress targeted
 - Individualize it
- For more complicated grounds
 - Contrition & Rehabilitation
 - Connected to victimization
 - VAWA Extreme Hardship
 - Good Moral Character

Prima Facie System

- Detained or facing imminent removal
- Contact Ellen Gallagher or Tom Pearl
 - Gail can help= gailpendleton@comcast.net
- VSC does PF and sends to ICE or IJ
 - Must have certification
- Be ready to file full application-fast decision

Avoiding Reinstatement

- ID 212(a)(9)(A) – (C) in admissibility waiver
- Keep copy of application identifying these grounds
- So when waived, can argue. . .
- No predicates left for 241(a)(5)
- VSC will not mention in grant, but tool if clients picked up by ICE, etc.

Clients in Proceedings or with Orders of Removal

- Eligible for U Nonimmigrant Status 8 CFR §214.14(c) (1)(ii) and (f)(2)(ii)
 - Request Joint Motion to Terminate
 - Ask court to hold case in abeyance
- Prior order of removal
 - File I-918
 - Approval of I-918 automatically cancels old DHS order by operation of law 8 CFR §214.14(c) (5)(i) and (f)(2)(i)
 - Old court and BIA orders require Motions to Reopen
 - Might require Stay of Removal if the client is in custody
 - If client is not in custody, may not want to alert ICE by filing the Motion



Adjustment of Status Process

- Accrued 3 years in U Status
- Continuous physical presence for 3 years in U Nonimmigrant Status
 - Absences of more than 90 days or periods exceeding 180 days in the aggregate will cut off continuous presence
- Has not unreasonably refused to provide assistance in investigation or prosecution
- Presence in the US is justified by humanitarian grounds, to ensure family unity or is in the public interest
- Discretion



Certification Process

- Who can certify?
- Creating a relationship with local law enforcement
- Work with community advocates
- Work with hypos
- Listen and learn about their concerns
- Collaborate on workshops
- Develop long-term relationships



Questions & Answers



2010 AILA Teleconference/Web Conference

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