

# Special Report: U.S. visa program for crime victims is hit-or-miss prospect

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Tue Oct 21, 2014 9:18am EDT

(Reuters) - It was the week of Chinese New Year, and Jian Zhen Huang was climbing her sister's doorstep in Brooklyn with cups and other supplies for the celebration inside. Suddenly, a young man grabbed her, punched her in the face several times, knocked her down to the pavement and stole her phone.

The housewife spent that February 2013 night at a hospital and left with her head wrapped in gauze, staples in her scalp and black circles around her eyes - "like a panda," her husband said in an affidavit. Headaches and sleepless nights persisted for months.

Reporting the crime to the police carried a potential risk: Huang had entered the country using someone else's passport 14 years ago. But after she left the hospital, Huang gave the New York Police Department a description of her attacker. Her husband, an undocumented cook, called the police to provide tracking information for the phone.

While they waited to hear back from the NYPD, Huang learned from her sister about a visa the federal government grants to undocumented immigrants who are victims of violent crime and who help law enforcement try to catch the perpetrators. The so-called U visa, which allows the recipient to live and work in the U.S. for four years, would remove the threat of deportation and start Huang and her husband on the road to citizenship.

Huang hired a lawyer to help with her application. On one of the forms, an NYPD sergeant attested to Huang's help. Then Huang hit a snag: Police headquarters must officially verify her cooperation before her application can be submitted to United States Citizenship and Immigration Services, and it hasn't done so. According to Chunyu Jean Wang, Huang's lawyer, the NYPD hasn't responded to her repeated inquiries for months. "We're lucky if anyone picks up the phone," Wang said.

The U visa program was created by Congress to help police and prosecutors build trust with immigrant communities. But national data analyzed by Reuters, along with dozens of interviews with police, prosecutors, lawyers and immigrants across the country, show that for undocumented immigrants like Huang who seek a U visa by helping the police, the chances of gaining a legal toehold in the United States are largely a matter of geography.

For interactive graphic, click [here](#)

TELLING NUMBERS

In some cities, police and prosecutors readily verify that an undocumented crime victim cooperated; in others, they stonewall. From 2009 through May 2014, law enforcement in New York City verified 1,151 crime victims, according to figures provided by federal immigration authorities in response to public records requests by Reuters. Meanwhile, police and prosecutors verified 4,585 crime victims in Los Angeles, a city with less than half of New York's population.

Oakland, California, has less than 5 percent of New York's population, yet law enforcement there verified 2,992 immigrants during the same period - more than twice as many. Sacramento, California, has a slightly higher population than Oakland, but verified just 300 crime victims.

The federal data do not include the number of immigrants whose requests for verification are ignored or denied by the police. Nor is it possible to determine how many of those would have ultimately been rejected anyway because the applicant would not qualify under the program. Victims of misdemeanor assault, for instance, do not qualify.

But wide variations in the numbers of certifications among jurisdictions of similar size suggest that thousands of victims of violent crimes who have embraced the offer of a U visa haven't got one.

"There is a significant portion of the country where law enforcement is not providing certifications," said Gail Pendleton, co-founder of ASISTA, which helps lawyers who work with immigrant survivors of domestic violence and sexual assault. "That means that you have tens of thousands of victims of crimes like domestic violence and rape that are just not getting help, and their perpetrators are not being held accountable."

In a nationwide survey of advocates and attorneys in 2013, researchers at the University of North Carolina School of Law found that the U visa program "is kind of like geography roulette," said Deborah Weissman, a UNC law professor.

NYPD Deputy Commissioner Susan Herman said the department has revamped its U visa policies since a new city administration took over earlier this year. "The problems were a lack of transparency and a lack of understanding about what the process was, a lack of speed, and a sense that people didn't have any recourse if they were denied and they felt they were wrongly denied," Herman said. "We've tried to address all three of those problems."

Herman declined to comment on specific cases like Huang's. She said the NYPD views U visas as "very helpful" for law enforcement. "It's appropriate that if someone is involved in an investigation, that they have this protection."

## UNEVEN APPLICATION

Democrat Senator Ted Kennedy and Republican Senator Spencer Abraham worked together in 2000 to create the U visa, part of the Violence Against Women Act. Congress limited the number to 10,000 a year, and the program is heavily oversubscribed. In fiscal 2012, Citizenship and Immigration Services received 24,768 applications from crime victims certified by local law enforcement. If the agency determines an immigrant is eligible for the visa but the yearly cap has

been reached, that person can still obtain protection against deportation - and work authorization - while joining the U visa queue.

To guard against potential fraud, lawmakers required that local law enforcement verify applicants so “someone whose day job it was to decide who is telling truth” could vet them, said Leslye Orloff, director of the National Immigrant Women’s Advocacy Project at American University, who has lobbied on the legislation over the years.

Interviews with attorneys across the country reveal wide disparities in approaches to law enforcement certification. Some agencies will only certify for open cases, others only for cases that are closed. Others put further limits on the type of crime or rule out victims whose injuries aren’t deemed severe enough.

UNC’s Weissman said that in many instances, local law enforcement is, in essence, usurping Citizenship and Immigration Services’ authority to decide whether to grant someone a visa or not.

Citizenship and Immigration Services declined to answer questions about the program. In a statement, it said it was “committed to the integrity of the immigration systems and administers this program based on the law and the information provided by both the applicant and law enforcement agencies.”

In some jurisdictions, law enforcement is split: Police may refuse to certify crime victims, while prosecutors will sign off, meaning that only those victims whose cases result in arrest and prosecution can apply for the visa, though that is not a requirement under the law.

That’s been the case in Albuquerque, New Mexico. In all, law enforcement there has certified 225 U visa hopefuls since 2009, the federal data show. By comparison, Fresno, California, with about 50,000 fewer people and a lower violent crime rate, certified 492 people during the same period.

Albuquerque’s number includes some certifications by the district attorney’s office. And over half of them – at least 140 cases from 2008 to 2013 – were certified by Quintin McShan.

#### ‘A CULTURE THING’

In 2008, McShan, a New Mexico state police captain, started certifying crime victims in cases investigated not by his own agency, but by the Albuquerque Police Department. “I strongly believe it is the right thing to do,” McShan said. “How can you tell people, ‘I have the power to help you, but I won’t use it?’”

When he first started interviewing victims in APD cases, McShan considered it a stop-gap measure until the department put its own policy in place. He said he soon realized he was the only officer in Albuquerque tasked with signing off on U visa certifications.

“It’s a culture thing in that agency,” said McShan, who retired last year. “They didn’t think it was their job.”

APD spokeswoman Janet Blair said that in most cases, prosecutors, not police, can best determine whether a victim should be certified. She said that “within weeks,” the city will finish revised guidelines for victims whose police reports do not result in an arrest. After that, she said, the city will agree to review applications that were previously denied.

McShan recalled a woman who made four separate police reports about her abusive boyfriend, saying he broke her wrist and threatened her with a steak knife. In the last incident, he shoved her head into a wall and threatened to have her deported if she testified against him. She remained willing to testify, and McShan certified her in 2010.

Hugo Reyes was not so lucky. In 2012, the 28-year-old had just been to Home Depot when he stopped off at his Albuquerque home to use the bathroom before taking his children to get a hamburger. On his doorstep, a man stopped and spoke to him, and then stabbed him.

“I had no idea what he had done to me... There was just a hole in my stomach,” Reyes said. “I wasn’t bleeding, but within three minutes I was unconscious.”

Reyes walked across the border from Mexico with a group of about 30 people when he was 16. Following the attack, Reyes spoke to the police multiple times, giving them a description, as best he could, of the man who stabbed him. The man was never caught, which meant Reyes isn’t eligible for a cooperation signature from the DA’s office. And McShan retired before Reyes applied.

APD did not respond to specific questions about Reyes's case.

Recently, the only work Reyes has been able to get is in construction. His doctor told him that to avoid complicating his injury, he should try not to do any heavy lifting. On the construction site, he wears a supportive belt. If he got a U visa, he said, he would look for work that doesn’t require constantly lifting heavy things. “My neighbor works at Wal-Mart and says that they pay well.”

## AMBASSADORS

Responding to concerns that some local agencies weren’t certifying crime victims, Democratic Senator Patrick Leahy proposed a change to the law in 2011: If a crime victim seeking verification from local police is stonewalled, he or she could then submit evidence directly to Citizenship and Immigration Services. That language drew opposition from other senators, including the ranking Republican on the Judiciary Committee, Charles Grassley. Leahy dropped the provision.

“It would have undermined the entire program,” Grassley said at a 2012 hearing. His spokeswoman recently told Reuters that the committee had not been presented with any evidence that law enforcement was not properly certifying U visa applicants.

The Oakland Police Department developed its U visa procedures in 2008, and faulty requests to verify cooperation have been rare: Between 2009 and 2013, the department rejected just 57, said Lieutenant Kevin Wiley, supervisor of the special victims section. Wiley recently turned away an applicant who was in prison for participating in the very crime of which he claimed to be a victim.

Wiley said he believes crime reporting has gone up in immigrant neighborhoods because of the U visa. “We’d rather give an applicant the benefit of the doubt at this level,” he said.

Oakland verifies more undocumented crime victims than any city besides Los Angeles, though it has little more than a tenth of the population of Los Angeles. Both the Oakland Police Department and the Alameda County district attorney’s office have coordinators who work with undocumented crime victims.

“They’re our ambassadors” for law enforcement in immigrant communities, said Kim Hunter, an Alameda County senior deputy district attorney.

The system worked for Zurisadai Cortez. A few weeks after he graduated from high school in 2007, he was hanging out with buddies in San Leandro, adjacent to Oakland, about to head for a pickup soccer game. A couple of guys walked up to them, made small talk, and walked a few paces. Then one of them opened fire on Cortez and his friends.

“I heard the ‘ch ch,’ and [saw] him just turn around, and we all just hit the ground,” Cortez said. No one was hurt, and the police came right away. “They seemed to believe we were good kids right off the bat,” he said. Later that night, he accompanied the cops to identify a suspect. Cortez testified for the government in court, and the shooter was sentenced to 12 years in prison.

Afterward, Cortez heard about the U visa from a family member whose husband had been shot. An Alameda County prosecutor certified Cortez’s cooperation form, and Citizenship and Immigration Services approved his application. Cortez, who walked across the desert with his family as a child to enter the U.S., graduated from college last year.

“It’s just crazy how that piece of plastic gives you a sigh of relief, just such empowerment,” he said.

#### ‘MASSIVE LOGJAMS’

Allegations of police dragging their feet on certifications have arisen in New York, with one of the largest populations of undocumented people in the United States.

Huang’s attorney filed a lawsuit against the city on behalf of Huang and six other immigrants, alleging that the NYPD abused its discretion under New York law because it wouldn’t allow anyone to verify cooperation besides the commissioner. That has created “massive logjams” and “leaves many crime victims with no alternative for obtaining certification,” according to the lawsuit filed earlier this year in New York state court.

NYPD Deputy Commissioner Herman said two additional police officials can now verify undocumented immigrants who cooperate with law enforcement. “That has sped up the application process, and that’s a good thing,” Herman said, adding that most crime victims shouldn’t be waiting more than two months. The lawsuit is pending.

Huang, meanwhile, said through an interpreter that the lack of certification is an obstacle to realizing her dream of opening a restaurant with her husband. Now living in Fairbanks, Alaska, all she can do is wait for the required signature.

“I’m living an afraid life,” she said.

Another New York crime victim, Omar Merabet, entered the country illegally on a ship from Algeria in 1994. Three years ago, he was badly beaten while out delivering Little Debbie snacks on Rockaway Boulevard in Queens. A driver in another car scraped his parked van and blamed him for the collision. He broke nine bones in Merabet's face, which is now held together by a metal plate. “In the wintertime, honestly the left side is like, dead,” he said. “It’s like numb.”

Merabet cooperated with police at the scene and returned to the station to look at books of mug shots. He never heard of any arrests in the case. The detective working on the case attested to Merabet’s cooperation, he said, but since that officer is not authorized by the NYPD to sign the certification form, Merabet needs a higher-up to do so. He is not part of Huang’s lawsuit.

Another sticking point is that Merabet’s assault is classified as a misdemeanor on the police report. NYPD officers often misclassify felony assaults as misdemeanors, said Merabet’s lawyer, Disha Chandiramani.

NYPD’s Herman said the department would still verify those cooperators if they provide medical records and other evidence demonstrating that the crime was actually more serious than a misdemeanor.

Merabet is currently under supervised release, fighting a deportation order issued after he lost a bid for political asylum. He hopes the NYPD will verify his cooperation so he has a chance to stay in the country.

<http://www.reuters.com/article/2014/10/21/us-usa-immigration-uvisa-specialreport-idUSKCN0IA1H420141021>