



Visas for Victims: A Look at the U Visa Program

By Jessica Vaughan

USCIS has released new information about the controversial U visa program, which awards lawful status and a path to a green card and citizenship for alien crime victims and their families.¹ In recent years, the U visa program has grown significantly, now drawing more than 50,000 applications per year. Congress intended for U visas to be a tool to assist law enforcement agencies in gaining the cooperation of victims who might otherwise be afraid to report crimes. However, in practice there are legitimate concerns that the program is vulnerable to fraud, improperly promoted by advocates, and exploited as an avenue to obtain legal status. This new data will help policymakers determine appropriate reforms to ensure the program works as Congress intended, serves law enforcement, and does not shut out deserving applicants.

Background

The U visa was created in 2000 as part of the Victims of Trafficking and Violence Protection Act. The purpose behind the visa is to assist law enforcement agencies in prosecuting certain types of offenders by gaining the cooperation of victims who might not otherwise engage with police or prosecutors because they lack legal status. Specifically, the visa is intended to encourage victims of domestic violence, sexual assault, gangs, and human trafficking to help authorities go after their abusers, although it is not limited to those scenarios. To qualify, victims must have suffered substantial physical or mental abuse; have information of use to prosecutors; and actually be helpful to authorities in prosecuting the abuser. It is not supposed to be an automatic benefit for anyone who is the victim of a crime. Applicants must obtain certification from a law enforcement agency that they have fulfilled these requirements.²

Like most immigration categories, there are more applicants than available visas. Congress set a limit of 10,000 U visas to be issued each year, not counting family members. Once approved, victims may sponsor spouses and children (or parents, if the victim is under age 21). U visa beneficiaries may apply for green cards after three years, and eventually citizenship (and sponsor additional family members according to the rules of the regular family immigration programs).

The first step for the alien petitioner is to obtain the certification of victimization and cooperation from a law enforcement agency. This paperwork is submitted to USCIS along with the petition, which includes other information about the applicant. Once approved (which currently takes several years), the alien is granted deferred action and may apply for a work permit while on the waiting list for the U visa. In practice, U visa petitioners are rarely subject to immigration enforcement even before being granted deferred action; they essentially are protected from deportation by virtue of applying for the U visa.

The U Visa Is a Sizeable Source of Permanent Immigration

The number of people filing U visa petitions has quintupled in the last decade, from roughly 11,000 in 2009 to 59,000 in 2018. (See Table 1.) As such, the U visa program annually confers de facto residency on more people than does the visa lottery or the refugee program. Currently there are more than 200,000 U visa petitions that are pending action from USCIS. More than 170,000 applications have been approved since 2009. (See Table 2.) The approval rate over 10 years is 82 percent. Just over half (56 percent) of the approved petitions were for the principal applicant (the original crime victim), while 44 percent of the approvals were for family members.

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Figure 1. Petitions Filed, 2009-2018

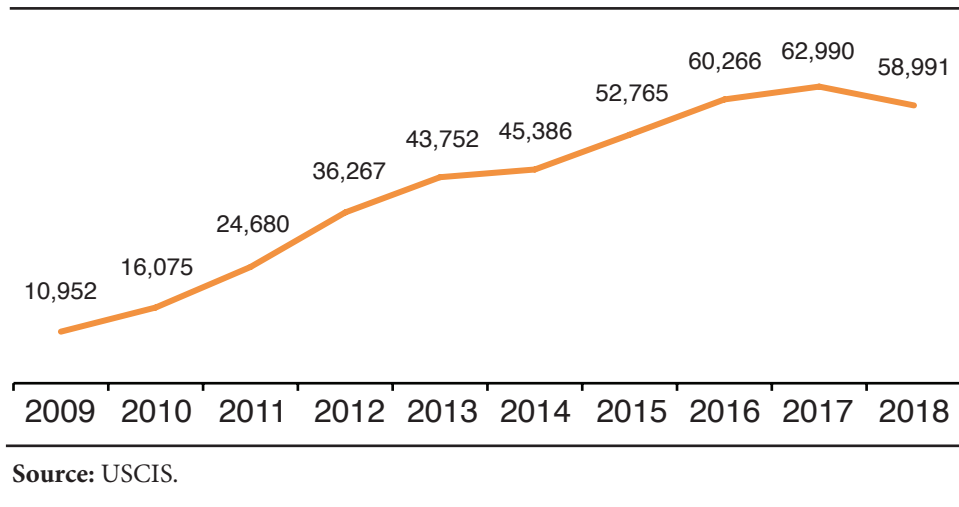


Table 1. U Visa Petitions and Outcomes, 2009-2018

Year	Petitions			
	Filed	Approved	Denied	Pending
2009	10,952	8,883	819	21,015
2010	16,075	19,330	6,571	13,722
2011	24,680	17,627	3,652	18,579
2012	36,267	17,452	3,149	35,416
2013	43,752	17,746	3,074	57,889
2014	45,386	18,534	6,317	78,762
2015	52,765	17,709	4,194	110,286
2016	60,266	17,643	3,018	150,906
2017	62,990	17,639	3,654	192,243
2018	58,991	17,915	4,308	228,764
Total	412,124	170,478	38,756	

Source: USCIS.

Table 2. U Visa Approvals: Victims and Family Members

Year	Victims	Family	Total
2009	6,045	2,838	8,883
2010	10,015	9,315	19,330
2011	10,025	7,602	17,627
2012	10,031	7,421	17,452
2013	10,022	7,724	17,746
2014	10,077	8,457	18,534
2015	10,060	7,649	17,709
2016	10,019	7,624	17,643
2017	10,011	7,628	17,639
2018	10,009	7,906	17,915
Total	96,314	74,164	170,478

Source: USCIS.

Report Reveals Demographics of Applicants and Immigration Violations

The new report from USCIS examines applications filed between 2012 and 2018. Among the key findings:

- Only 5 percent of U visa petitioners reported having lawful immigration status at the time of application. Seventy-nine percent reported never having lawful status and 14 percent said they were visa overstayers.
- 22 percent of the petitioners reported that they had once been in deportation proceedings prior to seeking the U visa. That number has nearly doubled in the last year. Another 13 percent said that they were in deportation proceedings at the time they petitioned for the U visa.
- A significant share of U visa applicants are disqualified for admission to the United States, but are able to apply for a waiver of inadmissibility as a U visa applicant. The most common reason for needing a waiver was illegal presence (79 percent), followed by lack of a valid passport or visa (19 percent).

- A number of approved U visa recipients had previously committed immigration fraud (10 percent) or re-entered illegally after removal (8 percent), which are both serious immigration violations. Six percent of those approved for the U visa had been ordered removed at some point before.
- The largest number of petitions were filed by citizens of Mexico (68 percent), followed by Guatemala (7 percent), El Salvador (6.3 percent), Honduras (5.3 percent), India (3 percent), and Ecuador (1.9 percent).
- Fifty-eight percent of all the petitioners were women. This share has gradually decreased since 2012, when 69 percent of the petitioners were female.
- About 43 percent of the petitioners also seek to sponsor a family member(s). On average, U visa petitioners sponsored 1.5 family members.
- Roughly half (49.2 percent) of the family members sponsored were spouses, 42.5 percent were children, and 7.1 percent were parents.
- Of the family members, about one-fifth had been or were currently in deportation proceedings. 90 percent were also in the United States at the time of application, and 86 percent lacked lawful status.

Observations

The demographic information presented in the USCIS study, together with the statistics showing the expanding number of U visa applications and anecdotal information from expert observers, indicate that there are valid reasons for concern that the U visa program may not be operating as Congress intended and may be vulnerable to fraud and abuse.

Not surprisingly, the study revealed that nearly all of the beneficiaries are illegal aliens who presumably have no other route to legal status. The very existence of the program offers an incentive for illegal aliens to try to qualify, and inevitably some will attempt to do so through fraud. Because the program rules allow applicants to avoid deportation and obtain a work permit for several years, even before final approval of the application, there is a powerful incentive just to file a petition, even if the applicant believes it eventually will be rejected. Notably, nearly all of the applicants have already violated our immigration laws by entering illegally or overstaying, sometimes multiple times, and 10 percent already have a record of immigration fraud.

Of particular concern is the finding that nearly one-fifth of the approved petitioners did not have a valid passport or visa. This raises questions as to the ability of USCIS to authenticate the identity of the petitioner (and their derivative family members).

Information from the state and local law enforcement agencies that serve as gatekeepers to the U visa program corroborates USCIS concerns about fraud and eligibility. Some local officers report encountering individuals who ask the agency for certification based on an alleged victimization that occurred several years earlier, or in another jurisdiction, or regarding an incident that did not involve a prosecutable offense. Others report encountering aliens who “shop” for certifications, meaning that they request certifications from numerous police departments until they find one that will agree to sign the paperwork. Officers tell of individuals who show up to ask for U visa certification accompanied by their alleged abuser, and who attempt to sponsor the alleged abuser for a derivative spouse U visa.³ Some Americans have reported being falsely accused of crimes by illegal aliens seeking to obtain U visa benefits. In 2016, the Department of Justice announced the indictment of 11 individuals in several states in a large U-visa fraud scheme.⁴

Other local officers report feeling pressured by advocacy groups or state officials to sign off on U visa applications. Many have the impression that all illegal alien crime victims are entitled to the U visa status, and that the visa is mainly to serve as a kind of compensation for the victim, rather than a tool for law enforcement purposes. At least two states, California and Illinois, have passed state laws that are designed to generate more U visa approvals, such as by establishing strict deadlines for completing certifications, imposing reporting requirements, and directing officers to use more lenient criteria for certification than federal law stipulates.

Victim and immigrant advocacy groups also have long pressed Congress to increase the annual limit on U visa issuances, citing the increasing number of applications and the backlog of cases.

The USCIS study provides interesting information on the U visa applicants and beneficiaries, but does not shed light on the prevalence of unqualified, frivolous, or fraudulent applications. Nor does it address whether the program is of value to law enforcement agencies in investigating and prosecuting crime, or whether it helps increase crime reporting by illegal aliens.

Recommendations

USCIS should analyze more information gathered from the petitions and certification forms and should release additional reports. USCIS also should collect information from local law enforcement agencies that have the most experience with U visa certifications. It would be especially helpful to the agency and to lawmakers to have data and analysis on fraud in the application process. In particular, this would include analysis of the types of crimes that form the basis of these applications, metrics that indicate the “helpfulness” of the program to law enforcement agencies, and qualitative data on the program from law enforcement agencies.

The demographic data reported by USCIS, together with the anecdotal information, suggest a number of possible reforms to the U visa program. Some can be accomplished through regulation, while others require action by Congress. These reforms include:

- Tighter eligibility rules for the circumstances of the victimization, including a deadline to apply or statute of limitations, and more specific requirements for the victim’s cooperation with law enforcement agencies;
- Mandatory in-person interviews of all applicants, both by USCIS and the certifying law enforcement agency, as well as a requirement for a more robust verification of claims made by the applicants;
- Victims who have committed serious immigration violations or other crimes, including fraud, illegal re-entry after deportation, and failure to appear for immigration proceedings, should be disqualified from U visas altogether or disqualified from adjusting to permanent status (and repatriated after the period of cooperation with law enforcement); these victims can be offered a grant of parole rather than a U visa;
- Updating USCIS record-keeping to enable more information to be collected and analyzed, ideally electronically; and
- Conducting recurring or post-approval vetting of U visa recipients to flag any subsequent criminal activity.

Finally, USCIS should analyze the applications received in states that have passed laws governing how local law enforcement agencies handle U visa certification requests to determine if these state laws produce different outcomes or trends than in other states. In addition, USCIS should target outreach efforts and training opportunities in these states to clarify the federal standards.

Any improvements that USCIS and Congress can make to reduce the number of frivolous, fraudulent, or unqualified applications will benefit the meritorious applicants and their family members by speeding up the application process and reducing the number of cases on the waiting list for visas. However, this requires better engagement with the law enforcement agencies, state officials, and advocacy groups that are involved in assisting applicants.

End Notes

¹ [“U Visa Demographics: Analysis of Data Through FY2019”](#), USCIS, March 2020.

² For more information on the purpose and operation of the U visa program, see [“U Visa Law Enforcement Resource Guide 2019”](#), USCIS, undated.

³ These accounts are from numerous interviews and conversations between the author and state and local law enforcement officers around the country over the last decade on the topic of U visas.

⁴ [“Nineteen Defendants Charged with Marriage and Visa Immigration Fraud”](#), U.S. Attorney’s Office, Southern District of Mississippi, May 19, 2016.