

**CHAPTER 1
INTRODUCTION**

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§ 1.1 Overview of Benefits and Eligibility for U Nonimmigrant Status

U nonimmigrant status is a nonimmigrant (temporary) status that allows noncitizen survivors¹ of crime to stay in the United States, obtain employment authorization, and apply for lawful permanent resident (LPR) status, as well as help certain family members obtain immigration status. For those who are eligible, U nonimmigrant status can be a transformative immigration option, as it has one of the most generous waivers in all of immigration law, as well as the ability to include family members at both the U petition stage as well as at the adjustment stage. U nonimmigrant status is also unique in that it is an application process that happens wholly before USCIS and without an interview. For all of these reasons, it is an important immigration option for advocates to know about. It is also important to note that although obtaining U nonimmigrant status can be transformative, it is a process that takes years to complete due to severe backlogs.

The Victims of Trafficking and Violence Prevention Act (VTVPA 2000),² enacted in October 2000, created U nonimmigrant status. It was later amended by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005),³ enacted in January 2006; the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008),⁴ enacted in December 2008; and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), combined with the Trafficking Victims Protection Reauthorization Act (TVPRA),⁵ signed into law on March 7, 2013.

¹ Please note that the ILRC often uses the terms “victim” and “survivor” interchangeably. Because a “victim” is typically defined by harm done to them, many advocates choose to instead use the word “survivor” to refer to clients. “Survivors” are defined by their lives after the harm, allowing them to reclaim control of their lives and their recovery. While our goal as advocates is to help community members survive and thrive despite harms they have suffered, we sometimes use the term “victim” when referring to a particular aspect of the criminal legal system, penal code, or immigration law; when describing someone recently affected by crime; when talking about the actions of a perpetrator; or when discussing the harm inflicted on those who did not survive. When working with impacted community members, we recommend asking people which term they prefer, as some may identify with the term victim, while others may prefer the term survivor.

² Pub. L. 106-386, 114 Stat. 1464 (2000).

³ Pub. L. 109-162, 119 Stat. 2960 (2006).

⁴ Pub. L. 110-457, 122 Stat. 5087 (2008).

⁵ Pub. L. 113-4, 127 Stat. 54 (2013).

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Although interim regulations largely implement U nonimmigrant status and its unique adjustment provisions, some of the procedures implementing U nonimmigrant status and U adjustment of status are captured in the U.S. Citizenship and Immigration Services (USCIS) Policy Manual and other USCIS policy guidance memoranda. Additionally, much of the adjudication procedures for U cases continues to evolve. Therefore, it is critical to stay up to date on current policies and practices by checking in with experts and colleagues in the field.⁶

U nonimmigrant status discussed in this manual is often colloquially referred to as a “U visa” by attorneys and community members alike. However, it is important to note that **most clients in the United States who benefit from this immigration option will not have a U visa. Instead, they will be approved for U nonimmigrant status.** This is an important distinction to make to clients and to understand as immigration practitioners.

PRACTICE TIP: The importance of the distinction between a U visa and U nonimmigrant status. Nonimmigrant status is a form of immigration status granted to your client when they are already in the United States, or they arrive in the United States. The status is usually indicated on an approval notice from USCIS and a Form I-94; and it will include an expiration date. It allows your client to temporarily remain legally in the United States as a U nonimmigrant.

A **visa** is a document placed in your client’s passport by a U.S. consular official. It permits your client to enter the United States and to travel into and out of the United States. U nonimmigrants may obtain a multiple-entry U visa that can be used to enter the United States repeatedly. Therefore, the U visa allows your client to enter the United States. U nonimmigrant status allows your client to remain in the United States.

Example: Chaya was the victim of a crime in Colorado and applied for U nonimmigrant status while living in Denver. When it was approved, her attorney told her she now had a “U visa” when in reality she had been granted “U nonimmigrant status.” Shortly thereafter, thinking she had a visa, Chaya traveled to India to visit her family. Upon attempting to return to the United States, Chaya presented her U nonimmigrant status approval notice. Because her U nonimmigrant status does not automatically confer a nonimmigrant visa to allow her to enter the United States, Chaya was not able to return to her home in Denver.

Chaya, like many other U nonimmigrants in this situation, will need to apply to obtain a U nonimmigrant *visa* through a consulate abroad to re-enter the United States. More information on this process is available in **Chapter 9**.

When Congress created U nonimmigrant status in 2000, its intention was to protect victims of certain crimes who gathered the courage to come forward, report the crime, and assist in the criminal investigation and prosecution. The purpose of this is two-fold. First, it enhances law enforcement’s ability to investigate and prosecute crimes. Second, it furthers humanitarian interests by protecting victims of serious crimes.⁷ It is important to remember that

⁶ For updates on U nonimmigrant issues, contact manager@asistahelp.org to join the VAWA Updates listserv. Also, visit the ASISTA website at www.asistahelp.org and the Immigrant Legal Resource Center (ILRC) website at <https://www.ilrc.org/>.

⁷ See USCIS Fact Sheet, *USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity*, (Dec. 8, 2008).

U nonimmigrant status not only is helpful to law enforcement but is also intended, as is much of immigration policy, to protect victims and provide humanitarian relief.⁸

The U nonimmigrant status is available to non-citizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic violence, sexual assault, felonious assault, kidnapping, and many other crimes.⁹

There is a statutory annual limit of 10,000 grants of U nonimmigrant status that can be issued per year. This numeric limit applies only to principal petitioners and not to derivative petitions.¹⁰ As of this manual's writing (February 2023), the statutory cap has been reached every year since USCIS began issuing U nonimmigrant status in 2009, leading to a growing wait list.¹¹ Those on the wait list (whose U petitions were adjudicated after the statutory cap was reached) could instead receive deferred action, and they are eligible to apply for work authorization while waiting for additional U visas to become available (or if outside of the country, they can apply for parole on a case-by-case basis).¹² However, due to the large number of pending applications, applicants wait years to receive deferred action or parole and work authorization. In other words, the wait for placement on the waitlist is itself currently years' long.

In an effort to provide protection to survivors and their family members while their petitioners are pending, USCIS created the bona fide determination (BFD) process in June of 2021.¹³ The purpose is to conduct initial reviews of applications and provide prima facie eligible applicants with deferred action and work authorization for up to four years while they wait for full adjudication of their U visa petitions.¹⁴ As of this manual's writing (February 2023), USCIS is reviewing petitions for BFD grants that were filed about five years ago, which is about one to two years faster than the wait for U nonimmigrant status.¹⁵ For more on the BFD process, see **Chapter 2**.

⁸ See § 1513 of Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 for Congressional findings and purpose of the U visa ("Protection for certain crime victims including victims of crimes against women"). Pub. L. 106-386 § 1513, 114 Stat. 1466 (2000).

⁹ INA §§ 101(a)(15)(U), 214(p), 245(m).

¹⁰ INA § 214(p)(2)(B). Fiscal year 2009 was the first year for which USCIS released the number of approved cases. In that year, 6,045 principal U applicants were approved and 661 were denied. At the same time, 2,838 derivative U applicants were approved and 158 were denied. By Fiscal Year 2010, the statutory cap was reached before the end of the fiscal year (in late summer, early autumn). In every subsequent year, the statutory cap has been exceeded. As of the end of Fiscal Year 2022, there were 188,974 principal U-1 petitions pending, indicating that approvable petitioners may remain on the waitlist for more than a decade before a visa becomes available. See Victims of Criminal Activity: U Nonimmigrant Status, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last updated February 28, 2022).

¹¹ *Id.*

¹² INA § 214(p)(2)(A).

¹³ 3 USCIS Policy Manual (USCIS-PM) 5.

¹⁴ 14 USCIS, *U Visa and Bona Fide Determination Process*, USCIS National Engagement (Sept. 23, 2021), <https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions>; 3 USCIS-PM 5(C)(3).

¹⁵ As of the writing of this manual, NSC is processing 80 percent of their cases within 60.5 months and VSC within 59.5 months. For more information visit <https://egov.uscis.gov/processing-times/>.

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The duration of U nonimmigrant status is up to four years.¹⁶ However, this period of status may be extended in certain situations.¹⁷

After three years of continuous physical U nonimmigrant status in the United States, the U nonimmigrant may adjust status to obtain lawful permanent residence (a green card).¹⁸ There are also provisions to grant derivative U nonimmigrant status, U visas, and lawful permanent resident status to certain family members of U nonimmigrants.¹⁹

In 2007, interim regulations implementing the U nonimmigrant status were issued.²⁰ They became effective on October 17, 2007, and are the current regulations as of this manual's writing (February 2023). Because the current U nonimmigrant regulations are interim, they may change when final regulations are issued. Interim regulations can be in place for many years before the regulations become final.

In 2008, interim regulations implementing provisions for U nonimmigrants to adjust their status to permanent residence were issued. They became effective on January 12, 2009. They are also interim regulations and therefore subject to change upon issuance of the final regulations.

As of this manual's writing (February 2023), USCIS has added sections on the U BFD process to the Policy Manual, and other additional implementing provisions have been issued in draft policy guidance memoranda.²¹ USCIS policy memoranda regarding U nonimmigrants may also be found on the USCIS website at <http://www.uscis.gov/> and the ASISTA website at <https://asistahelp.org/u-visa-2/>.

§ 1.2 How to Use This Manual

This manual is designed for attorneys, advocates, paralegals, and staff at nonprofit organizations, government agencies, shelters, law enforcement agencies, schools, social service agencies, health care providers, and other organizations who serve immigrant communities. With this manual, we will guide you through the entire process of handling an immigration case for a U nonimmigrant

¹⁶ INA § 214(p)(6).

¹⁷ See Chapter 3 for more detail about extending U nonimmigrant status past the four-year initial period.

¹⁸ INA § 245(m).

¹⁹ INA § 101(a)(15)(U)(ii). See Chapter 7 for a detailed discussion on assisting family members of U nonimmigrants in obtaining immigration status.

²⁰ There was an extended period of time between when the U visa was created in 2000 and when DHS issued the regulations in 2007. During that time, no U visas could be granted. In the meantime, USCIS made a form of interim relief available for those who appeared to be prima facie eligible for U nonimmigrant status. This form of interim relief was referred to as "U interim relief" and was outlined in a series of USCIS Interoffice Memoranda. U interim relief provided deferred action and employment authorization to those who were able to show they were prima facie eligible. A grant of U interim relief was not considered a binding determination that any of the eligibility requirements for U nonimmigrant status were met. Even those who were granted U interim relief were later required to apply for U nonimmigrant status and have all evidence adjudicated anew. While many of the U interim relief grantees who submitted applications for U nonimmigrant status were approved, some were ultimately denied and not granted U nonimmigrant status even though their U interim relief applications had originally been approved.

²¹ For more information visit, <https://www.uscis.gov/sites/default/files/document/memos/exten.status-tandu-nonimmigrants.pdf>.

status applicant—from screening for eligibility to adjusting status to lawful permanent residence, as well as assisting eligible family members and U nonimmigrants who wish to travel to, or back to, the United States.

In addition to providing a thorough explanation of the requirements and process, this manual includes numerous sample materials that may be helpful in putting together your client’s case. The included appendices include sample versions of the immigration forms you will need, sample checklists, sample declarations, samples of receipt notices and other correspondence you can expect to receive from USCIS, sample motions to submit to the immigration court, and more. Numerous sample materials are found at the back of this manual throughout the appendix and are referenced throughout the manual.

Some of the processing procedures for U nonimmigrants are in flux. As of this manual’s writing (February 2023), the U nonimmigrant and adjustment implementing regulations are still interim, USCIS forms may be updated or replaced, and U.S. consulates abroad are continuing to refine their policies to process U visas abroad.

PRACTICE TIP: Where to find the law, regulations, and policy on the U visa. Most of the policy and procedure related to the U visa are contained in one of three places: the statute, the regulations, or policy guidance issued by USCIS.

The statute is the Immigration & Nationality Act (INA) and the relevant sections are at:

- INA § 101(a)(15)(U): U nonimmigrant status eligibility requirements;
- INA § 214(p): Miscellaneous U nonimmigrant requirements;
- INA § 212(d)(14): U nonimmigrant inadmissibility waivers; and
- INA § 245(m): U nonimmigrant adjustment provisions.

Much of the policy and procedure are outlined in the regulations, the relevant sections of which are:

- 8 CFR §§ 212.17, 214.14: U nonimmigrant status; and
- 8 CFR § 245.24: U nonimmigrant adjustment of status.

Finally, as is often the case with immigration policy and procedure, some important issues related to U nonimmigrant status are addressed in USCIS policy guidance memoranda. Most importantly, the USCIS Policy Manual has 6 chapters on U nonimmigrant status.²² Before the Policy Manual much guidance was issued as memoranda, some of which are available on the USCIS website at <http://www.uscis.gov/>.

The statute, regulations, and many of the USCIS memoranda may be accessed from the “Legal Resources” page of <http://www.uscis.gov/>. Another great resource is the ASISTA website at <http://www.asistahelp.org/>. The “Resource Library” page includes a U visa link for USCIS memoranda.

²² 3 USCIS-PM C.

§ 1.3 Contents of This Manual

This manual contains nine chapters and an extensive appendix at the end of the manual. Please refer to these chapters for substantive coverage of the following topics:

CHAPTER 1 INTRODUCTION covers an overview of benefits and eligibility for U nonimmigrant status, the contents of this manual and how to use it, and resources to assist you in navigating this topic.

CHAPTER 2 U NONIMMIGRANT STATUS ELIGIBILITY covers eligibility for U nonimmigrant status including a detailed discussion of the eligibility requirements for the visa, red flag issues, screening tips, and practice tips.

CHAPTER 3 U NONIMMIGRANT STATUS PROCESS details step-by-step how to apply for U nonimmigrant status, including an explainer on how to fill out the Form I-918, information about additional documentation required to obtain U nonimmigrant status, what to expect from the process including the new BFD process, how to obtain work authorization, and how and when to communicate with USCIS about your client's case. It also describes issues that arise after U nonimmigrant status is approved, including requesting an extension of status or the possibility of a revocation of status.

CHAPTER 4 INADMISSIBILITY GROUNDS AND I-192 WAIVER provides information about the various grounds of inadmissibility applicable to the U nonimmigrant status applicant, the standard for overcoming them with a waiver, and strategies for how to apply for the inadmissibility waiver.

CHAPTER 5 ADJUSTMENT OF STATUS ELIGIBILITY details the requirements for U nonimmigrants to obtain lawful permanent residence, as well as how jurisdictional issues, inadmissibility grounds, and prior removal orders may affect your client's case.

CHAPTER 6 ADJUSTMENT OF STATUS PROCESS is a step-by-step chapter providing details to guide you through completing the adjustment packet, including Form I-485 and supporting documentation, for a U nonimmigrant.

CHAPTER 7 ASSISTING FAMILY MEMBERS is dedicated to providing information on how to help family members obtain immigration status—either as derivative family members with U nonimmigrant status or through the family petitioning process at the adjustment phase.

CHAPTER 8 REMOVAL ISSUES discusses issues impacting clients who are currently in removal proceedings and those with prior removal or deportation issues, including information on motions and stays.

CHAPTER 9 U TRAVEL ISSUES is dedicated to providing practical information for helping U visa petitioners applying from abroad, U nonimmigrant status holders who wish to travel, and approved U derivatives in their home countries who wish to travel to the United States and will need to go through consular processing or apply for parole.

The **APPENDIX** found at the end of this manual provides numerous sample materials, screening sheets, checklists, USCIS memoranda, and other materials that advocates may find useful in helping a client successfully obtain U nonimmigrant status.

§ 1.4 Resources

Those of us who work with U nonimmigrant status applicants are fortunate that a universe of resources exists to help advocates and attorneys with these cases, and there are numerous excellent attorneys who are willing to share the resources they have created. Attached to this manual at **Appendix A** please find a list of resources for immigration forms, fees and updates, technical assistance, websites, trainings, webinars, seminars, listservs, and other written materials.