

IMMIGRATION

Asylum



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Undocumented

Unlawful

Without Status

Without "papers"

Illegal (we don't like using this word)

Entered without inspection (EWI)

Entry Into US

- ❖ Two ways to enter:
 - ❖ With inspection (ex. B2 visitor visa, F1 Student visa etc...)
 - ❖ Without inspection (ex. crossing over border without permission)

How Does One Become "Undocumented"?

- ❖ Entered with inspection (documented) but did not leave within required timeframe
- ❖ Falls "out of status"
- ❖ Leads to being undocumented
- ❖ Crossed border without permission



- ❖ Example-
- ❖ Eugenia enters US on a B2 visitor visa on May 1st. She is given 2 months stay in the US. On July 1st she is required to have departed the US, but does not do so. She has not requested an extension on her visa. Eugenia continues to reside in the US.
- ❖ Eugenia entered legally and with inspection using the B2 visa. However once she overstayed her visa, she has now fallen out of status and is no longer "documented" or in a legal immigration status.

Options for the Undocumented

- ❖ Once an individual becomes undocumented, many of the traditional avenues of attaining immigrant or nonimmigrant status are barred due to inadmissibility.
- ❖ Undocumented presence = one type of inadmissibility
 - ❖ Other types of inadmissibility include criminal record, health conditions including addictions, prior deportations etc...

Main Options

- ❖ Asylum / Convention Against Torture (CAT)
- ❖ Deferred Action for Childhood Arrivals (DACA)
- ❖ Family Based Green Card Petitions (I-130) with a Waiver
- ❖ U Status for Victims of Qualifying Crimes
- ❖ Other options may apply, above are most frequently seen



Asylum

- ❖ Asylum may be granted to those who can establish that they are "refugees"
 - ❖ [A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of **race, religion, nationality, social group** or **political opinion.**" INA § 101(a)(42)(A).
- ❖ May be in fear due to past persecution as this creates a presumption that the applicant has a well-founded fear of future persecution
- ❖ Asylee vs. Refugee
 - ❖ Asylee applies when reaching US soil
 - ❖ Refugee applies while outside of US, not much can be done through private attorney in US

❖ Persecution:

- ❖ "Infliction of harm or suffering" *Matter of Kasinga*, 21 I&N Dec 357, 365 (BIA 1996)
- ❖ No bright line rule for what rises to level of persecution, fact dependent however there is a well established principle that minor beatings and brief detentions do not amount to persecution.
- ❖ Physical harm: rape, severe beating, prolonged imprisonment, torture, and female genital mutilation. Most common basis for persecution.
- ❖ Psychological harm: PTSD, anxiety, sleep issues etc... That stem from physical harm, watching harm come to relatives, believing they are in anticipation of death and other similar types of extreme situations.
- ❖ Other types of harm may be considered and harm may be compounded to meet the for persecution.

❖ Race, Religion, Nationality:

❖ Self explanatory

❖ Political Opinion:

❖ Encompasses more than electoral politics or formal political ideology or action. Can be an actual opinion held by applicant **or** an opinion imputed to him or her by persecutor.

❖ Also been held to include exposing corruption.

❖ Refusal to participate in population control may also fall within this category. (ex. involuntary sterilization)

❖ Social Group:

- ❖ Defined as a group that is: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014), *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014)
- ❖ Must look at the society in question to determine if applicant qualifies under the social group prong
- ❖ Examples of recognized social groups: homosexuals, albinos residing in Africa, young westernized people who have defied traditional Islamic values by marrying without paternal permission, young Albanian women living alone (in terms of human trafficking), Mexican women who are victims of domestic violence etc...
- ❖ Fleeing gang violence does not qualify for asylum. *Matter of S-E-G*, 24 I&N Dec. 579, 588 (BIA 2008), *Matter of E-A-G*, 24 I&N Dec. 591 (BIA 2008)

❖ Convention Against Torture:

❖ Offshoot of Asylum, US is prohibited from removing applicant to country where they will be tortured. No nexus to a "protected ground" is necessary.

❖ Torture Defined:

❖ "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person [...] for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

❖ Does not include lesser forms of cruel, inhuman or degrading treatment

❖ Must be specifically intended to inflict severe physical or mental pain / suffering

❖ Requires a government actor

❖ This form of relief has several facets however the relief has fewer benefits. Does not lead to permanent residency and cannot travel outside of the US. Can still be removed to a safe third country if one is found.

DACA

Deferred Action for Childhood Arrivals



- ❖ Were under the age of 31 as of June 15, 2012;
- ❖ Came to the United States before reaching 16th birthday;
- ❖ Have continuously resided in the United States since June 15, 2007, up to the present time;
- ❖ Were physically present in the United States on June 15, 2012, and at the time of making request for consideration of deferred action with USCIS;
- ❖ Had no lawful status on June 15, 2012;
- ❖ Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate
- ❖ Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Benefits of DACA

- ❖ Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status. However benefits do include:
 - ❖ Work Permit Authorization which allows recipient to attain-
 - ❖ Drivers License
 - ❖ Social Security Number for work authorization
 - ❖ Able to attain permission to leave the country for certain reasons
- ❖ Can be renewed every two years

What is a Waiver?

- ❖ Asking the government to waive an inadmissibility due to the USC (US Citizen) or LPR (Legal Permanent Resident) relative suffering extreme hardship if applicant is not granted LPR status.
- ❖ Can be inadmissible for numerous reasons, most commonly seen are:
 - ❖ Criminal record
 - ❖ Health related grounds (addictions fall under this)
 - ❖ Undocumented Presence

- ❖ Focus on Undocumented Presence:
- ❖ Who needs a waiver due to undocumented presence?
- ❖ Only those that have left the US after a period for unlawful presence or
- ❖ Those that must leave the US in order to change status
- ❖ No waiver needed if they entered US with status and overstayed status but have not since left (they are eligible to "adjust status").

3 / 10 Year Bar for Undocumented Presence

- ❖ INA § 212 (a)(9)(B)(i)(I)
- ❖ 3 Year Bar if:
 - ❖ Continuous unlawful presence
 - ❖ For more than 180 days, but less than one year, and
 - ❖ Left US voluntarily before being placed in removal proceedings
 - ❖ This means that the individual will be barred from entering the US for a period of 3 years
- ❖ 10 Year Bar if:
 - ❖ Continuous unlawful presence
 - ❖ For one year or more, and
 - ❖ Departed US, whether or not voluntarily
 - ❖ Includes individuals who departed or were removed
 - ❖ Includes individuals who are in removal proceedings

- ❖ Many relatives of USC and LPR's who are eligible for family based immigrant visa cannot apply for this from inside the US so they must leave and consular process
- ❖ Consular process: interview at the US Consulate in the applicant's home country
- ❖ Thus the need for those with undocumented presence to ask for a waiver for the 3/10 bar when they leave the US to consular process for their green card application

Waiver of 3 / 10 Year Bar



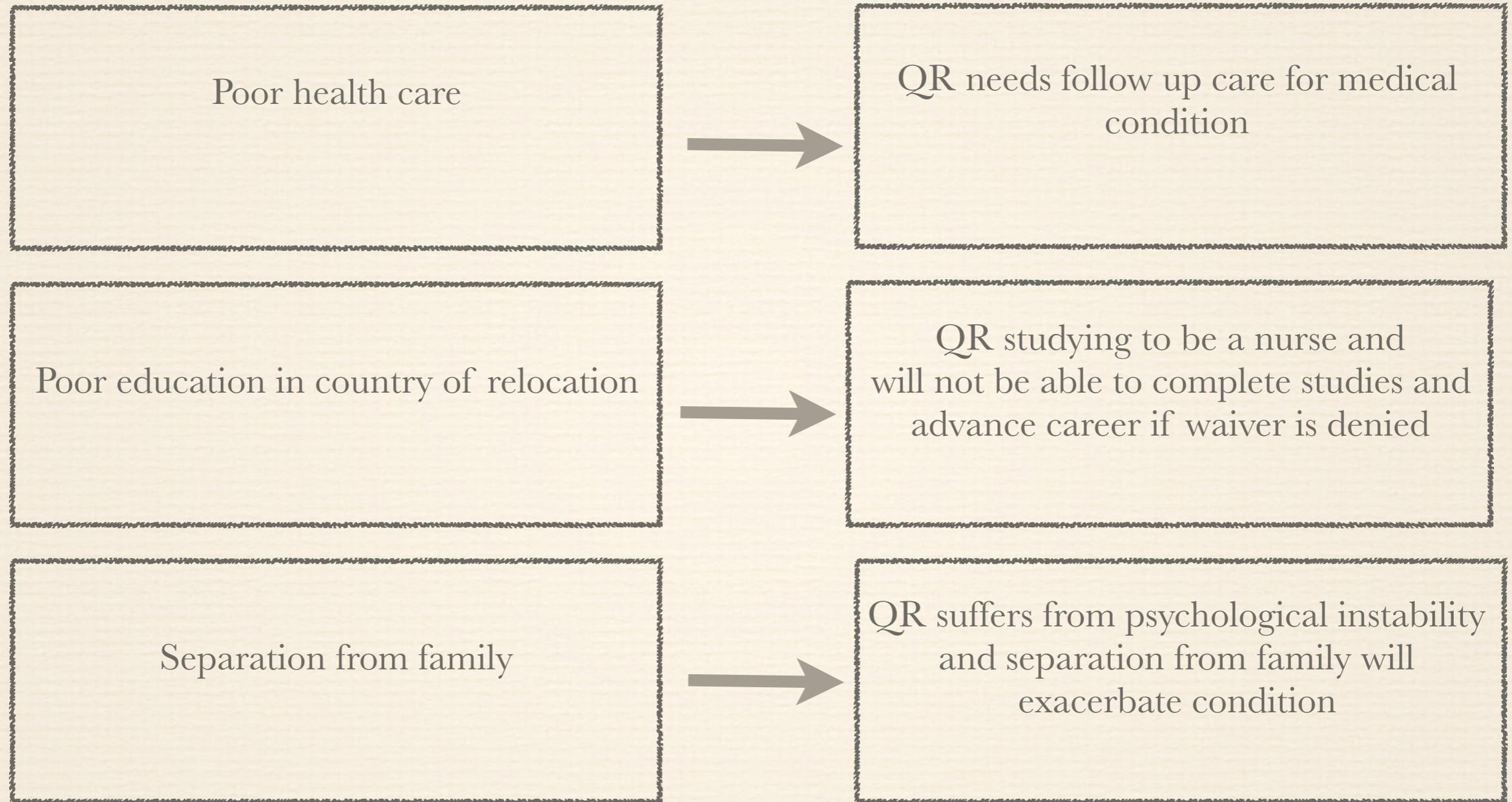
- ❖ Must have a qualifying relative
 - ❖ USC / LPR Parent
 - ❖ USC / LPR Spouse
- ❖ Must show that **the qualifying relative** will suffer extreme hardship if immigration denies waiver
- ❖ Note that hardship to USC child does not qualify!

Defining Extreme Hardship

- ❖ Not defined by statute, informed by case law
- ❖ Hardship standard for both I-601 and I-601A the same
- ❖ Matter of Cervantees-Gonzalez, 22 I&N Dec. 560 (BIA 1999):
 - ❖ Qualifying relative (QR)
 - ❖ Whether QR has ties outside of the country
 - ❖ Country conditions
 - ❖ Financial impact on QR of leaving the US to be with alien spouse
 - ❖ QR's Health Conditions
 - ❖ Availability of suitable medical care and education system in country of relocation
 - ❖ Language barriers
 - ❖ Discrimination due to being a USC / LPR
 - ❖ Could include risk of being kidnapped for ransom
- ❖ Evidentiary Standard = Totality of the Circumstances
 - ❖ All factors must be considered in aggregate

Examples of Hardship; Linking Generalized Hardship to Specific Factors

(considered in aggregate)



U Nonimmigrant Status/U Visa



Presented by: Sarah Hadi, U Visa Coordinator

Fast Facts: What & Who

INA § 101(a)(15)(U)

October 2000, Congress created the Victims of Trafficking and Violence Prevention Act. October 2007, U visa was finalized.

U nonimmigrant status/U visa: status lasts four years, recipient can apply for adjustment of status (green card) after three years.

Victims of certain crimes who have:

- ❖ suffered mental or physical abuse
- ❖ are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

Purpose is to strengthen ability of law enforcement to investigate and prosecute domestic violence, sexual assault, other crimes and to protect undocumented immigrants.

Qualifying Crimes

INA § 101(a)(15)(U)(iii)

- | | | |
|--|--|--|
| <ul style="list-style-type: none">• Abduction• Abusive Sexual Contact• Blackmail• Domestic Violence• Extortion• False Imprisonment• Female Genital Mutilation• Felonious Assault• Fraud in Foreign Labor Contracting | <ul style="list-style-type: none">• Hostage• Incest• Involuntary Servitude• Kidnapping• Manslaughter• Murder• Obstruction of Justice• Peonage• Perjury• Prostitution• Rape | <ul style="list-style-type: none">• Sexual Assault• Sexual Exploitation• Slave Trade• Stalking• Torture• Trafficking• Witness Tampering• Unlawful Criminal Restraint• Other Related Crimes*† |
|--|--|--|

*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

USCIS.gov

Related crimes: Robbery, 1st Degree as Felonious Assault

Process

Open Records Request (ORR)

- ❖ Ask client for narrative, demographic information of suspect, date and address where crime occurred, nature of crime.
- ❖ Send ORR form to police department in the county where the crime occurred. If police were not called, locate possible EPO/DVO (also include with any police documents).

Form I-918, Supplement B

- ❖ Determine certifying official (PD, Judge, Prosecutor).
 - *Certifying official does not grant immigration benefit, but simply certifies client was, is, or is likely to be helpful in investigation or prosecution.**
- ❖ Include client's demographic information, certifying official's information, summary of incident and helpfulness, suspect information.
- ❖ Include cover letter describing details of incident and client's helpfulness.

START HERE - Please type or print in black ink.

Part 1. Victim Information.

Family Name Given Name Middle Name

Other Name Used (Include maiden name(s)/alias(es))

Date of Birth (month/day/yr) Gender
 Male Female

Part 2. Agency Information.

Name of Certifying Agency

Name of Certifying Official Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

Agency Address - Street Number and Name State #

City State/Province Zip/Postal Code

Daytime Phone # (with area code and/or extension) Fax # (with area code)

Agency Type
 Federal State Local

Case Status
 Ongoing Completed Other _____

Certifying Agency Category
 Judge Law Enforcement Prosecutor Other _____

Case Number FBI # or SID # (if applicable)

For USCIS Use Only.

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

Remarks

Part 3. Criminal acts.

B. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abused Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Perjury	<input type="checkbox"/> Terrorism
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Persecution	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Rape	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Mandamus	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Solicitation to commit any of the named crimes	<input type="checkbox"/> Other: (if more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes		

Process

Supplement B must be signed to move forward with U visa.

If the Supplement B is signed, client has six months from sign date to gather documents and submit U visa packet.

USCIS provides a list of necessary documents for U visa. Compile a packet of supporting documentation along with applications.

Supporting documents include, but are not limited to:

- ❖ Client's ID & passport
- ❖ Client's original birth certificate with English translation
- ❖ Marriage certificates/divorce decrees
- ❖ United States citizen children's birth certificates/documents
- ❖ Affidavits of support
- ❖ Tax returns
- ❖ Proof of residence
- ❖ Psychological evaluation

Applications include:

- ❖ I-918 Supplement B
- ❖ I-918 Petition for U Nonimmigrant Status
- ❖ I-192 (inadmissibility issues)
- ❖ I-912 (fee waiver for I-192)
- ❖ G-28 Notice of Appearance

Include a cover letter detailing incident, client's helpfulness, why they should receive U nonimmigrant status/U visa.

Indirect Victims & Derivatives

Indirect victims: certain family members qualify if U visa applicant is incapacitated or was a victim of manslaughter or murder. IV must still meet helpfulness criteria.

- ❖ For U visa applicants (age 21+) spouse & children under 21 years of age.
- ❖ For U visa applicants under age 21, parents and unmarried siblings under 18 years of age.

Indirect Victims & Derivatives

Derivatives: Certain family members of U visa principal applicant may qualify as derivatives and can file a smaller application packet.

These family members do **NOT** need to be victims of any crime or follow the helpfulness criteria, but they must be admissible (i.e. no criminal history, legal citizen, etc). If they are not admissible, they must file a waiver form.

- ❖ For U visa applicants (age 21+) spouse and unmarried children under age 21.
- ❖ For U visa applicants under age 21, spouse, unmarried children under age 21, parents, and unmarried siblings under age 18.

Processing & Complications

After U visa application is sent, a receipt notice/fee waiver status is mailed to our office. 3-6 weeks later, we receive a biometrics notice for the client.

Processing times vary by case, but it generally is a year or more. Currently, we are experiencing a wait time of over a year.

There is a U visa cap of 10,000 per year. If cap is already met at time of submitted application, if approved for U nonimmigrant status/U visa, applicant will receive deferred action and work permit until they can be granted U nonimmigrant status/U visa.

Processing & Complications

U visa process is long and tiresome. Clients have six months to provide documents and answers for applications. Clients are responsible for providing everything necessary for application. If they do not have certain documents or answers for applications, we submit what is provided.

Certifying officials (specifically PD), are often unclear about their role. **Many PD think they must qualify the applicant, when their job is only to certify helpfulness.** Some PD think the suspect must be caught and prosecuted to certify helpfulness, but this also incorrect. This lack of clarity and interpretation of U visa statutes can have detrimental effect on many qualifying clients and their ability to obtain U nonimmigrant status/ U visa.

Importance

U visa is a great tool to strengthen cooperation between the undocumented community and certifying officials (specifically PD). It protects people who already feel vulnerable and unsafe, and allows them to move forward as productive members of the community without fear and repeated victimization.

References

<http://www.nolo.com/legal-encyclopedia/what-family-members-need-prove-get-derivative-u-status.html>

<http://www.nolo.com/legal-encyclopedia/both-direct-indirect-victims-can-qualify-u-nonimmigrant-status-u-visa.html>

<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>