Weaknesses in the U Visa Program

FAIR opposes current efforts in Congress to expand the U visa program under legislation to reauthorize the Violence Against Women Act (VAWA), <u>S. 1925</u>. S. 1925 attempts to expand the U visa by "recapturing" *tens of thousands* of visas that were not issued between 2006 and the present. (S. 1925 at § 805)

Congress created the U nonimmigrant visa program under the 2000 Victims of Trafficking and Violence Protection Act. (P.L. 106-386 § 1513) It was designed to allow aliens who have suffered substantial physical or mental abuse as a victim of domestic violence, rape, or certain other enumerated crimes to obtain *temporary* legal status as a nonimmigrant if they help law enforcement prosecute those crimes. (INA § 101(a)(15)(U)) But despite being classified as a nonimmigrant visa, the program is actually a path to citizenship for virtually anyone who applies. Both legal and illegal aliens are eligible for U visas, and once obtained, the alien may remain in the country for four years at a time, receive work authorization, and become eligible for a green card after three years. (INA § 214(p); USCIS <u>Website</u> on U visas)

While proponents of the program tout the U visa as a way to aid those who have suffered a serious violent crime, the program is neither necessary to help crime victims nor is granting citizenship to a victim of crime a proportional response. First, the Department of Homeland Security already has authority to grant humanitarian parole or deferred action to enable an alien to stay in the U.S. and assist in a criminal investigation or prosecution. In addition, police and prosecutors regularly interact with victims of crime and use their discretion not to pursue possible charges against an individual in order to pursue a case against the offender.

Finally, the U visa program is not narrowly tailored to achieve its purported goal: helping victims of violent crimes. The corresponding statutes and regulations make the program broad in scope and subject to fraud. For example, to be eligible for a U visa, an alien need not be the actual victim of a crime, nor must the crime be violent. Rather, the criminal activity could merely be in the "attempt, conspiracy, or solicitation to commit" phase, and qualifying crimes include acts of perjury, blackmail, and obstruction of justice. (INA § 101(a)(15)(U)(iii)) Thus, an illegal alien may be put on a path to citizenship merely because someone *conspired* to blackmail them.

In addition, while federal law caps the number of U visas granted each year at 10,000, there is no limit to derivative visas issued to qualifying family members. (INA § 214(p)(2)) Even family members in deportation proceedings or with final orders of removal are eligible to receive a U visa. (8 C.F.R. § 214.14(f)(2)) Qualifying family members include the spouse, children, and any unmarried siblings under the age of 18 if the U visa petitioner is under 21-years of age; it includes the spouse and children (up to age 21) if the petitioner is 21-years of age or older. (INA § 101(a)(15)(U)(ii))

The U visa program also provides immediate benefits to aliens who *simply apply* for a U visa. For example, if the annual cap has already been met, eligible applicants are placed on a waiting list and

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given first priority to receive a visa the following year. (8 C.F.R. § 214.14(d)(2)) Once on the waiting list, USCIS grants the alien <u>AND</u> their qualifying family members deferred action or humanitarian parole, affording them the same benefits as if they had been granted the visa. (*Id.*) These benefits include work authorization for the alien and their family members (*Id.*)

Not only is expanding the U visa program bad public policy, FAIR particularly objects to the exploitation of the VAWA reauthorization legislation—legislation aimed at protecting victims of domestic violence and abuse—to achieve immigration policy objectives. It enables unscrupulous politicians to play political football with our country's immigration laws during an election year. If lawmakers wish to expand the U visa program, that legislation should be introduced independently and debated with transparency for the benefit of the American people.

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