Know Your Rights

Forms of Legal Humanitarian Relief

Ivy Hernandez Delgado
Alfred Schweitzer Fellow,
Chicago Appleseed Center for Fair Courts
CONTENTS

- U-Visa
- VAWA
- T-Visa
- TPS
- Asylum
- Refugee
U-VISA
WHAT IS A U-VISA?

U-Visas are visas for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

This form of visa was created by the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000.

(USCIS, Nonimmigrant U Visa, 2021)
ELIGIBILITY

Someone is eligible for a U Nonimmigrant Visa if:

- They are the victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- They have information about the criminal activity. If they are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on their behalf.
- A crime occurred in the United States or violated U.S. laws and the person was, is, or may be helpful to law enforcement in the investigation or prosecution of the crime.
- You are admissible to the United States (or got a waiver on a Form I-192).

(USCIS, Nonimmigrant U Visa, 2021)
Qualifying "Criminal Activities"

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes
QUALIFYING FAMILY MEMBERS
Certain qualifying family members are eligible for a derivative U-Visa based on their relationship to you, the principal, filing for the U-Visa.

The principal petitioner must have their petition for a U Visa approved before their family members can be eligible for their own derivative U Visa. To petition for a qualified family member, you must file for Qualifying Family Member at the same time as your application or at a later time.

Under 21 years of age:
- You may petition on behalf of your spouse, children, parents, and unmarried siblings under age 18.

Over 21 years of age:
- You may petition on behalf of your spouse and children.

(USCIS, Nonimmigrant U-Visa, 2021)
U-VISA CAPACITY

Congress caps the number of U-Visas available per fiscal year at 10,000, but USCIS receives many more than this number of U-Visa applications per year.

Due to the backlog, there is now approximately five-year waiting period for U visa beneficiaries to gain employment authorization and deferred action, or deportation deferral.

(USCIS, Nonimmigrant U Visa, 2021)
VAWA
WHAT IS VAWA?

"VAWA" stands for the Violence Against Women Act, legislation originally passed in 1994 and since then has been reinstated to protect survivors of domestic violence, dating violence, sexual assault, and stalking. A person does not have to be a woman to qualify.

A person who files a VAWA self-petition is generally known as a VAWA self-petitioner. They may self-petition under VAWA without an abusive family member’s knowledge or consent.

If the self-petition is granted, this person can be awarded legal permanent residency.

(USCIS, Battered Spouse, Children, and Parents, 2021)
ELIGIBILITY

Spouses, children, or parents victimized by battery or extreme mental cruelty committed by:

- A U.S. citizen spouse or former spouse;
- A U.S. citizen parent;
- A U.S. citizen son or daughter;
- A lawful permanent resident (LPR) spouse or former spouse; or
- A Legal Permanent Resident parent.

To be eligible to file for VAWA, someone must be “of good moral character.”

(USCIS, Battered Spouse, Children, and Parents, 2021)
SPouse Eligibility

You may file for yourself if you are, or were, the abused spouse of a U.S. citizen or permanent resident. You must be currently married or the marriage was terminated by death or a divorce (related to the abuse) within the 2 years prior to filing your petition.

You may file as an abused spouse if your child has been abused by your U.S. citizen or permanent resident spouse. You may include on your petition your unmarried children who are under 21 if they have not filed for themselves.

(USCIS, Battered Spouse, Children, and Parents, 2021)
Parents may file for VAWA if they are the parent of a U.S. citizen, and have been abused by that child.

Children may file for VAWA if they are under 21,* unmarried, and have been abused by a U.S. citizen or permanent resident parent; they can include their children on their petition.

*Someone may also file as a child after age 21 but before age 25 if they can demonstrate that the abuse was the main reason for the delay in filing.

(USCIS, Battered Spouse, Children, and Parents, 2021)
WHAT IS A T-VISA?

T-Visa is for those who are or have been victims of human trafficking and are willing to assist law enforcement in the investigation or prosecution of acts of trafficking.

Created by the Victims of Trafficking and Violence Protection Act of 2000.

T-visas are valid for four years, with eligibility to apply for permanent residence after three years. People with T-Visas also receive Employment Authorization.

USCIS, Victims of Human Trafficking: T Nonimmigrant Status, 2021
What is Human Trafficking?

For a situation to be considered ‘trafficking’ it depends on the type of work and the use of force, fraud, or coercion to obtain or maintain work.

Under Federal law, the term “severe forms of trafficking” can be broken into two categories:

**Sex Trafficking**
Recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age.

**Labor Trafficking**
Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.
To qualify for a T-Visa, a person must:

- Be or have been a victim of severe trafficking and be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of trafficking.
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking. If someone is under the age of 18 or is unable to cooperate due to physical/psychological trauma, they may qualify for the T-Nonimmigrant Visa.
- Demonstrate extreme hardship involving severe, unusual harm upon removal from the United States.
- Be admissible to the United States or obtain a waiver of admissibility.
TPS
"TPS" stands for Temporary Protected Status. The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances where the country is unable to handle the return of its nationals adequately.

The Secretary may designate a country for TPS due to the following temporary conditions:

- Ongoing armed conflict (such as civil war);
- An environmental disaster (such as earthquake or hurricane), or an epidemic; or
- Other extraordinary and temporary conditions.

(USCIS, *Temporary Protected Status*, 2021)
ELIGIBILITY

To qualify for a TPS, a person must:

• Be a national of a country designated for TPS, or a person without nationality who last habitually resided in the designated country;

• File during the open initial registration or re-registration period, or you meet the country-specific requirements for late initial filing; and

• Have been continuously residing in physically present in the United States since the effective date of the most recent designation date of your country.

(CUS CIS, Temporary Protected Status, 2021)

Countries with current TPS status:

- Burma (Myanmar)
- El Salvador
- Haiti
- Honduras
- Nepal
- Nicaragua
- Somalia
- South Sudan
- Sudan
- Syria
- Venezuela
- Yemen
To qualify for a TPS, a person must NOT:

- Have been convicted of any felony or two or more misdemeanors in the United States;
- Be found inadmissible as an immigrant, including on non-waivable criminal and security-related grounds;
- Be subject to any of the mandatory bars to asylum.
- Fail to meet the continuous physical presence and continuous residence in the United States requirements;
- Fail to meet initial or late initial TPS registration requirements, or, if granted TPS, fail to re-register with a waiver as required without good cause.

(USCIS, Temporary Protected Status, 2021)
ASYLUM
Types of Asylum

There are two paths to claim asylum in the United States:

**Affirmative Asylum**

A person who is not in removal proceedings and is present in the US, may proactively apply for asylum through the U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS).

If the USCIS asylum officer does not grant the asylum application, the applicant is referred to removal (deportation) proceedings, where they may renew the request for asylum through the defensive process and appear before an immigration judge.

**Defensive Asylum**

A person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR) in the Department of Justice. In other words, asylum is applied for “as a defense against removal from the U.S.”

(USCIS, Asylum, 2021)
WHAT IS ASYLUM?

Asylum is a form of protection which allows an individual to remain in the United States instead of being removed (deported) to a country where he or she fears persecution or harm.

Under U.S. law, people who flee their countries because they fear persecution can apply for asylum. If they are granted asylum, this gives them protection and the right to stay in the United States. Those who are granted asylum are called asylees.

(USCIS, Asylum, 2021)
ELIGIBILITY

To apply for asylum, someone must be physically present in or seeking entry into the U.S. at a port of entry and must have suffered (or had the threat of suffering) persecution in their home country in the past.

Persecution is harm or the threat of harm to a person and/or their family or people similar to them on the basis of race, nationality, religion, political opinion, or membership in a particular social group.

(USCIS, Asylum, 2021)
WHO IS A REFUGEE?

A refugee is a person who has fled his or her country of origin because of past persecution or a fear of future persecution based upon race, religion, nationality, political opinion, or membership in a particular social group.

If the person is not in the United States, he or she may apply for inclusion in the U.S. refugee program. If the person is already in the United States, he or she may apply for the U.S. asylum program. Each year, the United States resettles a limited number of refugees.

A refugee does not include a person who has left his or her home only to seek a more prosperous life, also known as an economic migrant. People fleeing civil wars and natural disasters may not be eligible for resettlement under U.S. law.

(USCIS, Refugee, 2021)
ELIGIBILITY

A person may be eligible for a USCIS interview for resettlement (refugee status) in the U.S. if:

• UNHCR, the U.S. Embassy, or a non-governmental organization refers them for resettlement.
• They are members of specified groups with special characteristics (determined by the United States) from certain countries.
• They have an anchor relative in the United States who is a refugee or asylee.
• They have not been found “inadmissible” to the United States for reasons such as criminal, health, or security status.

Generally, people must be outside their homelands to be eligible for the U.S. refugee program, but the United States Refugee Admissions Program (USRAP) processes refugees in their home countries in a few places.

(USCIS, Refugee, 2021)
QUESTIONS?

Contact Chicago Appleseed:  
ChicagoAppleseed.org

Where can you find more information?  
Some resources:
  • Enlace
    • Legal Clinic
    • Clinic Hours every Tuesday 3-5 pm
      • Ph: 773-893-0798
THANK YOU!

This is not legal advice. Chicago Appleseed Center for Fair Courts does policy and advocacy, but no direct legal representation.