

INTERIM MEMO FOR COMMENT

Posted: 06-27-2014

Comment period ends: 08-08-2014

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

June 15, 2014

PM-602-0102

Policy Memorandum

SUBJECT: Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions

Purpose

This policy memorandum (PM) provides guidance on new legislation that amends the Immigration and Nationality Act (INA) affecting U nonimmigrant status programs and related adjustment of status applications. The Adjudicator's Field Manual (AFM) is updated by revising sections 39.1(a)(9) and 39.1(f)(4) of Chapter 39 (AFM Update AD13-06).

Scope

Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

Authorities

- Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013)
- INA § 101(a)(15)(U), 214(p)

Background

On March 7, 2013, President Obama signed VAWA 2013 into law. VAWA 2013 was added as an amendment during the process to reauthorize the Violence Against Women Act (VAWA) of 2013. USCIS has responsibility for administering some provisions of the law. Titles VIII and XII expand the immigration relief for certain individuals who are victims of human trafficking and other serious crimes. Except where noted below, the VAWA 2013 provisions took effect on March 7, 2013. This PM summarizes the legislative changes and directs USCIS officers to apply these provisions to requests for U nonimmigrant status and related applications for adjustment of status.

Policy

A. U Nonimmigrant Provisions of VAWA 2013

1. *New Crimes*

To be eligible for U nonimmigrant status, an alien must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying criminal activity.¹ The INA provides the statutory list of qualifying criminal activity for U nonimmigrant status.² This list, however, is not a list of specific statutory violations, but instead a list of general categories of crime.³ Additionally, this list includes any attempt, conspiracy, or solicitation to commit any of the statutorily listed crimes, including any criminal offense that is substantially similar to one of the listed crimes.⁴ USCIS reviews each U nonimmigrant petition on a case-by-case basis, including all evidence from the victim and law enforcement, to determine whether the criminal activity described in the petition meets the general definition of a qualifying criminal activity.

VAWA 2013 adds two new crimes to the original statutory list for U nonimmigrant eligibility. “Stalking” and “Fraud in Foreign Labor Contracting (as defined in section 1351 of title 18, United States Code)” are now qualifying criminal activities for U nonimmigrant purposes.⁵ As with all other qualifying criminal activities, both “Stalking” and “Fraud in Foreign Labor Contracting” will be evaluated as general crime categories, and substantially similar criminal activity to these new crimes may make a victim eligible for U nonimmigrant status. U nonimmigrant petitions based on “Stalking” and “Fraud in Foreign Labor Contracting” will be adjudicated on case-by-case basis to determine whether the essential elements of “Stalking” or “Fraud in Foreign Labor Contracting” have been met. To determine if a crime is substantially similar to “Fraud in Foreign Labor Contracting,” USCIS must use the definition for this crime at 18 U.S.C. 1351, as this was specifically mandated by VAWA 2013.⁶

The statutory list of qualifying crimes for U nonimmigrant status is now:

Abduction	False Imprisonment	Incest
Abusive Sexual Contact	Felonious Assault	Involuntary Servitude
Blackmail	Female Genital Mutilation	Kidnapping
Domestic Violence	Fraud in Foreign Labor Contracting	Manslaughter
Extortion	Being Held Hostage	Murder
Obstruction of Justice	Sexual Assault	Trafficking
Peonage	Sexual Exploitation	Witness Tampering
Perjury	Slave Trade	Unlawful Criminal Restraint
Prostitution	Stalking	Other Related Crimes ^{**†}

¹ INA § 101(a)(15)(U)(i)(I).

² INA § 101(a)(15)(U)(iii).

³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,018 (September 17, 2007).

⁴ 8 CFR 214.14(a)(9).

⁵ VAWA 2013.

⁶ *Id.* at §1222.

Rape	Torture	† Also includes attempt, conspiracy, or solicitation to commit any of the above, and other related crimes * Includes any similar activity where the nature and elements of the crime are substantially similar
------	---------	---

2. Age-Out Protection

The INA permits certain qualifying family members accompanying or following to join the alien victim to obtain U nonimmigrant status.⁷ USCIS refers to such family members as derivatives, and the alien victim as the principal. The determination of which family members are considered “qualifying” depends on their relationship to the principal and the age of the principal. If the principal is under 21 years of age at the time the principal properly filed the petition, qualifying family members include the principal’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents.⁸ If the principal is 21 years of age or older, only the spouse and children are eligible for derivative status as qualifying family members.⁹

Under current regulations, in order for a family member of a principal U nonimmigrant to be eligible for derivative status as a “qualifying family member,” the qualifying relationship must: (1) exist at the time the principal files the petition; (2) continue to exist at the time the family member’s petition is adjudicated; and, (3) continue to exist at the time of the derivative’s subsequent admission to the United States.¹⁰ Therefore, under the regulations, a qualifying family member who is a child must meet the definition of “child” under the INA (i.e., an unmarried person under 21 years of age)¹¹ at the time his or her derivative petition is properly filed and adjudicated, as well as on the date he or she is admitted to the United States.

Due to unforeseen delays, some qualifying children aged-out of derivative eligibility while their petitions for derivative U nonimmigrant status were pending. Additionally, the derivative U nonimmigrant status for other individuals expired when they turned 21 years of age, leaving them without the ability to acquire the requisite three years in U nonimmigrant status to be eligible to adjust status to a lawful permanent resident under 8 CFR 245.24.

To provide relief to these classes of derivative U nonimmigrants, USCIS posted an interim Policy Memorandum providing age-out protection to those previously granted derivative U nonimmigrant status but whose status expired upon turning 21 years of age.¹² Further, this PM

⁷ INA § 101(a)(15)(U)(ii).

⁸ INA § 101(a)(15)(U)(ii)(I).

⁹ INA § 101(a)(15)(U)(ii)(II).

¹⁰ 8 CFR 214.14(f)(4).

¹¹ INA § 101(b)(1).

¹² USCIS PM-602-0077, *Age-Out Protection for Derivative U Nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status* (October 24, 2012).

allowed for derivative petitions properly filed on or after the date of the publication of the memo to be allowed the full 4 years of derivative U nonimmigrant status upon approval of the derivative petition.¹³ However, those qualifying family members who turned 21 years of age while their petitions were pending were still ineligible for derivative U nonimmigrant status, as these petitions were not adjudicated prior to the family member turning 21 years of age. A statutory change would have been necessary to provide relief to these qualifying family members.

VAWA 2013 provides this relief by amending the INA¹⁴ and adding specific age-out protection to derivative petitioners where the qualifying family member turned 21 years of age while his or her petition was pending. Specifically, when a principal petitioner for U nonimmigrant status now properly files his or her principal petition, the age of the qualifying family member is established upon the date on which the principal properly filed for his or her principal U nonimmigrant status. Therefore, the age of the qualifying family member is determined by the date on which the principal properly filed his or her Form I-918, *Petition for U Nonimmigrant Status*. An unmarried qualifying family member “child” under 21 years of age who has a derivative petition properly filed for him or her by the principal will continue to be considered a “child” throughout the adjudication process, even if the qualifying family member turns 21 years of age while the principal or derivative petition is pending.¹⁵

VAWA 2013 provides further protection for derivative petitioners of a U principal petitioner who is under 21 years of age. If a U principal petitioner is under 21 years of age at the time he or she properly files for principal U nonimmigrant status, unmarried siblings under 18 years of age at that time and parents will still be considered qualifying family members for derivative U nonimmigrant status, even if, at the time of adjudication, the principal is over 21 years of age and even if the unmarried sibling is over 18 years of age.¹⁶

These provisions of VAWA 2013 are also retroactive and, therefore, considered part of the original Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).¹⁷ Accordingly, derivative petitions currently being held by USCIS due to the “child” or “unmarried sibling under the age of 18” qualifying family member aging out while the principal or derivative petition was pending are eligible as qualifying family members if the principal’s petition was properly filed before the “child” qualifying family member turned 21 years of age, or the “unmarried sibling” turned 18. If the derivative petition is approved, USCIS will provide written notice to the principal petitioner or the principal U nonimmigrant, and the qualifying family

¹³ *Id.*

¹⁴ INA § 214(p).

¹⁵ VAWA 2013 amends INA § 214(p) by adding a section (7)(A): “An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the alien attains 21 years of age after such parent’s petition was filed but while it was still pending.”

¹⁶ See INA § 101(a)(15)(U)(ii)(I) and INA § 214(p)(7)(B).

¹⁷ Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; 114 Stat. 1464).

member will receive the full four years of derivative U nonimmigrant status equal to the time in status granted to the principal petitioner.

B. Public Charge Exemption

1. U Nonimmigrant Status

In general, any alien applying for a visa to the United States or for adjustment of status who is likely to become a public charge is inadmissible.¹⁸ Additionally, any alien seeking U nonimmigrant status must be admissible to the United States.¹⁹ If such alien is inadmissible, the alien must file a waiver of inadmissibility with USCIS on Form I-192, *Application for Advance Permission to Enter as Nonimmigrant*.²⁰ If the waiver application is granted, USCIS continues with the full adjudication of the U nonimmigrant status petition. However, if the waiver application is denied, the underlying U nonimmigrant status petition is also denied. There is no appeal of a denial of a waiver application, but the alien may file a new inadmissibility waiver application, or a Motion to Reopen and/or Reconsider.²¹

VAWA 2013 provides that the “public charge” ground of inadmissibility at INA § 212(a)(4) does not apply to any alien who is petitioning for or has been granted U nonimmigrant status, or derivative U nonimmigrant status.²² Therefore, any alien seeking or granted principal or derivative U nonimmigrant status is not subject to the public charge ground of inadmissibility, and will not have to submit a waiver application for this ground of inadmissibility. USCIS plans to eliminate the question relating to public charge from the Form I-918. Until that time, petitioners should write in “not applicable” in response to the related question on the Form I-918.

2. U Adjustment of Status

While VAWA 2013 provides this exemption to the public charge ground of inadmissibility, the other admissibility requirements for U adjustment of status applications remain unchanged. For U nonimmigrants, under current regulations, the only non-waivable ground of inadmissibility that renders a U adjustment applicant ineligible for lawful permanent resident status is INA § 212(a)(3)(E) regarding Nazi persecution, acts of genocide, and extrajudicial killings.²³ While USCIS has the discretionary authority to deny any U nonimmigrant adjustment of status application when a negative exercise of discretion is warranted, the public charge ground of inadmissibility shall not apply to U nonimmigrant applications for adjustment of status.

¹⁸ INA § 212(a)(4).

¹⁹ See INA § 212(d)(3); INA § 212(d)(14); 8 CFR 214.14(c)(2)(iv).

²⁰ 8 CFR 214.14(c)(2)(iv).

²¹ 8 CFR 212.17(b)(3).

²² VAWA 2013, section 804.

²³ 8 CFR 245.24(b)(4).

C. Access to Federal Foster Care and Unaccompanied Refugee Minor Protections for Certain U Visa Recipients

While child T nonimmigrants have been eligible since 2000 for certain federal benefits²⁴ provided by the Department of Health and Human Services (HHS), such as certain refugee benefits and placement in federal foster care under the Unaccompanied Refugee Minors Program, U nonimmigrants have not had access to these same benefits.²⁵ VAWA 2013 provides for placement in federal foster care under the Unaccompanied Refugee Minors Program to principal and derivative U nonimmigrant children.²⁶ To access this benefit, eligible U nonimmigrant children must apply with HHS and be placed prior to turning 18 years of age.

Implementation

The AFM is updated as follows (AFM Update AD13-06):

☞ 1. Chapter 39.1(a)(9) is amended to read:

(9) Qualifying crime or criminal activity includes one or more of the following or any similar activities in violation of Federal, State, or local criminal law of the United States: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in foreign labor contracting (as defined in 18 U.S.C. 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term, “any similar activity,” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

☞ 2. Chapter 39.1(f)(4) is amended to read:

(f)(4) Relationship. A principal petitioner may seek U nonimmigrant status for a qualifying family member through the filing of a derivative petition with USCIS. The age-out protections discussed at sections (f)(4)(ii) and (iv) of this chapter do not apply to a change in a child or sibling’s marital status.

(i) Spouse. The relationship between the U-1 principal petitioner and his or her spouse must exist at the time the principal petition is properly filed, and the relationship must continue to exist at the time the derivative petition is properly filed, and at the time of the spouse’s subsequent admission to the United States.

²⁴ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (October 28, 2000) and the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 (December 19, 2003).

²⁵ U nonimmigrants may also be eligible for certain State benefits, but that will vary from State to State.

²⁶ VAWA 2013, section 1263.

(ii) Child. The relationship between the U-1 principal petitioner and his or her unmarried children under 21 years of age must exist at the time the U-1 principal petitioner properly files his or her principal petition. The age of the U-1 principal petitioner's unmarried children under 21 years of age shall be set on the date the U-1 principal's petition is properly filed. The child shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii) if the child attains 21 years of age and remains unmarried after the U-1 principal's petition was properly filed and while it was pending.

If the U-1 principal petitioner establishes that he or she has become the parent of a child after the principal petition was properly filed, the child shall be eligible to accompany or follow to join the U-1 principal petitioner.

(iii) Parent. If the U-1 principal petitioner was under 21 years of age at the time he or she properly filed for U-1 principal status, USCIS will continue to consider such parent(s) as a qualifying family member for purposes of U nonimmigrant status, even if the principal petitioner is no longer under 21 years of age at the time of adjudication of the derivative petition.

(iv) Sibling. The age of the U-1 principal petitioner's unmarried siblings shall be set on the date the U-1 principal's petition is properly filed. If the U-1 principal petitioner was under 21 years of age at the time he or she properly filed for U-1 principal status, USCIS will continue to consider an unmarried sibling(s) under 18 years of age as a qualifying family member for purposes of U nonimmigrant status, even if the principal petitioner is no longer under 21 years of age and the derivative is no longer under 18 years of age at the time of adjudication of the derivative petition.

(v) Interim Relief. For U-1 principal petitioners granted interim relief, the age of the principal petitioner and any of the principal petitioner's children and siblings as referred to in paragraphs (ii) – (iv) above shall be set on the date the principal petitioner's request for U interim relief was properly filed.

☞ 3. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD13-06 6/15/2014	Chapter 39.1(a)(9) Chapter 39.1(f)(4)	Adds guidance on the changes to the U nonimmigrant program created by the Violence Against Women Reauthorization Act of 2013.
----------------------	--	---

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or

benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Family Immigration and Victim Protection Division.

Interim