

TOOL KIT FOR LAW ENFORCEMENT USE OF THE U-VISA

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U-VISA CERTIFICATION: INTRODUCTION

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By providing U-visa certifications, law enforcement officials add to their arsenal of crime-fighting tools because victims feel safer coming forward to report crimes. This document provides the following background information on the U-visa: an overview of the U-visa and a section on law enforcement officials and the U-visa certification. The section on law enforcement officials includes who qualifies for a U-visa, which criminal activities are covered by the U-visa, the application process, and other information that will assist law enforcement in their role as certifiers.

Overview of the U-visa

When Congress created the U-visa in the Violence Against Women Act (VAWA) under the Victims of Trafficking and Violence Prevention Act of 2000 its intent was (1) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes; and (2) to offer protection to victims of such crimes.¹

Lawmakers recognized that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes.² Victims who fear deportation, however, will be unlikely to come forward to cooperate and assist in investigative efforts. Thus, Congress provided a specific avenue through which immigrant crime victims who cooperate with law enforcement can obtain lawful immigration status and protection against deportation.

Who is eligible for a U-visa?

To be eligible for a U-visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity.³ The law requires that a person who is eligible for a U-visa must

- (1) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;
- (2) possess information concerning such criminal activity;
- (3) have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and

¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014. 53,015 (Sept. 17, 2007) (citing Battered Immigrant Women Protection Act (BIWPA) § 1513(a)(2)(A)).

² Congress created the U-visa because it was important for U.S. humanitarian interests to enhance safety of crime victims and encourage them to cooperate with the justice system. BIWPA § 1513(a)(2)(A).

³ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U-visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term "criminal activity" rather than "crime" to provide victims access to U-visa protection as early as possible after the crime occurred or was reported.); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

(4) have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.⁴

The U-visa certification requirement

The U-visa statute states that federal, state, or local law enforcement officials are qualified to provide certifications for victims filing U-visa applications.⁵ Law enforcement officials are the first responders to immigrant victims of crime. Police departments, sheriffs' offices, marshals, and other law enforcement officials have firsthand knowledge of a victim's helpfulness in reporting the crime and participating in any subsequent investigations. Law enforcement officials, therefore, are well positioned to provide U-visa certifications and verify a victim's helpfulness in the detection or investigation of qualifying criminal activity.

The U-visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity.⁶ **Law enforcement officials who sign certifications do not confer any immigration status upon the victim**, but rather enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS).⁷ Only DHS has the discretion to grant or deny U-visa status to the victim.

Law Enforcement Officials and the U-visa Certification Requirement

I. INTRODUCTION

In creating the U-visa, Congress recognized that it is virtually impossible for officials who work in law enforcement, justice systems, or with other government enforcement agencies to punish and hold accountable perpetrators of crimes against noncitizens if the abusers and other criminals can avoid prosecution because their victims risk being deported. Congress also recognized that victims often do not come forward to seek law enforcement assistance because they fear detention and/or deportation. The U-visa encourages immigrant victims to report criminal activity by protecting them against deportation. It also enhances their access to safety and support needed to overcome physical and emotional injuries caused by criminal activity. The U-visa can make communities safer by holding perpetrators accountable for criminal activity that might otherwise go undetected.

⁴ INA § 101(a) (15) (U); 8 U.S.C. § 1101(a) (15) (U). If the petitioner is under 16 years of age, incapacitated, or incompetent, s/he is not required to personally possess information regarding the qualifying criminal activity. In these cases, an exception permits a parent, guardian, or "next friend" of the minor, incapacitated, or incompetent petitioner to provide information and assist in the investigation or prosecution. See INA § 101(a)(15)(U)(i), 8 U.S.C. § 1101(a)(15)(U)(i).

⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

⁶ *Id.*

⁷ See Form I-918, Supplement B, Instructions (08/31/07), at page 3 (United States Customs and Immigration Services will consider the totality of the circumstances in determining whether someone is eligible for the U-visa).

The U-visa application process requires an immigrant crime victim to obtain a certification by ***an approved certifying official*** who verifies the type of criminal activity perpetrated against the applicant and attests to the fact that the victim has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of that criminal activity.⁸ To increase victims' access to certifications, Congress explicitly included federal, state, and local law enforcement officials in the list of U-visa certifiers.⁹ This document outlines the significance of the role that certifiers play.

II. WHAT DOES THE U-VISA DO?

As described above, in 2000 Congress created a specific avenue for immigrant crime victims to obtain temporary lawful immigration status. This was done by amending sections of the Immigration and Nationality Act to create the U-visa.¹⁰

If approved for a U-visa, an applicant will receive legal status for up to four years. This status will permit the crime victim to live and work in the United States for the duration of the U-visa. At the end of the third year, the U-visa recipient may be eligible to apply to adjust his or her status to lawful permanent residence (commonly known as a "green card"). Receiving a U-visa does not directly or necessarily grant lawful permanent residency. Lawful permanent residency will be granted only to U-visa recipients who can provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

III. WHICH CRIMINAL ACTIVITIES DOES THE U-VISA COVER?

A "non-exclusive" list of qualifying criminal activities is provided in the statute.¹¹ The list includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law. The list also includes attempts or conspiracy to commit any of the listed activities.

Congress intentionally chose the term "criminal activity" in the statutory language to accomplish two goals: to be broadly inclusive of "any similar activity" and to focus on the victim's actions in coming to state or federal government officials with information about criminal activity.

⁸ INA § 214(p) (1), 8 U.S.C. § 1184(p) (1); 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007).

⁹ 8 U.S.C. § 1101(a)(15)(U)(I) (2006); 72 Fed. Reg. 53,014, 53,023-53,024 (Sept. 17, 2007).

¹⁰ See INA § 101(a)(15)(U), 8 U.S.C. § 1101 (a)(15)(U).

¹¹ INA § 101(a)(15)(U)(iii), 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007) (explaining that the list is non-exclusive).

This language is meant to take into account “the wide variety of state criminal statutes in which the terminology used to describe the criminal activity may not be identical to that found on the statutory list, although the nature and elements of both criminal activities are comparable.”¹² For example, the statute lists domestic violence as a U-visa–qualifying crime. However, most state statutes do not specify domestic violence as a crime, but instead list crimes that constitute domestic violence, such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage.¹³ Even though these crimes are not specifically enumerated in the U-visa, they are incorporated within the qualifying crime of domestic violence for U-visa purposes.

In cases when crime perpetrators are charged with unrelated crimes, U-visa certifications are still appropriate and explicitly encouraged by the United States Department of Homeland Security.¹⁴ An illustrative example is provided in the U-visa regulations: if a government agent is investigating federal embezzlement charges and learns that the offender is abusing his wife, the wife may be eligible for a U-visa as a victim of domestic violence, even if her husband is charged only with the non-qualifying federal embezzlement crimes.¹⁵

IV. DOES U-VISA STATUS REQUIRE THE INITIATION OF A LAW ENFORCEMENT INVESTIGATION OR A SUCCESSFUL PROSECUTION?

No. Congress explicitly crafted the U-visa immigration protections for victims so as not to interfere with the discretion that investigators and prosecutors have to investigate and choose whether to prosecute criminal activity in any particular case.

Congress also recognized that for many crimes, particularly those that can be serial in nature (e.g., rape), a victim could come forward, provide evidence, and only much later—after a number of victims have come forward—can police build a criminal case against the perpetrator. The U-visa was designed to provide protection for immigrant victims, to encourage them to come forward and provide evidence and information about criminal activity committed against them. If an immigrant crime victim has offered or is willing to offer assistance to law enforcement officials regarding such activity, the outcome of the case (or whether authorities ever proceed with the case) is not relevant to a victim’s U-visa eligibility. In addition, investigation or prosecution of some criminal activity is impossible because the perpetrator cannot be located, has diplomatic immunity, or has been deported.

¹² 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

¹³ See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 849-876 (1993).

¹⁴ See 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

¹⁵ *Id.*

U-visa status can therefore be granted even when police decline to investigate or prosecutors decline to charge perpetrators, when charges are later dropped, or when prosecutors are unable to secure convictions.¹⁶

V. APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of DHS has sole jurisdiction over adjudication of petitions for U-visa status.

A person seeking U-visa status must submit, by mail, Form I-918, “Petition for U Nonimmigrant Status” and include with it Form I-918 Supplement B, “U Nonimmigrant Status Certification,” along with supporting documents required to prove the four requirements for U-visa eligibility. A copy of Form I-918, Supplement B, with instructions is included in the tool kit on page 14. Form I-918, Supplement B must be signed by a qualifying certifier, such as a law enforcement official.¹⁷

The applicant sends the completed petition and supporting materials to the Victims and Trafficking Unit of USCIS, located in Vermont. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U-visa status.

By preparing and signing Form I-918, Supplement B, a certifier is not conferring legal immigration status upon a noncitizen applicant or making a determination of the applicant’s eligibility for a U-visa. The certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility to receive a U-visa. In addition to the certification, the applicant must meet the other eligibility criteria, such as demonstrating that he or she suffered substantial mental or physical abuse as a result of having been a victim of the qualifying criminal activity. To be granted a U-visa, victims are also required to prove that they are eligible for admission to the United States. In some cases, a victim may be inadmissible under immigration law. In such cases, a victim will need to submit an application for a discretionary waiver along with the U-visa petition.

VI. LAW ENFORCEMENT OFFICIALS AS U-VISA CERTIFIERS

A U-visa applicant must obtain a certification from a law enforcement official, prosecutor, judge, or other federal or state authority that is detecting, investigating, or prosecuting any of the criminal activities listed in the U-visa statute or regulations.¹⁸ Congress specifically listed

¹⁶ 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007). (“This rule does not require that the prosecution actually occur, since the statute only requires an alien victim to be helpful in the investigation or the prosecution of the criminal activity. See INA sections 101(a)(15)(U)(i)(III) & 214(p)(1), 8 U.S.C. 1101(a)15(u)(i)(III) and 1184(p)(1).”)

¹⁷ The implementing regulations of the U-visa require that the law enforcement official that is the certifying official be the head of the certifying agency, or any supervisor specifically designated by the head of the certifying agency to issue U-visa certifications. See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i).

¹⁸ INA § 214(p)(1), 8 U.S.C. 1184(p)(1); 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

federal, state, and local law enforcement officials as U-visa certifiers in the statute.¹⁹ As first responders, police departments, sheriffs' offices, and marshals regularly encounter victims whose allegations of criminal victimization they believe to be credible. During the process of detecting criminal activity, taking police reports, and engaging in crime investigations, officers routinely determine whether they believe the criminal activity occurred and whether a person has been a victim of such activity.²⁰ When the crime victim is or may be a noncitizen, the agency, under the federal U-visa statute, is authorized to issue a U-visa certification. Based upon the law enforcement officer's contact with the immigrant victim during detection or investigation of criminal activity, the officer is well positioned to certify an immigrant victim's helpfulness or willingness to be helpful.

The DHS regulations envision that the U-visa certification process fits within routine activities of law enforcement. The U-visa certification can be completed at the same time officers are completing their police reports and can then be reviewed and approved by supervisors who are also signing off on the police reports. The U-visa regulations allow the head of the certifying agency to grant any supervisory person(s) the authority to issue U-visa certifications.²¹ The regulations contemplate granting certification authority to multiple supervisory personnel. DHS encourages law enforcement agencies to develop internal policies and procedures to respond to requests for U-visa certifications. To facilitate the authorization of personnel to sign U-visa certification forms, a sample "Designee Letter" is included in the tool kit on page 20.

Certifying agencies may also develop internal policies and procedures to inform victims where and with whom to file requests for certifications; to provide certifying officials with the relevant and necessary information needed for supervisors to sign U-visa certifications; and to implement practices that result in certifications being issued. A sample U-visa certification policy is included in the tool kit on page 26.

Evaluating Helpfulness

Law enforcement officials may complete U-visa certifications once they are able to assess a victim's helpfulness. An investigation need not be complete prior to signing a certification. The certification signed by a certifying official demonstrates that the applicant "has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity."²²

The "helpfulness" requirement was written using several verb tenses, recognizing that an applicant may apply for status at different stages of an investigation or prosecution.²³ Congress

¹⁹ INA. § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

²⁰ It is important to note that U-visa certification can and should occur as early as possible after taking a police report or interviewing a credible crime victim. See 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007). Certification need not wait until the case reaches a probable cause determination. However, for cases in which probable cause has been found, noncitizen victims should receive U-visa certifications.

²¹ See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i).

²² 8 U.S.C. § 1184(p)(1)

²³ 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

intended to allow an individual to petition for status at virtually any stage of the investigation or prosecution.²⁴ Likewise, the definition of “investigation or prosecution” in the statute is interpreted broadly.²⁵ Some examples of helpful actions include, but are not limited to, calling 911 to report the crime, providing a statement to the police, filing a police report, or seeking a protection order.

A victim who received certification and was granted a U-visa has an ongoing obligation to provide assistance.²⁶ Law enforcement officials may notify USCIS directly for cases in which victims are no longer helpful. However, such notification is appropriate only when the victim’s lack of cooperation is not reasonable.

VII. APPLICATIONS FOR LAWFUL PERMANENT RESIDENCY BY U-VISA RECIPIENTS

U-visa status is issued for a period of up to four years.²⁷ A U-visa holder can live and work legally in the United States and file petitions with USCIS to provide immigration status for family members.²⁸ Upon certification by a qualifying official, U-visa status can be extended.²⁹

After three years of continuous presence in the United States, a U-visa holder is eligible to apply for lawful permanent residency.³⁰ Not all U-visa holders will qualify for lawful permanent residency. To qualify, U-visa holders must provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

²⁴ *Id.*

²⁵ *Id.* at 53,020; 8 C.F.R. § 214.14(a) (5).

²⁶ *Id.*

²⁷ See INA § 214(p) (6), 8 U.S.C. § 1184(p) (6).

²⁸ 8 C.F.R. § 214.4(g) (2008).

²⁹ See INA § 214(p)(6), 8 USC § 1184(p)(6); 8 CFR § 214.4(g)(2008).

³⁰ See INA § 245(m), 8 U.S.C. § 1255(m).

U-VISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS

Purpose of the U-visa	<ul style="list-style-type: none"> The U-visa facilitates the reporting of crimes to law enforcement officials by immigrant victims of crime, including domestic violence, sexual assault, human trafficking and other crimes listed in the U-visa statute.
Benefits of the U-visa	<ul style="list-style-type: none"> This type of visa strengthens law enforcement agencies' ability to detect, investigate, and prosecute crime while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.
Who is eligible for a U-visa?	<ul style="list-style-type: none"> To be eligible for a U-visa <ul style="list-style-type: none"> an individual must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities; the individual must possess information concerning the criminal activity; the individual must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local official in the detection, investigation, or prosecution of the criminal activity; and the criminal activity must have occurred in the United States or its territories and possessions or violated U.S. laws.
U-visa Qualifying Criminal Activity	<ul style="list-style-type: none"> U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or <i>any similar activity</i> in violation of federal, state, or local criminal law. The term <i>any similar activity</i> accounts for the wide variety of state and federal criminal laws that may have names different from the criminal activity listed in the statute but are comparable in nature and elements to the enumerated criminal activity.
Status of Crime Perpetrator	<ul style="list-style-type: none"> A victim may qualify for a U-visa certification regardless of whether there is any familial relationship between the victim and the perpetrator. The perpetrator may have any immigration or citizenship status such as U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.
Certification Requirements	<ul style="list-style-type: none"> A certifying official must complete U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B. A certifying official is the head of a law enforcement agency or a person(s) with supervisory responsibility designated by the head of the agency to provide certifications. The certification is necessary to establish eligibility for the U-visa, but by itself does not grant immigration status to the victim. To obtain a U-visa, a victim must meet certain eligibility requirements, in addition to obtaining a U-visa certification. USCIS has sole authority to grant or deny a U-visa. The certification should provide specific details about the nature of the crime being detected, investigated, or prosecuted, and describe the petitioner's

	<p>helpfulness in the case.</p> <ul style="list-style-type: none"> • U-visa certification does not require that law enforcement investigate the criminal activity beyond reporting of the crime. The certification attests only to the U-visa petitioner’s willingness to be helpful or past or present helpfulness in detection, investigation, prosecution, or investigation efforts.
<p>Assessing the Helpfulness of the U-visa Applicant</p>	<ul style="list-style-type: none"> • If a U-visa petitioner filed a police report and is willing to assist—or has assisted or cooperated—with detection, investigation, or prosecution of criminal activity, a certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction. • Law enforcement officials may issue a certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and identifies a person as a victim of criminal activity. The investigation need not be complete prior to issuing a certification. • Congress intended to allow victims to obtain U-visa certifications at very early stages of crime detection—during investigations into criminal activity. • To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance when reasonably requested, as the statute specifies.

Instructions for I-918, Supplement B, U Nonimmigrant Status Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.

What Is the Purpose of This Form?

You should use Form I-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity.

When Should I Use Form I-918, Supplement B?

If you, the certifying official, determine that this individual (better known as the petitioner) is, has been, or is likely to be helpful in your investigation or prosecution, you may complete this supplement form. The **petitioner** must then submit the supplement to USCIS with his or her petition for U nonimmigrant status.

NOTE: An agency's decision to provide a certification is entirely discretionary; the agency is under no legal obligation to complete a Form I-918, Supplement B, for any particular alien. However, without a completed Form I-918, Supplement B, the alien will be ineligible for U nonimmigrant status.

To be eligible for U nonimmigrant status, the alien must be a victim of qualifying criminal activity. The term "victim" generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The alien spouse, unmarried children under 21 years of age and, if the victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where:

1. The direct victim is deceased due to murder or manslaughter, or
2. Where a violent qualifying criminal activity has caused the direct victim physical harm of a kind and degree that makes the direct victim incompetent or incapacitated, and, therefore, unable to provide information concerning the criminal activity or to be helpful in the investigation or prosecution of the criminal activity.

An alien may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, conspiracy, or solicitation to commit one or more of those offenses if:

1. The victim has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; **and**
2. There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
 - A. To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
 - B. To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim.

A victim of qualifying criminal activity must provide evidence that he or she (or in the case of an alien under the age of 16 years or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity as listed in **Part 3** of this form. Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

General Instructions.

Fill Out the Form I-918, Supplement B

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.

-
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "none."

This form is divided into **Parts 1** through **7**. The following information should help you fill out the form.

Part 1 - Victim information.

- A. **Family Name** (Last Name) - Give victim's legal name.
- B. **Given Name** (First name) - Give victim's full first name, do not use "nicknames." (Example: If victim's name is Albert, do not use Al.)
- C. **Other Names Used** - Provide all the names the victim has used that you are aware of, including maiden name if applicable, married names, nicknames, etc.
- D. **Date of Birth** - Use eight numbers to show his or her date of birth (example: May 1, 1979, should be written 05/01/1979).
- E. **Gender** - Check the appropriate box.

Part 2 - Agency information.

- A. **Name of certifying agency** - The certifying agency must be a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, that has responsibility for the investigation or prosecution, conviction or sentencing of the qualifying criminal activity of which the petitioner was a victim.

This includes traditional law enforcement branches within the criminal justice system, and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, such as the child protective services, Equal Employment Opportunity Commission, and Department of Labor.

- B. **Name of certifying official** - A certifying official is:
 - 1. The head of the certifying agency or any person in a supervisory role, who has been specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency; **or**
 - 2. A Federal, state or local judge.

If the certification is not signed by the head of the certifying agency, please attach evidence of the agency head's written designation of the certifying official for this specific purpose.

- C. **Agency address** - Give the agency's mailing address.

Part 3 - Criminal acts.

- A. **Check all of the crimes of which the petitioner is a victim that your agency is investigating, prosecuting, or sentencing** - If the crime(s) of which the petitioner is a victim is not listed, please list the crime(s) and provide a written explanation regarding how it is similar to one of the listed crimes. Similar activity refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the list of criminal activity found on the certification form itself.
- B. **Indicate whether the qualifying criminal activity violated the laws of the United States or occurred within the United States (including in Indian country and military installations) or the territories and possessions of the United States** - Qualifying criminal activity of which the applicant is a victim had to violate U.S. law or occur within the United States.

Please indicate whether the qualifying criminal activity occurred within the United States (including in Indian country and military installations) or the territories and possessions of the United States.

- 1. **United States** means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands.
- 2. **Indian country** refers to all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.
- 3. **Military installation** means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

4. Territories and possessions of the United States

means American Samoa, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

If the qualifying criminal activity did not occur within the United States as discussed above, but was in violation of U.S. law, it must violate a Federal extraterritorial jurisdiction statute. There is no requirement that a prosecution actually occur. Please provide the statutory citation for the extraterritorial jurisdiction.

Part 4 - Helpfulness of the victim.

- A. Indicate whether the victim possesses information about the crime(s).** A petitioner must be in possession of information about the qualifying criminal activity of which he or she is a victim. A petitioner is considered to possess information concerning qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning that criminal activity that would assist in the investigation or prosecution of the criminal activity. Victims with information about a crime of which they are not the victim will not be considered to possess information concerning qualifying criminal activities.

When the victim is under 16 years of age, incapacitated or incompetent, he or she is not required to personally possess information regarding the qualifying criminal activity. The parent, guardian, or "next friend" of the minor petitioner may provide that information. "Next friend" is a person who appears in a lawsuit to act for the benefit of an alien victim. The "next friend" is not a party to the legal proceeding and is not appointed as a guardian.

- B. Provide an explanation of the victim's helpfulness to the investigation or prosecution of the criminal activity.** A victim must provide evidence to USCIS that he or she (or, in the case of an alien child under the age of 16 or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying law enforcement official in the investigation or prosecution of the qualifying criminal activity.

Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. Alien victims who, after initiating cooperation, refuse to provide continuing assistance when needed will not meet the helpfulness requirement. There is an ongoing responsibility on the part of the victim to be helpful, assuming there is an ongoing need for the victim's assistance.

You, the certifying official, will make the initial determination as to the helpfulness of the petitioner. USCIS will give a properly executed Supplement B, U Nonimmigrant Status Certification significant weight, but it will not be considered conclusory evidence that the victim has met the eligibility requirements. USCIS will look at the totality of the circumstances surrounding the alien's involvement with your agency and all other information known to USCIS in determining whether the alien meets the elements of eligibility.

Part 5 - Family members implicated in criminal activity.

List whether any of the victim's family members are believed to have been involved in the criminal activity of which he or she is a victim. An alien victim is prohibited from petitioning for derivative U nonimmigrant status on behalf of a qualifying family member who committed battery or extreme cruelty or trafficking against the alien victim which established his or her eligibility for U nonimmigrant status. Therefore, USCIS will not grant an immigration benefit to a qualifying family member who committed qualifying criminal activities in a family violence of trafficking context.

Part 6 - Certification.

Please read the certification block carefully. **NOTE:** If the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, even after this form is submitted to USCIS, you **must** notify USCIS by sending a written statement to: USCIS - Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001. Please include the victim's name, date of birth, and A-number (if available) on all correspondence.

Part 3. Criminal acts. (Continued.)

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?

Yes

No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes

No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Part 4. Helpfulness of the victim.

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in **Part 3**.

Yes

No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.)

Yes

No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)

Yes

No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.)

Yes

No

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (mm/dd/yyyy)

SAMPLE DESIGNEE LETTER

[POLICE DEPARTMENT LETTERHEAD]

Date

Victims and Trafficking Unit Vermont Service Center
Vermont Service Center
U.S. Citizenship and Immigration Services
75 Lower Welden Street
St. Albans, VT 05479

Dear Sir or Madam:

I am the Chief of Police [or Sheriff] of City [or County], State. In this capacity, I am the head of the Police Department of [County, State], which office is responsible for investigating crimes committed in [County, State], which is a certifying agency, as such term is defined at 8 C.F.R. §214.14(a)(2).

Pursuant to 8 C.F.R. § 214.14(a)(3) and 8 C.F.R. § 214.14(c)(2)(i), I hereby specifically designate Person A, Person B, and Person C, all of whom have supervisory responsibilities, to sign I-918 Supplement B, U Nonimmigrant Status Certification forms on my Department's behalf. This specific designation shall remain in force until revoked in writing.

Sincerely,

[Name]
[Title]
[County, State]

U-VISA CERTIFICATION OFFICER'S DUTIES¹

GENERAL PURPOSE

In addition to performing duties listed under *[reference job description that covers officer]*, the U-visa certification officer(s) will perform a variety of tasks associated with the U-visa certification process, including evaluating U-visa certification requests, and completing and signing I-918 Supplement B forms (certification forms).

SUPERVISION EXERCISED

U-visa certification officer is in a supervisory position and is designated by the head of the agency.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Serves as liaison between police department and agency personnel seeking U-visa certification
- Reviews and signs I-918 Supplement B certification forms prepared by agency personnel
- Completes and signs I-918 Supplement B certification forms
- Assists the police department in developing programs and practices that will enhance community-outreach activities related to the U-visa and noncitizen crime victims
- Oversees programs to educate the public about police department's U-visa certification function and purposes
- Meets and acts as a liaison with community groups
- Liaises with other local government agencies on U-visa issues as assigned

Supports patrol officers at crime, fire, and accident scenes with U-visa information, materials, and outreach activities

- Completes monthly reports of activities detailing the number of U-visa certification requests and grants

¹ This model duties document was created by Legal Momentum and the Vera Institute of Justice, two not-for-profit organizations that provide national technical assistance to law enforcement agencies on the U-visa certification process.

PERIPHERAL DUTIES

- Serves on various law enforcement and other committees as assigned
- Performs related U-visa work as assigned

DESIRED MINIMUM QUALIFICATIONS

Education and Experience:

(A) Same as for *[job description]*

Preferred Knowledge, Skills, and Abilities:

(A) Knowledge and experience working with immigrant and noncitizen crime victims, including those eligible for immigration benefits related to the Violence Against Women Act (VAWA) (e.g., VAWA self-petitions, T-visas, and U-visas)

(B) Knowledge of U-visa statute and regulations, the U-visa certification process, and other victim-based forms of immigration relief available to immigrant crime victims (e.g., VAWA self-petitions and T-visas).

(C) Knowledge and command (reading, writing, and speaking) of one or more foreign languages prevalent in the community

(D) Experience in community policing

(E) Familiarity with agency's limited English proficient policies and procedures (e.g., how to access telephonic interpreters and how to work with bilingual personnel); and

ADDITIONAL DESIRED QUALIFICATIONS

[for agency to complete]

SPECIAL REQUIREMENTS

[for agency to complete]

TOOLS AND EQUIPMENT USED

Personal computer, including word processing and specialized software; phone, typewriter, calculator, fax machine, copy machine; police car, police radio, pager, first aid equipment, vehicle lock-out tools, camera, outreach materials (pamphlets, palm cards) with information for noncitizen crime victims

SELECTION GUIDELINES

Written application by existing officer; rating of education and experience; oral interview; additional related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude those duties from the position if the work is similar and related to a logical assignment for the position.

SAMPLE OUTREACH FLYER

WERE YOU THE VICTIM OF A CRIME?

If you or a close family member were the victim of a crime, you may be able to get a temporary visa, the U-visa, that can protect you from being deported—if you are willing to help police investigate and prosecute that crime.

You may be eligible for a U-visa if you or your family member were the victim of one of these crimes:

rape, torture, trafficking, domestic violence, sexual assault, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, blackmail, extortion, murder, or *any similar activity* that violates the law

Were you a victim of one of the crimes listed above?

Was a close family member of yours a victim of a crime listed above?

Were you or a close family member the victim of a similar crime?

If your answer is YES, you should call [Name] at **X Police Department** to make a police report. You and your family member may be able to apply for a U-visa.

The U-visa is a temporary visa for victims who make a report to the police. The U-visa protects you from being deported for four years. It provides legal immigration status if you are a crime victim and allows you to work legally. You may be able to apply for a U-visa if you helped or will help police investigate or prosecute a crime.

If you have an emergency, call 911 right away.

*The **X Police Department** wants to help victims of crime who report crime. This helps us protect the public safety. To learn more about the **X Police Department's** U-visa program, contact*

_____ at _____.

¿FUE VÍCTIMA DE UN CRIMEN?

Si usted—o un familiar cercano—fue víctima de un crimen, puede calificar para obtener una visatemporal, la visa-U, que le proteja de la deportación, si ayuda a la policía a investigar y juzgar dicho crimen.

Para calificar para una visa-U, si usted o un miembro de su familia fue víctima de cualquiera de estos crímenes:

violación, tortura, tráfico de personas, violencia doméstica, asalto sexual, prostitución, explotación sexual, mutilación sexual femenina, toma de rehenes, servidumbre involuntaria, trata de esclavos, secuestro, raptó, chantaje, extorsión, homicidio o *cualquier actividad similar* violatoria de la ley.

¿Fue usted víctima de alguno de los crímenes mencionados anteriormente?

¿Fue un familiar cercano suyo, víctima de alguno de los crímenes mencionados anteriormente?

¿Fue usted, o un familiar cercano, víctima de un crimen similar?

Si su respuesta es Sí, llame a [nombre] del **Departamento de Policía X** [department name] para reportar el crimen a la policía. Usted y su familiar pueden calificar para recibir una visa-U.

La visa-U es una visa temporal para víctimas que reportan su crimen a la policía. La visa-U le protege de la deportación durante cuatro años. La visa-U le da status legal de inmigración si usted ha sido víctima de un crimen y le permite trabajar legalmente. Si usted ayudó o va a ayudar a la policía a investigar o juzgar un crimen.

Para emergencias llame al 911 inmediatamente.

El **Departamento de Policía X** quiere ayudar a las víctimas que reportan estos crímenes. Esto nos ayuda a garantizar la seguridad pública. Para más información sobre el programa de la visa-U del **Departamento de Policía X** llame a _____ al teléfono _____.

	POLICE DEPARTMENT GENERAL ORDERS, POLICIES, AND PROCEDURES
	Enforcement Operations
	Specialized Situations and Services

Police Department GENERAL ORDER	Date of Issue	Page	Number
Subject: CERTIFICATION OF U VISA – NON-IMMIGRANT STATUS (FORM I-918, SUPPLEMENT B)			
CALEA STANDARDS		BY AUTHORITY OF	

I. PURPOSE

The purpose of this General Order is to establish guidelines and procedures for officers who receive requests for a U-Visa Certification (Form I-918, Supplement B). This General Order also specifies the certifying officer who will sign Form I-918, Supplement B.

II. POLICY

- A. It is the policy of this police department that “any person(s) in a supervisory role” and specifically any supervisor in the domestic violence unit, sexual assault unit, and/or investigatory units, is designated to issue U-Visa Certification on behalf of the chief of police by completing Form I-918, Supplement B.
- B. It is also the policy of this police department to assist immigrant crime victims with their U-visa applications if they cooperate with agency officials.

III. DEFINITIONS

- A. “Qualifying criminal activity” is defined by statute to be “activity involving one or more of the following or any similar activity in violation of federal, state, or local criminal law.” The statute also includes the attempt, conspiracy, or solicitation to commit any of the crimes listed below:

Abduction	Incest	Rape
Abusive sexual contact	Involuntary servitude	Sexual assault
Blackmail	Kidnapping	Sexual exploitation
Domestic violence	Manslaughter	Slave trade
Extortion	Murder	Torture
False imprisonment	Obstruction of justice	Trafficking
Felonious assault	Peonage	Perjury
Unlawful criminal restraint	Female genital mutilation	Witness tampering
Being held hostage	Prostitution	Other related crimes

- B. “Any Similar Activity” refers to other criminal activity when the similarities are substantial and the nature and elements of the criminal activity are comparable.
- C. The “U-visa” is the common name for the U nonimmigrant status.

IV. PROCEDURE

Before completing a Form I-918, Supplement B (a request for a U-visa certification), the certifying official shall have verified the following:

- A. The noncitizen was or is
1. a victim of a criminal activity (listed in Part III-A above) that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or
 2. the spouse or under-21-year-old child of a victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated; or
 3. the parents and unmarried under-18-year-old siblings of an under-21-year-old victim who is deceased because of murder or manslaughter, or who is incompetent or incapacitated.
- B. The noncitizen has been, is being, or is likely to be helpful to the investigation. This department’s policy describes the victim as being helpful when s/he
1. possesses information about a qualifying criminal activity; and
 2. demonstrates cooperation during the detection or investigation of that criminal activity, even if the investigation is not completed.
- C. When a certification is based on a prior investigation or a criminal case that has been closed or suspended, or when a statute of limitations has passed, the certification shall be completed after the above verification has been conducted.
- D. No request for certification will be accepted unless it is made on the proper U.S. Citizenship and Immigration Services form (Form I-918, Supplement B) and has been

completed by the referring legal entity (such as a private attorney, nonprofit organization, or victim).

- E. The request for certification shall be completed within 14 days from the time it was presented to this department.
- F. All requests for Form I-918, Supplement B certifications presented to this department shall be forwarded to the designated certifying officials.
- G. The certifying official may contact the VAWA Unit of the U.S. Citizenship and Immigration Services to report the U-visa applicant's failure to continue cooperating with the department only when the failure to cooperate is considered unreasonable. To determine whether failure to cooperate is unreasonable, officials should review and consider the victim's history of abuse and victimization, and any threats the victim has experienced or is experiencing.

V. ADDITIONAL CONSIDERATIONS

Department policy authorizes its members to distribute to any crime victim who may be a noncitizen an informational flyer describing immigration relief and services available to immigrant crime victims.

**I-918 Supplement B,
U Nonimmigrant Status Certification**

START HERE - Please type or print in black ink.

Part 1. Victim information.

Family Name: [Redacted] Given Name: [Redacted] Middle Name: [Redacted]

Other Names Used (Include maiden name/nickname):
[Redacted] none

Date of Birth (mm/dd/yyyy): [Redacted] Gender: Male Female

Part 2. Agency information.

Name of Certifying Agency: [Redacted] Police Department

Name of Certifying Official: [Redacted] Title and Division/Office of Certifying Official: Captain [Redacted] Division

Name of Head of Certifying Agency: Chief [Redacted]

Agency Address - Street Number and Name: [Redacted] Suite #: 515

City: [Redacted] State/Province: CA Zip/Postal Code: [Redacted]

Daytime Phone # (with area code and/or extension): [Redacted] Fax # (with area code): [Redacted]

Agency Type: Federal State Local

Case Status: On-going Completed Other

Certifying Agency Category: Judge Law Enforcement Prosecutor Other

Case Number: 070 840 654 FBI # or SID # (if applicable): [Redacted]

For USCIS Use Only.

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	
Remarks	

Part 3. Criminal acts.

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	[Redacted]

Part 3. Criminal acts. (Continued.)

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)
08/18/2007			

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

California Penal Code 273.5

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? Yes No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

N/A

c. Where did the criminal activity occur?

CA

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

The victim's former live in boyfriend pushed her and then threw a shoe at her, striking her in the eye.

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

The victim's right eye reddened. Bruise below the right eye. Victim's vision in right eye affected.

Part 4. Helpfulness of the victim.

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.) Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.) Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) Yes No

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

Victim spoke freely with the responding officers.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

[Redacted Signature]

Date (mm/dd/yyyy)

05/28/2010

U-VISA NEWS ARTICLES

The links to the following news articles are provided as references that may assist law enforcement better understand their role as U-visa certifiers.

1. Ivie, Stacey and Nanasi, Natalie. "The U Visa: An Effective Resource for Law Enforcement." *FBI Law Enforcement Bulletin* (2009). Available at: http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2009-pdfs/october2009.pdf/at_download/file

Detective Stacey Ivie from the Alexandria (VA) Police Department discusses the advantages of the U-visa for law enforcement and answers several frequently asked questions posed by her peers about the U-visa. (See page 10 of the publication—page 12 of the PDF.)

2. Sprecher, Megan and McGrath, Michael. "City of Cleveland takes important steps to ensure citizen safety: We all should follow its lead." *Cleveland.com* (2010). Available at: http://www.lasclev.org/2010%20News%20Clippings/03-28-2010_Sprecher_and_McGrath_Op-Ed.pdf

This article chronicles the City of Cleveland's efforts to expand the use of the U-visa, including working with the Cleveland Police Department to issue a U-visa protocol.

3. Toral, Almudena. "Visas Out of Hell: Women Need to Know They Exist." *WeNews.org* (2010). Available at: <http://www.womensenews.org/story/100302/visas-out-hell-women-need-know-they-exist>

This article highlights the story of Graciela Beines, a crime victim, and how the assistance she received from police, advocates, and others led to a U-visa. The article also links to a video of Ms. Beines describing her experiences.

4. Ulloa, Jazmine. "U Visa provides temporary legal status for victims of violent crime." *The Brownsville Herald* (2010). Available at: <http://www.brownsvilleherald.com/articles/recalls-107822-night-wall.html>.

In this article, the author details the history of the U-visa, including the administrative barriers that have led to the U-visa being an underused tool for law enforcement.

U-VISA STATUTORY AND REGULATORY BACKGROUND: PURPOSE AND HELPFULNESS REQUIREMENT

The following excerpts from the Victims of Trafficking and Violence Prevention Act of 2000 and its implementing regulations summarize the statutory and regulatory background on the U-visa's purpose and its helpfulness requirement.

Statutory Authority: Purpose of the U-visa

"The purpose...is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens. Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status."¹

Statutory Authority: Helpfulness

"[T]he alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity..."²

Regulatory Authority: Helpfulness

"USCIS [United States Citizenship and Immigration Services] interprets 'helpful' to mean assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim."³

"The requirement was written with several verb tenses, recognizing that an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of the investigation. This suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status. If the alien victim only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide

¹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. 106-386 §1513.

² Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Pub L. 106-386, *codified at* 8 U.S.C. §1101(a)(15)(U)(i)(III).

³ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 21 (Sept. 17, 2007).

assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act] is not furthered.”⁴

“In addition, in order to qualify for permanent residence status on the basis of U nonimmigrant classification, the alien must not have unreasonably refused to provide assistance in the criminal investigation or prosecution. This requirement further suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status.”⁵

“The rule provides that the determination of whether an alien’s refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.”⁶

“Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”⁷

“Although there are no specific data on alien crime victims, statistics maintained by DOJ [Department of Justice] have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.”⁸

⁴ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

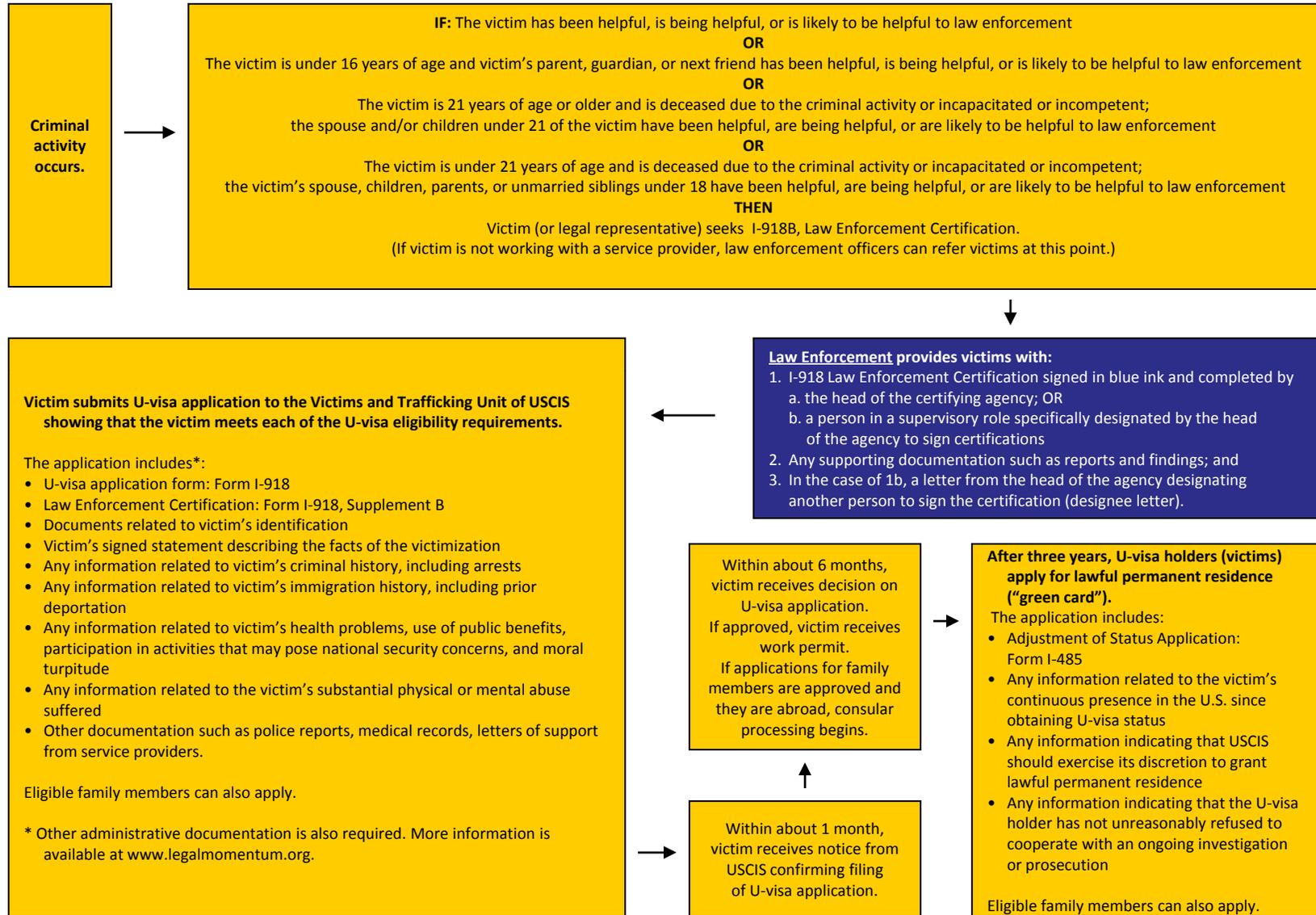
⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

⁶ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067. page 25 (December 8, 2008).

⁷ 72 Fed. Reg. 53014, 53014-53015 (2007).

⁸ 73 Fed. Reg. 75540, 75554 (2008).

U-visa Application Victim Flow Chart



U-VISA CERTIFICATION AND LAW ENFORCEMENT: FREQUENTLY ASKED QUESTIONS¹

BACKGROUND

What is the purpose of the U-visa?

In keeping with humanitarian interests of the United States, Congress created the U-visa to encourage immigrant crime victims to report crimes without fear of deportation and to “encourage law enforcement to better serve immigrant crime victims.”²

How do law enforcement agencies benefit from the U-visa?

As a crime-fighting tool, the U-visa reinforces an agency's commitment to victim safety, protection, and recovery from trauma. Victims without immigration status are more likely to report crimes if they have no reason to fear that doing so could cause them to be deported. The community will be safer as a result. Law enforcement agencies that use the U-visa in conjunction with other community policing measures also prove to immigrants and the community that they are serious about protecting immigrants from crime.

CERTIFICATION

What is the U-visa certification?

The U-visa certification is a Department of Homeland Security (DHS) form (I-918 Supplement B) that a U-visa applicant submits with a U-visa application to the United States Citizenship and Immigration Services (USCIS) of DHS.³ The certification is a sworn statement that says an individual is a victim of a qualified criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of that criminal activity.⁴

What is U-visa qualifying criminal activity?

U-visa qualifying criminal activity involves a violation of federal, state, or local criminal law (or any similar activity), and specifically includes “rape; torture; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or

¹ This document was modeled after the *Questions and Answers about U Visas* document, created by the International Institute of the Bay Area. Legal Momentum and the Vera Institute of Justice wish to acknowledge Susan Bowyer.

² Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

³ USCIS is the agency within DHS responsible for adjudicating applications for immigration benefits, work authorization, and naturalization. Two other branches of DHS are responsible for immigration enforcement activities: Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

⁴ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

solicitation to commit any of the above mentioned crimes.”⁵ Although not all-inclusive, the list of qualifying criminal activity represents the many types of behavior that can constitute domestic violence, sexual abuse, trafficking, or are crimes that often target vulnerable immigrants as victims.⁶

What constitutes *helpfulness*?

Helpfulness refers to the victim’s willingness to assist law enforcement during the detection, investigation, or prosecution of criminal activity. Helpfulness can be as simple as a victim reporting a crime to the police. It may also include participating in other aspects of the investigation or prosecution, such as identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements. Once a victim has been cooperative, the individual has continuing responsibility to assist officials and is required to provide reasonable ongoing cooperation in order to apply for lawful permanent residence.⁷ To prevent further harm to victims, an exception to the ongoing cooperation requirement exists when victims can demonstrate that their inability or refusal to cooperate is not unreasonable. In some cases it may be unsafe for a victim to fully cooperate with law enforcement. Such situations include trauma or threats of retaliation.⁸ If a victim has been helpful in detection or investigation of criminal activity, law enforcement can issue U-visa certification even if the victim later found it too difficult to continue cooperating.

Why is the law enforcement certification so important to immigrant victims?

The U-visa affords undocumented victims temporary legal immigration status. Without this, victims may be afraid to seek assistance from law enforcement when they are victimized by a spouse, family member, employer, or even a stranger. Undocumented victims fearing deportation may risk exploitation and ongoing victimization rather than coming forward to report crimes. The U-visa also provides a victim with employment authorization and protection against deportation, critical tools in establishing economic independence and long-term safety.

Who can sign a U-visa certification?

In order to approve a U-visa, USCIS requires a U-visa certification. Any agency that investigates or prosecutes criminal activity may sign a certification.⁹ USCIS includes in this category judges,

⁵ INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000).

⁶ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 7 (2007).

⁷ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 85 (2007).

⁸ USCIS will consider in deciding reasonableness of non-cooperation “general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.” 8 C.F.R. 245.24(a)(5); 73 Fed. Reg. 75540, 75547, 75560 (Dec. 12, 2008).

⁹ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

federal and local law enforcement agencies and prosecutors, Child Protective Services, the Equal Employment Opportunity Commission, Department of Labor, and other agencies that meet these guidelines.¹⁰ Within law enforcement agencies, only an individual in a supervisory role specifically designated by the head of the agency may sign the certification.¹¹ Every law enforcement officer with a supervisory role may be designated as a U-visa certification signatory. An agency head may designate any number of law enforcement officers to sign these certifications.

Is a law enforcement agency required to sign the certifications?

No. Law enforcement agencies are not required to sign the certifications. However, Congress enacted the U-visa protections with the expectation that law enforcement officers are in the best role to assess the helpfulness of a victim.¹² A victim cannot obtain a U-visa without a law enforcement certification.¹³

CERTIFICATION SCENARIOS

Can a law enforcement officer certify an application for a crime that happened long ago?

Yes. There is no applicable statute of limitations that precludes signing a certification. The U-visa was enacted in January 2001 as part of the Victims of Trafficking and Violence Prevention Act of 2000.¹⁴ However, USCIS did not promulgate regulations until September 2007.¹⁵ As a result, many individuals who were crime victims and likely eligible for U-visas were unable to apply. Many of them still reported crimes, despite the lack of immigration protections. Many more were too scared to report crimes to law enforcement for the reasons Congress contemplated.¹⁶ Similarly, by not creating a reporting statute of limitations, Congress protected individuals who were victimized before the law took effect (and before regulations were clarified) by allowing them to meet the criteria required for a law enforcement officer to sign a certification.

Can a law enforcement officer sign a certification if the agency decides to investigate a crime that is not listed as a qualifying crime under the U-visa statute?

Yes. The certifying officer must state only that the individual is a victim of a qualifying crime.¹⁷ It is not necessary that the qualifying crime be investigated or prosecuted.¹⁸

¹⁰ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000); New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 23 (2007).

¹¹ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (2000).

¹² Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a)(2)(B) (OCT. 28, 2000).

¹³ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

¹⁴ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 (OCT. 28, 2000).

¹⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 (2007).

¹⁶ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

¹⁷ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 38 (2007).

Can a law enforcement officer sign a certification if the victim is not needed in the course of the investigation or prosecution?

Yes. Per Congress, the certification process does not hinge on or require a victim's testimony or completion of a prosecution.

Can a law enforcement officer sign a certification if the prosecutors decide(d) not to prosecute the perpetrator?

Yes. A victim should be protected regardless of whether the perpetrator is investigated or prosecuted. In many cases prosecutors do not prosecute, such as when the alleged offender has absconded, enjoys diplomatic immunity, or may be a perpetrator against whom law enforcement has not yet fully built a case. The accused person will usually know at least that a police report has been filed against him (or her), even if charges are never filed. The risk of retaliation is still considerable.

Can a law enforcement officer sign a certification if the perpetrator is not convicted?

Yes. Prosecutors must build a case considering the full evidence, including the victim's statement. Ultimately, obtaining a conviction depends on many factors. Regardless of how the prosecution moves forward, however, the victim is at risk. The victim may be at a greater risk if the perpetrator is not convicted. The U-visa certification is designed to be issued when the law enforcement officer believes that the individual is a victim of a qualifying criminal activity. The criminal burden of proof does not apply and an acquittal in a criminal case does not affect certification, which requires only an assessment of victimization and helpfulness or willingness to be helpful.

Can a law enforcement officer sign a certification if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?

No. If the law enforcement officer does not believe that the individual seeking certification is a victim of a qualifying criminal activity, the officer should not sign the certification unless it is for an indirect victim (see below). Law enforcement officers, however, should remember that many of these crimes, including sexual assault and human trafficking, are traumatic. Furthermore, many perpetrators fuel immigrant victims' perceptions and expectations about law enforcement based on experiences from their home countries, where law enforcement officers might have been corrupt and unreliable. Therefore a law enforcement officer may not immediately identify someone as a victim because the individual is not yet comfortable disclosing the victimization.

Can a law enforcement officer sign a certification if the victim's testimony conflicts with earlier statements or is harmful to the case?

¹⁸ "For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity. For example, in the course of investigating Federal embezzlement and fraud charges, the investigators discover that the perpetrator is also abusing his wife and children, but because there are no applicable Federal domestic violence laws, he is charged only with non-qualifying Federal embezzlement and fraud crimes." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 18 (2007).

Maybe, depending on why the testimony conflicts with earlier statements. For example, language barriers and the use of unqualified interpreters often create the perception that an immigrant victim's testimony has changed when the conflict is because of faulty or no translation. In cases of particularly traumatic crimes, it may take some time before a victim is able to provide complete information, even if the victim is being helpful. This can also lead to unintended conflicting statements.

Can a law enforcement officer sign a certification if there is evidence that the victim is also a crime perpetrator?

Yes. Certification can be granted when an officer believes that the immigrant has been the victim of criminal activity, even if the victim has been arrested as a crime perpetrator in the past. Congress anticipated this problem and specifically allowed USCIS the discretion on a case-by-case basis to grant waivers of U-visa victims' criminal convictions when it is in the public or national interest.¹⁹ Many immigrant crime victims have been controlled in such a way that they end up being arrested based on information from the perpetrator or because of poor interpretation or fear of disclosing the truth about abuse to law enforcement. Despite federal and state policies to the contrary, some domestic violence incidents result in arrest of both the perpetrator and the victim, despite government policies discouraging arrest of the victim. Such arrests fail to acknowledge an overall power and control dynamic that exists in abusive relationships.²⁰ USCIS will screen the criminal background of every U-visa applicant and the agency will investigate every arrest. If a U-visa applicant is found to be the perpetrator of the crime (e.g., someone identified as a trafficking victim is actually the trafficker), USCIS precludes the individual from obtaining U-visa relief.

Can a law enforcement officer sign a certification if there are concerns about the victim's credibility?

Yes. The law enforcement officer is responsible for ensuring that the information on the certification is true and complete. USCIS will adjudicate any issues of credibility beyond the certification, including statements in the application that suggest issues of credibility. USCIS employs rigorous standards to check the credibility of every applicant.

Are there times when someone might be an indirect victim and still seek certification?

Yes. Indirect victims are able to seek U-visas in cases when the direct victim is deceased as a result of the crime (e.g., murder or manslaughter), incompetent, incapacitated, or under the age of 18.²¹ The indirect victims can include spouses, children under 21 years of age, and parents of the direct victim. If the direct victim is or was under 21 years of age, parents and

¹⁹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007)

²⁰ See "Family Violence: A Model State Code sec. 205A(2)" The National Council for Juvenile and Family Court Judges (1994) for an outline of considerations in dual arrest cases. Many states have adopted policies that encourage arrest of the predominant aggressor in domestic violence cases.

²¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

unmarried siblings under 18 years of age can also apply.²² Parents of U.S. citizens can be considered indirect victims. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, family members are encouraged to fully participate in the investigation or prosecution and may provide valuable information that would otherwise not be available.²³

What if a crime victim does not have an immigration attorney, practitioner, or advocate but the law enforcement officer wants to sign a certification?

Law enforcement officers may sign certifications for victims who have not yet secured legal representation.²⁴ U-visa certifiers should recommend that victims have representation before applying. They should also refer crime victims to agencies in the community with experience assisting immigrant victims. These agencies will provide social services and assist victims in securing representation before the victim applies for a U-visa. Law enforcement officers should not provide any legal advice to the crime victims. If law enforcement officers are eager to sign certifications, however, they can refer victims to community groups or organizations that can provide legal advice or representation or to advocates who can access technical assistance and support.

If a law enforcement officer signs the certification, does the victim automatically get lawful immigration status?

No. USCIS requires U-visa applicants to provide significant further documentation to meet all other U-visa requirements.²⁵

Can the certification be considered a benefit for the victim in the course of a prosecution of the perpetrator?

This may be a concern for prosecutors. Please refer any prosecutors to Partnership staff and we will provide technical assistance specific to that situation.

LAW ENFORCEMENT CONCERNS

If a law enforcement agency has an ICE (Immigrations and Customs Enforcement) ACCESS partnership agreement (such as 287(g), Secure Communities, or the Criminal Alien Program [CAP]), is a victim still eligible to receive a U-visa certification?

Yes. ICE ACCESS guidelines do not prohibit undocumented victims from seeking U-visa certification.

²² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

²³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at pages 12-15 (2007); 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

²⁴ If an officer signs a certification before the victim has located counsel, the officer may need to reissue the certification at a future date to certify additional or different crimes or if the certification expires due to delays in the victim attaining legal representation. Note, victims are not required to have attorneys to apply for the U-visa.

²⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 39 (2007); 72 Fed. Reg. 53014 (Sept. 17, 2007).

What if a particular jurisdiction has a policy not to protect people who are without lawful immigration status?

Congress created the U-visa to:

strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.²⁶

Law enforcement jurisdictions that in practice refuse to sign U-visa certifications or that adopt a uniform policy against signing U-visa certifications should consider the ramifications for immigrant victims and the safety and trust of law enforcement within the entire community. Law enforcement agencies exist to keep communities safe. Excluding a significant and vulnerable part of the population from protection may have long-lasting and serious effects for the entire community.

Once a certification is signed, what are the ongoing obligations for a law enforcement officer?

If a victim later appears not to be a victim or is no longer being helpful, a certifying officer is required to contact the VAWA Unit at the Vermont Service Center of USCIS to report any such changes. However, such notification is appropriate only when the victim's lack of cooperation is not reasonable. A victim may choose not to continue to provide information or testimony for a number of reasons, including the crime perpetrator's coercing the victim not to testify or threatening the victim or family members with further harm or other retaliation if s/he continues cooperating. The regulations use a "totality of circumstances" test to assess whether a U-visa holder unreasonably refused to provide assistance.²⁷ Some factors to consider in ascertaining whether the victim's lack of cooperation is reasonable are the amount of time that has passed since the victimization, the level of trauma, the availability of victim services and resources, and financial stability.²⁸

What if the victim is arrested after the certification is signed?

USCIS will investigate the arrest of every person with a pending application. Certifying officers have no duty to track the criminal history of every victim receiving a U-visa certification. U-visa applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the U-visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the U-visa is granted, USCIS will review an individual's criminal history when the U-visa holder applies for lawful permanent residence.²⁹ In some jurisdictions, the U-visa holder who is arrested will be

²⁶ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

²⁷ 8 CFR 245.24(a)(5) (2009)

²⁸ 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008).

²⁹ U-visa holders who apply for lawful permanent residence must also meet several other requirements and do not automatically receive permanent immigrant status in the United States. INA §245(m).

brought to the attention of U.S. Immigration and Customs Enforcement. Even to individuals granted lawful permanent status, a criminal conviction can have immigration consequences and the process is closely monitored by the Department of Homeland Security.

What if the victim is in immigration removal proceedings or immigration detention?

An immigrant in removal proceedings and/or detention may still be eligible for and granted a U-visa. These circumstances should have no impact on whether a law enforcement officer signs the certification. Immigration enforcement actions are typically subject to prosecutorial discretion. Law enforcement officers should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.

CONTACTS

If a law enforcement agency has questions about a particular case, who can provide guidance?

For questions about U-visa certification:

Thomas Pearl, Assistant Center Director, Victims and Trafficking Unit Vermont Service Center, USCIS: thomas.pearl@dhs.gov or Scott Whelan, Office of Policy and Strategy, USCIS: (202) 272-8137 or scott.whelan@dhs.gov.

For law enforcement officers seeking technical support or consultation, please contact Legal Momentum at (202) 326-0040 or iwp@legalmomentum.org to receive technical support from staff attorneys and law enforcement officer consultants.