



USING INDIRECT & BYSTANDER VICTIM THEORIES TO EXPAND U VISA ELIGIBILITY FOR FAMILIES

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U nonimmigrant status is a form of immigration relief for survivors of serious crimes.¹ While not all crimes lead to eligibility for U nonimmigrant status, or “U visa” as it is commonly known,² survivors of certain crimes who have been helpful to law enforcement can seek nonimmigrant status for themselves and qualifying relatives, gaining protection from deportation and a pathway to lawful permanent residence. To qualify for a U visa, the petitioner must be a “victim” of a crime,³ but “victim” is defined broadly by regulation to include three categories: 1) direct victim; 2) bystander victim; and 3) indirect victim. These broad victim categories may open up eligibility for more noncitizens, including noncitizen parents and siblings of certain U.S. citizen children who have been victims of crimes.

This practice advisory will first provide a basic overview of the requirements for U nonimmigrant eligibility. It will then discuss the definition of “victim” and three different ways to qualify as a victim for purposes of U visa eligibility. Finally, it will address derivative eligibility for qualifying family members. Qualifying family members do not have to fit into any of the “victim” definitions as long as they have a qualifying family relationship to someone who does.

WARNING: While the U visa offers protection from removal and a path to a green card, there are some risks to applying, particularly under an anti-immigrant presidential administration. First, because the number of principal U visas that can be distributed each year is capped at 10,000, there is currently an extreme adjudication backlog that only continues to grow each year. It is estimated that applicants who file today are likely to wait 15-20 years before receiving U nonimmigrant status. At the time of writing, applicants may be able to receive

¹ Please note that this advisory mostly uses the term “victim” throughout because we are focusing on “victim” definitions under the immigration laws. However, the ILRC recognizes that because a “victim” is typically defined by harm done to them, many advocates choose instead to use the word “survivor,” as “survivors” are defined by their lives after the harm, allowing them to reclaim control of their lives and their recovery.

² Although U nonimmigrant status is not technically a “visa” when granted to someone already present in the United States, it is commonly known as the “U visa” by advocates and in communities. This practice advisory will use the terms “U nonimmigrant” and “U visa” interchangeably. This practice advisory provides only a brief overview of U visa eligibility and application process; for more information, see *The U Visa: Obtaining Status for Immigrant Survivors of Crime*, 7th Ed. (ILRC 2023).

interim relief sooner through the “bona fide determination” process, introduced in 2021.⁴ However, it is unclear whether the new presidential administration will continue this process or its accompanying benefits of deferred action and work authorization.

Second, applying for U nonimmigrant status carries inherent risk because the applicant is exposing themselves to immigration authorities, making them vulnerable to enforcement action. Although denied applicants are generally not currently referred to immigration court, the new presidential administration may adopt stricter eligibility policies and issue Notices to Appear to applicants who are found ineligible for U nonimmigrant status, placing them at risk of removal. Applicants and derivative family members with prior removal orders or contact with the criminal legal system are at particular risk and should be fully informed of the risks of applying before moving forward.

I. Nonimmigrant Eligibility Overview

A noncitizen may qualify for U nonimmigrant status by filing Form I-918, Petition for U Nonimmigrant Status, if they meet the following criteria:

1. Have suffered substantial physical or mental abuse;
2. As a result of having been a victim of certain “qualifying criminal activity”;
3. Possess information concerning such criminal activity, and ha[ve] been helpful, or [are] being helpful, or [are] likely to be helpful in a local, state, or Federal law enforcement investigation or in prosecution of such criminal activity;
4. The criminal activity violated the laws of the United States or occurred in the United States; and
5. The applicant is admissible to the United States.⁵

A brief summary of each requirement follows:

1. Have suffered substantial physical or mental abuse

The principal applicant must have suffered “substantial physical or mental abuse” as a result of their victimization.⁶ The regulations define “physical” abuse as harm “to the victim’s physical person,” while “mental abuse” is defined as “harm to or impairment of the psychological soundness of the victim.”⁷ Whether the abuse was “substantial” is based on a number of factors, including the nature and severity of the injury; the severity of the criminal conduct; the duration of the harm; and the extent to which there is permanent or serious harm to the victim’s

⁴ See 3 USCIS-PM Ch. 5; ILRC, *Overview of the New U Nonimmigrant (“U Visa”) Bona Fide Determination* (Dec. 3, 2021), <https://www.ilrc.org/resources/overview-new-u-nonimmigrant-%E2%80%9Cu-visa%E2%80%9D-bona-fide-determination>.

⁵ INA § 101(a)(15)(U).

⁶ 8 CFR § 214.14(a)(14)(iii).

⁷ 8 CFR § 214.14(a)(8).

appearance, health, physical, or mental soundness.⁸ USCIS will also consider the cumulative impact of a series of events, not only the direct impact of the specific qualifying crime.⁹

No single factor is determinative, and USCIS will consider the victim's preexisting conditions when assessing the severity of their injuries. USCIS must consider "any credible evidence" to determine whether the applicant suffered substantial injury. The victim's declaration will generally be the most important piece of evidence and can sometimes be sufficient, although corroborating evidence such as medical records, psychological evaluations, or photographs are also helpful.

2. As a result of having been a victim of certain "qualifying criminal activity"

The regulations define "qualifying criminal activity" to include a list of 27 types of crimes, as well as "any similar activity ... in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities."¹⁰ In general, "qualifying crimes" must be crimes against the person, not purely property crimes. For example, if someone broke into your house while you were not home, this likely would not qualify. But if you were there when it happened and the suspect brandished a weapon at you, this might more likely be considered a qualifying crime. This will depend on the facts of the case as well as the evidence available, such as what criminal code violation was listed on the police report and/or any other documents from the investigation, prosecution, or court case.

For the most part, the designated crime does not need to be a felony; even misdemeanors can be "qualifying crimes" if they fall into one of the enumerated categories or are "substantially similar" to a listed qualifying crime. The only qualifying crime that is facially required to be a felony is "felonious assault," but even in that category, you can try to argue that a misdemeanor assault had some aggravating circumstances that bring it into the ambit of "felonious assault." For example, if there was a hate crime element to the assault, or if the suspect carried a dangerous weapon, these facts might help show that the crime constituted a "felonious assault" even if the criminal records only reference misdemeanor assault.

3. Possess information concerning such criminal activity, and have been helpful, or are being helpful, or are likely to be helpful in a local, state, or Federal law enforcement investigation or prosecution of such criminal activity

To qualify for U nonimmigrant status, the applicant must submit Form I-918 Supplement B, Law Enforcement Certification ("I-918 Supp. B"), signed by an authorized certifying official of

⁸ 8 CFR § 214.14(b)(1).

⁹ *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 52014, 53018 (Sep. 17, 2007).

¹⁰ 8 CFR § 214.14(a)(10). Enumerated qualifying crimes include 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. *Id.*

the law enforcement agency (“LEA”) that detected, investigated, or prosecuted the qualifying crime. Many government agencies are considered LEAs, including police departments, child protective services, the Department of Labor, and other agencies that have jurisdiction to investigate crimes within their area of expertise.¹¹ The LEA must certify that the applicant 1) possesses information about the crime; 2) has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and 3) has not refused or failed to provide assistance reasonably requested in the investigation or prosecution of the crime.¹² Stated simply, the applicant must have been cooperative, to the extent the LEA asked for their help. In many cases, the LEA does not ask the applicant to do much beyond their having reported the crime, but advocates will want to look out for statements in police reports about not wanting to press charges or refusing requests for further assistance, as USCIS may find that these facts indicate a lack of helpfulness. The statute does not require that the victim’s helpfulness lead to an arrest, prosecution, or conviction of a criminal case, but the victim must have had some contact with the LEA and provided information that assisted the LEA in their investigation of the case.

There is an exception to the helpfulness requirement for victims who are under 16 years of age, incapacitated, or incompetent at the time of the qualifying criminal activity.¹³ In these cases, a parent, guardian or “next friend” may provide the required assistance in lieu of the victim themselves being helpful.¹⁴ “Next friend” is defined in the regulations as “a person who appears in a lawsuit to act for the benefit of a [noncitizen] under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.”¹⁵

Example¹⁶: Joana was two years old when her aunt, Toby, discovered bruises on her body while helping her get dressed. Toby called the police, who discovered that Joana’s mother had been abusing her. Because Joana was not yet verbal, Toby spoke to the police on her behalf and provided evidence to support the police’s investigation. Joana can qualify for U nonimmigrant status because she suffered substantial injury as a result of qualifying criminal activity, and Toby acted as her “next friend” by helping the police on Joana’s behalf. Toby’s involvement as “next friend,” however, does not qualify Toby herself for U nonimmigrant status, unless she can also qualify as a victim in her own right.

¹¹ 8 CFR § 214.14(a)(2).

¹² 8 CFR § 214.14(c)(2)(i). Many states have laws that govern access to Law Enforcement Certifications. For more information, see ILRC, *State U and T Visa Laws* (Jun. 2023), <https://www.ilrc.org/sites/default/files/2023-06/State%20U%20Visa%20and%20T%20Visa%20Laws.pdf>.

¹³ 8 CFR § 214.14(b)(3).

¹⁴ INA § 101(a)(15)(U)(i)(III); 8 CFR § 214.14(b)(3).

¹⁵ 8 CFR § 214.14(a)(7).

¹⁶ Unless otherwise noted, the examples provided in this practice advisory are fictional and should not be construed as scenarios that are guaranteed to qualify for U nonimmigrant status. These examples reflect the ILRC’s research and understanding of how USCIS has historically interpreted the U visa regulations as of the date of this advisory.

As discussed further in Section II below, someone who is helpful as a “next friend” might also qualify as a “victim” themselves, depending on the circumstances, but they do not qualify automatically by serving as a “next friend.”

4. The criminal activity violated the laws of the United States or occurred in the United States

To be considered a qualifying criminal activity for U nonimmigrant status, the crime must have violated the laws of the United States or occurred in the United States.¹⁷ This includes the continental United States, Hawaii, and Alaska; U.S. territories including Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands; “Indian country” as defined in 18 USC § 1151; and military installations.¹⁸ If the criminal activity occurred outside the United States, it will only be considered a “qualifying crime” if it violated a federal statute that specifically provides for extraterritorial jurisdiction.¹⁹

As with the helpfulness requirement, the LEA that investigated or prosecuted the criminal activity must certify that this requirement is met on the I-918 Supp. B.

5. The applicant is admissible to the United States

Finally, to qualify for U nonimmigrant status, the U applicant must be admissible under all applicable grounds—the public charge ground of inadmissibility does not apply to U nonimmigrant status applicants or their derivative family members.²⁰ U applicants who are inadmissible under any other ground must seek a waiver for all applicable inadmissibility grounds, which is available under INA § 212(d)(14). The U waiver is very generous—it theoretically allows for a waiver of any grounds of inadmissibility except for the grounds applicable to perpetrators and participants of Nazi persecutions, genocide, torture, or extrajudicial killings. This means someone who is subject to the permanent bar or crimes-related grounds that may bar them from most other relief may request a waiver as part of the U visa process, although for more serious grounds it may be difficult to get the waiver granted as a matter of discretion. The U visa waiver can be granted if deemed in the public or national interest.²¹ For inadmissibility involving violent or dangerous crimes, USCIS will apply a higher discretionary standard, granting the waiver only where extraordinary circumstances are present.²²

¹⁷ INA § 101(a)(15)(U)(i)(IV); 8 CFR § 214.14(b)(4).

¹⁸ 8 CFR § 214.14(b)(4).

¹⁹ *Id.*

²⁰ See INA § 212(a)(4)(E)(ii). Note that, when a U nonimmigrant applies to adjust status to become a lawful permanent resident under INA § 245(m), only the ground of inadmissibility related to persecution, genocide, torture, or extrajudicial killings (INA § 212(a)(3)(E)) applies, although other grounds of inadmissibility are considered as a matter of discretion.

²¹ INA § 212(d)(14); 8 CFR § 212.17.

²² 8 CFR § 212.18(b)(2).

II. The Definition of “Victim” and Creative Ways to Structure the Application

Structuring a U nonimmigrant petition begins with identifying the principal applicant, who must first meet the definition of “victim.”²³ USCIS contemplates three main categories of crime survivors who will satisfy this definition to qualify for U nonimmigrant status: direct victims, bystander victims, and indirect victims. While direct victims are the most common category of U nonimmigrants (i.e., the direct target of the crime), bystander and indirect victim theories expand U visa eligibility to others, including in cases where the direct victim is a U.S. citizen. The rest of this practice advisory will discuss the three categories of “victim” and provide examples of how a creatively structured U visa application might allow multiple individuals to obtain U nonimmigrant status and protection from removal.

PRACTICE TIP: It is important to note that all three categories of victims are subject to the same eligibility requirements described in Section I above. In particular, as you consider whether an applicant might be eligible as a bystander or indirect victim, you must assess whether they personally suffered substantial injury as a result of the qualifying criminal activity, and whether they independently satisfy the helpfulness requirement, even though they were not the direct target of the criminal activity.

A. Direct victims:

The U regulations define “victim” at 8 CFR § 214.14(a)(14) as, generally, “a [noncitizen] who has suffered direct and proximate harm as a result of the commission of qualifying activity.” This “direct victim” is generally the person directly targeted for the criminal activity, or who is present and suffers the primary injury as a result of the crime. The overwhelming majority of U nonimmigrant status petitions approved by USCIS are for direct victims of crimes.

Example: Elijah was shot by a neighbor with whom he had an ongoing conflict. Elijah is the direct victim.

Example: Susana was beaten by her husband. Susana is the direct victim.

Example: Marcus was forced into a closet during a robbery at his restaurant. Marcus is the direct victim.

The U visa regulations define “direct and proximate harm” based on the Attorney General Guidelines for Victim and Witness Assistance, which state that the harm “must be a direct consequence of the crime; that is, the harm must generally be a ‘but for’ consequence of the conduct that constitutes the crime, specifically the crime under investigation, that has been charged, or for which there has been a conviction, depending on the stage of the criminal justice process.”²⁴ The AG Guidelines further state that the harm must have been a “reasonably foreseeable result” of the criminal activity. A person who suffers harm that is too

²³ 8 CFR § 214.14(a)(14).

²⁴ U.S. Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance*, 15-16 (Mar. 31, 2023); https://www.justice.gov/d9/pages/attachments/2022/10/21/new_ag_guidelines_for_vwa.pdf (“AG Guidelines”).

attenuated or not reasonably foreseeable as a result of the crime will not be considered a “direct victim” for purposes of U nonimmigrant eligibility.

B. Bystander victim:

In some cases, USCIS may approve U nonimmigrant status to individuals who were not the direct target of the criminal activity, but who nevertheless suffered “unusually direct injury” as a result of the qualifying crime.²⁵ These “bystander victims” are a type of “direct victim,” in that their eligibility does not depend on another victim’s incapacity or incompetency, and they do not need to be related to the primary victim. Bystander eligibility is not specifically contemplated in the U visa regulations, but the legislative history underlying the regulations provides some guidance as to who may qualify as a “bystander victim.”²⁶

Again drawing from the AG Guidelines, the regulations provide the example of “a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.”²⁷ USCIS approves bystander cases only in rare circumstances, and there is not much guidance on what kinds of cases will qualify under this theory. Below are some examples of bystander victim scenarios that have been approved in the past.

Example: Amal was in her living room with several family members when a drive-by shooting occurred outside. A gunshot tore through the room and struck Amal’s father, killing him. Other shots wounded Amal’s sister and brother-in-law. Amal was not physically injured, but she did suffer uniquely severe trauma symptoms after the incident. Amal was exceptionally helpful to police in their investigation: she urged everyone there to cooperate and speak candidly with police, and appeared on the local news, asking viewers to call the police if they had any information about the shooter. Amal can show that she qualifies as a “bystander victim” for U nonimmigrant eligibility because her psychological injuries were “unusually direct” as a result of the shooting, a felonious assault. She also satisfies the other requirements for U nonimmigrant eligibility, including possessing information about the crime and being helpful to law enforcement.

Example: Ines, age 32, lived with her brother Eddie, who was 25 when he was murdered. One night Ines was inside and she heard strange noises outside. She opened the door to find Eddie, brutally beaten and lying unconscious on the ground. Ines called the police and accompanied Eddie in an ambulance to the hospital, where he was pronounced dead. Ines answered all of the police’s questions throughout their investigation of the murder. Ines and Eddie lost their parents at young age, so Ines has acted like his mother in their absence, and she is deeply traumatized by what happened. Ines can show that she qualifies as a “bystander victim” because her psychological injuries were “unusually direct” as a result of the murder.

²⁵ See 72 Fed. Reg. at 53016–53017.

²⁶ *Id.*

²⁷ *Id.*

One important thing to remember for bystander victim eligibility is that it does not matter if the direct victim is a U.S. citizen or has some other lawful immigration status. As long as the principal applicant is a noncitizen and suffered an “unusually direct injury” as a result of the crime, they can qualify for U nonimmigrant status under the bystander theory.

Example: Henri does not have lawful status in the United States, but his 21-year-old, developmentally disabled daughter, Beatrice, is a U.S. citizen. Beatrice lives with Henri because she cannot live independently, and he is her primary caregiver. One day while Henri was at work, Beatrice was sexually assaulted in their apartment. Beatrice told a neighbor, who called Henri. Henri rushed home to find Beatrice extremely distraught. He was so upset that he punched a wall, injuring his hand, and he continued to suffer from emotional trauma for several years. This was sadly not the first time Beatrice had sexually assaulted, and Henri felt compounding guilt and trauma as a result of both incidents. Henri can show that he qualifies as a “bystander victim” for U nonimmigrant eligibility because his psychological injuries were an unusually direct result of his daughter’s assault. This is true even though Beatrice is a U.S. citizen and is over 21.

As shown in the above examples, someone who qualifies as a “bystander victim” must also independently satisfy the other requirements for U nonimmigrant eligibility, including showing that they suffered substantial physical or psychological injury; that they possess information about the crime; and that they have been, are being, or will be helpful in a law enforcement investigation of the crime. It is not enough that the person witnessed and was impacted by the crime—they must also provide evidence that they satisfy the remaining requirements for U nonimmigrant status.

Example: Jessica was 12 weeks pregnant when she witnessed two neighbors having an altercation. One of them pulled out a knife and stabbed the other. Jessica was so distraught that she suffered a miscarriage. Police later came to Jessica’s home to ask her questions about the incident, but she did not answer the door and refused to speak to law enforcement about what she saw. Even though Jessica suffered substantial injury as a result of the crime, she will not qualify for U nonimmigrant status because she was not helpful in the police’s investigation of the crime.

C. Indirect victim:

The regulations contemplate a third type of “victim” for certain family members, called “indirect victims.”²⁸ Where the direct victim of a crime is “deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information ... or be helpful in the investigation or prosecution of the criminal activity,” certain family members may qualify for U nonimmigrant status if they assisted law enforcement on the direct victim’s behalf and also meet the other requirements.²⁹ Unlike bystander victims, indirect victims are specifically accounted for in the regulations, and USCIS routinely grants U nonimmigrant status under this category. While the most clear-cut indirect victim cases may involve a direct victim who passed

²⁸ See 8 CFR § 214.14(a)(14)(i).

²⁹ *Id.*

away as a result of the crime, parents of child crime victims—including U.S. citizen children—who were legally “incompetent” also often fit within this definition.

Which family members may qualify for indirect victim status is determined by the age of the direct victim at the time the qualifying crime *occurred*.³⁰ When the direct victim was over 21 years of age at the time the qualifying criminal activity occurred, their noncitizen spouse or children under 21 years of age may qualify as an indirect victim, if they also meet the other eligibility requirements. When the direct victim was under 21 years of age at the time the qualifying criminal activity occurred, their parents and siblings under the age of 18 may also qualify. Any indirect victim must have also suffered substantial injury, have independently provided law enforcement with information concerning the criminal activity, and have been helpful (or are being helpful) in the investigation or prosecution of the crime.³¹

Example: Ahmed, age 55, suffers from early-onset dementia. Ahmed was assaulted while taking a walk in the park with his nurse. Because of his dementia, Ahmed was unable to communicate effectively, so his wife, Miriam, reported the assault to police and helped them take pictures of Ahmed’s injuries. Several years later, Miriam continues to suffer nightmares about the incident and is still afraid whenever she or Ahmed leaves the house. Miriam may qualify as an indirect victim because she is the spouse of the direct victim and was helpful to police in their investigation. Miriam will also need to show that she suffered substantial injury as a result of the assault.

In the past, direct victims of qualifying crimes under age 21 were considered per se incapacitated, or incompetent, “due to their status as a child.”³² More recently, however, USCIS has taken the position that just because someone is under twenty-one years old (the age limit for the definition of a child under immigration law), that does not definitively mean that the child is incompetent. USCIS has indicated that if a child is able to talk with law enforcement officials, then that child is not incompetent or incapacitated.³³ USCIS will evaluate whether the child was incompetent due to age on a case-by-case basis. Based on unpublished decisions by the Administrative Appeals Office, it appears that USCIS will generally presume incapacity or incompetency if the direct victim was under sixteen years old when the crime occurred, but that presumption may be overcome if the evidence otherwise shows that the young victim was

³⁰ *Id.* Note, this is different than age determinations for derivative eligibility, which is determined as of the time of filing Form I-918. 8 CFR § 214.14(f)(1).

³¹ 8 CFR § 214.14(a)(14)(i).

³² DHS, Questions and Answers from CIS Ombudsman’s Teleconference: “U Visa: One Year After the Interim Final Rule” (Aug. 26, 2008) (Question 4. Indirect Victims—Callers asked whether an indirect victim can apply for U-visa status. For example, if a two-year old U.S. citizen child is a victim of a qualifying crime under the interim final regulation, can the mother, an indirect victim, apply for U-visa status? USCIS Response on October 17, 2008—The rule extends the victim definition to include certain family members of incapacitated victims. Direct victims of qualifying crimes, under age 21, are considered to be incapacitated due to their status as a child.).

³³ *E.g., In re: 1591442* (AAO Mar. 11, 2020). Note that this case and the cases cited below are non-precedential decisions; therefore they are not binding on other cases and do not provide a basis for an interpretation of law or USCIS policy. These decisions do, however, provide helpful insight into how USCIS analyzes indirect victim cases.

able to talk to law enforcement effectively.³⁴ Therefore, in any indirect victim case, it is important to provide as much information as possible as to the direct victim's incapacity or incompetency, including factors other than age to demonstrate their inability be helpful to law enforcement officials.

Qualifying as an indirect victim is different than serving as a "next friend," as described in Section I above.³⁵ Like an indirect victim, a "parent, guardian, or next friend" may satisfy the helpfulness requirement where the direct victim was under 16 years old at the time of the crime. But unlike an indirect victim, the "next friend" is not a party to the proceeding and is not applying for U nonimmigrant status in their own right (at least not on that basis).

Example: Hank, age 11, was beaten up by gang members while walking home from school. Hank's mother, Margaret, took pictures of his injuries, which she provided to police when they came to the family's home as part of their investigation. After the beating, Margaret feels anxious all the time and the trauma exacerbated her preexisting heart disease. Margaret may qualify for U nonimmigrant status as an indirect victim, because she was helpful to the police and is the parent of Hank, who was under 21 at the time of the crime. Margaret will also have to show that she suffered substantial injury as a result of the assault on Hank.

Example: Patrick, age 13, was also beaten up in the same incident. Patrick's teacher, Peter, witnessed the beating and provided a statement to the police. If Patrick applies for U nonimmigrant status as the direct victim, Peter may serve as his "next friend" to satisfy the helpfulness requirement. But Peter will not qualify as an indirect victim because he does not have a qualifying relationship with Patrick.

Moreover, indirect victims may apply for U nonimmigrant status based on the direct victim's incompetence or incapacity for reasons other than age, such as cognitive disability or severe trauma symptoms, as in the example of Ahmed and Miriam above.

Like bystander victims, indirect victims can qualify for U nonimmigrant status even if the direct victim is a U.S. citizen, as long as they also satisfy the remaining eligibility requirements of substantial injury, possession of information, and helpfulness. As long as the direct victim was incompetent or incapacitated; the principal applicant has a qualifying relationship with the direct victim; and the principal applicant suffered substantial injury and was helpful to law enforcement, they can apply regardless of the immigration status of the direct victim.

Example: Sara, a 14-year-old U.S. citizen, has autism and is nonverbal. Sara's older sibling, Max, is 17 and is undocumented. Sadly, Sara was sexually assaulted by their father; their mother is deceased. Max told a teacher what was happening, and later spoke to child protective services and police, the siblings were removed from their

³⁴ *Matter of Y-F-S-M-*, ID #11147 (AAO Nov. 21, 2017) ("[USCIS] presumes incapacity or incompetency if the direct victim is under 16 years old," but the presumption may be overcome if "the evidence plainly indicates that despite the direct victim's age under 16 he or she was not incompetent or incapacitated."); *Matter of S-R-M-*, ID #15346 (AAO Jan. 15, 2016) (referring to 8 CFR §§ 214.14(b)(2) and (3), which provide that "[i]n the event that the [noncitizen] has not yet reached 16 years of age on the date on which" the qualifying crime took place, "a parent, guardian, or next friend may" satisfy the requirements of possessing information and assisting the LEA's detection, investigation, or prosecution of the crime).

³⁵ See 8 CFR § 214.14(a)(7).

father's home, and they now live with their grandmother. Max qualifies for U nonimmigrant status as an indirect victim, because he meets the definition of indirect victim: (1) the direct victim, Sara, is incompetent; (2) as a sibling under age 18 at the time of the crime, Max has a qualifying relationship with Sara; and (3) Max possessed information about the crime and was helpful to law enforcement. As a principal applicant, Max will also have to show that he personally suffered substantial injury as a result of Sara's victimization.

PRACTICE TIP: In some cases where the direct victim is incompetent or incapacitated, multiple family members can apply for principal U nonimmigrant status based on the same crime; the family is not limited to just one principal application based on a single qualifying crime. For example, if Sara in the above example were also undocumented, Sara could apply independently as a direct victim, with Max serving as "next friend" to satisfy the helpfulness requirement. Max could also apply as a principal, under the "indirect victim" theory. It is therefore helpful to assess each family member for both principal and derivative eligibility to determine how best to structure the application to benefit as many family members as possible.

III. Derivative Eligibility

Principal U nonimmigrants may also extend benefits to qualifying family members as derivative beneficiaries. Unlike principal applicants, family members who qualify as derivatives do not need to have suffered substantial harm or been helpful, all they must do is establish their qualifying relationship to the principal applicant and show that they are admissible or receive a waiver of inadmissibility. Who qualifies as a derivative beneficiary depends on the age of the principal applicant: at the I-918 stage, principal applicants who are 21 years or older at the time of filing may include their spouse and children under the age of 21.³⁶ Principal applicants who are under 21 years of age at the time of filing may include their spouse and children, if any, and may also include their parents and unmarried siblings under the age of 18.³⁷

Age-out protections.³⁸ The INA provides explicit "age-out" protection for child derivatives of U principal applicants.³⁹ Derivative children's age is set at the time the principal files the I-918 application, and they maintain their status as a "child" if they turn 21 while the principal application is pending. If the child turns 21 after the principal application is approved, however, their derivatives may lose that age-out protection.⁴⁰ Similarly, where a principal petitioner under age 21 seeks to extend derivative benefits to unmarried siblings under age 18, both ages are

³⁶ 8 CFR § 214.14(a)(10). Since 2020, USCIS has evaluated derivative spouse eligibility based on whether the marriage exists at the time the principal petition is favorably adjudicated, thereby allowing principal applicants to extend derivative benefits to "after-acquired" spouses, i.e., where the marriage takes place after the I-918 is filed but before it is adjudicated. 3 USCIS-PM C(2)(B) n.4.

³⁷ 8 CFR § 214.14(a)(10).

³⁸ For a more detailed overview of age-out protections for U nonimmigrant derivatives, see ILRC, *U Visa Derivatives Age-Out* (Jun. 2021), https://www.ilrc.org/sites/default/files/resources/6-21_u_visas_derivatives_age-out-ak-dg.ak-dg2.2.pdf.

³⁹ INA § 214(p)(7)(A).

⁴⁰ *Id.*

set at the time the I-918 is filed, so siblings remain eligible even if the principal turns 21, or the sibling turns 18, while the I-918 is pending.⁴¹

All principal applicants—regardless of which victim definition they fit within (direct, bystander, or indirect)—have the same ability to include derivative beneficiaries.

Example: Noemi, a U.S. citizen, is nine years old. She was sexually molested by her uncle. Her grandmother, Orelia, discovered the abuse taking place one afternoon when she stopped by the house unannounced. Orelia was so distraught that she suffered a heart attack. Noemi's mother, Esmeralda, reported the abuse to police and cooperated in their investigation. Orelia, who fortunately recovered from her heart attack, also answered officers' questions about what she witnessed. Esmeralda suffered emotional trauma as a result of her daughter's abuse and has been diagnosed with anxiety disorder.

In addition to Noemi, Esmeralda has two older children, Nicolas (age 14) and Nancy (age 16). Orelia is married to Oscar. Although Noemi was born in the United States and is therefore a U.S. citizen, everyone else in the family is undocumented.

Esmeralda can apply for U nonimmigrant status as an indirect victim because she meets the definition of indirect victim: (1) the direct victim, Noemi, is incapacitated because of her young age; (2) as Noemi's mother, Esmeralda has a qualifying relationship to the direct victim; and (3) Esmeralda was helpful to police in their investigation. As a principal applicant, Esmeralda will also need to show that she suffered substantial injury as a result of the crime. Esmeralda can also include Nicolas and Nancy as derivative children, because they are under 21 at the time of the principal application.

Orelia can also apply for U nonimmigrant status, as a bystander victim, because even though she does not have a qualifying relationship to Noemi, she suffered "unusually direct injury" as a result of the criminal activity, and she was also helpful to law enforcement. Orelia will be the principal applicant in her own I-918 petition, and she can include Oscar as her derivative spouse.

IV. Conclusion

The U visa can be a good option for immigrant survivors, including many who do not have another path to obtaining status and protection from deportation. This practice advisory was written to help advocates think creatively about the different victim definitions to enable more people to apply for U nonimmigrant status as principal applicants, especially where U.S. citizen children of undocumented parents are the direct victims. Structuring U visa applications creatively may help extend U visa benefits—and protection from removal—to multiple family members and in mixed status families.

⁴¹ 8 CFF § 214.14(f)(4)(ii).



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

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