U Visas or U Status – Victims of Crime

U Visas are available to individuals and their families who have fallen victim to specific crimes in the United States. Such crimes include, but are not limited to: domestic violence, sexual assault, rape, murder, manslaughter, human trafficking, abduction, torture, false imprisonment, extortion, involuntary servitude and many others. 10,000 U visas are granted annually.

A successful U visa applicant has shown that she (1) has suffered substantial physical or mental resulting from the "qualifying criminal activity" which gives cause to a U visa application, (2) you have information about the crime or, if a minor, have granted permission to somebody of legal age who will provide information about the crime, (3) is, will be, or has been helpful in investigating and prosecuting the criminal activity on which the U visa application is based, (4) the crime occurred in the United States or violated a U.S. federal law that provides for extraterritorial jurisdiction, and (5) is admissible to the United States.

A person is considered a victim of qualifying criminal activity if, (1) the person has suffered direct and proximate harm as a result of the criminal act, (2) the applicant is a family member related to the direct victim, where the direct victim is deceased due murder or manslaughter or incompetent, incapacitated, or not of legal age, (3) the person is the victim of obstruction of justice, witness tampering, or perjury, including attempt, solicitation, or conspiracy to commit one or more of those offenses if she is directly and proximately harmed by the perpetrator of those crimes and the crimes were committed to frustrate law enforcement in investigating, arresting, or prosecuting the perpetrator.

U visas are granted for periods of 4 years. A 4 year period can be extended if a law enforcement agent certifies that the visa recipient's presence is required in the United States to aid in the investigation and prosecution of the criminal activity on which the U visa application was based.

T Visas or T Status – Victims of Trafficking

T visas are available to victims of human trafficking. T visas allow victims of human trafficking to remain in the United States to assist in the investigation or prosecution of human traffickers. 5,000 T visas are granted annually.

An applicant is eligible for a T visa if (1) the person has been subject to "severe trafficking," meaning the use of force, fraud, or coercion for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery, (2) the victim is in the United States, (3) the applicant has or will comply with reasonable requests from a law enforcement agency in the investigation or prosecution of the human trafficking, (4) s/he can demonstrate that s/he will suffer extreme hardship upon removal from the United States.

If a T visa is granted, its maximum duration is 4 years. This time cannot be extended unless law enforcement officials certify that the victim's presence is required in the United States to assist in the ongoing investigation and prosecution of the human trafficking.

E-1 Visa – Treaty Traders

E-1 Visas are based upon treaty of friendship between the United States and a foreign country. E-1 visas are only available to citizens of certain countries (see below). The person must be entering the United States solely to carry on substantial international trade between the United States and a foreign state of which s/he is a national, or is a key employee from an E-1 treaty country (i.e. executive, supervisors, or persons whose services are "essential to the efficient operation of the enterprise"). An employee applying for an E-1 visa need not have worked for the company previously and can be a new hire.

Trade is the international exchange of items or services, such as goods, services, international banking, data processing, advertising, accounting, management consulting, between the United States and a foreign country. This trade must be: more than 50% of the total volume of international trade between the U.S. and the treaty country, principally between U.S. and treaty country, and must not count domestic trade in its calculations of "more than 50%." Substantial trade must insure a steady stream of trade between the treaty country and the U.S. and cannot be based on a single transaction; volume of exchanges if given more weight than value of exchanges.

50% or more of the company's stock must be owned by nationals of an E-1 treaty country. The calculation of this stock cannot include stock owned by Lawful Permanent Residents from the treaty country who own stock in the U.S. company.

E-1 countries include Argentina, Australia, Austria, Belgium, Bolivia, Bosnia & Herzegovina, Brunei, Canada, Chile, China (Taiwan), Colombia, Costa Rica, Croatia, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, South Korea, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Poland, Romania, Serbia & Montenegro, Singapore, Slovenia, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Turkey, United Kingdom, and Yugoslavia.

E-2 Visa - Investor Visa

Nationals of countries with which the United States maintains a treaty of commerce and navigation and who is coming to the United States to carry on substantial trade can apply for an E-2 Investor Visa. Substantial trade includes trade in services or technology, principally between the U.S. and the treaty country. An E-2 investor visa can also be granted to a foreign national entering the United States to develop or direct the operations of an enterprise in which the national has invested, or is in the process of investing a substantial amount of capital.

An E-2 applicant must show that s/he is entering: (1) to carry on substantial international trade between the U.S. and the foreign states of which s/he is a national, or (2) to develop or direct an enterprise in which the foreign national has invested, or will invest, a substantial amount of capital, or (3) as a principal employee from a treaty country, or (4) as a principal employer who is (a) a foreign national from a treaty country, or (b) an organization that 50% or more owned by treaty nationals.

A foreign national applying for an E-2 investor visa must also demonstrate that s/he does not intend to permanently reside in the United States. The Department of State requires an applicant to prove that s/he will not seek to adjust to permanent resident status in the United States.

An E-2 investor visa is initially granted for periods of 2 years; this visa can be extended for up to 2 years per application.

E-2 treaty investor countries include Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bolivia, Bosnia & Herzegovina, Bulgaria, Cameroon, Canada, Chile, China (Taiwan), Colombia, Congo, Costa Rica, Croatia, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Honduras, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, South Korea, Kyrgzstan, Latvia, Liberia, Lithuania, Luxembourg, Macedonia, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Serbia & Montenegro, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, Uruguay, United Kingdom, and Yugoslavia.

O Visas

O Visas are issued to individuals who have significant ability in the sciences, arts, education, business, or athletics and who has demonstrated extraordinary achievement in such field. If the applicant is involved in the television or motion picture industry, the person must demonstrate a record of extraordinary achievement. The applicant must also declare his/her intent to remain only temporarily in the United States.

Extraordinary achievement indicates a level of expertise which indicates that the person is at the forefront of his/her field; for those in science, education, business, or athletics, this is commonly demonstrated through awards, membership in organizations that demonstrate such achievement, published material about the applicant's work in the field, a high salary in the professional's field, and a record of employment in a critical position at a recognized company. For applicants whose work is in the arts, common ways to prove extraordinary achievement include being nominated or recipient of an award of national or international significance such as an Academy Award, Grammy, Emmy, or Director's Guild Award. If such evidence cannot be provided, there are additional criteria which can be fulfilled by evidence.

P Visas

P visas are available to minor league professionals, entertainers, and internationally recognized entertainment groups. International recognition is demonstrated through a person or group's skills being leading or well-known in more than one country, often shown through international engagements or publicity. P visas are meant to be temporary; the applicant must demonstrate intent to return to the country in which s/he resides. The applicant must be entering the United States to participate in a competition, event, or performance.

Athletes who apply for P-1 visas must also demonstrate that the team or athlete is internationally recognized, that the athletic competition which s/he is applying to participate in has a distinguished reputation, and that the athletic competition requires participation of an athlete/team with an international reputation. Minor and amateur athletes must fulfill additional requirements.

Entertainment groups applying for a P-1 visa need to show that the group is internationally recognized for a substantial amount of time and that 75% of the members of the group have had a continuous and considerable relationship to the group for one year. Additionally, the applicant must evidence having performed with the group for at least one year, received reviews in major publications or other critical or commercial success, and attach a list of members and dates those members were employed by the group.

An applicant must apply for a P visa within one year of the event in which s/he will perform or participate. Applicants are also required to include written contracts or summaries of oral contracts to demonstrate their engagements in the United States.

L Visas

An applicant for an L visa must have been continuously employed abroad for 1 of the past 3 years by a parent, branch, affiliate or subsidiary of a U.S. company preceding the application for admission. This cannot be met by working part of the year in the United States. The applicant must be seeking to enter the U.S. in order to continue working for the same employer, its affiliate, or its subsidiary. L visa applicants are no longer required to show intent to return to the country in which they reside, allowing those who have been granted L-1 visas to petition for other immigrant visas while maintaining L-1 status.

K-1 Visa (Fiancé(e) Petition)

A K-1 visa is available to the fiancé(e) of a United States Citizen who seeks to enter the United States to enter into a valid marriage with the visa petitioner. If a K-1 visa is granted the recipient must marry the United States Citizen within 90 days of entering the United States.

The alien's children will be allowed to accompany the alien through K-2 visas. The fiancé is also given work authorization upon approval of the K-1 visa.

In order to obtain a K-1 visa, a United States Citizen must file an I-129F petition where the petitioner is residing, including proof that there is a true intention to marry within 90 days of the fiancé's entry, there are no legal impediments to marriage, and that the petitioner and fiancé have met in person within two years of filing a petition.

Violence Against Women's Act - VAWA

The Violence Against Women's Act may provide immigration relief to a spouse, child, or parent who is subject to extreme cruelty or battered by a United States Citizen/Lawful Permanent Resident spouse or parents. In these cases the applicant may petition for immigration relief independent of the abusive spouse or parent. The spouse is not required to be married to the abusive U.S. Citizen/Lawful Permanent Resident at the time of the petition.

To successfully petition for a visa, the battered spouse or child needs to prove that s/he lived with the abusive U.S. citizen/Lawful Permanent Resident, was subjected to extreme cruelty during his/her marriage to the U.S. citizen/Lawful Permanent Resident, the marriage was entered into in good faith, s/he is eligible for immigration relief, and that s/he has strong moral character. Additional evidence to prove extreme cruelty or battery may be attached.

The term "battered spouse" applies to a variety of people, including (1) a spouse who believed s/he was legally married but was subject to bigamy during that marriage; (2) abused spouses of U.S. citizens who have passed away in the 2 years immediately preceding the petition being filed; (3) spouses whose abusive U.S. citizen/Lawful Permanent Resident spouse renounced or lost his/her immigration status in the 2 years immediately preceding the petition. If the marriage has ended, the petitioner can demonstrate that the marriage's termination was a direct result of abuse by the U.S. citizen/Lawful Permanent Resident of the petitioner.

N-400, Application for Naturalization for U.S. Citizenship

To qualify for naturalization, an applicant must (1) be a Lawful Permanent Resident, (2) be 18 years or older, (3) satisfy physical presence and continuous residence requirements; (4) satisfy the good moral character requirement, (5) be dedicated to the principles of the Constitution; (6) be willing to bear arms or participate in noncombatant service for the federal government; (7) not be otherwise inadmissible; and (8) have knowledge of the English language, U.S. history and government (demonstrated through a citizenship exam). Each of these requirements has sub-requirements which hold the person applying to a myriad of standards and responsibilities.

Other avenues of naturalization include military service for one year, military service during hostilities, and veterans of the Filipino or Persian Gulf Wars. Applicants from the Hmong tribe who participated in military action in Laos may also be eligible for naturalization. People who are deemed by the Attorney General, INS Commissioner, and Attorney General have made extraordinary contributions

to National Security may be naturalized despite not meeting the physical presence or residence requirements.

To apply an applicant must submit an N-400 application, a photocopy of the applicant's resident card, two color photos and all other supporting documents **prior** to examination.

Withholding of Removal (I-589)

Withholding of removal is provided to a person who can establish that, upon ejection from the United States, the person's "life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion."

Withholding of removal will prevent the applicant from being removed to the country where his/her life would be threatened; however, upon successful approval of the applicant's petition, the applicant can still be removed to a third country. Unlike claims for asylum, there is a mandatory prohibition against removal if such evidence is provided to the court.

A successful withholding of removal application does not permit the applicant to become a lawful permanent resident of the United States, nor does it allow the successful applicant to bring his/her family to the United States. This status also does not apply derivatively to any spouse/child included on the application; such family members have to apply for their own protective status.

Applicants ineligible for this protection include a person who has: engaged in Nazism or genocide, ordered or assisted in the persecution of any person on account of race, religion, nationality, or membership in a particular social group or political opinion, committed a serious crime which makes him/her a danger to the U.S. community, or if there are other reasonable grounds to believe the alien is a danger to the security of the U.S.

Visas For Temporary Visitors (B1/B-2)

To be eligible for a B-1/B-2 visa, the applicant must be an alien and cannot be performing skilled or unskilled labor, law enforcement, a representative of foreign information media or a student. The alien must also have residence in a foreign country with no intention of abandoning that foreign residence. The alien must be visiting for business or pleasure. There is a 1-year maximum time limit on B visas with potential for 6-month extensions.

The B -1 visa is meant for business visitors, including those who intend to meet with business associates, attend a scientific, educational, professional or business conference, negotiate a contract or conduct some type of business while in the United States.

The B-2 visa is for aliens visiting the United States for medical procedures or pleasure. Examples of pleasure visitation include tourism, visiting friends or relatives, rest, activities of a social

nature, and amusement. B-2 visa holders are also allowed to take a short course of study of less than 18 hours per week; however such credit should not be applied towards a degree.

F Visas

To be eligible for an F visa, the applicant must: have a foreign residence with no intention to abandon it, be a *bona fide* student qualified to pursue a full course of study, seek to enter the United States as a student for a course of study at an established institution of learning or other recognized place of study in the U.S., only student at an institution designated by the applicant and approved by ICE, and must not attend public school unless the applicant attends secondary school for a period of less than 12 months and demonstrates that s/he has reimbursed the school board the full, unsubsidized per capita cost of the education. Family members of those granted F visas may not attend school, except that a child may attend elementary through 12th grade.

An applicant must also: present a SEVIS Form I-20 issued to the applicant in the applicant's name by an approved school, have sufficient financial support, be proficient in English (or will receive training to make her proficient), intend to depart the United States, have sufficient academic credentials to attend the particular institution, and maintain a full course of study.

Students granted an F visa will be admitted a maximum of 30 days before the program start date.

Vocational Students (M Visa):

This visa is similar to the F-1 visa, except this visa is extended to those at a vocational/nonacademic institution. To be eligible for an M visa, the student must study in a community/junior college or vocational/business school with a specific objective. The student must also have a residence abroad (with no immediate intention to abandon that residence), intend to depart from the U.S. upon completing his/her studies, and possess sufficient funds to pursue the proposed course of study. Online courses do not fulfill the requirements of the M-1 visa. The student cannot begin the educational program until entering the United States on the M visa. The student also cannot transfer schools after the first six months unless the reason for transferring is "beyond the student's control," nor can the student accept employment or change educational objectives.

A student entering on an M visa will be admitted for the time necessary to complete the course plus thirty (30) days or for one year, whichever is less. Extensions are available up to three (3) years plus thirty (30) days from the original start date in order to complete the program.

Family members of those admitted on M visas must individually obtain their Student and Exchange Visitor Information System Forms; while in the United States, family members cannot obtain employment nor can they engage in full time study unless it is a child attending primary or secondary school.

H1-B Visa (Specialty Occupation)

To qualify for an H-1B visa a person must be in a specialty occupation, a fashion model of distinguished ability and merit, or a person helping the Department of Defense with cooperative research or a development/co-production project. A specialty occupation is defined as a theoretical and practical application of highly specialized knowledge and receiving a bachelor's or higher degree in the specific specialty (or its equivalent). A fashion model must demonstrate that s/he is prominent in his/her field and that position which s/he will fill requires such prominence. A person working with the Department of Defense must be performing exceptional services in a position under a government-to-government agreement controlled by the Secretary of Defense. The applicant must be coming to the United States temporarily, but need not keep a foreign residence. Note that those working for the Department of Defense must have a foreign residence which the applicant does not intend to abandon.

The applicant's employer ("petitioner") must begin paying the applicant the wage stated on the petition within 30 days of the employee's entry or 60 days from the employee's application if the employee is already in the United States. The position the applicant will fill if granted the H-1B visa must be a permanent position that will be temporarily filled by the H-1B applicant. The petitioner must be a U.S. employer, i.e. one who hires employees to work within the U.S., has an employer-employee relationship in that the employer may hire, fire, or supervise the employee, and has an IRS Tax ID number. The petitioner must have supervisory control over the H-1B applicant, but does not need to pay his/her entire salary.

A maximum of 65,000 H-1B visas are granted each year. This number does not include an extra 20,000 visas granted to people who have earned a master's or higher degree from a U.S. institution of higher education. If the H-1B is let go from his/her position s/he is no longer considered to be maintain lawful status upon such termination. An H-1B is initially approved for an entry period of up to 3 years; in total an H-1B can be admitted for 6 years, including extensions. H-1B visas granted to those working with the Department of Defense are for a maximum of 10 years; extensions are then granted in 2-year increments.

J Visa (Exchange Visitor)

This program is meant for nonimmigrants who have no intention of abandoning their foreign residence and work as the following: professor/research scholar, short-term scholar, trainee/intern, college or university student, teacher, secondary school student, nonacademic specialist, foreign physician, international visitor, government visitor, camp counselor, au pair, or summer student in a travel/work program. The J visa applicant must also have sufficient funds, be fluent in English, and have sufficient medical insurance for accident and illness in a minimum of $50,000 per accident or illness.

The period of stay allowed on a J visa varies based on the field in which the J Visa holder was first admitted. For instance, a post-doctoral degree candidate is granted his/her J Visa for the time it takes to complete the degree plus an additional 36 months of academic training while a post-secondary student is granted enough time to complete the degree along with an additional 18 months of practical or academic training.

Change of Status (I-129)

The I-129 is used by temporary workers when applying to adjust status to another non-immigrant visa status. Such temporary workers are on E, H, L, O, P, Q, R, or TN visas. This form is meant for temporary workers who are in the United States and concurrent employment, change of employment or change of status is necessary.

An I-129 applicant must apply for the change of status in a timely fashion, i.e. before the applicant's original temporary visa expires. A worker applying to adjust status who has been employed in an unauthorized manner has failed to maintain status. The applicant cannot be in deportation proceedings.

Writ of Error Coram Nobis

A writ of error coram nobis applies to people who have been convicted of a crime and have already served any time imposed as a result of such conviction.

This writ can be applied for at a state and federal level; a successful applicant will demonstrate that there are circumstances compelling action to achieve justice, there are reasons for the applicant not seeking earlier relief, and the applicant's continued suffering of legal consequences from his conviction that the writ would remedy if granted.

These writs are often applied for in cases of immigrants who have committed crimes and were subject to detention time along with probation; such sentences can adversely affect an immigrant's status in the United States.

Advance Parole

While an adjustment application is pending, departing the United States without advance permission is considered abandonment. Certain exceptions exist for a person in the United States with valid H or L status (and their dependents) and for K-3 or K-4 visa holders. Advance parole cannot be granted to a person outside of the United States.

Advance parole can be granted to a person whose adjustment application is pending if the person must leave the United States for "*bona fide* business or personal reasons." The person applying for advance parole may be traveling for any reasons that are not against law or public policy.

If granted advance parole, it will apply to multiple entries and exits and will be valid for the duration of the pendency of the adjustment of status application; however such pendency should not exceed one (1) year.

A person applying for advance parole will become eligible for employment authorization when the application for advance parole is submitted.

Immigration Petition for Relative (Marriage Case)

Immediate Relative positions are restricted to the children, parents, and spouse of a U.S. citizen. A binational marriage will result in conditional status unless it is more than two (2) years old at the time of granting immigrant status. This two (2) year period begins when alien's residency is granted. Conditional status will expire if, within the two (2) year time period of such status, United States Citizenship and Immigration Services ("USCIS") finds that the (a) the marriage was judicially annulled or terminated other than because of the death of the spouse; or (b) the couple was married with the U.S. citizen receiving a fee or other consideration for the non-citizen's entry into the U.S.; or (c) the U.S. citizen and his/her spouse fail to jointly appear at USCIS interview or the U.S. citizen and spouse fail to petition USCIS within a 90-day period before the expiration of the two (2) year conditional status originally granted to the alien spouse.

In order to petition for an alien spouse, the U.S. citizen spouse mile a joint petition with their alien spouse within 90 days of the expiration of the grant of conditional residence and before the expiration of such a period. This petition must include evidence of a valid marriage, including but not limited to: (1) proof of joint tenancy, (2) shared finances, (3) birth certificate(s) of child(ren) produced through the union, (4) affidavits from third parties, (5) joint ownership of property, or (6) other documentation. The noncitizen spouse is not required to be in the United States at the time the petition is filed; however, such spouse is required to attend the USCIS interview with his/her U.S. citizen spouse.

Marriage Entered While in Removal Proceedings

If a noncitizen in removal proceedings and a U.S. citizen wed, the U.S. noncitizen cannot adjust his/her status to permanent resident or have a visa petition for permanent status as a spouse approved unless the couple can show by "clear and convincing evidence… that the marriage was entered into in good faith." Such evidence may include: (1) proof of joint tenancy, (2) shared finances, (3) birth certificate(s) of child(ren) produced through the union, (4) affidavits from third parties, (5) joint ownership of property, or (6) other documentation.