



## **U-Visa Victims and Lawful Permanent Residency**

By: Leslye Orloff, Levi Wolberg, and Benish Anver  
National Immigrant Women's Advocacy Project  
NIWAP (pronounced *new-app*)  
American University, Washington College of Law

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The National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law conducted a cross-country survey of advocates and attorneys that work with and represent U-visa applicants in an effort to learn more about the extent to which U-visa applicants and their children plan to file for and qualify for lawful permanent residency should they be granted a U-visa. This was a quantitative survey designed to measure U-visa applicants' intentions to stay in the United States, their eligibility for lawful permanent residency, and the proportion of U-visa holders that apply for and are ultimately granted lawful permanent resident status in the United States. The U-visa is an immigration remedy designed for immigrant survivors of criminal activity who came forward and reported crimes committed against them who have been, are being or are willing to be helpful to law enforcement and/or prosecutors in the detection, investigation, prosecution, conviction or sentencing of perpetrators of criminal activity against undocumented immigrant crime victims.<sup>1</sup>

### **Number of U-visa applications reported in the survey**

The total number of agencies completing the survey was 156. These agencies provided data on a total of 7,887 U-visa applications, of which 5,092<sup>2</sup> (64.6%) had already been approved, 2,701 (34.2%) were pending, and 96 (1.2%) were denied.

### **Children included in their parent's U-visa application**

Forty-seven percent (47.0%) of U-visa applicants included at least one child. When U-visa victims sought U-visas for their children by including as derivative U-visa applicants, the average number of children included in the U-visa application was 2.28 per application. When all U-visa applicants are considered together, those that include children and those that do not, the average number of children who receive U-visas as a derivative of their parent's U-visa application is 1.07 children for every pending or approved U-visa application reported in the survey.

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<sup>1</sup> For further information on the U-visa see, *Leslye Orloff, Carole Angel and Sally Robinson*, U-Visas: Victims of Criminal Activity in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault 2010 available at: [http://iwp.legalmomentum.org/immigration/u-visa/tools/10\\_U-visa-MANUAL-ES.pdf/view](http://iwp.legalmomentum.org/immigration/u-visa/tools/10_U-visa-MANUAL-ES.pdf/view)

<sup>2</sup> The 5092 approved visa applications reported in this survey represent approximately 14.2% of the U-visas applications 35,825 U-visa applications approved to date (2009 = 5,825; 2010 = 10,000; 2011 = 10,000; 2012 = 10,000).

This research finds that the approximate numbers of children who received U-visa protections together with their crime victim parents whose cases were reported on in this research are –

- 5,448 children of U-visa victims whose cases were approved
- 2,890 children of U-visa applicants with pending U-visa applications.

### **Parents of child victims included in their child's U-visa application**

This survey found that children filling U-visa applications sought U-visa protections for the parents who care for them and help them heal following crime victimization. Of the cases reported here 8.26% (644) of the pending and approved applications U-visa applications were filed by child immigrant crime victims who also sought U-visa protections for their non-abusive protective immigrant parent.

### **Proportion of U-visa applicants and recipients who have received or intend to pursue lawful permanent residency as U-visa victims**

The survey sought data on U-visa cases filed from the time the Department of Homeland Security<sup>3</sup> began accepting U-visa application in August of 2001 to the present. For many years between 2001 and 2007 when DHS issued U-visa regulations, U-visa applicants and their children were granted interim relief. DHS only began adjudicating U-visa cases and issuing U-visas to immigrant crime victims and certain of their family members after October 17, 2007.<sup>4</sup> The following year on December 8, 2008, DHS issued regulations making it possible for the first time for T and U-visa recipients to apply for and be awarded lawful permanent residency as T or U visa holders.<sup>5</sup> DHS started accepting applications and adjudicating lawful permanent residency cases filed by U-visa victims on January 12, 2009. As a result of this regulatory history, all of the applications for U-visa status reported in this survey were filed between September, 2001 and August, 2012. Applications for lawful permanent residency filed by U-visa holders were filed between January, 2009 and August, 2012.

The U-visa was created to offer protection from deportation, lawful presence and access to legal work authorization for immigrant crime victims offering protection from deportation and the security of having a path to lawful permanent residency for immigrant crime victims who came forward to report crimes and cooperate in crime detection, investigation and prosecution.

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<sup>3</sup> The Immigration and Naturalization Service (INS) was the agency responsible for processing applications for immigration benefits prior to the creation of the Department of Homeland Security (DHS). INS began accepting U-visa applications on August 30, 2001. See T and U Visa Policy Guidance Memorandum #2 available at: [http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/c\\_UVisa\\_INS%20T-U%20Visa%20Memo%208.30.01%20\\_OVW%206.2.04.pdf](http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/c_UVisa_INS%20T-U%20Visa%20Memo%208.30.01%20_OVW%206.2.04.pdf).

<sup>4</sup> On September 17, 2007 DHS issued interim final regulations implementing U-visa protections. See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Federal Register 53013 Vol. 72, No. 179 / Monday, September 17, 2007 available at: [http://iwp.legalmomentum.org/immigration/u-visa/regulations/UVISA\\_interim%20regs%20Fed%20Reg\\_10.30.07.pdf/view](http://iwp.legalmomentum.org/immigration/u-visa/regulations/UVISA_interim%20regs%20Fed%20Reg_10.30.07.pdf/view)

<sup>5</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, Interim Rule, Federal Register, 75540 Vol. 73, No. 240 / Friday, December 12, 2008 available at: [http://iwp.legalmomentum.org/immigration/u-visa/regulations/HT\\_Regulations\\_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view](http://iwp.legalmomentum.org/immigration/u-visa/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view)

Congress understood that without such protection, perpetrators could elude prosecution by using threats of deportation to keep victims from reporting crimes and cooperating with law enforcement and prosecutors. The U-visa's 4-year lawful status followed by a path to lawful permanent residency encourages "frightened victims to come out of the shadows"<sup>6</sup> and find the courage to help the justice system pursue their perpetrators. The purpose of the U-visa was to "encourage cooperation with criminal investigations and protect vulnerable victims."<sup>7</sup>

A key goal of this survey was to determine whether and to what extent immigrant crime victims who filed U-visa applications intended to also pursue lawful permanent residence as U-visa holders. Each survey respondent was asked to specify whether U-visa applicants they worked with intended to apply for legal permanent residency, how many actually applied, and how many were granted legal permanent residency status. Since U-visa holders only qualify to apply for lawful permanent residents if they meet certain additional requirements, the survey also measured the degree to which the immigrant victims who came forward and applied for U-visas also qualified to attain lawful permanent residency as U-visa recipients. In order to qualify for lawful permanent residency U-visa holders would have to prove –

- That they provided assistance in detection, investigation, prosecution, conviction or sentencing, provided there was an ongoing need for assistance,<sup>8</sup> or
- That the U-visa did not unreasonably refuse to assist in the investigation or prosecution taking into account the totality of circumstances in the victim's case;<sup>9</sup>  
*AND*
- At least one of the following
  - Humanitarian need, *OR*
  - Family unity; *OR*
  - Public interest, *AND*
- Continuous physical presence in the United States in U-visa status.

This survey found that the vast majority of immigrant victims who go through the process of reporting crimes, obtaining the required certifications, and filing U-visa applications also qualify to attain lawful permanent residency at U-visa holders. The results make clear that all but a small percentage of U-visa holders and U-visa applicants apply or are planning to apply for lawful permanent residency. Our findings are as follows:

In order to measure whether U-visa applicants intended to obtain legal permanent residency, respondents were asked how many applicants had been granted legal permanent residency status, had already filed and had pending applications for lawful permanent residency, planned to file for lawful permanent residency or did not plan to file for residency. The findings

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<sup>6</sup> New York Times, Editorial, U Visas Hit a Ceiling, September 3, 2012 p. A 26 available at: <http://www.nytimes.com/2012/09/04/opinion/special-visas-for-abused-women-hit-a-ceiling.html>

<sup>7</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Federal Register 53017 Vol. 72, No. 179 / Monday, September 17, 2007 available at: [http://iwpl.legalmomentum.org/immigration/u-visa/regulations/UVISA\\_interim%20regs%20Fed%20Reg\\_10.30.07.pdf/view](http://iwpl.legalmomentum.org/immigration/u-visa/regulations/UVISA_interim%20regs%20Fed%20Reg_10.30.07.pdf/view)

<sup>8</sup> Id at 53019.

<sup>9</sup> Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, Interim Rule, Federal Register, 75547 Vol. 73, No. 240 / Friday, December 12, 2008 available at: [http://iwpl.legalmomentum.org/immigration/u-visa/regulations/HT\\_Regulations\\_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view](http://iwpl.legalmomentum.org/immigration/u-visa/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view)

- 21.3% of the U-visa applicants had been granted legal permanent residency;
- 6.0% of the applicants had already filed and had pending applications for lawful permanent residency;
- 72.5% of the applicants planned to file for lawful permanent residency; and
- 0.2% did not plan to file for lawful permanent residency.

As the findings indicate 99.8% of U-visa applicants and U-visa holders whose cases were described in this research either applied for legal permanent residency or planned to apply once they have accrued three years continuous presence in the United States. Of the 0.2% that did not plan to apply for legal permanent residency, most planned to return to their home countries. From these research findings support a conclusion that immigrant crime victims in general are applying for U-visas when they likely already know that they will be eligible to apply for lawful permanent residency.

This finding is consistent with National Institutes of Justice funded research which found that advocates and attorneys trained on the legal rights and options for immigrant survivors played a key role in informing undocumented immigrant victims about protection orders, assessing lethality and encouraging immigrant survivors to seek domestic violence protection orders against their abusers.<sup>10</sup> That research found that 60.9% of immigrant victims did not know about protection orders when they turned to advocates and attorneys for help to end domestic violence.<sup>11</sup> Advocates played a key role in teaching victims about their legal rights, conducting lethality assessments and supporting immigrant victims in the protection order application process. As a result, the severity of the violence significantly related to and increased immigrant victims' willingness to file protection orders.<sup>12</sup>

It is likely that victim advocates and attorneys are playing a similar role with regard to immigrant crime victims' ability to find the courage to overcome threats and fear of deportation to report crimes to and cooperate in detection, investigation or prosecution of crimes committed against them. It is also possible that this is also due in no small part to the role U-visas are playing in communities across the country in increasing collaboration between law enforcement, prosecutors and immigrant victim advocates that is building better relationships and greater between law enforcement, prosecutors and immigrant victims.<sup>13</sup>

### **U-Visa Victim Eligibility to Attain Lawful Permanent Residency**

In order to assess the likelihood that U-visa applicants and U-visa holders who intend to pursue lawful permanent residency after 3 years continued presence in U-visa status, it is

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<sup>10</sup> Mary Ann Dutton, Nawal Ammar, Leslye Orloff and Darci Terrell, *Use and Outcomes of Protection Orders By Battered Immigrant Women* November 10, 2006 available at: [http://iwp.legalmomentum.org/reference/additional-materials/family-law-for-immigrants/protective-orders/research-reports-and-data/RSRCH\\_DV\\_Use\\_Outcomes%20Protection\\_Orders.pdf/view](http://iwp.legalmomentum.org/reference/additional-materials/family-law-for-immigrants/protective-orders/research-reports-and-data/RSRCH_DV_Use_Outcomes%20Protection_Orders.pdf/view)

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> See How the U-Visa Helps Law Enforcement: Statements From the Field available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/how-the-u-visa-helps-law-enforcement-statements-from-the-field/>

important to examine not only the victim applicant's intent, but whether they meet the U-visas lawful permanent residency requirements.

## Cooperation

Once a U-visa holder has been continuously present in the United States for three years, the victim can file for lawful permanent residency if she meets two additional requirements. The first requires the victim to prove that she has complied with the ongoing responsibility of U-visa victims to provide "reasonably requested information and assistance"<sup>14</sup> to law enforcement and prosecutors. However, Congress understood that because of the danger to crime victims who are cooperating witnesses, there would be instances in which an immigrant victim's refusal to provide ongoing cooperation after being granted a U-visa is not unreasonable.<sup>15</sup>

Survey participants were asked to answer the following questions with regard to their U-visa clients' cooperation with law enforcement in the detection, investigation, prosecution, conviction and/or sentencing the criminal activity perpetrated against them –

- Number of U-visa clients who cooperated
- Number of clients who were willing to cooperate, but law enforcement and/or prosecutors did not seek further assistance from them
- Client did not cooperate, but did not unreasonably refuse to cooperate
- Client did not cooperate

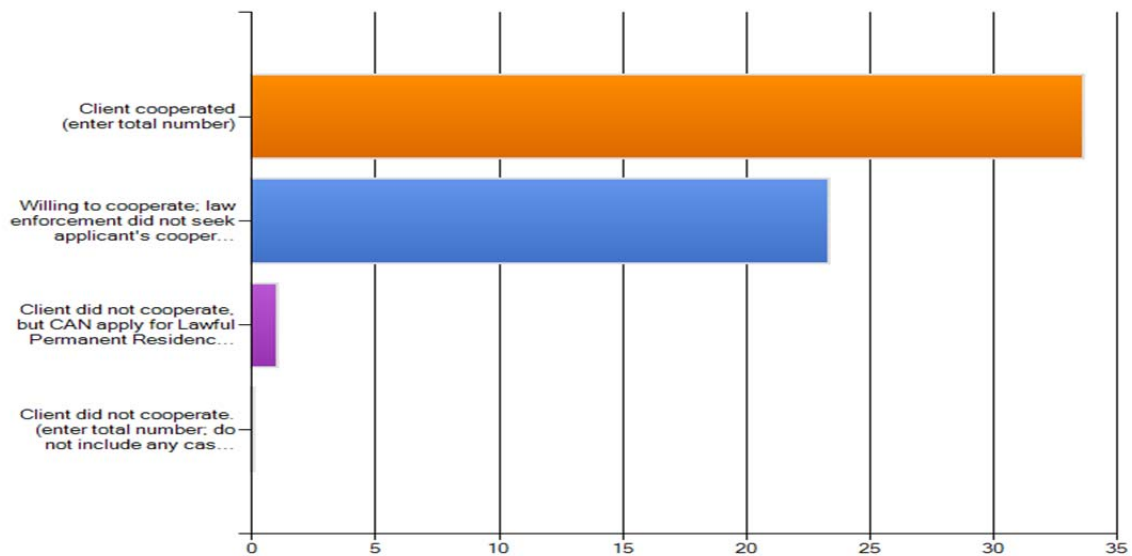
This survey found that 70.0% of U-visa applicants and U-visa holders provided continued cooperation to law enforcement officers and prosecutors. In 29.45% of the cases, the victim was willing to provide additional cooperation but officials did not seek further cooperation from the victim. This can occur for a number of reasons including but not limited to: the victim's ongoing cooperation is not needed because the perpetrator entered into a plea agreement, the victim filed for her U-visa after the criminal prosecution was completed, the victim was willing to cooperate but a bench warrant was issued for the perpetrator who has still not been arrested, or police have not yet been able to identify the perpetrator and make an arrest.

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<sup>14</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Federal Register 53019 Vol. 72, No. 179 / Monday, September 17, 2007 available at: [http://iwp.legalmomentum.org/immigration/u-visa/regulations/UVISA\\_interim%20regs%20Fed%20Reg\\_10.30.07.pdf/view](http://iwp.legalmomentum.org/immigration/u-visa/regulations/UVISA_interim%20regs%20Fed%20Reg_10.30.07.pdf/view)

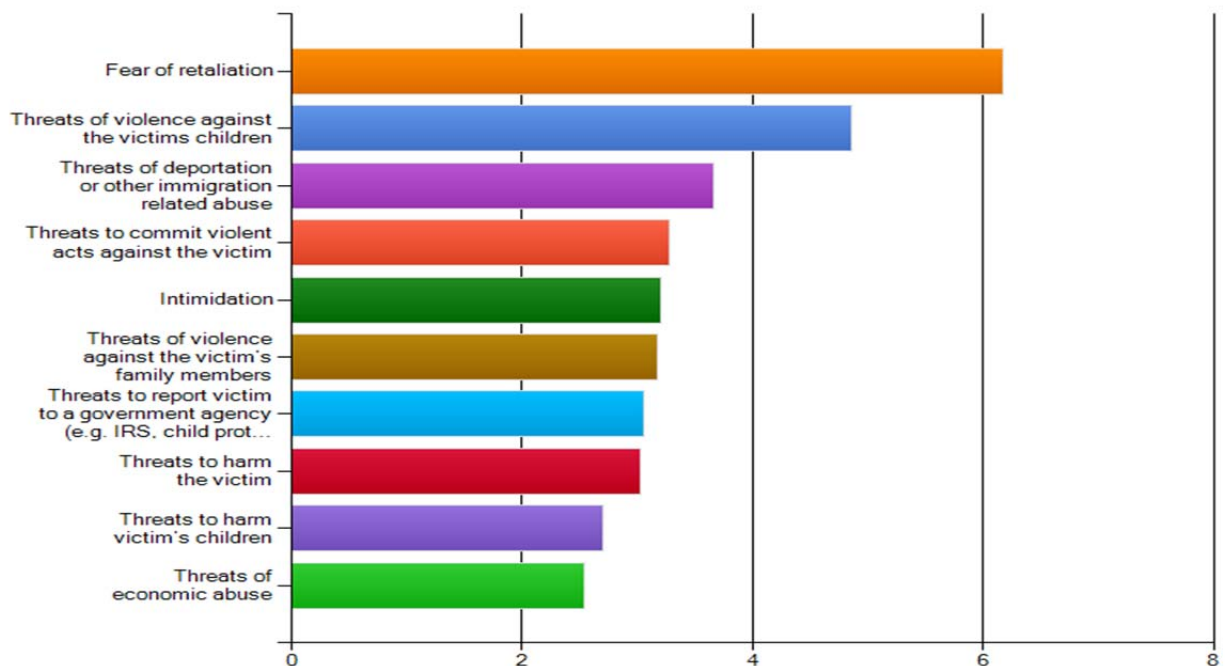
<sup>15</sup> See generally, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, Interim Rule, Federal Register, 75546-75548 Vol. 73, No. 240 / Friday, December 12, 2008 available at: [http://iwp.legalmomentum.org/immigration/u-visa/regulations/HT\\_Regulations\\_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view](http://iwp.legalmomentum.org/immigration/u-visa/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view)

Figure 1: Levels of Cooperation



As figure 1 demonstrates, in only .55% of the cases in this survey did the U-visa victims refuse cooperation. Most of these (.50%) were cases in which the victim's refusal to cooperate was not unreasonable for the following reasons:

Figure 2: Reasons for Non-cooperation



Other notable reasons cited for non-cooperation included: failure of government officials (police or prosecutors) to provide interpreters for limited English proficient victims and threats of harm to family members in the victim's home country.



## **Humanitarian Need, Family Unity or Public Interest**

For U-visa holders to attain lawful permanent residency, in addition to proving 3 years continuous presence in the United States and meeting the cooperation requirement or proving that failure to cooperate was not unreasonable, U-visa holders can only be granted lawful permanent if they additionally prove humanitarian need, family unity or public interest. The survey asked advocates and attorneys to answer each of the following questions with regard to three groups of U-visa applicants and U-visa holders –

- Adult U-visa crime victim applicants or U-visa holders
- Children who are U-visa applicants or U-visa holders (both child victims who filed for U-visas and children who received their U-visas because they were included in their immigrant crime victim parent's U-visa application as a derivative beneficiary
- Parents who applied for or received their U-visas based upon their immigrant crime victim child's U-visa application.

For the adult applicants and U-visa holders, the findings are as follows:

- 2% cited humanitarian need;
- 6% cited family unity;
- 1% cited public interest;
- 6% cited both humanitarian need and family unity;
- 7% cited both humanitarian need and public interest;
- 6% cited both family unity and public interest; and
- 72% cited all of the above.

For the child applicants and U-visa holders (primary child applicants and those included in their parent's U-visa application) the findings are as follows:

- 1% cited humanitarian need;
- 3% cited family unity;
- 0% cited public interest;
- 9% cited both humanitarian need and family unity;
- 0% cited both humanitarian need and public interest;
- 6% cited both family unity and public interest; and
- 81% cited all of the above.

For the parents who applied for or were granted U-visas based upon their immigrant child crime victim having filed or obtained a U-visa the findings are as follows:

- 0% cited humanitarian need;
- 0% cited family unity;

- 0% cited public interest;
- 2% cited both humanitarian need and family unity;
- 0% cited both humanitarian need and public interest;
- 9% cited both family unity and public interest; and
- 88% cited all of the above.

As the data illustrates, the vast majority of applicants cited at least one ground upon which they qualified to receive legal permanent residency. Significant percentages of the cases survey participants reported replied that they qualified for lawful permanent residency on multiple grounds. Not surprisingly, family members who applied for or obtained their U-visas as family members of immigrant crime victim parents or children included family unity among the grounds upon which they qualified for lawful permanent residency.

### Crime Victimization Suffered By U-Visa Applicants

Finally, this survey provide second<sup>16</sup> opportunity to learn about the types of crimes that U-visa victims has suffered, found the courage and support they needed to report these crimes to the police and to provide police and prosecutors with ongoing cooperation. These findings consistent with prior findings with domestic violence (intimate partner, spouse, child and elder abuse) and sexual assault offenses (sexual assault, rape, abusive sexual contact, incest, sexual exploitation) being the basis for significant proportions of U-visa applications. The next largest group of U-visa crimes is felonious assault.

Domestic Violence	337 6	46.2%
Felonious Assault	929	12.7%
Sexual Assault	817	11.2%
Rape	533	7.3%
Abusive Sexual Contact	456	6.2%
Attempt, conspiracy or solicitation to commit any of the above crimes	232	3.2%
Incest	127	1.7%
False Imprisonment	116	1.6%
'Similar activity' related crimes (please list the other crimes in next question)	96	1.3%
Murder	89	1.2%
Witness Tampering	71	1.0%
Sexual Exploitation	65	.9%
Manslaughter	55	.8%
Kidnapping	52	.7%
Unlawful Criminal Restraint	47	.6%
Obstruction of Justice	47	.6%
Being Held Hostage	34	.5%
Torture	31	.4%
Involuntary Servitude	30	.4%

<sup>16</sup> Leslye E. Orloff and Paige E. Feldman, *National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients* November 29, 2011 available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/research-reports-and-data/Orloff-Feldman%20Final%20U%20visa%20recipients%20criminal%20activity%20survey.pdf/view>



Blackmail	25	.3%
Perjury	23	.3%
Trafficking	22	.3%
Abduction	8	.1%
Female Genital Mutilation	7	.1%
Extortion	7	.1%
Prostitution	6	.1%
Slave Trade	2	.0%
Peonage	1	.0%

Figure 1: Crime Victimization of U-Visa Applicants

