

CREDIBILITY - IMMIGRATION CONSEQUENCES OF TESTIMONY¹

You have heard evidence that [name(s) of witness(es)] who testified for the State [is/are] [a] foreign national(s) who [is/are] not [a] legal resident(s) of the United States and, therefore, subject to removal from this country.

(CHOOSE IF APPROPRIATE)

You have also heard evidence that [witness(es) may [have applied for] [be interested in] [be aware of] programs that could prevent removal if the State informs federal immigration authorities that [he/she/they] [was/were] a victim of a crime.² This evidence may be used by you in assessing the credibility or believability of [name of witness(es)] testimony. However, [names of witness(es)] [application for] [knowledge of] [interest in] [awareness of] such a program may be used only to the extent you determine that it has biased [name of witness(es)] in favor of the State, that is to say, if you believe that [name of witness(es)] testified as [he/she/they] did because of the potential threat of removal, and because [he/she/they] hoped that [his/her/their] testimony would help [him/ her/them] to avoid removal from this country.

(In all cases)

You may not use the mere fact that [name of witness(es)] may not be a legal resident of the United States to conclude that [he/she/they] [is/are] less likely to comply with our society's rules and, therefore, more likely to ignore the oath requiring truthfulness on the witness stand. Indeed, that [name of witness(es)] may be here in violation of federal immigration laws does not, in and of itself, affect [his/her/their] credibility.³ Rather, the focus must be on whether the possibility that the State can help [name of witness(es)] delay or avoid removal from the United States improperly influenced [his/her/their] testimony.

¹ Before this charge is given, the Court should first determine in a hearing outside of the presence of the jury that the probative value of disclosing the immigration status of a witness outweighs the likely prejudice to that witness from that disclosure so that defendant's right to a fair trial by confronting that witness must prevail. N.J.R.E. 104, 403, and 404(b). See also Serrano v. Underground Utils. Corporation, 407 N.J. Super. 253, 273 (App. Div. 2009).

² The U Visa program is an immigration benefit for victims of certain crimes under the Victims of Trafficking and Violence Prevention Act (VTUPA) of 2000. Pub. L. No. 106-386.

³ See Serrano v. Underground Utils. Corporation, 407 N.J. Super. 253, 274 (App. Div. 2009) (a witness' immigration status "is very likely to trigger negative sentiments in the minds of some jurors").

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In weighing this witness(es)'s testimony you may consider whether [his/her/their] testimony was influenced by the hope or expectation for any favorable treatment or reward such as delaying or avoiding removal from the United States by federal immigration authorities.

Finally, you are not obligated to consider the [name of witness(es)] interest in avoiding or delaying removal from this country as having any particular effect on [his/her/their] credibility. You may, however, consider this evidence, in light of my instructions, along with all the other factors we previously discussed in determining the credibility of [name of witness(es)].

If you believe [this/these] witness(es) to be credible and worthy of belief, you have a right to convict the defendant on [his/her/their] testimony alone, provided of course, that upon consideration of the whole case, you are satisfied beyond a reasonable doubt of the defendant's guilt.