



OFFICE OF LEGAL AFFAIRS

Advisory Opinion

Advisory Opinion # AO-2013-03

Subject: Derivative U Visas for Family Members of U Visa Applicants Represented
by LSC Recipients

Date: June 13, 2013

QUESTION

Whether a recipient is permitted to include, in an application for a primary U visa for an eligible client, requests for derivative U visas for family members of the client who are not themselves victims of domestic violence or other abuse or criminal conduct and/or who are not themselves in the United States.

BRIEF ANSWER

Yes. Aliens who qualify for a derivative U visa under the Immigration and Nationality Act (“INA”) are eligible for assistance from LSC recipients, because the alienage restriction in LSC’s appropriations act, as amended by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA”),¹ permits recipients to provide legal assistance to any person qualified for a U visa under the INA without limitation. Further, under immigration procedures established by the U.S. Citizenship and Immigration Services (“USCIS”), a primary applicant for a U visa may include in his or her application a request for a derivative U visa for the applicant’s children and certain other family members, *regardless* of whether the children or family members have been subjected to abuse or crimes or whether they are in the United States. The derivative U visa process is thus part of the primary U visa process, and there is no basis for segregating derivative U visa applicants from assistance that may be provided to primary U visa applicants.

BACKGROUND DISCUSSION

Puerto Rico Legal Services (“PRLS”) receives funds from the Department of Justice Office of Violence Against Women (“OVW”) to strengthen services to victims of domestic violence and sexual assault. PRLS’s OVW-funded program, the Comprehensive Justice for Women Project (“the Project”), serves victims of domestic violence.

¹ The LSC alienage prohibition appears in Section 504(a)(11) of the LSC appropriations act. See Pub. L. 104-134, Title V, 110 Stat. 1321, 1321-54, § 504(a)(11) (1996), as incorporated and modified, Pub. L. 105-119, § 502, 111 Stat. 2440, 2510 (1997). The amendment permitting assistance to persons qualified for U visas appears at Section 502(a)(2)(C) of the appropriations act. See Pub. L. 109-162, 119 Stat. 2960, 2979, § 502(a)(2)(C) (2006).

The Project serves, among others, persons authorized to receive legal assistance from an LSC recipient under the Violence Against Women and Department of Justice Reauthorization Act of 2005. VAWA permits LSC recipients to provide assistance to any alien who “qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(U)).” Pub. L. 105-119, § 502(a)(2)(C)(i) (FY 1998 LSC appropriation as amended by Pub. L. 109-162, § 104 (VAWA)). The immigration relief available under section 101(a)(15)(U) of the INA is often referred to as a “U visa.”

The U visa provision of the INA establishes two categories of persons eligible for admission: 1) aliens subject to abuse, violence and similar crimes enumerated in the U visa provision or who can assist law enforcement officials in the investigation or prosecution of such crimes (referred to as “primary applicants”), and 2) children and other family members of primary U visa applicants (referred to as “derivative applicants”). 8 U.S.C. § 1101(a)(15)(U)(i), (ii). Primary U visa applicants who are under 21 years old may apply for derivative U visas for their parents, spouses, children, and unmarried siblings under 18 years old. 8 U.S.C. § 1101(a)(15)(U)(ii)(I). Primary U visa applicants who are 21 years old or older may apply for derivative U visas for their spouses and children. 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

Under immigration procedures, the derivative U visa process is part of the primary U visa application process, with the primary U visa applicant “[f]iling on behalf of family members.” Department of Homeland Security, U.S. Citizenship and Immigration Services, Form I-918, Petition for U Nonimmigrant Status, page 8, Part 5. In the U visa form, under the section for designating family members for derivative U visas, the primary U visa applicant states “I am now petitioning for one or more qualifying family members,” and is asked to complete supplemental forms “for each family member for whom you [the primary applicant] are applying.” *Id.* The instructions to the application also state that the principal U visa applicant is “filing for a qualifying family member,” and ask the primary applicant to submit a supplemental form “for each qualifying family member you want included in your petition.” U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Instructions for Form I-918, Petition for U Nonimmigrant Status, Pages 2, 3, 7. The supplemental form filed for a derivative U visa applicant “is to be completed by the principal” U visa applicant. Department of Homeland Security, U.S. Citizenship and Immigration Services, Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, page 1.

The supplemental form for derivative U visas also contemplates that primary U visa applicants may apply for derivative U visas for persons *not* in the United States. Part 3 of the form asks for the derivative applicant’s “[r]esidence or intended residence in the U.S.” Department of Homeland Security, U.S. Citizenship and Immigration Services, Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, page 1. Part 4 of the form asks the applicant to provide information about the derivative applicant “if he or she is in the United States.” *Id.*, page 3. The signature section states that the derivative applicant “must sign if he or she is present in the United States.”

PRLS has been approached by several prospective clients who are eligible for PRLS representation as primary U visa applicants and who seek derivative U visas for their children.

PRLS is unsure as to whether it may include requests for derivative U visas when the children on whose behalf such visas are sought are not themselves victims of violence or abuse. PRLS is not currently filing applications with requests for derivative visas, and asked LSC's Office of Legal Affairs for an opinion after prospective clients declined to accept assistance that required the clients not to file for derivative U visas.

ANALYSIS

We conclude that recipients may provide assistance to aliens seeking derivative U visas based on the plain language of two statutory provisions: 1) Section 502(a)(2)(C) of the LSC appropriations act as amended by VAWA, which establishes eligibility for assistance for those qualified for a U visa, and 2) Section 101(a)(15)(U) of the INA, which defines who is qualified for a derivative U visa.

The appropriations act provision on eligibility for persons qualified for U visas is an exception to Section 504 of the FY 1996 LSC appropriation act, which prohibits funding of any recipient "that provides legal assistance for or on behalf of any alien" unless a specific statutory exception applies. Pub. L. 104-134, § 504(a)(11). Congress created a domestic violence exception to the Section 504 prohibition in the FY 1998 LSC appropriation. Pub. L. 105-119, § 502.

In 2006, VAWA amended the Section 502 exception allowing assistance to include persons qualified for U visas:

[S]ubsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from providing related legal assistance to –

- (i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, *or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act* (8 U.S.C. § 1101(a)(15)(U)).

Pub. L. 105-119, § 502(a)(2)(C)(i) (emphasis added) (FY 1998 LSC appropriation as amended by Pub. L. 109-162, § 104 (VAWA)). The plain language of the italicized portion of the VAWA exception allows recipients to provide representation to *all* aliens who qualify for a U visa. As explained earlier in this opinion, the persons qualified for U visa relief under the INA include family members of primary U visa applicants, and such family members are qualified for derivative U visas *regardless* of whether they have themselves been subjected to criminal abuse or whether they are in the United States. 8 U.S.C. § 1101(a)(15)(U)(ii). Neither the VAWA provision allowing assistance to U visa applicants nor the INA provision establishing derivative U visa status include any language that would serve as a basis for excluding derivative U visa applicants from assistance or requiring primary U visa applicants to refrain from applying on behalf of derivative visa applicants as a condition for assistance.

This conclusion is reinforced by the DHS/USCIS process and forms for derivative U visa status.

The derivative U visa process is actually part of the primary U visa process and part of the primary U visa application form. The DHS/USCIS I-918 form and supplement allow primary U visa applicants to apply for derivative U visas for family members as part of their own applications, and establish a single administrative process that allows a primary U visa applicant to incorporate requests for derivative U visa immigration relief for family members. Moreover, as described above, the supplemental form for derivative U visas clearly contemplates applications for derivative U visas for persons not in the United States.

In its request for this opinion, PRLS referenced an LSC program letter permitting LSC recipients to formally adopt the VAWA exceptions into their eligibility criteria. Program Letter 6-02 (February 21, 2006). The program letter, consistent with the plain language of the statutory VAWA exceptions and statutory U visa exception, permits recipients to represent eligible clients applying for U visas who request derivative U visas for relatives. The question and answer section of the program letter includes the following exchange:

May an LSC grantee represent individuals who are eligible for LSC services under the VAWA 2006 Amendments . . . ?²

Yes . . .

Who is covered by the VAWA 2006 Amendments?

In addition to covering aliens who have been battered or subjected to extreme cruelty, *the VAWA 2006 Amendments expand coverage to permit LSC grantees to serve . . . aliens who qualify for a “U” visa under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA).* A “U” visa provides for lawful temporary status for an alien who . . . has suffered substantial abuse as a victim of certain criminal activity, possesses information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity and such criminal activity violated U.S. law or took place in the U.S. *Certain family members of a “U” visa applicant may also apply for “U” visa relief.*

Program Letter 6-02, page 3 (emphasis in bold in original, emphasis in italics added).

In sum, read together, the VAWA amendments and the INA make clear that derivative U visa applicants are eligible for assistance from LSC recipients. The 2006 LSC program letter is consistent with this conclusion.

² The program letter’s shorthand term for the Violence Against Women and Department of Justice Reauthorization Act of 2005 was “VAWA 2006 Amendments.” The VAWA amendments were passed in 2006.



Charlie Martel
Assistant General Counsel
Office of Legal Affairs



Ronald S. Flagg
Vice President & General Counsel
Office of Legal Affairs