

U VISA CERTIFICATION *and* T VISA DECLARATION TOOLKIT *for* LAW ENFORCEMENT AGENCIES AND PROSECUTORS

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REINFORCING PUBLIC SAFETY IN IMMIGRANT COMMUNITIES: THE IMPACT OF THE U VISA AND T VISA LAW ENFORCEMENT CERTIFICATION OVERVIEW

(Last Updated July 2020)

Law enforcement agencies² with a practice or policy for signing U visa certifications and T visa declarations have an additional tool to reduce crime and ensure safer communities. The U visa and the T visa are federal programs available to immigrant victims of crime who are helpful to law enforcement. U visa applicants must submit, among other documentation, a law enforcement certification as part of their U visa application. A law enforcement declaration is not a required document for a T visa declaration, but is useful³ and valuable evidence of a victim's cooperation.⁴ This toolkit provides an overview and details about the U visa and T visa programs and guidance on how law enforcement agencies, in particular police and prosecutors, can develop a certification practice.

This toolkit provides the following background information on the U and T visa programs: an overview of the U and T visas, information on who qualifies for these visas, which criminal activities are covered by the U and T visas, the application process, and other information that will assist law enforcement agencies, in particular police and prosecutors, in their role as certifiers. The U visa certification form, the T visa declaration form and a sample forms completed by a law enforcement official are included in this toolkit.

U VISA

Overview of the U visa

When Congress created the U visa in the Violence Against Women Act of 2000 (VAWA), its intent was (1) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute, convict and sentence in cases of domestic violence, sexual assault, human trafficking, and other crimes; and (2) to offer protection to victims of such criminal activities.⁵ Lawmakers recognized that a victim's helpfulness, cooperation, assistance, and safety are essential to the effective detection, investigation, prosecution, conviction and sentencing of

² The Department of Homeland Security (DHS) recognizes law enforcement officials to include federal, state, local law enforcement agencies, prosecutors, judges or other authority that has the responsibility for investigation or prosecution of a qualifying crime or criminal activity. Hereinafter, the phrases "law enforcement" and "law enforcement agencies" are to include the aforementioned authorities.

³ 72 Fed. Reg. 92266, 92276 (2016).

⁴ DEP'T OF HOMELAND SECURITY, U and T Visa Law Enforcement Resource Guide 3 & 10 (2015) [hereinafter *DHS U and T Visa Resource Guide*], <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

⁵ 72 Fed. Reg. 53014, 53015 (2007) (citing Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464).

crimes.⁶ Victims who fear deportation, however, will be unlikely to come forward to help government officials detect criminal activities, cooperate and assist in investigative efforts, and/or participate in criminal prosecutions of crime perpetrators.⁷ Thus, Congress created the U visa program to provide specific avenue through which immigrant crime victims who are helpful in detecting criminal activity or who cooperate with law enforcement, prosecutors or other government officials investigating, prosecuting, convicting or sentencing their perpetrator, can obtain lawful immigration status and protection against deportation. This program was designed to foster increased trust between law enforcement agencies and the immigrant population they serve.⁸

Who is eligible for a U visa?

To be eligible for a U visa, immigrant victims must meet four statutory requirements. They must also include in their application a certification from a certifying official or agency describing that they have been, are being, or are likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a qualifying criminal activity.⁹ The law requires that a person who is eligible for a U visa must:

- (1) have been the victim of a criminal activity perpetrated in the United States or that violated the laws, state or federal, of the United States;
- (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
- (4) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity.¹⁰

⁶ 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. Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

⁷ “Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims’ lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.” *DHS U and T Visa Resource Guide* at 3.

⁸ VAWA 2000, § 1513(a), Pub. L. No. 106-386, 114 Stat. 1464; *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002) Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

⁹ I.N.A. § 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 was committed or was reported.); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

¹⁰ I.N.A. § 101(a) (15) (U), 8 U.S.C. § 1101(a) (15) (U). If the petitioner is under 16 years of age, incapacitated, or incompetent, the victim 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).

In addition, the victim must be admissible to the United States. Under U.S. immigration law a person is “admissible” if they are eligible to be granted lawful entry into the United States.¹¹ Immigrant victims who are inadmissible,¹² may apply for any waiver of inadmissibility for which the victim may be eligible. The Violence Against Women Act of 2000 created a waiver specific to U visa, under which DHS has the discretion to waive any ground of inadmissibility except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.¹³ However, DHS first must determine that such a waiver would be in the public or national interest.¹⁴

The U visa certification requirement

The law enforcement certification (Form I-918B) is a five-page form that immigrant crime victims must submit as part of their U visa application. The form includes seven short parts and must be signed by a ***certifying law enforcement official, prosecutor, or other government agency official authorized to certify*** that attests to the following:

- 1) The type of criminal activity perpetrated against the victim (I-918B Form: Part 3)
- 2) The fact that the person seeking the certification has been a victim of criminal activity;
- 3) Include notes of any injuries or other facts about the criminal activity they witnessed; and (I-918B Form: Part 3)
- 4) That the person possesses information about the criminal activity; I-918B Form: Part 4).¹⁵
- 5) That the victim has been helpful, is being helpful or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a U visa listed criminal activity; (I-918B Form: Part 4)
- 6) Information they have about any perpetrators who are family members of the victim. (I-918B Form: Part 5)

To increase victims’ access to certifications, Congress explicitly included federal, state, and local law enforcement officials, prosecutors, and judges in the list of U visa certifiers.¹⁶

¹¹ I.N.A. § 101(a)(13), 8 U.S.C. 1101(a)(13).

¹² Grounds of inadmissibility are listed in I.N.A. § 212, 8 U.S.C. 1182.

¹³ I.N.A. § 212(d)(14), 8 U.S.C. 1182(d)(14).

¹⁴ *Id.*

¹⁵ 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, they are 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).

¹⁶ 8 U.S.C. § 1101(a)(15)(U)(I) (2006); 72 Fed. Reg. 53014, 53023–24 (Sept. 17, 2007).

- **Qualifying Criminal Activities for the U visa Certification (I-918B Form: Part 3)**

The U visa statute includes a “non-exclusive”¹⁷ list of qualifying criminal activities, which appears in part 3 of the certification form. The list includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation,¹⁸ being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, fraud in foreign labor contracting, 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. This list of criminal activities is not exhaustive, but rather it represents the various types of behavior that can be classified as domestic violence, sexual abuse, trafficking, or other criminal activities that often impact immigrants.¹⁹

Congress intentionally chose the term “criminal activity” in the statutory language to accomplish two goals: 1) to broadly include “any similar activity” and 2) to focus on the victim’s actions in coming to state or federal government officials with information about criminal activity.

¹⁷ INA § 101(a)(15)(U)(iii), 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (explaining that the list is non-exclusive).

¹⁸ The United States federal government defines Female Genital Mutilation or Cutting (“FGM/C”) as follows:

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia major or labia minor or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is –

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioners, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

(d) Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both. 18 U.S.C. § 116 (2013).

DHS developed a brochure that provides information clarifying the criminal consequences for performing FGM/C on a minor, attempting to send her outside the United States for FGM/C to be performed, or performing FGM/C on a woman over the age of 18 without consent. In addition, this brochure details the immigration consequences to performing or assisting in FGM/C, and that immigration relief may be available for those that have undergone FGM/C or are at risk of undergoing FGM/C. Department of Homeland Security, “Female Genital Mutilation/Cutting,” available at http://library.niwap.org/wp-content/uploads/FGMC_Brochure_FINAL.pdf.

¹⁹ 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007).

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.”²⁰

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 criminal activities 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.²¹ 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 perpetrators are charged with unrelated crimes, U visa certifications are still appropriate and explicitly encouraged by the United States Department of Homeland Security.²² 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.²³

- **Evaluating U Visa Helpfulness (I-918B Form: Part 5)**

Law enforcement, prosecution, judges, and other government officials may complete U visa certifications once they are able to assess a victim’s helpfulness.²⁴ An investigation need not be complete prior to signing a certification. The certification signed by a certifying official demonstrates that the victim “has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity.”²⁵

The “helpfulness” requirement was written using several verb tenses, recognizing that a victim may apply for status at different stages of an investigation or prosecution.²⁶ Congress intended to allow an individual to petition for status at virtually any stage of the investigation or prosecution.²⁷ Likewise, the definition of “investigation or prosecution” in the statute is interpreted broadly²⁸ to include victim assistance in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁹ Some examples of helpful actions include,

²⁰ 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

²¹ 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, 849–76 (1993).

²² See 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

²³ *Id.*

²⁴ “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.” *DHS U and T Visa Resource Guide* at 7.

²⁵ 8 U.S.C. § 1184(p)(1).

²⁶ 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007).

²⁷ *Id.*

²⁸ *Id.* at 53020; 8 C.F.R. § 214.14(a) (5).

²⁹ *Id.*

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.³⁰

It is important to note that a victim who received certification and a victim who was granted a U visa has an ongoing obligation to provide assistance or cooperation reasonably requested by law enforcement or prosecutors.³¹ According to DHS “This means that since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonable requested by law enforcement or prosecution in connection with a criminal investigation or prosecution.”³² Certifiers may inform USCIS if a victim is no longer helpful. However, such notification is appropriate only if the certifier determines that the victim’s unwillingness to provide ongoing helpfulness was unreasonable.³³ Whether the victim’s lack of helpfulness is unreasonable is to be assessed in light of the totality of the circumstances.³⁴

The full system of checks and balances involving the U visa certification process is designed to encourage the U visa victim to provide ongoing assistance when reasonably requested by law enforcement or prosecutors who pursue a criminal investigation or prosecution against the perpetrator of the criminal activity perpetrated against the victim. Once a U visa has been granted the U visa regulations impose an ongoing requirement of assistance when reasonably requested. However, recognizing that dangers to crime victims posed by perpetrators and the dynamics of domestic violence, child abuse, sexual assault and human trafficking cases in particular, Congress created an exception to this cooperation/assistance requirement when victims can show that their refusal to cooperate was *reasonable* in light of the circumstances. Any U visa victim who applies for lawful permanent residence based upon having received a U visa must prove that they did not unreasonably refuse to comply with reasonable requests for assistance.

Congress included witness tampering because threats from perpetrators can deter the cooperation of crime victims who initially come forward and report criminal activities. The following are common examples of when a victim’s lack of ongoing cooperation is “not unreasonable”:³⁵

³⁰ See Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>. (for more examples of helpfulness)

³¹ *Id.* “The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the U visa revoked by USCIS.” *DHS U and T Visa Resource Guide* at 7.

³² *DHS U and T Visa Resource Guide* at 18.

³³ 8 CFR 245.24(a)(5).

³⁴ 73 Fed. Reg. 75540, 75547 (Dec. 12, 2008) (“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. New 8 CFR 245.24(a)(5).”)

³⁵ I.N.A. § 245(m)(1); 8 U.S.C. 1255(m)(1).

- 1) When perpetrators, through coercion and threats, make the victim unavailable for trial;
- 2) When perpetrators use other tactics of power and control, such as isolation, economic abuse, and emotional abuse to manipulate the victim;
- 3) When a victim reasonably fears for her safety or her children's safety; or
- 4) The victim fears retaliation from her perpetrator if she testifies at trial.

Police and prosecutors working with domestic violence and sexual assault victims understand that perpetrators can be held accountable through evidence-based prosecutions even when victims do not participate. Receiving a U visa approved by DHS and protection from deportation can bolster the victim's courage to cooperate despite these fears and concerns.³⁶ Based on the understanding that victim's level and ability to cooperate may fluctuate over time, the law requires that for U visa victims to attain lawful permanent residency, they must provide DHS proof of cooperation or they must prove to DHS that they did not unreasonably refuse to cooperate in the investigation or prosecution of criminal activity.³⁷

It is important to understand that the standard for certification is whether the victim has been, is being, or is likely to be helpful. This is different than the assistance/cooperation requirement imposed by regulations on victims once their U visa case has been filed. The Congressional goal was first to get victims to come forward and give government agencies a tool to encourage them to do so. Once victims file for the U visa, the ongoing cooperation/assistance requirement, and its safety promoting exceptions, apply.³⁸

It can take up to 6 years to adjudicate the U visa application. If a certifying official signs a certification and later determines that the facts were other than they believed to be true at the time they signed the certification or believes that the immigrant U visa victim's failure to provide ongoing assistance was unreasonable, the official can notify DHS. DHS will use the

³⁶ "It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain advantage in a civil or family law case and/or to avoid prosecution in a criminal case. Congress created the U visa as a tool to counter such efforts by perpetrators." *DHS U and T Visa Resource Guide* at 20.

³⁷ "[T]he I-918B...provide an opportunity for law enforcement to provide information to USCIS about the extent of the victim's assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. [Law enforcement officials] may complete the form including all information [they] find relevant about the victim's assistance. USCIS will ultimately determine whether the victim meets these requirements. Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the investigation and/or prosecution of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. [Law enforcement officials] may select "yes" or "no" to these questions and further explain [their] answers." *DHS U and T Visa Resource Guide* at 18.

³⁸ Research has found that that this statutory and regulatory structure with its safety focused victim protection based exception results over time in high levels of U visa victim participation in criminal investigations and prosecutions of perpetrators. See generally, Leslye Orloff, Levi Wolberg, and Benish Anver, *U Visa Victims and Lawful Permanent Residency* (September 6, 2012), <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12> (70% of U visa applicants and U visa holders provided continued cooperation with law enforcement and prosecutors. Further, another 29.5% of U visa applicants and recipients wanted to offer additional ongoing cooperation but such assistance was not requested by law enforcement officials or prosecutors. This occurs for many reasons including, because the criminal case had stalled (e.g. the perpetrator could not be identified or served), police and/or prosecutors did not end up pursuing criminal prosecution of the perpetrator, or the perpetrator took a plea ending the criminal case.

information provided by the certifier to investigate whether the U visa should be revoked. DHS will also use this information in adjudicating the victim's application for lawful permanent residency as evidence of non-cooperation that the victim will have to overcome by proving to DHS' satisfaction that they did not unreasonably refuse to assist.

T VISA

Overview of the T visa

Congress, in the Trafficking Victims Protection Act of 2000 (TVPA) created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the detection, investigation or prosecution of this human trafficking related criminal activities.³⁹

Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.⁴⁰ Accordingly, in both the TVPA and VAWA, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, including human trafficking, but also to strengthen relations between law enforcement and immigrant communities.⁴¹ The T visa assists in law enforcement efforts to bring perpetrators of trafficking to justice and to provide protection and a sense of security for immigrant victims.

The T visa allows eligible victims to temporarily remain and work in the U.S. for up to four years. The visa may be extended in limited cases, such as when the presence of the victim is necessary to assist the investigation or prosecution of the trafficking activity.⁴² If certain conditions are met, an individual with a T visa may apply for lawful permanent residency (i.e., apply for a green card in the United States) after three years in the United States with a T visa or upon completion of the investigation or prosecution, whichever occurs earlier.⁴³

Who is eligible for a T visa?

USCIS may find an individual eligible for a T visa if the victim:

- (1) Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;

³⁹ *DHS U and T Visa Resource Guide* at 4.

⁴⁰ *Id.*

⁴¹ *Id.*; See Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464.

⁴² INA § 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B).

⁴³ See generally 73 Fed. Reg. 75540 (2008).

22 U.S.C. 7102(12): **The term “severe forms of trafficking in persons” means—**

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

- (2) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- (3) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking⁴⁴ (except victims who are under 18 years of age, or those who are unable to cooperate due to physical or psychological trauma⁴⁵);
- (4) Would suffer extreme hardship involving unusual and severe harm if removed from the United States.⁴⁶

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible.⁴⁷

The T visa declaration

The T visa declaration is supplementary evidence of a victim’s assistance to law enforcement or prosecutors that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a T visa applicant.⁴⁸ DHS adopts an “any credible evidence” standard for the T visa.⁴⁹ The declaration is not a required document for a T visa application, and is not given any special evidentiary weight.⁵⁰ DHS encourages judges and other government officials to sign U visa certifications and by assuring certifiers that the declaration is useful, rather than controlling evidence in the case should result

⁴⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)(i)) (2016).

⁴⁵ See I.N.A. § 101(a)(15)(T)(i) (III), 8 U.S.C. 1101(a)(15)(T)(i)(III). ⁴⁵ “There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.” *DHS U and T Visa Resource Guide* at 12.

⁴⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

⁴⁷ *DHS U and T Visa Resource Guide* at 4; 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(i)) (2016). Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>

⁴⁸ *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁴⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016).

⁵⁰ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

in judges and other certifiers “more likely to sign endorsements, increasing the likelihood that T visa will be utilized as the law enforcement tool that it is intended to be.”⁵¹

The T visa declaration must be provided on Form I-914, Supplement B. The declaration helps demonstrate that the victim is or was a victim of a severe form of trafficking in persons, and/or that the victim has complied with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.⁵² **Certifying officials who sign declarations do not confer any visa upon the victim, nor do they decide whether the victim meets the eligibility standards.**⁵³ The declaration is not conclusive evidence that the applicant meets the eligibility requirements. Only USCIS has the discretion to grant or deny T visa to the victim.⁵⁴

What’s the purpose of the law enforcement declaration?

The law enforcement, prosecutor, judge or government agency declaration (Form I-914B) is a three-page form that immigrant trafficking victims can submit as part of their T visa application. The declaration is not required, but when provided, is useful⁵⁵ and valuable evidence of a victim’s cooperation.⁵⁶

The form includes six short parts and must be signed by a **law enforcement or other government agency authorized to sign declarations** (see definition below) that attests to the following:

- 1) The applicant is or has been a victim of a severe form of trafficking in persons. (I-914B Form: Part C)
- 2) The applicant has complied with requests for assistance in the detection, investigation, or prosecution of a human trafficking related crime. (I-914B Form: Part D)
- 3) Information the agency signing the declaration has about any family members of the victim believed to have been involved in the victim’s trafficking to or within the United States. (I-914B Form: Part E)

USCIS applies the VAWA “any credible evidence” standard for T visa applications. The government agency declaration is not conclusory evidence. The determination of whether the victim meets the eligibility standards is made by USCIS.⁵⁷

- **Victimization (I-918B Form: Part C)**

⁵¹ 72 Fed. Reg. 92266, 92276 (2016).

⁵² *Id.*

⁵³ *Id.*; 72 Fed. Reg. 92266, 92276 (2016); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS at 1 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>

⁵⁴ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁵⁵ 72 Fed. Reg. 92266, 92276 (2016).

⁵⁶ *DHS U and T Visa Resource Guide* at 3, 10.

⁵⁷ 72 Fed. Reg. 92266, 92272 (2016).

“Severe form of trafficking in persons” is defined as:⁵⁸

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- (2) sex trafficking in which the person induced to perform such an act is under the age of 18; or
- (3) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.

DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) is present in the case.⁵⁹ This would include, for example, a situation where the victim was recruited and came to the United States through force, fraud or coercion for the purpose of a commercial sex act, but the victim was rescued or escaped before performing a commercial sex act.⁶⁰

USCIS will accept any credible evidence of victimization, including but not limited to a T visa declaration signed by a law enforcement agency.⁶¹ An law enforcement agency does not determine if the victim meets the “severe form of trafficking” definition under Federal law. That is a determination that is made by USCIS.⁶²

- **The Assistance Requirement (I-918B Form: Part D)**

The T visa requires that the victim has complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.⁶³ USCIS will accept any credible evidence of assistance, including but not limited to a T visa declaration signed by a law enforcement, prosecution, or government agency, or a judge.⁶⁴ The government official signing the declaration does not determine if the victim meets the assistance requirement; that is a determination made by USCIS.

In determining “reasonableness” of the request, USCIS will consider the totality of the circumstances using a broad range of factors, including but not limited to: general law enforcement and prosecutorial practices; the nature of the victimization; and the specific

⁵⁸ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁵⁹ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); 72 Fed. Reg. 92266, 92270 (2016); Freedom Network, General Tips for T Visas for Victims of Severe Form of Trafficking in Persons (Apr. 2018), <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

⁶⁰ 72 Fed. Reg. 92266, 92270 (2016).

⁶¹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016); 72 Fed. Reg. 92266, 92272 (2016).

⁶² 72 Fed. Reg. 92266, 92272 (2016).

⁶³ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

⁶⁴ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(2)(ii)) (2016); 72 Fed. Reg. 92266, 92272 (2016).

circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.⁶⁵ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.⁶⁶ It is generally reasonable for law enforcement or prosecutors to ask a victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.⁶⁷

The victim must fulfill an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency.⁶⁸ At their discretion, a government agency signing a declaration may revoke or disavow a declaration if a victim stops cooperating; after revocation or disavowal, the declaration will no longer be considered as evidence.⁶⁹

Who can provide the T visa declaration?

DHS regulations define the range of government agencies authorized to sign T visa declarations to be a federal, state, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.⁷⁰

LAW ENFORCEMENT OFFICIALS AND PROSECUTORS AS U/T VISA CERTIFIERS

Congress and DHS specifically listed federal, state, and local law enforcement officials and prosecutors as U visa and T visa certifiers in the statute and regulations.⁷¹ The two visas are effective tools for law enforcement and prosecutors because they allow both to hold perpetrators of crimes accountable and to receive assistance from victims in investigations.⁷² They also allow law enforcement and prosecutors to foster a trusting relationship with the local immigrant population in their efforts to bring perpetrators to justice.

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, obtaining warrants, and engaging in crime investigations, officers routinely determine whether they believe the criminal activity

⁶⁵ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

⁶⁶ 72 Fed. Reg. 92266, 92275 (2016).

⁶⁷ *Id.*

⁶⁸ 72 Fed. Reg. 92266, 92274 (2016).

⁶⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

⁷⁰ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁷¹ INA § 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

⁷² "In cases where the information provided by the victim led to the detection of criminal activity, a certifying agency may sign a certification. In these cases it does not matter if another agency will be the one to determine whether to pursue a criminal investigation or prosecution. In cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution." *DHS U and T Visa Resource Guide* at 15.

occurred and whether a person has been a victim of such activity.⁷³ 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 U visa certification or T visa declaration.⁷⁴

Although the manner in which prosecutions are initiated vary by jurisdiction, prosecutors encounter persons who have been victims of criminal activity. These encounters occur in the process of making charging decisions or when police, magistrates, commissioners or even the victim's own perpetrator, have brought criminal charges. The prosecutors might need the victim to testify in court, or otherwise help during the prosecution, which might include the sentencing phase. When the crime victim is or may be a non-citizen, DHS has authorized prosecutors to issue U visa certifications and T visa declarations. This authority to certify exists whether the prosecutor ultimately pursues prosecution of the perpetrator for the crime.⁷⁵

Although the U visa and T visa statutes clearly authorize all law enforcement and prosecution agencies to sign declarations, DHS and USCIS refer to agencies authorized to sign certifications and declarations as Law Enforcement Agencies (LEA). Federal LEAs include but are not limited to the following: U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (Department of Justice); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Diplomatic Security Service (Department of State); and Department of Labor.⁷⁶

The head of any federal, state or local law enforcement, protection, or other government agency authorized to sign certifications and declarations can sign or they can designate signing authority to any person who works for the agency whose job includes supervision. The head of the agency or a designated supervising official at federal, state or local government agency that has the responsibility and authority for the detection, investigation, prosecution, conviction or sentencing of U visa listed criminal activities or in T visas cases of severe forms of trafficking in persons or other related activity may sign the certification or declaration.⁷⁷

The DHS regulations envision that the certification process fits within routine activities of law enforcement. The certification/declaration can be completed at the same time officers are completing their police reports and can then be reviewed and approved by supervisors who are

⁷³ It is important to note that U visa certification and T visa regulation can and should occur as early as possible after taking a police report or interviewing a credible crime victim. *See* 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). Certification need not wait until the case reaches a probable cause determination, reasonable suspicion is sufficient. For cases in which probable cause has been found, best practices are to provide noncitizen victims with certifications.

⁷⁴ "When completing the Form I-918B, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case." *DHS U and T Visa Resource Guide* at 8.

⁷⁵ "Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations." *DHS U and T Visa Resource Guide* at 21.

⁷⁶ *Id.*

⁷⁷ *DHS U and T Visa Resource Guide* at 15.

also signing off on the police reports. The U and T visa regulations allow the head of the certifying agency to grant any supervisory person(s) the authority to issue U visa certifications and T visa declarations.⁷⁸ The regulations contemplate granting certification authority to multiple supervisory personnel.⁷⁹ DHS encourages law enforcement agencies to develop internal policies and procedures to respond to requests for U visa certifications and T visa declarations. To facilitate the authorization of personnel to sign certification forms, a sample “Designee Letter” is included in the tool kit.⁸⁰

The International Association of Chiefs of Police issued a resolution encouraging law enforcement agency leadership to adopt U and T visa training and polices.⁸¹ Receiving training on U visa and T visa certification is recommended for courts and for staff at any government agency signing certifications.⁸²

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 certifications; and to implement practices that result in certifications being issued.⁸³ A number of police departments collaborated on the development of a model U and T visa certification policy.⁸⁴

⁷⁸ See 8 CFR §§ 214.14(a)(3) & 214.14(c)(2)(i); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

⁷⁹ “The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign [certifications/declarations]. [A law enforcement official] should only sign a [certification/declaration] if [his or her] agency has given [him or her] this authority.” *DHS U and T Visa Resource Guide* at 8, 13.

⁸⁰ “If a certifying agency has written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.” *DHS U and T Visa Resource Guide* at 8.

⁸¹ International Association of Chiefs of Police, 2018 Resolutions – Support for Education and Awareness on U Visa Certification and T Visa Declaration, <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

⁸² On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

⁸³ *DHS U and T Visa Resource Guide* at 8. (“Some examples of how various agencies or officials educate their officials about U visa certifications...and how they designate a certifier or certifiers in their agency include: Distributing department policy or a general order on the process and use of the U visa certification...; Distributing a letter or memorandum from the Chief or Sherriff to the agency’s designee in charge of signing U visa certifications...designating a process and authority to certify;...Sending written notification, via email or other method, from the Chief or Sheriff to the entire department explaining the purpose of the U or T visa, the certification/declaration process, and who is/are designated as the certifier(s).”)

⁸⁴ The model policies for law enforcement and prosecution agencies are available at <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

Prosecutors or law enforcement officials who sign certifications do not grant a visa to the victim, but rather help demonstrate the eligibility requirements in the victim’s application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Only DHS has the discretion to grant or deny a visa to the victim.

III. APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of the United States Department of Homeland Security (DHS) has sole jurisdiction over all petitions for U and T visas.⁸⁵ A person seeking a U visa must submit, by mail, Form I-918, “Petition for U Nonimmigrant Status” along with supporting documents establishing eligibility and is required to include a U visa certification that must be completed using Form I-918 Supplement B.⁸⁶ Form I-918 Supplement B must be signed by a qualifying certifier, such as a federal, state, or local law enforcement or prosecution official or a judge, within the six months immediately preceding the filing of Form I-918.⁸⁷

A person seeking a T visa must submit Form I-914, “Application for T Nonimmigrant Status” and supporting documents establishing eligibility.⁸⁸ A T visa declaration (Form I-914 Supplement B) may be submitted with the application and is helpful but is not required.⁸⁹

All U and T visa applications are filed with the specialized VAWA Victims and Trafficking Unit of USCIS. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visas or T visas.⁹⁰

By preparing and signing U visa certification (Form I-918 Supplement B) or the T visa declaration (Form I-914 Supplement B), a certifier is not conferring a visa upon an immigrant applicant or making a determination of the applicant’s eligibility for a U or T visa.

For the 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. The certification is limited to verification that the individual is a victim of a qualifying criminal activity and that the victim has been, is being or is

⁸⁵ 72 Fed. Reg. 53014, 53022 (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁸⁶ “Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency or official is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim’s credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.” *DHS U and T Visa Resource Guide* at 6.

⁸⁷ “Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.” *DHS U and T Visa Resource Guide* at 8; 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)) (2007).

⁸⁸ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)) (2016).

⁸⁹ 72 Fed. Reg. 92266, 92276 (2016).

⁹⁰ Even where a case is before an immigration judge, adjudication for visas may still only be conducted by the USCIS Vermont Service Center.

likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.⁹¹ In addition to the certification, the applicant must meet several other eligibility criteria, including demonstrating that they suffered substantial mental or physical abuse⁹² as a result of having been a victim of qualifying criminal activity and providing a statement describing the facts of the victimization in the victim's own words.⁹³

For the T visa, the declaration is not mandatory and is just one type of evidence of victimization and assistance.⁹⁴ The declaration is limited to helping demonstrate victimization and compliance with reasonable requests.⁹⁵ Even if the declaration, along with other evidence the applicant submits, successfully demonstrate these two prongs, the applicant must meet several other requirements, including demonstrating victim of human trafficking would suffer extreme hardship involving unusual and severe harm upon removal.⁹⁶

To be granted a U or T visa, victims are also required to prove that they are eligible for admission to the United States. DHS may grant specified discretionary waivers authorized by the U or T visa statutes and approve a U or T visa for immigrant victims who cannot prove admissibility. In making this determination DHS will consider the totality of the victim's case and circumstances.⁹⁷

⁹¹ See Janell Ross, *Metro Nashville Police Block Visas for Crime Victims, Witnesses*, THE TENNESSEAN (Apr. 18, 2010), <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS>. (quoting DHS spokeswoman clarifying that the role of certifying officials including police filling out U visa certifications is to verify that an individual was a crime victim).

⁹² U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visas_certification_guide.pdf (stating that USCIS will make the determination as to whether the victim has met the "substantial physical or mental" standard on a case-by-case basis during its adjudication of the U visa petition).

⁹³ "While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS." *DHS U and T Visa Resource Guide* at 6.

⁹⁴ 72 Fed. Reg. 92266, 92272 (2016).

⁹⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)) (2016).

⁹⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

⁹⁷ "For all U visas petitioners and their qualifying family members, USCIS conducts a thorough background investigation including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS also reviews the petitioner's immigration records to assess whether any inadmissibility issue exist, such as the petitioner's criminal history, immigration violations, or any security concerns. The results of these checks, as well as any evidence that certifying officials and immigration authorities possess, may be considered when determining eligibility for a U visa." *DHS U and T Visa Resource Guide* at 5.

BENEFITS OF THE U AND T VISAS AND APPLICATIONS FOR LAWFUL PERMANENT RESIDENCY

Benefits to Victims

In general, U visas and T visas are issued for a period of four years.⁹⁸ A U or T visa holder can live and work legally in the United States without fear of deportation, and gains access to legal work authorization. Victims of human trafficking who have continued presence or file T visa applications gain broad access to federal, state and local public benefits. U visa victims access to public benefits is much more limited, however victims in some states gain access to state funded public benefits, wait-list approved U visa victims in some states gain some access to health care, and U visa victims with lawful permanent residency gain additional access over time to other public benefits programs.⁹⁹

A U or T visa holder can include petitions with their application seeking U visas or T visas for eligible family members.¹⁰⁰

- For the U visa, if the victim is under 21 years of age, qualifying family members include the principal victim's spouse, parents, and children, unmarried siblings under 18 years of age (on the filing date of the principal victim's petition).¹⁰¹
- For the U visa if the victim is 21 years of age or older, qualifying family members include their spouse and children.¹⁰²
- For the T visa, eligible family members include:
 - Children;
 - Spouse;
 - Parents of child trafficking victims who are under age 21 at the time of application, or any victim's parents who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement;
 - Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim's unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement; and

⁹⁸ See I.N.A. § 214(p)(6), 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7)(A), 8 U.S.C. § 1184(o)(7)(A).

⁹⁹ NIWAP has developed a series of tools to assist courts, victim advocates working in law enforcement and prosecution agencies and non-profit based victim advocates and attorneys determine which immigrant victims qualify for which public benefits and services in each state. See NIWAP, *A Guide to Public Benefits Map for Immigrant Survivors of Crime* (June 11, 2019), <http://niwaplibrary.wcl.american.edu/pubs/benefits-map-guide/>; NIWAP, *Interactive Public Benefits Map* <http://map.niwap.org/>; NIWAP, *All State Public Benefits Charts* (June 7, 2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>; Jordan Tacher, Aditi Kumar, and Leslye E. Orloff, *U-Visa Victim Benefits Eligibility Process* (Oct. 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard/>.

¹⁰⁰ 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(f)) (2007); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(c)(2)) (2016).

¹⁰¹ I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

¹⁰² I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

- Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.¹⁰³

The U visa and T visa application process includes a bona fide determination. For U visa cases an immigrant victim applicant receives a bona fide determination after USCIS reviews the case and finds that the application contains required initial evidence, the applicant successfully completed a background check, and the U visa application was made in good faith, without fraud or deceit.¹⁰⁴ Recipients of U visa bona fide determinations are granted “deferred action status” which is formal protection against deportation and receive legal work authorization, both of which last for 4 years and can be renewed.¹⁰⁵ U visa applicants and recipients have limited access to state and federally funded public benefits.¹⁰⁶

Similarly when T visa applicants receive bona fide determinations¹⁰⁷ they receive deferred action and work authorization.¹⁰⁸ T visa applicants with bona fide determinations also are granted access to a broad array of federally and state funded public benefits.¹⁰⁹

T and U visas are granted for a period of 4 years. Once a victim is granted the visa, both U and T visas can be extended beyond 4 years. Extensions are permitted in three circumstances:¹¹⁰

- If the U or T visa recipient has a pending application for lawful permanent residency;
- If DHS determines that an extension is needed due to exceptional circumstances; or
- The duration of the U or T visa shall be extended upon certification from a federal, state or local law enforcement official, prosecutor, judge or other government official investigating or prosecuting criminal activity or trafficking that the presence of the immigrant in the United States is required to assist in the investigation or prosecution of the criminal activity or human trafficking.

For the U visa, the government official can demonstrate the need for the U visa extension by completing a new U visa certification form.¹¹¹ For the T visa, government officials may demonstrate the need for the T visa extension by signing a new T visa declaration or by

¹⁰³ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

¹⁰⁴ USCIS, Policy Manual Chapter 5 Bona Fide Determination Process (June 14, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>

¹⁰⁵ USCIS Policy Alert (PA-2021-13), Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners (June 14, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>

¹⁰⁶ Access to public benefits varies by state, by benefits program and by immigration status. To look up what state or federal public benefits an immigrant victim qualifies to receive go to: <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁰⁷ 8 C.F.R. Section 214.11(a).

¹⁰⁸ 67 Fed. Reg. 4784, 4790 (January 31, 2002).

¹⁰⁹ Section 107(b), Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], (October 28, 2000).

¹¹⁰ I.N.A. § 214(p)(6), 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7), 8 U.S.C. § 1184(o)(7).

¹¹¹ I.N.A. § 214(p)(6), 8 U.S.C. 1184(p)(6).

sending a letter, fax or email to DHS.¹¹² The government agency that signs the certification or declaration related to the request for the extension need not be the same agency that signed the victim's original certification or declaration form.

Applying for Lawful Permanent Residency: U Visa

If approved for a U visa, a victim 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. After three years of continuous presence in the U.S. since receiving the U visa, a U visa holder is eligible to apply for lawful permanent residency.¹¹³ Not all U visa holders will qualify for lawful permanent residency. To qualify, a U visa holder must also provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that the victim's continued presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.¹¹⁴

Additionally, in connection with the application for lawful permanent residency, if the U visa holder departed the U.S. for any single period of time exceeding 90 days, or for shorter periods in the aggregate exceeding 180 days, they must include a certification – from the original certifier – that verifies that the absences were justified.¹¹⁵

Applying for Lawful Permanent Residency: T Visa

A T visa holder is eligible to apply for lawful permanent residency after three years of continuous presence in the U.S. since receiving the T visa, or, when the trafficking case has been concluded.¹¹⁶ If at the time the victim is granted a T visa, the any criminal investigation or prosecution of their trafficker has already been concluded, the victim receiving the T visa is immediately eligible to apply for lawful permanent residency. Not all T visa holders will qualify for lawful permanent residency. To qualify, a T visa holder must also provide evidence that they have complied with any reasonable request for assistance, and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.¹¹⁷

Additionally, in connection with the application for lawful permanent residency, a T visa holder is not permitted to depart the U.S. for any single period of time exceeding 90 days, or for shorter periods in the aggregate exceeding 180 days.¹¹⁸ Unlike the U visa, T visa holders are not permitted to exceed the maximum time allowed by statute for being outside of the United States for any reason.¹¹⁹

¹¹² See 72 Fed. Reg. 92266, 92311 (codified at 8 C.F.R. § 214.11(l)) (2016).

¹¹³ Under immigration law the process of applying for lawful permanent residency with the application filed while the immigrant is living in the United States is called *adjustment of status*.

¹¹⁴ 73 Fed. Reg. 75540, 75550 (codified at 8 C.F.R. § 245.24(b)) (2008).

¹¹⁵ I.N.A. § 245(l)(3), 8 U.S.C. 1255(l)(3).

¹¹⁶ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(3)) (2008).

¹¹⁷ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(6)) (2008).

¹¹⁸ I.N.A. § 245(m)(2), 8 U.S.C. 1255(m)(2).

¹¹⁹ 73 Fed. Reg. 75540, 75541(2008).

U Visa Quick Reference for Law Enforcement and Prosecutors¹¹⁴

By Leslye E. Orloff, Alina Husain, Alisha Lineswala,
Benish Anver, Daniel Enos and Sylvie Sheng
March 24, 2021

<p>Purpose of the U visa¹¹⁵</p>	<ul style="list-style-type: none"> ● The U visa facilitates the reporting of criminal activities to government officials including but not limited to law enforcement, prosecutors, courts, adult and child protective services and state and federal administrative agency officials by immigrant victims of domestic violence, child abuse, sexual assault, dating violence, stalking and human trafficking, and other U visa listed criminal activities and ensures immigrant victims receive access to justice in civil, family, criminal and administrative law cases.
<p>Benefits of the U visa¹¹⁶</p>	<ul style="list-style-type: none"> ● Strengthens the ability of the law enforcement officers, prosecutors, courts, as well as state and federal government agencies to detect, investigate, prosecute, convict and/or sentence perpetrators of criminal activity while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation. ● Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the criminal, family, and civil justice systems. The U visa certification promotes access to justice by enhancing accessibility and ensuring fairness.
<p>Who is eligible for a U visa?</p>	<ul style="list-style-type: none"> ● To be eligible for a U visa an individual: <ul style="list-style-type: none"> ○ Must be a victim of a criminal activity listed in the U visa statute or a similar criminal activity; ○ Must possess information concerning the criminal activity; ○ Must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local government agency or family, civil, or criminal court in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity;¹¹⁷ ○ Must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities; and ○ The criminal activity must have violated the federal or state laws of the U.S. or been perpetrated in the U.S. or its territories and possessions.¹¹⁸ ● To prove helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, judge, Department of Homeland Security (DHS) official, or other federal or state authority involved in detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.¹¹⁹

¹¹⁴ U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

¹¹⁵ See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

¹¹⁶ *Id.*

¹¹⁷ An exception to the helpfulness requirement applies to alien victims who are under 16 years of age, incapacitated, or incompetent. Such alien victims can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the required assistance. I.N.A. § 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II).

¹¹⁸ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)) (2007).

¹¹⁹ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007).

Eligible Family Members	<ul style="list-style-type: none"> • The victim may apply for their eligible family members to receive U visas. • For victims under 21 years of age, qualifying family members include the principal crime victim’s spouse, children, parents, and unmarried siblings who are under 18 years of age (on the filing date of the principal crime victim’s petition).¹²⁰ • For victims who are 21 years of age or older, qualifying family members include their spouse and children.¹²¹
U visa Qualifying Criminal Activities	<ul style="list-style-type: none"> • U visa qualifying criminal activities include, but are not limited to the following non-exclusive list: <ul style="list-style-type: none"> Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, 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, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned criminal activity, or <i>any similar activity</i> in violation of federal, state, or local criminal law and solicitation, attempts or conspiracy to commit any such criminal activity. • The term “<i>criminal activity</i>” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “<i>any similar activity</i>” and to focus on the actions of the victim in coming to state or federal government officials and courts with information about criminal activity. 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.”¹²² • For example, the statute lists domestic violence as a U visa qualifying crime. However, many states 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, child abuse, elder abuse, or malicious property damage. Even though these criminal activities are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.
Status of Crime Perpetrator	<ul style="list-style-type: none"> • The U visa applicant does not have to be married to the crime perpetrator and there may or may not be any family relationship between the victim and the perpetrator. The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.

¹²⁰ I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

¹²¹ I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

¹²² 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

Certification Requirements

- U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a law enforcement official or prosecutor. On the I-918B certification form that certifying official verifies that the victim applying for a U visa meets the following four criteria:
 - The victim has been the victim of qualifying criminal activity;
 - The victim possesses information about the qualifying criminal activity;
 - The qualifying criminal activity was perpetrated in the U.S. or violated U.S. federal or state law.
 - The victim has been, is being or is likely to be helpful in the detection or investigation, or prosecution, or conviction, or sentencing of one or more qualifying criminal activities;
 - ***For law enforcement:*** Helpfulness includes but is not limited to reporting a criminal activity, making or attempting to make a police report, providing information at the crime scene, participating in interviews with police, allowing police to photograph injuries, or attempting to provide information to police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter;¹²³
 - ***For prosecutors:*** Helpfulness includes but is not limited to providing evidence used in charging document, attending a hearing, participating in interviews with prosecution office staff, providing information needed for restitution, attending and/or testifying at the initial appearance, bond hearing, preliminary hearing, arraignment, pre-trial motions, sentencing, or trial;
- The criminal activity may have occurred at **any time** in the past. There is no statute of limitation and certification can be made even when the state statute of limitation for the criminal activity has passed. Once the certification is completed, the victim is required file the U visa application within six (6) months of the date the certification was signed.
- The certification should provide specific details about the nature of the criminal activity being detected, investigated, prosecuted, convicted and/or sentenced and describe the victim's helpfulness in the case.
- U visa certification does not require the criminal prosecution to be initiated, completed, or successful, nor does it require law enforcement to investigate the criminal activity. U visa certification can be based solely on the victim having taken any number of actions including but not limited to: calling police for help, making a police report, seeking a civil protection order, providing a history of violence to law enforcement or the court, providing statements in a line-up, or providing a victim impact statement. The certification only attests to the U visa petitioner's helpfulness in one or more of the following: detection, investigation, prosecution, conviction or sentencing.

¹²³ See Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos, Chief Peter Helein, Devon E. Turner, and Spencer Cantrell, *U-Visa: "Helpfulness"* (Oct. 21, 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<p>Law Enforcement and Prosecutors as U visa Certifiers</p>	<ul style="list-style-type: none"> ● Law enforcement officials and prosecutors are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B.¹²⁴ A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.¹²⁵ ● 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 eligibility requirements, in addition to obtaining a U visa certification. The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa and completes full background checks on all applicants.
<p>Assessing the Helpfulness of the U visa Applicant</p>	<ul style="list-style-type: none"> ● “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.¹²⁶ ● There is no degree of helpfulness required. Instead, once the victim receives a U visa certification and files their U visa application, the victim must not unreasonably refuse to provide help, information, or assistance to law enforcement and prosecutors that is reasonably requested. <ul style="list-style-type: none"> ○ Note -- if the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse. ● Being helpful is not related to whether the perpetrator of the criminal activity has been issued a warrant, is prosecuted, is arrested, is convicted, or the case is ongoing or is closed. Being helpful is independent from the results of the case.¹²⁷ For example, if the victim has reported a criminal activity, and the perpetrator cannot be found or identified, the victim can still be deemed helpful. ● The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of a criminal case including providing information that helps government officials detect, investigate, or prosecute the criminal activity. This includes past helpfulness or willingness to be helpful in the future. Congress intended for individuals to be eligible for U visa at the very early stages of a case.¹²⁸

¹²⁴ 20 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).

¹²⁵ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(3)) (2007).

¹²⁶ Helpfulness is defined in the U visa statute 8 U.S.C. 1101(a)(15)(U)(i)(III); The U visa regulations 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows: “Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

¹²⁷ *DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

¹²⁸ *See Id.*

<p>Assessing the Helpfulness of the U visa Applicant</p>	<ul style="list-style-type: none"> ● In order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials investigating or prosecuting the criminal activity. ● DHS confirms that officials may sign a certification if they are unsure whether the victim meets the helpfulness requirement. USCIS will ultimately determine whether the victim meets these requirements.¹²⁹
<p>Attesting to Helpfulness on the Certification Form</p>	<ul style="list-style-type: none"> ● Law enforcement and prosecutors should provide on the certification form a general description of victim helpfulness which may include (for example): <ul style="list-style-type: none"> ○ Victim called police to report the criminal activity ○ Victim spoke freely with responding officers ○ Victim participated in pre-arrest identification ○ Victim sought a protection order that law enforcement would serve on the perpetrator and that the victim can enforce if violated in the future ○ Victim provided photographs of injuries ○ Victim attended prep sessions with prosecutor ○ Victim testified before the grand jury or at other stages of a criminal case.
<p>Applicant’s Responsibility After Helpfulness Is Established</p>	<ul style="list-style-type: none"> ● In order to obtain a U visa, the victim must provide continuing assistance when reasonably requested by law enforcement or prosecutors,¹³⁰ or the certifier may revoke the certification.¹³¹ Similarly, in order to apply for lawful permanent residency after being granted a U visa, the victim must prove that they fulfilled an ongoing responsibility to provide assistance or they must prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials.¹³² However, “continuing assistance” is a standard used <i>after</i> the victim files for and after the victim obtains their U visa. For the purpose of obtaining an initial certification, only the victim’s helpfulness or likelihood of future helpfulness should be considered. ● Note: If the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.¹³³

¹²⁹ *DHS U and T Visa Resource Guide* at 18.

¹³⁰ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 4 (expires 04/30/2021).

¹³¹ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)(A)) (2007).

¹³² 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e)) (2008).

¹³³ 73 Fed. Reg. 75540, 75560 (codified at 8 C.F.R. § 245.24(a)(5)) (2008).

<p>Timing of U Visa Certification</p>	<ul style="list-style-type: none"> ● Law enforcement and prosecution officials may complete U visa certifications once they are able to assess a victim’s helpfulness. Congress intended that U visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.¹³⁴ ● The certification signed by a certifying official demonstrates that the victim has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity. 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 police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide certifications at any time after they assess the helpfulness. Waiting to sign certifications until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.¹³⁵ ● A completed certification will be valid for six months from the date of signature.¹³⁶
<p>When Law Enforcement & Prosecutors are Able to Provide U visa Certification</p>	<ul style="list-style-type: none"> ● If a law enforcement official or prosecutor has reasonable suspicion that criminal activity occurred, that the person seeking certification was a victim, and that the victim was helpful, is being helpful or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing, a certification can be signed at any stages of the criminal investigation, prosecution, or court case. ● Examples include when victims have been helpful to prosecutors making charging decisions, when they cooperated in a criminal investigation or filed a police report. This authority to certify exists whether or not law enforcement opens an investigation or the prosecutor ultimately pursues prosecution of the perpetrator for the criminal activity listed in the U visa statute.
<p>U visa, Time Line & Attaining Lawful Permanent Residency</p>	<ul style="list-style-type: none"> ● Within a few weeks after filing the U visa, the victim’s case is logged in a specialized computer VAWA confidentiality system at the DHS that provides victims some protection from deportation. DHS will run a background check based on the applicant’s fingerprints. ● Approximately 4-6 years¹³⁷ after filing DHS will adjudicate the case and conduct another fingerprint check. Approvable cases receive wait-list approval, “deferred action status” which provides formal protection from deportation, and legal work authorization. ● The victim is placed on a waitlist for a U visa. Only 10,000 visas can be issued each year and the current waiting time is 11-14 years. Once the victim’s case reaches the top of the waitlist, fingerprint checks are run again prior to issuing the victim a U visa. ● The U visa lasts for 4 years. It is at this point that U visa holders may be able to travel abroad.

¹³⁴ See *DHS U and T Visa Resource Guide* at 19.

¹³⁵ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

¹³⁶ DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 2 (expires 04/30/2021).

¹³⁷ The time frames in this section were current as of April 2020. See, USCIS, Visa Report: U Visa Filing Trends (April 2020). https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf

**U visa, Time
Line &
Attaining
Lawful
Permanent
Residency**

- After three (3) years as a U visa holder, the victim may apply for lawful permanent residency. To obtain lawful permanent residency as a U visa holder the victim must prove:
 - Their helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity or that they did not unreasonably refuse to cooperate with reasonable requests for assistance. Some victims may return to the certifying agency for a new certification to provide evidence of their helpfulness to support the victim’s application for lawful permanent residency.
 - That they are eligible for lawful permanent residency as a U visa holder due to either:
 - Humanitarian need;
 - Family unity; or
 - Public interest
 - That they have continuous presence in the U.S., since receiving they U visa. Due to the “continuous presence” requirement, if a U visa holder departed the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days, they must include a certification with their application for lawful permanent residency– from the original U visa certifying agency – that verifies that the absence was necessary for the investigation or prosecution or otherwise justified.
 - Fingerprint checks are run as part of this adjudication.

**More
Information**

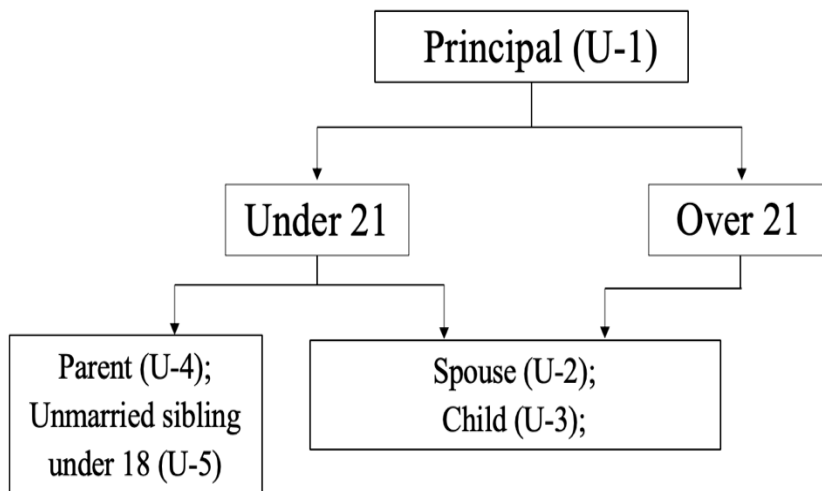
- Please visit the NIWAP’s web library for more information, training or technical assistance at <http://niwaplibrary.wcl.american.edu/>

U Visa: Protections for Family Members

(INA § 101(a)(15)(U)(ii); 8 CFR 214.14(a)(10))

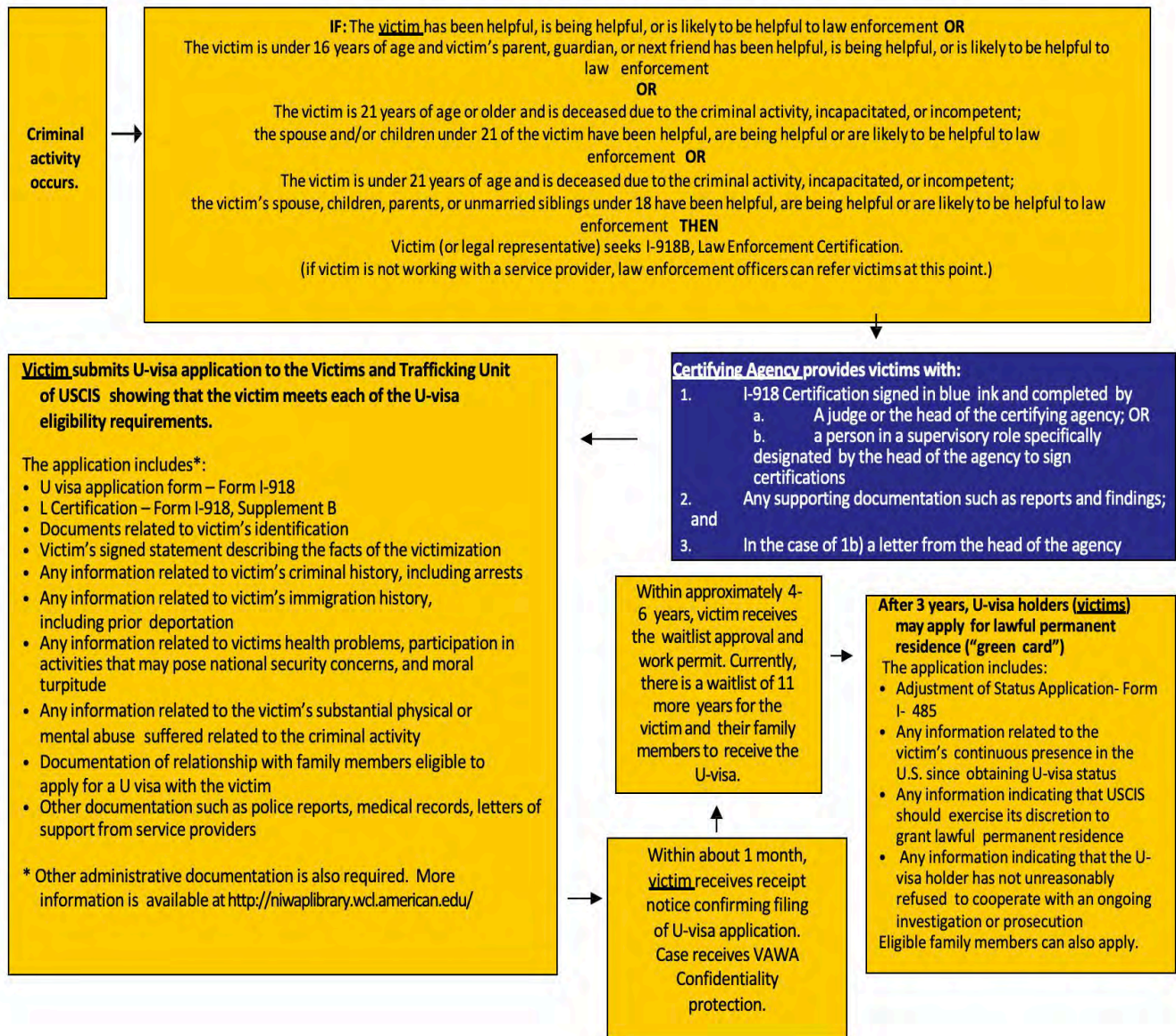
An immigrant crime victim filing a U visa application may file applications seeking that their eligible family members also be granted U visas. Under immigration laws, the applicant is called a principal, and the family members are called derivatives. The following chart outlines each of the types of U visas available to immigrant crime victims and their family members. Age-out protections are provided for U visa principal applicants and for the family members they included in their applications (derivatives) who are under 18 or 21 years of age.¹³⁸

Code	Name
U-1	Principal (the victim)
U-2	Principal's spouse (always eligible)
U-3	Principal's child (always eligible)
U-4	Principal's parent (eligible only when principal is under 21 years of age)
U-5	Principal's unmarried sibling under the age of 18 (eligible only when principal is under 21 years of age)



¹³⁸ See INA § 214(p)(7), 8 U.S.C. 1184(p)(7).

U-visa Application Victim Flow Chart¹³⁹



¹³⁹ Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice. This project was also supported by Grant Nos. 2011-TA-AX-K002 and 2013-TA-AX-K009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women



U Visa qualifying criminal activity occurs

Law enforcement or systems-based advocate informs victim about U Visa

Victim is referred to advocate / non-government agency / trusted immigration attorney

U Visa request made by victim, victim advocate or immigration attorney

Applicable certifying agency receives U Visa request

Certifying Agency reviews relevant records to determine eligibility

Based on provided reports from the police and the victim, the certifier determines the following:

1. All qualifying criminal activities in the case;*
2. That criminal activity occurred in the U.S.; and
3. That the victim is/was/ will likely be helpful in the detection, investigation, prosecution or sentencing

If qualified, the agency fills out the required forms and sends all relevant information to a certifying agent

U visa certification signed by chief/sheriff or designee

Agency / victim send the forms and all applicable documents and evidence to USCIS for processing

*For more information on qualifying criminal activities, see NIWAP's "U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors" (May 6, 2021) https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit_law-enforcement-prosecutors.

T Visa Quick Reference for Law Enforcement and Prosecutors¹⁴⁰

By Sylvie Sheng and Leslye E. Orloff

March 24, 2021

<p>Purpose of the T Visa</p>	<ul style="list-style-type: none"> • Congress created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of their human traffickers.¹⁴¹ Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.¹⁴²
<p>Benefits of the T Visa</p>	<ul style="list-style-type: none"> • Strengthens the ability of the law enforcement, prosecutors, the courts, and state and federal government agencies to detect, investigate, prosecute, convict and sentence perpetrators of human trafficking while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.¹⁴³ • Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the civil, family, and criminal justice systems.¹⁴⁴ The T visa promotes access to justice by enhancing accessibility and ensuring fairness. • If certain conditions are met, an individual with T visa may apply for lawful permanent residency (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.¹⁴⁵
<p>Who is eligible for a T visa?¹⁴⁶</p>	<ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) of DHS may find an individual eligible for a T visa if the victim: <ul style="list-style-type: none"> ○ Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law; ○ Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to human trafficking; ○ Has complied with any reasonable request from a law enforcement or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking;¹⁴⁷ and ○ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.¹⁴⁸ • In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual

¹⁴⁰ U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

¹⁴¹ See TVPA 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

¹⁴² *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002).

¹⁴³ 72 Fed. Reg. 92266, 92269 (2016).

¹⁴⁴ 67 Fed. Reg. 4782, 4784 (2002); 73 Fed. Reg. 75540, 75554 (2008).

¹⁴⁵ See generally 73 Fed. Reg. 75540 (2008).

¹⁴⁶ *DHS U and T Visa Resource Guide* at 9–10.

¹⁴⁷ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

¹⁴⁸ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

<p>Who is eligible for a T visa?</p>	<p>may apply for any waiver of inadmissibility for which they may be eligible.¹⁴⁹</p> <ul style="list-style-type: none"> • Individuals currently in removal proceedings or with final orders of removal are eligible for a T visa.¹⁵⁰ • Certain family members of a T visa recipient may also be eligible to live and work in the United States. These are: <ul style="list-style-type: none"> ○ Children; ○ Spouse; ○ Parents of child trafficking victims who are under age 21 at the time of application, or any victim’s parents who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; ○ Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim’s unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; and ○ Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.¹⁵¹ • While in the United States, the victim has an ongoing duty to comply with reasonable requests from law enforcement or prosecutors for assistance in the investigation or prosecution of human trafficking.¹⁵² •
<p>T visa Qualifying Criminal Activities¹⁵³</p>	<ul style="list-style-type: none"> • A victim of severe forms of trafficking in persons is an individual who is a victim of either: <ul style="list-style-type: none"> ○ Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion; ○ Sex trafficking in which the person induced to perform such an act is under the age of 18; ○ The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.¹⁵⁴ • DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) are present in the case.¹⁵⁵ This

¹⁴⁹ 72 Fed. Reg. 92266, 92283 (2016). Limayli Huguet, Faiza Chappell and Leslye E. Orloff, Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>

¹⁵⁰ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(1)(i)) (2016).

¹⁵¹ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

¹⁵² 72 Fed. Reg. 92266, 92274 (2016); *DHS U and T Visa Resource Guide* at 13.

¹⁵³ *DHS U and T Visa Resource Guide* at 12.

¹⁵⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

¹⁵⁵ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); 72 Fed. Reg. 92266, 92270 (2016); Freedom Network, *General Tips for T Visas for Victims of Severe Form of Trafficking in Persons* (Apr. 2018), <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

T visa Qualifying Criminal Activities	would include, for example, a situation where the victim was recruited and came to the United States through force, fraud or coercion for the purpose of a commercial sex act, but the victim was rescued or escaped before performing a commercial sex act. ¹⁵⁶
Status of Criminal Case Against Crime Perpetrator	<ul style="list-style-type: none"> • The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant. • A declaration may be signed whether or not a criminal investigation or prosecution is brought against the trafficker and regardless of the outcome of the criminal case brought against the trafficker. There is no requirement that an arrest, prosecution, or conviction occur.¹⁵⁷
What Is a T visa Declaration? ¹⁵⁸	<ul style="list-style-type: none"> • The T visa declaration is supplementary evidence that law enforcement, prosecution, and other authorized agencies can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests¹⁵⁹ for assistance in the detection, investigation or prosecution of human trafficking.¹⁶⁰ • The T visa declaration is not a required document or conclusive evidence for a T visa application, but when provided, is useful evidence.¹⁶¹ DHS applies the Violence Against Women Act’s “any credible evidence” standard to T visa cases to encourage government officials including law enforcement and prosecutors to sign T visa declarations.¹⁶² • Signing a declaration is at the government officials authorized to sign the declaration’s discretion, and it does not mean the government official is sponsoring or endorsing the victim for a T visa.¹⁶³ USCIS considers the T visa declaration as one part of the evidence in the T visa application. USCIS also conducts a full background check and, in considering each T visa application and the applicant’s credibility, examines the totality of the evidence and the circumstances of each case.¹⁶⁴ • The T-visa declaration must be provided on Form I-914 Supplement B, and must be completed by a qualifying certifier, such as a judge. On the I-914B form the certifying official verifies that that the victim applying for a T visa meets the following criteria: <ul style="list-style-type: none"> ○ The victim is or was a victim of a severe form of trafficking in persons; and/or ○ The victim has met the “assistance requirement” by either having complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or by being exempt from the requirement because the victim is under 18 years of age, or because the victim is unable to assist due to physical or psychological trauma.¹⁶⁵

¹⁵⁶ 72 Fed. Reg. 92266, 92270 (2016).

¹⁵⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016); *DHS U and T Visa Resource Guide* at 21.

¹⁵⁸ *DHS U and T Visa Resource Guide* at 10–11.

¹⁵⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016). Although 8 C.F.R. § 214.11(d)(3)(i) only requires judges to demonstrate victimization *and/or* compliance with reasonable requests, we recommend attesting to both prongs if you have sufficient information. See DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-914B 2 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>

¹⁶⁰ *DHS U and T Visa Resource Guide* at 18–19.

¹⁶¹ 72 Fed. Reg. 92266, 92276 (2016).

¹⁶² 72 Fed. Reg. 92266, 92272 & 92276 (2016).

¹⁶³ *DHS U and T Visa Resource Guide* at 11.

¹⁶⁴ 72 Fed. Reg. 92266, 92276 (2016).

¹⁶⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016).

<p>What Is a T visa Declaration?</p>	<ul style="list-style-type: none"> • The criminal activity may have occurred at any time in the past.¹⁶⁶ There is no statute of limitations and certification can be made even when the state statute of limitations for the criminal activity has passed. There is no expiration date for the Form I-914B T visa declaration. The applicant can submit the form any time after the certifying government official signs the form.
<p>Law Enforcement and Prosecutors as T visa Certifiers</p>	<ul style="list-style-type: none"> • Law enforcement officials and prosecutors are specifically listed in the regulations as one of the government agencies that are authorized certifiers able to complete the T visa Certification Form I-914, Supplement B.¹⁶⁷ A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.¹⁶⁸ • Law enforcement officials are the first responders to immigrant victims of human trafficking. Police departments, sheriffs’ offices, marshals, and other law enforcement officials have firsthand knowledge of a victim’s assistance in reporting the crime and participating in any subsequent investigations. Law enforcement officials, therefore, are well positioned to provide T visa declarations and verify a victim’s assistance in the detection, investigation, or prosecution of human traffickers. • When a human trafficking related crime is prosecuted, prosecutors work closely with both law enforcement and victims. The prosecutors might need the victim to testify in court, or otherwise help during the prosecution, which might include the sentencing phase. During the prosecution of a qualifying criminal activity when there is an immigrant victim, the prosecutors are well positioned to verify a victim’s eligibility for a T visa and to provide the declaration. Although the manner in which prosecutions are initiated vary by jurisdiction, law enforcement officers and prosecutors encounter persons who have been victims of human trafficking. <p>The declaration is not necessary to establish eligibility for the T visa, nor does it by itself grant immigration status to the victim. To obtain a T visa, a victim must meet eligibility requirements. The Department of Homeland Security (DHS) has sole authority to grant or deny a T visa and completes full background checks on all applicants.</p>
<p>Assessing the Assistance Requirement</p>	<ul style="list-style-type: none"> • The T visa requires that the victim has complied with any reasonable requests from law enforcement in detection, investigation, or prosecution of human trafficking and/or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.¹⁶⁹ • In determining “reasonableness” of the request for assistance or cooperation made by law enforcement and prosecution officials, USCIS will consider the totality of the circumstances. USCIS is required by regulations to use a broad range of factors, including but not limited to: general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.¹⁷⁰ DHS emphasizes that the proper standard is the reasonableness

¹⁶⁶ See 72 Fed. Reg. 92266, 92278 (2016). “USCIS will accept applications regardless of when the applicant was victimized.”

¹⁶⁷ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

¹⁶⁸ DHS U and T Visa Resource Guide at 13.

¹⁶⁹ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

¹⁷⁰ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

<p>Assessing the Assistance Requirement</p>	<p>of the request, not whether a victim unreasonably refused to assist.¹⁷¹ It is generally reasonable for law enforcement to ask a trafficking victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.¹⁷²</p> <ul style="list-style-type: none"> • There are certain times when the T visa statute does not require a victim to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.¹⁷³ • If a T visa victim has complied with any reasonable request in the detection, investigation, or prosecution the certifying official may prepare the certification even when investigation or prosecution efforts have been abandoned or did not result in conviction.¹⁷⁴ A judge may also certify when the only court case the victim participated in was a family or civil court matter. • If a law enforcement official or prosecutor is unsure whether the victim meets the assistance requirement, they may sign the declaration and include all information that has been found relevant about the victim's assistance (Form I-914B includes several options to select). USCIS will ultimately determine whether the victim meets these requirements.¹⁷⁵ <p>The victim must fulfill an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency.¹⁷⁶ At their discretion, a certifying official may revoke or disavow a declaration if a victim stops assisting; after revocation or disavowal, the declaration will no longer be considered as evidence.¹⁷⁷</p>
<p>When Officials are Able to Grant T visa Declaration</p>	<ul style="list-style-type: none"> • If the law enforcement, prosecutor, or other government official has reasonable suspicion that criminal activity occurred and that the victim was cooperative, a declaration can be signed at any of the stages of the case.¹⁷⁸ • Law enforcement and prosecution officials may complete T visa declarations once they are able to assess a victim's helpfulness. Congress intended that T visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.¹⁷⁹ • The T visa declaration can be completed at the same time officers are completing police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide declarations at any time after they access the assistance. Waiting to sign declarations until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.¹⁸⁰

¹⁷¹ 72 Fed. Reg. 92266, 92275 (2016).

¹⁷² *Id.*

¹⁷³ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

¹⁷⁴ DEP'T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS 1 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>; *DHS U and T Visa Resource Guide* at 17, 19.

¹⁷⁵ *Id.* at 18.

¹⁷⁶ 72 Fed. Reg. 92266, 92274 (2016).

¹⁷⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

¹⁷⁸ *DHS U and T Visa Resource Guide* at 18.

¹⁷⁹ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016); *DHS U and T Visa Resource Guide* at 21.

¹⁸⁰ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

<p>T visa, Time Line & Attaining Lawful Permanent Residency</p>	<ul style="list-style-type: none"> • Typically within six (6) months after filing the T visa application, if USCIS finds that there is sufficient evidence in the case, the applicant’s case will receive bona fide determination and the victim will receive formal protection from deportation, work authorization,¹⁸¹ and access to state and federal public benefits.¹⁸² DHS will run a background check based on the applicant’s fingerprints before granting bona fide determination.¹⁸³ • Approximately two (2) years after the bona fide determination, that is, about 2.5 years after filing, DHS will adjudicate the case. If the case is approved the applicant receives a T visa that lasts for four (4) years. At this point, if the trafficking case is concluded, the applicant will be able to immediately apply for lawful permanent residency. If not, the applicant will be able to apply for to apply for legal permanent residency three (3) years after receipt of T visa.¹⁸⁴ • To obtain lawful permanent residency as a T visa holder, the victim must prove: <ul style="list-style-type: none"> ○ That they lawfully hold T visa and can prove that they have good moral character; ○ That they meet one of the following: <ul style="list-style-type: none"> ▪ They have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; ▪ They would suffer extreme hardship involving unusual and severe harm if they were removed from the United States; or ▪ They were under 18 years of age at the time of the trafficking. ○ That they have continuous presence in the U.S. since receiving the T visa. Due to the “continuous presence” requirement, the T visa holder cannot depart the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days. ○ That they are admissible to the United States or have been granted a waiver by USCIS of any waivable grounds of inadmissibility.¹⁸⁵ • Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year.¹⁸⁶ However, to date, the annual cap has never been reached and visas remain available to all applicants who qualify.¹⁸⁷
<p>More Information</p>	<p>Please visit NIWAP’s web library for more information, training or technical assistance at http://niwaplibrary.wcl.american.edu/</p>

¹⁸¹ 72 Fed. Reg. 92266, 92279 & 92307 (codified at 8 C.F.R. § 214.11(e)) (2016); 8 C.F.R. 274a.12(c)(14); Katelyn Deibler and Leslye E. Orloff, *T-Visa Timeline with Background Checks* (2019), <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

¹⁸² To look up what federal and state public benefits human trafficking victims are eligible for in each state see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *All State Public Benefit Charts* (2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁸³ 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(e)(1)(iv)) (2016)

¹⁸⁴ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(3)) (2008).

¹⁸⁵ 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)) (2008).

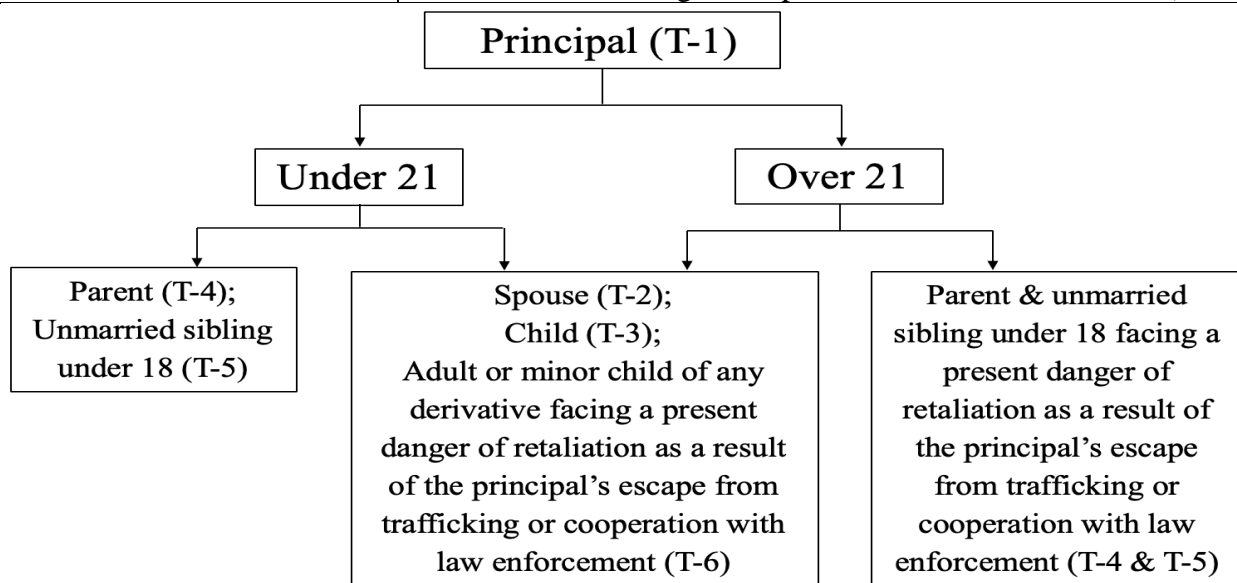
¹⁸⁶ I.N.A. § 214(o)(2)–(3), 8 U.S.C. 1184(o)(2)–(3).

¹⁸⁷ *DHS U and T Visa Resource Guide* at 10.

T Visa: Protections for Family Members (8 CFR 214.11(k)(1))

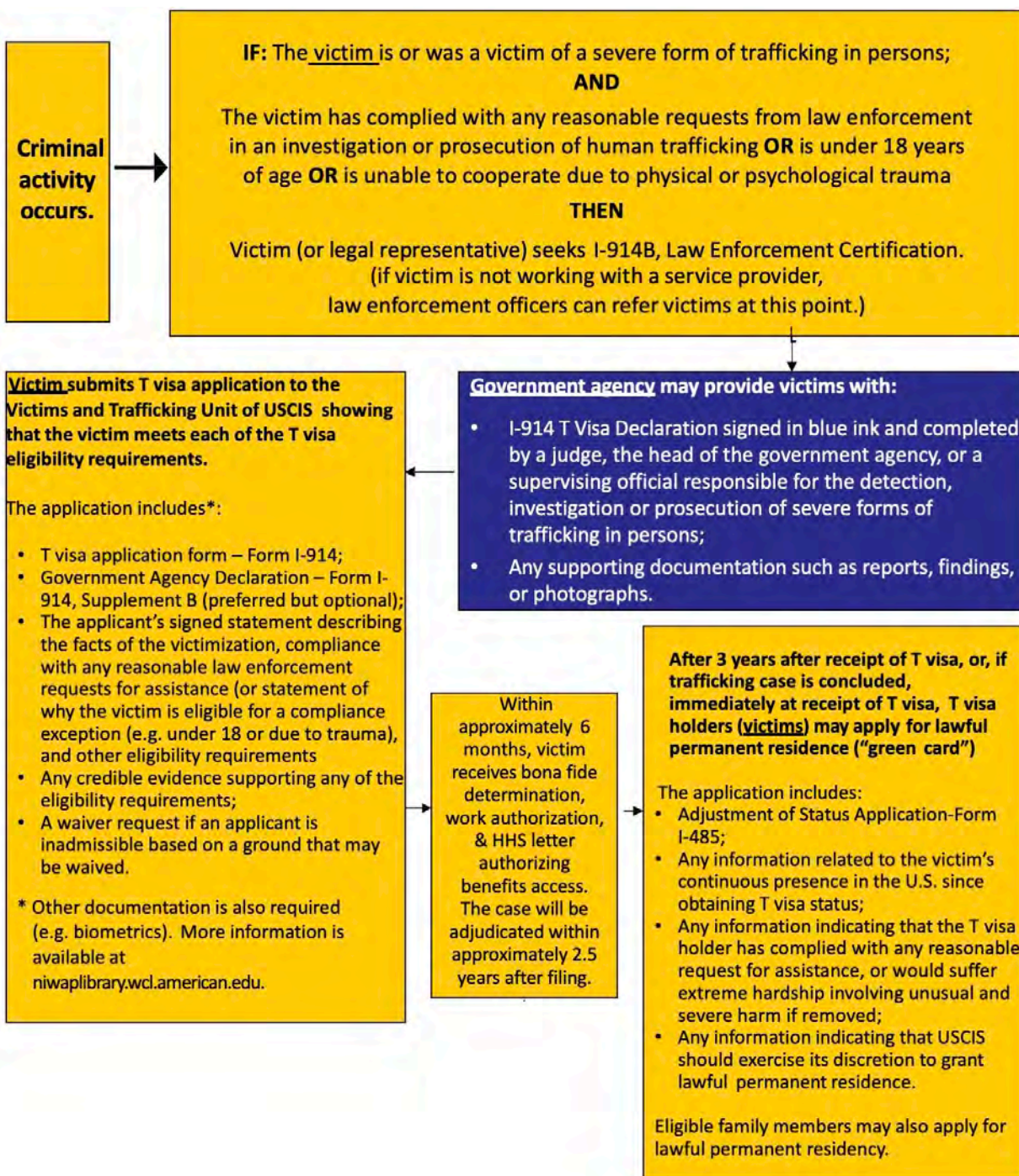
A T visa applicant may apply for the admission of eligible family members. The applicant is called a principal, and the family members are called derivatives. The following chart outlines each classification of the T visa. Age-out protections are provided for principals and derivatives under 21 years of age.¹⁸⁸

Code	Name
T-1	Principal (the victim)
T-2	Principal's spouse (always eligible)
T-3	Principal's child (always eligible)
T-4	Principal's parent (eligible only when principal is under 21 years of age, or when the parent faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
T-5	Principal's unmarried sibling under the age of 18 (eligible only when principal is under 21 years of age, or when the sibling faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
T-6	Adult or minor child of any derivative (T-2–T-5) (eligible only when the adult or minor child of a derivative faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)



¹⁸⁸ See I.N.A. § 214(o)(4)–(5), 8 U.S.C. 1184(o)(4)–(5); 8 C.F.R. 214.11(k)(5)(ii)–(iii).

T Visa Application Victim Flow Chart



U Visa Statutory and Regulatory Background

The following excerpts from the Violence Against Women Act of 2000 and its implementing regulations summarize the statutory and regulatory background on the U visa's purpose, its helpfulness requirement, and its authorization of judges as certifiers.

Statutory Authority: Purpose of the U visa

“Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.”¹⁸⁹

“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.”¹⁹⁰

“(Sec. 1513 of VAWA) creates new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.”¹⁹¹

“[I]t is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”¹⁹²

Regulatory Authority: Purpose of the U Visa As Described By DHS in the U Visa Regulations

“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.”¹⁹³

¹⁸⁹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) § 1513, Pub L. 106-386.

¹⁹⁰ *Id.*

¹⁹¹ 146 Cong. Rec. S10196 (2000)

¹⁹² 151 Cong. Rec. E2607 (2005) (Rep. Conyers)

¹⁹³ 72 Fed. Reg. 53013, 53014 (2007).

“Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.”¹⁹⁴

“USCIS implemented procedures to ensure that those aliens who appeared to be eligible for U nonimmigrant status under the BIWPA would not be removed from the United States until they had an opportunity to apply for such status.”

Statutory Authority: Law Enforcement/Prosecutor Certification

“(A U visa petition) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.”¹⁹⁵

Regulatory Authority: Law Enforcement/Prosecutor Certification

“Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.”¹⁹⁶

“Certifying official means: (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or (ii) A Federal, State, or local judge.”¹⁹⁷

Regulatory Authority: Investigation or Prosecution Includes Detection

“The rule provides that the term ‘investigation or prosecution,’ used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity...[DHS] is defining the term to include the detection of qualifying activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties...[DHS] is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution... Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications... Judges neither investigate crimes nor prosecute perpetrators. Therefore, [DHS] believes that the term ‘investigation or prosecution’ should be interpreted broadly.”¹⁹⁸

¹⁹⁴ 72 Fed. Reg. 53013, 53014–15 (2007).

¹⁹⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹⁹⁶ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007).

¹⁹⁷ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(3)) (2007).

¹⁹⁸ 72 Fed. Reg. 53014, 53023 (2007) (emphasis added).

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...”¹⁹⁹

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.”²⁰⁰

“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 assistance to an investigation, the purpose of BIWPA [Battered Immigrant Women Protection Act enacted into law as the Violence Against Women Act of 2000] is not furthered.”²⁰¹

“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.”²⁰²

“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.”²⁰³

¹⁹⁹ 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).

²⁰⁰ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006- 0069, page 21 (Sept. 17, 2007).

²⁰¹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁰² New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁰³ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067, 25 (December 8, 2008).

“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.”²⁰⁴

“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.”²⁰⁵

²⁰⁴ 72 Fed. Reg. 53014, 53014–15 (2007).

²⁰⁵ 73 Fed. Reg. 75540, 75554 (2008).

T Visa Statutory and Regulatory Background²⁰⁶

The following excerpts from the Trafficking Victims Protection Act (TVPA) of 2000 and its implementing regulations summarize the statutory and regulatory background on the T visa's purpose and its authorization of judges as certifiers.

Statutory Authority: Purpose of the T visa

The T visa is created “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”²⁰⁷

“Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. ... Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.”²⁰⁸

“Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. ... Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves. ... Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”²⁰⁹

“Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”²¹⁰

“One of the most important of these provisions expands assistance and protection to victims of severe forms of trafficking, ensuring that they receive appropriate shelter and care, and are able to remain in the United States to assist in the prosecution of traffickers. Relief from deportation is also critical for victims who could face retribution or other hardship if removed from the United States.”²¹¹

²⁰⁶ The T visa regulations were initially issued in 2002 and were updated in 2016. For the T visa regulations and their full regulatory history *see*, T Visa Regulations 2002 and 2016 (June 23, 2020) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-regulations-2002-and-2016>

²⁰⁷ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

²⁰⁸ *Id.*, § 102(b)(4)–(5).

²⁰⁹ *Id.*, § 102(b)(14), (17), (19).

²¹⁰ *Id.*, § 102(b)(20)).

²¹¹ 146 Cong. Rec. S10170 (2000). (Sen. Kennedy)

“[I]t is very important that the system of services we provide to ... trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”²¹²

Regulatory Authority: Purpose of the T visa

“In trafficking in persons situations, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. Congress’s intentions in passing the TVPA were to further the humanitarian interests of the United States and to strengthen the ability of government officials to investigate and prosecute trafficking in persons crimes by providing temporary immigration benefits to victims.”²¹³

“Congress established this new classification ... to create a safe haven for certain eligible victims of severe forms of trafficking in persons who are assisting law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.”²¹⁴

Regulatory Authority: Law Enforcement/Prosecutor Declaration

An government agency endorsement (T visa declaration) is “optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests.”²¹⁵

When DHS discusses the range of agencies authorized to sign declarations they stated:

“Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.”²¹⁶

Regulatory Authority: Nature of Declaration

A government agency (LEA) “endorsement is not mandatory and is not given any special evidentiary weight. An LEA endorsement itself does not grant a benefit and is one form of possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA endorsement must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status. The decision whether to complete an LEA endorsement is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA endorsement.”²¹⁷

²¹² 151 Cong. Rec. E2607 (2005). (Rep. Conyers)

²¹³ 67 Fed. Reg. 4782, 4784 (2002).

²¹⁴ 67 Fed. Reg. 4782, 4785 (2002).

²¹⁵ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

²¹⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²¹⁷ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016).

U VISA CERTIFICATION AND T VISA DECLARATION BY LAW ENFORCEMENT AND PROSECUTORS: FREQUENTLY ASKED QUESTIONS

BACKGROUND

What is the purpose of the U visa and the T visa?

In keeping with humanitarian interests of the United States, Congress created the U visa and the T visa to encourage immigrant crime victims to report crimes without fear of deportation and to “encourage law enforcement to better serve immigrant crime victims.”²¹⁸

How do law enforcement agencies benefit from the U visa and T visa?

As a crime-fighting tool, the two visas reinforce a law enforcement agency's commitment to hold offenders accountable, promote victim safety, enhance protection, and assist victims in their recovery from trauma resulting from criminal activity. Victims without immigration status are more likely to report crimes and cooperate in the perpetrator's prosecution if they have no reason to fear that doing so could cause them to be deported. Immigrant victims with U visas or T visas will be less susceptible to and less likely to succumb to the perpetrator's intimidation. The community itself will also be safer as a result.²¹⁹ Law enforcement agencies that use the U visa or the T visa in conjunction with other community policing measures also prove to immigrants and the community that they are serious about protecting immigrants from crime.

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.

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.²²⁰ 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, prosecution, conviction or sentencing of that criminal activity.²²¹

²¹⁸ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a), Pub. L. 106–386, 114 Stat. 1464.

²¹⁹ See Rodrigues, R., Bates, M., Orloff, L. (2020). Improving Crime Fighting Outcomes in Cases of Immigrant Victims: The Role of Continued Presence U and T Visas as Tools for Law Enforcement.

<https://niwaplibrary.wcl.american.edu/pubs/improving-crime-fighting-outcomes-in-cases-of-immigrant-victims-11-17-20-1>

²²⁰ 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).

²²¹ I.N.A. § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

What is the T visa declaration?

The T visa declaration is a DHS form (I-914 Supplement B) that a T visa applicant may submit when they file a T visa application with USCIS. The declaration is supplementary evidence to demonstrate that the applicant is or was a victim of severe forms of trafficking in persons and has not rejected reasonable requests for assistance from law enforcement.²²²

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). Although not all-inclusive, the list of qualifying criminal activity represents the many types of criminal behavior and includes domestic violence, sexual abuse, human trafficking, and other serious and often violent crimes in which perpetrators often target vulnerable immigrants as victims.²²³ The U visa specifically includes the following criminal activities:²²⁴

Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

What is considered T visa qualifying criminal activity?

DHS defines “severe forms of trafficking in persons” as either:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- Sex trafficking in which the person induced to perform such an act is under the age of 18;
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.²²⁵

What are the evidentiary standards for U visa and T visa?

For both visas, federal statutes and DHS regulations apply the Violence Against Women Act’s “any credible evidence” standard.²²⁶ When USCIS conducts its adjudication of the case USCIS reviews all evidence submitted and will determine, in its sole discretion, the evidentiary value of the evidence.²²⁷ The rules reflect the broad protections and flexible evidentiary standards envisioned by Congress.²²⁸

²²² *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

²²³ 72 Fed. Reg. 53014, 53015 (2007).

²²⁴ I.N.A. § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii) (2000) (As amended by the Violence Against Women Reauthorization Act of 2013).

²²⁵ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²²⁶ 72 Fed. Reg. 53014, 53038 (codified at 8 C.F.R. § 214.11(c)(4)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016).

²²⁷ *Id.*

²²⁸ *See, e.g.*, H.R. REP. NO. 103-395, at 38 (1993).

Which family members can be included in a U visa and T visa application?

The federal law permits certain qualifying family members to obtain U or T visas when the family member is accompanying (in the U.S. with together with the victim) or following to join the immigrant victim applying for the U or T visa. USCIS refers to such family members as “derivatives.” The immigrant who was the victim of the criminal activity applying for the U visa or T visa is referred to under immigration law as the “principal” applicant. The determination of which family members are considered “qualifying” depends on their relationship to the principal immigrant victim and the age of the principal immigrant victim.²²⁹

For the U visa, if the immigrant victim applicant is under 21 years of age at the time the victim’s application for a U visa is properly filed, qualifying family members eligible to file for U visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is 21 years of age or older, the only family members who are eligible to apply for U visas are the victim’s spouse and children.²³⁰

For the T visa, as with the U visas, when the immigrant victim applicant is under 21 years old at the time they file a T visa application, qualifying family members eligible to file for T visas, together with the victim, include the victim’s spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal’s petition), and parents. If the immigrant victim is over the age of 21 the family members for which they may seek T visas are the victim’s spouse and children. In addition, T visa victims, without regard to age, can apply for parents, unmarried siblings under 18 years of age, or children (adult or minor) of the principal victim’s eligible family members, if the family member faces a present danger of retaliation as a result of the principal’s escape from the severe form of trafficking in persons or cooperation.²³¹

The law includes “age out” protections for T and U visa victims and their child family members who are under 21 years old on the date their U or T visa application is filed. Once a victim or the family member of a victim who is under the age of 21 files a U or T visa application, the age of the child on the date of filing is by law fixed in time so that when their case is adjudicated even if the applicant is over 21 on the date of adjudication, their case is adjudicated as if they are still under 21 years of age.²³²

CERTIFICATION/DECLARATION PROCESS

Who can sign a U visa certification/T visa declaration?

Any agency that detects, investigates, prosecutes, convicts, or sentences criminal activity or perpetrators of criminal activity may sign a certification/declaration.²³³ Statutes and DHS regulations explicitly lists as agencies and state government officials authorized to sign certifications the following agencies: state and local judges, law enforcement agencies,

²²⁹ USCIS, Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions, PM-602-0102 (April 15, 2015), <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVPR-2013-PM.pdf>.

²³⁰ I.N.A. § 101(a)(15)(U)(ii)(I)–(II); 8 U.S.C. § 1101(a)(15)(U)(ii) (I)–(II).

²³¹ I.N.A. § 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); 8 C.F.R. 214.11(k)(1)(ii)–(iii).

²³² I.N.A. § 214(p)(7), 8 U.S.C. § 1184(p)(7); I.N.A. § 214(o)(4)–(5), 8 U.S.C. § 1184(o)(4)–(5).

²³³ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1); *DHS U and T Visa Resource Guide* at 15.

prosecutors, Child Protective Services, Adult Protective Services, the Equal Employment Opportunity Commission, Department of Labor, NLRB, state labor law enforcement entities, and other government agencies that have civil, criminal, or administrative investigative authority.²³⁴ Individual federal, state, and local judges adjudicating any type of proceeding (family, civil, criminal, or administrative) are authorized by federal statute and federal regulations to act as certifying officials.²³⁵

Why did Congress authorize multiple certifiers?

Congress sought to protect immigrant crime victims and encourage their cooperation in the detection of crime, criminal investigations, and prosecutions as early as possible after the victim was identified as a crime victim. Immigrant victims first come in contact with the justice system in a variety of ways. For example, some victims find their way to advocates who assist them in filing for a civil protection order and only after receiving the protection order do victims feel able to cooperate in the criminal prosecution of their abuser. Other victims call the police to report domestic violence, sexual assault or other crimes committed against them and system advocates or similar staff members at the police department inform them about the U or T visa program.

The goal was to provide a range of avenues for U visa certification and T visa declaration from justice system professionals whose jobs include making determinations about whether there was reasonable suspicion or probable cause to believe that criminal activity was perpetrated, and against which victim. The authority to issue U visa certifications and T visa declarations was not designed to be consecutive or mutually exclusive among authorized certifiers, but rather was designed to facilitate certification as early as possible in the case. The federal statute is designed to provide multiple avenues to certification/declaration so that eligible victims may obtain a certification even when they live in a jurisdiction in which one agency eligible to issue certifications/declarations, as a matter of practice, never issues them.²³⁶

²³⁴ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 53014, 53015 & 53019 (2007); *DHS U and T Visa Resource Guide* at 15.

²³⁵ 8 C.F.R. 214.14(a)(2). Unlike other certifying officials, approval by any supervisor is needed for judicial certifications.

Each individual judge or magistrate is authorized to sign certifications.

²³⁶ Several states have begun to address the issue of state agencies who have the authority to sign U visa and T visa certifications whose agencies have policies or practices that result in their agencies not issuing certifications by passing state laws requiring that these state agencies have certification practices that result in their issuance of certifications. A list of state laws regarding U and T visa certification is available at <http://niwaplibrary.wcl.american.edu/state-u-visacertification-laws>. See also Oregon Senate Bill 962 (2019), <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB962/Enrolled>; Alison Kamhi and Sarah Lakhani, A

Guide to State Laws on U Visa and T Visa Certifications, IMMIGRANT LEGAL RES. CTR. (Apr. 2020) (listing IN, NY, RI, VT, Virgin Islands, and WY laws), https://www.ilrc.org/sites/default/files/resources/u_visa_and_t_visa_pa-04.2020.pdf.

Are law enforcement agencies and prosecutor’s offices required to sign the U visa certifications/T visa declarations?

No. Agencies authorized to sign certifications and declarations, including law enforcement and prosecution agencies, are not required to sign the certifications or declarations.²³⁷ Whether a certifying agency signs a certification/declaration is at the discretion of the agency. However, Congress enacted the U visa and T visa protections with the expectation that law enforcement and prosecutors are in a good position to assess the helpfulness or assistance of a victim.²³⁸ A victim cannot obtain a U visa without a certification.²³⁹

The U visa certification (Form I-918B) is one of the required pieces of evidence to confirm that:

- The applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity;
- The applicant has specific knowledge and details of the crime; and
- The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

The declaration is not required for a T visa, but it is a helpful piece of evidence submitted by the applicant.²⁴⁰ In addition, signing a certification or declaration will not subject an agency to liability and does not grant any immigration benefit. USCIS adjudicates the victim’s case based on the totality of the evidence in the record including a full background investigation. Only USCIS has the authority to grant or deny immigration benefits of the U or T visa to an immigrant victim applicant.²⁴¹

Is my agency required to create a policy for reviewing and signing Form I-918B and Form I-914B?²⁴²

No. Certifying agencies are not required under federal regulations to create a policy in order for authorized certifiers to review and sign Form I-918B or Form I-914B. However, many agencies have found this to be helpful. Certifying agencies are also not required to notify DHS in advance that the agency will be signing certifications. The International Association of Chiefs of Police issued a resolution encouraging law enforcement agency leadership to adopt U and T visa training and polices.²⁴³ A number of police departments collaborated on the development of a model U and

²³⁷ See *Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010) (holding that the decision to decline to issue certification is discretionary); *DHS Resource Guide* at 17.

²³⁸ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a)(2)(B), Pub. L. 106–386, 114 Stat. 1464.

²³⁹ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

²⁴⁰ See 81 Fed. Reg. 92266, 92276 (2016).

²⁴¹ DHS Blue Campaign, Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and other Crimes at p. 2, available at <http://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>

²⁴² *DHS U and T Visa Resource Guide* at 16.

²⁴³ International Association of Chiefs of Police, 2018 Resolutions – Support for Education and Awareness on U Visa Certification and T Visa Declaration, <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

T visa certification policy.²⁴⁴ Training on U visa and T visa certification is recommended for courts and staff at any government agency signing certifications.²⁴⁵

If I sign a certification or declaration, does the victim automatically get a U visa, T visa or lawful immigration status?²⁴⁶

No. There are many additional eligibility requirements that USCIS evaluates when it adjudicates a victim's U visa or T visa application, depending on which visa the victim is seeking (see above sections for list of eligibility requirements). Upon receiving a U or T visa application, USCIS will conduct a full review of all evidence and a thorough background check of the victim before approving or denying the application. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds.

A victim may be found inadmissible if the victim does not meet required criteria in the Immigration and Nationality Act to gain admission to or lawful immigration status in the United States. Victims may seek a waiver of inadmissibility, which USCIS has discretion to grant. Waivers are considered based on the totality of the evidence in the case and the results of the background check. USCIS may also contact the certifying official for further information if necessary.

Will my certifying agency be liable for any future conduct of someone who is granted a U or T visa? What if I signed a certification or declaration for someone who later commits a crime?²⁴⁷

No. A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime. The T visa declaration simply addresses whether the victim was a victim of human trafficking and has complied with all reasonable requests for assistance.

The certification or declaration does not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa. If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues. If a certifying agency or official later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency or official wishes to withdraw the certification, the agency or official should contact USCIS.

²⁴⁴ The model policies for law enforcement and prosecution agencies are available at <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>. The model policy is included in this toolkit at page 99.

²⁴⁵ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 17.

Who decides which benefit to seek, a U or T visa?²⁴⁸

The victim or victim's advocate or attorney will usually make that decision and indicate to the certifying agency or judge whether the victim is seeking a U visa certification or a T visa declaration. It is important to note that victims of human trafficking may qualify for and may apply for both a U and a T visa.

U VISA HELPFULNESS AND T VISA ASSISTANCE REQUIREMENTS

What constitutes *helpfulness* for U visa certification purposes?

“Helpfulness” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.²⁴⁹

Helpfulness can be as simple as a victim reporting a crime to the police or the victim's filing for a protection order or a temporary protection order, such as a civil protection order, sexual assault protection order, or a harassment restraining order. Victims who seek civil protection orders demonstrate willingness to be helpful by revealing the facts of the abuse they have suffered to the court and by coming to court to obtain the order. With a protection order, the victim is obtaining an order that the violation of which is a crime that they can enforce by calling the police to report future protection order violations. Some of those future protection order violations will be crimes in and of themselves (e.g. assault, threats to kill) other protection order violations become crimes because the actions violate the provisions of the protection order issued by the judge against the perpetrator. (e.g. violation of a no contact provision). Victims may also demonstrate helpfulness through sworn statements in the protection order application, by providing the court a copy of a police report they made, or by testimony before the court about steps they have taken to help police or prosecutors.

When there is a criminal investigation of the perpetrator, the victim may have provided helpfulness to police or prosecutors by participating in various aspects of the investigation or prosecution, such as identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements.

The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of the case, including past helpfulness and willingness to be helpful in the future.²⁵⁰ Congress intended for individuals to be eligible for a U visa at the very early stages of an

²⁴⁸ *Id.*

²⁴⁹ Helpfulness is defined in the U visa statute 8 U.S.C. § 1101(a)(15)(U)(i)(III); The U visa regulations at 8 C.F.R. § 214.14(5) define investigation or prosecution as follows: Investigation or prosecution refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. See Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

²⁵⁰ 72 Fed. Reg. 53013, 53019 (2007). Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, *U-Visa “Helpfulness” Checklist*, NIWAP (2019), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

investigation.²⁵¹ Once a victim has provided any form of helpfulness they are eligible to receive a U visa certification. The victims must file their U visa application within six (6) months of receiving the certification. If the victim needs more time to document their U visa case before filing, they will need to return to the judge or agency that issued the U visa certification and request reissuance of a new certification.

After the victim has provided helpfulness, received certification and filed for the U visa, the victim is required by the U visa regulations to provide ongoing assistance to law enforcement and prosecution officials when reasonably requested. This requirement to offer ongoing assistance or cooperation applies from the time the victim files their U visa application, through adjudication of the U visa case, receipt of wait-list approval, receipt of the U visa, and through the time the victim applies for and is granted lawful permanent residency.²⁵²

To prevent further harm to victims however that could be caused by the cooperation To prevent further harm to victims that could be caused by the cooperation requirement, however, Congress created an exception to the ongoing cooperation requirement when victims can demonstrate that their inability or refusal to cooperate is not unreasonable.²⁵³ In some cases it may be unsafe for a victim to fully cooperate with law enforcement. Such situations include trauma, threats of retaliation, or the victim being physically restrained or monitored by the perpetrator.²⁵⁴ If a victim has been helpful in detection or investigation of criminal activity, judges, law enforcement and other certifying officials can issue U visa certification even if the victim later found it too difficult to continue participating.

It is important to distinguish “continuing assistance” from “helpfulness” because continuing assistance is a standard that applies *after* the victim files their U visa application and also after the victim obtains their U visa. For the purpose of obtaining an initial certification from a judge, only the victim’s past helpfulness, current helpfulness, or the likelihood of future helpfulness can be considered. In actual practice, judges are almost always being asked to issue U visa certifications based on helpfulness the victim has already provided. That helpfulness often has been provided or is being provided to the courts in the filing for a protection order or providing evidence of abuse in a pleading, testimony or

²⁵¹ *Id.*

²⁵² 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(b)(3)) (2007); 73 Fed. Reg. 75540, 75561 (codified at 8 C.F.R. § 245.24(e) (2008)).

²⁵³ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 4, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

²⁵⁴ 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).

related to a court proceeding. The court may have also received information or evidence about helpfulness the victim provided to law enforcement or prosecution officials in a criminal investigation or prosecution of a crime the victim suffered.

What constitutes “complying with any reasonable request” for a T visa declaration?

USCIS regulations require that the victim of trafficking comply with reasonable requests from law enforcement or prosecution officials for assistance in the detection, investigation or prosecution of the acts of trafficking in persons.²⁵⁵ To determine whether the request from law enforcement is reasonable, USCIS takes into account the totality of the circumstances, such as general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.²⁵⁶ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.²⁵⁷ It is generally reasonable for law enforcement or prosecutors to ask a victim similar things they would ask other comparably situated crime victims,, such as domestic violence and sexual assault victims.²⁵⁸

A victim is requesting Form I-918B (U Visa Certification) or Form I-914B (T Visa Declaration), but I am unsure whether they meet the “helpfulness” requirement or the “compliance with reasonable requests” requirement. May I sign this certification or declaration?

Yes. Both the I-918B and the I-914B provide an opportunity for the certifying agency completing the form to provide information to USCIS about the extent of the victim’s assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. Certifiers may complete the form including all information they find relevant about the victim’s assistance. USCIS will ultimately determine whether the victim meets these requirements.

- Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. Certifiers may select “yes” or “no” to these questions and further explain their answers.
- Form I-914B asks the certifying official to provide information about the victim’s cooperation and includes several options to select regarding the victim’s cooperation with law enforcement and/or prosecutors.

²⁵⁵ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

²⁵⁶ 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

²⁵⁷ 72 Fed. Reg. 92266, 92275 (2016).

²⁵⁸ *Id.*

DECIDING WHETHER TO CERTIFY

Can a law enforcement officer or prosecutor complete Form I-918B/I-914B if an investigation or case is closed or happened a long time ago? What is the statute of limitations for the qualifying criminal activity has lapsed?

Yes. There is no applicable statute of limitations (i.e. time limit) that precludes signing a certification or declaration.²⁵⁹ The two visas were enacted in January 2001 as part of the Violence Against Women Act and the Trafficking Victims Protection Act of 2000 and were drafted to offer access to U and T visas to immigrants who were victims of criminal activity both before and after the date of enactment.²⁶⁰ In addition, T visa regulations were not promulgated until 2002 and the U visa regulations were not issued until September 2007.²⁶¹ There were significant periods of time between enactment of U and T visa protections and the dates on which victims could begin to apply for these protections. Since Congress did not apply any statute of limitations to U and T visa cases the impact of the regulations delays was mitigated and victims who have provided helpfulness remain eligible to file for U and T visas with no requirements imposed regarding the length of time that may have passed between the commission of the crime and date the victims files their U or T visa application.²⁶²

Most victims who report crimes do not know at the time of the report about the existence of the U and T visa programs. Other victims are too scared to report crimes to law enforcement for the reasons Congress contemplated.²⁶³ The Congressional goal of improving trust between law enforcement, courts and immigrant crime victims was best met by providing access to U and T visa certification to any immigrant crime victim who mustered the courage and overcame fear to seek help from the courts, law enforcement, prosecutors and other government officials. When victims who report crimes and seek help from law enforcement, prosecutors, and the courts get U and T visa protections, the word spreads that the courts and justice system officials are willing to help immigrants with the result that more immigrant victims come forward to report crimes and seek help.²⁶⁴

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 or T visa.²⁶⁵ Many circumstances, including reports about the victim to DHS by the perpetrator, can lead a

²⁵⁹ “Certifying officials may complete Form I-918B or Form I-914B for an investigation or prosecution that is closed. There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity.” *DHS U and T Visa Resource Guide* at 18. “USCIS will accept applications regardless of when the applicant was victimized.” 72 Fed. Reg. 92266, 92278 (2016).

²⁶⁰ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386.

²⁶¹ 72 Fed. Reg. 53013 (2007).

²⁶² For the T visa, a filing deadline was imposed in the 2002 interim rule, but the application volume has not reached expected levels. To protect as many victims as possible, DHS removed the deadline in its 2016 interim rule. 72 Fed. Reg. 92266, 92278 (2016).

²⁶³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a).

²⁶⁴ “Evidence to further establish that the petitioner is a victim of qualifying criminal activity may include: trial transcripts, court documents, news articles, police reports, orders of protection, and affidavits of other witnesses such as medical personnel.” 72 Fed. Reg. 53013, 53024 (2007).

²⁶⁵ 72 Fed. Reg. 53013, 53041 (2007); 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(d)(9)) (2016);

“Individuals currently in removal proceedings or with final orders of removal may still apply for a U or T visa. A petitioner

crime victim to be detained and placed in removal proceedings. Immigration enforcement actions are subject to prosecutorial discretion and DHS policies discourage initiation or continuation of removal proceedings against crime victims and witnesses and in particular victims of domestic violence, sexual assault, human trafficking, U visa and other serious crimes.²⁶⁶ The fact that an immigrant victim is in immigration detention or is in immigration proceedings before an immigration judge is not relevant to whether an official signs the U visa certification or T visa declaration or whether USICS grants the victim a U or T visa. Officials should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.²⁶⁷

Can law enforcement or prosecution agency sign a certification if it is investigating a crime that is NOT listed as a qualifying criminal activity under the U visa statute, but in the course of the investigation uncovers a victim of a qualifying crime that is unrelated to the primary investigation?

Yes. The certifying law enforcement or prosecution agency must state only that the individual was a victim of a qualifying criminal activity.²⁶⁸ An example of this would be the investigation of a drug distribution ring where law enforcement uncovers an instance of domestic violence between a suspected dealer and his girlfriend. This victim would be eligible for a certification even though the domestic violence was not the primary criminal investigation. Also, it is not necessary that the qualifying criminal activity be investigated or prosecuted.²⁶⁹ It is important that certifying officials completing certifications check all criminal activities detected in the case on Form I-918 and should not be limited by the specific crimes being investigated or prosecuted by the certifying agency.

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

Yes. 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. Additionally, per Congress, the certification process does not require a victim's testimony or completion of a prosecution, as long as that victim does not unreasonably refuse to provide ongoing assistance reasonably requested after the victim's U visa

for U nonimmigrant status or an applicant for T nonimmigrant status has administrative remedies and is not prejudiced by completion of removal proceedings. Specifically, a victim who is the subject of a final order of removal, deportation, or exclusion may still file a petition or application for U or T nonimmigrant status directly with USCIS. If a victim is granted U or T nonimmigrant status prior to, or after, removal, the regulations provide a procedure whereby the victim may remain in or return to the United States." *DHS U and T Visa Resource Guide* at 19.

²⁶⁶ NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *ICE Confirms Continued Effectiveness of Victim Witness Protections* (April 19, 2019), <http://niwaplibrary.wcl.american.edu/pubs/ice-confirmation-of-continued-effect-victim-witness-memo>; DEP'T OF HOMELAND SECURITY, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011),

<http://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

²⁶⁷ *DHS U and T Visa Resource Guide* at 20.

²⁶⁸ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, DHS Docket No. USCIS-2006-0069 at page 38 (2007).

²⁶⁹ 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).

application has been filed.²⁷⁰ T visa victims are required to comply with reasonable requests for assistance from law enforcement and prosecutors investigating human trafficking²⁷¹ unless they fall into one of two statutory exceptions.²⁷² The exceptions listed in the statute apply when the victim is under the age of 18 or if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.

Can a law enforcement officer or prosecutor sign a certification/declaration if the prosecution of the perpetrator may not be able to move forward or if the prosecutor decided not to prosecute the perpetrator?

Yes. A victim willing to help in the detection, investigation, or prosecution of criminal activity is able to access U and T visa protections regardless of whether the perpetrator is investigated or prosecuted.²⁷³ In many cases prosecutors do not prosecute, such as when the alleged offender has absconded, enjoys diplomatic immunity, has been deported, 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 victim needs protection in these cases because risk of retaliation for reporting the crime can be considerable. For these reasons, a victim can apply for and be granted a U or T visa even when police decline to investigate or prosecutors decline to charge perpetrators, when charges are later dismissed, or when prosecutors are unable to secure convictions.

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 and T visas were 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 or prosecutors regarding such activity, the outcome of the case (or whether authorities ever proceed with the case) is not relevant to a victim’s U or T visa eligibility.

Can a prosecutor still certify even if a victim does not testify?

Yes. There is no requirement that an arrest, prosecution, or conviction occur for a victim to be eligible for a U visa or T visa. While there is no requirement that a victim testify at a trial to be eligible for a U visa or T visa, if a U visa victim is requested to testify, they cannot unreasonably refuse to cooperate with law enforcement. T visa victims are required to comply with reasonable requests for cooperation from law enforcement and prosecutors in the investigation or prosecution of human trafficking, with two exceptions:

- 1) T visa applicants under age of 18; or
- 2) Victims whose experiences of physical or psychological trauma prevent them from complying with a reasonable request.²⁷⁴

²⁷⁰ *DHS U and T Visa Resource Guide* at 18.

²⁷¹ *DHS U and T Visa Resource Guide* at 18, 21.

²⁷² 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

²⁷³ *Id.* at 21; U.S. Citizenship and Immigration Services, *Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at: <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>.

²⁷⁴ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed certification or declaration Form I-918B/I-914B.²⁷⁵

Can a law enforcement officer or prosecutor sign a certification/declaration 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. Plea agreements and dismissals do not negatively impact a victim's eligibility.²⁷⁶ The victim may be at a greater risk if the perpetrator is not convicted. The U visa certification and T visa declaration are designed to be issued when law enforcement 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 or prosecutor sign a certification/declaration if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?

No. If the law enforcement officer or prosecutor does not believe that the individual seeking certification is a victim of a qualifying criminal activity (for U visa cases) or a victims of a severe form of human trafficking (for T visa cases), the officer should not sign the certification/declaration. There is one exception, when the immigrant applying for a U visa is an indirect victim (see below). Law enforcement officers, however, should remember that many of these crimes, including sexual assault and human trafficking, are traumatic and are not immediately reported. Furthermore, many perpetrators fuel immigrant victims' perceptions and expectations about law enforcement based on experiences from their home countries, where law enforcement officers or prosecutors might have been corrupt and unreliable. Therefore, a law enforcement officer or a prosecutor may not immediately identify someone as a victim because the individual is not yet comfortable disclosing the victimization. Careful investigation of possible victims must be done with the utmost care in instances where victims have not yet disclosed their victimization.

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

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 officials failed to obtain the assistance of qualified interpreters when taking police reports or conducting the investigation. 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 or prosecutor sign a certification if there is evidence that the victim is also a criminal perpetrator?

Yes. Certification can be granted when an officer or prosecutor 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.

²⁷⁵ *Id.*

²⁷⁶ *DHS T and U Visa Resource Guide* at 12.

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.²⁷⁷ Waivers of inadmissibility for certain criminal grounds may also be available on a case-by-case basis for T visa victims when the criminal activities were caused by or incident to the trafficking victimization²⁷⁸ and in other extraordinary circumstances.²⁷⁹

Many immigrant crime victims have been controlled in such a way that they end up being arrested based on information from their 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.²⁸⁰ USCIS will screen the criminal background of every U and T visa applicant and the agency will investigate every arrest. If an 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 or T visa relief.

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

Yes. The certifier is responsible for ensuring that the information on the certification/declaration is true and complete.²⁸¹ USCIS will adjudicate any issues of credibility beyond the certification/declaration, including statements in the application that suggest issues of credibility. USCIS employs rigorous standards to check the credibility of every applicant.²⁸²

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, or incapacitated.²⁸³ Indirect victims can also seek U visas when the victim of criminal activity was an under 21 year old child victim. When the victim is an immigrant or U.S. citizen child under the age of 21 their parents and under age siblings under the age of 18 can be considered indirect victims and can also apply for U visas.²⁸⁴

²⁷⁷ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007); 8 C.F.R. § 212.16(b).

²⁷⁸ INA Section 212(d)(13)(B)(ii); 8 U.S.C. 1182(d)(13)(B)(ii).

²⁷⁹ 8 C.F.R. 212.16(b)(3).

²⁸⁰ 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.

²⁸¹ DHS USCIS Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

²⁸² "A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa...The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa...If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues." DHS U and T Visa Resource Guide at 17.

²⁸³ 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).

²⁸⁴ 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).

The preamble to the U Visa regulations reflect DHS' intention to with regard to indirect victims to encourage "these family members to fully participate in the investigation or prosecution" and avoid results outcomes that "separate families and lead to anomalous results".²⁸⁵ 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.²⁸⁶

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

Law enforcement officers and prosecutors may sign certifications for victims who have not yet secured legal representation.²⁸⁷ 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 or T visa. Law enforcement officers should not provide any legal advice to the crime victims. If law enforcement officers or prosecutors 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 and/or prosecutor signs the certification/declaration, does the victim automatically get lawful immigration status?

No. USCIS requires U visa and T visa applicants to provide significant further documentation to meet all other visa requirements.²⁸⁸

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

No. The U visa certification/T visa declaration is not a benefit. It provides the immigrant victim with a piece of evidence that the victim submits as part of her U or T visa application. For a victim's application to be approved, the victim must submit sufficient evidence to convince DHS that the immigrant victim applicant has met all of the evidentiary requirements. Congress designed the U visa and T visa process to facilitate prosecutions of perpetrators of crimes committed against non-citizens. To ensure that the U visa or T visa would not be considered a benefit offered by the prosecution to the victim, Congress gave DHS the sole authority to grant U and T visas. Additionally, the two visas were created as temporary visas, conferring no permanent legal immigration status to the victim. Any application for lawful permanent residency for U visa or T visa victims requires a separate application and fulfillment of requirements that are in addition to and not related to the criminal prosecution. To obtain lawful permanent residency, U visa victims must prove humanitarian need, public interest or

²⁸⁵ 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).

²⁸⁶ 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).

²⁸⁷ 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.

²⁸⁸ 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).

family unity. T visa victims must prove that their deportation would cause unusual and severe harm if removed from the United States.

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

Congress created the two visas 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.*²⁸⁹

Congress noted that:

*[T]he United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.*²⁹⁰

Law enforcement or prosecutions agencies that, in practice, refuse to sign U visa certifications/T visa declarations or that adopt a uniform policy against signing them 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/declaration is signed, what are the ongoing obligations for a law enforcement agency?

A law enforcement agency cannot be held liable for the future actions of a victim for whom the law enforcement agency signed a certification or declaration and to whom DHS granted a U or T visa.²⁹¹ The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa.²⁹²

If a victim later appears not to be a victim or unreasonably refuses to be helpful or cooperative in an investigation or prosecution, a certifying agency is required to contact the VAWA Unit of USCIS to report any such changes, and may disavow the certification or declaration in writing.²⁹³ DHS may

²⁸⁹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386, §1513(a).

²⁹⁰ Trafficking Victims Protection Act of 2000, Pub. L. 106–386, §102(b)(24).

²⁹¹ *DHS U and T Visa Resource Guide* at 17.

²⁹² *Id.*

²⁹³ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

Send the victim's name, date of birth, A-file number (if available) and the reason for the certification's withdrawal to: U.S. Citizenship and Immigration Services/Vermont Service Center, Attn: T/U visa Unit 75 Lower Welden Street St. Albans, VT 05479-0001.

then revoke the visa after providing notice to the victim of the intent to revoke and an opportunity for the victim to respond.²⁹⁴

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 visa holder unreasonably refused to provide assistance.²⁹⁵ 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.²⁹⁶

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

USCIS will investigate the arrest of every person with a pending application. The certifying agency does not have the duty to track the criminal history of every victim receiving a U visa certification/T visa declaration. Applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the visa is granted, USCIS will review an individual's criminal history again when the visa holder applies for lawful permanent residency.²⁹⁷ Once any immigrant applies for an immigration benefit through the time the immigrant receives lawful permanent residency until an immigrant becomes a naturalized citizen, Department of Homeland Security closely monitors the criminal history of the immigrant continuously at multiple stages of the immigration case process. Criminal convictions can result in DHS not granting waivers to applicants and can result in loss of lawful permanent residency.

What are the safeguards for protecting the U and T visa program against fraud?

Congress and USCIS recognize that law enforcement agencies that investigate and prosecute the qualifying criminal activities are in the best position to determine if a qualifying crime has taken place.

PROSECUTOR'S DISCLOSURE OBLIGATIONS

Under rulings from the Supreme Court and most state case law, prosecutors have discovery obligations to disclose certain information to the defense. Generally, U visa certifications and T visa declarations are subject to discovery in criminal cases as they are considered to be under the prosecutor's control and are deemed relevant and material to the case as the defense can argue that the U visa/T visa provides a possible bias or motive to lie. Prosecutors should also consider if any related communications or documentation would also be discoverable under this analysis. Courts have ruled that the rest of the information in the victim's U or T visa file, however, is not discoverable by the defendant in the criminal case.²⁹⁸ Obligations may differ for federal prosecutors

²⁹⁴ 72 Fed. Reg. 53013, 53041 (codified at 8 C.F.R. § 214.14(h)(2)) (2007); 72 Fed. Reg. 92266, 92312 (codified at 8 C.F.R. § 214.11(m)(2)) (2016).

²⁹⁵ 8 CFR 245.24(a)(5) (2009); 8 CFR 214.11(h)(2) (2016).

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

²⁹⁷ 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).

²⁹⁸ See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017).

because the U visa and T visa are federal immigration remedies adjudicated by the Department of Homeland Security (DHS) which is a federal agency.

Are state and local prosecutors required to obtain and disclose information contained in federal immigration case files and produce such information under *Brady* or its progeny?

Under the Supreme Court’s decision in *Brady v. Maryland*, prosecutors have a constitutional mandate to disclose “material” and “exculpatory” evidence in their “possession” to defendants in criminal cases, even absent a request from the defendant for such evidence. In state prosecutions, this will include local police files, and may include records from systems-based victim services staff who work for law enforcement or prosecution agencies.

Under the Violence Against Women Act (VAWA), VAWA confidentiality protections prohibit the disclosure of information contained in and information about the existence of immigration cases filed by VAWA self-petitioners, T visa and U visa applicants. State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that is maintained in federal immigration case files.²⁹⁹

Which agencies are considered to be part of the state prosecutor’s team and may also be required to produce information related to victims?

System advocates (employed by/within the prosecutor’s office or police department to assist crime victims), and other governmental social service agencies, such as child/adult protective services. This is especially true with child and elder abuse records that may be required to be turned over if its existence is known or should have been known to the prosecutor. Community-based victim services are not considered to be part of the prosecution team and their files are not subject to discovery and could possibly be protected by state statute.

Is a U visa certification/T visa declaration form signed by law enforcement or a prosecutor discoverable under *Brady* or its progeny?

Yes. Pursuant to most state penal codes and constitutional obligations under *Brady v. Maryland*, a U visa certification/T visa declaration issued during the pendency of the case may be considered discoverable as “material” evidence. Most states define “material” to mean information that tends to influence the trier of fact because of the logical connection to the issue. Thus, the prosecutor’s duty of disclosure extends to all information and evidence in his/her possession that reasonably appears to be favorable to the accused. Accordingly, this appears to include information that could undermine the credibility of the prosecution witness/victim. Therefore, in order to ensure *Brady* and state practice requirements are met, and to avoid vulnerability to an appeal, most state prosecutors will disclose the U visa certifications and the /T visa declarations.

Post-conviction certification requests do not need to be disclosed to the defense. A recent federal case, *United States v. Mills*³⁰⁰, affirms the proposition that the prosecution's failure to disclose the post-trial issuance of a Special Public Benefit Parole Visa to an informant who testified at trial is not a *Brady* violation and would not require a new trial because the document did not exist prior to trial.

²⁹⁹ *Id.*

³⁰⁰ 334 Fed. Appx. 946 (2009).

The federal court also held that even if the post-trial issuance of the visa could be considered *Brady* information, its impeachment value in that case was not material to the outcome of the trial.

Are there prosecution strategies to combat an anticipated defense that the victim is lying for a U Visa/T Visa?

Relevancy statutes and case law continue to evolve, but it is likely that at trial the defense will be able to admit the fact that the victim sought or received a certification/declaration. In fact, a prosecutor may want to admit evidence related to the victim's immigration status because it could be relevant to the defendant's victim selection, immigration-related abuse suffered by the victim, and the victim's delay in disclosing the criminal activity. NIWAP can provide training and technical assistance on pretrial and trial strategies to combat common defenses related to a victim's immigration status.³⁰¹

What are best practices for law enforcement in completing U visa certifications and T visa declarations and how do these practices impact a prosecutor's discovery obligations, of the U visa certification/T visa declaration and related documents the prosecutor receives and reviews as part of the certification process?

Best practices are for state and local law enforcement and prosecutors to base certifications and declarations upon information contained in their own agency records and information provided by police or prosecution staff. Additional documentation should not be sought from the victim or the victim's advocate or attorney. Since certifications and declarations are based on government agency records and experiences with the victim regarding helpfulness or assistance, the only piece of information contained in the certifying agencies' certification file that is not already a discoverable government document will be the victim's letter requesting U visa certification or T visa declaration and a copy of the signed certification/declaration form itself. Police and prosecution agencies will not have copies of the full U or T visa case file as part of their records.

Best Practices

In creating the U visa and T visa, Congress sought to offer immigrant crime victims access to visa protections as early as possible after the victim of a crime came forward and made a report to the police, to a court or other government agency revealing the facts of the criminal activity the immigrant victim suffered. Congress also wanted to ensure that crime victims who came forward to help with any part of the criminal case process from detection and investigation through prosecution, conviction and sentencing -- could be protected against the perpetrators use of threats of deportation, retaliation and intimidation to coerce victims into not cooperating with government agencies investigating criminal activities.

To accomplish this, Congress authorized a range of government officials to be visa certifiers. Police, prosecutors, judges, DHS officials, child and adult protective services, FBI, federal and state agencies investigating labor violations including the U.S. Department of Labor and the Equal Employment Opportunity Commission, and state and federal Alcohol, Tobacco and Firearms investigators were each authorized to sign certifications. The goal was to ensure that any certifying agency that the victim first encounters could sign certifications. Alternatively, if the first agency did not provide language access or was not knowledgeable about the U visa or T visa, victims could obtain certification from another certifying agency that could attest to the veracity of the victimization and the victim's past, present or future likelihood of helpfulness or assistance.

³⁰¹ For information on how to request a training see <https://niwaplibrary.wcl.american.edu/pubs/ta-flyer-lea>

U visa certification and T visa declaration should be signed by police, prosecutors and/or other certifiers based on police, prosecution, court, or government agency records and information. For U visa, the following information is the only information called for in the U visa certification:

- The applicant was a victim or, in some cases, an indirect victim of the qualifying criminal activity;
- The applicant has specific knowledge and details of the crime; and
- The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

For T visa, the following information is the only information called for in the declaration:

- The applicant was a victim of a severe form of trafficking in persons;
- The applicant has complied with requests for assistance in the investigation/prosecution of the crime of trafficking; and
- Information about any family members of the victim believed to have been involved in the victim's trafficking to the United States.

Prosecutors and police are encouraged to look closely at the facts of the case before them and to identify all of the types of criminal activities listed on the U visa certification/T visa declaration that the facts of the case potentially support. Often, the criminal investigation and prosecution proceeds, that exact criminal activities that become the focus of the investigation or prosecution may change. For this reason, it is best practice for prosecutors and police to check off all of the criminal activities listed on the U visa certification form that apply. For example, if the facts demonstrate domestic violence and use of a deadly weapon (which would be a felonious assault) both boxes should be checked since both criminal activities occurred. The same set of facts can sometimes be charged under multiple statutes.

DHS CONTACTS INFORMATION

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

The Department of Homeland Security has created a U and T Visa hotline for certifying officials only. Certifiers with questions about U and T visa certification can call (240) 721-3333 for assistance. There is also a certify agency only email to which certifiers can send questions or ask specific case related questions – LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov. Although the email has “law enforcement” in the title the address is for use by all certifiers, not limited to law enforcement officials. It is important to note that DHS officials responding to calls and emails cannot disclose to the caller information contained in U and T visa cases files and cannot reveal the status of a case or decisions made by DHS in the case. Revealing such information is barred by VAWA confidentiality laws 8 U.S.C. 1367.³⁰²

Certifying officials seeking technical assistance, training, support or consultation, please contact the National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law at niwap@wcl.american.edu or call (202) 274-4457. NIWAP provides this technical assistance and training in collaboration with a national team of law enforcement officers, prosecutors, and judges.³⁰³

³⁰² Zachary B. Perez, Alina Husain, and Leslye E. Orloff, *Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies* (Mar. 29, 2019), http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-va-wa-confidentiality-protections_3-29-19; Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (last updated Apr. 4, 2018), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

³⁰³ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

U-Visa: “Helpfulness” Checklist^{304 305}

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The victim can be said to satisfy the “helpfulness” requirement of the U-Visa

*...when the victim has been helpful, is willing to be helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a **qualifying criminal activity**.*

Qualifying Criminal Activity is defined under immigration law³⁰⁶ as:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contract (8 U.S.C. 1351)
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other related crimes

³⁰⁴ Copyright © The National Immigrant Women’s Advocacy Project, American University Washington College of Law 2019.

³⁰⁵ This document was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for

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³⁰⁶ Department of Homeland Security, U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. <http://niwaplibrary.wcl.american.edu/pubs/dhs-u-visa-guide-2012/> (Hereinafter DHS U and T Visa Resource Guide)

This includes any similar activity where the elements of the crime are substantially similar, including attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.³⁰⁷

Who detects a U visa victim's helpfulness in the detection, investigation, prosecution, conviction or sentencing of criminal activity?

- Federal, state, or local law enforcement agency³⁰⁸
- Prosecutor, including city and states' attorneys and state attorneys' general³⁰⁹
- Federal or State Judge,³¹⁰ commissioner, magistrate,³¹¹ or other judicial officer in a civil, family, juvenile, criminal or administrative law case³¹²
- Child Protective Services³¹³
- Equal Employment Opportunity Commission (EEOC)³¹⁴
- Department of Labor (DOL)³¹⁵
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority³¹⁶

Certifiers can either detect or receive helpfulness.

Whether a certifier or certifying agency receives the following types of helpfulness or detects this helpfulness will depend on the type of certifier or certifying agency. Below is a non-exhaustive list of examples.

- State police, local police, and sheriffs' offices will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Police, child/adult protective services; FBI, EEOC

³⁰⁷ DHS U and T Visa Resource Guide at 13.

³⁰⁸ Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. (Hereinafter U Visa Rule) <http://niwaplibrary.wcl.american.edu/pubs/federal-register-new-classification-victims-criminal-activity-eligibility-u-nonimmigrant-status-interim-rule/>.

³⁰⁹ U Visa Rule at 53019.

³¹⁰ U Visa Rule at 53019.

³¹¹ DHS U and T Visa Resource Guide at 16 ("Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.").

³¹² See *Expert Advice for Judges: How to Handle U Visa Certification and T Visa Endorsement Requests* (Webinar), NIWAP (Dec. 1, 2014) <http://niwaplibrary.wcl.american.edu/december-1-2014-expert-advice-for-judges-webinar/>.

³¹³ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet. USCIS Publishes Rule for Nonimmigrant Victims of Criminal Activity. September 5, 2007 <http://niwaplibrary.wcl.american.edu/pubs/certifying-u-factsheet/> (Hereinafter USCIS Fact Sheet) (e.g. Federal Bureau of Investigation, Human Rights Commissions, and City and State Departments of Labor, Housing, and Human Rights).

³¹⁴ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

³¹⁵ 8 C.F.R. § 214.14 (2007); see also USCIS Fact Sheet.

³¹⁶ DHS U and T Visa Resource Guide at 6.

- Judges, Commissioners, Magistrates and other judicial officials for example will:
 - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local or federal agencies that the court observes or learns about through pleadings, court filings, and evidence offered
 - Observe helpfulness when victims seek help from the justice system and/or provide evidence of crime victimization in a criminal case, a protection order, divorce, custody, employment enforcement, housing, administrative law or other civil or family court proceeding
 - Observe helpfulness when a victim discloses criminal activity in pleadings, motions or other documents filed with the court
 - Detect helpfulness when victims register with VINE or other victim notification networks or receive Victims of Crime Act (VOCA) assistance
 - Observe helpfulness when victims attend court proceedings and/or work with sheriffs/police who serve protection orders
- The EEOC, U.S. or state departments of labor: will receive helpfulness of crime victims who come forward to make labor law complaints or cooperate in employment investigations and will detect helpfulness to other agencies when victims that the EEOC of state departments of labor is working with made police reports, provided information to police or prosecutors, or sought protection orders or injunctions
- Child protective services (CPS) and Adult protective services (APS): CPS and APS agencies will receive helpfulness of crime victims directly in child and elder abuse investigations. CPS and APS will also detect helpfulness to other agencies when victims that CPS and APS are working with make police reports, provide information to police or prosecutors, or seek protection orders, or provide evidence of child or elder abuse in family court proceedings.

What constitutes being helpful, having been helpful, or likely to be helpful?

DHS summarizes the U visa statute³¹⁷ and regulations³¹⁸ helpfulness requirement as follows: *“Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim.*”³¹⁹

The U visa was created to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Nonetheless, Congress understood based on social science³²⁰ that in many criminal cases, particularly victims of domestic violence and sexual assault, often find, for very compelling reasons that they cannot further cooperate with requests from law

³¹⁷ I.N.A. Section 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

³¹⁸ 8 C.F.R. 214.14(b)(3).

³¹⁹ DHS U and T Visa Resource Guide at 7. The U visa regulations in 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

³²⁰ Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (2012); Edward W. Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, 3 *Journal of Interpersonal Violence*, No. 3 at 276 (Sept. 1988); Cynthia Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* at 129 (1989).

enforcement and prosecutors after reporting the crime. The pattern of difficulty these victims have in providing ongoing cooperation is due to many factors and often is primarily based on fears of retaliation or because the victim is experiencing the perpetrator's retaliation and witness tampering efforts³²¹ or part of the trauma due to crime victimization.³²² These retaliation and witness tampering efforts with immigrant victims often include immigration related abuse — threats of deportation and abusers contacting immigration enforcement officials to provide “tips” designed to trigger immigration enforcement actions, detention, and deportation of the crime victim.

Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of immigrants and other crimes while offering protection to victims³²³ who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”³²⁴ U-visas are intended, in part, to help overcome this reluctance.³²⁵

“The findings that Congress expressed in sections 1513(a)(1) and (2) of the [VAWA] make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.”³²⁶

In 1994, when Congress enacted the Violence Against Women Act (VAWA) and in 2000 when VAWA was amended to add the U Visa, Congress clearly understood how perpetrators of domestic violence, child abuse, sexual assault, human trafficking and other crimes use threats of deportation, coercive control and other forms of intimidation and abuse to impede or interfere with victims ability and willingness to provide ongoing cooperation in investigations, prosecutions and court cases involving the victim's crime perpetrator. DHS describes in its issuance of policies governing VAWA confidentiality an example:

“There are a number of ways DHS employees might receive “tips” from an abuser or an abuser's family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim's application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.”³²⁷

³²¹ Kerry Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, National Institute of Justice: Research in Action (Oct. 1995) (Only unsuccessful intimidation ever came to the attention of police or prosecutors), <https://www.ncjrs.gov/pdffiles/witintim.pdf>.

³²² 73 Fed. Reg. 75,552 (“Demographics Statistics indicate that aliens may be victimized at even higher rates than citizens”. Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status.).

³²³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

³²⁴ New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

³²⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

³²⁶ New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

³²⁷ Dept. of Homeland Security, Instruction Number: 002-02-001, Implementation of Section 1367 Information Provisions, 10 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02001/>.

In order to ensure that the U visa would properly offer protection for victims in light of Congress's findings, legislation³²⁸ and regulations³²⁹ were established so that victims would be eligible to file for U visa protections at the very early stages of an investigation. Therefore, victims can receive certification once they demonstrate that they have been, are being, or are likely to be helpful.³³⁰

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and file their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.³³¹ Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.³³²

The U visa statute was structured to offer a realistic flexible approach that would:

- Encourage more victims to come forward and report criminal activity;³³³
- Offer U visa protection early in the case soon after a victim offered helpfulness;³³⁴
- Encourage ongoing cooperation in investigations and prosecutions when reasonably requested;³³⁵ and
- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuser and human trafficking due to trauma, the perpetrator's threat and action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.³³⁶

To accomplish this, the statute was written to grant immigrant crime victims the ability to attain U visas and lawful permanent residency even when they do not offer ongoing assistance so long as their refusal to provide assistance was not unreasonable.

- U visa applicants and recipients can receive waitlist approval, be granted the U visa, and be granted lawful permanent residency as U visa holders if they provide ongoing cooperation or if they demonstrate to DHS that they did not refuse to provide help, assistance, or

³²⁸ 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(o)(1).

³²⁹ 8 C.F.R. 214.14(a)(12).

³³⁰ 53019 Fed. Reg. Vol. 72, No. 179. (2007); "8 U.S.C. 1101(a)(15)(U)(i)(III) ("USCIS interprets 'helpful' to mean assisting ... authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim."); see also 53019 Fed. Reg. Vol. 72, No. 179 (2007) (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 an investigation.)".

³³¹ 8 C.F.R. § 214.14(b)(3).

³³² DHS U and T Visa Resource Guide at 7.

³³³ Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending*, National Immigrant Women's Advocacy Project at 2-3 (2014) (Research has found that once immigrant victims file for immigration relief, they are more willing to turn to the justice system (police, prosecutors, courts) for help), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>; Kristina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, National Immigrant Women's Advocacy Project at 29-30 (2014), http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf.

³³⁴ 53019 Fed. Reg. Vol. 72, No. 179. (2007).

³³⁵ *Id.*

³³⁶ 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008).

cooperation in an unreasonable manner.³³⁷ Whether a victim’s refusal or inability to cooperate was unreasonable is determined by:

- Examining the totality of the circumstances including the nature of the victimization, victim’s fear or the abuser, trauma suffered, force, fraud or coercion.³³⁸
- If the victim’s ongoing cooperation in the investigation or prosecution may jeopardize the *victim’s safety* or the *safety of her family* members in the U.S. or abroad, then the victim’s failure to cooperate is **not** unreasonable.³³⁹
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, or whether the perpetrator is charged, arrested, convicted, etc.
- Being “helpful” is **independent** from the results of the case.³⁴⁰ Once the victim has provided helpfulness, the “helpfulness” requirement is satisfied even if:
 - An arrest or prosecution cannot take place due to evidentiary or other circumstances;³⁴¹
 - The victim reported the crime but there was no further investigation;
 - Victims give helpful information to law enforcement, which is documented in a police report, but the charging deputy declines to file charges;

³³⁷ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim_regs-Fed-Reg.pdf/view;

³³⁸ 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%202012.08.08.pdf/view

³³⁹ Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, U Visa Quick Reference for Judges (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Leslye E. Orloff, Alina Hussain, Alisha Lineswala, Benish Anver and Daniel Enos, U Visa Quick Reference for Law Enforcement and Prosecutors (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-law-enforcement-and-prosecutors>; NIWAP, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (2018)(Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice and the State Justice Institute) (U Visa Toolkit) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; NIWAP, American University, Washington College of Law, U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials (2018) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

³⁴⁰ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; NIWAP: U-Visas - Victims of Criminal Activity. http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view; *U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security.* http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view.

³⁴¹ DHS U and T Visa Resource Guide at 11.

- The perpetrator has not been identified, has absconded, or is in hiding to avoid arrest;³⁴²
- The victim has cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;³⁴³
- The victim is not needed as a witness;
- Victim reported a past crime that at the time of the incident the victim did not feel safe to report (there is no statute of limitations);³⁴⁴
- The perpetrator has been deported;
- The perpetrator is prosecuted for a different crime;
- The criminal case did not result in a guilty plea or conviction;
- The prosecutor initiates a criminal prosecution then discovers irregularities in the crime lab or irregularities with the police officers' investigation and either exercises prosecutorial discretion not to file the case or discharges the matter "in the interest of justice";
- During the course of a criminal investigation for another crime for which the victim is providing evidence, the victim reports a qualifying U visa criminal activity which is not being prosecuted (e.g. a decision is made to prosecute a drug or gang related case instead of the domestic violence or sexual assault);
- The criminal case ends in acquittal or with a hung jury and the prosecutor decides not to refile the criminal case;
- Victim is not needed as a witness;
- Victim is dead (indirect victim qualifies);
- Perpetrator is dead;
- The victim is dead and the immigrant seeking certification is an indirect victim family member;
- The court case related to the criminal activity (criminal, civil, or family) is closed or was completed a long time ago;
- Victim has a criminal history;
- Victim is subject to immigration enforcement;
- Victim is reticent at first to cooperate, but later discloses events or offers helpfulness after better understanding rights or after being provided meaningful language access;
- Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity.

Documents that can be used to prove helpfulness:

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity³⁴⁵
- Trial transcripts³⁴⁶

³⁴² U Visa Toolkit at 5.

³⁴³ DHS U and T Visa Resource Guide at 11-12.

³⁴⁴ *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

³⁴⁵ U Visa Rule at 53024.

³⁴⁶ U Visa Rule at 53024.

- Court Findings, rulings and other documents³⁴⁷
- Police reports³⁴⁸
- News articles³⁴⁹
- Copies of Reimbursement form for travel to and from court.³⁵⁰
- Affidavits of other witnesses or officials³⁵¹

In Cases Where the Victim is a Child or Incapacitated:

If a child victim is dead, incapacitated, or incompetent, another person can meet the “helpfulness” requirement:

- On behalf of an immigrant victim who is a child, or who is incapacitated, or incompetent the person who provides the helpfulness may be:³⁵²
 - A parent
 - Guardian; or
 - Next friend
- When a victim has died, is a child, or is incapacitated or incompetent, certain family members are eligible to file for U visas as indirect victims:³⁵³
 - Adult victims
 - Spouses
 - Children under 21 years of age
 - Child victims
 - Spouses
 - Children under 21 years of age
 - Parents
 - Unmarried siblings under the age of 18 years

Checklist for Criminal Cases

Helpfulness can be met in a variety of ways in criminal cases that include but are *not* limited to:

- Victim called police to report the crime
- Victim spoke freely with responding officers
- Victim participated in interviews with police investigators
- Victim allowed the police to take photographs of injuries and/or the crime scene

³⁴⁷ U Visa Rule at 53024.

³⁴⁸ U Visa Rule at 53024.

³⁴⁹ U Visa Rule at 53024.

³⁵⁰ U Visa Rule at 53024.

³⁵¹ U Visa Rule at 53024.

³⁵² 8 C.F.R. 214.14(b)(2) & (3)

³⁵³ Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007.

http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view.

- Making or attempting to make a police report
- Reporting a Crime
- Providing information to police at the crime scene
- Attempting to provide information to the police at the crime scene that could not be communicated because the police did not obtain a qualified interpreter
- Participating in pre-arrest identification on scene
- Victim sought medical assistance provided as evidence or the victim is willing to sign a medical release form
- Participating in a forensic medical, rape kit, or SART medical examination
- Registering for VINE or other victim notification system
- Victim is willing to answer follow-up questions at a later time
- Identifying and providing background information about the perpetrator
- Providing a history of violence perpetrated by the offender
- Disclosing or reporting prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Victim sought a criminal protection order
- Cooperating as a witness for whom prosecutors seek a criminal stay away as part of bond
- Participating in pre-arrest identification of photo array
- Attending a line-up to identify the perpetrator
- Providing a statement to police, even if there is no arrest
- Providing photographs of injuries
- Providing restitution information
- Attending preparation sessions with the prosecutor
- Testifying at or attending the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at or attending pre-trial motions
- Testifying at or attending the trial
- Testifying at or attending post-trial motions
- Testifying at or attending sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at or attending parole hearings
- Testifying at or attending parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in another prosecution or investigation involving the perpetrator

Checklist of Family Law Cases

Helpfulness can be met in a variety of ways in family law cases that include but are *not* limited to:

- Victim sought a civil protection order

- Victim sought and/or received a temporary, interim, or ex parte protection order³⁵⁴
- Victim returns to court to receive a permanent protection order
- Victim testifies in a default or contested protection order proceeding
- Provided information to assist with service of a civil or criminal protection order on the perpetrator by local police and/or sheriff's deputies
- Calling police to enforce or report violations of a civil protection order
- Attempting to provide information to the police to report violations of a protection order that could not be communicated because the police did not obtain a qualified interpreter
- Providing evidence of domestic violence, child abuse, and/or other U visa criminal activity in a custody, divorce, paternity, child support or other family court action, including but not limited to providing testimony, photographs of injuries, or medical records
- Providing information regarding child/ elder abuse to protective services/ investigators
- Victim attends court for a family court show cause hearing to report perpetrator's violations or contempt of family court custody and visitation order when threats or other criminal activity occurs
- Providing evidence or testifying in a child or elder abuse or neglect case
- Providing a history of violence perpetrated by the offender
- Victim provides the court with information about calling 911 for help, speaking to responding officers, making a police report of providing any other helpfulness to law enforcement or prosecutors listed on the law enforcement/prosecutors checklist above
- Victim provides the court information about filing or participating in and revealing the U visa listed criminal activity in a civil case including the activities listed in the civil court check list below.

Checklist for Civil Court Cases

Helpfulness can be met in a variety of ways in other civil court cases that include but are *not* limited to

- Victim of sexual assault in the workplace is cooperating with the EEOC or DOL in another investigation of the employer by the EEOC or DOL
- Victim made a police report regarding crimes that occurred at their workplace
- Victim made a report to the EEOC or an equivalent state agency
- Victim provided information to an EEOC investigator
- Victim testified for the EEOC in a federal case regarding the employer
- Victim testified in a landlord tenant case regarding domestic violence, child abuse, or other U visa listed criminal activity
- Victim filed a small claims case against the abuser providing evidence of a U visa criminal activity

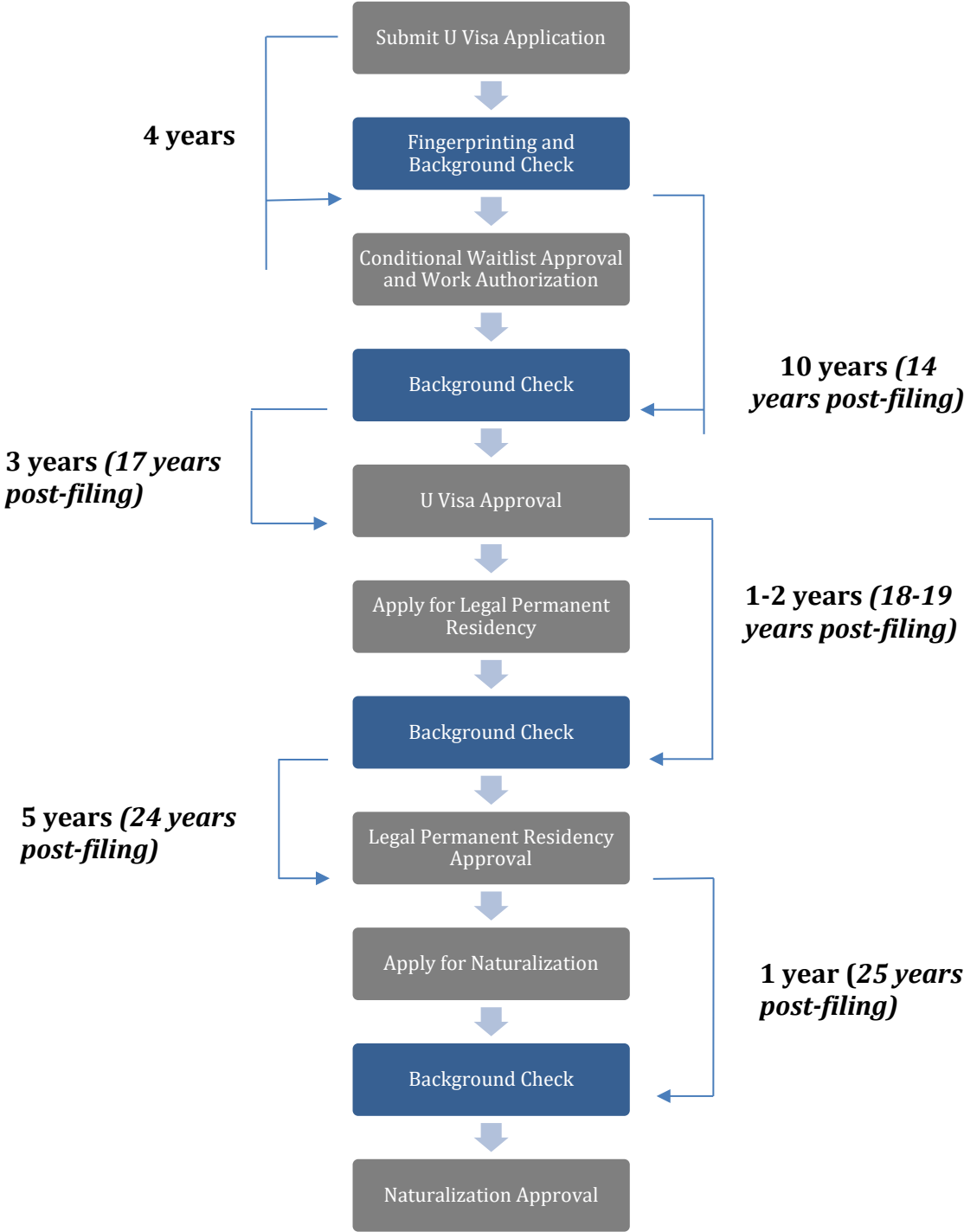
³⁵⁴ Certifications signed after the court proceeding has concluded or after the court has issued its final appealable order are signed as an administrative function of the court. Courts considering requests for certification while a civil, family or criminal case is pending will need to provide the parties an opportunity to be heard on the certification request. Judges signing U visa certifications in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.

- Victim revealed the U visa criminal activity in a civil court case including but not limited to a tort action
- Providing evidence of domestic violence, child abuse, human trafficking or other U visa criminal activity in a small claims, housing, or other civil court case, including but not limited to providing testimony, photographs of injuries, or medical records
- The victim provides the court in the civil case information listed on the criminal or family court checklists above.

U Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

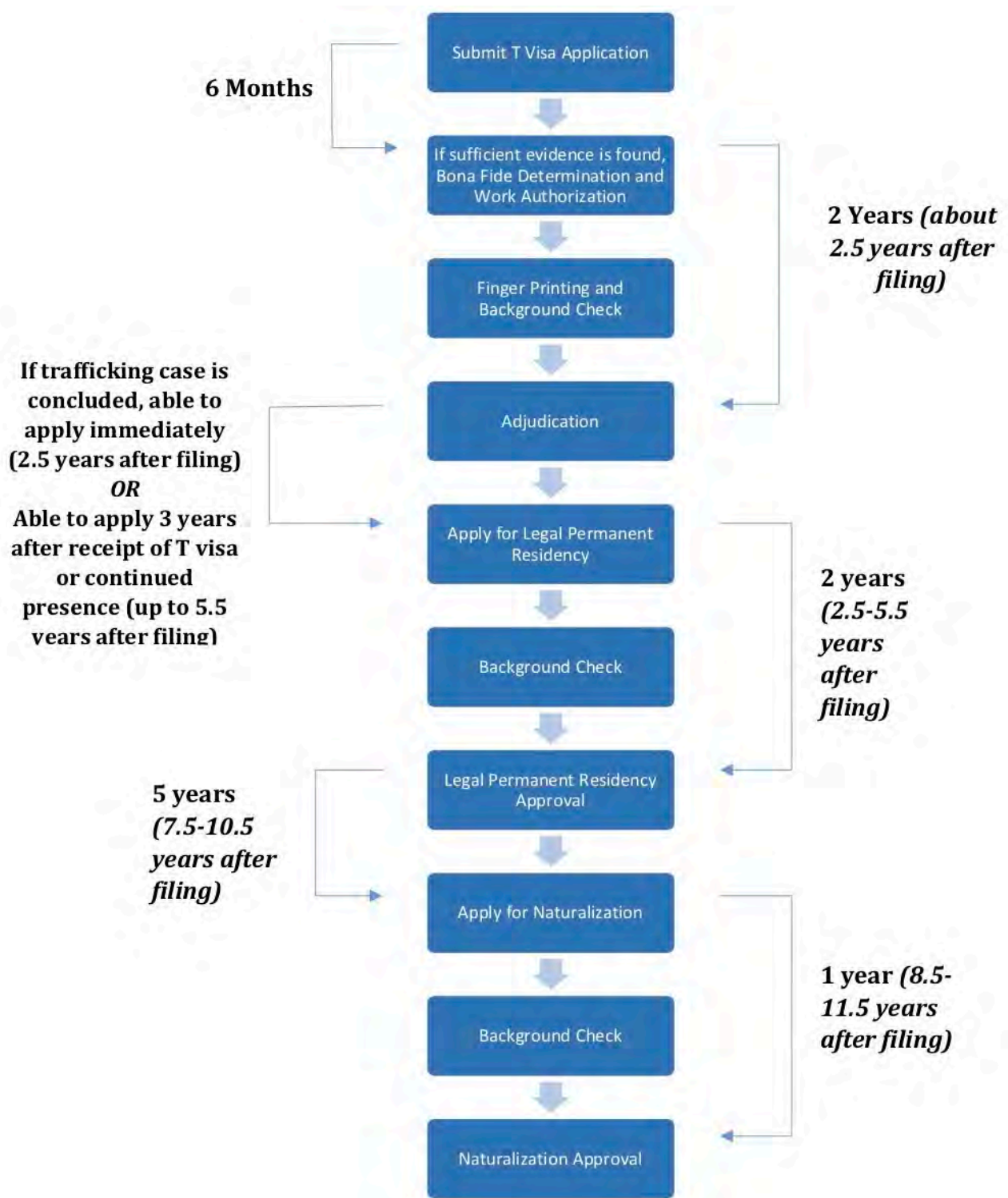
April 9, 2019



T-Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

March 29, 2019



I-918, Supplement B, U Nonimmigrant Status Certification: Instructions, Template and Sample



Instructions for Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 04/30/2021

What Is the Purpose of Supplement B?

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

Who May File Supplement B?

If you, the certifying official, determine that this individual (also known as the petitioner and principal) was, is, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity, you may complete Supplement B, U Nonimmigrant Status Certification. The petitioner must submit Supplement B to U.S. Citizenship and Immigration Services (USCIS) with his or her Form I-918.

“Investigation or prosecution” refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

NOTE: The decision whether to complete Supplement B is at the discretion of the certifying agency. However, without a completed Supplement B, the petitioner will be ineligible for U nonimmigrant status.

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

USCIS will consider the petitioner’s spouse and unmarried children under 21 years of age, and the parents and unmarried siblings under 18 years of age if the victim is under 21 years of age, as victims of qualifying criminal activity where:

1. The direct victim is deceased due to murder or manslaughter; or
2. The direct victim is incompetent or incapacitated and, therefore, unable to provide information concerning the criminal activity or unable to be helpful in the investigation or prosecution of the criminal activity.

USCIS will consider a petitioner 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 was 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.

NOTE: 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 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 supplement. In the case of a petitioner under 16 years of age or a petitioner who is incapacitated or incompetent, the parent, guardian, or “next friend” of the petitioner may provide evidence on behalf of the petitioner to be helpful to a certifying official’s investigation. “Next friend” is a person who appears in a lawsuit to act for the benefit of a victim under 16 years of age or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian. 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.

NOTE: Once you, the certifying official, have completed Supplement B, it will be valid for six months from the date of signature. If the victim does not file Form I-918, Petition for U Nonimmigrant Status, within six months, the victim will need to obtain a new Supplement B from the certifying agency.

General Instructions

How to Fill Out Supplement B

1. Type or print legibly in black or blue ink.
2. If you need extra space to complete any item within this supplement, use the space provided in **Part 7. Additional Information** or attach a separate sheet of paper; type or print the agency’s name, petitioner’s name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you type or print “N/A,” unless otherwise directed. If your answer to a question which requires a numeric response is zero or none, type or print “None.”
4. Each Supplement B must be properly signed and filed. USCIS will not accept a photocopy of the signature page of the Supplement B or a typewritten name in place of a signature.

Specific Instructions

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

Part 1. Victim Information

Item Number 1. Alien Registration Number (A-Number) (if any). This is the victim’s USCIS file number. If the victim does not have an A-Number or you do not know it, leave this space blank.

Item Numbers 2.a. - 2.c. Full Name. Provide the victim’s full legal name. Do not provide a nickname.

Item Numbers 3.a. - 3.c. Other Names Used. Provide other names used by the victim, including his or her maiden name, nicknames, and aliases, if applicable.

Item Number 4. Date of Birth (mm/dd/yyyy). Provide his or her date of birth (Example, May 1, 1979, should be written 05/01/1979).

Item Number 5. Gender. Select the appropriate box.

Part 2. Agency Information

Item Number 1. Name of Certifying Agency. The certifying agency must be a Federal, state, local, or tribal law enforcement agency; prosecutor; authority; or Federal, state, or local judge that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which the petitioner was a victim.

This includes traditional law enforcement branches with the criminal justice system and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, Child Protective Services, the Equal Employment Opportunity Commission, and the Department of Labor.

Item Number 2.a. - 2.c. Name of Certifying Official.

A certifying official is:

1. The head of the certifying agency or any person in a supervisory role, who was 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, attach evidence of the agency head's written designation of the certifying official for this specific purpose.

Item Numbers 3. - 10. Provide the requested information regarding agency officials, the agency's address, agency type, case status, certifying agency category, case number, and FBI Number or SID Number.

Part 3. Criminal Acts

Item Numbers 1. - 3. Select all of the crimes of which the petitioner is a victim that your agency is investigating, prosecuting, or sentencing and provide the dates of the criminal activity. If the criminal activity occurred over a period of time, provide a date on which at least one act constituting an element of qualifying criminal activity occurred. If multiple incidents occurred, provide the date of each incident investigated or prosecuted. List the statutory citations for the crimes in the space provided. If the crimes of which the petitioner is a victim are not listed, select the crimes that are similar to those crimes. You may provide a written explanation regarding how the crime of which the petitioner is a victim is similar to 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 at section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (INA) and found on the certification form itself.

Item Numbers 4.a. - 7. 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 petitioner is a victim had to violate United States law or occur within the United States.

1. **United States** means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands (CNMI), 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, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, 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. Provide the statutory citation for the extraterritorial jurisdiction.

Part 4. Helpfulness of the Victim

Item Number 1. Indicate whether the victim possesses information about the crimes. A petitioner must possess 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 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 a 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 petitioner may provide that information.

Item Number 2. 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 was, is, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity. In the case of a victim under 16 years of age or a victim who is incapacitated or incompetent, the parent, guardian, or next friend of the victim may provide evidence on behalf of the victim to be helpful to a certifying official's investigation.

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. Petitioner victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested, will not meet the helpfulness requirement. The victim has an ongoing responsibility 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 significant weight, but USCIS will not consider it conclusory evidence that the victim has met the eligibility requirements. USCIS will look at the totality of the circumstances surrounding the petitioner's involvement with your agency and all other information known to USCIS in determining whether the petitioner meets the elements of eligibility.

Item Number 3. Indicate if the victim has refused or failed to provide assistance reasonably requested since the initiation of cooperation. Explain in the space provided. If you need extra space, use the space provided in **Part 7. Additional Information**; type or print the agency's name, petitioner's name, and the A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

Item Number 4. Include any additional information you would like to provide.

Part 5. Family Members Culpable In Criminal Activity

Item Numbers 1. - 4.e. List whether any of the victim's family members are culpable or are believed to be culpable in the criminal activity of which the petitioner is a victim, their relationship to the victim, and their culpability in the criminal activity. USCIS will not grant U nonimmigrant status to a qualifying family member who committed the qualifying criminal activities that established the victim's eligibility for U nonimmigrant status, in a family violence or trafficking context.

Part 6. Certification

Item Numbers 1. - 4. Read the certification block carefully, and sign and date the supplement. Provide your daytime telephone number and a fax number (if any).

NOTE: At your discretion, you may withdraw or disavow a Form I-918, Supplement B at any time, even after this supplement is submitted to USCIS, if a victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity. To do so, you must notify USCIS by sending a written statement to:

USCIS - Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

Include the victim's name, date of birth, and A-Number (if any) on all correspondence.

Part 7. Additional Information

Item Numbers 1. - 6.d. If you need extra space to provide any additional information within this supplement, use the space provided in **Part 7. Additional Information**. If you need more space than what is provided in **Part 7.**, you may make copies of **Part 7.** to complete and file with your supplement, or attach a separate sheet of paper. Include your agency's name, the petitioner's name, and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

DHS Privacy Notice

AUTHORITIES: The information requested on this supplement, and the associated evidence, is collected under the Immigration and Nationality Act, sections 101(a)(15)(U) and Public Law 106-386, section 1513(c).

PURPOSE: The primary purpose for providing the requested information on this supplement is to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of that activity. The Department of Homeland Security (DHS) uses the information you provide to grant or deny the immigration benefit the petitioner is seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in denial of the Form I-918 petition.

ROUTINE USES: DHS may, where allowable under relevant confidentiality provisions, share the information you provide on this supplement and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-001 - Alien File, Index, and National File Tracking System, DHS/USCIS-007 - Benefits Information System, and DHS/USCIS-018 Immigration Biometric and Background Check] and the published privacy impact assessment [DHS/USCIS/PIA-016a Computer Linked Application Information Management system and Associated Systems] which you can find at www.dhs.gov/privacy. DHS may also share the information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a current valid OMB control number. The public reporting burden for Supplement B is estimated at 1 hour per response, including the time for reviewing instructions, gathering the required documentation and information, completing the supplement, attaching necessary documentation, and submitting the supplement. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0104. **Do not mail your completed Supplement B to this address.**



Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 04/30/2021

For USCIS Use Only	Remarks
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▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
▶ A-
- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name
4. Date of Birth (mm/dd/yyyy)
5. Gender Male Female

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Agency Address

- 5.a. Street Number and Name
- 5.b. Apt. Ste. Flr.
- 5.c. City or Town
- 5.d. State 5.f. ZIP Code
- 5.g. Province
- 5.h. Postal Code
- 5.i. Country

Other Agency Information

6. Agency Type
 Federal State Local
7. Case Status
 On-going Completed
 Other
8. Certifying Agency Category
 Judge Law Enforcement Prosecutor
 Other
9. Case Number
10. FBI Number or SID Number (if applicable)

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

- Abduction
- Abusive Sexual Contact
- Attempt to Commit Any of the Named Crimes
- Being Held Hostage
- Blackmail
- Conspiracy to Commit Any of the Named Crimes
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Female Genital Mutilation
- Fraud in Foreign Labor Contracting
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Solicitation to Commit Any of the Named Crimes
- Stalking
- Torture
- Trafficking
- Unlawful Criminal Restraint
- Witness Tampering

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy)
- 2.b. Date (mm/dd/yyyy)
- 2.c. Date (mm/dd/yyyy)
- 2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. 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

4.b. If you answered "Yes," where did the criminal activity occur?

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

Yes No

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

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

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

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

4.d. Relationship

4.e. Involvement

Part 6. Certification

I am the head of the agency listed in **Part 2.** or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, 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 U.S. Citizenship and Immigration Services (USCIS), 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 or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➡

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Sample



Supplement B, U Nonimmigrant Status Certification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-918
 OMB No. 1615-0104
 Expires 04/30/2021

For USCIS Use Only	Remarks
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▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
 ▶ A-

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender Male Female

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Agency Address

5.a. Street Number and Name

5.b. Apt. Ste. Flr.

5.c. City or Town

5.d. State 5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type
 Federal State Local

7. Case Status
 On-going Completed
 Other

8. Certifying Agency Category
 Judge Law Enforcement Prosecutor
 Other

9. Case Number

10. FBI Number or SID Number (if applicable)

Sample

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3**? Yes No
2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? Yes No
3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? Yes No

If you answer "Yes" to **Item Numbers 1 - 3**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck.

4. Other. Include any additional information you would like to provide.

(Additional Information)

Sample

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

4.d. Relationship

4.e. Involvement

Part 6. Certification

I am the head of the agency listed in **Part 2.** or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, 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 U.S. Citizenship and Immigration Services (USCIS), 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 or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➔

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Sample

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Washington, D.C. Police Department

Petitioner's Name

2.a. Family Name (Last Name) Orloff

2.b. Given Name (First Name) Leslye

2.c. Middle Name N/A

3. A-Number (if any)

▶ A- 1 2 3 4 5 6 7 8

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.

Specify or N/A

I-914, Supplement B, T Nonimmigrant Status Declaration: Instructions, Template and Sample



Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons

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

USCIS
Form I-914B
OMB No. 1615-0099
Expires 04/30/2021

What Is the Purpose of This Form?

Federal, State, and local law enforcement officials should use Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, to provide evidence to United States Citizenship and Immigration Services (USCIS) that you believe an individual (the applicant) submitting Form I-914, Application for T Nonimmigrant Status, is a victim of a severe form of trafficking in persons and has cooperated with your reasonable requests for assistance in an investigation or prosecution of a crime where trafficking is at least one central reason for the commission of that crime. USCIS (not the Federal, State, or local law enforcement official) will make the decision if the applicant meets the eligibility requirements for T nonimmigrant status.

By signing the Form I-914, Supplement B, you are not conferring an immigration benefit. USCIS is the only agency that can approve the applicant's Form I-914. USCIS requires fingerprints and police clearances from the victim and conducts background and security checks. The applicant must submit other evidence in addition to the Form I-914, Supplement B. USCIS may contact you if USCIS has any questions about the information provided in the supplement form.

When Should I Use Form I-914, Supplement B?

If **you**, the certifying Federal, State, or local law enforcement official, believe that this individual is or has been a victim of a severe form of trafficking in persons and has cooperated with your reasonable requests for assistance in your investigation or prosecution, **you** may complete this supplement form. **You** should complete all fields of this form yourself. Supplement B must be signed with an original signature. A photocopy of a signed application or a typewritten name in place of a signature is not acceptable. The **applicant** will then submit Form I-914, Supplement B, to USCIS with his or her application for T nonimmigrant status.

You must complete the form based upon your knowledge of the case, including evidence developed by other law enforcement officers involved with the case.

You do not need to formally launch an investigation or file charges to complete Form I-914, Supplement B. You may complete Form I-914, Supplement B, if an investigation does not lead to an arrest or a prosecution. Completing Form I-914, Supplement B, is not contingent on the outcome of a prosecution or investigation. Completing Form I-914, Supplement B, is at your discretion. There is no statute of limitations related to completing Form I-914, Supplement B.

Your agency may have its own procedures related to completing Form I-914, Supplement B.

To be eligible for T nonimmigrant status, the applicant must demonstrate to USCIS that he or she:

1. Is or was a victim of a severe form of trafficking in persons (see Form, **Part C. Statement of Claim**, for a definition);
2. Is present in the United States as a result of being a victim of a severe form of trafficking in persons (including physical presence based on having been allowed entry into the United States to participate in investigative or judicial processes associated with an act or perpetrator of trafficking);
3. Has complied with any reasonable requests from Federal, State or local law enforcement in the investigation or prosecution of the trafficking crime of which he or she was a victim; unless
 - A. The applicant is under 18 years of age; or
 - B. He or she is unable to cooperate due to physical or psychological trauma; and
4. Would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

These qualifying elements may be established without submitting Form I-914, Supplement B, but submission of Supplement B is one piece of evidence. USCIS (not the certifying Federal, State, or local law enforcement official) makes the determination on whether the evidence is sufficient and whether the applicant meets each eligibility requirement.

General Instructions

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach an additional sheet of paper. Write the victim's name and A-Number, if known, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.
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 A. - F.** The following information will help you fill out the form:

Part A. Victim Information

1. **Full Name.** Provide the legal name of the victim, as shown on his or her birth certificate or legal name change document. If the victim has two last names, include both and use a hyphen (-) between the names, if appropriate. Write the victim's last, first and middle names in each appropriate field.
2. **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.
3. **Date of Birth.** Use eight numbers to show the victim's date of birth (example: May 1, 1979, should be written 05/01/1979).
4. **Gender.** Check the appropriate box.
5. **A-Number.** Provide the USCIS (former INS) file number if there is one, and if it is known to you.
6. **Social Security Number.** Provide the Social Security Number if there is one, and if it is known to you.

Part B. Agency Information

1. **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 trafficking in persons of which the applicant was a victim.
2. **Name of Certifying Official.** Give your name, title, and division or office.
3. **Agency Address.** Give the agency's mailing address.
4. **Daytime Phone Number and Fax Number.** Give your phone number and fax number with area code.
5. **Agency Type.** Mark the appropriate box.
6. **Case Information.** Provide the case status information and case identification number, if applicable.

Part C. Statement of Claim

7. In order to qualify for T nonimmigrant benefits, the individual must be or have been a victim of a severe form of trafficking in persons. Mark the box that describes the individual's victimization.
 - A. Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion.
 - B. Sex trafficking and the victim is under 18 years of age.
 - C. Recruiting, harboring, transporting, providing, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.

-
- D.** Not applicable. You do not believe this individual is a victim of trafficking.
- E.** Other. Attach additional sheets to explain.
- 8.** Describe the victimization on which the applicant's claim is based and identify the relationship of the victimization to the crime under investigation or prosecution by attaching additional sheets. Attach the results of any name or database inquiry and any relevant reports or findings. Attach additional sheets if necessary.
- 9.** Explain if the individual has expressed any fear of retaliation or revenge if they are removed from the United States.
- 10.** Provide the dates on which the acts of trafficking occurred.
- 11.** List the statutory citations that are or were being investigated or prosecuted.
- 12.** Provide the date on which the investigation or prosecution was initiated.
- 13.** Provide the date on which the investigation or prosecution was completed, if any.

Part D. Cooperation of Victim

In order to qualify for T nonimmigrant status, the individual must show that he or she has complied with any reasonable requests from Federal, State, or local law enforcement in the investigation or prosecution of the acts of trafficking of which he or she was a victim (unless he or she is under 18 years of age or he or she is unable to cooperate with the request due to physical or psychological trauma).

Mark the box that describes the individual's cooperation with you and explain, attaching additional sheets if necessary.

Part E. Family Members Implicated in Trafficking

List whether any of the victim's family members are believed to have been involved in the trafficking in persons of which the individual is a victim.

An alien victim is prohibited from filing for derivative T nonimmigrant status on behalf of a family member who participated in trafficking the alien victim that established his or her eligibility for T nonimmigrant status. Therefore, USCIS will not grant an immigration benefit to a family member who committed trafficking.

Part F. Attestation

The law enforcement officer filling out this form (identified in **Part B.** of the form), and their supervisor, must sign and date the form in this section.

The Form I-914, Supplement B, must have an original signature. A photocopy of a signed declaration or a type written name in place of a signature is not acceptable.

How Can I Provide Further Information at a Later Date?

An agency can provide further information to USCIS or formally revoke Form I-914, Supplement B, at a later date, even after this form is submitted to USCIS, if there is new information or if the victim is no longer cooperating with a reasonable request for assistance in an investigation or prosecution. You should notify USCIS by sending a written statement to:

USCIS
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

An agency should send a letter on official agency letterhead to USCIS at the address above describing the reasons for providing further information or the reasons for revoking the declaration. Include the victim's name, date of birth, and A-Number (if available) on all correspondence. USCIS will allow the victim to rebut this information.

DHS Privacy Notice

AUTHORITIES: The information requested on this application, and the associated evidence, is collected under Public Law 106-386 sections 107(e) and 1513(c) and 8 USC 1101(a)(15)(T).

PURPOSE: The primary purpose for providing the requested information on this application is to determine if you have established eligibility for temporary immigration benefits for which you are filing. DHS uses the information you provide to grant or deny the immigration benefit you are seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in denial of your application.

ROUTINE USES: DHS may, where allowable under relevant confidentiality provisions, share the information you provide on this application and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-001 - Alien File, Index, and National File Tracking System and DHS/USCIS-007 - Benefits Information System] and published the privacy impact assessment [DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System and Associated Systems], which you can find at www.dhs.gov/privacy. DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for law enforcement agencies for this collection of information is estimated at 3 hours and 30 minutes per response, including the time for reviewing instructions and completing and submitting the form. The public burden for the Form I-914 respondents who will take the action of contacting a law enforcement agency to request that Form I-914, Supplement B, be completed is estimated to require 15 minutes to make such a request to the agency. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW, Washington, DC 20529-2140. OMB No. 1615-0099. **Do not mail your completed Form I-914, Supplement B to this address.**



**Supplement B, Declaration of Law Enforcement Officer for
Victim of Trafficking in Persons**

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

USCIS
Form I-914
OMB No. 1615-0099
Expires 04/30/2021

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

PART A. Victim Information

Family Name (Last Name) **Given Name (First Name)** **Middle Name (if any)**

Other Names Used (include maiden name/nickname)

Date of Birth (mm/dd/yyyy) **Gender**
 Male Female

A # (if known) **Social Security # (if known)**

Part B. Agency Information

Name of Certifying Agency

Name of Certifying Official **Title and Division/Office of Certifying Official**

Agency Address - Street Number and Name **Suite Number**

City **State/Province** **Zip/Postal Code**

Daytime Phone # (area code and/or extension) **Fax # (with area code)** (USPS ZIP Code Lookup)

Agency Type
 Federal State Local

Case Status
 On-going Completed Local

Certifying Agency Category
 Judge Law Enforcement Prosecutor Other

Case Number **FBI or SID Number (if applicable)**

Part C. Statement of Claim

1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: *(Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)*

- Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- Sex trafficking and the victim is under the age of 18.

For USCIS Use Only	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	

Remarks

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

4. Provide the date(s) on which the acts of trafficking occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Part E. Family Members Implicated In Trafficking

Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. 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 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 acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer *(identified in Part B) (sign in ink)*

Date *(mm/dd/yyyy)*

Signature of Supervisor of Certifying Officer *(sign in ink)*

Date *(mm/dd/yyyy)*

Printed Name of Supervisor

Sample

Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons Department of Homeland Security U.S. Citizenship and Immigration Services



USCIS
Form I-914
OMB No. 1615-0099
Expires 04/30/2021

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

PART A. Victim Information

Family Name (Last Name)	Given Name (First Name)	Middle Name (if any)
Tobias	Leslye	N/A
Other Names Used (include maiden name/nickname)		
N/A		
Date of Birth (mm/dd/yyyy)	Gender	
08/28/1976	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
A # (if known)	Social Security # (if known)	
12345678	123456789	

Part B. Agency Information

Name of Certifying Agency		
Washington DC Police Department		
Name of Certifying Official	Title and Division/Office of Certifying Official	
Lorna Livingston	Captain Third Division	
Agency Address - Street Number and Name		Suite Number
1620 V Street NW		N/A
City	State/Province	Zip/Postal Code
Washington	DC	20009
Daytime Phone # (area code and/or extension)	Fax # (with area code)	
5555555555	5555555556	
Agency Type		
<input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local		
Case Status		
<input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Local		
Certifying Agency Category		
<input type="checkbox"/> Judge <input checked="" type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other		
Case Number	FBI or SID Number (if applicable)	
070840654	N/A	

For USCIS Use Only	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Remarks	

Part C. Statement of Claim

1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: (Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)
- Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
 - Sex trafficking and the victim is under the age of 18.

Sample

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subject to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

Ms. Tobias was subjected to sex trafficking from December 2018 to May 2019. In December 2018, Ms. Tobias entered the United States for better work opportunities. She was introduced to a "beauty salon" to work as a massage therapist, but soon realized the job was actually to provide sex services. Unfamiliar with the country and threatened by her boss, Ms. Tobias was forced to stay until she called 911 in May 2019. Attached are police reports.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

I have not inquired into whether Ms. Tobias's fear retaliation or revenge if removed from the US.

4. Provide the date(s) on which the acts of trafficking occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)
12/18/2018	N/A	N/A	N/A

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

DC. Code § 22-1834

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)

05/09/2019

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)

06/03/2020

Sample

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Ms. Tobias called 911 for help and provided information about her trafficker, which helped the police locate the trafficker.

Part E. Family Members Implicated In Trafficking

- Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement
	N/A	

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. 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 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 acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer *(identified in Part B) (sign in ink)*

Lorna Livingston

Date *(mm/dd/yyyy)*

07/03/2020

Signature of Supervisor of Certifying Officer *(sign in ink)*

Peter Emerman

Date *(mm/dd/yyyy)*

07/03/2020

Printed Name of Supervisor

Peter Emerman

SAMPLE DESIGNEE LETTER

[LAW ENFORCEMENT AGENCY or PROSECUTOR'S OFFICE 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/ Sheriff/Prosecutor's Office] of [City or County, State]. In this capacity, I am the head of the [Police Department /Sheriff's Office/Prosecutor's Office] of [County, State], which office is responsible for investigating [or prosecuting] crimes committed in [County, State], which is a [certifying agency, as such term is defined at 8 C.F.R. §214.14(a)(2) (U visa)/ law enforcement agency, as such term is defined at 8 C.F.R. § 214.11(a) (T visa)].

Pursuant to [8 C.F.R. § 214.14(a)(3) and 8 C.F.R. § 214.14(c)(2)(i) (U visa)/ 8 C.F.R. § 214.11(d)(3)(i) (T visa)], 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/ I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons] on my Department's behalf. This specific designation shall remain in force until revoked in writing.

Sincerely,

[Name]

[Title] [County, State]

SAMPLE U-VISA CERTIFICATION & T-VISA DECLARATION OFFICER'S DUTIES³⁵⁵

GENERAL PURPOSE

In addition to performing duties listed under *[reference job description that covers officer]*, the U-visa certification and T-visa declaration officer(s) will perform a variety of tasks associated with the U-visa certification and T-visa declaration process, including evaluating U-visa certification and T-visa declaration requests, and completing and signing I-918 Supplement B forms (certification forms) and I-914 Supplement B forms (declaration forms).

SUPERVISION EXERCISED

U-visa certification and T-visa declaration 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 and T-visa declaration
- Reviews and signs I-918 Supplement B certification forms and I-914 Supplement B declaration forms prepared by agency personnel
- Completes and signs I-918 Supplement B certification forms and I-914 Supplement B declaration forms
- Assists the police department in developing programs and practices that will enhance community-outreach activities related to the U and T visas and noncitizen crime victims
- Oversees programs to educate the public about police department's U-visa certification and T-visa declaration function and purposes
- Meets and acts as a liaison with community groups

³⁵⁵ 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.

- Liaises with other local government agencies on U-visa and T-visa issues as assigned
- Supports patrol officers at crime, fire, and accident scenes with U-visa and T-visa information, materials, and outreach activities
- Completes monthly reports of activities detailing the number of U-visa certification and T-visa declaration requests and grants

PERIPHERAL DUTIES

- Serves on various law enforcement and other committees as assigned
- Performs related U-visa and T-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 and T-visa statute and regulations, the U-visa and T-visa certification process, and other victim-based forms of immigration relief available to immigrant crime victims (e.g., VAWA self-petitions).

(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 and prosecutors 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, stalking, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, fraud in foreign labor contracting, 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 and prosecutors investigate or prosecute a crime.

If you have an emergency, call 911 right away.

*The **X Police Department [X Prosecutor's Office]** 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 [X Prosecution's Office]** 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 visa temporal, la visa-U, que le proteja de la deportación, si ayuda a la policía a o la procuraduría 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, rapto, 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 o Procuraduría**

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 y la procuraduría a investigar o juzgar un crimen.

Para emergencias llame al 911 inmediatamente.

El **Departamento de Policía o Procuraduría 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 o Procuraduría X** llame a _____ al teléfono _____.

Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations^{356 357 358}

October 31, 2016

I. Purpose

The purpose of this policy is to endorse the use of the U visa as a crime-fighting tool for police departments to better serve immigrant victims of crime that they encounter in their communities. Departments can better serve this vulnerable population by removing the fear of deportation that results in a lack of reporting violent crimes and cases of human trafficking to local law enforcement.³⁵⁹ By signing U Visa Certifications or T Visa Declarations, police departments encourage the reporting of such crimes and will be able to foster a positive relationship with the immigrant population in their communities. The U.S. Department of Homeland Security (DHS) is seeking the voluntary assistance of state and local law enforcement agencies in identifying immigrant crime victims and providing U Visa Certifications and T Visa Declarations.

II. Policy

It is the policy of this Department to serve immigrant victims of crime and human trafficking by signing U Visa Certifications and T Visa Declarations. This policy has been adopted in the interest of promoting officer, victim, and community safety by encouraging immigrant victims to come forward to report dangerous offenders within the community. In the process of serving immigrant victims through Certifications and Declarations, police departments will strengthen ties to their local immigrant communities and promote safety within those communities.

³⁵⁶ Copyright © The National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2016. This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. This project was also supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

³⁵⁷ Agencies participating in the development of this model policy included: Alexandria Police Department (VA), Amherst Police Department (MA), Appleton Police Department (WI), Boise Police Department (ID), New Orleans Police Department (LA), Riverside Police Department (CA), Salem Police Department (MA), San Francisco Police Department (CA), and San Antonio Police Department (TX).

³⁵⁸ Discussion Paper for Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations (October 31, 2016) <https://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016>. See also, International Association of Chiefs of Police (IACP) Resolution on Education and Awareness of U and T Visa Certifications (November 2018) <https://niwaplibrary.wcl.american.edu/iacp-resolution-u-t-visa-certification-nov2018>

³⁵⁹ See generally Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, 3 (2015) [hereinafter “*DHS Law Enforcement Resource Guide*”] (stating that “Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims’ lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to provide victims of a crime a greater sense of security that also makes it easier for them to assist [law enforcement officials] with [their] law enforcement and prosecutorial efforts.”)

a. Definitions- U Visa³⁶⁰

U Visa Status: The U visa is an immigration benefit, provided by DHS, that is available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted by DHS, the U visa provides the victim with temporary immigration status so that they can remain in the United States. The U visa is valid for four (4) years and requires the victim to continue to help law enforcement, if requested. After three (3) years, immigrant victims who have been helpful can apply to for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.

U Visa Law Enforcement Certification: A certifying officer, usually the head of the department or a supervising officer designated by the head of the department, confirms, on the U Visa Certification (Form I-918B “U Nonimmigrant Status Certification”) that:

- a qualifying criminal activity occurred,
- the victim had information concerning that criminal activity, and
- the victim was helpful, is being helpful, or will likely be helpful in the investigation, prosecution, and/or sentencing of the perpetrator .

It is important to remember that:

- Signing a U Visa Certification does not grant legal immigration status to the immigrant victim; it is an evidentiary form that has to be included in the victim’s application.
- Certifications are signed at the discretion of the department.
- The department is not held liable for the later actions of the immigrant victim after it signs a Certification. If the individual is later determined to not be a victim or subsequently refuses to help law enforcement, the department may withdraw previously signed Certifications at any time.³⁶¹

The U Visa Certification is a required piece of evidence that must be submitted at part of the victim’s U Visa application without which the case cannot be adjudicated.

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:

<ul style="list-style-type: none">• Rape• Torture• Trafficking	<ul style="list-style-type: none">• Female Genital Mutilation• Being Held Hostage	<ul style="list-style-type: none">• Extortion• Manslaughter• Murder
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³⁶⁰ For a more extensive list of definitions of U visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix A in the attached supplemental discussion paper. For a more detailed discussion of the U visa and the role of law enforcement in signing certifications, please refer to Appendix E “U Visa Toolkit for Law Enforcement Agencies and Prosecutors,” developed with funding from the Office on Violence Against Women and the Bureau of Justice Assistance at the U.S. Department of Justice (hereinafter “U Visa Toolkit”). This toolkit is also available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors>

³⁶¹ For instructions on how to withdraw a previously signed Certification, please see Section V, “Procedure: Encountering Immigrant Victims of Crime (U Visa).”

<ul style="list-style-type: none"> • Incest • Domestic Violence • Sexual Assault • Abusive Sexual Contact • Prostitution • Sexual Exploitation • Stalking 	<ul style="list-style-type: none"> • Peonage • Involuntary Servitude • Slave Trade • Kidnapping • Abduction • Unlawful Criminal Restraint • False Imprisonment • Blackmail 	<ul style="list-style-type: none"> • Felonious Assault • Witness Tampering • Obstruction of Justice • Perjury • Fraud in Foreign Labor Contracting³⁶² • Other Similar Activity
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b. Definitions- T Visa/Continued Presence³⁶³

T Visa Status: The T visa is an immigration benefit available from DHS for immigrant victims of severe forms of human sex and labor trafficking who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking offenders. If granted a T visa by DHS, an immigrant victim is required to continue to comply with reasonable requests for cooperation from law enforcement, if requested. A T visa is valid for four (4) years. After three (3) years, the immigrant victim can apply to DHS for lawful permanent residency.

Severe form of trafficking

The term “severe forms of trafficking in persons” means—

- “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”³⁶⁴

The Federal Criminal Code includes crimes of human trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, and sex trafficking of children or by force, fraud, or coercion that state and local law enforcement should be familiar with.³⁶⁵

T Visa Law Enforcement Declaration: A certifying officer, usually the supervising officer responsible for the investigation or prosecution of the trafficking offense, will confirm that the immigrant was a victim of a severe form of trafficking and complied with reasonable requests for cooperation by law enforcement in a T Visa Declaration (Form I-914B “Declaration of Law Enforcement Officer for Victim of Trafficking of Persons”).

- Unlike the U visa, an immigrant applying for a T visa is **not required** to obtain a signed Declaration from law enforcement. However, since Declarations provide a

³⁶² As defined in 18 U.S.C. § 1351 (2013).

³⁶³ For a more extensive list of definitions of T visa terminology, including detailed definitions of the terms included in this section, please refer to Appendix B.

³⁶⁴ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013).

³⁶⁵ See Appendix B, “Definitions of T Visa/Continued Presence Terminology” for the complete Federal Penal Code sections that define human trafficking.

key piece of evidence supporting their application, victims may request Declarations from law enforcement.

- Signing a T Visa Declaration does not grant the immigrant victim legal immigration status; the Declaration is one piece of evidence in the victim’s application.
- Declarations are signed at the discretion of the department.
- The department is not held liable for the later actions of the immigrant victim after it signs a Declaration. If the individual is later determined to not be a victim or subsequently has unreasonably refused to cooperate with reasonable requests for assistance from law enforcement, the department may withdraw previously signed Declarations at any time.³⁶⁶

Continued Presence: Continued Presence is the first form of immigration relief available to a victim of human trafficking who is undocumented. Continued presence is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States because they are a victim and they are a potential witness in a human trafficking investigation. Continued presence is designed to be a tool for law enforcement to keep someone who is a victim and a potential witness in the United States who may not otherwise be able to stay in the United States legally. Continued presence also connects victims to services that provide support and stabilized the victim.

III. Criteria for U Visa Certifications

A. Before completing a Certification Form I-918B, the certifying official shall verify the following:

1. Eligibility- The applicant is:³⁶⁷

- a. A victim of a qualified criminal activity (listed in II 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
- b. The parent or unmarried sibling under 18 years old of a citizen or immigrant crime victim who is a child under the age of 21; or
- c. The spouse or child under-21-year-old of a victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter; or
- d. The parents or unmarried siblings under 18-years old of an under-21-year-old citizen or immigrant victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter.

B. Assessing the Helpfulness of the Immigrant Victim

1. Law enforcement officials may complete U Visa Certifications once they are able to assess a victim’s helpfulness. The entire investigation need not be completed prior to

³⁶⁶ For instructions on how to withdraw a previously signed Declaration, please see Section VII, “Procedure: Encountering Immigrant Victims of Human Trafficking (T Visa).”

³⁶⁷ See U Visa Toolkit (Appendix E) at 8.

signing a Certification. The Certification signed by the Chief or a designated supervisor confirms that the applicant has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.

2. If a U visa petitioner filed a police report and is willing to assist – or has assisted or was helpful – with detection, investigation, prosecution, conviction, or sentencing 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.
3. The Chief or a designated supervisor may issue a Certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and is able to identify the victim of the criminal activity. The investigation need not be complete prior to issuing a certification.
4. Congress intended to allow victims to obtain U Visa Certifications at the very early stages of crime detection.
5. To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance, if requested.
6. Victims threatened by further acts of violence, may be able to prove to the DHS that their decision to not continue to provide assistance was not unreasonable and, therefore, remain eligible for a U visa.

C. Statute of Limitations

1. A certification can be issued any time after the criminal activity occurred. There are no time limits. Statutes of limitations are not a consideration when determining eligibility for Certification.

IV. Procedure- Introduction

This model policy recognizes that law enforcement agencies vary on policies and procedures regarding inquiring about the immigration status of victims, witnesses, and the general public. The following sample protocol has been created by combining policies from various jurisdictions that have U Visa Certification Procedures in place. The following procedure provides a guide that can be adapted to be consistent with any other policies your department may have that facilitates your department's relationship with immigrant communities and your work with immigrant crime victims. If, during the normal course of investigative efforts, information is revealed that suggests that a person is an immigrant victim, officers should follow the investigative steps listed below.

V. Procedure- Encountering Immigrant Victims of Crime (U Visa)

A. Officer Responsibilities

1. At the scene of the crime

- a. Conduct the preliminary investigation in accordance with the department policy and provide the victim with a DHS brochure that contains information about the U visa³⁶⁸ and a list of local victim services/resources.³⁶⁹
- b. Collect any relevant evidence, such as photographs of the location and of injuries, statements from the victim and witnesses, etc.
- c. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification care and obtain the help of an interpreter to understand and communicate with the LEP person.³⁷⁰ In exigent circumstances, personnel should use the most reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, fleeing suspect, and identifying injuries) has passed.
- d. Officers should explain the possibility of obtaining a U visa to the victim and provide the victim a copy of the DHS crime victim brochure. This can be done either at the scene or at a later interview.
 1. Do NOT promise the issuance of a U visa.
 2. Do NOT attempt to determine the victim's eligibility for a U visa.
- e. Conduct a more thorough interview away from the scene of the exploitation at a neutral location, such as the police station.

2. Interview

- a. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.³⁷¹

³⁶⁸ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C.

³⁶⁹ To identify local programs with experience serving immigrant crime victims, please refer to the directory available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

³⁷⁰ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines* 1,3, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both... Using family, friends, or bystanders to interpret could result in breach of confidentiality, a conflict of interest, or an inadequate interpretation... personnel should not use minor children to provide interpreter services.

³⁷¹ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf ("Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court.

- b. Ask questions that will help determine whether the individual was a victim of a qualifying criminal activity.
- c. Explain the role of law enforcement in the victim's U visa application process.
 - 1. The victim requires a Certification from law enforcement that he/she was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, or sentencing. This Certification does **NOT** guarantee that the victim will receive a U visa.
 - 2. The Certification is a required piece of evidence that confirms to DHS that the applicant is a victim of a qualifying crime and verifies helpfulness.
 - 3. The victim must file his/her application with DHS and DHS alone will make the final determination regarding the victim's eligibility to receive a U visa. The department will provide the victim with a signed certification. The department cannot file the Certification with DHS for the victim.
 - 4. The victim has a duty to remain helpful to law enforcement and those who unreasonably refuse to provide reasonably requested assistance after receiving a U visa may have their U visa revoked by DHS. Law enforcement may report to DHS any unreasonable refusals for assistance by the victim.

3. Post-Interview

- a. The interviewing officer(s) will provide the certifying/supervising officer delegated with the authority to sign certifications with information obtained during the interview as well as other evidence collected.

B. Supervisor/Certifying Officer Responsibility

- 1. Prior to completing a Certification for a U visa application, the certifying officer shall have verified the following:
 - a. The non-citizen was or is a victim of a qualifying criminal activity, as noted in the definitions section above, that took place in the United States or its territories or occurred outside the United States, but violates U.S. extraterritorial law; or
 - b. The non-citizen is the parent or under 18 year old unmarried sibling of a citizen or immigrant crime victim who is a child under the age of 21; or

As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.”)

- c. The non-citizen is the spouse or under 21-year old child of a victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter; or
 - d. The non-citizen is a parent or an unmarried under 18-year old sibling of an under 21-year old citizen or immigrant victim who is incompetent or incapacitated, or who is deceased because of murder or manslaughter.
2. The certifying officer shall establish if the victim has been, is being, or is likely to be helpful to detection, investigation, prosecution, conviction, or sentencing.
 3. 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 when the criteria described in B1 and B2 are met.
 4. No request for Certification will be accepted unless it is made on the proper Form I-918, Supplement B.
 5. Certification requests will be signed by the Chief or each supervisor designated to sign certifications.
 6. Once the Certification is completed, the certifying officer will return it to the victim or the victim's representative so that it can be included with the victim's U visa application. The law enforcement agency **cannot** send the signed certification to DHS; this is the victim's or his/her representative's responsibility.
 7. If the victim unreasonably refuses to provide assistance reasonably requested by law enforcement after receiving his/her U visa, the department may withdraw its Certification by notifying DHS in writing.
 - a. Send the agency name, certification date, name of certifier, petitioner's name, date of birth, and the reason for the Certification's withdrawal to:

U.S. Citizenship and Immigration
 Services/Vermont Service Center
 Attn: T/U visa Unit
 75 Lower Welden Street
 St. Albans, VT 05479-0001

VI. Criteria for T Visa Declarations

A. Before completing a T Visa Declaration (Form I-914B), the certifying official shall verify the following:

1. Eligibility- the applicant is:

- a. A victim of a severe form of trafficking and
- b. The victim is under the age of 18; or

- c. The victim complied with any reasonable requests from Federal, State, or local law enforcement in the investigation or prosecution of the trafficking crime of which he/she was a victim of.

B. Assessing the Cooperation of the Immigrant Victim of Human Trafficking

1. Law enforcement officials may complete T Visa Declarations for a trafficking victim under the age of 18 once they assess that the child has been a victim of a severe form of trafficking.
2. Law enforcement officials may complete T Visa Declarations once they are able to assess whether the victim has responded to a reasonable request for assistance. The entire investigation need not be completed prior to signing a Declaration. The signed Declaration confirms that the immigrant was a victim of a severe form of trafficking and cooperated with reasonable requests from law enforcement in the investigation or prosecution of a trafficking offender.
3. If a T visa applicant filed a police report and is willing to cooperate with law enforcement, a Declaration may be signed even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
4. After obtaining a signed Declaration, the victim has an ongoing responsibility to cooperate with reasonable requests of assistance by law enforcement.
5. Reasonableness of the request depends on:
 - a. Totality of the circumstances, taking into account general law enforcement and prosecutorial practices,
 - b. The nature of the victimization,
 - c. Specific circumstances of the victim (consider fear, severe physical and mental trauma, and age/maturity of the victim).

VII. Procedure- Encountering Immigrant Victims of Human Trafficking (T Visa)

A. Officer Responsibilities

- a. **At the scene of the crime**

- i. Conduct a preliminary investigation in accordance with department policy and provide the victim with information about the T visa³⁷² and other local victim services/resources.³⁷³
- ii. Collect any relevant evidence, such as witness statements, photographs of the location or any injuries, etc.
- iii. Officers who encounter persons who are limited English proficient (LEP) should attempt to identify the LEP individual's primary language through use of a language identification card and obtain the help of an interpreter to understand and communicate with the LEP person.³⁷⁴ In exigent circumstances, personnel should use the most reliable temporary person available to interpret only until the exigency (e.g. securing the crime scene, locating weapons, fleeing suspect, identifying injuries) has passed.
- iv. Officers should explain the possibility of obtaining a T visa to the victim, and provide the victim a copy of the DHS crime victim brochure. This can either be done at the scene or at a later interview.
 1. Do NOT promise the issuance of a T visa.
 2. Do NOT attempt to determine the victim's eligibility for a T visa.
- v. Conduct a more thorough interview away from the scene of the crime at a neutral location such as the police station.

b. Interview

³⁷² For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C. Please note that this brochure is available in several languages. These are available at: <http://niwaplibrary.wcl.american.edu/cultural-competency/multilingual-materials-for-victims/dhs-immigration-options-for-crime-victims>

³⁷³ To locate programs with experience serving trafficking victims are listed in the following resources: <http://freedomnetworkusa.org/membership/current-members/> and

<http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

³⁷⁴ Office of Justice Programs, *U.S. Department of Justice, Model Directive: Limited English Proficiency Guidelines* 1,3, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (Recognizing the importance of effective and accurate communication between law enforcement officials and the community that they serve).

Language barriers can impede effective and accurate communication in a variety of ways. Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from accessing and/or understanding important rights, obligations, and services, or from communicating accurately and effectively in difficult situations. Hampered communication with LEP victims, witnesses, alleged perpetrators, and community members can present the Department with safety, evidentiary, and ethical challenges. Ensuring maximum communication ability between law enforcement and all segments of the community serves the interests of both... Using family, friends, or bystanders to interpret could result in breach of confidentiality, a conflict of interest, or an inadequate interpretation... personnel should not use minor children to provide interpreter services.

- i. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.³⁷⁵
- ii. If the officer suspects that the individual is a victim of trafficking, questions should be focused on obtaining information about the following: possible recruitment, circumstances of migration and arrival in the United States, working conditions, and whether there was any force, fraud, and/or coercion involved.³⁷⁶
- iii. Requesting Continued Presence: When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for continued presence. Contact the local ICE office in your jurisdiction or an office of the Special Agents in Charge (SAC) <http://www.ice.gov/contact/inv/> to obtain a “Request for Continued Presence” ICE Form 73-031.
- iv. Explain the following to the victim regarding the Declaration that the agency can complete to assist the victim:
 1. The law enforcement Declaration is an optional piece of evidence that the victim may file with her T visa application to DHS.
 2. Once the Declaration has been completed, it will be returned to the victim or his/her representative to be filed with the T visa application. The department cannot file the Declaration with DHS for the victim.

c. Post-Interview

- i. The interviewing officer(s) will provide the certifying/supervising officer delegated with the authority to sign Declarations with information obtained during the interview as well as other evidence collected.

B. Supervisor/Endorsing Officer Responsibilities

- a. The supervising/endorsing officer must verify:
 - i. The victim was or is a victim of a severe form of trafficking, and
 - ii. The victim is under the age of 18; or
 - iii. The victim has complied with any reasonable requests for assistance in a trafficking investigation or prosecution.

³⁷⁵ Office of Justice Programs, U.S. Department of Justice, *Model Directive: Limited English Proficiency Guidelines*, available at: http://www.ojp.usdoj.gov/about/ocr/pdfs/lep_sample.pdf (“Crime witness interviews: These scenarios potentially involve statements with evidentiary value upon which a witness may be impeached in court. As such accuracy is a priority...miscommunication during ...crime witness interviews may have a substantial impact on the evidence presented in any related criminal prosecution.”)

³⁷⁶ For examples of questions for each category, please refer to Appendix D “Sample Questions for Identifying a Trafficked/Enslaved Person.”

- b. Once the Declaration is complete, return it to the victim or his/her representative for filing with the T visa application.
- c. If the victim unreasonably refuses to cooperate with reasonable requests to assist law enforcement after receiving his/her T visa, the department may withdraw its declaration by notifying DHS in writing.
 - i. Send the agency name, declaration date, name of officer who signed the declaration, the petitioner's name, date of birth, and the reason for the certification's withdrawal to:

U.S. Citizenship and Immigration
Services/Vermont Service Center
Attn: T/U visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

**Discussion Paper for Model Policy for Interactions with Immigrant Victims of
Crime and Human Trafficking**
&
Signing of U Visa Certifications and T Visa Declarations¹²³

October 31, 2017

I. INTRODUCTION

This discussion paper is a supplement to the “Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking and Signing of U Visa Certifications & T Visa Declarations.” The purpose of this paper is to provide a more detailed explanation of the purpose of U and T visas and Continued Presence, the importance of signing Certifications and Declarations for victim/officer/community safety, and supporting the U.S. Department of Homeland Security’s (DHS) efforts to offer protection to immigrant crime victims. The discussion paper also includes helpful appendices, which define U and T visa terminology and provide screening, outreach, and investigatory tools for officers that encounter immigrant victims of crime.

II. PURPOSE

In 2000, Congress created the U visa under the Violence Against Women Act (VAWA), which allowed immigrant victims of certain qualifying criminal activities access to immigration relief by giving discretionary authority to state, local, and federal law enforcement officers to sign certifications for U visa applications. Under the 2000 Victims of Trafficking and Violence Protection Act (TVPA), a T visa and continued presence is available to help immigrant victims of severe forms of human trafficking. In addition to providing immigration relief, Congress intended that the certification/declaration process for both visas would be a tool that builds relationships between law enforcement officials and crime victims in immigrant communities.

The T and U visa and continued presence offer help to vulnerable immigrant victims who come forward, report criminal activities and are helpful in the detection, investigation, prosecution,

¹ Copyright © The National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2017. This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. This project was also supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

² Agencies participating in the development of this model policy included: Alexandria Police Department (VA), Amherst Police Department (MA), Appleton Police Department (WI), Boise Police Department (ID), New Orleans Police Department (LA), Riverside Police Department (CA), Salem Police Department (MA), San Francisco Police Department (CA), and San Antonio Police Department (TX).

³ See also Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations <http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/> and U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors/>

conviction, and/or sentencing of a violent offender. Domestic violence, sexual assault and human trafficking constitute at least 75% of the U visa cases filed nationally.⁴ Congress sought to remove threats of deportation as a tool perpetrators use to keep victims from reporting crime and assisting law enforcement while at the same time encouraging the development of a mutually beneficial relationship between law enforcement and the communities they protect. This relationship benefits the immigrant victim, improves law enforcement officer safety, and promotes safety in the community at large.

As such, the purpose of this policy is to:

- Establish guidelines for law enforcement officers and supervisors who receive and review requests for U Visa Certifications and T Visa Declarations;
- Clarify victims' eligibility requirements for Certification/Declaration;
- Inform state and local law enforcement officials involved in investigation and/or prosecution of human trafficking cases how to gain the assistance of federal DHS officials in obtaining continued presence allowing trafficking victims to remain in the United States and assist in criminal investigations and prosecutions of human traffickers;
- Discuss benefits to law enforcement and vulnerable communities, such as preventing crime in the interest of protecting victims and promoting officer safety; and
- Promote a trusting relationship between immigrant communities and law enforcement.

III. POLICY

- It is the policy of this agency to assist immigrant crime victims by signing U Visa Certifications, if they have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of a perpetrator of a qualifying criminal activity.
- It is the policy of this agency to assist immigrant victims of human trafficking by signing T Visa Declarations if they are victims of severe forms of trafficking and cooperate with law enforcement in the investigation or prosecution of human traffickers to “facilitate reporting of crimes...to regularize the status of cooperating individuals during investigations and prosecutions...this...will...strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases.”⁵

⁴ LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U-VISA RECIPIENTS (November 29, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/National-Survey-on-Types-of-Criminal-Activities-Updated2011.pdf>

⁵ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §§ 1513(a)(1) & (2) (2000) (codified at 8 U.S.C. 1184) (hereinafter “VAWA 2000”)

(a) FINDINGS.—Congress finds that—

(1) The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

- It is the policy of this agency to encourage state and local law enforcement officials to collaborate with DHS in its efforts to offer access to legal immigration status and protection from deportation of immigrant crime victims and witnesses by implementing U visa certification and T visa declaration practices, policies and protocols.
- It is the policy of this agency to encourage the development of relationships with DHS and federal law enforcement officials that help state and local law enforcement enlist the assistance of DHS and federal law enforcement officials in obtaining grants of continued presence for immigrant trafficking victims assisting in state and local investigations and prosecutions of human traffickers.

This policy has been adopted in the interest of promoting officer safety, improving community safety, and protecting immigrant crime victims. Domestic violence offenders not only pose a threat within the home, they also pose a threat to the community and to law enforcement officers involved in holding and bringing domestic violence offenders to justice. For example, research currently being conducted is finding that 75% of offenders responsible for deaths of law enforcement officers have histories of being domestic violence offenders.⁶ Additionally, perpetrators of mass shootings are often also domestic violence perpetrators. Therefore, the signing of Certifications and Declarations not only provides an opportunity for the victim to feel comfortable enough to report criminal activities, but also creates a relationship between the community and law enforcement that allows officers to respond accordingly to dangerous offenders that pose a potential threat to officers and the community. Although participation in the certification/endorsement and the continued presence process is at the discretion of the departments, it is also the policy of this agency to participate in order to facilitate much needed collaboration between local law enforcement agencies and their federal counterparts in the identification and screening of immigrant victims of violent criminal activities and human trafficking.⁷

(2) Providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

(3) There are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this title are—

(1) To remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

(2) To offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

⁶ Research conducted by Officer Michael LaRiviere, U-Visa Law Enforcement Expert; *see generally* Department of Homeland Security, “Blue Campaign: Law Enforcement Discussion of Immigration Relief” Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement, April 2013, available at: <http://niwap.org/training/DHS-roll-call/>

⁷ Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief*: Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

Finally, it is the policy of this agency that investigating officers distribute to immigrant victims outreach materials developed by DHS describing immigration relief for crime victims⁸ and provide immigrant victims with information about local or national immigrant victim services or resources that support immigrant victims⁹ in a manner that maintains the safety of the victim.

IV. BACKGROUND/DISCUSSION

The relationship between law enforcement and immigrant communities is often a strained one. Immigrant communities may mistrust or fear law enforcement based on their experience with the police in their native country, due to cultural differences or because immigrants have not historically been provided language access to police assistance. This mistrust leads to a lack of reporting of crimes and makes many undocumented immigrants vulnerable to criminal activities. With this background in mind, Congress' intent in creating the U and T visas was to strengthen local law enforcement's ability to detect, investigate, prosecute, convict and sentence criminal offenders that pose significant threats to both the community and to the officers themselves and to develop a relationship between law enforcement and the local immigrant population. As first responders, it is important for law enforcement to develop a trusting relationship with the local immigrant population so that they increase their ability to detect/prevent and investigate violent crimes in their community.¹⁰ This trusting relationship is "central to overall public safety."¹¹ In addition to a lack of trust, it is important to recognize and understand that a significant number of immigrants who are victims of crime do not report those criminal activities to law enforcement officials due to:

- Threat of physical harm to self and/or children;
- Threat of deportation;
- Threat of losing custody of children;
- Threat of losing employment; and/or
- Fear of being ostracized by family and/or community (particularly when the crimes are domestic violence, incest, child abuse, elder abuse, rape or sexual assault).

Perpetrators often threaten their victims with the reporting them to immigration authorities in order to secure the victim's deportation. Violent offenders trump the criminal justice system by

⁸ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C. Please note that this brochure is available in several languages. These are available at: <http://library.niwap.org/wp-content/uploads/2015/CULT-Bro-DHSEnglishImmOptionsVictimsofCrime.pdf>

⁹ To identify local programs with experience serving immigrant crime victims, please refer to NIWAP's directory of local service providers, available at <http://www.niwap.org/directory/>

¹⁰ For a more detailed discussion of the role of law enforcement in the U Visa Certification process, please refer to "U Visa Toolkit for Law Enforcement and Prosecutors" (hereinafter "U Visa Toolkit"). The toolkit was developed with funding from the U.S. Department of Justice Bureau of Justice Assistance and Office on Violence Against Women and includes sample forms, sample outreach flyers, a frequently asked questions section, a flowchart that shows the certification process as it pertains to law enforcement and other resources. The toolkit is also available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

¹¹ See FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (May 2015), available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (Recommendation 1.9: Law enforcement agencies should build relationships based on trust with immigrant communities).

using the threat of deportation to stop victims from reporting crimes that were perpetrated against them to law enforcement. When the fear of deportation, witness tampering, and exploitation is reduced, it is more likely that immigrants will come forward to report crimes. The prospect of attaining legal immigration status and access to work authorization are powerful tools that counteract perpetrator threats, reduce victim fears, and, in turn, increase the probability that immigrant crime victims will come forward and report crimes perpetrated against them, many of which pose a threat to the community. By providing U Visa Certifications or T Visa Declarations and by seeking continued presence, law enforcement officials are able to enhance their ability to fight crimes by fostering trust and the development of relationships that encourage immigrant victims to feel comfortable in coming forward to report crimes.

U.S. immigration laws contain special VAWA Confidentiality and Victim Safety Provisions. They provide three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed criminal activities.

Specifically, VAWA Confidentiality consists of:

- Non-Disclosure Provisions: Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers, and crime perpetrators from using the information to harm the victim, undermine her immigration case or locate her.
- Prohibited Source Limitations: Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding initiation of an immigration enforcement action, or making an adverse ruling in the victim's immigration case or as to the victim's admissibility or deportability. These protections apply without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.
- Immigration Enforcement Limitations: Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking. If any part of an enforcement action took place at any of these locations, DHS must disclose this fact to the immigration judge and the judge can dismiss the removal action against the victim when VAWA confidentiality provisions have been violated.
- Prohibited Enforcement at Sensitive Locations: In addition to VAWA Confidentiality, DHS prohibits its enforcement officials from conducting immigration enforcement actions at the following locations: schools, places of worship, funerals and religious activities.

Signing Certifications or Declarations creates a means to reduce crimes and presents the opportunity to build trust and work closely with members of the local immigrant community to:

- Detect and prevent crimes and/or trafficking;
- Promote community and officer safety; and
- Hold offenders accountable.

It should be noted that signing a Certification or Declaration does not automatically confer immigration status nor does it guarantee it.¹² The application for a U or T visa must be reviewed by DHS and DHS will either grant or deny the application. Law enforcement does not determine eligibility for receiving a U or T visa; it only determines eligibility for Certifications or Declarations, which serve as evidence in a U or T visa application.

The certifying official and the department are not liable for the future acts of a victim should they choose sign a Certification or Declaration.¹³ If an individual is later determined to not be a victim or subsequently unreasonably refuses to provide assistance that has been reasonably requested by law enforcement, the department may withdraw its previously signed Certifications/Declarations in writing at any time.¹⁴

Congress and DHS regulations have structured the U Visa Certification and T Visa Declaration so that they fit within the routine activities of law enforcement. They can be completed simultaneously with police reports. Since Certifications and Declarations are based upon police reports and the information that law enforcement agencies routinely collect as they proceed with a criminal investigation, signing Certifications or Declarations does not add additional burden on police departments.

¹² Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹³ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

¹⁴ Send the petitioner's name, date of birth, A-file number (if available), and the reason for the Certification or Declaration's withdrawal to:

U.S. Citizenship and Immigration Services/Vermont Service Center
Attn: T/U visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4-5*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification_guide.pdf; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX A: DEFINITIONS OF U VISA TERMINOLOGY

U Visa Status¹⁵: The U visa is an immigration benefit that is available to immigrant victims of certain qualifying criminal activities that have helped, are helping, or are likely to help law enforcement and other government officials in the detection, investigation, prosecution, conviction and/or sentencing of the offender. If granted, the U visa provides the victim with temporary immigration status so that they can remain in the United States. The U visa is valid for 4 years and requires the victim to continue to help law enforcement, if requested. After 4 years, immigrant victims who have been helpful can apply to for lawful permanent residency if they can demonstrate need due for humanitarian, public interest, or family unity reasons.

U Visa Certification refers to Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner was a victim of a qualifying criminal activity, has knowledge of that criminal activity, and has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction and/or sentencing of the qualifying criminal activity of which he or she is a victim.¹⁶ The certification does not guarantee that the victim will receive a U visa and it does not grant immigration status. It is, however, a required piece of evidence that must be included in the victim’s application.¹⁷

Certifying Official: Certifications can be issued by the head of the certifying agency, or any person(s) in supervisory role(s) that has been specifically designated by the head of the certifying agency to issue U visa certifications on behalf of that agency, or a Federal, State, or local judge.¹⁸

Certifying Agency: government officials and entities, including Federal, State, or local law enforcement agencies, prosecutor, judge, or other state or federal government agency that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the qualifying criminal activities.¹⁹ This can include, but is not limited to, child and adult protective services agency staff, state labor agencies, the Equal Employment Opportunity Commission, the U.S. Department of Labor, the FBI, and ATF officers.

Criteria for U Visa Certifications: Certification Forms (Form I-918B for U visas), can be completed when the law enforcement agency has determined that the applicant was a victim of a qualifying criminal activity and that the applicant was helpful, is helpful, or will likely be helpful in the detection, investigation, prosecution, conviction, and/or sentencing of the

¹⁵ 8 C.F.R. § 214.14

¹⁶ 8 C.F.R. 214.14(a)(5) & (12) (definition of U Visa Certification and helpfulness requirement), 8 C.F.R. 214.14(b)(2) (victim must establish that he or she has knowledge of details about the qualifying criminal activity that will aid law enforcement in the detection, investigation, prosecution, and/or sentencing of the criminal offender); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf

¹⁷ 8 C.F.R. § 214.14(c)(2)(i); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 6*, available at:

http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf; Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Criminal Activities* 1 (October 22, 2011), available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcemen t.pdf

¹⁸ 8 C.F.R. § 214.14(a)(3)(i) & (ii).

¹⁹ 8 C.F.R. § 214.14(a)(2).

offender. The certifying official determines whether the victim meets the criteria required for the certification only. Whether a victim will be awarded a U visa is determined only by DHS and requires that the victim meet additional elements of proof in addition to submitting a Certification. The criteria for U Visa Certifications are discussed in detail in Section III “Criteria: U visa Certifications” in the Model Policy.

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.”²⁰ The statute also includes the attempt, conspiracy, or solicitation to commit any of the criminal activities listed below:

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

Similar Activity: since the qualifying criminal activities list consists of general categories of criminal activity, any similar activity to the activities listed may be a qualifying criminal activity. The nature and elements of both criminal activities should be comparable.²¹

Helpfulness means assisting law enforcement or other state or federal authorities in the detection, investigation, prosecution, conviction or sentencing related to the qualifying criminal activity of which he or she is a victim. DHS is excluding from eligibility those victims who, after initial cooperation, refuse to provide continuing assistance when reasonably requested.²² An immigrant victim has an ongoing responsibility to provide assistance reasonably requested by law enforcement while in U visa status and in order to qualify for permanent resident status.²³ An exception to the helpfulness requirement applies to victims

²⁰ 8 C.F.R. § 214.14(a)(9). See also Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4*, available at:

http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf

²¹ 8 C.F.R. § 214.14(a)(9). See also Toolkit, *supra* note 5, at 7 for more discussion on this non-exclusive list of qualifying crimes and more information on “similar activity”:

[The U visa] statute lists domestic violence as a U-visa-qualifying crime. However, most state statutes do not specific domestic violence as a crime, but instead list crimes that constitute domestic violence [or arise out of domestic violence incidents], such as harassment, assault, battery, criminal threats, menacing, criminal trespass, burglary, malicious mischief, reckless endangerment, stalking, child abuse, elder abuse, or malicious property damage. Even though these crimes are not specifically enumerated in the U-visa [statute], they are incorporated within the qualifying crime of domestic violence for U-visa purposes.

²² 8 C.F.R. § 214.14(b)(3).

²³ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal Activities 2* (October 22, 2011), available at:

http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcemen t.pdf

under 16 years of age.²⁴ There is also an exception for immigrant crime victims who can demonstrate to DHS that their failure to provide ongoing cooperation with reasonable requests for assistance was not unreasonable. The following are a few common examples of when a victim's lack of helpfulness is **not** unreasonable:

- When perpetrators, through coercion and/or threats, make the victim unavailable for trial;
- When a victim reasonably fears for her safety or her children's safety;
- When perpetrators actively limit the victim's ability to leave the house, travel or movement, precluding her participation in investigative interviews or appearing to testify at trial;
- When perpetrators use threats of deportation and calls report victims to DHS for immigration enforcement to convince victims not to continue cooperation with law enforcement or prosecutors;
- When perpetrators threaten victims that their continued cooperation with law enforcement and/or prosecutors will result in the perpetrator ensuring that the victim will lose contact with, access to or custody of her children; or
- When a victim fears retaliation from the perpetrator if he/she testifies at trial.

Direct Victim is a victim who is directly and proximately harmed by qualifying criminal activity.²⁵

Indirect Victim may a file for U visa status (and request a U Visa Certification) if he or she is:

- A victim of a qualified criminal activity that took place in the United States or its territories or occurred outside the United States but violates U.S. extraterritorial law; or
- The parent or under 18 year old unmarried sibling of a citizen or immigrant crime victim who is a child under the age of 21; or
- The spouse or under-21-year-old child of a victim who incompetent or incapacitated or who is deceased because of murder or manslaughter; or

²⁴ 8 C.F.R. § 214.14(b)(3) (if the victim is under the age of 16 or was under the age of 16 when "an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the [victim] may provide the required assistance.")

²⁵ 8 C.F.R. § 214.14(a)(14).

- The parents or unmarried under-18-year-old siblings of an under-21-year-old citizen or immigrant victim who is incompetent or incapacitated or who is deceased because of murder or manslaughter.²⁶

Liability: The department will sign Certifications at its own discretion. There is no penalty or liability for certifying or not certifying a victim on an I-918B Certification Form. The certifying official and the department are not liable for the future acts of a victim should they choose to sign a Certification for that victim.²⁷ If an individual is later determined to not be a victim or subsequently unreasonably refuses to help the department, law enforcement may withdraw previously signed Certifications at any time.²⁸

²⁶ 8 C.F.R. § 214.14(a)(14)(i); *see also* Department of Homeland Security, U.S. Citizenship and Immigration Services, New Classifications for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status [72 FR 53014][FR 48-07] (citing 2005 Department of Justice Attorney General Guidelines definition of “indirect victim” to include certain family members of deceased or incompetent or incapacitated victims because the victim may not be able to sufficiently help law enforcement in investigation or prosecution, but family members may be able to- at pg. 9), available at: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>

²⁷ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal activities* 1 (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

²⁸ 8 C.F.R. § 214.14(h)(2)(i)(A) & (ii) (DHS may revoke U visa status if a certifying official revokes a signed Certification in writing); *see also* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement* 4-5, available at: <http://library.niwap.org/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf>; *see also* Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX B: DEFINITIONS OF T VISA/CONTINUED PRESENCE TERMINOLOGY

T Visa Status²⁹: The T visa is an immigration benefit available to immigrant victims of severe forms of human trafficking who comply with reasonable requests for cooperation from law enforcement in the detection, investigation, prosecution and/or sentencing of human trafficking offenders. If granted T visa status, an immigrant victim is required to continually comply with reasonable requests for cooperation, if requested. After 3 years, the immigrant victim can apply for adjustment to lawful permanent residency.

Continued Presence: temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States because they are a victim and they are a potential witness in a human trafficking investigation. Continued presence is designed to be a tool for law enforcement to keep someone who is a victim and a potential witness in the United States who may not otherwise be able to stay in the United States legally. Continued presence also connects victims to services that provide support and stabilized the victim.

T Visa Law Enforcement Declaration³⁰: A certifying officer, usually the head of the department or a supervising officer designated by the head of the department, will confirm that the immigrant was a victim of a severe form of trafficking and complied with reasonable requests for cooperation by law enforcement in a T Visa Declaration (Form I-914B “Declaration of Law Enforcement Officer for Victim of Trafficking of Persons”).

Endorsing/Certifying Official - The head of the certifying agency/department, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue T visa Declarations on behalf of that agency or a Federal, State, or local judge.

Endorsing/Certifying Agency - government officials and entities, including Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that have responsibility for the detection, investigation or prosecution, conviction and sentencing of the perpetrator(s) of the trafficking activity.

Criteria for a Declaration: based on whether the victim meets the statutory requirements listed in Declaration Form I-914B for T visas, which includes determining whether the applicant was a victim of a severe form of trafficking and has cooperated with any reasonable requests from Federal, state, or local law enforcement in the detection, investigation, prosecution, and/or sentencing of the trafficking offender. The endorsing official determines whether these factors have been met and must be verified by that official on Form I-914B. The endorsing official determines eligibility for the declaration only; eligibility for the T visa itself

²⁹ 8.C.F.R. § 214.11

³⁰ Form I-914B is titled “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.” However, the terminology used by DHS refers to this process as endorsements, certifications and/or declaration interchangeably. For the purposes of clarity, this model policy will use “certifications” and “certifying” in the context of explaining the U visa process only. This model policy will use “endorsement” and “endorses” to refer to the T visa process and to any actions required to complete an I-914B Declaration form.

is determined only by DHS because it confers legal status to the victim. The eligibility process for a T visa Declaration is discussed in detail in Section VI “Eligibility: T visa” below.

Severe form of human trafficking means:

- “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has attained 18 years of age; or
- (B) recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”³¹
- **Federal Penal Code Definition**
 - **§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor**³²
 - (a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.
 - (b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).
 - **§ 1591. Sex trafficking of children or by force, fraud, or coercion**³³
 - (a) Whoever knowingly—
 - (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
 - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such

³¹ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013); *see also* “Abuse or threatened abuse of law or legal process,” at §7102(1); “Coercion” at §7102(3); “Commercial sex act” at §7102(4); “Debt bondage” at §7102(5); “Involuntary servitude” at §7102(6); “Sex trafficking” at §7102(10).

³² 18 U.S.C.A. §1590.

³³ 18 U.S.C.A. § 1591.

means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

Cooperation is determined by whether the applicant complied with reasonable requests for assistance from law enforcement in the investigation or prosecution of the acts of trafficking. Reasonableness of the request depends upon the “totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, traumatization (both mental and physical), and the age and maturity of young victims.”³⁴

Liability: The department will decide to sign a Declaration at its own discretion. There is no penalty or liability for endorsing or not endorsing a victim on an I-914B Declaration Form. The certifying official and the department are not liable for the future acts of a victim should they choose to partake in the endorsement process.³⁵ If an individual is later determined to not be a victim or subsequently refuses to cooperate, law enforcement may withdraw previously signed declarations at any time.³⁶

³⁴ 8 C.F.R. § 214.11(a).

³⁵ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Criminal Activities 1* (October 22, 2011), available at: <http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISQAforLawEnforcements.pdf>

³⁶ Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement 4-5*, available at: <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>; see also Department of Homeland Security, *Blue Campaign: Law Enforcement Discussion of Immigration Relief* (April 2013), available at: <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

APPENDIX C: SAMPLE QUESTIONS FOR IDENTIFYING A TRAFFICKED/ENSLAVED PERSON

Developed by VIDA Legal Assistance (June, 2011)

Recruitment

- Was the victim recruited by someone?
- What kind of job abroad was offered to the victim?
- How much money was promised to the victim and by whom?
- Did the victim sign a contract? What were the terms of the contract?
- Was the victim sold? By whom?

Migration

- Was the victim kidnapped or coerced into migration? How?
- How did the victim obtain documents?
- Which documents were obtained?
- How did the victim travel to the U.S.?
- Was a fee paid for organizing the victim's migration? By whom and to whom?

Arrival

- Did the victim have control over his/her identity documents?
- What happened to the victim's identification documents after arrival?
- Did the employer/trafficker use the victim's identity for another purpose?

Working conditions

- Was the victim placed into debt bondage? By whom?
- Were working conditions different than what the victims expected? How?
- Was the victim's movement restricted? How?
- Was the victim living and working at the same place?
- Was the victim chaperoned, guarded, incarcerated?
- Was the victim paid and at what rate?
- How many hours a day did the victim work? Time off? Allowed to rest if sick?
- Was the victim allowed to communicate with family members? Other workers? Make friends?
- Was the victim able to quit working for the employer and get a job somewhere else?

What strategies were used to coerce the victim? (One or all may apply.)

Physical Coercion

- Was the victim subjected to pinching, hitting, slapping, punching, kicking, shaking, etc?
- Was the victim subjected to sexual assault, rape, sexual harassment/abuse?
- Was the victim subjected to torture, beatings or other physical violence?
- Was the victim subjected to incarceration, imprisoned or physically isolated? How?
- Was the victim denied medical care, food, clothes and other basic necessities?
- Did the victim attempt to escape from her traffickers? Why?

Coercion, Force, and/or Fraud

- Was the victim placed into debt bondage?
- Was the victim subjected to threats of physical abuse, harm or retaliation?
- Were others abused in front of victim?
- Were the victim's family members threatened? How?
- Threats to report victim to authorities for deportation/jail?
- Was the victim verbally abused, humiliated or degraded?
- Did the victim ask their employer if they could leave? Why? Why not? What happened?

SCREENING TOOLS

Department of Homeland Security Infographic³⁷⁷

The Department of Homeland Security (“DHS”) released an infographic detailing the protections afforded to immigrant victims. This interactive infographic describes qualifications and benefits for each form of immigration relief designed to help immigrant victims. When you click on each form of relief, a link takes you to a DHS webpage with further information, brochures, and application forms.

This tool should be available to law enforcement officials to assist officers in identifying victims eligible for immigration protections and informing victims about legal protections available to them. The following pages contain the infographic in both English and Spanish.

NIWAP’s Blue Card

Screening for Victims Who Qualify for Immigration Protective Relief³⁷⁸

Immigration protective relief is an important tool for community policing that strengthens the ability of law enforcement agencies to detect, investigate, prosecute, and solve cases of domestic violence, sexual assault, trafficking, and other types of criminal activity. Without adequate language assistance, many immigrant victims cannot obtain police protection, obtain emergency medical assistance, or give law enforcement officers crucial information. The following pages include a blue card that can be used as a checklist to screen for potential immigration relief and language issues.

³⁷⁷ Department of Homeland Security, “Protections for Immigrant Victims,” *available at* <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>. Available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁷⁸ National Immigrant Women’s Advocacy Project, “Screening for Victims Who Qualify for Immigration Protective Relief,” *available at* <http://niwaplibrary.wcl.american.edu/pubs/squadcarscreeningbluecard/>.

PROTECTIONS FOR IMMIGRANT VICTIMS

CONSIDERATIONS

- ▶ Must be in the US on account of the trafficking
- ▶ Law enforcement certification is encouraged but not required



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS
Form I-914

T VISA

For victims of trafficking

CONSIDERATIONS

- ▶ Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

To apply:
USCIS
Form I-360

VAWA

For victims of Domestic Violence married to US citizens or permanent residents

CONSIDERATIONS

- ▶ Qualifying crime must be in the US or have violated US law
- ▶ Must have law enforcement certification

To apply:
USCIS
Form I-918

U VISA

For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in particular social group



If approved, benefit provides:

1. Asylee status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS or
Immigration
Judge
Form I-589

ASYLUM

For victims of persecution

SIJS

Special Immigrant Juvenile Status for child victims

To apply:
USCIS
Form I-360



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must have juvenile court order
- ▶ For victims of abuse, abandonment, or neglect by one or both parents

CONTINUED PRESENCE

For victims of trafficking

To apply:
ICE - Federal law enforcement must seek this protection for you



If approved, benefit provides:

1. Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
2. Work authorization
3. Access to federal social services benefits

CONSIDERATIONS

- ▶ Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
- ▶ Law enforcement support is required

Screening for Victims Who Qualify for Immigration Protective Relief Eligibility Questions for Protective Relief (March 2, 2018)

By: Rocio Molina, Lauren Dudley, Emily McCabe, Jennifer Johnson, and Leslye Orloff

Immigration protective relief is an important tool for community policing that strengthens the ability of law enforcement agencies to detect, investigate, prosecute, and solve cases of domestic violence, sexual assault, trafficking, and other types of criminal activity. Without adequate language assistance, many immigrant victims cannot obtain police protection, obtain emergency medical assistance, or give police crucial information. Use this card as a checklist to screen for potential immigration relief and language issues.

VAWA Self-Petitions (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the victim married to a U.S. citizen or lawful permanent resident and living with his/her spouse, *or*
 - Is the victim divorced from a U.S. citizen or lawful permanent resident spouse within the last two years, *or*
 - Is the victim the child of a U.S. citizen or lawful permanent resident, *or*
 - Is the victim the parent of an adult U.S. citizen son or daughter?
- Has the victim been a victim of battery or extreme cruelty?
- Has the victim resided with the abuser?
- Does the victim have good moral character?

VAWA Cancellation of Removal (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the abuser a current or former spouse who is a U.S. citizen or lawful permanent resident, *or*
 - Is the abuser a citizen or lawful permanent resident parent or step parent if they are under the age of 21, *or*
 - Is the abuser a citizen or lawful permanent resident the other biological or step-parent of the victim's abused child?
- Is the victim currently in deportation or removal proceedings?
- Has the victim lived continuously in the U.S. for at least five years?
- Has the victim been physically hurt or suffered extreme cruelty? Where did the abuse occur?
- What would happen to the victim and his/her child if the victim were deported?

Battered Spouse Waiver (domestic violence victim)

- What is the victim's relationship to the abuser?
 - Is the victim a battered immigrant married to a U.S. citizen spouse?
 - Is the victim a battered immigrant victim divorced from a U.S. citizen spouse?
- Was the victim battered or subjected to extreme cruelty by the citizen spouse?
- Does the victim have a lawful permanent residency card "green card" that ends 2 years after it was issued?

Law Enforcement's Role

Inform the victim that he/she can file for full lawful permanent residency without the abuser's knowledge or help

T Visa (trafficking victim)

- Is the individual a victim of a severe form of trafficking in persons?
- Is the victim physically present in the United States on account of the trafficking?
- Has the victim complied with any reasonable requests for assistance in the investigation or prosecution?, *or*
 - Is the victim under the age of 18?
- Victim would suffer extreme hardship involving unusual or severe harm if removed from the United States

Law Enforcement's Role

- *Identify the victim*
- *Describe the severe form(s) of human trafficking the victim was subject to:*
 - *Sex trafficking by force fraud or coercion, sex trafficking of a minor, or*
 - *Labor trafficking by force fraud or coercion*
- *Describe victim cooperation*
- *Determine if any family members were implicated in the crime*

U Visa (crime victim)

- Has the victim been a victim of a qualifying criminal activity (listed below)? Did the criminal activity violate a U.S. law?
- Has the victim suffered substantial physical or mental abuse as a result of the criminal activity?
- Does the victim possess information about the qualifying criminal activity?

Helpfulness of the victim...

- Is the victim being helpful? , *or*
- Has the victim been helpful? *or*
- Is the victim likely to be helpful?

Helpfulness in regards to the...

- Detection, *or*
- Investigation, *or*
- Prosecution of the qualifying criminal activity

Qualifying Criminal Activities of the U Visa

Rape	Prostitution	Abduction	Manslaughter
Torture	Female genital mutilation	Peonage	Murder
Trafficking	Involuntary servitude	False Imprisonment	Felonious assault
Incest	Slave trade	Blackmail	Witness tampering
Domestic violence	Being held hostage	Fraud in Foreign Labor	Obstruction of justice
Sexual assault	Kidnapping	Contracting	Abduction
Stalking		Extortion	Perjury

And Attempt, threats, conspiracy or solicitation to commit any of these crimes

Law Enforcement's Role

- *Identify that criminal activity occurred*
- *Identify the victim or indirect victim*
- *Note injuries observed, if any*
- *Determine helpfulness of the victim*
- *Determine if any family members were implicated in the crime*

Language Access

- Does the individual speak English?
- Does the individual have a limited ability to read, write, speak or understand English?

Law Enforcement's Role

- *Identify whether the victim is in need of language assistance by asking open-ended questions and questions that require an opinion*
- *Determine what language is needed using the "I Speak" cards*
- *Find an interpreter, or provide the victim with the phone number for the language lines*
- *If you choose to use an interpreter at the scene, make sure the interpreter is not:*
 - *A child or family friend*
 - *A family member of the victim or the perpetrator/primary aggressor*
 - *The perpetrator or primary aggressor*
 - *The interpreter used by the perpetrator/primary aggressor*

Special Immigrant Juvenile Status (abused, abandoned or neglected child)

- Is the individual under the age of 18 or 21 (depending on state's legal definition of "child")?
- Is the individual unmarried?
- Is he or she the victim of abuse, abandonment or neglect by one or both parents?
- Would it be against the best interest of the child to be reunited with the abusive or neglectful parent?

For Additional Resources or Technical Assistance contact the National Immigrant Women's Advocacy Project at 202-274-4457 or info@niwap.org. DHS Blue Campaign information on human trafficking is available at www.uscis.gov/humantrafficking. DHS Infographic - <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> and DHS U and T Visa Resource Guide <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

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Department of Homeland Security Brochures and Pamphlets

The Department of Homeland Security has developed a series of documents and brochures that will assist immigrant victims and law enforcement officers to understand the rights to which victims are entitled. Victims of trafficking can find information about their rights at <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>.

The following pages include the DHS brochure on “Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others,”³⁷⁹ and a document entitled “Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know.”³⁸⁰ The first two documents are available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁷⁹ DEP’T OF HOMELAND SECURITY, *Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others*, available at <http://library.niwap.org/wp-content/uploads/2015/CULT-Bro-DHSEnglishImmOptionsVictimsofCrime.pdf>. Available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

³⁸⁰ DEP’T OF HOMELAND SECURITY, *Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know*, available at <http://niwaplibrary.wcl.american.edu/pubs/domestic-violence-international-marriage-broker-regulation-act-dhs-brochure-law-enforcement-victim-advocates/>.



Victims are not required to be in legal immigration status, but they must:

- Be a victim of a severe form of trafficking in persons.
- Be physically present in the United States on account of the trafficking.
- Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18), and
- Suffer extreme hardship involving unusual and severe harm if removed from the United States.

To apply for a T Nonimmigrant status, applicants must file form I-914, Application for T Nonimmigrant Status. Qualifying family members may also be eligible to apply for benefits.

Many immigrants are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime. Officials such as police officers, healthcare providers, judges, and prosecutors are often the first



to see the signs of violence and are therefore in a unique position to provide information and assistance to those who have been victims. This brochure is designed to assist front-line workers in this endeavor.



U.S. law provides several protections for legal and undocumented immigrants who have been victims of a crime. Often victims are unaware of such protections, thus frontline workers serve as a critical link for immigrant victims. There are specific protections for victims of domestic violence, victims of certain crimes, and victims of human trafficking.

All agencies within the Department of Homeland Security (DHS), including USCIS, are legally prohibited from disclosing that a victim has applied for VAWA, T, or U immigration benefits.

Visit the "Humanitarian" section of the USCIS website
www.uscis.gov

Law Enforcement Officials and Representatives of Record
 contact USCIS at **1 802 527 4888**
 All others should call **1 800 375 5283**



Immigration Options for Victims of Crimes
 Information for Law Enforcement, Healthcare Providers, and Others

Violence Against Women Act
 U Nonimmigrant Status
 T Nonimmigrant Status



#-779 (02/19)

Violence Against Women Act

(VAWA) Self-Petitioners



Some immigrants may be afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

Victims of domestic violence who are the child, parent, or current/former spouse of a United States citizen or a permanent resident (green card holder) and are abused by the citizen or permanent resident may be eligible to apply for a green card themselves without needing the abuser to file for immigration benefits on their behalf. This provision of the law was created under the Violence Against Women Act (VAWA).

Victims must establish that they:

- Have or had a qualifying relationship with the abuser spouse, or, are the parent or child of the abuser.
- Reside or resided with the abuser.
- Have good moral character, and
- Have been victims of battery or extreme cruelty.

VAWA provisions apply equally to men and women. Victims of domestic violence, whether a spouse, child, or parent of the abuser, may self-petition by filing Form I-360, Petition for Widow(er)s, Amerasians, and Special Immigrants. This form is available on USCIS' website, www.uscis.gov.

U Nonimmigrant Status

U nonimmigrant status (or U visa) offers immigration protection for victims and is also a tool for law enforcement. To obtain U status, the victim must obtain a certification from law enforcement, however, law enforcement officials should note that providing a certification does not grant a benefit—only USCIS has the authority to grant or deny this benefit.

Victims are not required to be in legal immigration status, but they must:

- Be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime.
- Possess credible and reliable information about the qualifying criminal activity.
- Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity, and
- Be a victim of criminal activity that violated a U.S. law.



Victims of the following crimes may be eligible for a U nonimmigrant visa:

Abduction	Manslaughter
Abusive Sexual Contact	Rape
Blackmail	Murder
Domestic Violence	Obstruction of Justice
Extortion	Witness Tampering
False Imprisonment	Prostitution
Female Genital Mutilation	Sexual Assault
Perjury	Slave Trade
Religious Assault	Torture
Hostage Taken	Trafficking
Incest	Sexual Exploitation
Peonage	Unlawful Criminal Restraint
Involuntary Servitude	Other Related Crimes
Kidnapping	

To apply for U nonimmigrant status, the victim must file Form I-918, Petition for U Nonimmigrant Status. Law enforcement official must certify Form I-918. Supplement B, Qualifying family members may also be eligible to apply for benefits.

Visit the "Humanitarian" section of the USCIS website www.uscis.gov

Law Enforcement Officials and Representatives of Record contact USCIS at **1 802 527 4898**
All others should call **1 800 375 5283**



T Nonimmigrant Status

Trafficking in persons—also known as "human trafficking"—is a form of modern-day slavery. Traffickers prey on many types of people, often including individuals who are poor, unemployed, underemployed, or who lack the safety and protection of strong social networks. Victims are often lured under the false pretenses of good jobs and better lives, and then forced to work under brutal and inhumane conditions. Many believe that human trafficking is a problem that only occurs in other countries—but human trafficking also happens in the United States.

The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who assist law enforcement in the investigation and prosecution of human trafficking cases.

Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose: Immigrants are particularly vulnerable because many do not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This pamphlet will explain domestic violence and inform you of your legal rights in the United States. The International Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiancé(e)s and spouses immigrating to the United States information about their legal rights as well as criminal or domestic violence histories of their U.S. citizen fiancé(e)s and spouses. One of IMBRA's goals is to provide accurate information to immigrating fiancé(e)s and spouses about the immigration process and how to access help if their relationship becomes abusive.

What is domestic violence?
Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), economic and/or immigration related threats. While most recorded

incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. Child abuse includes: physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, or immigration status) are guaranteed protection from abuse under the law. Any victim of domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?

- All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:
- The right to obtain a protection order for you and your child(ren).
 - The right to legal separation or divorce without the consent of your spouse.
 - The right to share certain marital property.
- In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of

children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer who works with immigrants to discuss how any of these family law options may affect or assist you.

Under U.S. law any crime victim, regardless of immigration or citizenship status, can call the police for help or obtain a protection order.

Call police at 911 if you or your child(ren) are in danger. The police may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police about any abuse that has happened, even in the past, and show any injuries. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence you can apply to a court for a protection order. A court-issued protection order or restraining order may prohibit your abuser from calling, contacting, approaching, or harming you, your child(ren), or other family members. If your abuser violates the protection order, you can contact the police, who may arrest the abuser. Applications for protection orders are available at most courthouses, police stations, women's shelters, and legal service offices.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer; the right to not answer questions without a lawyer present; the right to speak in your defense. It is important to talk with both an immigration lawyer and a criminal lawyer.

What services are available to victims of domestic violence and sexual assault in the United States?
In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.

The national telephone numbers or "hotlines" listed below have operators trained to help victims 24 hours a day free of charge. Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.adph.org

National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN)
1-800-656-HOPE (1-800-656-4673)
www.rainn.org

National Center for Missing and Exploited Children
1-800-THE-LOST (1-800-843-5678)
www.missingkids.com

The National Center for Victims of Crime
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.nccvc.org

NOTE: These are organizations whose primary mission is safety and protection.

If I am a victim of domestic violence, sexual assault, or other crime, what immigration options are available to me?

There are three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren). A victim's application is confidential and no one, including an abuser, crime perpetrator or family member, will be told that you applied.

- Self-petitions for legal status under the Violence Against Women Act (VAWA)
- Cancellation of removal under VAWA
- U-nonimmigrant status (crimes victims)

These immigration benefits each have specific requirements that must be established. Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration benefits may affect or assist you.

How does the marriage-based immigration process work?

The marriage-based immigration process involves several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. These steps depend on the type of marriage-based visa you travel on to the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

K-1 nonimmigrant status (as the fiancé(e) of a United States citizen): You are required to either marry the United States citizen within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen fiancé(e) who petitioned for you, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident. You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

K-3 nonimmigrant status (as the spouse of a United States citizen): You are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (I-130). Once the I-130 is approved, you are entitled to lawful permanent

residence (green card) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at <http://www.uscis.gov>.

What are the penalties for marriage fraud?

Immigrants who commit marriage fraud may be subject to removal proceedings and may be barred from receiving future immigration benefits in the United States. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency).

If I am married to a U.S. citizen who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive conditional residence status from USCIS. Ninety (90) days before the second anniversary of your conditional residence, you and your spouse generally must apply together to remove the conditions on your lawful residence. To do so, you must prove the marriage is in "good faith" and valid. Once the conditions are removed, you have permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

There are three situations when the law allows conditional residents the option to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions. 1) The removal of the conditional resident from the U.S. would result in extreme hardship; OR 2) The marriage was legally terminated, other than by death, and the applicant was not at fault for failing to file a timely application to remove the conditional basis of his or her status.

OR 3) During the marriage the U.S. citizen or lawful permanent resident spouse subjected the conditional resident to battery or extreme cruelty. All three waivers are filed on Form I-751 and require you to prove your marriage was in "good faith" and not fraudulent.

What other ways does the U.S. government try to inform foreign fiancés and spouses about their rights and protect them and their children from abuse?

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends to escape violence at home.

IMBRA required this pamphlet be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prevents U.S. citizens from sponsoring multiple visas for foreign fiancé(e)s if they have a history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

How does the U.S. government regulate "International Marriage Brokers"?

If an agency qualifies as an "international marriage broker," it is required to give you background information on the U.S. client who wants to contact you, including information contained in Federal and State sex offender public registries, and get your written permission before giving the U.S. client your contact information. The agency is required to give you a copy of this pamphlet. It is prohibited from doing business with you if you are under 18 years of age.

Visit our internet website at:
<http://www.uscis.gov>



Can I rely on the criminal background information on my U.S. citizen fiancée or spouse?
The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information you receive may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(s) and spouses. Ultimately you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancées or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation including human trafficking can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts.

Help regarding human trafficking may be found at:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours a day, 7 days a week)
www.acf.hhs.gov/trafficking

Human Trafficking and Worker Exploitation Task Force Hotline, U.S. Department of Justice
1-888-428-7581
(Monday - Friday, 9am to 5pm)
www.usdoj.gov/crt/impwrt/jobp

More information can be found at our website or by calling the toll free number listed below.

USCIS General Information
In the United States, telephone toll free to:
1-800-870-3676 or



The United States
Department of Justice

Questions to Ask Domestic Violence Victims Who Emigrated to the United States to Join Their Fiancé(e) or Spouse

How did you first meet or speak with your fiancé(e)/spouse (for ease of reference, "fiancé")? Did anyone arrange your introduction? If so, who?

Did this person or entity require you or your fiancé to pay a fee for the introduction/matchmaking service?

Could you tell me more about this person or entity (for ease of reference, "matchmaking service")? Was the matchmaking service affiliated with a religious or cultural organization?

How old were you when the matchmaking service introduced you to your fiancé?

Did the matchmaking service attempt to verify your age? Did it ask for any documentation concerning your age?

How did you learn about the matchmaking service? How did you communicate with it?

What is the contact information for the matchmaking service?

Did it ask for permission to share your contact information with your fiancé before you met or spoke with your fiancé for the first time? Did you provide your permission in writing?

Did you receive any background information about your fiancé before you met or spoke for the first time?

Did the matchmaking service inform you of its obligation to search the National Sex Offender Public Website and determine whether that website contains any information regarding your fiancé?

Did this person or entity provide you any documents or other information concerning its search of the sex offender website?

Did the matchmaking service provide you with any information about or copies of police or court records concerning:

- Temporary restraining or civil protection orders?
- Arrests or convictions for assault, battery, homicide, manslaughter, or murder?
- Domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect?
- Torture, human trafficking, holding hostage, involuntary servitude or slavery?
- Kidnapping, abduction, unlawful criminal restraint, false imprisonment or stalking?
- Prostitution?
- Alcohol or drug abuse?

Did you receive any information about your U.S. fiancé(e) or spouse's:

- Prior marriages?
- Prior efforts to obtain visas for other fiancé(e)s or spouses?
- Children under the age of 18?
- Prior states or countries of residence?

Did you receive this pamphlet from the matchmaking service? <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011>

Suspicion? Concern? Question? Notify us immediately!

If the answers to any of these questions suggest that an IMB made an introduction and failed to satisfy the requirements identified in this pamphlet, notify us immediately.



United States
Department of Justice

Office of the Associate Attorney General

950 Pennsylvania Avenue NW

Washington, DC 20530

Phone: 202-514-9500

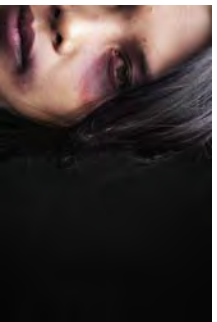
E-mail: IMBRA.Questions@usdoj.gov

Domestic Violence and the International Marriage Broker Regulation Act:

What Every Law Enforcement Officer and Domestic Violence Advocate Should Know



This is Lana.



Lana is a 28 year old domestic violence victim.* In the course of interviewing Lana you learn that she is originally from South Asia. You also learn that Lana met her fiancé through an international matchmaking agency that recruits South Asian women interested in meeting men in the United States and markets its matchmaking services over the internet. Lana tells you that she emigrated to the United States to join her fiancé — now her batterer and spouse — here. Interesting background information, you think, but does it bear on your investigation or analysis of her domestic violence case? *It should.*

The International Marriage Broker Regulation Act (IMBRA)

IMBRA, 8 U.S.C. §1375a, regulates individuals and companies who charge fees for facilitating introductions between U.S. citizens, nationals, or green card holders (together, “U.S. clients”) and foreign nationals. IMBRA created certain disclosure requirements for international marriage brokers (“IMBs”) and their U.S. clients, and the failure of either to abide by those requirements may give rise to federal civil and/or criminal liability in addition to any other federal or state law charges relating to Lana’s case.

What is an IMB?

IMBs include individuals, businesses, companies, or other legal entities that charge fees for providing dating, matrimonial or matchmaking services, or social referrals (collectively, “matchmaking services”) by sharing personal contact information or otherwise introducing or facilitating communication between U.S. clients and foreign nationals. (IMBs do not include: (1) non-profit cultural or religious organizations providing matchmaking services; or (2) persons or entities who do not provide these services as their principal business and whose rates and services are the same regardless of the client’s gender or country of citizenship.)

How does IMBRA regulate IMBs?

IMBRA regulates IMBs and U.S. clients in several different ways. Among other things, the law:

- Prohibits IMBs from conducting business with any individual under the age of 18;
- Requires IMBs to search the National Sex Offender Public Website for the names of U.S. clients;
- Obligates IMBs to collect certain background information from their U.S. clients (including, among other things, information about arrests or convictions for assault, battery, domestic violence, murder, prostitution, rape, and sexual assault, as well as civil protection orders);
- Requires IMBs to provide foreign nationals with the results of the sex offender website search, the background information, and a pamphlet including information about domestic violence, sexual assault, and child abuse; the legal rights of immi-

- grant victims of these crimes; and a warning about the use of fiancé(e) and spouse visas by U.S. citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes;
- Demands that IMBs obtain the foreign national’s written consent to release his or her contact information to the U.S. client *before* the IMB shares that information with the U.S. client; and
- Creates civil and/or criminal penalties for IMBs and U.S. clients who fail to abide by their disclosure obligations.

How will I know if an IMB was involved in a particular case?

Discerning an IMB’s involvement in a domestic violence case involving a foreign national may be challenging. Some domestic violence victims may be reluctant to acknowledge that they relied on an intermediary for an introduction; others may have been coached by an IMB to avoid disclosing that fact; still others may not know what an IMB is or understand the legal requirements attaching to IMBs. On the back of this pamphlet you will find a list of questions to ask domestic violence victims who are foreign nationals. If the answers to any of these questions suggest that an IMB was involved and failed to satisfy the requirements identified in this pamphlet, contact us today.



*United States
Department of Justice*

Office of the Associate Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530
Phone: 202-514-9500
Email: IMBRA.Questions@usdoj.gov

*Lana is a fictional character used for illustrative purposes only.

TRAINING MATERIALS FOR PROSECUTORS AND LAW ENFORCEMENT³⁸¹

Last updated: October 2, 2020

If you are a law enforcement officer, prosecutor, or a victim advocate or other staff working for a law enforcement or prosecution agency and are working with immigrant victims and you would like to receive case specific technical assistance on immigration protections for immigrant survivors of domestic and sexual violence victims and their children, please call NIWAP for [technical assistance](#). (202) 274-4457 or email us at info@niwap.org.

NIWAP offers roundtables exclusively for officials and staff working for law enforcement and prosecution agencies to sign up go to

<https://secure.campaigner.com/CSB/Public/Form.aspx?fid=1682905&ac=fohe>

NIWAP's roundtables are led by law enforcement and prosecutor faculty, offer an opportunity for peer to peer learning, can be joined on-line or by conference call, and provide ongoing training and technical assistance to officers and staff at law enforcement and prosecution agencies. When you sign up you choose the list exclusively open to staff working at law enforcement and prosecution agencies. You can also elect to sign up for NIWAP's general outreach list to receive notices of trainings, webinars, new materials, resources and policies. More tools for law enforcement and prosecution agencies are available in NIWAP's web library <http://niwaplibrary.wcl.american.edu/training-materials-prosecutors>

Webinars

- In Accordance with the Law: When Your Victim Witness Speaks Limited English <http://niwap.wpengine.com/in-accordance-lep-nov19>
- U Visa: Overview of Certification Presented by Investigator Michael LaRiviere, Salem Police Department
 - *In order to reach this module you will need to sign-in for free access to course* <https://pbtraining.org/course/u-visa-overview-of-certification/>
- The U Visa as a Crime-Fighting Tool: How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions <http://niwap.wpengine.com/u-visa-2020>
- Battered Women's Justice Program (BWJP) Assessing Helpfulness for Immigrant Crime Victims <http://niwap.wpengine.com/april-10-2015-assessing-helpfulness-bwjp/>
- DHS U and T Visa Training Videos <http://niwap.wpengine.com/dhs-roll-call-videos/>

³⁸¹ This materials list includes publications issued by government agencies and materials produced by NIWAP in collaboration with national experts. Each of the materials included in this list developed with support from government funders contains government agency disclaimers.

- Lessons Learned from Law Enforcement: How Collaborations That Result in U Visa Certifications Support Safer Communities <http://niwap.wpengine.com/lessons-learned-from-le-webinar/>
- Law Enforcement and Advocates Partnering to Better Serve Immigrant Crime Victims <http://niwap.wpengine.com/webinar-law-enforcement-collaboration/>
- Law Enforcement Use of the U Visa (Podcast) <http://niwap.wpengine.com/uvisa-podcast-bja/>
- An Introduction to Law Enforcement Use of the U-Visa <http://niwap.wpengine.com/uvisa-intro-webinar-bja/>

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516>
- DHS Brochure: Immigration Options for Victims of Crime <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>
- Multilingual Materials for Victims and Advocates <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>
- Pathways to Immigration Relief for Students <http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigration-protections/>
- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa <http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>
- Immigration Relief for Abused Children http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure

Prosecutor's Tools Enhancing Work With Immigrant Crime Victims

- What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>
- VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-vawa-confidentiality-tool-final-7-24-17/>
- Certifying Early: When Should You Sign a U or T Visa Certification for a Victim? <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>
- Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law <http://niwaplibrary.wcl.american.edu/pubs/quick-reference-guide-for-prosecutors-u-visa-and-vawa-confidentiality/>

- Family Court Bench Card on VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality>

VAWA Confidentiality

- VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2.23.17)
<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>
- Three Prongs of VAWA Confidentiality <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality/>
- Chapter 3 of Empowering Survivors: VAWA Confidentiality, History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections
<http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>
- Utilizing VAWA Confidentiality Protections in Family Court Proceedings**
<https://www.civicrosearchinstitute.com/online/article.php?pid=6&iid=1270>
- VAWA Self-Petitioning Timeline with Background Checks
<http://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19/>
- Quick Reference Guide for Judges: VAWA Confidentiality & Discovery Related Case Law
<http://niwaplibrary.wcl.american.edu/pubs/judges-vawa-confidentiality-cases-and-discovery/>
- VAWA Confidentiality Protections, Courthouse Enforcement, and Sensitive Locations Policies at a Glance <http://niwaplibrary.wcl.american.edu/pubs/vawa-protections-in-state-courts-and-cases/>
- Quick reference: VAWA Confidentiality Protections - Quoting Statutes Regulations and Department of Homeland Security Policies
<http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-vawa-confidentiality-protections-3-29-19/>

U and T Visas

- DHS: U and T Visa Law Enforcement Resource Guide
<http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>
- U-Visa Toolkit for Law Enforcement Agencies and Prosecutors
<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors>
- International Association of Chiefs of Police (IACP) 2018 Resolution on Education and Awareness of U and T Visa Certifications <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations/>
- Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations
<http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/>
- Discussion Paper for Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations
<http://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016/>

- USCIS U Visa Certification Factsheet Q&A
<http://niwaplibrary.wcl.american.edu/pubs/imm-relief-victims-trafficking-and-other>
- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- U-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/uvisaflowchart/>
- T-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/t-visa-application-flowchart>
- U-Visa Family Member Sponsors <http://niwaplibrary.wcl.american.edu/pubs/u-visa-family-member>
- T-Visa Family Member Sponsors <http://niwaplibrary.wcl.american.edu/pubs/t-visa-family-member>
- DHS Policy Answers to Law Enforcement Reasons for Not Certifying
<http://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying>
- U Visa News Articles <http://niwaplibrary.wcl.american.edu/pubs/uvisa-news-articles/>
- U-Visa Checklist: "Helpfulness" <http://niwaplibrary.wcl.american.edu/pubs/uvisa-helpfulness-chcklist>
- Glossary of Terms <http://niwaplibrary.wcl.american.edu/pubs/imm-tools-bjaglossaryofterms>
- U Visa Certifications: Range of Potential Certifiers
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-fcertifiers>
- U-Visa Legal Advocacy: Overview of Effective Policies and Practices
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>
- Press Release on the U Visa – Template
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-policedeptstraining>
- U Visa Resource List <http://niwaplibrary.wcl.american.edu/pubs/resource-list-with-logo>
- U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (2017)
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates>
- Sample Questions for Identifying a Trafficked/Enslaved Person
<http://niwaplibrary.wcl.american.edu/pubs/questions-for-identifying-trafficked-or-enslaved-persons/>
- Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations
<http://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>
- 2017 New U and T Visa Application and Certification Forms (January and February 2017)
<http://niwaplibrary.wcl.american.edu/2017-u-cert-forms/>
- U Visa Timeline with Background Checks <http://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline/>
- Tip Sheet for Courts Developing U Visa Certification Protocols
<http://niwaplibrary.wcl.american.edu/wp-content/uploads/Tips-for-Courts-U-Visa-Cert-Protocols-Policies.pdf>

- T Visa Timeline with Background Checks <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline/>

Forms

- DHS: Instructions for Form I-914, Supplement B
<http://niwaplibrary.wcl.american.edu/pubs/i-916-supplement-b-instructions>
- DHS: Form I-914, Supplement B for T visa Endorsement
<http://niwaplibrary.wcl.american.edu/pubs/i-914-supplement-b-instructions>
- DHS: Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/i918-supb-certification>
- DHS: Instructions for Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/instructions-i1918-unonimm-status>

U Visa as a Crime-fighting Tool

- Stories From the Field: The Crime Fighting Effectiveness of the U Visa (August 27, 2020)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>
- The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials - Views from Around the Country <http://niwaplibrary.wcl.american.edu/pubs/uvisa-crime-fighting-tool>
- Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims (Police Chief Magazine April 2018)
<http://niwaplibrary.wcl.american.edu/pubs/policechief april-2018 building-trust-immigrant-victims/>
- Protecting Our Communities and Officer Safety
<http://niwaplibrary.wcl.american.edu/pubs/may june sheriff>
- COPS Dispatch Article: The U visa: An important tool for Community Policing
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-community-policing-tool/>
- How Law Enforcement Is Using the U-Visa Practice Brief
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-uvisapracticebrief-10-11>
- State U Visa Certification Laws <http://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws/>
- U and T Visa Certifications and Certification Reporting Requirements in California:
<https://niwaplibrary.wcl.american.edu/pubs/ca-t-u-reporting-requirements>
- Bench Card: U and T Visa Certification Reporting Requirements in California:
<https://niwaplibrary.wcl.american.edu/pubs/ca-bench-card-u-t-reporting>

Forms of Immigration Relief

- Bench Card: Overview of Types of Immigration Status
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstatustypes>

- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims <http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>
- Blue Card: Screening for Victims Who Qualify for Immigration Protective Relief (Squad Car Screening Tool) <http://niwaplibrary.wcl.american.edu/pubs/screening-tool-victims-qualify>
- Prosecutorial Discretion: Certain Victim, Witnesses and Plaintiffs <http://niwaplibrary.wcl.american.edu/pubs/discretion-victims-witnesses-plaintiffs/>

Screening Tools and Collaboration

- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the US and Facts about Immigrating on a Marriage-based Vis <http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>
- **Brochure: Continued Presence & Temporary Immigration Status for Victims of Human Trafficking** <http://niwaplibrary.wcl.american.edu/pubs/continued-presence-temp-imm-status>
- Immigrant and LEP Victims' Access to the Criminal Justice System <http://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims>
- U Visa Legal Advocacy: Overview of Effective Policies and Practices <http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief>
- Building Trusting Relationships: A Guide for Advocates/Attorneys Working with Law Enforcement (LE) on U-Visa Certification Issues (Flow Chart) <http://niwaplibrary.wcl.american.edu/pubs/advocate-law-enforcement-guide>
- Comparison Chart of U visa, T Visa, Violence Against Women Act (VAWA) Self-Petition, Special Immigrant Juvenile Status (SIJS), and Deferred Action for Childhood Arrivals (DACA) <http://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca/>

Language Access

- Code of Conduct for Court Interpreters- Washington State Interpreters Program <http://niwaplibrary.wcl.american.edu/pubs/lang-lawpol-interconductcode1986/>
- Questions to Use for Crime Scene Identification of LEP <http://niwaplibrary.wcl.american.edu/pubs/crime-scene-identification-of-lep-persons>
- Dos and Don'ts to Help Identify LEP Persons <http://niwaplibrary.wcl.american.edu/pubs/dos-and-donts-to-identify-lep-persons>
- Language Identification Card - DeKalb County Magistrate Court's Compliance Project, Caminar Latino, Men Stopping Violence, Raksha, Inc, Tapestri, Inc, and Women's Resource Center to End Domestic Violence <http://niwaplibrary.wcl.american.edu/pubs/language-id-card-19010116-raksha-pdf/>
- Laws Governing Law Enforcement Agency Provision of Language Assistance to LEP Persons <http://niwaplibrary.wcl.american.edu/pubs/laws-governing-langauge-access>
- Important Tips to Remember When Using an Interpreter <http://niwaplibrary.wcl.american.edu/pubs/interpretation-tips>

- NAJIT Code of Ethics and Professional Responsibilities
<http://niwaplibrary.wcl.american.edu/pubs/najitcodeofethicsfinal>
- U.S. Department of Justice Sample Limited English Proficiency Guidelines from Office of Justice Programs “Center City Police Department”
<http://niwaplibrary.wcl.american.edu/pubs/sample-limited-english-proficiency-guidelines-from-the-office-of-justice-programs>
- Steps for Obtaining Interpreter <http://niwaplibrary.wcl.american.edu/pubs/step-for-obtaining-interpreters>
- Tips for Working Effectively with Telephone Interpreters
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-workingwithtelephoneinterp>
- Are you Compliant with Title VI Self-Assessment Tool
<http://niwaplibrary.wcl.american.edu/pubs/self-assessment-tool-title-vi>
- Why Using an Interpreter is Beneficial to Law Enforcement
<http://niwaplibrary.wcl.american.edu/pubs/law-enforcement-benefits-of-qualified-interpreters>
- DOJ Letter to State Chief Justices and State Court Administrators on Access for Limited English Proficient Persons to State Court Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter>
- Judicial Bench Card for Court Interpretation
<http://niwaplibrary.wcl.american.edu/pubs/ncsc-bench-card-language-access>
- Serving Limited English Proficient Immigrant Victims**
<https://www.civicrosearchinstitute.com/online/article.php?pid=6&iid=12699>

VAWA Self-Petition [keep]

- VAWA Self-Petitioning Flow Chart for Child Applicants
<http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-elder-abuse-flow-chart-6-17-19-pdf/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-flow-chart-for-adults-6-17-19-pdf/>
- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2/>
- VAWA Self-Petitioning Introduction and Flow Charts
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioning-intro-and-flow-charts-pdf/>

Public Benefits

- State by State Demographics
<http://niwaplibrary.wcl.american.edu/demographics/>

- State by State Public Benefits Charts <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>
- Interactive State Benefits Map <http://map.niwap.org/>
- Guide to the Public Benefits Map <http://niwaplibrary.wcl.american.edu/guide-to-public-benefits-map/>
- Privacy Protections for Immigrants Applying for Public Benefits <http://niwaplibrary.wcl.american.edu/pubs/privacy-protections-reporting-and-public-benefits/>
- Anti-Discrimination Provisions That Apply to Programs Receiving Federal Funding Services Victims of Violence Against Women Crimes <http://niwaplibrary.wcl.american.edu/pubs/pb-tool-antidiscrimlaws/>
- Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status <http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants/>

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Collection of News Articles³⁸²

Last updated: August 28, 2020

The following news articles are provided as references that may assist law enforcement, prosecutors, and judges to better understand the importance of the U visa program and 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: <https://leb.fbi.gov/2009-pdfs/leb-october-2009/view>

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 regarding the U-visa.

2. Ivie, Stacey; LaRiviere, Michael; Flores, Antonio, Orloff, Leslye E., and Ammar Nawal H. “Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims” (2018). Available at:

https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims

3. 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.cleveland.com/opinion/index.ssf/2010/03/city_of_cleveland_takes_import.html

In this article, the City of Cleveland’s efforts to expand the use of the U-visa are

³⁸² This project was supported by Grant Nos. 2015-TA-AX-K043 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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chronicled, including working with the Cleveland Police Department to issue a U-visa protocol.

4. Toral, Almudena. "Visas Out of Hell: Women Need to Know They Exist." WeNews (2010). Available at: <http://womensenews.org/story/100302/visas-out-hell-women-need-know-they-exist#.UlwpqBZ8JII>

This article highlights the story of Graciela Beines, a victim of crime, and how assistance that 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.

5. 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.

6. Ellison, Katherine, A Special Visa Program Benefits Abused Illegal Immigrants, N.Y. TIMES (Jan. 8, 2010)

<http://www.nytimes.com/2010/01/08/us/08sfimmigrant.html?pagewanted=all>

("... police certification of the visas was a powerful tool in creating bonds among wary residents who have long been the silent victims of a range of crimes, like the robberies of illegal immigrants known on the streets as 'amigo checkings.'").

7. Berestein Rojas, Leslie. *When Immigrants Are Crime Victims, How Much Does Legal Status Matter?*, MULTI-AMERICAN (Feb. 7, 2012),

<http://www.scpr.org/blogs/multiamerican/2012/02/07/8051/when-immigrants-are-crime-victims-how-much-does-le/>.

8. Wallace, Ava. *As Demand for U Visa Grows, Visa's Future for Abused Women Uncertain*, IMMIGRANT CONNECT: CHICAGO (Dec. 9, 2012),

<http://www.immigrantconnect.org/2012/12/09/as-demand-for-u-visa-grows-visas-future-uncertain/>.

9. Castellanos, Sara. *Cops Without Borders: Keeping the Peace With Illegal Immigrants*, AURORA SENTINEL (July 3, 2013), <http://www.aurorasentinel.com/news/cops-without-borders-keeping-the-peace-with-illegal-immigrants/>.
10. Kelley, Jeremy P. *Dayton Aims to Help Illegal Immigrant Crime Victims*, DAYTON DAILY NEWS (Feb. 14, 2013), <http://www.daytondailynews.com/news/news/dayton-aims-to-help-illegal-immigrant-crime-victim/nWPPx/>.
11. Anderson, Lindsey. *Special Report: DC Stalemate Leaves Too Few Visas for Crime Victims*, LAS CRUCES SUN-NEWS (June 8, 2013), <http://nmindepth.com/2013/06/08/dc-stalemate-leaves-too-few-visas-for-crime-victims/>
12. Walter, Shoshana. *U Visa Aids Immigrant Crime Victims*, SAN FRANCISCO CHRONICLE (Oct. 30, 2012), <http://www.sfgate.com/bayarea/article/U-visa-aids-immigrant-crime-victims-3994601.php>.
13. Casey, Chris. *Shut Out: An In-Depth Look at U-Visas*, GREELEY TRIBUNE <https://immigrationintheheartland.wordpress.com/2010-conference/projects/chris-casey/>
14. Collins, Erin. *Refuge from Violence: Minnesota Lawyers Help Immigrant Crime Victims Find Safe Harbor*, TWIN CITIES DAILY PLANET (July 8, 2013), <https://www.tcdailyplanet.net/refuge-violence-minnesota-lawyers-help-immigrant-crime-victims-find-safe-harbor/>
15. Macchi, Victoria. *Undocumented Immigrants Allowed to Stay in Collier as Crime Victims, Witnesses*, NAPLES NEWS (Nov. 25, 2012), <http://archive.naplesnews.com/community/undocumented-immigrants-allowed-to-stay-in-collier-as-crime-victims-witnesses-ep-385768381-331579421.html/>
16. McEnroe, Paul. *Protecting Illegal Immigrants to Catch Criminals*, STAR TRIBUNE (Oct. 27, 2011), <http://mexicanexpulsions.blogspot.com.ar/2011/10/protecting-illegal-immigrants-to-catch.html>
17. Meltzer, Erica, Boulder DA Stan Garnett Takes a Stand on Crimes Against Immigrants, DAILY CAMERA (Oct. 16, 2011), <http://www.dailycamera.com/boulder->

[county-news/ci_19121370](#) (“Garnett said he believes more cases are being reported since his office actively reached out to groups that work with immigrant communities.”).

18. Howard, Willie, Lake Worth Liaison Builds Trust Between City’s Immigrants, Law Officers, PALM BEACH POST(March 11, 2012), <http://www.palmbeachpost.com/news/lake-worth-liaison-builds-trust-between-city-immigrants-law-officers/X11TOPX0MrZ7HP4xP11UPI/> (“Benito Gaspar [Community Outreach Liaison] has been working for nearly two years to build trust between the city's immigrants and the Palm Beach County Sheriff's Office. . . . Calls to Crime Stoppers from Lake Worth increased 25 percent last year compared with 2010, which the sheriff's office attributes in part to Gaspar's efforts.”).

19. Abernathy, Michael, U visas Gaining Prominence, TIMES-NEWS (December 30, 2011), <http://www.alipac.us/f12/u-visas-gaining-prominence-246800/>

20. “The ‘U’ Visa for Victims of a Crime in the United States”

<http://sethilawgroup.com/u-visa-victims-crime-united-states/>

This article discusses how the U visa is an effective tool for law enforcement and, despite the unsettling number of applicants awaiting the visa, it is an opportunity that immigrant victims should take advantage of.

21. How Law Enforcement is Using the U-Visa (October 2011).

https://storage.googleapis.com/vera-web-assets/downloads/Publications/how-law-enforcement-is-using-the-u-visa/legacy_downloads/U-visa-practice-brief.pdf

This article describes what a U-visa is; how it is used, including barriers within it; and how it has been successful in the past.

22. Solis, Gustavo, U Visa Data Give Glimpse into Local Law Enforcement-Immigrant Relationship, USA TODAY (Feb 8, 2017)

<https://www.usatoday.com/story/news/nation-now/2017/02/08/u-visa-immigrant-police-relationship/97666590/>

This article goes over the use of the U-visa in California, including its demand and signs of success.

23. Myers, Randy, U Visa Allows Undocumented Domestic-Violence Victims Work Permits

<https://search.proquest.com/docview/456945587/51387E1A93074A58PQ/1?accountid=8285>

This article tells the story of an immigrant woman who experienced domestic abuse, but now lives in a calmer environment and is seeking to spread the word about the U Visa so that other undocumented immigrant victims can reap its benefits.

24. Morrissey, Kate, Immigration Status Can Make Matters Worse for Domestic Violence Victims (January 27, 2017).

<http://www.sandiegouniontribune.com/news/immigration/sd-me-domestic-violence-20170107-story.html>

This article details the story of a woman who experienced domestic violence for many years and was eventually picked up by ICE officers for her immigration status, but avoided deportation by applying for the U-Visa

25. LaRiviere, Michael P; Guthman, Nick; Anver, Benich, PROTECTING OUR COMMUNITIES AND OFFICER SAFETY (May/June 2016)

<https://search.proquest.com/docview/1924840182/D6323CBD77DF4AB2PQ/4?accountid=8285>

This article discusses how the U visa can help law enforcement learn about and prosecute criminals, bringing about more safety for all members of the community.

26. Madrid-Crost, Mary Carmen, U Visas Available for Out-of-Status Immigrants in US Who Are Victims of Certain Crimes (April 9, 2014).

<http://globalnation.inquirer.net/101829/u-visas-available-for-out-of-status-immigrants-in-us-who-are-victims-of-certain-crimes>

Upon describing what a U visa is and how one can qualify for it, this article describes successful U Visa cases, including a woman who was robbed by three armed men. It also describes how the U visa can help foreign workers in a scenario that is far too common—where they are forced into debt, are stuck with a job with sporadic hours, low wages, and cramped housing conditions.

27. U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants.

http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_jun_ug.pdf (“A number of police departments have found that their role in making such certifications helps them to build trust in immigrant communities”)

28. Newton, Noelle, Travis County Sheriff Educates Immigrant Community on U Visa Program <http://www.fox7austin.com/news/local-news/travis-county-sheriff-educates-immigrant-community-on-u-visa-program> (“If a victim or witness doesn't come forth, that means a suspect or a defendant runs free and so that has an impact on all of us because if they've harmed one person, and they're not held accountable then all of us...you, me, everyone could be the next victim.”)

29. Guidos, Rhina, Visa Helps Noncitizens Who Are Victims of Crime Stay in the U.S., The Salt Lake Tribune (July 11, 2004).
<https://search.proquest.com/docview/281951854/53520B877A214B6FPQ/19?accountid=8285> This article describes the story of a woman who has received a work permit while waiting for her U-visa to be processed, which has helped her to support her two young daughter.

30. Rodrigues, Rafaela; Husain, Alina, Couture-Carron, Amanda et. al., *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 2018) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>