

U-Visa: “Helpfulness”¹

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The victim can be said to satisfy the “helpfulness” requirement of the U-Visa . . .

. . . when the victim has been helpful, is willing to be helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a qualifying criminal activity.

*Qualifying Criminal Activity is defined under immigration law as:³

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting (8 U.S.C. 1351)
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Stalking
- Slave Trade
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint

Who Does the Victim need to Help or Assist?

- Federal, state, or local law enforcement agency⁴
- Prosecutor or other Authority⁵

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³ Department of Homeland Security, U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view (Hereinafter DHS Resource Guide)

⁴ Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. (Hereinafter U Visa Rule) http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view

⁵ U Visa Rule

- Federal or State Judge⁶
- Child Protective Services⁷
- Equal Employment Opportunity Commission⁸
- Department of Labor⁹

What constitutes having been helpful or being willing to be helpful?

- Not to unreasonably refusing to provide help, information, or assistance examples¹⁰
 - Viewed examining the totality of the circumstances including the nature of the victimization, victim's fear or the abuser, trauma suffered, force, fraud or coercion¹¹
 - When the victim's ongoing cooperation in the criminal investigation may jeopardize the *victim's safety* or the *safety of her family* members in the U.S. or abroad the victim's failure to cooperate is **not** unreasonable.¹²
- Being helpful is NOT related to whether the perpetrator of the criminal activity has a warrant issued, is prosecuted, is arrested, is convicted, the case is ongoing or is closed, etc.
- Being "helpful" is INDEPENDENT from the results that helping may lead to for example:¹³
 - If the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances, victim was still helpful;¹⁴
 - If the victim has reported a crime, and the perpetrator has run away, the

⁶ U Visa Rule

⁷ USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007.

http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view (Hereinafter USCIS Fact Sheet)

⁸ USCIS Fact Sheet

⁹ USCIS Fact Sheet

¹⁰ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim_regs-Fed-Reg.pdf/view; U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view; NIWAP: U-Visas - Victims of Criminal Activity. http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view.

¹¹ Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%202012.08.08.pdf/view

¹² National Immigrant Women's Advocacy Project, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (November 2012) (Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice) (U Visa Toolkit) http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/U-visa_toolkit_August_2011.pdf/view

¹³ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; NIWAP: U-Visas - Victims of Criminal Activity.

http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view; U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view

¹⁴ DHS Resource Guide at p. 11

- victim can still be deemed helpful;¹⁵
- If victim continuously cooperated with law enforcement and case is dismissed due to mishandling of evidence, or conducting an unlawful search, the victim is still deemed helpful.¹⁶

¹⁵ U Visa Toolkit at p. 5

¹⁶ DHS Resource Guide at p. 11-12

Documents that can be used to prove helpfulness¹⁷:

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity¹⁷
- Trial Transcripts¹⁸
- Court Findings and Rulings and other Documents¹⁹
- Police Reports²⁰
- News Articles²¹
- Copies of Reimbursement form for travel to and from court.²²
- Affidavits of other witnesses or officials²³

In Cases Where the Victim is a Child or Incapacitated:

If victim is a child or incapacitated or incompetent, the “helpfulness” requirement can be satisfied by the following, given that the indirect victim applicant submits the necessary evidence on behalf of the petitioner:²⁴

- The parent can be the “indirect” victim if
 - The principal victim is a child under 21 years of age, or
 - A child is murdered
- Guardian
- Next friend

CHECKLIST

Helpfulness can be met in a variety of ways that include but are *not* limited to:

- Reporting a Crime
- Reporting a crime to 911 – depends on the way it was reported
- Making or attempting to make a police report
- Participating in pre-arrest identification on scene
- Providing information to police at the crime scene
- Attempting to provide information to the police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter
- Victim sought a criminal protection order
- Victim sought a civil protection order
- Calling police to enforce a civil or criminal protection order
- Participating in pre-arrest identification of photo array

¹⁷ U Visa Rule at p. 53024

¹⁸ U Visa Rule at p. 53024

¹⁹ U Visa Rule at p. 53024

²⁰ U Visa Rule at p. 53024

²¹ U Visa Rule at p. 53024

²² U Visa Rule at p. 53024

²³ U Visa Rule at p. 53024

²⁴ U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u visa certification guide.pdf/view; Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view

- Attending a line-up to identify perpetrator
- Providing a statement to police, even if there is no arrest
- Providing pictures of injuries
- Providing restitution information
- Attending prep sessions with the prosecutor
- Testifying at the preliminary hearing
- Testifying at pre-trial motions
- Testifying at trial
- Testifying at post-trial motions
- Testifying at sentencing
- Providing a victim impact statement
- Testifying at parole hearings
- Testifying at parole/probation violation hearings
- Working with social services, if required
- Victim is willing to answer follow-up questions at a later time
- Victim sought medical assistance and is willing to sign a medical release form
- Identifying and providing background information about the perpetrator
- Providing a history of violence, if repeat offender
- Disclosing prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Reporting *previous* criminal activity

Helpfulness is satisfied **EVEN IF:**

- Victim reported a crime, and there was no further investigation
- Victim reported a past crime that at the moment did not feel safe to report
- The perpetrator absconds or is subject to immigration removal
- The perpetrator is prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history
- Victim is subject to immigration enforcement
- Victim at first keeps some information, but fully discloses events after better understanding rights and having meaningful language access