

Immigration Relief for Crime Victims
The T and U Visas

Hypotheticals

Hypothetical #1

In May 2009, Ms. OH's five-year old U.S. Citizen son, J, told her that he was molested by a neighbor, Mr. ID. Ms. OH, an undocumented immigrant, immediately took J to the hospital and the police were called. Based on Ms. OH's statements, Mr. ID was arrested and charged with predatory sexual assault and endangering the welfare of a child. Mr. ID's spouse was angry with Ms. OH, and continued to harass her in the building. Ms. OH and J had to move to another neighborhood, where J is seeing a counselor at his new school.

Answer to #1

Ms. OH is eligible to petition for a U visa based on her minor U.S. Citizen son's victimization of a qualifying crime, her cooperation with the police and the District Attorney's office, and the substantial harm her son suffered as a result of the crime. *See U Visa Manual, Page A-13.*

Hypothetical #2

- An applicant who was assaulted and held at gunpoint, and beaten with a blunt object. He sustained injuries that left him hospitalized for a week and had to go to physical therapy for three months. He continues to have back pain and was forced to quit his job as a delivery worker. He has trouble sleeping at night because of his pain and nightmares from the incident.
- Does the applicant's harm qualify as “substantial physical or mental abuse?”

Answer to #2

The term “substantial” is used in both the definition of severity of the injury to the victim and the severity of the abuse inflicted by the perpetrator. The regulations indicate “no single factor is a prerequisite to establish that the abuse suffered was substantial.” A series of acts taken together may constitute substantial physical or mental abuse, even when no single act alone rises to that level. *See U Visa Manual, Page A-16.*

Hypothetical #3

Viridiana, a Guatemalan who overstayed her tourist visa, had been on two dates with Jon. For their third date, Viridiana had invited Jon over for dinner at the apartment she shared with her cousin. Jon made advances towards her, which she tried to politely turn down. He grew frustrated, pushed her onto the couch, and started undoing her jeans. As she tried to get away from him, he ripped her blouse. Her cousin then walked in, yelled, and started calling the police on her cell phone.

Answer to #3

- Attempt, conspiracy, or solicitation to commit any of the enumerated crimes, including rape and abusive sexual contact, is a qualifying crime. Determine whether Viridiana reports Jon to the authorities and if law enforcement is willing to investigate or prosecute him for attempted rape.
- Also determine whether Viridiana has suffered substantially as a result of the attempted rape.

Hypothetical #4

Pedro came to the U.S. on an H-2A visa to work as a fruit harvester for a large farm-labor contractor. When he was recruited, the company said that he would receive the federal-mandated rate of pay for farm workers (which is higher than the minimum wage), housing, and transportation. Although he was a monolingual Spanish speaker, he had to sign a contract that was written in English. Upon arriving in the U.S., the contractor took his passport and other identification documents; the contractor explained that they needed to do this since other workers had walked off the job. Pedro worked 12 hours a day, seven days a week. He was not paid even the minimum wage, and he was not paid in a timely manner. He was not allowed to take meal breaks, and passed out on at least four occasions during work hours from dehydration. He was not allowed to see a doctor and instead was told to return to work. Pedro slept in a trailer with nine other men, and had to do his laundry in the sink. As an H-2A visa holder, he was legally bound to this contracting company or he would have to return to Guatemala. Pedro felt like he had little recourse to complain about the working conditions. *See T Visa Manual, Page A-27.*

Hypothetical #5

Susanna and Penelope are two adolescent girls who were trafficked into the United States from a South American country and forced into sex work. The trafficker lured them to the U.S. by claiming he could get them jobs. He also told one of the girls that he would reunite her with her mother, who was already in the U.S. The trafficker created personal relationships with these girls, thus earning their trust. For example, he told Susanna and her family that he wanted to marry her, and acted as a boyfriend, while he created a platonic “older brother” friendship with Penelope. Ultimately, he sexually assaulted both girls and forced them to work against their will in a brothel. Susanna and Penelope were resourceful enough to escape from him one night, and made contact with the local police. Both were under the age of 18, meaning that they were not required to cooperate with a reasonable request from law enforcement in order to qualify for a T visa. However, they are now choosing to cooperate with law enforcement in the prosecution of their trafficker. *See T Visa Manual, Page A-29.*