



PROS AND CONS OF APPLYING FOR A U VISA

Under the Second Trump Administration

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Under the current administration there has been much discussion about whether filing a U nonimmigrant status (“U visa”) petition is risky considering the long processing times, the lack of protection given to applicants while they wait for relief, and the increased enforcement climate.

First, it is important to note that even with the increase in enforcement risks, there are still many benefits to applying for the U visa. Even though eligibility turns on an unfortunate event—having been the victim of a crime—the U visa’s relatively generous waiver provisions can make it one of the few immigration options available to those barred from most other relief. For instance, issues like a prior removal order, the “permanent bar,” and most criminal convictions do not categorically disqualify a person from applying for a U visa. Additionally, the U visa may provide temporary lawful status, employment authorization, and protection from removal, as well as a pathway to a lawful permanent resident status and the ability to help family members obtain immigration status. It also confers other collateral benefits: U visa applicants are protected by special confidentiality provisions that prevent disclosure of their information, may be eligible to apply for state public benefits programs depending on where they live, and are no longer prevented from renewing Deferred Action for Childhood Arrivals (DACA) once they receive deferred action through the U visa process.

At the same time, under this administration there has been an increase in policies that may be used to make it more difficult for individuals to obtain relief and easier for them to be placed in removal proceedings. This is especially worrisome for U visa applicants since the backlog and waitlist has grown exponentially. People who applied about eight years ago are just getting approved U visas now.¹ As the waitlist increases, this could mean that people who file today can have a much longer wait time before they are able to benefit. This long wait time leaves applicants vulnerable to the ever changing and increasingly harsher administrative policy changes. U visa petitions filed under one set of enforcement priorities and adjudication policies may be decided when other harsher policies are in place, thereby increasing the risk for denial and the negative consequences a denial entails. This is happening now. The anti-immigration policies implemented by the Trump administration, like the NTA memorandum², discretionary

¹ Estimates note that applicants who applied around April 2017 are getting approvals as of late 2025.

² USCIS, *Policy Memorandum: Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, Feb. 28, 2025, https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

determinations³, the weaponization of USCIS⁴, and increase of detention of survivors of crimes, has given many pauses about moving forward.

This advisory will lay out some of the main “pros” and “cons” to applying for U nonimmigrant status as they exist now, to help practitioners explain to prospective applicants how to weigh benefits and risks and make an informed decision on how to proceed with their case.

I. Brief Background on the U Visa

U nonimmigrant status, commonly referred to as the U visa,⁵ is an immigration remedy available to noncitizens who have been victims of certain serious crimes in the United States. It provides temporary lawful status for four years and allows those granted U nonimmigrant status to stay in the United States, obtain employment authorization, apply for lawful permanent resident status (a “green card”) after three years in U nonimmigrant status, and help certain qualifying family members obtain immigration status as well.

To apply for a U visa, an applicant must demonstrate:

- They were the victim of qualifying criminal activity (see below) that violated the laws of the United States or occurred in the United States;
- They suffered substantial physical or mental abuse as a result;
- They possess information concerning the criminal activity and have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of the criminal activity;
- They have certification from a federal, state, or local law enforcement authority certifying their helpfulness in the detection, investigation, or prosecution of the criminal activity; and
- They are admissible to the United States or demonstrate eligibility for a public interest waiver of any applicable inadmissibility factors.

In order to qualify for a U visa, the individual must have been a victim of “qualifying criminal activity,” listed in the regulations at 8 CFR § 214.14(a)(9) as 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,

³ USCIS, *Policy Alert: Clarifying Discretionary Factors in Certain Immigration Benefit Requests*, Aug. 19, 2025, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250819-DiscretionaryFactors.pdf>.

⁴ DHS Codification of Certain U.S. Citizenship and Immigration Services Law Enforcement Authorities, 90 Fed. Reg. 42797 (Sep. 5, 2025) (codified at 8 CFR § 287) (Final Rule).

⁵ Although the terms “U nonimmigrant status” and “U visa” are frequently used interchangeably, very technically these are two different things. Someone who is granted their U petition from inside the United States gets “U nonimmigrant status,” allowing them to remain legally in the United States, whereas someone outside the United States is issued a “U visa” to be admitted into the United States.

unlawful criminal restraints, or attempt, conspiracy, or solicitation to commit any of the enumerated crimes, and other “similar”⁶ related crimes.

While a U petitioner must establish that they are admissible, they may seek a waiver for *any* applicable ground of inadmissibility except INA § 212(a)(3)(E), participation in Nazi persecution, genocide, torture, or extrajudicial killing. This means many grounds that have no waiver outside the U context potentially are waivable with the U visa, and that waivers which in other contexts require a qualifying family member are available to a U petitioner as long as they can show that it is in the public interest for the waiver to be granted. See Part II, Section A.2. for more details.

There is a statutory cap of 10,000 U visas that may be issued per year.⁷ The number of approved U petitions far exceeds this amount. Under current backlogged case processing times, applicants face a multi-year wait for U visa adjudication, and then additional time before a U visa can be issued to them due to the cap. While waiting for a U visa to become available, individuals are generally placed on a lengthy waitlist (unless they receive Bona Fide Determination (BFD), see below) after their petition has been preliminarily reviewed and found approvable. Once a person is added to the U visa waitlist, they receive deferred action (protection from removal) and are eligible to apply for work authorization, which can be renewed while they wait for final adjudication of their U petition.

II. “Pros” of Applying for a U Visa

With its generous waiver provisions, the U visa can be a rare chance to apply for immigration relief. U status provides temporary lawful status, work authorization, a pathway to permanent legal status that is not barred by almost all grounds of inadmissibility, and the ability to help family members obtain immigration status. See Section A, below.

Beyond those benefits directly associated with the U visa, other benefits of applying for U status include:

- Special confidentiality provisions;
- BFD process that enables certain “bona fide” applicants to get work authorization and deferred action sooner than they would through the waitlist process, while their U petition is still pending;
- Ability to continue renewing DACA once granted deferred action through the U process.

See Section B below.

⁶ “Similar” crimes are those where the elements of the crime are substantially similar. See 8 CFR § 214.14(a)(9) (definition of qualifying crime or qualifying criminal activity).

⁷ INA § 214(p)(2). The cap only applies to principal U applicants, not derivatives.

A. General U Visa Benefits

1. Ability to Help Qualifying Family Members Apply for Immigration Status Too

U visa petitioners can help close family members obtain immigration status through the U visa process. As with principal petitioners, for many family members the U visa process may be one of the few ways they will be able to get legal status in the United States due to otherwise disqualifying immigration or criminal history.

U petitioners can include their spouses and children (unmarried and under age 21) as derivatives on their U visa petition using Form I-918A. If the principal petitioner is under 21 years old at the time they properly file their petition on Form I-918, in addition to their spouse and children they can include their parents and unmarried siblings under 18 years of age.⁸ Family can also be included later; for family members who were not included as derivatives at the nonimmigrant petition stage, there is a separate petitioning process for qualifying family members, using Form I-929, that can occur at the same time the principal adjusts status to lawful permanent resident or after they adjust (as long as the family relationship was in existence at the time the principal's adjustment was granted).

U visa derivatives are not subject to the 10,000-visa limit set by the statute; their petitions are simply tied to the principal's.

2. Waiver Available for Most Inadmissibility Grounds

Petitioners for U nonimmigrant status are subject to the grounds of inadmissibility at INA § 212(a), except for the public charge ground.⁹ As part of the U visa petition process, a waiver is available for most applicable grounds of inadmissibility. Specifically, under INA § 212(d)(14) a U visa petitioner may apply for a waiver of any applicable inadmissibility ground except for participation in Nazi persecution, genocide, torture, or extrajudicial killing (INA § 212(a)(3)(E)).

Except for INA § 212(a)(3)(E), all other inadmissibility grounds are waivable, although they will still factor into the discretionary decision to grant or deny status and in recent years USCIS has become less likely to grant waivers for U petitioners with criminal grounds of inadmissibility. Additionally, the Trump administration has issued a memorandum on new factors they will consider in their discretionary determination that could impact U visa applicants, see below for a discussion on this. Thus, it is important to keep abreast of trends in adjudication and practice before submitting a U visa petition for someone who might have strong negative factors and criminal inadmissibility issues.¹⁰ Nonetheless, this generous waiver provision means that individuals foreclosed from most other affirmative immigration relief options may be able to obtain lawful status through the U visa.

⁸ Age is assessed at time of filing the principal's petition. INA § 101(a)(15)(U)(ii)(I).

⁹ U applicants are exempt from the public charge ground of inadmissibility. See INA § 212(a)(4)(E)(ii).

¹⁰ However, as is discussed in Part III, the long wait for a final decision in a U visa case makes it nearly impossible to fully predict how borderline cases, with strong negative factors, might be handled.

3. Work Authorization and Pathway to Lawful Permanent Resident Status

U visa holders are given employment authorization which allows them to work lawfully while they are in U nonimmigrant status. This work authorization is available to U petitioners once they either are issued BFD, or are placed on the U waitlist. In addition, once the U petitioner is granted U status, they will also receive authorization to work lawfully while they remain in U status.

U visa holders may apply for adjustment of status to lawful permanent resident after being in U status for three years. Unlike the U visa, there is no numerical cap on the number of U-based adjustments that may be granted annually. U visa holders adjust under section 245(m) of the INA, a special section in the statute that applies only to those who have received U status. Under this provision, the only ground of inadmissibility that applies to U nonimmigrants at time of adjustment is INA § 212(a)(3)(E), participants in Nazi persecution, genocide, torture, or extrajudicial killings. Other than this, section 245(m) U adjustment applicants are not required to establish that they are admissible. However, the adjustment grant is discretionary, and USCIS still may consider other inadmissibility grounds as part of the exercise of discretion.¹¹

B. Other Benefits of Applying for U Visa

1. Special Confidentiality Protections

U nonimmigrant petitioners are covered under special confidentiality protections contained in 8 U.S.C. § 1367. This provision prohibits employees with the Department of Homeland Security (DHS), including officials with USCIS and ICE, as well as Department of Justice and Department of State, from making adverse admissibility or deportability determinations based solely on information provided by the perpetrator of the criminal activity. It also prohibits officials from disclosing any information about a U petition to anyone, especially a potential abuser or perpetrator in the case.

2. Option to Get Work Authorization and Deferred Action Sooner Through the Bona Fide Determination (BFD) Process

The Bona Fide Determination (BFD) process gives certain U visa petitioners and their family members work authorization and deferred action while they wait for their U petition to be fully adjudicated.¹² Historically, U visa petitioners have had little to no protection while their petitions were pending, and the BFD is an attempt to give them protection (and work authorization) sooner. The BFD process is available to all pending U petitions and those that will be filed in the future. Both the principal petitioner and qualifying family members¹³ who are living in the

¹¹ See 8 CFR § 245.24(d)(11) (“Although U adjustment applicants are not required to establish that they are admissible, USCIS may take into account all factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision...”).

¹² U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM), Vol. 3, Part C, Ch. 5.

¹³ Family members are eligible for BFD if the principal U petitioner is issued BFD and they have properly filed a complete I-918A with evidence of the qualifying family relationship to the principal U petitioner.

United States¹⁴ can benefit from this process. There is no separate application process to request BFD review; USCIS will initiate BFD review on all pending U petitions that have not yet undergone waitlist adjudication where the petitioner is residing in the United States.

USCIS will not favorably exercise its discretion to issue BFD for individuals deemed to be a threat to national security or public safety or who present other adverse factors, based on the results of the background check conducted as part of the overall U petition process. Individuals whose background checks show convictions—or even just arrests—for offenses related to aggravated assault; sexual abuse; firearms; child pornography; or drug manufacturing, distributing, or sale, among other offenses, will likely be seen as raising “public safety” concerns and not be issued BFD. Petitioners who are issued BFD will get the benefit of deferred action and work authorization for four years while they continue to wait for their U visa adjudication. BFD and subsequently the employment authorization can also be renewed.

BFD issuance also satisfies the prima facie standard that ICE considers when granting a stay of removal for a pending U case.¹⁵ In addition, issuance of BFD could offer protection from being placed in removal proceedings. If someone has deferred action and they are arrested by immigration authorities, USCIS needs to terminate their deferred action first before they can be removed. Issuance of BFD deferred action should therefore protect those that have prior removals from reinstatement and detention while they are under BFD. It is important to note that ICE can move to seek termination from USCIS thereby leaving applicants vulnerable to enforcement.

For more information on the U BFD process, see ILRC’s practice advisory, *Overview of the New U Nonimmigrant (“U Visa”) Bona Fide Determination* (Dec. 3, 2021)¹⁶ and the USCIS Policy Manual on BFD at Volume 3, Part C, Chapter 5.

3. Ability to Maintain DACA While Also Being Granted Deferred Action through the U Process

Up until very recently, another consideration when deciding whether to apply for a U visa was USCIS’s position that it could not grant two forms of deferred action. This affected individuals with DACA who were also eligible for a U visa. In general, an individual can apply for multiple forms of immigration relief if they qualify for them. However, because USCIS took the position that individuals could not hold two types of deferred action and DACA results in a two-year grant of deferred action (as well as employment authorization), while the U waitlist and U BFD result in a four-year grant of deferred action, someone who already had DACA might not want to apply for a U visa since once they got deferred action through the U visa, they would not be able to renew their DACA. This was especially problematic for those who wanted to travel

¹⁴ Although a person can also apply for a U visa from outside the United States, USCIS says it does not have the authority to provide deferred action or work authorization for petitioners residing outside the United States thus these individuals are left out of the BFD process. If the principal U applicant is living outside the United States, unfortunately qualifying family members cannot get BFD even if they are living in the United States. See 3 USCIS-PM C.5(C)(7).

¹⁵ 3 USCIS-PM C.5(C)(4).

¹⁶ See <https://www.ilrc.org/overview-new-u-nonimmigrant-%E2%80%9Cu-visa%E2%80%9D-bona-fide-determination>.

abroad since only DACA, and not the U visa, allows for an application for advance parole travel permission.

USCIS seems to have changed its position on this and, to date, USCIS is no longer denying DACA renewals on the basis that the individual already has deferred action through the U waitlist or U BFD. This means individuals with DACA can now also apply for a U visa without worrying that they will be unable to renew their DACA later.

Additionally, applicants who have DACA have an extra layer of protection against enforcement policies while they wait the final adjudication of their U visa. While in DACA status, applicants should not be removed even if they have not received any benefit from their pending U visa petition. Moreover, if their U visa petition is denied but they are still in DACA status, this can potentially protect them from being issued a Notice to Appear (NTA).

4. Potential Protection from Deportation after BDF Grant

While applicants will not get full protection from removal until they are granted U nonimmigrant status, having a U visa on file and being granted BFD could offer applicants some protection if removal proceedings were initiated against them.

First individuals who are granted BFD should be protected from removal while their BFD is valid. This is because once an applicant is granted BFD, USCIS also exercises its discretion to grant them deferred action for the period of the BFD employment authorization.¹⁷ USCIS noted that the purpose of granting applicants a BFD work permit and deferred action is to create stability in the survivor's life.¹⁸ Note, however, that the policy manual also notes that USCIS reserves the right to revoke the BFD work permit and terminate the grant of deferred action if it determines the BFD work permit or the favorable exercise of discretion is no longer warranted or that the prior BFD work permit and deferred action were granted in error.¹⁹

Second, if removal proceedings do commence against an individual who has been granted BFD, they can seek discretionary termination of those proceedings or alternatively administrative closure of the same in immigration court. Immigration judges have authority to terminate cases before them.²⁰ The regulations allow for mandatory termination and discretionary termination. When a noncitizen is seeking termination based on deferred action, termination is discretionary.²¹ Advocates should argue for discretionary termination noting that the immigration judge may terminate proceedings upon the motion of a party where the individual is a beneficiary of "temporary protected status, deferred action or deferred enforcement departure."²² While unlikely under this administration, advocates can ask U.S. Immigration and Customs Enforcement (ICE) counsel to agree, as a matter of discretion, to join a joint motion to terminate proceedings without prejudice.²³

¹⁷ 3 USCIS-PM C.5.

¹⁸ 3 USCIS-PM C.5(C)(1).

¹⁹ *Id.*

²⁰ 8 CFR § 1003.18(d)(1)(ii)(C).

²¹ 8 CFR §§ 1003.1(m)(1)(ii)(C), 1003.18(d)(1)(ii)(C).

²² *Id.*

²³ 8 CFR § 214.14(c)(1)(i).

If the judge is not inclined to terminate proceedings or denies a motion to terminate proceedings, practitioners can also argue for administrative closure of proceedings. Factors relevant to a decision to administratively close a case include: (a) the reason administrative closure is sought; (b) basis for any opposition; (c) any requirement that a case be administratively closed for DHS to grant a petition or application; (d) the likelihood of success on the relief being pursued outside of removal proceedings; (e) the anticipated duration of administrative closure; (f) the responsibility of either party, if any, in contributing to any current or anticipated delay; (g) the ultimate anticipated outcome of the case pending before the court; and (h) the ICE detention status of the noncitizen.²⁴ A motion to administratively close proceedings demands significantly more effort than a motion to terminate, given the need to address the above factors. While a motion to terminate is often more concise, requiring fewer procedural arguments and evidentiary materials, a motion to administratively close proceedings, on the other hand, often involves more arguments and evidentiary material sufficient to convince the immigration judge that administrative closure is warranted even against ICE counsel's objections.

Note: USCIS no longer considers a U grant an “Admission” for 245(a) Adjustment of Status Purposes. Previously those granted U nonimmigrant status were able to meet the threshold requirement under INA § 245(a) of having been “inspected and admitted or paroled” once they were granted U status. This was based on an unpublished Board of Immigration Appeals decision.²⁵ This meant that individuals with another basis to adjust such as a family petition could apply for adjustment sooner than through the U-specific adjustment provision at INA § 245(m), which requires an applicant to have had U nonimmigrant status for a minimum of three years first, among other requirements.²⁶ However, on November 3 2025, USCIS issued new guidance in the USCIS Policy Manual saying that a grant of U nonimmigrant status is *not* an admission for purposes of adjustment of status under INA § 245(a).²⁷ This policy change means that someone who last entered the United States without inspection and was later granted U nonimmigrant status is no longer considered to meet the threshold “inspected and admitted or paroled” requirement to adjust under section 245(a). U Visa applicants who entered without inspection and are granted a U visa will only be eligible to adjust under INA § 245(m)²⁸ once they have three years in U status. Moreover, because a grant of U nonimmigrant status is no longer an “admission,” a U visa holder is not subject to the grounds

²⁴ 8 CFR § 1003.18(c)(3)(i)(A)-(H).

²⁵ *Alejandro Garnica Silva*, A098 269 615 (BIA June 29, 2017).

²⁶ It is also important to note, however, that U applicants applying to adjust under § 245(a) rather than § 245(m) are subject to all the grounds of inadmissibility, rather than just § 212(a)(3)(E), and thus adjusting under the general adjustment of status provision may not be a great option for those with other inadmissibility issues, especially ones for which no waiver is available.

²⁷ In issuing this new guidance, USCIS did not address the BIA's statutory reasons for the prior interpretation or any of the statutory or regulatory instances where a grant of U nonimmigrant status is arguably referred to as an “admission.” See, e.g., INA § 245(m); 8 CFR § 214.1; 8 CFR § 245.24(b)(2)(i); 8 CFR § 245.24(d)(7).

²⁸ See USCIS Policy Memorandum, *Admission for Adjustment of Status under 245(a)*, November 3, 2025, available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251103-AOSAdmission.pdf>.

of deportability and cannot be placed in deportation proceedings under INA § 237 unless they have been otherwise admitted (by having last entered with a visa, etc.).

III. “Cons” of Applying for a U Visa: Considerations When Submitting a U Visa Petition

As discussed above, the U visa gives some individuals the possibility to seek immigration relief despite complicated immigration histories and contact with the criminal legal system. Further, collateral benefits like work authorization and deferred action through the BFD process add to the advantages of submitting a U visa petition, apart from the benefits obtained if the U visa petition is ultimately granted.

On the other hand, with increased enforcement and anti-immigrant policies being implemented by the Trump administration, the risk of submitting a U visa could be greater than before due to lack of protection against removal at the time of filing, processing delays, and an increase in instances where an applicant can be referred to immigration court proceedings and risk being deported. All this can leave applicants vulnerable to harsher consequences if their U visa petition is denied (and potentially a greater likelihood of denial if adjudication trends continue to become less favorable).

A. Long Processing Times

Currently there are over 400,000 U visa petitions waiting to be adjudicated and every year many more applications are approved than the 10,000 cap. A U visa petition submitted today will most likely not be granted full U status for many years. Further, time spent on the U waitlist or with U BFD does not count towards the three years required to then apply for legal permanent resident status based on having U status.

According to USCIS, the cap for this fiscal year was met on September 9, 2025 and they adjudicated cases that were filed on or before April 30, 2017. This means that applicants who filed a U visa could see a wait of at least eight years to get a final decision on their case. Though some estimate the wait for final adjudication of the U visa can be as long as fifteen years due to the current backlog and cap. This time frame estimate includes the time from filing the initial request to getting the final decision once a U visa becomes available. Additionally, USCIS case processing date notes that the average wait time for BFD is around 27 months, though it could be longer. This means that applicants may be without any protection for over two years after filing their U visa petition. When counseling a client, advocates must let them know that if they are not currently protected from removal, such as those who currently have DACA, they will remain unprotected until they are granted BFD.

Note: BFD process does not cover all applicants. It is important to highlight that not all U petitioners will benefit from the BFD process. USCIS uses its discretion when granting BFD and it may choose not to exercise its discretion to grant deferred action and a BFD work permit to applicants who pose a risk to national security or public safety or who present other negative discretionary factors such as criminal history.²⁹ Those who are not granted BFD will need to wait for the regular U visa waitlist process to receive work authorization and protection from deportation.

B. Subject to Changing Enforcement Priorities and Other Policies

The long wait for any kind of protection (and work authorization) through the U visa process means that applicants are also vulnerable to changing enforcement priorities and adjudication trends while they wait. For instance, individuals who submitted their U visa petitions during the Obama administration, which generally would not refer denied U petitions to the immigration court, might have their U petition decided during this Trump administration, which has created more policies to refer those denied to immigration court. During the last Trump administration, anyone whose application for immigration relief were denied and who lacked lawful status at time of denial could be referred to removal proceedings. This policy has been reinstated under Trump 2.0. In addition to this, there has been an increase in policies that can negatively impact those waiting for a final decision of their U visa case. However, because of processing times and the backlog, those who are applying today may not have their cases reviewed until after the Trump administration leaves office and friendlier policies go into place. Below are brief discussions of current policies that may negatively impact U visa applicants whose applications are adjudicated under this administration. Note that practitioners must continue to monitor new policies and trends as they emerge.

1. Notice to Appear Memorandum

In February 2025, the Trump administration issued a new Notice to Appear (NTA) memorandum directing USCIS officers to issue an NTA to any applicant who is removable and whose case is denied or withdrawn.³⁰ Given the backlog, it is unlikely that any U visa case filed now will be adjudicated under this administration. Nevertheless, it is important to warn clients that if they have a weak case, or a waiver that may not be approved, and are otherwise removable (either for criminal convictions or simply being in the United States without status), they could be placed in removal proceedings if their case is denied. Similarly, for applicants whose cases were already submitted, particularly those submitted in 2017 who may be adjudicated in the coming years and possibly under this administration, it is important to reassess the strength of the case and screen for potential relief in removal proceedings as a precaution.

²⁹ 3 USCIS-PM B.6(C).

³⁰ USCIS, *Policy Memorandum: Issuance of Notices to Appear in Cases Involving Inadmissible and Deportable Aliens* (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

2. Discretionary Policy Memorandum

On August 19, 2025, USCIS added two new factors for USCIS to consider when conducting a discretionary analysis.³¹ These new factors are 1) whether the applicant has “endorsed, promoted, supported, or otherwise espouses the views of a terrorist organization or group including those who support or promote anti-American ideologies or activities, antisemitic terrorism, antisemitic terrorist organizations, and antisemitic ideologies,” and 2) in the case of a noncitizen “who was admitted or paroled into the United States, whether the application for admission or parole violated the laws, regulations, and policies in place at that time.”³² Anti-American ideologies and activities are defined at INA § 313(a). To date, it is not clear what constitutes antisemitic ideologies. Practitioners and applicants must be mindful of these new factors as they are to be given “significant negative discretionary weight”³³ if present in a given case.

Practitioners must remember that there are discretionary considerations in different stages of the U visa process—BFD, waiver, deferred action, approval, and adjustment. Practitioners must keep informed on how this policy is being implemented and assess whether there are any trends that may result in a negative discretionary determination and potential eventual denial of a U visa.

3. Rescission of Victim-Centered Policy Memorandum

At the end of January 2025, it was reported that ICE had rescinded both the “Using a Victim Centered Approach with Noncitizen Crime Victims” memorandum issued by the Biden Administration in December of 2021 and the “Prosecutorial Discretion: Certain Victims, and Plaintiffs” memorandum from June 2011. The interim new guidance issued to all ICE employees, which was leaked on or about January 31, 2025, no longer requires ICE to affirmatively try to identify individuals in their custody as survivors of crimes to allow them to seek a U visa and when making the decision to take enforcement action against them. In addition, it states that ICE no longer must work with USCIS to seek expedited adjudication of victim-based immigration applications. This increases the risk of more victims being detained by ICE and makes it harder for them to seek termination of removal proceedings started against them. However, practitioners must remember that immigration judges still have authority to terminate and administratively close proceedings as discussed above.

For more information on this policy see practice note released by the American Immigration Lawyer’s Association (AILA), ASISTA and Alliance for Immigrant Survivors (AIS) titled “Practice Alert: New ICE Guidance on Current or Potential Victim-Based Benefits.”³⁴

³¹ USCIS, *Policy Alert: Clarifying Discretionary Factors in Certain Immigration Benefit Requests* (Aug. 19, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250819-DiscretionaryFactors.pdf>.

³² 1 USCIS-PM E.8(C)(2).

³³ USCIS, *Policy Alert: Clarifying Discretionary Factors in Certain Immigration Benefit Requests* (Aug. 19, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250819-DiscretionaryFactors.pdf>.

³⁴ Available at: <https://asistahelp.org/wp-content/uploads/2025/02/ICEGuidancePracticeAlert.pdf>.

4. USCIS Delegation of Power

DHS has delegated certain law enforcement authorities to USCIS. The Enforcement Rule, which went into effect on October 6, 2025, allows particular USCIS personnel to issue and execute warrants, arrests individuals, and carry firearms, amongst other authorities.³⁵

This could mean that applications pending before USCIS will be reviewed at different stages with the purpose of vetting them and denying them at earlier stages than before. Denials could then result in U visa applicants being issued an NTA and being placed in removal proceedings.

Note: Potential abandonment and denial of U visa petitions for detained applicants who cannot attend their biometrics appointment. On December 5, 2025, USCIS issued a policy alert regarding biometrics collection in which it noted that USCIS will no longer allow USCIS contractors or staff to travel to jails, prisons, or non-DHS detention facilities to collection biometrics.³⁶ Moreover, it stated that there is no agreement between USCIS and ICE for biometrics collections. If a detained applicant does not attend their biometrics appointment at an application support center—which they cannot do if they are detained—their U visa petition will be denied based on abandonment.

IV. Advising Clients

Ultimately, the decision to file a U visa petition rest solely on the applicant. As practitioners, the best you can do is provide as much information so that the client can make an informed decision after considering all benefits and risks given the unique circumstances of their case and prior immigration and/or criminal history. You must:

1. **Assess eligibility:** Screen your clients for U eligibility. Particularly under this administration assess for any and all other affirmative and defensive relief. Be sure to also provide them with Know Your Rights information. Do not assume that clients know or have been advised of their rights.
2. **Discuss benefits:** Explain to them the benefits that U visa offers and compare those benefits to other forms of relief they may be eligible for.
3. **Discuss risks:** Discuss current risks based on the latest policy developments and enforcement trends.
4. **Do an individualized benefits/risk analysis:** It is important that you not only discuss benefits and risks but that you also do an individualized risk assessment – how to these benefits/risks affect this particular client? What are potential red flags? How strong is their case? Do they have other relief? What are the strengths or weaknesses of alternative relief? What happens if they end up in removal proceedings?

³⁵ 90 Fed. Reg. 42797 (Sep. 5, 2025) (amending 8 CFR 287).

³⁶ USCIS, *Policy Alert: Biometrics Collection for Aliens in Custody* (Dec. 5, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251205-BiometricsCollection.pdf>.

5. **Let the client decide:** Ultimately, it is your client’s decision to file. The times we are in are confusing for us; they are also very confusing and concerning for your clients. They may ask a lot of questions; they may go back and forth discussing benefits and/or risks. Try to answer their questions but remain neutral. Let them decide what the best course of action is for their case.

V. Conclusion

A U visa provides many benefits, including a pathway to legal permanent resident status, the ability to help family members obtain immigration relief, and the possibility to overcome inadmissibility issues that would disqualify a person from most other immigration relief. There are also benefits to applying for a U visa, even before approval, including potential work permission and deferred action through the BFD process, all benefits that apply to people with pending U petitions. Nonetheless, it is important to thoroughly screen clients and assess the strength of the U case before applying, given how long the process takes and the inability to predict what policies will be in effect when their various processes are adjudicated.



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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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