

U VISA CERTIFICATION
and
T VISA DECLARATION
TOOLKIT
for
ADULT PROTECTIVE SERVICES

**By Leslye Orloff, National Immigrant Women’s Advocacy Project, American University,
Washington College of Law¹,**

**Rocio Molina, National Immigrant Women’s Advocacy Project, American University,
Washington College of Law,**

Maria Jose Fletcher, VIDA Legal Assistance,

Linda Dawson, National Clearinghouse on Abuse in Later Life (NCALL),

**Carolyn S. Ronis, LL.M. Candidate, American University, Washington College of Law,
and**

**Aditi Kumar and Hannah Bridges, Dean’s Fellows, American University,
Washington College of Law**

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TABLE OF CONTENTS

*Enhancing Access To Relief In Adult Immigrant Communities: The Impact Of The U And T Visas
Adult Protective Services Certification*..... 6

 Introduction..... 6

Overview of Immigration Relief and Benefits for Immigrant Victims 12

 VAWA Self-Petitioners..... 16

 Special Immigrant Juvenile Status (SIJS) 21

*The U Visa: A Significant Form of Relief for Abused Immigrant Elders and Persons with
Disabilities* 23

 Overview of the U Visa..... 23

 Eligibility for a U Visa 24

 The U Visa Certification Requirement..... 25

 Criminal Activities 25

 Evaluating Helpfulness..... 27

 Incapacity or Incompetence..... 30

 Law Enforcement Investigation or Successful Prosecution Is Not a Prerequisite to Granting
 U Visa..... 32

The T Visa: A Significant Form of Relief for Adult Victims of Human Trafficking..... 32

 Overview of the T Visa 32

 Eligibility for a T Visa..... 33

 The T Visa Declaration..... 34

 Victimization 35

 Evaluating Assistance..... 36

 Who Can Provide The T Visa Declaration? 37

Adult Protective Services, U Visa Certifications, and T Visa Declaration 39

 APS Staff and Certification Authority..... 40

 Best Practices for APS Workers..... 40

Benefits of the U and T Visas and Applications for Lawful Permanent Residency 42

 Family Members and Deferred Action 42

 Applying for Lawful Permanent Residency: U Visa..... 44

 Applying for Lawful Permanent Residency: T Visa 45

Public Benefits Access for VAWA, T and U Visa Applicant and Recipient Victims of Elder Abuse or Abuse of Adults with Disabilities	45
<i>The U and T Visa Application Process</i>	48
U Visa Quick Reference For Law Enforcement, Prosecutors, & Adult Protective Services	51
U Visa Statutory and Regulatory Background.....	58
T Visa Quick Reference for Law Enforcement, Prosecutors, & Adult Protective Services..	61
T Visa Statutory and Regulatory Background	67
<i>U Visa Certification and T Visa Declaration By Adult Protective Services: Frequently Asked Questions</i>	70
U-Visa: “Helpfulness” Checklist	90
Appendix A: VAWA Self-Petitioning Eligibility Flow Chart for Abused Elders, Vulnerable or Disabled Adults.....	101
Appendix B: VAWA Self-Petitioning Flow Chart for Adults.....	102
Appendix C: U Visa: Protections for Family Members.....	103
Appendix D: T Visa Protections for Family Members	104
Appendix E: Access to Federal and State Public Benefits for U Visa Victims	105
Appendix F: Access to Federal and State Public Benefits for Victims of Human Trafficking ..	106
Appendix G: Access to Federal and State Public Benefits for VAWA Battered Immigrant Spouses and Children of U.S. Citizens or Lawful Permanent Residents	107
Appendix H: U-Visa Application Victim Flow Chart	108
Appendix I: T Visa Application Victim Flow Chart	109
Appendix J: 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).....	110
Appendix K: Comparison Chart of VAWA and U visa Immigration Relief.....	128
Appendix L: U Visa, T Visa, and VAWA Timelines with Background Checks.....	134
Appendix M: I-918, Supplement B, U Visa Certification: Instructions, Template, and Sample	137
Appendix N: I-914, Supplement B, T Visa Certification: Instructions, Template, and Sample	153
Appendix O: Sample Designee Letter	164
Appendix P: Sample U and T Visa Certification.....	165
Appendix Q: Sample Outreach Flyer.....	167
Appendix R: Resource List and Training Materials for Adult Protective Services.....	169
Appendix S: Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations.....	179
Appendix T: Discussion Paper for Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking.....	191

Appendix U: Screening Tools..... 206
Appendix V: Department of Homeland Security Brochures and Pamphlets..... 210
Appendix W: 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..... 214

Enhancing Access To Relief In Adult Immigrant Communities: The Impact Of The U and T Visas Adult Protective Services Certification

Introduction

As the older adult and immigrant populations increase, elder abuse and other crimes against vulnerable persons,² including older adults and persons with disabilities, are also on the rise. It is estimated that nearly 14% of the U.S. population in 2019 were foreign born, almost 17% of which was comprised of foreign born persons who were 65 years of age or older.³ It is important that professionals working with aging adults utilize all the tools available to understand best practices for how to detect and investigate elder abuse experienced by older immigrants.⁴ This will ultimately improve the quality of life and build trust among older and vulnerable adults. Older adult immigrants are particularly vulnerable in abusive encounters due to potential cultural, faith, and language barriers, as well as reduced access to public benefit programs. An adult immigrant's ability to access state or federally funded public benefits [e.g. Medicare, SSI, Public or Assisted Housing, Food Stamps (SNAP)] can be quite limited compared to U.S. citizens. Access will depend on:

- Whether and what type of immigration status they have or for which form of immigration status they have filed an application or are eligible to receive;
- Whether they first entered the United States before or after 8/22/96;
- What state they reside in; and
- What type of public benefits program or services it would be beneficial for them to access.

There are a wide range of federally and state funded programs that assist people who are older adults and/or are victims⁵ of crime and are open to all persons without regard to immigration status.⁶ Most immigrant adults who are victims of elder abuse, neglect, or

² References in this toolkit to “older adults and persons with disabilities” will include vulnerable adults. The definition of who constitutes a “vulnerable adult” varies from state to state, but most states generally define a vulnerable adult as an individual over the age of 18 who has a disability or impairment that affects their ability to function. Therefore, references to “older adults and persons with disabilities” will capture this population. *See State Elder Abuse Statutes*, Dep’t of Justice: Equal Justice Initiative (last visited April 10, 2023), available at <https://www.justice.gov/elderjustice/elder-justice-statutes-0>.

³ *State Immigration Data Profiles*, Migration Policy Institute (last visited Feb. 15, 2023), available at <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

⁴ This toolkit uses the term “immigrant” to refer to any person who was born outside of the United States without regard to their immigration or citizenship status in the United States. Immigrants may be naturalized citizens or noncitizens. Noncitizens include lawful permanent residents, visa holders, and temporary and undocumented immigrants.

⁵ In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions.

⁶ Catherine Longville & Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status* (July 23, 2015), available at <http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants/>.

exploitation will be eligible for one or more forms of immigration relief based on that victimization. Victims with pending crime victim or abuse-based immigration cases receive forms of protection against deportation that become stronger as their case moves through the immigration adjudication process. Within 3 months to 5 years of filing for crime victim based immigration relief, most immigrant victims will be granted legal work authorization, which leads to eligibility for a federally recognized state-issued ID and/or driver's license. As older or vulnerable adult immigrant victims file for legal immigration status, their ability to access state and federal public benefits expands.

Since access to federal and state public benefits and services varies by state and public benefits program type, Adult Protective Services (APS) staff will need to use NIWAP's public benefit map⁷ to screen victims to determine which state or federal public benefits the individual immigrant victim they are working with qualifies for in their state. If the public benefits map indicates that the immigrant may be eligible, APS staff should then turn to the public benefits state-by-state charts⁸ to find the specific qualifications and the state and federal law and website citations that support the immigrant's eligibility. APS staff can also utilize a guide for how to use the benefits map and charts⁹ when working with an individual immigrant victim.

To obtain assistance from programs that are state and federally funded public benefits programs, the immigrant victim will have to provide proof of identity and immigration status eligibility. This generally requires that the immigrant have a valid driver's license, state issued identification card, or a passport. To prove immigration status eligibility, immigrants will need to provide documentation from the Department of Homeland Security (DHS), which can include an employment authorization document.

Culture and faith can affect how older and vulnerable adults perceive abuse and seek help.¹⁰ Accordingly, culture, language access, economic status, and ability can also affect how professionals engage, assess, and intervene to offer help.¹¹ By providing U and T visa certification, professionals working in APS agencies add to the ways they can assist vulnerable adult victims of criminal activities, such as elder abuse,¹² neglect, and exploitation (including but not limited to domestic violence, stalking, sexual assault, and human trafficking).

⁷ *Interactive Public Benefits Map*, available at <http://niwaplibrary.wcl.american.edu/interactive-public-benefits-map/>.

⁸ *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

⁹ *Guide-to-the-Public-Benefits-Map* (Oct. 9, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/guide-to-the-public-benefits-map>.

¹⁰ *Mistreatment of Asian Pacific Islander (API) Elders*, National Center on Elder Abuse (last visited Feb. 15, 2023), available at [https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-\(API\)-Elders-\(2013\).pdf](https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-(API)-Elders-(2013).pdf).

¹¹ *Mistreatment of Asian Pacific Islander (API) Elders*, National Center on Elder Abuse (last visited Feb. 15, 2023), available at [https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-\(API\)-Elders-\(2013\).pdf](https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-(API)-Elders-(2013).pdf).

¹² "The term 'abuse of vulnerable or elder adults' refers to any physical, sexual or psychological abuse, neglect, abandonment, or financial exploitation of an older person either within a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability (US DOJ, 2013)."

In many cultures, the family or group is emphasized over the individual. Older adult immigrants often reside with families and rely on them for long-term care. Familialism, which emphasizes the needs of the family over the needs of the individual, can affect an older adult's willingness to admit abuse or seek help.¹³ Often times fear of separation from their abusive spouse or family and uncertainty can cause older and vulnerable adults to remain in an abusive home. A study by the National Center on Elder Abuse found that undocumented Latinx individuals are less likely to report abuse for fear of deportation of themselves or family members.¹⁴

The Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) provide a variety of forms of immigration relief that can help older and vulnerable adult victims overcome barriers to attaining legal immigration status and obtaining protection from deportation.¹⁵ The Department of Homeland Security (DHS) also prioritizes protection from deportation, detention, and removal for crime victims, witnesses, victims seeking protection from the courts, and participants in investigations by state and federal agencies, including APS, police, and prosecutors.¹⁶ Many immigrant elder abuse victims are victims of domestic violence, sexual assault, battering, extreme cruelty, or human trafficking perpetrated by their U.S. citizen or lawful permanent resident spouse, former spouse, child, or step-child. Others will be victims of abuse perpetrated by their over 21-year-old son, son-in-law, daughter, or daughter-in-law. When the perpetrator of abuse has one of these relationships to the immigrant victim, the older adult victim may qualify to file a VAWA self-petition.

For immigrant victims of abuse, neglect, or exploitation whose perpetrators do not fall into one of the categories listed above, Congress created another remedy called the U visa, which provides immigration relief to victims of a range of criminal activities perpetrated against immigrant victims. The U visa statute authorizes federal, state, and local law enforcement agencies, prosecutors, and other government authorities to provide certifications for victims filing U visa applications.¹⁷ This includes agencies with investigative jurisdiction in their

¹³ *Mistreatment of Asian Pacific Islander (API) Elders*, National Center on Elder Abuse (last visited Feb. 15, 2023), available at [https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-\(API\)-Elders-\(2013\).pdf](https://ncea.acl.gov/NCEA/media/publications/Mistreatment-of-Asian-Pacific-Islander-(API)-Elders-(2013).pdf).

¹⁴ *Determining Prevalence and Correlates of Elder Abuse Using Promotores: Low-Income Immigrant Latinos Report High Rates of Abuse and Neglect*, National Center on Elder Abuse (last visited Feb. 1, 2023), available at http://www.centeronelderabuse.org/docs/NCEAResearchTranslation_PromotoresLowIncomeLatinoElders.pdf.

¹⁵ The Department of Homeland Security has developed a brochure that is available in multiple languages that provides an overview of immigration options for crime victims. The National Immigrant Women's Advocacy Project (NIWAP) amplified this brochure to provide basic information on two additional forms of relief designed to help immigrant children. These forms of relief help immigrant children including those being raised by their grandparents or other extended family members. These brochures are available at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title> (last visited Feb. 1, 2023).

¹⁶ *Dep't of Homeland Security (DHS) Immigration Policies Released in 2021 and 2022: That Are Important for Immigrant Survivors* (May 17, 2022), available at <https://niwaplibrary.wcl.american.edu/dhspoliciesreleased>; see also Executive Order 14012, 86 Fed. Reg. 8277, 8278 (Feb. 5, 2021).

¹⁷ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1); see also, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement* 9, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

respective areas of expertise, including but not limited to APS, Child Protective Services (CPS), the Equal Employment Opportunity Commission, and Federal and State Departments of Labor.¹⁸

APS staff are often among the first to respond to assist immigrant victims of crime. APS staff have firsthand knowledge of a victim's helpfulness in reporting a criminal activity and participating in any subsequent investigations by APS, law enforcement, and other government entities. APS staff, therefore, are well positioned to identify immigrant crime victims who qualify for immigration protections, provide U and T visa certifications, and verify a victim's helpfulness in the detection or investigation of qualifying criminal activity. In addition to being a tool for immigrant victims of crime, family violence, and human trafficking, the U and T visas also serve as a tool for APS to foster trusting and lasting relationships with local immigrant populations. As immigrant adult victims of abuse and exploitation apply for victim-based immigration relief, the APS workers who serve these individuals can provide assistance and services throughout the process, contributing to more successful outcomes for APS and the vulnerable adults they serve. Already overworked APS workers are not expected to become experts in the U and T visa application or certification process. NIWAP is readily available to you and can provide technical assistance along the way.¹⁹

Although this toolkit focuses on the U and T visas, it will introduce you to other options which may be available to immigrant adults that APS staff encounter in their work. Having an awareness of these options can help APS identify the best options available for immigrant victims your agency serves and can improve your agency's reputation among immigrant populations in your communities. This can improve detection, investigation, and case outcomes for older and vulnerable immigrant adults who are victims of abuse, neglect, and/or exploitation. These options will be discussed below in the Public Benefits Section of this Toolkit and more detailed information can be found in NIWAP's immigration remedies comparison chart²⁰ and Public Benefits Bench Cards.²¹

¹⁸ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1); *see also*, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement* 9, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

¹⁹ NIWAP Technical assistance available at niwap@wcl.american.edu; 202-274-4457; additional information is available on our website at: www.wcl.american.edu/niwap and our web-library at: <http://niwaplibrary.wcl.american.edu/>.

²⁰ Leslye E. Orloff et al., *Comparing Forms of Immigration Relief for Immigrant Victims of Crime* (September 21, 2017), available at <http://niwaplibrary.wcl.american.edu/pubs/imm-relief-forms-comparison/>.

²¹ Daniel Enos et. al., *Bench Card on Immigrant Crime Victim's and Immigrant Children's Access to Public Benefits and Services* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits>; Jordan Tacher et. al., *U Visa Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>; Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>; Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>; Jordan Tacher & Leslye Orloff, *Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services* (Apr. 17, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits>. A more detailed comparison of forms of immigration relief is available at <https://niwaplibrary.wcl.american.edu/pubs/imm-relief-forms-comparison> (last visited Feb. 1, 2023).

Detained Parents

APS workers may find themselves working with adult parents who are detained by or who are at risk of being detained by Immigration & Customs Enforcement (ICE). It is important for APS workers to understand the rights of detained parents and their children in order to provide important information to ICE that can influence the ICE decision about whether or not to detain a parent or guardian of a minor child.²² ICE has an obligation under U.S. immigration laws and policies to:

“ensure that the agency’s civil immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children and incapacitated adults...”²³

Under ICE policies, ICE enforcement officials are required to inquire at their first encounter with a noncitizen about the noncitizen’s status as a parent or legal guardian of a minor child or incapacitated adult. ICE is also required to continue to make these inquiries during all future encounters with the immigrant.²⁴ When a parent or guardian is identified as a primary caretaker or custodian of a child or incapacitated adult, or is a person with a direct interest in a state court proceeding regarding a child or incapacitated adult, that information must be recorded in the immigrant’s case file. This information must also be reported up the chain of command at ICE to the highest ranking official in the ICE field office.²⁵

These requirements help ICE officials identify and consider an immigrant’s status as a primary caregiver for children or an incapacitated adult and exercise ICE’s prosecutorial discretion on the immigrant’s behalf. There are many scenarios where the parents or legal guardians of children and incapacitated adults, particularly those who are or have been involved in family court proceedings, are immigrants, but will not be at risk of detention because they are not an ICE enforcement priority. Under DHS policies, noncitizens who are primary caregivers of children or incapacitated adults are generally considered a low priority for removal.

The ICE Parental-Guardian Interests Directive applies to immigrant parents and guardians only in the “limited circumstances in which detention is appropriate,” which are cases that fall under one of the Department of Homeland Security’s three civil immigration enforcement priorities. These three priorities are when the noncitizen is a:²⁶

- 1) Threat to national security;²⁷

²² <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>

²³ <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court> p 1

²⁴ <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court> p 5

²⁵ <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court> p 2

²⁶ See Memorandum from Alejandro N. Mayorkas, Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/mayorkas-civil-imm-guide-sept-21>.

²⁷ DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges (December 27, 2021) p. 5

<https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“A noncitizen who engaged in or is suspected of terrorism or espionage, or terrorism-related or espionage-related activities; or who otherwise poses a danger to national security, is a priority for apprehension and removal.”)

- 2) Threat to border security;²⁸ or
- 3) Threat to public safety.²⁹

It is important that APS staff are aware that victimization by crime or abuse of the immigrant parent, immigrant guardian, or their child also prevents detention, deportation, and other forms of civil immigration enforcement as part of the ICE policies on a victim-centered approach.³⁰ To understand whether a party in a case is an enforcement priority and therefore at risk of detention, this publication should be read in conjunction with the NIWAP publication on enforcement priorities.³¹

APS can play an important role when immigrant parents are detained, including helping secure the parent's attendance at court proceedings involving their children³² and helping facilitate visitation with the child client and making a determination as to whether and how to pursue SIJS for the immigrant child.³³ Under the 2022 ICE Detained Parents Directive, there are certain actions ICE must take in order to preserve the parental and/or guardianship rights of noncitizen parents and legal guardians:³⁴

- ICE must detain parents/guardians in the same place as the minor children if they were all in same initial area of apprehension;
- ICE must facilitate transportation for parents/guardians with active family court/child welfare/guardianship proceedings;
- ICE must facilitate regular visitation with the detained parents/guardians and the minor children; and

²⁸ DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges (December 27, 2021) p. 5

<https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“A noncitizen apprehended at the border or port of entry while attempting to unlawfully enter the United States; or a noncitizen apprehended in the United States after unlawfully entering after November 1, 2020; in cases concerning border security, there could be mitigating or extenuating facts and circumstances that militate in favor of declining enforcement action.”)

²⁹ DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges (December 27, 2021) p. 5

<https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard> (“noncitizen poses a current threat to public safety, typically because of serious criminal conduct. Whether a noncitizen poses a current threat to public safety requires an assessment of the individual and the totality of the facts and circumstances. In reevaluating whether a noncitizen currently “poses a threat to public safety” requires an assessment of the individual and the totality of the facts and circumstances and consideration of both aggravating and mitigating factors. DHS personnel should, to the fullest extent possible, obtain and review the entire criminal and administrative record and other investigative information to learn of the totality of the facts and circumstances of the conduct at issue.”)

³⁰ ICE Directive 11005.3 – Using a Victim-Centered Approach with Noncitizen Crime Victims (August 10, 2021) <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>

³¹ DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges (December 27, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard>

³² <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>

³³ U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

³⁴ U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

- When the detainees are the parents/guardians of a U.S. citizen child, ICE must conduct outreach to a local child protection agency if no other arrangements can be made. **Under no circumstances can ICE take a U.S. citizen child into custody.**³⁵

APS staff should be aware of these directives in order to advocate for the child victim and ensure family unity. ICE also created a fact sheet for child welfare and guardianship stakeholders containing best practices for how to effectively realize the directives outlined above.³⁶

Overview of Immigration Relief and Benefits for Immigrant Victims³⁷

This section provides an overview of the range of immigration remedies an adult victim of elder abuse, neglect, or exploitation may qualify to receive. Although this toolkit focuses primarily on the U and T visas and U and T visa certification, it is important for APS workers to be able to identify the full range of immigration options a victim may be eligible to receive. Some forms of immigration relief come with greater and swifter access to federal and state funded public benefits, work authorization, and protection from deportation.

The beginning of this toolkit will walk you through resources such as the VAWA self-petition. Many elder abuse victims will be victims of family violence. In your work with immigrant elder abuse and vulnerable adult immigrant victims, you may find that significant numbers will qualify for relief under VAWA self-petitioning laws. If the perpetrator of the abuse is a spouse or former spouse who is a U.S. citizen or lawful permanent resident, the primary form of immigration relief the victim will be eligible to receive is the VAWA self-petition. Elder abuse victims whose perpetrators are their U.S. citizen over 21 year old son, daughter, son-in-law, or daughter-in-law would also qualify to self-petition. Self-petitioning brings more access to state and federal public benefits than the U visa for crime victims. Some older or vulnerable adults that APS is working with may be the beneficiaries on their spouse's, children's, or parent's immigration application. In cases where those family members have status, the family member may be using immigration related abuse power and coercive control tactics as part of the pattern of abuse.³⁸

³⁵ This includes placing the minor children in an ICE vehicle while they are awaiting the arrival of a third party. U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* at 6 n.5 (July 14, 2022), available at <https://www.ice.gov/detain/parental-interest>.

³⁶ U.S. Immigration & Customs Enforcement, *Fact Sheet for Child Welfare & Guardianship Stakeholders: ICE Policies and Standards Related to Detained Parents & Legal Guardians* (Oct. 2022), available at <https://www.ice.gov/doclib/detention-reform/pdf/factSheetDetainedParentsChildWelfareStakeholders.pdf>.

³⁷ Leslye E. Orloff et al., *Comparing Forms of Immigration Relief for Immigrant Victims of Crime* (September 21, 2017), available at <http://niwaplibrary.wcl.american.edu/pubs/imm-relief-forms-comparison/> (comparing application requirements, protections available, access to work authorization, benefits access and protection from deportation for each of the forms of immigration relief available to immigrant adults who are victims of battering, extreme cruelty, elder abuse, abuse of disabled or vulnerable adults and other U visa listed crimes).

³⁸ Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses* (Apr. 24, 2006), available at <https://niwaplibrary.wcl.american.edu/pubs/battered-immigrants-u-s-citizen-spouses>; Leslye Orloff & Olivia Garcia, *Immigrant Survivor's Experiences with Domestic Violence Chapter 01.1: Dynamics of Domestic Violence Experienced by Immigrant Victims* (July 31, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/cult-man-ch1-1-dynamicsdomesticviolence2016>.

T visa may become useful under circumstances where an older or vulnerable adult victim was a victim of sex or labor trafficking which often include cases in which the victims' family members are involved in the human trafficking. This can include when a mother-in-law is brought to the U.S. to care for grandchildren, her passport is taken by her son-in-law, and she is forced to work long hours without being paid.

Some other forms of relief are not as widely used for adult victims, but may become crucial in individual cases, particularly when older adult family members are caring for children who are their relatives. These include Deferred Action for Childhood Arrivals (DACA) relief and Special Immigrant Juvenile Status (SIJS). DACA relief and SIJS may become relevant if an older adult victim is a caregiver to a grandchild or a younger relative.

The next section of this Toolkit provides a brief overview of VAWA self-petitioning that will help APS workers screen for eligible older and vulnerable adult immigrants harmed by their citizen or lawful permanent resident family members. The concluding part of this section discusses help from the DACA and SIJS programs available to immigrant child family members that the APS adult client may be caring for when the children are also being abused or neglected. Following this overview of VAWA, DACA and SIJS this toolkit will provide a detailed description of the U and T visa programs and the important role state APS agencies play in signing U and T visa certifications needed for older and vulnerable adult victims' applications for immigration relief.

Adult Protective Services Screening Tool: Child Immigration Relief Eligibility³⁹

The following page contains a helpful guide for APS to utilize when screening adults for the various forms of immigration relief discussed in this toolkit.⁴⁰

³⁹ See Katelyn Deibler, Abigail Whitmore, and Leslye E. Orloff, *Bench Card – Identifying Victims Who May Qualify for Immigration Relief* (Mar. 9, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/https-niwaplibrary-wcl-american-edu-pubs-judges-immigration-relief-tool>; Kristina E. Szabo, Spencer Cantrell, Abigail Whitmore, and Leslye E. Orloff, *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)* (Dec. 30, 3031), available at <https://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca> (Note due to litigation, DACA renewals are being accepted but not new applications for DACA.)

⁴⁰ See also Katelyn Deibler, Abigail Whitmore, and Leslye E. Orloff, *Bench Card – Identifying Victims Who May Qualify for Immigration Relief* (Mar. 9, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/https-niwaplibrary-wcl-american-edu-pubs-judges-immigration-relief-tool>; Kristina E. Szabo, Spencer Cantrell, Abigail Whitmore, and Leslye E. Orloff, *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)* (Dec. 30, 3031), available at <https://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca> (Note due to litigation, DACA renewals are being accepted but not new applications for DACA.)

Eligibility Questions for Crime Victim Related Immigration Options

Immigration protective relief is an important tool that strengthens the ability of adult protective services 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 — is the victim:

- Married to a U.S. citizen or lawful permanent resident *or*
- Divorced from a U.S. citizen or lawful permanent resident spouse within the last two years *or*
- The child or stepchild of a U.S. citizen or lawful permanent resident *or*
- The parent or stepparent of an adult U.S. citizen son or daughter
- Has the victim resided with the abuser?
- Does the victim have good moral character?
- Has the victim or their child been a victim of battery or extreme cruelty (includes domestic violence, child, and elder abuse)?

VAWA Cancellation of Removal – is the victim:

- Currently in Deportation or Removal Proceedings?
- Lived continuously in the U.S. for at least three years?
- Has the victim or their child been a victim of battering or extreme cruelty (includes domestic violence child, and elder abuse)?
- What is the victim's relationship to the abuser:
 - Their current or former spouse who is a U.S. citizen or lawful permanent resident *or*
 - Their citizen or lawful permanent resident parent or stepparent if abused when under the age of 21
 - The citizen or lawful permanent resident other parent of the victim's abused child?
- Did the abuse occur in the United States?
- What would happen to the victim and their child if the victim were deported?

Battered Spouse Waiver

- Victim has a conditional permanent residency card "green card" that ends 2 years after it was issued
- Battered immigrant victim is married or divorced from a U.S. citizen or lawful permanent resident spouse
- Victim or the victim's child was battered or subjected to extreme cruelty by the citizen or permanent resident spouse

Adult Protective Services' Role

- Inform the victim that they can file for full lawful permanent residency without the abuser's knowledge or help and refer the victim to an agency with expertise on crime victim's immigration relief

U-Visa (Crime Victim):

- Applicant must be a victim of a qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the criminal activity;
- The criminal activity must have occurred in the U.S. or violated a U.S. law;
- The victim or the child's parent, guardian or next friend must possess information about the qualifying criminal activity;
- The victim is being, has been, or is likely to be helpful in the detection or, investigation or, prosecution or, conviction or, sentencing of the qualifying criminal activity.

QUALIFYING CRIMES

Abduction
 Abusive Sexual Contact
 Being held hostage
 Blackmail
 Domestic violence
 Extortion
 False Imprisonment
 Female genital mutilation
 Fraud in Foreign Labor Contacting
 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
 Similar crimes including e.g.
 Aggravated robbery
 Child/elder abuse
 Hate Crimes
 Video Voyeurism
 Attempt, threats, conspiracy or solicitation to commit any of these crimes

Adult Protective Services' Role

- Identify the criminal activity that occurred and the direct or indirect victim
- Note injuries observed, if any
- Determine the helpfulness of the victim
- Determine if any family members were implicated in the crime
- Sign the U visa certification

T-Visa (Trafficking victim): Victim is...

- A victim of a severe form of trafficking in persons
- Physically present in the United States on account of the trafficking
- Victim has complied with any reasonable requests for assistance in the investigation or prosecution (exemption if victim is under the age of 18; exception due to trauma suffered)
- Victim would suffer extreme hardship involving unusual or severe harm if removed from the United States

Adult Protective Services' Role

- Identify the victim
- Determine if the victim was subject to severe form(s) of human trafficking:
 - sex trafficking by force, fraud, or coercion, sex trafficking of a minor or
 - labor trafficking by force, fraud, or coercion
- Determine victim cooperation and if any family members were implicated in the crime
- Sign the T visa declaration
- Seek continued presence for trafficking victims
- Help connect the victim to legal services for assistance filing for a T visa

Special Immigrant Juvenile Status: A child victim who is a minor under state law and unmarried who...

- Suffered abuse, abandonment, neglect, or similar harm defined in state law
- Perpetrated by one of the child's parents
- Who receives a court order regarding the child's custody, care or placement with specific judicial determinations

Adult Protective Services' Role

- Determine whether the adult is caring for SIJS qualifying relatives, such as grandchildren
- Screen & identify immigrant children abused, abandoned, or neglected by one of their parents in U.S. or abroad
- Assist the child in obtaining SIJS judicial determinations from a state court

Language Access: A victim who...

- Does not speak English as their primary language, and
- Has a limited ability to read, write, speak or understand English

Adult Protective Services' Role

- Identify whether the victim is in need of language assistance by asking open-ended questions that require more than a yes or no response
- Determine what language is needed using the "I Speak" cards
- Locate a qualified interpreter to provide in-person, virtual, or telephonic interpretation
- Absent exigent circumstances that end once a crime scene has been secured do not use the following persons to interpret:
 - 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

For Additional Resources or Technical Assistance: Contact the National Immigrant Women's Advocacy Project, American University, Washington College of Law at 202-274-4457 or info@niwap.org.

For more information see DHS Blue Campaign, <https://www.dhs.gov/blue-campaign>.

VAWA Self-Petitioners

The most common forms of immigration relief available to the adults served by APS programs typically fall into two categories: VAWA self-petitioners and U visa victims.⁴¹ VAWA self-petitioning relief may be available to victims of domestic violence who are vulnerable, disabled,⁴² or older adults abused by their U.S. citizen or lawful permanent resident spouses or former spouses. Immigrant family violence victims abused by their over 21-year-old U.S. citizen natural, adopted, or step children will also be eligible to self-petition.⁴³ Finally, vulnerable, disabled, or older immigrants who are the natural, adopted, or step parent of an under 21-year-old child who is abused by the child's U.S. citizen or lawful permanent resident parent may also self-petition, regardless of whether the immigrant adult has also been abused.

Early screening of clients being served by APS agencies for immigration relief followed by referrals, certifications (where applicable) and support or assistance in filing for immigration remedies can result in protection from deportation, access to legal work authorization,⁴⁴ and enhanced access to publicly funded benefits for the APS agencies' older or vulnerable adult client.

It is important to be aware that prior to filing for any form of immigration relief discussed in this toolkit, immigrant victims and their children may qualify for certain benefits and publically funded services that are available to undocumented immigrants.⁴⁵ VAWA self-petitioners qualify for Victims of Crime Act (VOCA) crime victims' compensation if they meet state requirements. VOCA crime victim assistance is available to victims without regard to immigration status in all states except Alabama. All immigrant family violence victims are, if income-eligible, able to receive free legal representation from Legal Services Corporation⁴⁶ funded programs in addition to other free legal services programs that may be available in the victim's community or state.⁴⁷

Shortly after filing, VAWA self-petitioners become eligible as qualified immigrants for federal and state funded public benefits that can include public and assisted housing, educational

⁴¹ See *supra* page 111 for a chart comparing VAWA and the U visa.

⁴² This toolkit uses the term "adults with disabilities" rather than "disabled adult" in recognition of the growing trend towards utilizing "people-first language," which emphasizes the person, not the disability. See *Guidelines for Writing About People with Disabilities*, Americans with Disabilities Act National Network (last updated Mar. 2023), available at <https://adata.org/factsheet/ADANN-writing>; Labib Rahman, *Disability Language Guide*, Stanford Disability Initiative Board (July 2019), available at https://disability.stanford.edu/sites/g/files/sbiybj26391/files/media/file/disability-language-guide-stanford_1.pdf; *Disability-Inclusive Language Guidelines*, United Nations Office at Geneva (last visited Mar. 8, 2023), available at <https://www.ungeneva.org/en/disability-inclusive-language>.

⁴³ See 3 United States Citizenship & Immigration Services Policy Manual (hereinafter USCIS-PM) D.2(B)(4), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁴⁴ Employment work authorization is valid for applying for a Social Security Card.

⁴⁵ Daniel Enos et. al., *Bench Card on Immigrant Crime Victim's and Immigrant Children's Access to Public Benefits and Services* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits>.

⁴⁶ Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. § 104 (2005).

⁴⁷ For a list of legal services and victim advocacy programs with experience working with immigrant crime survivors see NIWAP's National Directory at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

grants and loans, and other public benefits. Access to federal means-tested public benefits is also available, but these programs impose a federal 5-year waiting period before the qualified immigrant client can access to these benefits. States have the option to provide state funded benefits to qualified immigrants during the 5-year waiting period. These benefits programs are TANF⁴⁸, SSI, Heating assistance, SNAP food assistance, SCHIP, Medicaid,⁴⁹ TANF funded child care, and adoption assistance.⁵⁰ Many states have opted to provide state funded access to TANF, Medicaid, and to a lesser extent food stamps and SSI during this 5 year wait for access to federally funded public benefits.⁵¹ Some states also provide childcare benefits to immigrant victims.⁵² For a detailed list of the state and federal public benefits and services APS immigrant clients are eligible to receive in your state, see NIWAP's *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*.⁵³ These tools will help APS workers screen for benefits eligibility in your state as well as download the legal citations that prove immigrant client eligibility.

In order to be eligible for VAWA self-petition, victims must establish that they:⁵⁴

1. Have or had a legal relationship with an abusive U.S. citizen spouse or former spouse (must file within 2 years of divorce);⁵⁵
2. Have or had a relationship as the parent or step-parent of an over 21-year-old U.S. citizen son, daughter, who was at least 21 years of age when the self-petition is filed (the child has to be a citizen and over the age of 21, **not** a lawful permanent resident);⁵⁶

⁴⁸ Benish Anver and Leslye E. Orloff, *Eligibility for state Funded TANF Replacement Programs for Immigrant Crime Victims* (Mar. 12, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-chart-tanf> (providing a list of states where TANF benefits are available).

⁴⁹ *Bench Card: VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>.

⁵⁰ TANF, SNAP, and Medicaid limited to qualified immigrants who entered before 8-22-1996, or those who have been qualified immigrants for more than 5 years. SSI available for those who were lawful permanent residents and were receiving SSI on 8-22-1996, or the immigrant, spouse, or parent had individually or collectively worked for 40 quarters.

⁵¹ An overview of state funded public benefits that VAWA self-petitioners are eligible to receive is available at <https://niwaplibrary.wcl.american.edu/benefits-map>.

⁵² Benish Anver & Leslye E. Orloff, *Immigrant Crime Victim Child Care Access* (Mar. 13, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access/Childcare-Chart.pdf/view>.

⁵³ *All State Public Benefits Charts and Interactive Public Benefits Map (2022)*, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

⁵⁴ Moira Fisher Preda et. al., *Chapter 03.3: Preparing the VAWA Self-Petition and Applying for Residence* (July 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

⁵⁵ See 3 USCIS-PM D.2(B)(2), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁵⁶ See 3 USCIS-PM D.2(B)(4), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>; Section 101(b)(1)(B) of the Immigration and National Act (Act), 8 U.S.C. §1101(b)(1)(b), defines “child” to include a “stepchild...provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.” The Act also defines “child” to include certain adopted children. INA 101(b)(1)(E), (F) and (G). Similarly, “parent,” “father,” and “mother” are defined in section 101(b)(2) to include stepparents and certain adoptive parents. An abused parent, stepparent, or adoptive parent of a U.S. citizen is therefore eligible to apply for VAWA relief pursuant to 201(a)(1)(A)(vii) provided that the self-petitioner is a

3. Are the parent of a former U.S. citizen son or daughter who
 - a. Lost or renounced citizenship within the two years prior to filing the self-petition as a result of an incident of domestic violence (at the time of the loss of citizenship, the son or daughter must have been at least 21 years of age);⁵⁷ or
 - b. Was at least 21 years of age and who died within two years prior to filing the self-petition;⁵⁸
4. Reside or have resided with the abusive spouse, son or daughter before or after the son or daughter turned age 21;⁵⁹
5. Have good moral character;⁶⁰ and
6. Have been victims of battery or extreme cruelty.⁶¹

DHS regulations define domestic violence under immigration law as battering or extreme cruelty. This immigration law definition of domestic or family violence applies as do all state law definitions of domestic/family violence, elder abuse and child abuse for all VAWA, U visa and SIJS immigration cases. The immigration law definition was first stated in the VAWA regulations preamble:

"[W]as battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), forced prostitution shall be considered acts of violence."⁶²

"The acts mentioned in this definition-rape, molestation, incest if the victim is a minor, and forced prostitution-will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence."⁶³

"parent" (as defined in section 101(b)(2)) and has or had a qualifying relationship to a U.S. citizen son or daughter. Additionally, the qualifying relationship must have been in existence at the time of the abuse and at the time of filing. It is important to note that if the perpetrator of the abuse is the son or daughter in law the older adult immigrant abuse victim would not be eligible to file a VAWA self-petition, but instead would be eligible to file for a U visa if the abuse they suffered is one of the forms of criminal activity listed in the U visa.

⁵⁷ See 3 USCIS-PM D.3(E), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁵⁸ See 3 USCIS-PM D.3(D)(1), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁵⁹ See 3 USCIS-PM D.2(F), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁶⁰ See 3 USCIS-PM D.2(G), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁶¹ See 3 USCIS-PM D.2(E), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-vawa-sp-policy-manual>.

⁶² Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/regulations/1996VAWAregsself-petition.pdf/view>.

⁶³ Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

“It is not possible to cite all perpetrations that could be act of violence under certain circumstances The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty." ⁶⁴

“[T]he regulatory definition has proven be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty”⁶⁵

This DHS regulation’s description of battering or extreme cruelty is broad enough to be consistent with and include the Centers for Disease Control and Prevention (CDC) definitions’ of elder abuse:⁶⁶

“Elder abuse is any abuse and neglect of persons age 60 and older by a caregiver or another person in a relationship involving an expectation of trust.” ⁶⁷

The CDC also provides a list of forms of elder abuse that are congruent with DHS’s approach to “battering or extreme cruelty.” According to the CDC, forms of elder abuse include:

- Physical Abuse, defined as an act injuring an elder or vulnerable adult, including but not limited to being scratched, bitten, slapped, pushed, hit, burned, etc.), assaulted or threatened with a weapon (e.g., knife, gun, or other object), or inappropriately restrained. ⁶⁸
- Sexual Abuse or Abusive Sexual Contact, defined as any sexual contact against an elder’s or vulnerable adult’s will. This includes acts in which the elder is unable to understand the act or is unable to communicate. Abusive sexual contact is defined as intentional touching (either directly or through the clothing), of the genitalia, anus, groin, breast, mouth, inner thigh, or buttocks. ⁶⁹

Forms of abuse that would constitute or contribute to extreme cruelty under immigration law include:

⁶⁴ Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

⁶⁵ Petition to Classify Alien as Immediate Relative of a United States Citizen or a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. §13,061-02, 13065 (Mar. 26, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

⁶⁶ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁶⁷ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁶⁸ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁶⁹ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

- Psychological or Emotional Abuse,⁷⁰ such as an elder or vulnerable adult who experiences trauma after exposure to threatening acts or coercive tactics. Examples include:
 - Humiliation or embarrassment;
 - Controlling behavior (e.g., prohibiting or limiting access to transportation, telephone, money or other resources);
 - Social isolation;
 - Disregarding or trivializing needs; or
 - Damaging or destroying property.
- Neglect,⁷¹ defined as the failure or refusal of a caregiver or other responsible person to provide for an elder’s basic physical, emotional, or social needs, or failure to protect them from harm. Examples include:
 - Failure to provide adequate nutrition, hygiene, clothing, shelter, or access to necessary health care; or
 - Failure to prevent exposure to unsafe activities and environments.
- Abandonment or willful desertion⁷² of an elderly person or vulnerable adult by caregiver or other responsible person may also be a form of extreme cruelty.
- Financial Exploitation⁷³ may also be considered extreme cruelty in regard to elders and vulnerable adults, if it instills fear and uncertainty as to their future, and/or demands they relinquish control of their financial affairs as a form of control or coercion. Many such acts are crimes, examples of which include forgery, misuse or theft of money or possessions; use of coercion or deception to surrender finances or property; or improper use of guardianship or power of attorney.

When a battered immigrant applies for a VAWA self-petition, APS’s role is to assist them by referring the victim to an attorney or victim advocate who can help the immigrant victim file the self-petition and providing support for the victim applying for immigration relief.⁷⁴ This support can include assisting the victim’s attorney or advocate in putting together the evidence the victim needs to support their self-petition. For VAWA self-petitioning cases, no particular documentation or certification by APS is necessary, however an affidavit from the APS case

⁷⁰ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at, <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁷¹ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁷² *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at, <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁷³ *Elder Abuse: Definitions*, Center for Disease Control and Prevention, available at <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> (last visited Jan. 30, 2023).

⁷⁴ To identify a victim advocacy or legal services organization with experience or expertise assisting immigrant victims filing applications under VAWA or the U visa, go to the national directory at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>. Technical assistance is available to APS workers who choose to help elder abuse victims self-petition from NIWAP. Please call (202) 274-4457 or email niwap@wcl.american.edu. Materials on self-petitioning including evidence collection checklists are available from NIWAP’s web library at <https://niwaplibrary.wcl.american.edu/>.

worker can be helpful. When a victim files a self-petition, the application includes the following:⁷⁵

- Evidence of the abuser’s U.S. citizenship or lawful permanent residency;
- Evidence of the victim’s relationship to the abuser, such as:
 - Legal marriage to spouse or former spouse (must additionally prove that the marriage was entered into in good faith);⁷⁶
 - Intended spouse in the case of a U.S. citizen or lawful permanent resident abusive bigamist;⁷⁷
 - Son or daughter;⁷⁸
- Evidence of an adoptive child relationship created before the adopted child turned 16 and the adopted child is over 21 at the time of filing and a U.S. citizen;
- Evidence of the stepchild relationship created before the U.S. citizen stepchild turned 18 and the step child relationship is in existence at the time of filing and at the time of the abuse;⁷⁹
- Evidence of abuse, battering, or extreme cruelty (which can include neglect and exploitation of a elderly or vulnerable adults);
- Evidence of residency with the abuser; and
- Evidence of “good moral character.”

The VAWA self-petitioning flow charts found in Appendix A and Appendix B are useful tools to assist APS workers in determining whether the immigrant victim they are working with is eligible to self-petition. The flow charts provide an overview of adult eligibility for VAWA self-petitioning.

Special Immigrant Juvenile Status (SIJS)

An APS worker may be working with an elder abuse victim who has legal immigration status themselves, but their abuser is using threats of deportation of the older adult immigrant’s grandchild or young family member as a tactic to perpetrate financial, physical, emotional, or sexual abuse of the older adult immigrant caring for their young relative. Immigrant crime victims who are older, vulnerable, or disabled adults who qualify for immigration status themselves, may be also caring for younger family members who the adult cannot include in their application for immigration benefits. This occurs when the person the elder abuse victim is caring for is a family member who is not their child or is not under the age of 21. An APS client may have immigrant children family members who qualify for immigration relief through the Special Immigrant Juvenile Status (SIJS) Program.

⁷⁵ See *Abused Spouses, Children and Parents*, USCIS (Apr. 1, 2022), available at <https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents>; 3 USCIS-PM D.2 available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-va-wa-sp-policy-manual>.

⁷⁶ For more information on petitions for relatives, widows and widowers, and abused spouses and children, see 8 C.F.R. § 204.2 (a)(1)(i)(B) (2007).

⁷⁷ 8 C.F.R. § 204.2 (a)(1)(i)(B) (2007).

⁷⁸ 8 C.F.R. § 204.2(f)(2) (2007).

⁷⁹ 8 C.F.R. § 204.2(d)(2)(iv) (2007).

Another form of immigration relief that may be available to help children under 21 years old⁸⁰ who are family members of APS clients is Special Immigrant Juvenile Status (SIJS).⁸¹ Many older immigrant APS clients may be living in households caring for and raising young family members who have been abused, abandoned, or neglected by one or both of the child's parents. To qualify for SIJS, the older adult family member may need to file a court case seeking custody or guardianship of their younger relative before the child turns the age of majority in the state where the APS client and child live.

SIJS is available to youth who:

- Are under the age of 21;
- Are unmarried;
- Are physically present in the U.S.;⁸²
- Have been abused, neglected or abandoned by one or both parents;⁸³ and
- Have obtained a court order from a state family or juvenile court containing judicial determinations that contain findings of fact and conclusions of law as to the following:⁸⁴
 - Granting custody or placing the child with the APS client, a non-abusive parent, or another person or agency or issuing an order regarding the child's dependency;
 - Reunification is not viable with the parent or parents who abused, abandoned, neglected, or committed another form of similar maltreatment that children are protected against under state law; and
 - It is not in the child's best interests to return to the child's or their parent's home country.⁸⁵

Children whose SIJS petitions are approved receive work authorization, protection from deportation and are eligible to apply for lawful permanent residency. SIJS may be of particular interest to an APS worker for their older client caring for a young relative who may qualify for

⁸⁰ Varies by state.

⁸¹ See Leslye E. Orloff & Hannah Bridges, *Answers to Questions from State Court Judges on the 2022 Special Immigrant Juvenile Status (SIJS) Regulations* (April 4, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-q-and-a>; Leslye Orloff & Rafaela Rodrigues, *Special Immigrant Juvenile Status Bench Book: A National Guide to Best Practice for Judges and Courts* (Mar. 31, 2018), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-bench-book-complete>; *Special Immigrant Juvenile Status – National Judicial Network Webinar* (Oct. 4, 2022), available at <https://niwaplibrary.wcl.american.edu/njn-webinar-new-regulations-policies-sijs-orders-oct-2022>.

⁸² See INA § 101(a)(27)(J)(i); 8 C.F.R. § 204.11(b)(3) (2023); 6 USCIS-PM J.2(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁸³ See INA § 101(a)(27)(J)(i); 8 C.F.R. § 204.11(b)(5) (2023); 6 USCIS-PM J.2, available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁸⁴ 8 C.F.R. § 204.11(a) (definition of “judicial determination”); 8 C.F.R. § 204.11(c)(1)-(2) (required conclusions of law for SIJS judicial determination); see also 6 USCIS-PM J.2(C), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁸⁵ 8 C.F.R. § 204.11(c); see also Leslye E. Orloff & Hannah Bridges, *Answers to Questions from State Court Judges on the 2022 Special Immigrant Juvenile Status (SIJS) Regulations* (April 4, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-q-and-a>.

SIJS status. Gaining SIJS status will help remove threats against the child as a tool the perpetrator can use against an elder abuse victim.

The U Visa: A Significant Form of Relief for Abused, Older Adult Immigrants and Persons with Disabilities

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, prosecute, convict, and sentence in cases of domestic violence, sexual assault, stalking, elder abuse, child abuse, human trafficking, and other crimes; and (2) to offer protection to victims of such criminal activities.⁸⁶ Lawmakers recognized that a victim’s helpfulness, cooperation, assistance, and safety are essential to the effective detection, investigation, prosecution, conviction and sentencing of crimes.⁸⁷ Victims who fear deportation, however, will be unlikely to come forward to help government officials detect criminal activities, cooperate and assist in investigative efforts, turn to the courts for help, and/or participate in criminal prosecutions of crime perpetrators.⁸⁸ Thus, Congress created the U visa program to provide a 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, courts, APS, and other government agencies and the immigrant population they serve.⁸⁹

In creating the U visa, Congress recognized that it is virtually impossible for officials who work in law enforcement, justice systems, courts, or with other government agencies

⁸⁶ 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); *U Visa Law Enforcement Resource Guide* at 4 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

⁸⁷ 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.

⁸⁸ “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; see also *DHS U Visa Law Enforcement Resource Guide* at 13 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022> (“Signing [a U visa certification] may strengthen your agency’s ability to detect, investigate, and prosecute serious crimes and may encourage victims to report crimes committed against them and to participate in the investigation and prosecution of those crimes. These actions bolster relationships between law enforcement and the communities they protect and make communities safer as a whole.”).

⁸⁹ VAWA 2000, § 1513(a), Pub. L. No. 106-386, 114 Stat. 1464; *DHS U and T Visa Resource Guide* at 9; see also *DHS U Visa Law Enforcement Resource Guide* at 14 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

67 Fed. Reg. 4782, 4785 (2002) Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a) (OCT. 28, 2000).

including adult and child protective services to punish and hold accountable perpetrators of crimes against noncitizens if the abusers and other criminals can avoid prosecution because their victims risk being deported. Congress also recognized that victims often do not come forward to seek assistance from federal or state government agencies, including APS, because immigrants fear that their interaction with government agencies will lead to their detention and/or deportation. A study in the State of New York found a dramatic gap between the rate of elder abuse events reported by older New Yorkers and the number of cases referred to and served by the formal elder abuse service system. The reported incidence rate is nearly 24 times greater than the number of referred cases. This suggests that many older adults are not seeking (or getting) the assistance they need.⁹⁰ The U visa encourages immigrant victims to report criminal activity by protecting them against deportation. It also enhances their access to safety and support needed to overcome physical and emotional injuries caused by criminal activity. The U visa can make communities safer by holding perpetrators accountable for criminal activity that might otherwise go undetected.

Eligibility 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 government 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.⁹¹ 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.⁹²

In addition, the victim must be admissible to the United States.⁹³

⁹⁰ *Elder Abuse and Crime Victim Services*, NYC Department for the Aging (2014), available at <https://www.nyc.gov/site/dfta/services/elder-abuse-crime.page> (last visited May 26, 2023).

⁹¹ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term “criminal activity” rather than “crime” to provide victims access to U visa protection as early as possible after the crime was committed or was reported.); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

⁹² 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, 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).

⁹³ Under United States immigration law, a person is “admissible” if they are eligible to be granted lawful entry into the United States. INA § 101(a)(13); 8 U.S.C. § 1101(a)(13). If the immigrant victim is inadmissible, they may apply for a waiver of the applicable ground of inadmissibility, if eligible. *See* INA § 212; 8 U.S.C. § 1182 (listing the grounds of inadmissibility); *see also Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Dec. 26, 2022), available at

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, judge or APS, CPS or other government agency official authorized to certify* that attests to the following:

- 1) The type of criminal activity or criminal activities 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 the immigrant suffered; (I-918B Form: Part 3)
- 4) That the person possesses information about the criminal activity; I-918B Form: Part 4).⁹⁴
- 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, prosecutors, judges, and other government officials (including APS and CPS)⁹⁵ in the list of U visa certifiers.⁹⁶

Criminal Activities

The U visa statute includes a “non-exclusive”⁹⁷ 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

<https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs> (This chart also tracks inadmissibility exemptions and waivers available for each of the forms of crime victim based immigration relief including the U visa.). 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; however, DHS first must determine that such a waiver would be in the public or national interest. INA § 212(d)(14); 8 U.S.C. § 1182(d)(14); INA § 212(d)(14); 8 U.S.C. § 1182(d)(14).

⁹⁴ See INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i). 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.

⁹⁵ 8 C.F.R. § 214.14(a)(2).

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

⁹⁷ 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).

exploitation, stalking, female genital mutilation,⁹⁸ 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.⁹⁹

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. 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.”¹⁰⁰

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, child abuse,

⁹⁸ *Female Genital Mutilation/Cutting*, Dep’t of Homeland Sec. (last visited May 26, 2023), available at https://www.uscis.gov/sites/default/files/document/brochures/FGMC_Brochure.pdf. 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.

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

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

elder abuse, or malicious property damage.¹⁰¹ 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.¹⁰²

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.¹⁰³ 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.¹⁰⁴ When an APS staff member learns information about extortion or sexual assault while conducting an investigation of abuse or exploitation of an adult with disabilities, APS should complete the U visa certification form checking off these identified criminal activities regardless of whether a criminal investigation is initiated by any law enforcement official.

Evaluating Helpfulness

APS agency officials may complete U visa certifications once they are able to assess a victim's helpfulness.¹⁰⁵ 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."¹⁰⁶

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.¹⁰⁷ Congress intended to allow an individual to petition for status at virtually any stage of the investigation or prosecution.¹⁰⁸ Likewise, the definition of "investigation or prosecution" in the statute is interpreted broadly¹⁰⁹ to include victim assistance in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.¹¹⁰ As a result, the definition of "investigation or prosecution" in the statute is interpreted broadly.¹¹¹ Some examples of helpful actions include, but are not limited to, calling 911 to report the criminal activity, providing a statement to

¹⁰¹ 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).

¹⁰² *DHS U Visa Law Enforcement Resource Guide* at 4 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹⁰³ See 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

¹⁰⁴ See 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007).

¹⁰⁵ "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; *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹⁰⁶ 8 U.S.C. § 1184(p)(1).

¹⁰⁷ 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007); see generally *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

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

¹⁰⁹ 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007); 8 C.F.R. § 214.14(a)(5).

¹¹⁰ 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007); 8 C.F.R. § 214.14(a)(5).

¹¹¹ 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007); 8 C.F.R. § 214.14(a)(5).

APS or another government agency, attending meetings with APS staff, appearing in court, filing a report with the government agency, or seeking a protection order.¹¹²

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.¹¹³ 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.”¹¹⁴ 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.¹¹⁵ Whether the victim’s lack of helpfulness is unreasonable is to be assessed in light of the totality of the circumstances.¹¹⁶

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 the 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 on the list of U visa criminal activities because threats from perpetrators can deter the cooperation of crime victims who initially come forward

¹¹² For more details on the types of actions an immigrant victim of crime or abuse may take to show helpfulness see, <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>

¹¹³ “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; see also 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007); 8 C.F.R. § 214.14(a)(5); *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹¹⁴ *DHS U and T Visa Resource Guide* at 18; *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹¹⁵ 8 C.F.R. § 245.24(a)(5); see also *June 2022 Recordings – Two Part Series April 13, 2022 Webinar: Understanding Helpfulness for U Visa Certification and the Ongoing Assistance Requirement* (April 13, 2022), available at <https://niwaplibrary.wcl.american.edu/uvisa-helpfulness-webinar-april2022>.

¹¹⁶ 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).”)

and report criminal activities. The following are common examples of when a victim's lack of ongoing cooperation is "not unreasonable":¹¹⁷

- (1) When perpetrators, through coercion and threats, make the victim unavailable for interviews with APS workers or 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) When the victim fears retaliation from her perpetrator if she cooperates or meets with APS workers, or testifies at trial.

Those who work 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.¹¹⁸ Based on the understanding that the victim's level of cooperation 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.¹¹⁹

This approach works to encourage immigrant victims of crime, abuse, battering and extreme cruelty to come forward and seek help from and cooperate with government agencies including APS, law enforcement, prosecutors and the courts. Social science research has found that once immigrant victims obtain certification from a government agency, file for a U visa and obtain work authorization and protection from deportation through deferred action as a U visa applicant, the victim's willingness to file police reports, seek help from the courts, trust government agency staff, and participate in the justice system goes up significantly.¹²⁰

It is important to understand that the standard for certification is whether the victim has been, is being, or is likely to be helpful in the detection, or investigation, or prosecution, or

¹¹⁷ INA § 245(m)(1); 8 U.S.C. § 1255(m)(1).

¹¹⁸ "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; see also *DHS U Visa Law Enforcement Resource Guide* at 13 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹¹⁹ "[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; see also *DHS U Visa Law Enforcement Resource Guide* at 8 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹²⁰ Leslye E. Orloff et. al., *Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/transforming-lives-study-21>.

conviction, or sentencing of the perpetrator of the criminal activity. This is different than the assistance/cooperation requirement imposed by regulations on victims once their U visa case has been filed. The Congressional goal in creating the helpfulness requirement was to first get victims to come forward, seek help, and provide information about the criminal activity suffered. This was intended to give government agencies a tool to encourage victims' willingness to work with government agency staff. Once victims file for the U visa, the ongoing cooperation/assistance requirement, and its safety promoting exceptions, apply.¹²¹

Once an immigrant crime victim files a U visa application their case is flagged by DHS as a crime victim related case which offers victims initial protection against perpetrator's threats of deportation.¹²² Within 5 years of filing the victim applicant for a U visa will receive a bona fide determination on their case which provides them deferred action, a form of formal protection against deportation.¹²³ Victims who receive deferred action are eligible for work authorization.

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 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.

Incapacity or Incompetence

If the petitioner is 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 incapacitated or incompetent petitioner to provide information and assist in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity suffered by the incapacitated or incompetent immigrant victim.¹²⁴ However, the petitioner is the only one that can be granted a U visa unless the parent,

¹²¹ 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. 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. *See generally*, Leslye Orloff, Levi Wolberg, and Benish Anver, *U Visa Victims and Lawful Permanent Residency* (September 6, 2012), available at <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12>.

¹²² Alina Husain, Daliana Gomez Garcia, and Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (June 7, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

¹²³ 3 USCIS-PM C.5, available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>.

¹²⁴ See INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

guardian, or “next friend” would also qualify for a U visa on their own.¹²⁵ The person serving as the “next friend” of an older adult immigrant abuse victim or immigrant person with disabilities will often not qualify for U visa immigration status as either a direct or indirect victim unless the “next friend” was also a victim of criminal activity. Despite this fact, DHS has offered protection from deportation for immigrants assisting in the criminal justice system as witnesses or as “next friends” to an incompetent or incapacitated crime victim by making them a low priority for removal from the United States. DHS has encouraged immigration enforcement officials to exercise discretion not to remove immigrants serving as witnesses in the criminal and civil justice systems which is the role “next friends” play in U visa cases on behalf of immigrant crime victims who are incapacitated or incompetent.¹²⁶

An individual will qualify as a “next friend” for U visa purposes if they appear in a lawsuit to act for the benefit of an immigrant who is under the age of 16 or who is incapacitated or incompetent.¹²⁷ The “next friend” is not a party to the legal proceeding and is not appointed as a guardian.¹²⁸ Additionally, the parent, guardian, or “next friend” must provide evidence of their relationship to the petitioner and evidence establishing the age, incapacity, or incompetence of the petitioner. Examples of such evidence include: birth certificates, court documents demonstrating recognition of an individual as the petitioner’s “next friend,” and medical records.¹²⁹

In order to be eligible for a U visa, an immigrant must provide evidence of past or present helpfulness or likelihood of future helpfulness to a government official or entity regarding the qualifying criminal activity. In the case of incapacitation, incompetence, or an immigrant child under the age of 16, the parent, guardian, or next friend of the immigrant may fulfill this helpfulness requirement instead of the immigrant victim.¹³⁰

In addition, in order to qualify for permanent resident status on the basis of the U visa classification, the immigrant must not have unreasonably refused to provide assistance in a criminal investigation or prosecution.¹³¹ An exception to the helpfulness requirement applies to immigrant victims who are under 16 years of age. Immigrant victims who are incapacitated, incompetent, or under the age of 16 can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the requested assistance.¹³² Evidence to further establish that the petitioner has provided the necessary assistance in the investigation or prosecution of qualifying criminal activity may include such documentation as: APS staff notes documenting

¹²⁵ See INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

¹²⁶ *John Morton, Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs Memo* (June 17, 2011), U.S. Immigration and Custom Services, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims> (last visited Apr. 5, 2023).

John Morton, Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs Memo (June 17, 2011), U.S. Immigration and Custom Services, available at

[.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims"](https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims)

<https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims> (last visited Apr. 5, 2023).

times of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,019 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14(a)(7)).

¹³⁰ 8 C.F.R. § 214.14(a)(7).

¹³¹ INA § 245(m)(1), 8 U.S.C. § 1255(m)(1).

¹³² INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(III).

attendance at meetings with APS staff, conversations providing information to APS staff, trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits of other witnesses or officials.¹³³

Law Enforcement Investigation or Successful Prosecution Is Not a Prerequisite to Granting U Visa

Congress explicitly crafted the U visa immigration protections for victims so as not to interfere with the discretion that governmental agencies that investigate or prosecute criminal activities have to choose whether to prosecute criminal activity in any particular case.

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

A U visa can therefore be granted even when law enforcement agencies decline to investigate, when prosecutors decline to charge perpetrators, when charges are later dropped, or when prosecutors are unable to secure convictions.¹³⁴

The T Visa: A Significant Form of Relief for Adult Victims of Human Trafficking

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 human trafficking related criminal activities.¹³⁵

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.¹³⁶ Accordingly, in both the TVPA and VAWA, Congress sought not only to prosecute perpetrators of crimes committed

¹³³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,024 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14(a)(7)).

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

¹³⁵ *DHS U and T Visa Resource Guide* at 4; *DHS T Visa Law Enforcement Resource Guide* at 2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

¹³⁶ *DHS U and T Visa Resource Guide* at 4; *DHS T Visa Law Enforcement Resource Guide* at 1-2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

against immigrants, including human trafficking, but also to strengthen relationships between law enforcement, government agencies, and immigrant communities.¹³⁷ 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.¹³⁸

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.¹³⁹ 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.¹⁴⁰

Eligibility 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;
- (2) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry on account of trafficking;¹⁴¹
- (3) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking¹⁴² (except victims who are under 18 years of age, and trafficking victims who are unable to cooperate due to physical or psychological trauma¹⁴³);
- (4) Would suffer extreme hardship involving unusual and severe harm if removed from the United States.¹⁴⁴

¹³⁷ *DHS U and T Visa Resource Guide* at 4; see also Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464.

¹³⁸ *DHS T Visa Law Enforcement Resource Guide* at 1-2 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

¹³⁹ INA § 214(o)(7)(B); 8 U.S.C. 1184(o)(7)(B).

¹⁴⁰ See generally 73 Fed. Reg. 75540 (2008).

¹⁴¹ The trafficking victim need not have been brought into the U.S. by the trafficker. A person is considered to meet the “on account of” trafficking requirement if at the time of filing their T visa application they:

- Were present in the U.S. and currently being subjected to trafficking;
- Were liberated from human trafficking by law enforcement;
- Escaped their traffickers prior to law enforcement involvement;
- Were trafficking at some point in the past and their continuing presence in the U.S. is directly related to the original trafficking; or
- Were present after having been allowed to enter the U.S. to participate in an investigation or judicial process associated with an act of or the perpetrator of trafficking.

See *DHS T Visa Law Enforcement Resource Guide* at 4 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

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

¹⁴³ See INA § 101(a)(15)(T)(i) (III); 8 U.S.C. § 1101(a)(15)(T)(i)(III). “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.”; see also *DHS U and T Visa Resource Guide* at 12.

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

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States.¹⁴⁵ If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible.¹⁴⁶

The T Visa Declaration

The T visa declaration is supplementary evidence of a victim's assistance to government officials that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, APS, or other government official can complete for a T visa applicant.¹⁴⁷ DHS applies the VAWA "any credible evidence" standard for the T visa.¹⁴⁸ The declaration is not a required document for a T visa application. It is helpful evidence but is not given any special evidentiary weight.¹⁴⁹ DHS encourages law enforcement, prosecutors, judges, APS, and other government officials to sign T visa certifications.¹⁵⁰ The T visa regulations assure certifiers that the declaration is useful, rather than controlling evidence in the case, and should result in certifiers being "more likely to sign [declarations], increasing the likelihood that T visa will be utilized as the law enforcement tool that it is intended to be."¹⁵¹

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.¹⁵² **Certifying officials who sign declarations do not confer any visa upon the victim, nor do they decide whether the victim meets the eligibility standards.**¹⁵³ The declaration is not conclusive evidence that the applicant meets the eligibility requirements. Only USCIS has the discretion to grant or deny a T visa to the victim.¹⁵⁴

¹⁴⁵ See *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Dec. 26, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs> (This chart also tracks inadmissibility exemptions and waivers available for each of the forms of crime victim based immigration relief including the T visa.).

¹⁴⁶ *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 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* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

¹⁴⁷ *DHS U and T Visa Resource Guide* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016)).

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

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

¹⁵⁰ See generally *DHS T Visa Law Enforcement Resource Guide* (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

¹⁵¹ 72 Fed. Reg. 92266, 92276 (2016).

¹⁵² 72 Fed. Reg. 92266, 92276 (2016).

¹⁵³ 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* (expires 04/30/2021), available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>.

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

What is the purpose of the law enforcement declaration?

The declaration (Form I-914B) is a four-page form that immigrant trafficking victims can submit as part of their T visa application. The declaration is not required, but when provided, is useful¹⁵⁵ and valuable evidence of a victim’s cooperation.¹⁵⁶

The form includes six short parts and must be signed by a *law enforcement, prosecution, APS, court, 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.¹⁵⁷

Victimization

“Severe form of trafficking in persons” is defined as:¹⁵⁸

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 subjection to involuntary servitude, 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,

¹⁵⁵ 72 Fed. Reg. 92266, 92276 (2016).

¹⁵⁶ *DHS U and T Visa Resource Guide* at 3, 10.

¹⁵⁷ 72 Fed. Reg. 92266, 92272 (2016).

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

involuntary servitude, peonage, debt bondage, or slavery) is present in the case.¹⁵⁹ 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.¹⁶⁰

Elder abuse victims and victims of abuse perpetrated against persons with disabilities may fall victim to human trafficking perpetrated in the context of their intimate partner or family relationships. USCIS has recognized that human trafficking and involuntary servitude can occur alongside intimate partner abuse or family violence when the abuse involves compelled or coerced labor or services of forced sexual activity that is induced by force, fraud, or coercion.¹⁶¹ Labor trafficking compelled by domestic violence may be enforced by abuse or the threat of abuse with the goal of forcing labor or services through fear or coercion. This causes the victim to feel that they do not have their own liberty or self-determination, which creates conditions of servitude.¹⁶² When a person with disabilities or victim of elder abuse has been a victim of involuntary servitude, they are eligible to apply for a T visa based on labor trafficking.¹⁶³

USCIS will accept any credible evidence of victimization, including but not limited to a T visa declaration signed by a law enforcement agency.¹⁶⁴ A government agency such as APS signing a T visa declaration 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.¹⁶⁵

Evaluating Assistance

The T visa requires that the victim has complied with any reasonable requests from law enforcement or prosecutors in detection, investigation, or prosecution of human trafficking or the investigation of crimes where acts of trafficking are at least one central reason for the commission of that crime.¹⁶⁶ USCIS will accept any credible evidence of assistance, including but not limited to a T visa declaration signed by a law enforcement, prosecution, APS, a judge, or another government agency.¹⁶⁷ The government official signing the declaration does not determine if the victim meets the assistance requirement; that is a determination made by USCIS.¹⁶⁸

¹⁵⁹ 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), available at <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

¹⁶⁰ 72 Fed. Reg. 92266, 92270 (2016).

¹⁶¹ 3 USCIS-PM B.2(B)(4), available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

¹⁶² 3 USCIS-PM B.2(B)(4), available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

¹⁶³ Depending on the facts of the case, the immigrant victim may also qualify for a VAWA self-petition or a U visa and can apply for all forms of immigration relief they may be eligible to receive. Trafficking victims who apply for T visas generally have greater access to state funded public benefits than U visa applicants or VAWA self-petitioners.

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

¹⁶⁵ 72 Fed. Reg. 92266, 92272 (2016).

¹⁶⁶ INA § 101(a)(15)(T)(i)(III)(aa); 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

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

¹⁶⁸ 81 Fed. Reg. 92266, 92272 (2016).

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 circumstances of the victim, including their level of fear, the severity of the traumatization, and their age and maturity.¹⁶⁹

DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.¹⁷⁰ It is generally reasonable for APS certifiers to ask a victim similar things they would ask other comparably situated victims, such as elder abuse, domestic violence, or sexual assault victims.¹⁷¹

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.¹⁷² 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.¹⁷³

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, child protective services agency, or other authority, including an adult protective services agency, that has the responsibility and authority to conduct investigations in the course of their work that could lead to the detection, investigation, and/or prosecution of severe forms of trafficking in persons.¹⁷⁴

Continued Presence and APS’ Role¹⁷⁵

As soon as APS identifies a victim of human trafficking, DHS encourages them to “request continued presence as early and as expeditiously as possible.”¹⁷⁶ Continued presence is a temporary form of immigration relief that allows adult and child victims of severe forms of human trafficking who may be potential witnesses in the investigation or prosecution of the trafficker to lawfully remain in the United States. This relief lasts for two years with the

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

¹⁷⁰ 72 Fed. Reg. 92266, 92275 (2016).

¹⁷¹ 72 Fed. Reg. 92266, 92275 (2016).

¹⁷² 72 Fed. Reg. 92266, 92274 (2016).

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

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

¹⁷⁵ See Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>.

¹⁷⁶ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

possibility of renewal.¹⁷⁷ Continued presence is a significant remedy because it provides adult and child victims of human trafficking protection from deportation while they are in the process of applying for a T visa. Additionally, continued presence allows victims to work and receive a broad range of federal and state public benefits.¹⁷⁸ In fact, continued presence is the *only* way to access public benefits for adult trafficking victims, making it vital that APS initiate the continued presence application process immediately upon identification.

Only federal government officials can file continued presence applications on a trafficking victim's behalf.¹⁷⁹ Thus, APS should establish relationships with federal agency staff authorized to file continued presence applications. This will ensure that when APS staff encounter an adult victim of human trafficking, there will already be a system in place to swiftly file a continued presence application for the victim with the assistance of the federal agency. Those authorized to file continued presence applications include, but is not limited to:

- State, tribal, territorial, and local law enforcement working through their local Homeland Security Investigations (HSI) office;
- Federal Bureau of Investigations (FBI);
- U.S. Department of Diplomatic Security Service (DSS);
- U.S. Attorney's Offices;
- Civil Rights Division, Criminal Section of the U.S. Department of Justice (DOJ); U.S. Marshals Service; U.S. Department of Labor (DOL);
- Equal Employment Opportunity Commission (EEOC); and
- Another federal law enforcement agency partner.¹⁸⁰

Certain eligible family members of trafficking victims can also seek protection through "Significant Public Benefit Parole."¹⁸¹ Eligible family members include:

- For children under age 21, their spouse, child, parent, or unmarried siblings under the age of 18;
- For adults, their spouse or children; and
- Parents or siblings of a continued presence recipient who are in present danger due to the trafficking victim's escape from trafficking or cooperation in an investigation or prosecution of trafficking.

Victims can qualify for continued presence even when they have not cooperated with law enforcement, as some victims may have experienced severe trauma that prevents them from

¹⁷⁷ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁷⁸ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁷⁹ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 9 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁸⁰ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 7-8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁸¹ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 14 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

being able to assist.¹⁸² However, after victims receive continued presence, which gives them greater access to essential services, they may be in a better place physically and mentally to assist law enforcement.¹⁸³ Continued presence is part of a victim-centered approach that “places equal value on the investigation and prosecution of human traffickers and on the identification and stabilization of victims of human trafficking.”¹⁸⁴ APS agencies that routinely assist trafficking victims with applying for continued presence will be able to build trust with victim services organizations and other service providers who serve as an important bridge for identifying human trafficking victims and supporting them in healing and accessing justice.¹⁸⁵

Adult Protective Services, U Visa Certifications, and T Visa Declaration

In order to apply for a U visa, a victim must obtain a certification from an adult protective services worker, prosecutor, judge, law enforcement official, or another federal or state authority, which is responding to, detecting, investigating, prosecuting, convicting or sentencing any of the criminal activities listed in the U visa statute, or defined as a similar criminal activity by state law, DHS policies, or regulations.¹⁸⁶ APS agency staff members are in a good position to assess the allegations of the forms of qualifying U visa criminal activity or human trafficking victimization, as they regularly encounter elder abuse victims and persons with disabilities subjected to various forms of abuse and exploitation. During the process of responding to, investigating, assessing, and determining the disposition of reports of abuse, neglect, financial exploitation, or sex and labor trafficking, APS staff must determine whether they believe the alleged conduct occurred and whether a person has been a victim of any U visa listed criminal activity or human trafficking.¹⁸⁷ When the victim of the criminal activity or abuse is or may be a noncitizen, the agency, under the federal U and T visa statutes, is authorized to issue a U visa certification or T visa declaration.

The U visa certification must affirm the immigrant victim’s past, present, or future helpfulness in the detection, investigation, prosecution, conviction or sentencing of certain qualifying criminal activity.¹⁸⁸ Similarly, the T visa declaration confirms the trafficking victim’s cooperation.¹⁸⁹ Based upon the APS staff’s contact with the immigrant victim during detection or

¹⁸² See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁸³ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 8 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁸⁴ See *Continued Presence Resource Guide*, Center for Countering Human Trafficking at 6 (July 2021), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Resource-Guide-2021.pdf>.

¹⁸⁵ See *Continued Presence: Temporary Immigration Designation for Victims of Human Trafficking*, U.S. Immigration and Customs Enforcement (hereinafter ICE) (2019), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Continued-Presence-Pamphlet-2019.pdf>.

¹⁸⁶ INA § 214(p)(1); 8 U.S.C. § 1184(p)(1); 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007); *DHS U Visa Law Enforcement Resource Guide* at 5 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

¹⁸⁷ See 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007). It is important to note that U visa certification can and should occur as early as possible after taking a report or interviewing a credible victim of suspected criminal activity. Certification need not wait until the case reaches a probable cause determination. However, for cases in which probable cause has been found, noncitizen victims should receive U visa certifications.

¹⁸⁸ See 72 Fed. Reg. 53,014, 53,019 (Sept. 17, 2007).

¹⁸⁹ *DHS T Visa Law Enforcement Resource Guide* at 5 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>.

investigation of suspected criminal activity, the APS staff are well positioned to certify an immigrant victim's helpfulness or willingness to be helpful.

APS agency officials who sign certifications do not confer any immigration status upon the victim, but rather enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS).¹⁹⁰ Only DHS has the discretion to grant or deny U visa status to the victim.

APS Staff and Certification Authority

DHS regulations envision that the U and T visa certification process fits within routine activities of APS staff. The U visa certification and the T visa declaration can be completed at the same time that staff are completing their reports relating to allegations of abuse, neglect, or exploitation of persons with disabilities or older adults and can then be reviewed and approved by supervisors who are also signing off on the reports. The U visa regulations and U and T visa policies allow the head of the certifying agency to grant any supervisory person(s) the authority to issue U and T visa certifications.¹⁹¹ The regulations contemplate granting certification authority to multiple supervisory personnel.

It is a best practice for APS to develop internal policies and procedures that inform victims of where and with whom to file requests for certifications; provide certifying officials with the relevant and necessary information needed for supervisors to sign U visa certifications; and implement practices that result in certifications being issued. *A sample U visa certification policy is included in this toolkit as Appendix H.*

DHS encourages federal, state and local government agencies to develop internal policies and procedures to respond to requests for U visa certifications. However, DHS does not require agencies to have U visa certification policies or protocols in place in order to be authorized to sign U visa certifications. The head of each APS agency is authorized to sign U and T visa certifications themselves and to designate supervisors within the agency to sign certifications on the agency's behalf. This authority is established by federal statute, regulations, and policies, and such authority is still effective even if the agency does not presently have an existing policy or protocol for signing certifications. As a result APS agency heads can start signing U and T visa certifications immediately upon identification of immigrants who have suffered from U visa listed criminal activities. *To facilitate the authorization of personnel to sign U visa certification forms, a sample "Designee Letter" is included in the toolkit as Appendix E.*

Best Practices for APS Workers

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 criminal activity came forward and made a report to the police, to a court, to APS, or other government agency revealing the

¹⁹⁰ See Form I-918, Supplement B, Instructions (08/31/07), at page 3 (United States Customs and Immigration Services will consider the totality of the circumstances in determining whether someone is eligible for the U visa).

¹⁹¹ See 8 C.F.R. § 214.14(a)(3), (c)(2)(i); *DHS T Visa Law Enforcement Resource Guide* at 6 (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>; *DHS U Visa Law Enforcement Resource Guide* at 3 (Feb. 28, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

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 a government agency's investigation or court 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 cases involving facts about U or T visa covered criminal activities.

To accomplish this, Congress authorized a range of government officials to be U and T visa certifiers. Police, prosecutors, judges, adult and child protective services, DHS officials, the FBI, federal and state agencies investigating labor violations (including the U.S. Department of Labor and the Equal Employment Opportunity Commission), state and federal Alcohol, Tobacco and Firearms investigators, and any other federal or state government agency 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.

U visa certifications and T visa declarations should be signed by APS based on APS agency records and information. The following information is the only information called for in the 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;
- The applicant was helpful, is being helpful or is likely to be helpful in the detection, investigation or prosecution of the criminal activity;
 - In cases of applicants who are incompetent or incapacitated this helpfulness can be provided by a parent, guardian or next friend; and
- Information about any family members of the victim involved in perpetrating the criminal activity.

In T visa cases, 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 involved in the victim's trafficking to the United States.

APS workers 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. Oftentimes as the APS investigation moves forward, and any criminal investigation or prosecution that may be initiated proceeds, the exact criminal activities that become the focus of the APS investigation, any law enforcement

investigation, or prosecution may change. For this reason, it is best practice for APS workers to check off all of the listed criminal activities that apply on the U visa certification form. 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. It is also important to note that an abused older adult or person with disabilities is eligible for certification even if no criminal investigation or prosecution in the case is ever opened or initiated and no criminal charges are brought against the perpetrator.

Benefits of the U and T Visas and Applications for Lawful Permanent Residency

In general, U and T visas are issued for a period of four years.¹⁹² 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 and health care. U visa victims with lawful permanent residency gain additional access over time to other public benefits programs.¹⁹³

Family Members and Deferred Action

Family Members Who Can be Included in a U or T Visa Application

A U or T visa holder can include petitions with their application seeking U visas or T visas for eligible family members.¹⁹⁴

- For the U visa:¹⁹⁵
 - 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);¹⁹⁶ and

¹⁹² See INA § 214(p)(6); 8 U.S.C. § 1184(p)(6); INA § 214(o)(7)(A); 8 U.S.C. § 1184(o)(7)(A).

¹⁹³ NIWAP has developed a series of tools to assist APS staff, 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 *A Guide to Public Benefits Map for Immigrant Survivors of Crime* (June 11, 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/guide-to-the-public-benefits-map>; *Interactive Public Benefits Map* (Oct. 24, 2022), available at <https://niwaplibrary.wcl.american.edu/benefits-map>; *All State Public Benefits Charts* (June 7, 2019), available at <https://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), available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>; *Bench Card Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>.

¹⁹⁴ 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)).

¹⁹⁵ *U Visa Protections for Family Members* (Aug. 12, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-family-member>.

¹⁹⁶ INA § 101(a)(15)(U)(ii)(I); 8 U.S.C. 1101(a)(15)(U)(ii)(I).

- If the victim is 21 years of age or older, qualifying family members include their spouse and children.¹⁹⁷
- For the T visa, eligible family members include:¹⁹⁸
 - 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.¹⁹⁹

NIWAP has developed helpful tools for identifying which family members U visa and T visa applicants can include in their applications. *These tools can be found in Appendix C (U visa) and Appendix D (T visa).*

Family Members Who Can Receive Deferred Action

The U visa and T visa application process includes a bona fide determination. For U visa cases, an applicant receives a bona fide determination (BFD) after USCIS reviews the case and finds that the application contains the required initial evidence, the applicant successfully completed a background check, and the U visa application was made in good faith, without fraud or deceit.²⁰⁰ Recipients of U visa bona fide determinations are granted “deferred action status,” which is formal protection against deportation, and legal work authorization, both of which last for 4 years and can be renewed.²⁰¹ U visa applicants and recipients have limited access to state and federally funded public benefits.²⁰²

¹⁹⁷ INA § 101(a)(15)(U)(ii)(II); 8 U.S.C. 1101(a)(15)(U)(ii)(II).

¹⁹⁸ Sylvie Sheng & Leslye E. Orloff, *T Visa Protections for Family Members* (July 3, 2020), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/T-Visa-for-Family-Members7.7.20.pdf>.

¹⁹⁹ Age-out protection applies. See 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016)).

²⁰⁰ USCIS, *Policy Manual Chapter 5 Bona Fide Determination Process* (June 14, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process--uscis>.

²⁰¹ 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), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>.

²⁰² 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>.

Similarly, when T visa applicants receive bona fide determinations,²⁰³ they receive deferred action and work authorization.²⁰⁴ T visa applicants with bona fide determinations are also granted access to a broad array of federally and state funded public benefits.²⁰⁵

U and T visas are granted for a period of 4 years. Once a victim is granted the visa, they can be extended beyond 4 years. Extensions are permitted in three circumstances:²⁰⁶

- 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.²⁰⁷ For the T visa, government officials may demonstrate the need for an extension by signing a new T visa declaration or by sending a letter, fax, or email to DHS.²⁰⁸ 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, the 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. Once the U visa holder has maintained three years of continuous presence in the United States, they will be eligible to apply for lawful permanent residency.²⁰⁹ Not all U visa holders will qualify for lawful permanent residency. Because even recipients of a U visa have an ongoing obligation to provide assistance in the prosecution of the criminal activity, at the time of filing for lawful permanent residency they must provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution.²¹⁰ The applicant is also required to show that their continued presence in the country is justified on humanitarian grounds, to ensure family unity, or because it is otherwise in the public interest.²¹¹

²⁰³ 8 C.F.R. § 214.11(a).

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

²⁰⁵ § 107(b), Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], (October 28, 2000). To look up what state or federal public benefits an immigrant victim qualifies to receive, see <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²⁰⁶ INA § 214(p)(6); 8 U.S.C. § 1184(p)(6); INA § 214(o)(7); 8 U.S.C. § 1184(o)(7).

²⁰⁷ INA § 214(p)(6); 8 U.S.C. § 1184(p)(6).

²⁰⁸ See 72 Fed. Reg. 92266, 92311 (codified at 8 C.F.R. § 214.11(l)) (2016)).

²⁰⁹ The application for lawful permanent residency, submitted while in the United States, is called *adjustment of status*.

²¹⁰ 8 C.F.R. § 245.24(b)(5).

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

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.²¹²

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 as soon as the trafficking case has been concluded.²¹³ This means that if the victim is granted a T visa and any criminal investigation or prosecution of their trafficker has already concluded, the victim 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 provide evidence that (1) they have complied with any reasonable request for assistance, and (2) they would suffer extreme hardship involving unusual and severe harm if removed from the United States.²¹⁴

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.²¹⁵ Unlike the U visa, T visa holders are not permitted to exceed the maximum time provided by the statute for being outside of the United States for any reason.²¹⁶

Public Benefits Access for VAWA, T and U Visa Applicant and Recipient Victims of Elder Abuse or Abuse of Adults with Disabilities

Immigrant APS clients who are screened and found to be eligible for immigration relief based on abuse or crime victimization become eligible for federal and state funded public benefits as they move through the immigration relief process. The sooner an immigrant abuse victim is screened and referred to an agency with expertise providing legal assistance to immigrant victims of crime and abuse, the sooner they can begin the process through which they gain more access to publically funded benefits and services that provide support for persons with disabilities and older adults. This greater access to benefits results in more options that help immigrant survivors of crime and abuse at a lower cost to the immigrant and the local jurisdiction assisting them.

APS staff need to be aware that there is a broad array of government funded services and assistance that are open to all victims of abuse and crime victimization without regard to the

²¹² INA § 245(l)(3); 8 U.S.C. § 1255(l)(3).

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

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

²¹⁵ INA § 245(m)(2); 8 U.S.C. § 1255(m)(2).

²¹⁶ 73 Fed. Reg. 75540, 75541 (2008).

victim's immigration status.²¹⁷ Examples of programs open to all without immigration restrictions include, but are not limited to:²¹⁸

- Adult and child protective services
- Emergency shelter and transitional housing
- Legal Services²¹⁹
- Crisis counseling and intervention programs
- Violence and abuse prevention
- Services for victims of domestic violence, elder abuse, abuse of persons with disabilities, sexual assault, stalking, human trafficking and other crimes
- Soup kitchens, food banks, senior nutrition programs, WIC
- Healthcare from Federally Qualified Health Centers and Community and Migrant Health Centers
- Help from courts, police, prosecutors, fire, ambulance, sanitation
- Victims of Crime Act Compensation²²⁰

As APS immigrant clients file for immigration relief and their cases are processed, applicants' access to federal and state public benefits will expand beyond the assistance open to all persons without regard to immigration status. Which federal or state funded public benefits an immigrant qualifies for varies based on several factors:²²¹

- The state in which the immigrant victim of abuse or crime lives;
- The type of immigration status the immigrant victim has applied for or been granted;
- The stage in the immigration process their case has reached;
- When they first entered the United States;
- Their age;
- Whether they are a person with disabilities; and
- Which federal or state public benefits program(s) they need.

²¹⁷ DOJ [A.G. Order No. 2353–2001], Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613 (2001), available at <https://niwaplibrary.wcl.american.edu/pubs/protectionlifeorsafetyagreg>; Soraya Fata, Leslye E. Orloff, and Monique Drew, *Access to Programs and Services That Help Immigrant Victims of Sexual Assault and Domestic Violence* (2011), available at <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>.

²¹⁸ Catherine Longville & Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status* (May 22, 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>; Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Chapter 04.1: Access to Programs and Services That Can Help Battered Immigrants* (July 10, 2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch4-1-access-to-services-helpbatteredimm>.

²¹⁹ Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. § 104 (2005); *National Legal Aid & Defender Association Cornerstone: The Need for Pro Bono Assistance to Unaccompanied Immigrant Children*, Vol. 36, No. 1 (Jan. 2015), available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/Anti-Abuse-LSC-Reg-Articles-Cornerstone_Vol_36_No_1_96-Jan-Apr-2015.pdf.

²²⁰ Open to all crime victims without regard to immigration status in all U.S. jurisdictions except Alabama.

²²¹ Soraya Fata, Leslye E. Orloff, and Monique Drew, *Chapter 16: Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, Empowering Survivors Manual (July 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>.

To help APS workers, courts, victim advocates, and attorneys better understand which public benefits immigrant survivors are eligible to receive and how long it takes to start receiving them, NIWAP created a series of public benefits bench cards and timeline tools for cases involving T visa trafficking victims,²²² VAWA self-petitioners,²²³ and U visa victims.²²⁴ Since many APS immigrant clients could qualify for multiple forms of immigration relief, it is important to screen for all options. It is important that APS staff always screen for human trafficking,²²⁵ including trafficking occurring within family relationships.²²⁶

Human Trafficking Victims:²²⁷ Among immigrant crime victims, those who have the greatest access to federal and state funded public benefits are victims of human trafficking who have been granted continued presence; have obtained a bona fide determination in a T visa case; have been granted a T visa; and are adults with disabilities who were trafficked when they were children and received a child eligibility letter from the Office in Trafficking in Persons at the U.S. Department of Health and Human Services.

VAWA Eligible Abused Family Members:²²⁸ Abused spouses, parents, and children abused by their U.S. citizen spouses, former spouses, parents, or over 21 year old children, or by their lawful permanent resident spouses, former spouses, or parents, have greater access to federal and state public benefits than many other immigrants, but have significantly less access than victims of human trafficking. There are a number of different types of VAWA immigration relief, including VAWA self-petitions and VAWA cancellation of removal. It is important to identify adults with disabilities who were abused as children. If an adult with disabilities was abused when they were under the age of 21 by their citizen or lawful permanent resident parent, they have up to their 25th birthday to file a VAWA self-petition.

²²² Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>; Katelyn Deibler & Leslye E. Orloff, *T Visa Timeline with Background Checks* (June 12, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

²²³ Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>; Katelyn Deibler & Leslye E. Orloff, *VAWA Self-Petition Timeline with Background Checks* (June 12, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-timeline>.

²²⁴ Jordan Tacher, Aditi Kumar, Abigail Whitmore, and Leslye E. Orloff, *U Visa Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>; Katelyn Deibler & Leslye E. Orloff, *U Visa Timeline with Background Checks* (Sept. 15, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>.

²²⁵ *Questions for Identifying Trafficked or Enslaved Persons* (June 2011), available at <https://niwaplibrary.wcl.american.edu/pubs/questions-for-identifying-trafficked-or-enslaved-persons>.

²²⁶ 3 USCIS-PM B.2, available at <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

²²⁷ Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *Trafficking Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>.

²²⁸ Jordan Tacher, Abigail Whitmore, and Leslye E. Orloff, *VAWA Immigration and Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, VAWA Suspension of Deportation, and Battered Spouse Waiver Applicants* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>.

U Visa Crime Victims.²²⁹ Immigrant victims of domestic violence, elder abuse, sexual assault, stalking, kidnapping, felonious assault, extortion, human trafficking, and other U visa listed criminal activities will be eligible for a U visa when they assist with APS investigations. U visa victims have less access to federal and state funded public benefits than both human trafficking victims and VAWA eligible victims. It can take up to 5 years for U visa victims to be granted bona fide determinations, which provide protection from deportation through deferred action and work authorization. U visa victims with bona fide determinations are eligible to purchase health insurance on the exchanges, get drivers' licenses and state issued IDs, and in some states qualify for additional state funded public benefits.

Because access to federal and state public benefits and services varies by state and by public benefits program, NIWAP has developed a set of tools that will help APS staff, victim advocates, attorneys, social workers, and other service providers working with older adult abuse victims and abused persons with disabilities identify all of the federal and state funded public benefits the abused immigrant qualifies to receive in your state. These tools include an interactive public benefits map,²³⁰ state-by-state screening tools,²³¹ and state-by state detailed public benefits charts²³² that contain all of the legal citations needed to prove an immigrant survivor's public benefits eligibility in the state. NIWAP has also published a helpful guide on how to use these state public benefits maps and charts²³³ and can provide case specific technical assistance to APS staff and other professionals on immigrant survivors' legal rights to access federal and state public benefits.²³⁴ *For helpful tools that promote better understanding of the eligibility of immigrant victims of elder abuse or abuse of adults with disabilities for federal and state funded public benefits, see Appendix E (U visa), Appendix F (T visa), and Appendix G (VAWA).*

The U and T Visa Application Process

USCIS has sole jurisdiction over all petitions for U and T visas.²³⁵ A person seeking a U visa must submit, by mail, 1) Form I-918, "Petition for U Nonimmigrant Status," 2) all supporting documents establishing eligibility, and 3) certification Form I-918B.²³⁶ Form I-918B

²²⁹ Jordan Tacher, Aditi Kumar, Abigail Whitmore, and Leslye E. Orloff, *U Visa Victim Immigration and Public Benefits Eligibility Process* (Dec. 31, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>.

²³⁰ *Interactive Public Benefits Map*, available at <http://niwaplibrary.wcl.american.edu/interactive-public-benefits-map/>.

²³¹ *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²³² *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²³³ *Guide-to-the-Public-Benefits-Map* (Oct. 9, 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/guide-to-the-public-benefits-map>.

²³⁴ For technical assistance email info@niwap.org or call (202) 274-4457.

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

²³⁶ "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

must be signed by a qualified certifier, such as a CPS director or supervisor, who has been designated the authority to sign U visa certifications.²³⁷ The date of the certification must be within the six months immediately preceding the filing of the U visa application.²³⁸

A person seeking a T visa must submit a T visa application (Form I-914), “Application for T Nonimmigrant Status,” and supporting documents establishing eligibility.²³⁹ A T visa declaration (Form I-914 Supplement B) may be submitted with the application, but is not required evidence; however, it does provide helpful evidence of the victimization, trafficking, and assistance offered by the victim.²⁴⁰

All U and T visa applications are filed with a specialized section of USCIS whose adjudicators have specialized training on domestic violence, sexual assault, child abuse, and human trafficking. 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.²⁴¹

By preparing and signing the U visa certification (Form I-918 Supplement B) or the T visa declaration (Form I-914 Supplement B), *a certifier is not conferring legal immigration status upon a noncitizen applicant or making a determination of the applicant’s eligibility for a U or a T visa.*²⁴²

For the U visa, the certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility. By signing the certification, the certifying agency verifies that the individual is a victim of a qualifying criminal activity and that the victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁴³ In addition to the certification, the applicant must demonstrate that they suffered substantial mental or physical abuse²⁴⁴ as a result of having been

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 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

²³⁷ The U visa implementing regulations require that the certifying official be the head of the certifying agency or a supervisor specifically designated by the head of the certifying agency to issue U visa certifications. *See* 8 C.F.R. §§ 214.14(a)(3) & 214.14(c)(2)(i).

²³⁸ “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; *see also* 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)) (2007).

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

²⁴⁰ 81 Fed. Reg. 92266, 92276 (2016).

²⁴¹ Even where a case is before an immigration judge, adjudication for visas may still only be conducted by the USCIS Vermont Service Center.

²⁴² *DHS U Visa Law Enforcement Certification Resource Guide* (January, 2012), available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visa_certification_guide.pdf/view (last visited Feb. 26, 2014).

²⁴³ *See* Janell Ross, *Metro Nashville Police Block Visas for Crime Victims, Witnesses*, *The Tennessean* (Apr. 18, 2010), available at <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS> (quoting DHS spokeswomen clarifying that the role of certifying officials including police filling out U visa certifications is to verify that an individual was a crime victim).

²⁴⁴ *DHS U and T Visa Resource Guide* at 24 (Nov. 2015), available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015> (stating that USCIS

a victim of a qualifying criminal activity. The victim should also provide a statement describing the facts of the victimization in their own words. However, the certifier is not required to assess whether the victim actually suffered substantial mental and physical abuse in order to sign the certification.²⁴⁵

For the T visa, the declaration is not mandatory and is one type of evidence that the T visa applicant can submit that provides evidence of victimization and the assistance the trafficking victim has offered, provided, or is providing to government officials detecting, investigating, or prosecuting the human trafficking.²⁴⁶ The declaration provides evidence that helps the victim demonstrate victimization and compliance with reasonable requests for assistance.²⁴⁷ The declaration is limited to helping demonstrate victimization and compliance with reasonable requests.²⁴⁸ 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 that the trafficking victim would suffer extreme hardship involving unusual and severe harm upon removal.²⁴⁹

Additionally, to be granted a U or T visa, victims are required to prove that they are eligible for admission²⁵⁰ to the United States. If the immigrant victim cannot prove inadmissibility, DHS may grant a discretionary waiver as authorized by the U and T visa statutes.²⁵¹ In making this determination DHS will consider the totality of the victim's case and circumstances.²⁵² *For an overview of the full U visa and T visa process and the role that U visa certifications and T visa declarations play in the full U and T visa application and adjudication process, see the charts located in Appendix H (U visa) and Appendix I (T visa).*²⁵³

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).

²⁴⁵ *DHS U and T Visa Resource Guide* at 6 (Nov. 2015), available at

<https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>.

²⁴⁶ 72 Fed. Reg. 92266, 92272 (2016).

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

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

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

²⁵⁰ See INA § 212; 8 U.S.C. § 1182 (grounds of inadmissibility).

²⁵¹ See Limayli Huguet et. al., *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Dec. 26, 2022), available at

<https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-ava-t-u-sijs> (This chart also tracks inadmissibility exemptions and waivers available for each of the forms of crime victim based immigration relief, including the U visa.).

²⁵² "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.

²⁵³ Additionally, for a comparison of the U visa and the T visa, see *supra* Appendix J. For a comparison of the U visa and VAWA forms of relief, see *supra* Appendix K.

U Visa Quick Reference For Child and Adult Protective Services Agencies and Staff²⁵⁴

By Leslye E. Orloff, Alina Husain, Alisha Lineswala,
Benish Anver, Daniel Enos, Sylvie Sheng, and Hannah Bridges
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Purpose of the U visa²⁵⁵	<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.
Benefits of the U visa²⁵⁶	<ul style="list-style-type: none"> ● Strengthens the ability of adult and child protective services agencies, 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.
Who is eligible for a U visa?	<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;²⁵⁷ ○ 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.²⁵⁸
Who is eligible for a U visa?	<ul style="list-style-type: none"> ● To prove helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, judge, Department of Homeland Security (DHS) official, child or adult

²⁵⁴ Adopted from Leslye E. Orloff et al., *U visa Certification and T visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors* (Aug. 30, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit-law-enforcement-prosecutor>.

²⁵⁵ See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

²⁵⁶ See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

²⁵⁷ 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).

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

	<i>protective services</i> , or other federal or state authority involved in detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities. ²⁵⁹
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).²⁶⁰ • For victims who are 21 years of age or older, qualifying family members include their spouse and children.²⁶¹
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: • 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 any similar activity in violation of federal, state, or local criminal law and solicitation, attempts or conspiracy to commit any such criminal activity. • The term “criminal activity” in the statutory language was intentionally chosen by Congress to accomplish two goals – to be broadly inclusive of “any similar activity” 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.” • 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.
Certification Requirements	<ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a child or adult protective services agency, 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:

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

²⁶⁰ I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

²⁶¹ I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

Certification Requirements

- 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 Child and Adult Protective Services:** Helpfulness includes, but is not limited to, calling 911 to report the criminal activity, providing a statement to APS or another government agency, attending meetings with APS staff, appearing in court, filing a report with the government agency, or seeking a protection order.²⁶²
 - **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;²⁶³
 - **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 child or adult protective services or the court, providing statements in a CPS or APS interview, 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.

²⁶² For more details on the types of actions an immigrant victim of crime or abuse may take to show helpfulness see Peter Helein et al., *U-Visa: "Helpfulness" Checklist* (Oct. 28, 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

²⁶³ See Benish Anver, Rocio Molina, Andrea Carcamo-Cavazos, Chief Peter Helein, Devon E. Turner, and Spencer Cantrell, *U-Visa: "Helpfulness"* (Oct. 21, 2019), available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

<p>Child or Adult Protective Services as U visa Certifiers</p>	<ul style="list-style-type: none"> ● Child and adult protective services agencies are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B.²⁶⁴ A certifying official is the head of a child or adult protective services agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.²⁶⁵ ● 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 child or adult protective services staff, 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.²⁶⁶ ● 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, prosecutors, or child or adult protective services agency staff 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.²⁶⁷ 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.²⁶⁸ ● 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

²⁶⁴ 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).

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

²⁶⁶ 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.”

²⁶⁷ *DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

²⁶⁸ *See DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

<p>Assessing the Helpfulness of the U visa Applicant</p>	<p>prove that they did not unreasonably refuse to cooperate with reasonable requests for assistance from government officials investigating or prosecuting the criminal activity.</p> <ul style="list-style-type: none"> ● 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.²⁶⁹
<p>Attesting to Helpfulness on the Certification Form</p>	<ul style="list-style-type: none"> ● Child and adult protective services agency staff responsible for certification 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 CPS to report child abuse or neglect ○ Victim called APS to report abuse, neglect or exploitation or a senior or disabled adult ○ Victim was interviewed by and spoke freely with CPS/APS staff ○ U visa applicant parent brought their abused child to meetings and appointments with CPS staff, therapists, and others in response to CPS staff requests ○ Victim attended court hearings related to a case CPS/APS initiated ○ 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 for Cooperation After Filing</p>	<ul style="list-style-type: none"> ● In order to obtain a U visa, the victim must provide continuing assistance when reasonably requested by child or adult protective services staff, law enforcement, or prosecutors,²⁷⁰ or the certifier may revoke the certification.²⁷¹ 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.²⁷² 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,

²⁶⁹ DHS U and T Visa Resource Guide at 18.

²⁷⁰ 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).

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

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

victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.²⁷³

Timing of U Visa Certification

- Child and adult protective services 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.²⁷⁴

Timing of U Visa 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. The DHS regulations envision that the U visa certification process fits within routine activities of child and adult protective services. The U visa certification can be completed at the same time CPS and APS staff are completing CPS/APS reports or when prosecutors begin working with the victim. Child and adult protective services agencies can provide certifications at any time after they assess the helpfulness. Waiting to sign certifications until after the CPS or APS investigation, court case, or any 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.²⁷⁵

- A completed certification will be valid for six months from the date of signature.²⁷⁶

When Child and Adult Protective Services are Able to Provide U visa Certification

- If a child or adult protective services agency staff member 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 CPS or APS investigation, or any prosecution or court case that occurs as a result of the investigation.
- Examples include when victims have been helpful to prosecutors making charging decisions, when they cooperated during interviews and meetings with CPS or APS agency staff, participating in a criminal investigation, filed for a protection order, or filed a police report. This authority to certify exists whether or not child or adult protective services opens an investigation or CPS, APS, the State, or a prosecutor ultimately pursues a court action against or a prosecution of the perpetrator based upon one or more of the criminal activities listed in the U visa statute.

U visa, Timeline & Attaining Lawful Permanent Residency

- 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.

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

²⁷⁴ See *DHS U and T Visa Resource Guide* at 19.

²⁷⁵ See *Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery* (Nov. 8, 2017), available at <https://niwaplibrary.wcl.american.edu/prosecutors-tools>.

²⁷⁶ Dep’t of Homeland Sec., *Instructions for Supplement B, Form I-918* at 2 (expires 04/30/2021).

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

- Approximately 4-5 years²⁷⁷ after filing DHS will adjudicate the case and conduct another fingerprint check. Approvable cases receive bona fide determinations and are granted “deferred action status” which provides formal protection from deportation, and legal work authorization. Bona fide determinations last for four years and are renewable (after an additional background check) while the victim awaits the availability of a U visa.
- 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 more than 19 years after filing. 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.
- 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 their 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/>

²⁷⁷ The time frames in this section were current as of April 2020. See, USCIS, *Visa Report: U Visa Filing Trends* (April 2020), available at https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf.

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 child and adult protective services agencies as certifiers. In the legislative and regulatory history of the U visa Congress and DHS often use the term "law enforcement" to refer to all government agencies, including Child and Adult Protective Services agencies that are authorized to sign U visa certifications. When the legislative and regulatory history refers to "investigations or prosecutions" this term includes "detection, investigation, prosecution, conviction, or sentencing" of U visa listed criminal activity which can occur during the process of many investigations that government agencies conduct in the civil, family, juvenile or criminal context.

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, kidnapping, 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."²⁷⁸

"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."²⁷⁹

"(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."²⁸⁰

"[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

²⁷⁸ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) § 1513, Pub L. 106-386.

²⁷⁹ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) § 1513, Pub L. 106-386.

²⁸⁰ 146 Cong. Rec. S10196 (2000).

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.”²⁸¹

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.”²⁸²

“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.”²⁸³

“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.”

Department of Homeland Security Statements on Adult Protective Services U Visa Certification Authority²⁸⁴

“Who can complete the Form I-918B?”

- Any federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict or sentence the perpetrator.
- Agencies with criminal investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor.”

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...”²⁸⁵

Regulatory Authority: Helpfulness

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

²⁸² 72 Fed. Reg. 53013, 53014 (2007).

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

²⁸⁴ *U Visa Law Enforcement Resource Guide* at iii (last visited May 26, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>.

²⁸⁵ 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).

“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.”²⁸⁶

“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.”²⁸⁷

“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.”²⁸⁸

“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.”²⁸⁹

“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.”²⁹⁰

“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.”²⁹¹

²⁸⁶ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁸⁷ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁸⁸ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, DHS Docket USCIS-2006-0069, page 21 (Sept. 17, 2007).

²⁸⁹ 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).

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

²⁹¹ 73 Fed. Reg. 75540, 75554 (2008).

T Visa Quick Reference for Child and Adult Protective Services Agencies and Staff²⁹²

By Sylvie Sheng, Hannah Bridges, and Leslye E. Orloff
October 3, 2023

Purpose of the T Visa	<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.²⁹³ Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement, child and adult protective services, government agencies, and immigrant communities.²⁹⁴
Benefits of the T Visa	<ul style="list-style-type: none"> • Strengthens the ability of the child and adult protective services, 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.²⁹⁵ • 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.²⁹⁶ 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.²⁹⁷
Who is eligible for a T visa?²⁹⁸	<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 child or adult protective services, law enforcement, or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking;²⁹⁹ and ○ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.³⁰⁰ • In addition, the victim must be admissible (based on a review of criminal history,

²⁹² *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (March 2018), available at <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>.

²⁹³ See TVPA 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

²⁹⁴ *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002).

²⁹⁵ 72 Fed. Reg. 92266, 92269 (2016).

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

²⁹⁷ See generally 73 Fed. Reg. 75540 (2008).

²⁹⁸ *DHS U and T Visa Resource Guide* at 9–10.

²⁹⁹ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

³⁰⁰ 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>immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which they may be eligible.³⁰¹</p> <ul style="list-style-type: none"> • Individuals currently in removal proceedings or with final orders of removal are eligible for a T visa.³⁰² • 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 child or adult protective services agency staff or 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 child or adult protective services agency staff or law enforcement.³⁰³ • While in the United States, the victim has an ongoing duty to comply with reasonable requests from child or adult protective services agency staff, law enforcement, or prosecutors for assistance in the investigation or prosecution of human trafficking.³⁰⁴
<p>T visa Qualifying Criminal Activities³⁰⁵</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.³⁰⁶ • 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.³⁰⁷ This

³⁰¹ 72 Fed. Reg. 92266, 92283 (2016); Limayli Hugué, 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* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

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

³⁰³ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016)).

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

³⁰⁵ *DHS U and T Visa Resource Guide* at 12.

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

³⁰⁷ 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),

T visa Qualifying Crimes Activities	<p>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.³⁰⁸</p>
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.³⁰⁹
What Is a T visa Declaration? ³¹⁰	<ul style="list-style-type: none"> • The T visa declaration is supplementary evidence that child or adult protective services agency staff, law enforcement, prosecution, and other authorized agencies can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests³¹¹ for assistance in the detection, investigation or prosecution of human trafficking.³¹² • The T visa declaration is not a required document or conclusive evidence for a T visa application, but when provided, is useful evidence.³¹³ DHS applies the Violence Against Women Act’s “any credible evidence” standard to T visa cases to encourage government officials including child or adult protective services agency staff, law enforcement, and prosecutors to sign T visa declarations.³¹⁴ • 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.³¹⁵ 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.³¹⁶ • 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 a child or adult protective services agency, law enforcement,

available at <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

³⁰⁸ 72 Fed. Reg. 92266, 92270 (2016).

³⁰⁹ 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.

³¹⁰ *DHS U and T Visa Resource Guide* at 10–11.

³¹¹ 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 Sec., *Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* at 2 (expires Dec. 31, 2023), available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supbinstr.pdf>.

³¹² *DHS U and T Visa Resource Guide* at 18–19.

³¹³ 72 Fed. Reg. 92266, 92276 (2016).

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

³¹⁵ *DHS U and T Visa Resource Guide* at 11.

³¹⁶ 72 Fed. Reg. 92266, 92276 (2016).

<p>What Is a T visa Declaration?</p>	<p>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.³¹⁷</p> <ul style="list-style-type: none"> • The criminal activity may have occurred at any time in the past.³¹⁸ 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>Child and Adult Protective Services Agencies as T visa Certifiers</p> <p>Law Enforcement and Prosecutors as T visa Certifiers</p>	<ul style="list-style-type: none"> • Child and adult protective services agencies 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.³¹⁹ A certifying official is the head of a child or adult protective services agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.³²⁰ • Child and adult protective services agencies may be the first responders to immigrant victims of human trafficking. Child and adult protective services staff have firsthand knowledge of a victim’s assistance in reporting the criminal activity and participating in any subsequent CPS, APS, and/or law enforcement investigations. Child and adult protective services agency staff, 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, and for cases involving children, seniors, or disabled adults, child or adult protective services agency staff. 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 and the CPS/APS staff working with the victim 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, child and adult protective services agencies, 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 child or adult protective services agency staff or 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.³²¹

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

³¹⁸ See 72 Fed. Reg. 92266, 92278 (2016). “USCIS will accept applications regardless of when the applicant was victimized.”

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

³²⁰ *DHS U and T Visa Resource Guide* at 13.

³²¹ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa).

<p>Assessing the Assistance Requirement</p>	<ul style="list-style-type: none"> • In determining “reasonableness” of the request for assistance or cooperation made by child or adult protective services agency staff, 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 child or adult protective services agency, 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.³²² DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.³²³ It is generally reasonable for child or adult protective services agency staff to ask a trafficking victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.³²⁴ • 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.³²⁵ • 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.³²⁶ A judge may also certify when the only court case the victim participated in was a family or civil court matter. If a child or adult protective services agency staff 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.³²⁷ <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.³²⁸ 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.³²⁹</p>
<p>When Officials are Able to Grant T visa Declaration</p>	<ul style="list-style-type: none"> • If the child or adult protective services agency staff, 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.³³⁰ • Child or adult protective services agency staff 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

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

³²³ 72 Fed. Reg. 92266, 92275 (2016).

³²⁴ 72 Fed. Reg. 92266, 92275 (2016).

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

³²⁶ Dep’t of Homeland Sec., *Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* at 1 (expires Dec. 31, 2023), available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supbinstr.pdf>; *DHS U and T Visa Resource Guide* at 17, 19.

³²⁷ *DHS U and T Visa Resource Guide* at 18.

³²⁸ 72 Fed. Reg. 92266, 92274 (2016).

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

³³⁰ *DHS U and T Visa Resource Guide* at 18.

<p>T Visa Declaration</p>	<p>signing a certification.³³¹</p> <ul style="list-style-type: none"> • The T visa declaration can be completed at the same time officers are completing police reports or when prosecutors begin working with the victim. Child or adult protective services agency staff 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.³³²
<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,³³³ and access to state and federal public benefits.³³⁴ DHS will run a background check based on the applicant’s fingerprints before granting bona fide determination.³³⁵ • 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.³³⁶ • 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.³³⁷

³³¹ 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.

³³² See *Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery* (Nov. 8, 2017), available at <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

³³³ 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), available at <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

³³⁴ To look up what federal and state public benefits human trafficking victims are eligible for in each state see *All State Public Benefit Charts* (2019), available at <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

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

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

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

	<ul style="list-style-type: none"> • Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year.³³⁸ However, to date, the annual cap has never been reached and visas remain available to all applicants who qualify.³³⁹
More Information	Please visit NIWAP’s web library for more information, training or technical assistance at http://niwaplibrary.wcl.american.edu/

T Visa Statutory and Regulatory Background³⁴⁰

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.”³⁴¹

“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.”³⁴²

“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.”³⁴³

“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

³³⁸ I.N.A. § 214(o)(2)–(3), 8 U.S.C. § 1184(o)(2)–(3).

³³⁹ *DHS U and T Visa Resource Guide* at 10.

³⁴⁰ 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), available at <https://niwaplibrary.wcl.american.edu/pubs/t-visa-regulations-2002-and-2016>

³⁴¹ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

³⁴² Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(4)–(5), Pub. L. No. 106-386, 114 Stat. 1464.

³⁴³ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(14), (b)(17), (b)(19), Pub. L. No. 106-386, 114 Stat. 1464.

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.”³⁴⁴

“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.”³⁴⁵

“[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.”³⁴⁶

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.”³⁴⁷

“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.”³⁴⁸

Department of Homeland Security Statements on Adult Protective Services T Visa Declaration Authority³⁴⁹

“A federal, state, local, tribal, or territorial law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the detection, investigation, prosecution, conviction or sentencing of a qualifying crime or criminal activity or human trafficking is eligible to sign Form I-918B or Form I-914B. This includes agencies with investigative jurisdiction in their respective areas of expertise, including but not limited to: child and adult protective services, the Equal Employment Opportunity Commission (EEOC), and Federal and State Departments of Labor (DOL).”

Regulatory Authority: Nature of Declaration

A government agency T visa declaration not mandatory, it serves as helpful evidence in the victim’s T visa case but is not given any special evidentiary weight. A government agency declaration itself does not grant a benefit and is one form of possible evidence but it does not

³⁴⁴ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), (b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

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

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

³⁴⁷ 67 Fed. Reg. 4782, 4784 (2002).

³⁴⁸ 67 Fed. Reg. 4782, 4785 (2002).

³⁴⁹ *DHS U and T Visa Resource Guide* at 15.

lead to automatic approval of the application for T visa status by USCIS. If provided, the T visa declaration 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 T visa declaration 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 government agency completing the T visa declaration, 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 a T visa declaration is at the discretion of the government agency from whom the trafficking victim seeks the declaration. A formal civil, administrative, or criminal investigation or prosecution is not required for government agencies to have the authority to and be able to complete the T visa declaration form.”³⁵⁰

³⁵⁰ 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 Adult Protective Services: Frequently Asked Questions³⁵¹

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.”³⁵²

How do Adult Protective Services (APS) agencies benefit from the U visa?

To provide protective, emergency or other supportive services to older individuals, the U and T visas reinforce an APS agency’s commitment to victim safety, protection, and recovery from trauma. 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 and 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.³⁵³ Government agencies responsible for detecting, investigating, prosecuting, convicting, or sentencing criminal activity can use the U and T visas in conjunction with other measures also to prove to immigrants and the community that they are serious about providing services to older immigrants and protecting them from criminal activities.

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.³⁵⁴ 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.³⁵⁵

³⁵¹ This document was modeled after the *Questions and Answers about U Visas* document, created by the International Institute of the Bay Area. Legal Momentum and the Vera Institute of Justice wish to acknowledge Susan Bowyer.

³⁵² Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a), Pub. L. 106–386, 114 Stat. 1464.

³⁵³ See Rafaela Rodrigues & Leslye Orloff, *Improving Crime Fighting Outcomes in Cases of Immigrant Victims: The Role of Continued Presence U and T Visas as Tools for Law Enforcement* (2020), available at <https://niwaplibrary.wcl.american.edu/pubs/improving-crime-fighting-outcomes-in-cases-of-immigrant-victims-11-17-20-1>.

³⁵⁴ 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).

³⁵⁵ INA § 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 or prosecutors.³⁵⁶

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.³⁵⁷ The U visa specifically includes the following criminal activities:³⁵⁸

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.³⁵⁹

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.³⁶⁰ When USCIS conducts its adjudication of the case

³⁵⁶ *DHS U and T Visa Resource Guide* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016)).

³⁵⁷ 72 Fed. Reg. 53014, 53015 (2007).

³⁵⁸ 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).

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

³⁶⁰ 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)).

USCIS reviews all evidence submitted and will determine, in its sole discretion, the evidentiary value of the evidence.³⁶¹ The rules reflect the broad protections and flexible evidentiary standards envisioned by Congress.³⁶²

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.³⁶³

The discussion of eligible children below will apply to cases of adult victims of elder abuse and abuse of persons with disabilities. Federal immigration laws define “child” as a person under the age of 21. Depending on how state laws define the age at which one becomes an adult, APS may encounter immigrant persons with disabilities who are eligible for a U or T visa and are still considered “children” under immigration law, even if they are considered an adult in their state. They may also be eligible to include parents or siblings in their applications because the immigrant will be under the age of 21 when they file for U or T visa protections.

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.³⁶⁴

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.³⁶⁵

³⁶¹ 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)).

³⁶² See, e.g., H.R. REP. NO. 103-395, at 38 (1993).

³⁶³ USCIS, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions*, PM-602-0102 (Apr. 15, 2015), available at <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVVRA-2013-PM.pdf>.

³⁶⁴ INA § 101(a)(15)(U)(ii)(I)–(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(I)–(II).

³⁶⁵ INA § 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).

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.³⁶⁶

Why is the APS agency’s certification so important to immigrant victims?

The U and T visas afford undocumented victims temporary legal immigration status. Without this protection, victims may be afraid to seek assistance from APS agency staff because they are afraid of being victimized or threatened with deportation in retaliation for revealing information to APS about the abuse and criminal activities they have been subjected to. Due to this fear, immigrant victims may risk exploitation and ongoing victimization rather than come forward to report crimes. Older immigrant victims may be untrusting of any government officials based on previous experiences in their home country. At the same time they may also be unaware of U.S. laws and often cultural norms may pose barriers to reporting maltreatment. For these reasons, it is important to build trust among immigrant communities by protecting those whom are most vulnerable. The U and T visas also provide a victim with employment authorization, protection against deportation, and increased access to public benefits, which are critical tools in establishing economic independence and long-term safety.

CERTIFICATION 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.³⁶⁷ 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, 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.³⁶⁸ 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.³⁶⁹ Within an agency, only an individual in a supervisory role specifically designated by the head of the agency to sign U visa certifications and T visa declarations may sign the certification.³⁷⁰ Every APS official with a supervisory role may be designated as a U visa certification signatory. An agency head may designate any number of APS supervisory staff to sign these certifications.

³⁶⁶ INA § 214(p)(7); 8 U.S.C. § 1184(p)(7); INA § 214(o)(4)–(5); 8 U.S.C. § 1184(o)(4)–(5).

³⁶⁷ INA § 214(p)(1); 8 U.S.C. § 1184(p)(1); *DHS U and T Visa Resource Guide* at 15.

³⁶⁸ 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.

³⁶⁹ 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.

³⁷⁰ INA § 214(p)(1); 8 U.S.C. § 1184(p)(1) (2000).

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 or APS to report domestic violence, sexual assault or other crimes committed against them, and APS staff, police, or prosecution-based victim advocates 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.³⁷¹

Are APS agency staff required to sign the certifications?

No. An APS agency is not required by federal law to sign the certifications.³⁷² Under federal law, whether a certifying agency signs a certification/declaration is at the discretion of the agency. However, some states have passed laws that require the signing of U or T visa certifications by state agencies authorized to sign U or T visa certifications under federal law.³⁷³ Congress enacted the U visa and T visa protections with the expectation that certain government agencies are in a good position to assess the helpfulness or assistance of a victim.³⁷⁴ A victim cannot obtain a U visa without a certification.³⁷⁵

³⁷¹ 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), available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB962/Enrolled>; Alison Kamhi & 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), available at https://www.ilrc.org/sites/default/files/resources/u_visas_and_t_visas_pa-04.2020.pdf.

³⁷² 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.

³⁷³ A list of state U and T visa certification laws is available at: <https://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws>

³⁷⁴ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a)(2)(B), Pub. L. 106–386, 114 Stat. 1464.

³⁷⁵ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

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.³⁷⁶ 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.³⁷⁷

Is APS required to create a policy for reviewing and signing Form I-918B and Form I-914B?³⁷⁸

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 (U visa certification) or Form I-914B (T visa declaration). 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. Training on U visa and T visa certification is recommended for courts and staff at any government agency signing certifications.³⁷⁹

If an authorized APS official signs the certification, does the victim automatically get a U visa, T visa, or lawful immigration status?³⁸⁰

³⁷⁶ See 81 Fed. Reg. 92266, 92276 (2016).

³⁷⁷ DHS Blue Campaign, *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and other Crimes* at 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>.

³⁷⁸ *DHS U and T Visa Resource Guide* at 16.

³⁷⁹ On-line webinars on U visa certification by APS, law enforcement, prosecutors, judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials and a webinar for APS agencies on U visa and T visa certification is available at: <https://niwaplibrary.wcl.american.edu/webinar-aps>. Training is available for APS 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 APS staff and all professionals who work with immigrant survivors is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

³⁸⁰ On-line webinars on U visa certification by APS, law enforcement, prosecutors, judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials and a webinar for APS agencies on U visa and T visa certification is available at: <https://niwaplibrary.wcl.american.edu/webinar-aps>. Training is available for APS 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 APS staff and all professionals who work with immigrant survivors is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

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 APS staff who sign a certification 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?³⁸¹

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.

Who decides which benefit to seek, a U or T visa?³⁸²

The victim or victim's advocate or attorney will usually make that decision and will 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 at the same time. Immigrant victims of elder abuse or abuse of persons with disabilities may be initially identified as a U visa crime victim, but later it is discovered they also experienced human trafficking. Since T visa victims receive broad access to federal and state public benefits, APS staff and victim advocates and attorneys

³⁸¹ *DHS U and T Visa Resource Guide* at 17.

³⁸² *DHS U and T Visa Resource Guide* at 17.

working with older adult victims of abuse or persons with disabilities should screen all clients for trafficking victimization.³⁸³ Furthermore, because immigrants are particularly vulnerable for being targeted by traffickers, screening should occur not just once, but at regular intervals.

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.³⁸⁴ Helpfulness can be as simple as a victim reporting a crime to the police, victimization to APS, 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. Older adults and persons with disabilities can provide helpfulness in many ways, including by speaking with APS staff, showing up at appointments with APS, participating in activities or taking action on the advice of APS workers. Their guardians or next friends can also provide information and assistance in APS investigations.

Victims who seek civil protection orders or divorce 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 speaking with investigators, providing information for a police report, identifying a perpetrator, appearing at court hearings, testifying, or filing victim-impact statements.

³⁸³ For examples of screening questions, please refer to Appendix D “Sample Questions for Identifying a Trafficked/Enslaved Person.”

³⁸⁴ 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* (2019), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

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.³⁸⁵ Congress intended for individuals to be eligible for a U visa at the very early stages of an investigation.³⁸⁶ 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 agency or judge 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 receipt of a bona fide determination, full adjudication of the U visa case, receipt of the U visa, and through the time the victim applies for and is granted lawful permanent residency.³⁸⁷

To prevent further harm to victims that could be caused by the cooperation requirement, Congress created an exception to the ongoing cooperation requirement when victims can demonstrate that their inability or refusal to cooperate is not unreasonable.³⁸⁸ 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.³⁸⁹ If a victim has been helpful in detection or investigation of criminal activity, APS staff, 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 APS, law enforcement, prosecutors, a judge, or other government agency only the victim’s past helpfulness, current helpfulness, or the likelihood of future helpfulness can be considered.

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

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

³⁸⁷ 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)).

³⁸⁸ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement* at 4 (Jan. 2012), available at http://www.dhs.gov/xlibrary/assets/dhs_u_visas_certification_guide.pdf.

³⁸⁹ 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).

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.³⁹⁰ 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.³⁹¹ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.³⁹² 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.³⁹³

A victim is requesting a U visa certification or 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?

Yes. Both the I-918B (U visa certification) and the I-914B (T visa certification) provide an opportunity for the certifying agency completing the form to provide information to USCIS about the extent of the victim’s helpfulness 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 helpfulness. USCIS will ultimately determine whether the victim meets all of the U visa or T visa requirements.

- Form I-918B U visa certification form 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 T visa certification form 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.

DECIDING WHETHER TO CERTIFY

Can an authorized APS agency official complete a U or T visa certification form 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?

³⁹⁰ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

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

³⁹² 72 Fed. Reg. 92266, 92275 (2016).

³⁹³ 72 Fed. Reg. 92266, 92275 (2016).

Yes. There is no applicable statute of limitations (i.e. time limit) that precludes signing a U visa certification or T visas declaration.³⁹⁴ 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.³⁹⁵ In addition, T visa regulations were not promulgated until 2002 and the U visa regulations were not issued until September 2007.³⁹⁶ 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 delays was mitigated, and victims who have provided helpfulness remain eligible to file for U and T visas. No requirements will be 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.³⁹⁷

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.³⁹⁸ The Congressional goal of improving trust between government agencies, 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 these officials. When victims report crimes and seek help from APS in obtaining U and T visa protections, the word spreads that the courts and justice system officials are willing to help immigrants, which will result in more immigrant victims coming forward.³⁹⁹

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

The fact that an immigrant is in removal proceedings and/or detention does not impact the victim's eligibility to apply for and be granted a U or T visa.⁴⁰⁰ Many circumstances,

³⁹⁴ "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).

³⁹⁵ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386.

³⁹⁶ 72 Fed. Reg. 53013 (2007).

³⁹⁷ 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).

³⁹⁸ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 §1513(a).

³⁹⁹ "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).

⁴⁰⁰ 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 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

including reports about the victim to DHS by the perpetrator, can lead a 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.⁴⁰¹ 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.⁴⁰²

Can an authorized APS agency official sign a certification if the agency investigates abuse or a criminal activity that is not listed as a qualifying crime under the U visa statute?

Yes. The certifying official is only required to state in the U visa certification one or more qualifying criminal activities suffered by the victim that were identified through the agency's investigation or work with the victim.⁴⁰³ It is not necessary that the qualifying criminal activity detected be the crime that the agency investigated or prosecuted.⁴⁰⁴ For example, if an older immigrant couple's (victims') home is being used as a methamphetamine lab by their grandson and his companions and the victims are being held in the home under threat of reporting them to immigration authorities, APS may provide supportive services for the victims while law enforcement investigates the grandson's illegal drug activity (a non-qualifying criminal activity). APS may certify that the grandparents are victims of a qualifying criminal activity (extortion, kidnapping, elder abuse) even though the criminal activity being investigated is a non-qualifying criminal activity under the U visa statute and the extortion, kidnapping or elder abuse are not pursued by the criminal justice system.

Can an authorized APS agency official sign a certification if the victim is not needed in the course of a criminal 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

procedure whereby the victim may remain in or return to the United States." *DHS U and T Visa Resource Guide* at 19.

⁴⁰¹ *ICE Confirms Continued Effectiveness of Victim Witness Protections* (Apr. 19, 2019), available at <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), available at <http://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

⁴⁰² *DHS U and T Visa Resource Guide* at 20.

⁴⁰³ 8 C.F.R. § 214.14(c)(2)(i); New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,023-24.

⁴⁰⁴ "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, 72 Fed. Reg. at 53,018.

long as that victim does not unreasonably refuse to provide ongoing assistance reasonably requested after the victim's U visa application has been filed.⁴⁰⁵ T visa victims are required to comply with reasonable requests for assistance from law enforcement and prosecutors investigating human trafficking⁴⁰⁶ unless they fall into one of two statutory exceptions.⁴⁰⁷ 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. When an immigrant is incompetent or incapacitated, but their parent, guardian, or next friend, is being or has been helpful to APS investigators, APS can sign the U or T visa certification, including cases where there is not and may never be a criminal investigation or prosecution.

Can an authorized APS agency official sign a certification if the prosecutors decide(d) not to prosecute the perpetrator?

Yes. A victim willing to help in the detection, investigation, or prosecution of criminal activity by APS staff are able to access U visa protections regardless of whether the perpetrator is investigated by law enforcement or prosecuted.⁴⁰⁸ 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 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 visa was designed to provide protection for immigrant victims, to encourage them to come forward and provide evidence and information about criminal activity committed against them. If an immigrant crime victim has offered or is willing to offer assistance to law enforcement officials 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 visa eligibility.

Can an authorized APS official sign a certification or declaration if the individual seeking certification does not appear to be a victim of a qualifying criminal activity?

No. If the APS official does not believe that the individual seeking certification is a victim of a qualifying criminal activity (for U visa cases) or a victim of a severe form of human

⁴⁰⁵ *DHS U and T Visa Resource Guide* at 18.

⁴⁰⁶ *DHS U and T Visa Resource Guide* at 18, 21.

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

⁴⁰⁸ *DHS U and T Visa Resource Guide* 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>.

trafficking (for T visa cases), the agency should not sign the U visa certification or T visa declaration. There is one exception, when the immigrant applying for a U visa is an indirect victim (discussed below). APS officials, however, should remember that many of these crimes, including domestic violence, elder abuse, sexual assault and human trafficking, are traumatic and are not immediately reported. Furthermore, many perpetrators fuel immigrant victims' perceptions and expectations about government agencies, based on experiences from their home countries, where government investigators might have been corrupt and unreliable. Therefore, an APS official 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.

In addition, over time APS staff may develop reason to believe that an older individual or a person with disabilities who is receiving support or services is a victim of a qualifying criminal activity. Examples of criminal activities that may emerge over time may include the neglect or exploitation of an older immigrant victim. The criminal activity must have violated a state, federal or local criminal law.⁴⁰⁹ APS staff should review the list of U and T visa criminal activities to determine whether the person was a victim of a listed criminal activity or a similar criminal activity.⁴¹⁰ Additionally, APS should assess whether the victim is being, has been, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity and to encourage victim helpfulness and certification at the very early stages of detection or investigation of criminal activities.⁴¹¹ When a criminal activity listed in the U visa statute or a similar criminal activity has occurred to an older adult victim or a person with disabilities, and the immigrant victim or their family member or next friend has been, is being or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing, the APS agency should sign a U visa certification that the victim can use in applying for U visa protections.

In cases in which the victim may not qualify for a U Visa, the victim may be eligible for a VAWA self-petition or another form of immigration relief described in this toolkit. It is important to note that VAWA self-petition requires that the perpetrator commits "battering or extreme cruelty" and there is no requirement that the victim prove how and to what extent the battery or extreme cruelty harmed the victim as an element of proof in the VAWA self-petitioning case. In contrast, U visa victims are required to prove to DHS that the criminal activity they suffered constituted "substantial mental or physical abuse." In deciding on substantial mental or physical abuse, DHS considers both the severity of the harm suffered by the victim and the severity of the abuse inflicted by the perpetrator.⁴¹² The certifying agency is authorized to sign the certification without making any assessment of the harm suffered by the victim beforehand. Apart from obtaining the certification, the victim must provide evidence that they suffered substantial harm due to the criminal activity in their U visa application, and USCIS will decide whether the victim

⁴⁰⁹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,015.

⁴¹⁰ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,015; *see also* the Quick Reference Guide in this toolkit for a full list of U visa criminal activities.

⁴¹¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,019.

⁴¹² New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,018.

has proven substantial harm. APS and other certifying agencies that have evidence of physical or emotional harm suffered by the immigrant victim can include that information as part of their certification in support of the victim's case.

Can an authorized APS official sign a certification 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 of faulty or lack of interpretation. In cases of particularly traumatic crimes, it may take some time before a victim is able to recall or provide complete information, even if the victim is being helpful. This can also lead to unintended conflicting statements.

Can an APS official sign a certification if there is evidence that the victim is accused or convicted of a crime?

Yes. Certification can be granted when an APS with authority or delegated authority to sign certifications believes that the immigrant has been the victim of criminal activity, even if the victim has been arrested as a crime perpetrator in the past. Congress anticipated this problem and specifically allowed DHS 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.⁴¹³ Many immigrant crime victims have been controlled by their abusers in such a way that they end up being arrested based on information from the perpetrator or because of poor interpretation or fear of disclosing the truth about abuse to investigators. 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.⁴¹⁴ DHS will screen the criminal background of every U visa applicant and the agency will investigate every arrest. If a U visa applicant is found to be the perpetrator of the crime (e.g., someone identified as a trafficking victim is actually the trafficker), DHS will deny the applicant's case precluding the individual from obtaining U visa immigration relief.

Can an authorized APS official sign a certification 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.⁴¹⁵ USCIS will adjudicate any issues of credibility

⁴¹³ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,015.

⁴¹⁴ 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.

⁴¹⁵ DHS USCIS Instructions to Form I-918 Supplement B, U Nonimmigrant Status Certification.

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.⁴¹⁶

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.⁴¹⁷ 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 siblings under the age of 18 can be considered indirect victims and can also apply for U visas.⁴¹⁸

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".⁴¹⁹ 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.⁴²⁰

APS clients may also qualify for a U visa when they have been a victim of witness tampering, obstruction of justice, or perjury. The DHS U visa regulations state that:

"[T]his rule provides that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system."⁴²¹

Many APS clients are victims of various forms of financial abuse and manipulation that can involve manipulation of the legal system. In other cases the older adult APS client may have

⁴¹⁶ "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.

⁴¹⁷ 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).

⁴¹⁸ 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).

⁴¹⁹ 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).

⁴²⁰ 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).

⁴²¹ 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).

been a witness to crimes being perpetrated against or by members of their extended family who may live in their household. The criminal activities of witness tampering, obstruction of justice, and/or perjury may form the basis for U visa eligibility for an APS client independent of⁴²² or in tandem with other U visa criminal activities the APS immigrant client has suffered.⁴²³ It is important to note that immigrant victims who are themselves culpable of criminal activity unrelated to having been abused and forced by their abuser to commit crimes are not eligible to receive a U visa, subject to certain exceptions.⁴²⁴

What if a crime victim does not have an immigration attorney, practitioner, or advocate but the authorized APS official wants to sign a certification?

The APS agency head and APS officials with designated certification authority may sign U and T visa certifications for victims who have not yet secured legal representation.⁴²⁵ Since immigrant victims are required to file their U visa applications within 6 months of the date that the certification is signed, it is highly recommended that APS refer the immigrant survivor to an agency in the state that has expertise providing legal representation in VAWA, T visa, and U visa cases. APS staff can use NIWAP's online directory of programs with this expertise to identify agencies that provide this assistance in your state.⁴²⁶ Over 97% of U visa applicants nationally file with the assistance of an attorney or an accredited representative (a non-lawyer advocate).⁴²⁷

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.*⁴²⁸

⁴²² 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).

⁴²³ See 8 C.F.R. § 214.14(a)(14)(ii).

⁴²⁴ See 8 C.F.R. § 214.14(a)(14)(iii).

⁴²⁵ 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.

⁴²⁶ To identify local programs with experience serving immigrant crime victims, please refer to NIWAP's directory, available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>.

⁴²⁷ USCIS: U Visa Demographics: U Visa Report at 6 (Mar. 2020), available at <https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics>.

⁴²⁸ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386, §1513(a).

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.*⁴²⁹

Jurisdictions 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, the impact on trust of government agencies, including APS, and how this approach undermines community safety and the government's ability to stop crime and abuse.⁴³⁰ 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 or declaration is signed, what are the ongoing obligations for APS staff?

APS cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration and to whom DHS granted a U or T visa.⁴³¹ The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa.⁴³²

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 may contact the USCIS to report any such changes, and may disavow the certification or declaration in writing.⁴³³ DHS may then revoke the visa after providing notice to the victim of the intent to revoke and an opportunity for the victim to respond.⁴³⁴

However, such notification is appropriate only when the victim's lack of cooperation is not reasonable. A victim may decide 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 they continue cooperating. The regulations use a "totality of circumstances" test to assess whether a visa holder unreasonably refused to provide assistance.⁴³⁵ Some factors to consider in ascertaining whether the victim's lack of cooperation is reasonable are the amount of time that has passed

⁴²⁹ Trafficking Victims Protection Act of 2000, Pub. L. 106–386, §102(b)(24).

⁴³⁰ *Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims*, Police Chief Magazine (April 2018), available at https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims.

⁴³¹ *DHS U and T Visa Resource Guide* at 17.

⁴³² *DHS U and T Visa Resource Guide* at 17.

⁴³³ 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.

⁴³⁴ 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)).

⁴³⁵ 8 C.F.R. § 245.24(a)(5) (2009); 8 C.F.R. § 214.11(h)(2) (2016).

since the victimization, the level of trauma, the availability of victim services and resources, and financial stability.⁴³⁶

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

The certifying agency does not have an obligation to track the criminal history of every victim receiving a U visa certification/T visa declaration. It is the responsibility of USCIS to investigate the arrest of every person with a pending immigration application. Background checks are performed several times over the years in which a U visa case is pending, including when USCIS considers issuing a bona fide determination, when the U visa case is adjudicated before a U visa will be issued, and when a U visa holder is applying for lawful permanent residence.⁴³⁷

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.⁴³⁸ 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.

If an APS agency staff or official 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. 1367.⁴³⁹

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

⁴³⁷ Katelyn Deibler & Leslye E. Orloff, *U Visa Timeline with Background Checks* (Sept. 15, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>.

⁴³⁸ 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).

⁴³⁹ 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), available at http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-avaa-confidentiality-protections_3-29-19; Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (last updated Apr. 4, 2018), available at <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

For APS agency staff and agency leaders seeking technical support or consultation, please contact the National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law at (202) 274-4457 or email us at info@niwap.org or visit our web library <http://niwaplibrary.wcl.american.edu/>.

NIWAP also maintains a directory of service providers with experience working with immigrant victims of domestic violence, sexual assault, U visa crimes and human trafficking.⁴⁴⁰

⁴⁴⁰ See *Directory of Programs with Experience Serving Immigrant Victims*, available at <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>.

U-Visa: “Helpfulness” Checklist^{441 442}

By: Peter Helein, Devon E. Turner, Spencer Cantrell, Leslye E. Orloff, Rocio Molina, Benish Anver, Faiza Chappell, Andrea Carcamo-Cavazos, and Rafaela Rodrigues

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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 law⁴⁴³ 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

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.⁴⁴⁴

⁴⁴¹ Copyright © The National Immigrant Women’s Advocacy Project, American University Washington College of Law 2019.

⁴⁴² 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 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 document was also developed under grant number SJI-12-E-169 and SJI 14-E-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. 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.

⁴⁴³ *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

⁴⁴⁴ *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, at 13, available at <https://niwaplibrary.wcl.american.edu/pubs/dhs-u-cert-resource-guide> (last visited Feb. 15, 2023).

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 agency⁴⁴⁵
- Prosecutor, including city and states’ attorneys and state attorneys general⁴⁴⁶
- Federal or State Judge,⁴⁴⁷ commissioner, magistrate,⁴⁴⁸ or other judicial officer in a civil, family, juvenile, criminal, or administrative law case⁴⁴⁹
- Child or Adult Protective Services⁴⁵⁰
- Equal Employment Opportunity Commission (EEOC)⁴⁵¹
- Department of Labor (DOL)⁴⁵²
- Other Federal, State, Local, Tribal, or Territorial government agencies with investigative duties, including agencies that have criminal, civil, or administrative investigative or prosecutorial authority⁴⁵³

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 for others. Examples include:
 - Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness for others. Examples include:
 - Police, child/adult protective services, FBI, EEOC
- Judges, Commissioners, Magistrates, and other judicial officials will:
 - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local, or federal agencies that the court observes or

⁴⁴⁵ 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/>.

⁴⁴⁶ U Visa Rule at 53019.

⁴⁴⁷ U Visa Rule at 53019.

⁴⁴⁸ *DHS 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.”).

⁴⁴⁹ *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/>.

⁴⁵⁰ 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).

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

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

⁴⁵³ *DHS Resource Guide* at 6.

- 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 statute⁴⁵⁴ and regulations⁴⁵⁵ 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.”*⁴⁵⁶

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 science⁴⁵⁷ 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

⁴⁵⁴ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. 1101(a)(15)(U)(i)(III).

⁴⁵⁵ 8 C.F.R. § 214.14(b)(3).

⁴⁵⁶ *DHS 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.”

⁴⁵⁷ 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).

requests from law 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 efforts⁴⁵⁸ or part of the trauma due to crime victimization.⁴⁵⁹ 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 aliens, and other crimes while offering protection to victims⁴⁶⁰ who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”⁴⁶¹ U-visas are intended, in part, to help overcome this reluctance.⁴⁶²

“The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA 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.”⁴⁶³

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

⁴⁵⁸ 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>.

⁴⁵⁹ “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, 73 Fed. Reg. 75,552.

⁴⁶⁰ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

⁴⁶¹ New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

⁴⁶² Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

⁴⁶³ New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

trafficking, or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.”⁴⁶⁴

In order to ensure that the U visa would properly offer protection for victims in light of Congress’s understanding of the dynamics of domestic violence, sexual assault and human trafficking suffered by immigrant victims, Congress designed the legislation⁴⁶⁵ and regulations⁴⁶⁶ 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.⁴⁶⁷

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and files their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.⁴⁶⁸ Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.⁴⁶⁹

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

- Encourage more victims to come forward and report criminal activity;⁴⁷⁰
- Offer U visa protection early in the case soon after a victim offered helpfulness;⁴⁷¹
- Encourage ongoing cooperation in investigations and prosecutions when reasonably requested;⁴⁷² and
- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuse, and human trafficking due to trauma, the perpetrator’s threat and

⁴⁶⁴ 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/>.

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

⁴⁶⁶ 8 C.F.R. § 214.14(a)(12).

⁴⁶⁷ 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.”).

⁴⁶⁸ 8 C.F.R. § 214.14(b)(3).

⁴⁶⁹ *DHS Resource Guide* at 7.

⁴⁷⁰ Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims’ Immigration Cases Are Pending* 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), *available at* <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* at 29-30 (2014), *available at* http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf.

⁴⁷¹ 53019 Fed. Reg. Vol. 72, No. 179. (2007).

⁴⁷² 53019 Fed. Reg. Vol. 72, No. 179. (2007).

action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.⁴⁷³

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 wait-list 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 to unreasonably refuse to provide help, assistance, or cooperation.⁴⁷⁴ 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.⁴⁷⁵
 - 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.⁴⁷⁶
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, is prosecuted, is arrested, is convicted, etc.
- Being “helpful” is **independent** from the results of the case.⁴⁷⁷ Once the victim has

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

⁴⁷⁴ 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; 8 C.F.R. Parts 103, 212, et al.; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule (Sept. 17, 2007), available at http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view;

⁴⁷⁵ 8 C.F.R. § 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); 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 (Dec. 12, 2008) (Hereinafter T and U Adjustment Rule), available at http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view.

⁴⁷⁶ Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, *U Visa Quick Reference for Judges* (Oct. 21, 2019), available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; *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), available at <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; *U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials* (2018), available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

⁴⁷⁷ 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; *U-Visas - Victims of Criminal Activity*, available at 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*, available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_visas_certification_guide.pdf/view.

provided helpfulness, the “helpfulness” requirement is satisfied even if:

- An arrest or prosecution cannot take place due to evidentiary or other circumstances;⁴⁷⁸
- 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;
- The perpetrator has not been identified, has absconded, or is in hiding to avoid arrest;⁴⁷⁹
- If the victim cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;⁴⁸⁰
- 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);⁴⁸¹
- 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;

⁴⁷⁸ *DHS Resource Guide* at 11.

⁴⁷⁹ *U Visa Toolkit* at 5.

⁴⁸⁰ *DHS Resource Guide* at 11-12.

⁴⁸¹ *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, USCIS available at <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

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 activity⁴⁸²
- Trial transcripts⁴⁸³
- Court Findings, rulings, and other documents⁴⁸⁴
- Police reports⁴⁸⁵
- News articles⁴⁸⁶
- Copies of Reimbursement form for travel to and from court.⁴⁸⁷
- Affidavits of other witnesses or officials⁴⁸⁸

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:⁴⁸⁹
 - 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:⁴⁹⁰
 - 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

⁴⁸² U Visa Rule at 53024.

⁴⁸³ U Visa Rule at 53024.

⁴⁸⁴ U Visa Rule at 53024.

⁴⁸⁵ U Visa Rule at 53024.

⁴⁸⁶ U Visa Rule at 53024.

⁴⁸⁷ U Visa Rule at 53024.

⁴⁸⁸ U Visa Rule at 53024.

⁴⁸⁹ 8 C.F.R. § 214.14(b)(2), (3).

⁴⁹⁰ 8 C.F.R. Parts 103, 212, et al., New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule (Sept. 17, 2007), *available at*

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

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
- 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 victims 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 a 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 an temporary, interim, or ex parte protection order⁴⁹¹
- 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

⁴⁹¹ 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.

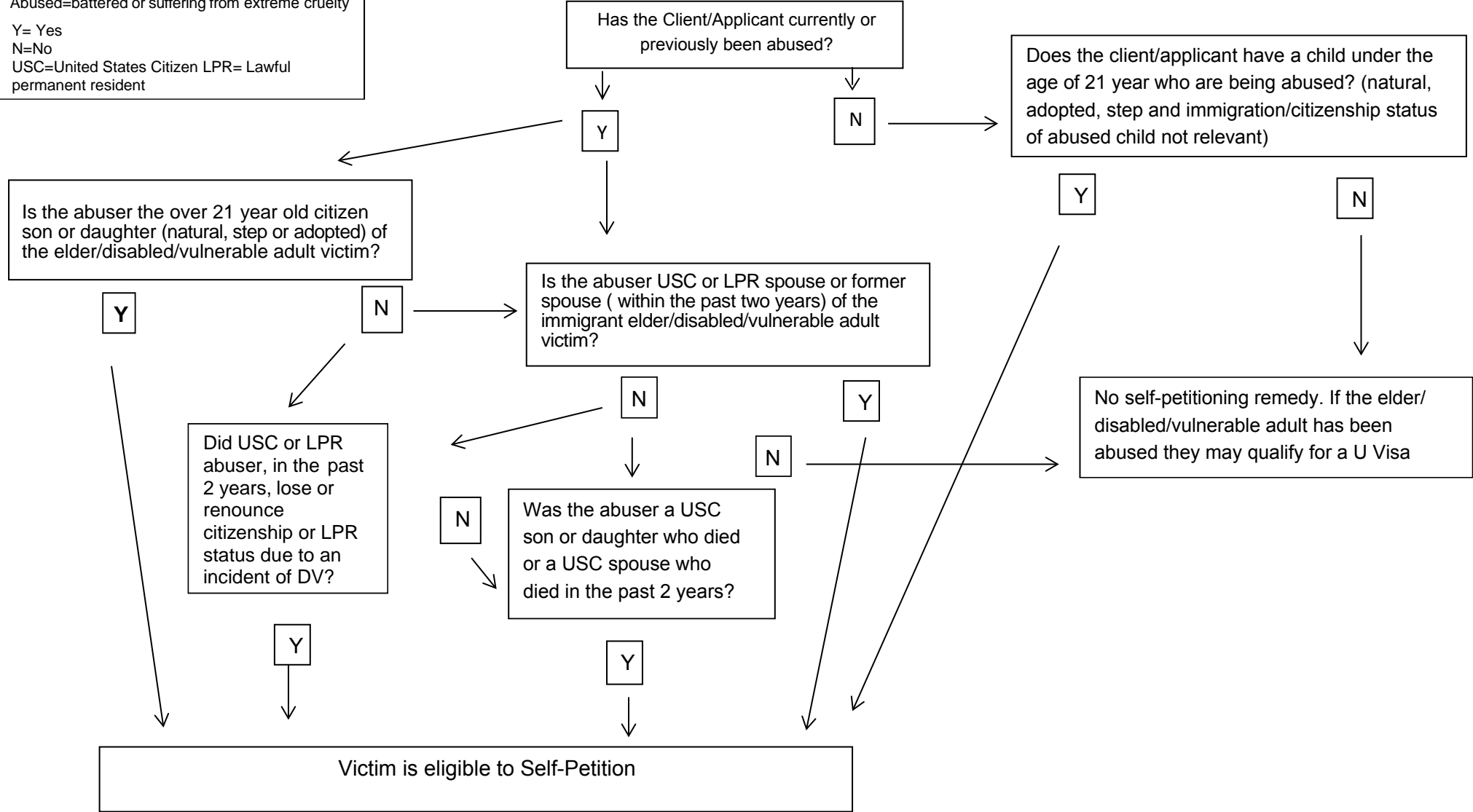
Helpfulness can be met in a variety of ways in other civil court cases that include but are *not* limited to

- 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
- 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.

Key

Abused=battered or suffering from extreme cruelty
 Y= Yes
 N=No
 USC=United States Citizen LPR= Lawful permanent resident

VAWA Self-Petitioning Eligibility Flow Chart for Abused Elders, Vulnerable or Disabled Adults (Last updated: June 17, 2019)



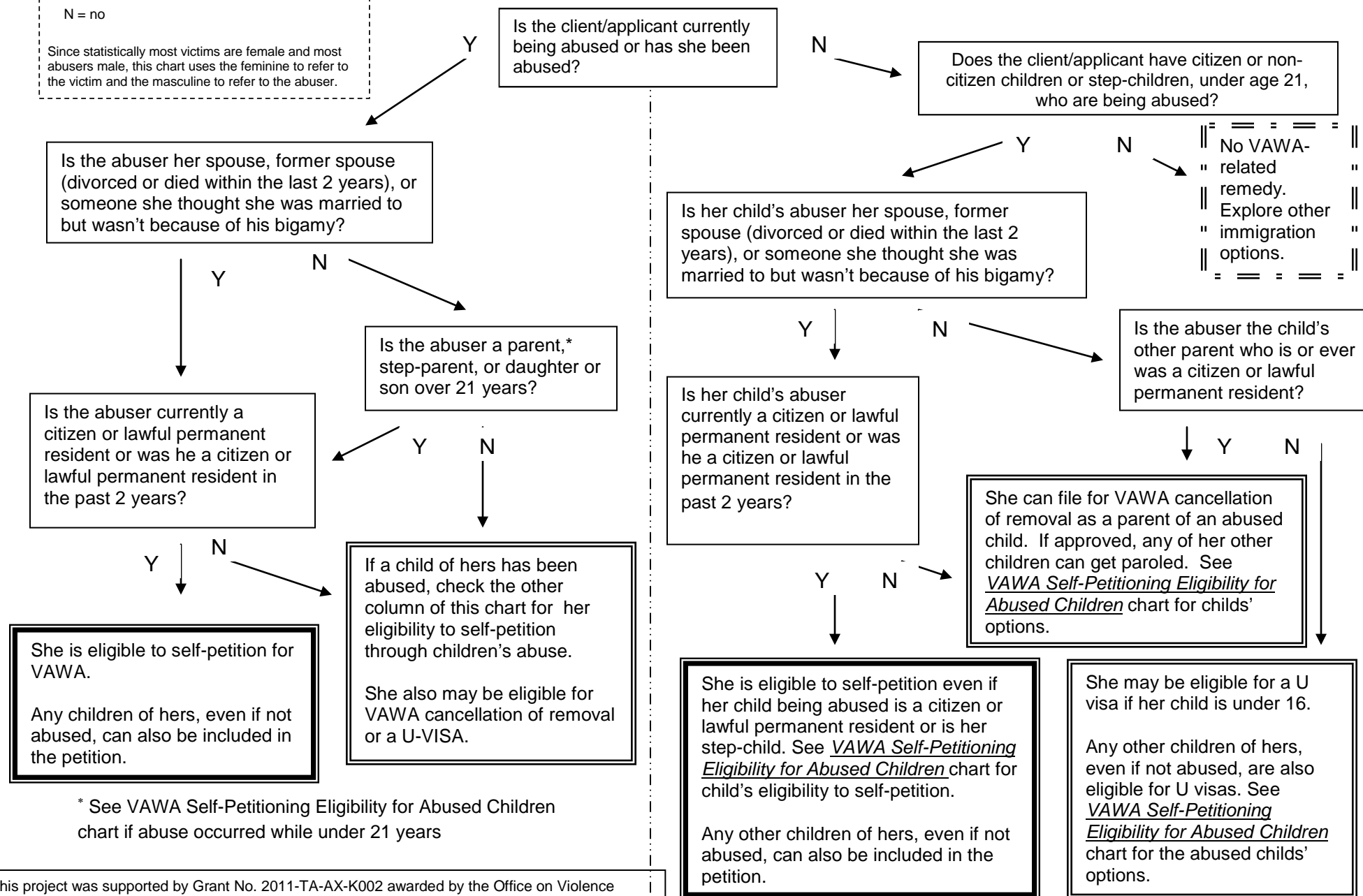
Developed by Leslye E. Orloff and Eileen Lohmann

This material was supported by Grant Numbers 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, 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 view of the Department of Justice, Office on Violence Against Women.

Key

Abused = battered or suffering from extreme cruelty
 Y = yes
 N = no
 Since statistically most victims are female and most abusers male, this chart uses the feminine to refer to the victim and the masculine to refer to the abuser.

VAWA Self-Petitioning Flow Chart for Adults

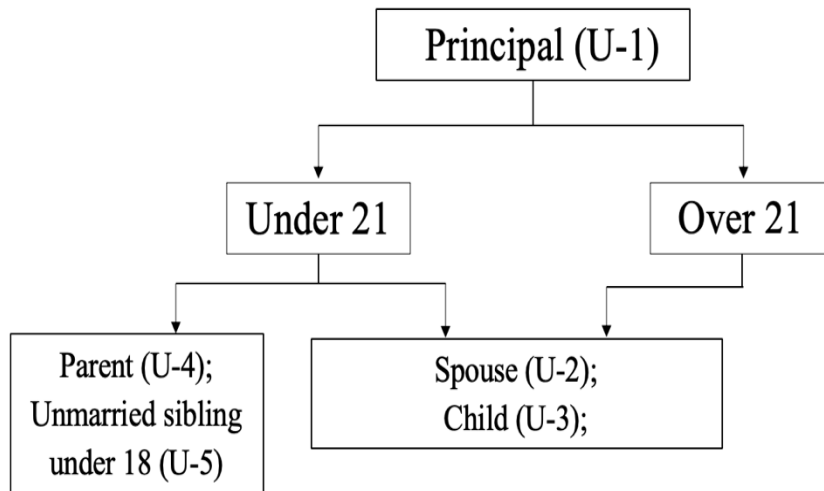


* See VAWA Self-Petitioning Eligibility for Abused Children chart if abuse occurred while under 21 years

Appendix C: 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.⁴⁹³

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)

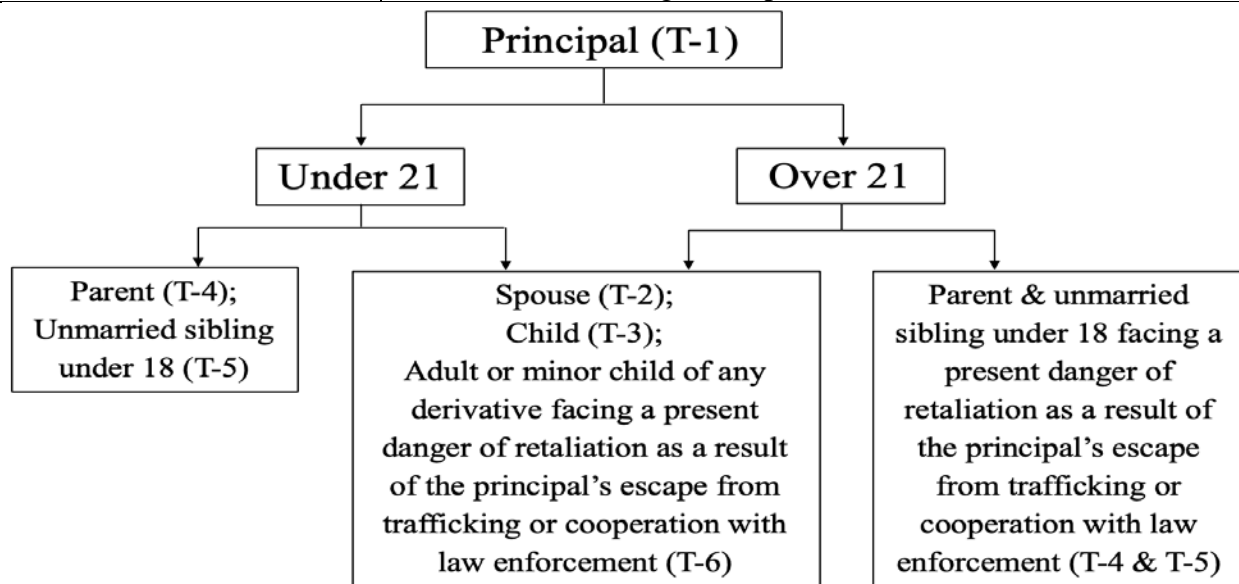


⁴⁹³ See INA § 214(p)(7); 8 U.S.C. § 1184(p)(7).

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

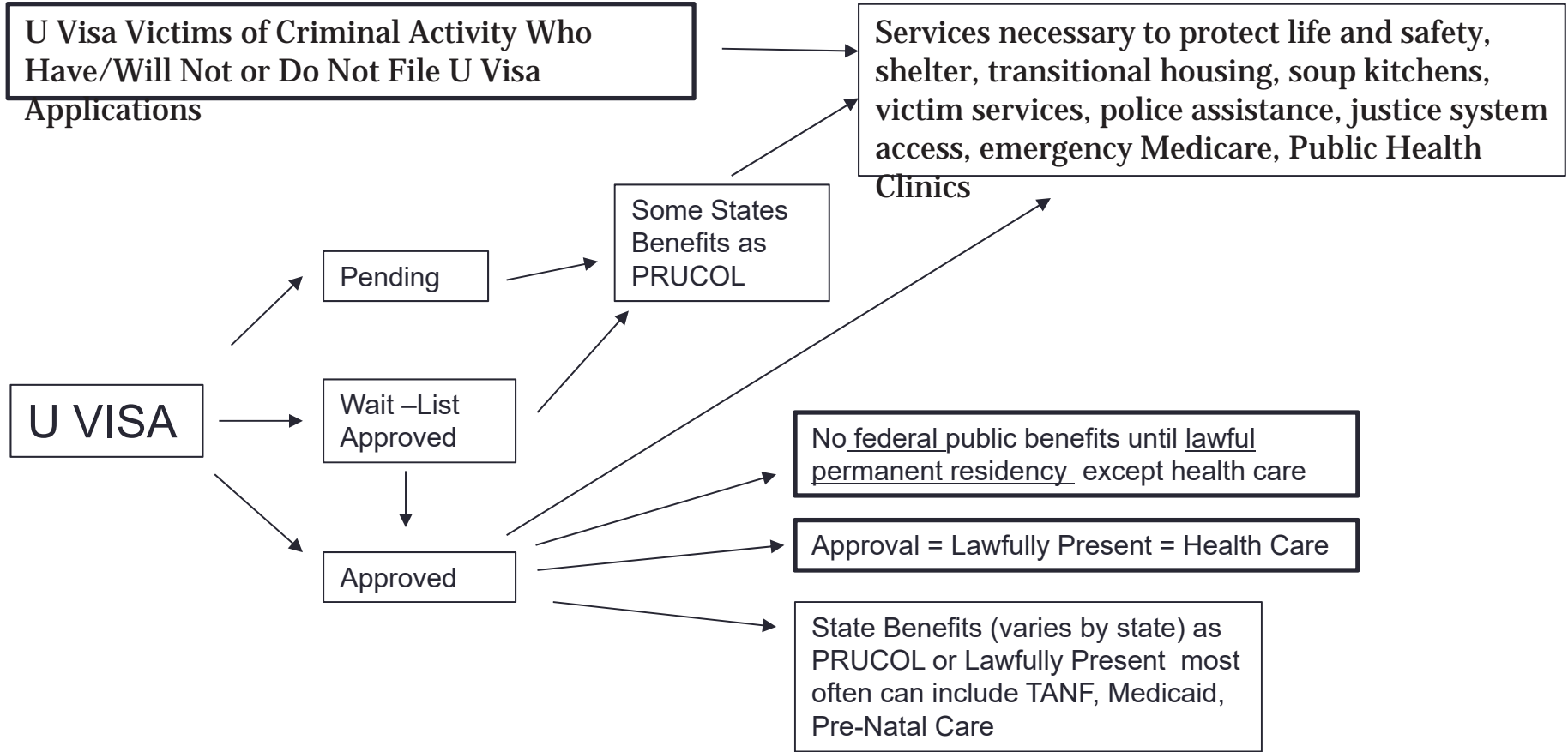
A T visa applicant may apply for the admission of eligible family members. The applicant is called a principal, and the family members are called derivatives. The following chart outlines each classification of the T visa. Age-out protections are provided for principals and derivatives under 21 years of age.⁴⁹⁴

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)



⁴⁹⁴ See INA § 214(o)(4)–(5); 8 U.S.C. § 1184(o)(4)–(5); 8 C.F.R. § 214.11(k)(5)(ii)–(iii).

Access to Federal and State Public Benefits for U Visa Victims

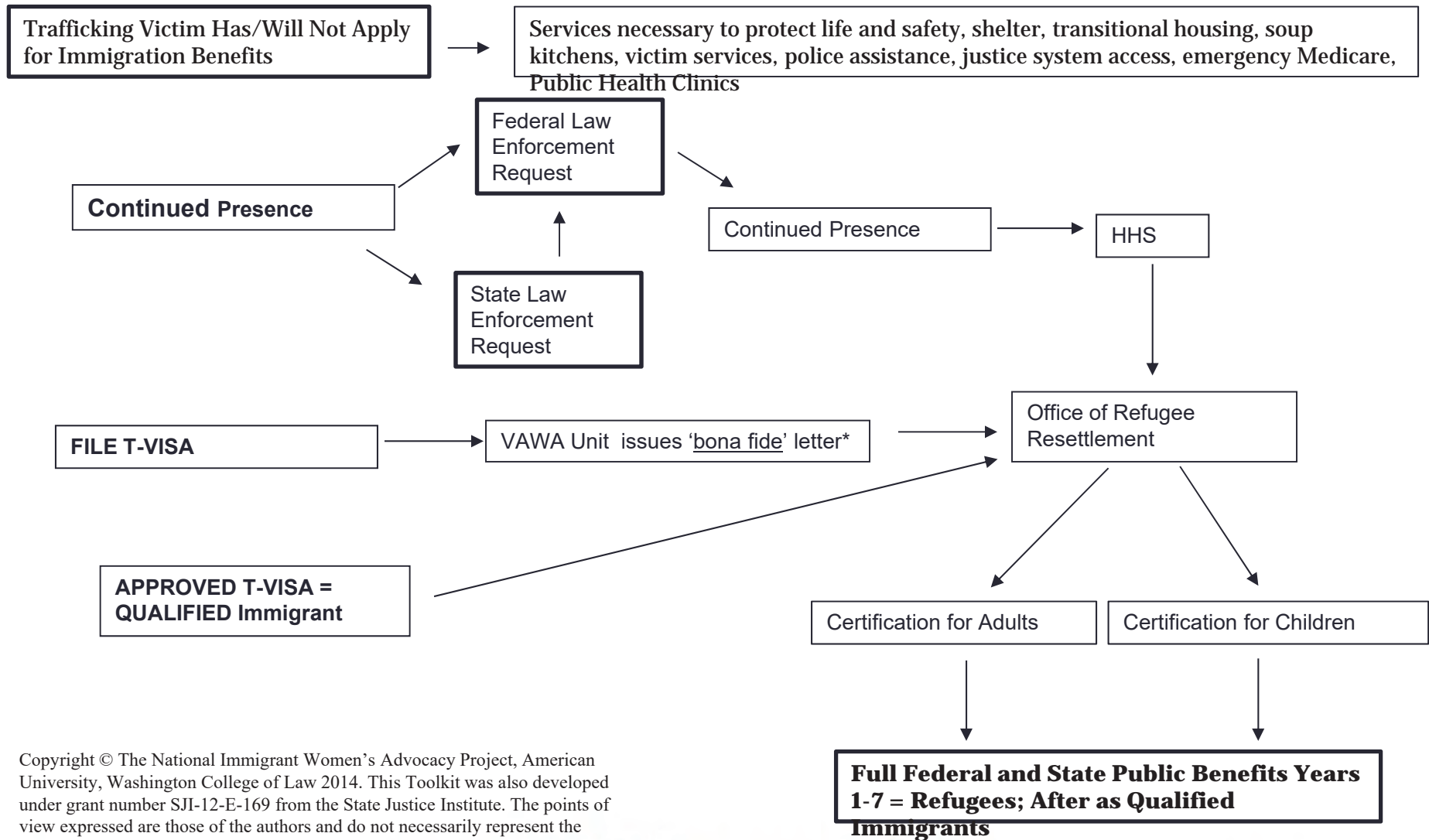


Materials U Visa Benefits Eligibility Bench Card -

<http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf>

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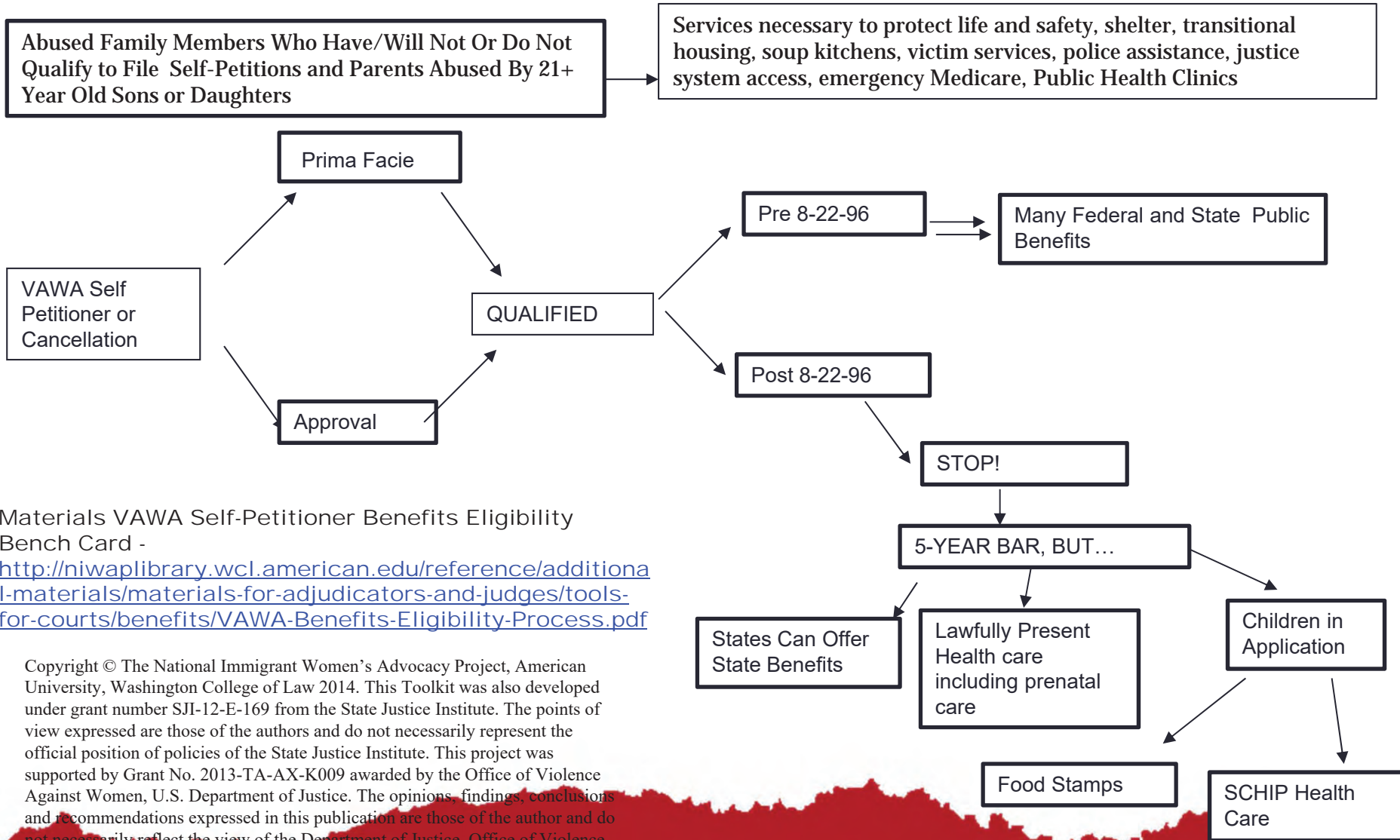
Access to Federal and State Public Benefits for Victims of Human Trafficking



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Materials T Visa Benefits Eligibility Bench Card - <http://niwaplibrary.wcl.american.edu/reference/additiona-l-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Trafficking-Victims-Benefits-Eligibility-Process.pdf>

Access to Federal and State Public Benefits for Battered Immigrant Spouses and Children of U.S. Citizens or Lawful Permanent Residents

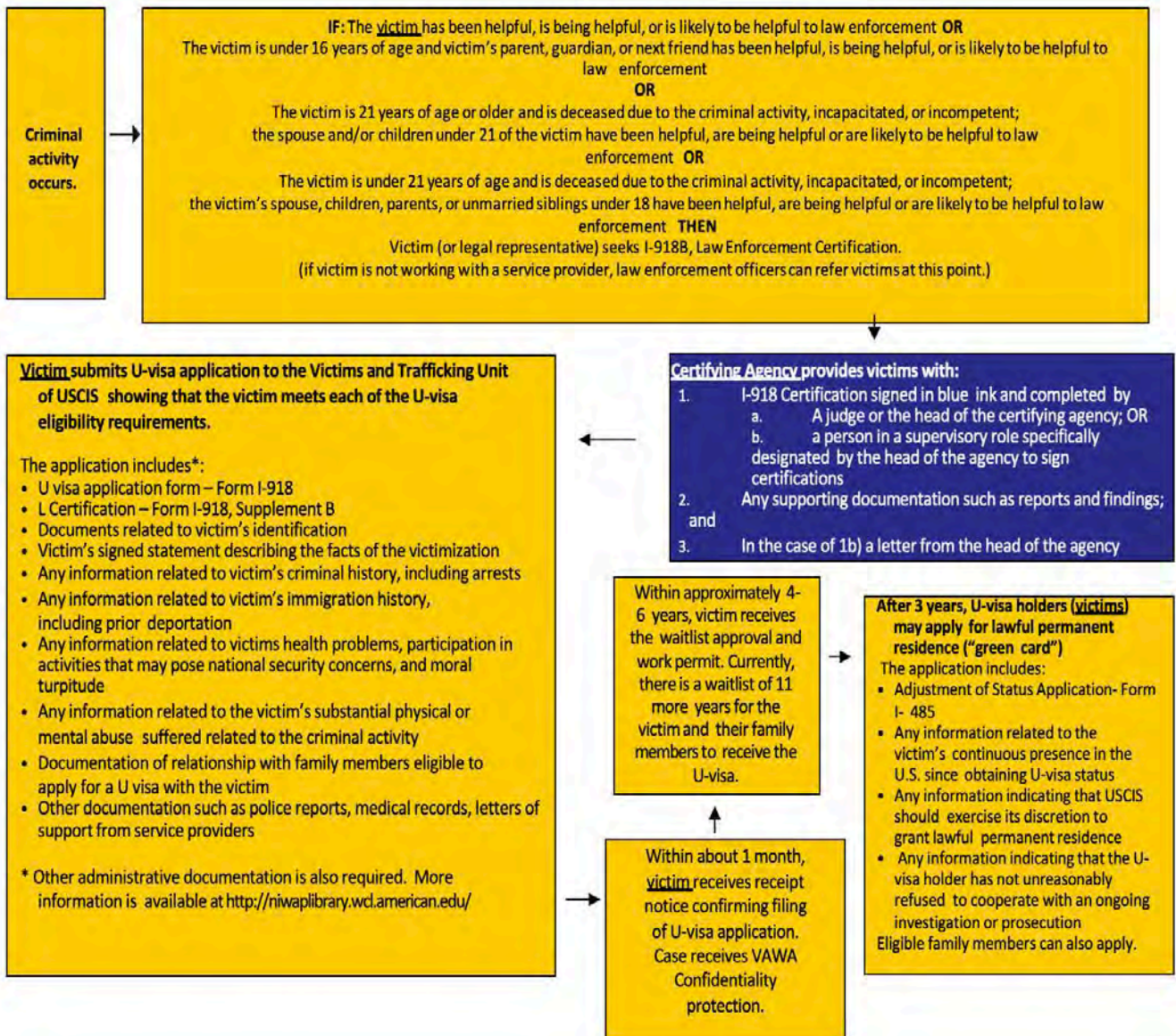


Materials VAWA Self-Petitioner Benefits Eligibility Bench Card - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/VAWA-Benefits-Eligibility-Process.pdf>

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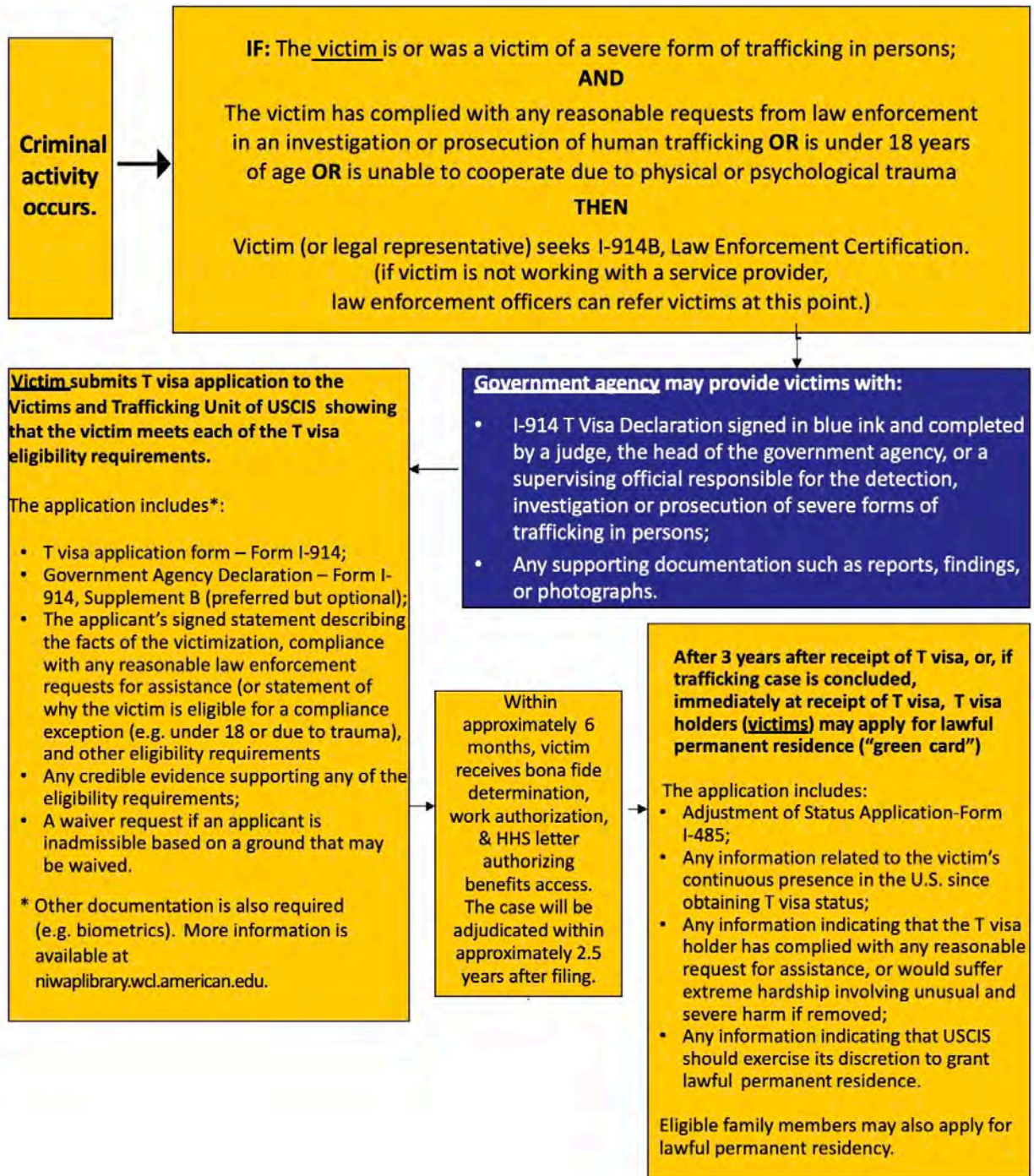


Appendix H: U Visa Application Victim Flow Chart⁴⁹⁵



⁴⁹⁵ 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.

Appendix I: T Visa Application Victim Flow Chart



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)¹

By: Krisztina E. Szabo, Spencer Cantrell, Abigail Whitmore, & Leslye E. Orloff

July 10, 2015

Updated: December 30, 2021

	U Visa	T Visa/ Continued Presence	VAWA Self-Petition	Special Immigrant Juvenile Status (SIJS)	Deferred Action for Childhood Arrivals (DACA)
ELIGIBILITY					
Applicant					
Typical Recipients	<p>Victims of certain criminal activities (i.e. violent criminal activity and fraud), including:</p> <ul style="list-style-type: none"> ▪ <i>Direct victims:</i> individuals who experienced substantial physical and mental abuse as a result of the qualifying criminal activity ▪ <i>Indirect victims:</i> certain family members* of direct victims where the direct victim is: <ul style="list-style-type: none"> ○ Deceased due to manslaughter or murder, or ○ Incompetent, or incapacitated and therefore not able to give 	<p>Human trafficking victims are eligible for <i>Continued Presence</i> when they are:</p> <ul style="list-style-type: none"> • A victim of a severe form of trafficking in persons; • A potential witness in the investigation or prosecution of the trafficker. <p>To be eligible for a <i>T visa</i>, a human trafficking victim must show that s/he:</p> <ul style="list-style-type: none"> • Is or has been a victim of a severe form of trafficking; • Is physically present in the U.S., American Samoa, or the Mariana Islands or at a port of entry 	<p>The immigrant (or the immigrant’s child or step-child) has been battered or subjected to extreme cruelty by the immigrant’s:</p> <ul style="list-style-type: none"> ▪ U.S. citizen- <ul style="list-style-type: none"> ○ Spouse ○ Former spouse (within 2 years) ○ Parent ○ Step-parent ○ Over 21 year old child, adopted child or step-child • Lawful permanent resident <ul style="list-style-type: none"> ○ Spouse ○ Former spouse (within 2 years) ○ Parent ○ Step-parent 	<p>The applicant must:</p> <ul style="list-style-type: none"> • Be under 21 years old and unmarried (most jurisdictions will not declare a youth dependent of the court once they are 18 or older);² • Have been abused, neglected, or abandoned by one or both parents; • Demonstrate that reunification with parent who abused, neglected or abandoned is not viable; • That it is not in the best interest of the child to return to home country; and • Have a court order placing the child/juvenile under jurisdiction of a state juvenile, family, or probate court. 	<p>The applicant must:</p> <ul style="list-style-type: none"> • Be at least 15 years of age at the time of application and under 31 years of age as of 06/15/2012; • Have been physically present in the U.S. on 06/15/2012; • Have entered without inspection before 06/15/2012 <u>or</u> lawful status expired before this date; • Have been continuously in the U.S. since 06/15/2007 (brief absences for humanitarian reasons do not count); • Be in school, graduated from high school, has GED, or have been honorably discharged from the coast guard or armed

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² State laws generally require that a child be under age 18 at the time he or she first is declared a juvenile court dependent. State laws vary as to how long a child can remain a juvenile court dependent once he or she has been declared a dependent. Some states end dependency at age 18, others extend it to age 19 (especially if the child must complete high school), and others potentially can extend dependency to age 21. Similarly, different states have different laws on how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case.

	information concerning the qualifying criminal activity (i.e. parent of a sexually abused child)	<p>on account of trafficking;</p> <ul style="list-style-type: none"> • Has complied with any reasonable request for assistance in investigating or prosecuting trafficking (if 18 or older), and; • Would suffer extreme hardship involving unusual and severe harm upon removal. 			<p>forces <i>at the time of applying</i> for DACA; and</p> <ul style="list-style-type: none"> • Have not been convicted of a felony or a significant misdemeanor, and/or has not accumulated three or more misdemeanors, and must not pose a national security or public safety threat
Family Members Who May Qualify as Indirect Victims	<p>If direct victim is over 21: spouse, children and stepchildren under 21 years old.</p> <p>If direct victim is under 21: spouse, children, stepchildren, parents, and unmarried siblings under 18 years old.</p>	Not applicable for T visas or continued presence – No applications from indirect victims	An immigrant parent can self-petition whose child or stepchild has been abused by the immigrant parent’s U.S. citizen or lawful permanent resident spouse based on battering or extreme cruelty to the child without regard to whether the immigrant parent has also been abused.	Not applicable - No applications from indirect victims	Not applicable - No applications from indirect victims
Family Members Who Can Be Included in the Victim’s Application and Receive Protection	<p>Under 21 year old children can include their spouse, children & stepchildren (unmarried and under age 21), parents and unmarried under 18 year old siblings in their U visa application.</p> <p>Adult U visa applicants can include their spouse, children & stepchildren (unmarried and under age 21) in their U visa application.</p>	<p><i>Continued Presence</i> recipients following family members may receive significant public benefit parole to join the victim in the U.S.:</p> <ul style="list-style-type: none"> • Child with CP under 21 - spouse, child, stepchild, parent, or unmarried sibling (under 18); • Adult with CP – spouse, child or stepchild • Any CP recipient if present danger of retaliation - parent(s) or sibling(s). 	<p>Under 21 year old self-petitioners can include their under 21 year old children, stepchildren, and their non-abusive parent in their self petition</p> <p>Adult self-petitioners can include their under 21 year old children and stepchildren in their VAWA self-petition</p>	Not applicable	Not applicable

<p>Family Members Who Can Be Included in the Victim's Application and Receive Protection</p>		<p><i>T visa cases</i></p> <p>If present danger of retaliation can include: parents, unmarried siblings under age 18, children without regard to age or marital status</p> <p>Additionally -</p> <p>Under 21 year old children can include their spouse, children & stepchildren (unmarried and under age 21) parents, and unmarried siblings under 18 years old</p> <p>Adults can include their spouse and their unmarried and under 21 year old children and stepchildren.</p>			
<p>Proof of Good Moral Character</p>	<p>Proof of good moral character is not required for the U visa application, but is required to be granted lawful permanent residency.</p>	<p>Proof of good moral character is not required for the continued presence or T visa application, but is required for T visa recipients to be granted lawful permanent residency.</p>	<p>Required for self-petition.³</p>	<p>Not required</p>	<p>Good moral character is not required, but applicant cannot have a felony, a significant misdemeanor, or three or more misdemeanor convictions, and the applicant must not pose a national security or public safety threat.</p>

³ Leslye E. Orloff, *Comparing VAWA Suspension of Deportation, VAWA Cancellation of Removal, VAWA Nicaraguan and Central American Relief Act (NACARA), and VAWA Self-Petitioning* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

<p>Applicant's Criminal History⁴</p>	<p>The applicant may apply for a discretionary waiver for crimes they may have committed. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.</p>	<p>Many crimes are considered exceptions. Applicant's crimes directly related to the trafficking may be waived (such as prostitution). Also, the applicant may apply for a discretionary waiver of certain crimes that do not qualify as exceptions.</p> <p>Continued presence can be revoked if the recipient commits a crime, absconds, or departs without obtaining advance parole.</p>	<p>Any arrest,* conviction,* or otherwise criminal involvement* may make the applicant ineligible to obtain an approved VAWA self-petition on good moral character grounds.</p> <p>Many types of convictions may also bar access to lawful permanent residency based on an approved self-petition.</p>	<p>Criminal history involving drugs, prostitution, fraud, smuggling, or felonies may bar SIJS approval.⁵</p>	<p>The applicant has not been convicted (as an adult) of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.</p>
<p>Applicant's Criminal History That Is Related to Domestic Violence Suffered⁶</p>	<p>The applicant may apply for a discretionary waiver for crimes they may have committed including domestic violence. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.</p>	<p>Not applicable</p>	<p>In determining good moral character as part of the VAWA self-petition adjudication, crimes related to the domestic violence may not bar victims from being found to have good moral character.</p> <p>Domestic violence convictions are deportable offenses that could also bar access to lawful permanent residency. A domestic violence victim with a conviction for domestic violence may be able to obtain a special domestic violence victim waiver if the battered immigrant was acting in self-defense; was found to have violated a protection order intended to protect the person;</p>	<p>Not applicable</p>	<p>The applicant has not been convicted (as an adult) of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.</p>

⁴ Limayli Hugué, Faiza Chappell & Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petition, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

⁵ Leslye E. Orloff, *Special Immigrant Juveniles (SIJS): Inadmissibility Factors That Do and Do Not Apply to SIJS Cases* (Jun. 12, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-factors-sijs>.

⁶ Limayli Hugué, Faiza Chappell & Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petition, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Jan. 28, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

Applicant's Criminal History That Is Related to Domestic Violence Suffered			or committed, was arrested for, was convicted of, or pled guilty to committing a crime – --that did not result in serious bodily injury; and --where there was a connection between the crime and the person's having been barred of subject to extreme cruelty		
Criminal Activity Suffered by Victim					
Qualifying Criminal Activity	Any of the following: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, 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 criminal (including attempt, conspiracy, or solicitation to commit any of the above and other related criminal activity).	"Severe form of trafficking in persons" The TVPA defines a "severe form of trafficking" as: (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 an 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.	Not applicable	Not applicable	Not applicable
Proof of Harm	Must show substantial physical or mental abuse as a result of the criminal activity.	Not required	Must show battery or extreme cruelty <ul style="list-style-type: none"> • Extreme cruelty includes forms of emotional abuse that do not have to rise to the level of physical violence, sexual violence or criminal activity. 	Must show that the child has been abused, neglected, or abandoned by one or both parents. "Abuse, abandonment or neglect" includes behaviors and patterns of treatment and coercive control that are not	Not applicable

Proof of Harm				limited to physical or sexual abuse and would constitute “extreme cruelty.” ⁷	
Perpetrator					
Applicant's Relationship to Perpetrator	Any individual	Any individual	Applicant must have or had one of the following relationships with the abuser: <ul style="list-style-type: none"> ▪ Spouse ▪ Former spouse (must file within 2 years) ▪ Parent of child victim ▪ Step-parent of child victim ▪ Parent abused by over 21-year-old son or daughter. 	Applicant must be the perpetrator’s child.	Not applicable
If Applicant Is/Was Married to Perpetrator	Not required	Not required	Applicant must show the couple was legally married in good faith (i.e. not solely to gain immigration status).	Applicant must be unmarried.	Not applicable
Requirement of Applicant and Perpetrator's Shared Residence	Not required	Not required	Cannot marry until the self-petition is approved and the child receives lawful permanent residency.	Not required	Not applicable
Perpetrator's Immigration Status	Any status (including undocumented)	Any status (including undocumented)	Applicant must currently reside or have resided with the abuser at any point (no specific duration of residence required).	Any status (including undocumented)	Not applicable
Cooperation with Law Enforcement Requirement	Applicant must submit a U visa certification (Form I-918 Supplement B) signed by a designated law enforcement officer, judge, prosecutor, or other state or federal government official involved in detection, investigation, conviction, prosecution, conviction or sentencing of a listed criminal activity. Applicant	For Continued Presence there are no initial cooperation requirements. However, renewal beyond two years may be unlikely without some level of current of potential cooperation. For T Visa, an applicant must submit proof of	Abuser must be either a United States Citizen or a Lawful Permanent Resident spouse, former spouse, parent or step parent. The abuser may also be an over 21 year old citizen son or daughter.	Not required	Not applicable

⁷ Leslye Orloff, Brittnay Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NIWAP (Sept. 12, 2015) available at <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.

<p>Cooperation with Law Enforcement Requirement</p>	<p>may be certified if she is a victim of a qualifying criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, prosecution conviction or sentencing of criminal activity. Certification is encouraged as soon as possible and certifying helpfulness does not hinge on a case proceeding beyond detection or investigation of a criminal activity.</p> <p>The standard for certification is that the victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the perpetrator.</p> <p>Once the victim files their U visa application, they have an obligation to provide assistance or cooperation reasonably requested by the agency investigating or prosecuting the criminal activity. Exception: Victim can refuse to cooperate and remain eligible for the U visa and U visa based lawful permanent residence so long as their refusal to cooperate is not unreasonable in light of the totality of the circumstances in their case.</p>	<p>reasonable cooperation with a trafficking investigation or prosecution, unless she is under 18 years old or she can demonstrate that she is unable to cooperate due to physical or psychological trauma.</p> <p>Applicant <i>may</i> submit, but is not required to submit, a law enforcement endorsement on Form I-914 Supplement B as proof.</p> <ul style="list-style-type: none"> • The law enforcement endorsement is not required. • Proof of continued presence may be submitted as secondary evidence. • Endorsement is encouraged as soon as possible and certifying cooperation does not hinge on a case proceeding beyond detection or investigation of human trafficking. • May also be eligible for U visa by virtue of being a victim of human trafficking. 			
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PROCESS					
What to File	U visa Application. Title: Application for U Nonimmigrant Status (Form I-918; including I-918 Supplement B).	Continued presence for a trafficking victim may be requested from federal officials who file the application by any federal, state or local law enforcement agency with authority to investigate or prosecute human trafficking. The application is filed with the ICE Center for Countering Human Trafficking. T Visa Application. Title: Application for T Nonimmigrant Status (Form I-914)	VAWA Self-Petition (Form I-360).	Form I-360 ⁸ (and Form I-485 Application for Lawful Permanent Residency Title: “Adjustment of Status” if the child is filing affirmatively).	Application for DACA Title “Consideration of Deferred Action for Childhood Arrivals” Form Number: I-821 D
Where to File	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	Submissions by state and local requesting agencies must be sponsored by a federal agency and routed through designated POCs of the federal sponsoring agency to ICE Center for Countering Human Trafficking VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).
Family Members Whom Applicant Can Include in His or Her Application	If applicant is over 21: spouse and unmarried children under the age of 21 at the time of filing. If applicant is under 21: spouse, children under the age of 21 at the time of	If applicant is over 21: spouse and unmarried children under the age of 21 at the time of filing, and any adult or minor children of the derivative family members	If applicant is over 21: unmarried children under the age of 21 at the time of filing. If applicant is under 21: children under the age of 21 at the time of filing	Cannot include family members. A child who immigrates as SIJS essentially ceases to be the “child” of his or her natural or prior adoptive parent who subjected the child to abuse, abandonment or neglect for immigration	Cannot include family members

⁸ Form I-360 must be filed with the underlying custody order from family court, dependency order, and the child’s translated birth certificate.

Family Members Whom Applicant Can Include in His or Her Application	filing, parent(s), unmarried siblings under the age of 18 at the time of filing.	If applicant is under 21: spouse, children under the age of 21 at the time of filing, parent(s), unmarried siblings under the age of 18 at the time of filing, and any adult or minor children of the derivative family members.		purposes. This means that the child who obtains lawful permanent residence through SIJS and later becomes a naturalized citizen will not be able to file an immigration application to confer any legal immigration status on the parent who abused, abandoned or neglected the parent, even when the parent's parental rights were not terminated. ⁹	
Number of Visas given/year	10,000 each fiscal year	5,000 visas for each fiscal year. DHS has never reached the cap.	No limit.	No limit	No limit
Average Case Processing Times	As of 2021, it can take up to 5 years to adjudicate the U visa application. Bona fide process announced in 2021 should shorten wait times to formal protection against deportation through deferred action and work authorization.	As of 2021 18-24 months.	As of 2021 up to 24 months.	As of 2021 between 6 months and 3 years to receive approval and lawful permanent residency.	As of 2021 approximately 7-10 months
How Long Relief Lasts	<u>4 years</u> – may be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a DHS delay in issuing regulations or if DHS determines that an extension is needed due to exceptional circumstances.	<u>2 years</u> (CP) – may be renewed in two-year increments. <u>4 years</u> (T visa)– may be extended beyond the four years based on an endorsement from a law enforcement official that the T nonimmigrant's presence was necessary to assist in the investigation or prosecution of the acts of trafficking.	Indefinitely, once approved the victim whose abusive spouse, parent or stepparent is a U.S. citizen can immediately apply for lawful permanent residency. If the abuser is a lawful permanent resident, must await a visa becoming available. ¹⁰	SIJS leads directly to lawful permanent residency	2 years, may be renewable

⁹ In some cases where children want to help a non-offending parent to also obtain lawful immigration status, applying for U visa may be a better option. Moreover, an SIJS with lawful permanent residency can apply for citizenship in 5 years, and a U.S. citizen of at least 21 years of age would be able to file for her immediate family members, parents, and siblings.

¹⁰ *The Visa Bulletin*, U.S. DEPARTMENT OF STATE, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.

<p>What Wait-List Approval Provides</p>	<p>Pursuant to the limit of 10,000 U visas a year, the Department of Homeland Security provides certain immigrants with "wait-list" approvals. This classification does not grant the individual with all benefits that come with a U visa status, but it does provide deferred action, which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization 	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>What Approval Provides</p>	<p>Conditional approval provides deferred action, which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization <p>U visa approval provides</p> <ul style="list-style-type: none"> ▪ U visa that lasts for 4 years ▪ Ability to apply for lawful permanent residency after 3 years ▪ *May be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a 	<p>Approval provides:</p> <ul style="list-style-type: none"> ▪ Protection against removal/deportation ▪ Basis for work authorization ▪ *May be extended if the T visa holder is certified by law enforcement that their continued presence in the U.S. is necessary for an investigation or prosecution of activity related to human trafficking. 	<p>Approval provides deferred action which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization ▪ May be renewed until self-petitioner is eligible to apply for lawful permanent residence. ▪ Eligibility to apply for lawful permanent residency either <ul style="list-style-type: none"> ○ Immediately if the perpetrator is a citizen; or ○ When the victim's priority date becomes current, if the perpetrator is a lawful permanent resident. As of April 2014, the wait times for a priority date to come current to apply for lawful permanent residency was 9 months to 2 years depending on 	<p>SIJS approval allows the applicant to apply for lawful permanent residency.</p>	<p>Approval provides deferred action for 2 years, which:</p> <ul style="list-style-type: none"> • Protects against removal/deportation • Provides work authorization • *May be extended for another 2 years.¹¹ <p>No path to lawful permanent residency</p>

¹¹ DACA is renewable as long as the applicant (1) did not leave the U.S. without obtaining advance parole, (2) has kept continuous presence since applying for DACA, and (3) has not been convicted of a felony or a significant misdemeanor, and/or has not accumulated three or more misdemeanors, and must not pose a national security or public safety threat. For more information on DACA renewal, see <https://www.niic.org/issues/daca/>.

What Approval Provides	DHS delay in issuing regulations.		the victim's country of origin.		
BENEFITS					
Immigration Benefits					
Protection Against Deportation	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicants are protected against deportation until their cases are decided.	DACA provides an administrative protection from deportation.
Applicant's Access to Work Authorization <i>Work authorization is provided for all applicants including children under the legal working age. The work authorization document is needed to obtain a social security number and driver's license</i>	Work authorization upon conditional approval based on deferred action status which a victim receives along with a bona fide determination or wait-list approval of the victim's U visa case. Work authorization for 4 years upon receipt of the U visa.	An applicant receives employment authorization upon receipt of a bona fide determination from the VAWA Unit (after filing but before approval). Work authorization upon approval	If abuser is a United States Citizen: Employment authorization upon prima facie finding, provided the applicant is admissible and has jointly filed an application for lawful permanent residency (I-485) as an immediate relative of a U.S. citizen. If abuser is a Lawful Permanent Resident: Applicant receives employment authorization upon approval of VAWA petition.	Applicants, who have submitted affirmative SIJS petitions and have also submitted an application for lawful permanent residency, are granted employment authorization while their cases are pending. Applicants who are in removal (deportation) proceedings and cannot obtain a work authorization until their SIJS application has been approved by USCIS and their application for lawful permanent residency is filed with the immigration judge.	Work Authorization (for two years) upon approval

<p>Applicant's Access to Work Authorization</p>	<p>Form to file: None required for approvals. Application for Employment Authorization (Form I-765) is required for wait-list approvals with deferred action status.</p>	<p>Form to file: None required.</p>	<p>Form to file: Employment Authorization (Form I-765) – fee waiver available.</p>	<p>Forms to file: Form I-485 “Adjustment of Status Application.” This is the application for lawful permanent residency. Additionally, the applicant will need to file an Application for Employment Authorization (Form I-765) – fee waivers are available.</p>	<p>Forms to file: I-765 Application for Employment Authorization and I-765WS Worksheet explaining the applicant’s economic need to work.</p>
<p>Waivers Available for Ineligibility Factors So That Victim Can Receive Lawful Permanent Residency</p>	<p>There is an exception to the public charge grounds of inadmissibility.</p> <p>Discretionary waiver of inadmissibility available if it is in the public or national interest. No waiver available for participants in Nazi persecution, genocide, torture, or extrajudicial killing.</p>	<p>There is an exception to the public charge grounds of inadmissibility.</p> <p>A discretionary waiver available for other grounds of inadmissibility if inadmissibility is incident to the victimization.</p> <p>No waiver is available if inadmissibility is because of Nazi persecution, genocide, torture or extrajudicial killing; national security-related grounds, international child abduction, or renunciation of citizenship to avoid taxation.</p>	<p>There is an exception to the public charge grounds of inadmissibility.</p> <p>There are a range of inadmissibility waivers that are available specifically for VAWA self-petitioners:</p> <ul style="list-style-type: none"> • <i>Fraud</i> – may be waived if self-petitioner can show extreme hardship to self and/or children, spouse, and parents • <i>Immigration violations</i> – may be waived if self-petitioner can establish substantial connection between the immigration violation and the abuse • <i>Other crimes</i> – may affect the good moral character requirement, unless self-petitioner can show connection between the crime and the abuse suffered. • <i>Domestic violence victim waiver</i> – for self-defense; violation of protection order intended to protect the victim; or committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result 	<p><u>Grounds of inadmissibility that are statutorily waived:</u> public charge, misrepresentation (including false claim to U.S. citizenship), stowaways, smuggling/trafficking of people, being present without inspection, unlawful presence, being present without admission or parole</p> <p><u>For other grounds of inadmissibility, waivers are discretionary.</u> The applicant must show that the inadmissibility should be waived:</p> <ul style="list-style-type: none"> • For humanitarian purposes, family unity, or when it is otherwise in the public interest. • Because of health related reasons (physical/mental disorder) <p>No waiver for certain crimes involving moral turpitude, drug offenses, multiple criminal convictions, terrorist activities, genocide, torture, extrajudicial killing.</p>	<p>Not applicable because DACA recipients cannot apply for lawful permanent residency with their DACA approval.</p>

<p>Waivers Available for Ineligibility Factors So That Victim Can Receive Lawful Permanent Residency</p>			<p>in serious bodily injury; and where there was a connection between the crime and the alien's having been barred or subject to extreme cruelty.</p>		
<p>Applicant's Access to a Permanent Residency Card <i>Also known as a "Green Card"</i></p>	<p>A U visa holder can apply for lawful permanent residence, if the applicant has:</p> <ol style="list-style-type: none"> 1. Maintained continuous presence in the U.S. for 3 years; 2. Complied with reasonable requests to cooperate in investigation or prosecution, 3. Good moral character, 4. Demonstrated that continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, and 5. Is admissible or qualifies for a waiver of inadmissibility. 	<p>A continued presence recipient will need to file for another form of immigration relief that includes a path to lawful permanent residency. Typically they will self-petition for a T visa or a U visa.</p> <p>A T visa holder can apply for lawful permanent residence if the applicant has:</p> <ol style="list-style-type: none"> 1. Maintained continuous presence in the U.S. for 3 years (or qualifies to apply earlier because the investigation or prosecution is complete), 2. Complied with reasonable requests in the investigation or prosecution (or was under 18 or would suffer extreme hardship), 3. Good moral character, and 4. Is admissible or qualifies for a waiver of inadmissibility. 	<p>If abuser is a United States Citizen: eligible following approval if admissible.</p> <p>If abuser is a Lawful Permanent Resident and self-petitioner must wait until their priority date becomes current. Wait times vary by the victim's country of origin and in April 2014 ranged from 9 months to 2 years.</p>	<p>Applicants can apply for permanent residency upon approval of SIJS application.</p>	<p>No path to lawful permanent residency</p>

Access to Services Not Considered Public Benefits Open to All Immigrants ¹²					
Life and Safety Services¹³	Eligible	Eligible	Eligible	Eligible	Eligible
Transitional Housing	Eligible	Eligible	Eligible	Eligible	Eligible
Emergency Medicaid	Eligible	Eligible	Eligible	Eligible	Eligible
Healthcare from HHS-funded Community Clinics www.HRSA.gov	Eligible	Eligible	Eligible	Eligible	Eligible
Assistance from a Legal Services Corporation Funded Program	Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from any U visa criminal activity. Upon filing an application for lawful permanent residency based upon a U visa the victim is eligible for all legal assistance offered with no relationship to the abuse required.	Victims of severe forms of human trafficking are eligible for all legal assistance offered by and LSC funded agency.	Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from battering or extreme cruelty. Upon filing an application for lawful permanent residency based on VAWA, VAWA self-petitioners are eligible for all legal assistance offered with no relationship to the abuse required.	Eligible under anti-abuse regulations because “abuse, abandonment or neglect” includes behaviors and patterns of treatment and coercive control that are not limited to physical or sexual abuse and would constitute “extreme cruelty.” ¹⁴	Not eligible, unless the DACA recipient is a victim of crime eligible under anti-abuse regulations.
Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	Eligible	Eligible	Eligible	Eligible	Eligible

¹² *All State Public Benefits Charts and Interactive Public Benefits Map*, NIWAP (2021), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts> (Hereinafter Public Benefits Charts and Map); See also, Leslye Orloff, Aditi Kumar and Krisztina Szabo, *Public Benefits Toolkit*, NIWAP (March 2014) available at <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-publicbenefits>.

¹³ For more information about the benefits available to all immigrants regardless of status, see Catherine Longville and Leslye E. Orloff, *Programs Open To Immigrant Victims And All Immigrants Without Regard To Immigration Status*, NIWAP (May 2014) available at <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>.

¹⁴ Leslye Orloff, Brittnay Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NIWAP (Sept. 12, 2015) available at <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.

Access to Federal and State Public Benefits¹⁵

<p>General Access to Public Benefits</p>	<p>U visa holders are not "qualified immigrants," and are not eligible to receive federal public benefits or federal means-tested public benefits.</p>	<p><u>Continued Presence:</u> Victims of severe forms of human trafficking receive HHS Office of Refugee Resettlement (ORR) certification or eligibility letter making them eligible for public benefits to the same extent as refugees for 7 years.</p> <p><u>T-Visas:</u> Victims of severe forms of human trafficking that receive bona fide determinations and T visas receive ORR certification making them eligible for public benefits to the same extent as refugees for 7 years <i>and</i> are qualified immigrants giving them access to public benefits beyond the 7 year limitation.</p>	<p>VAWA self-petitioners who entered on or after 8/22/1996, upon receipt of prima facie determinations are "qualified immigrants," but must wait 5 years before they can access federal means-tested benefits. Some states offer state funded benefits to qualified immigrants.</p> <p>VAWA self-petitioners who entered the United States before 8/22/1996, upon receipt of prima facie determinations are "qualified immigrants," and are eligible to receive federal public benefits and federal means-tested public benefits.</p>	<p>SJIS applicants are lawfully present for health care purposes and states have the option of providing subsidized health care to lawfully present children.</p> <p>SIJS recipients upon receipt of lawful permanent residency are qualified immigrants for public benefits purposes, but they must wait 5 years before they are eligible for federal means tested public benefits.</p> <p>SIJS recipients upon receipt of lawful permanent residency are eligible for Title IV-E federal foster care funds and federal financial aid to go to college.</p>	<p>DACA recipients are not eligible to receive federal public benefits or federal means-tested public benefits.</p>
<p>Post-secondary Education</p>	<p>U visa holders are not able to file for FAFSA or other governmental scholarships, grants, or loans, until they become Lawful Permanent Residents. However, recipients may be eligible to apply for non-governmental, and state scholarships, grants, and loans.¹⁶ Recipients may also be eligible to receive</p>	<p>Eligible</p>	<p>Eligible upon receipt of prima facie determinations as immigrants for postsecondary grants and loans.</p>	<p>SIJS applicants and recipients are not able to file for FAFSA or other governmental scholarships, grants, or loans, until they become lawful permanent residents. However, recipients may be eligible to apply for non-governmental and state scholarships, grants, and loans. Recipients may also be</p>	<p>Not eligible. However, recipients may be eligible to apply for non-governmental, and state scholarships, grants, and loans.¹⁹ Recipients may also be eligible to receive in-state tuition in certain states.²⁰</p>

¹⁵ This section highlights some of the public benefits available to qualified immigrants for a more complete list of benefits available *see* Public Benefits Charts and Map, *available at* <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁶ For resources on financial aid and scholarships regardless of immigration status, please *see* <https://www.nilc.org/issues/education/eduaccess toolkit/> and <https://www.maldef.org/resources/scholarship-resources/>.

¹⁹ For resources on financial aid and scholarships regardless of immigration status, please *see* <https://www.nilc.org/issues/education/eduaccess toolkit/> and <https://www.maldef.org/resources/scholarship-resources/>.

²⁰ For information, *see* National Conference of State Legislators, *Undocumented Student Tuition: Overview* (June 9, 2021), *available at* <https://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

	in-state tuition in certain states. ¹⁷			eligible to receive in-state tuition in certain states. ¹⁸	
Public and Assisted Housing	Not eligible	Eligible	Eligible upon receipt of prima facie determinations as qualified immigrants for Section 8 Subsidized Housing and Public and Assisted Housing.	Eligible upon receipt of lawful permanent residency.	Not eligible
Child Care²¹	<p>All immigrants, regardless of immigration status, are eligible for Child Care Development Fund (CCDF) child care when:</p> <ul style="list-style-type: none"> Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private childcare provided after school or during school holidays. Child care is subject to Head Start performance standards. Eligibility for child care services is determined by a nonprofit charitable organization. 	<p><u>Child Care Development Fund (CCDF):</u> With ORR certification eligible for 7 years. With bona fide determination or approval of a T visa eligible beyond 7 years.</p> <p><u>TANF Funded Child Care:</u> With ORR certification eligible for 7 years. With bona fide determination or approval of a T visa eligible beyond 7 years.</p>	<p><u>Child Care Development Fund (CCDF):</u> Children, who are self-petitioners or included in their parent’s self-petition upon receiving a prima facie determination, are eligible for CCDF child care as qualified immigrants.</p> <p><u>TANF Funded Child Care:</u> Varies by state. Depends on whether the state provides benefits for qualified immigrants during the 5 year bar.</p>	<p><u>Child Care Development Fund (CCDF):</u> Children receiving lawful permanent residency through SIJS are qualified immigrants are eligible for CCDF child care.</p> <p><u>TANF Funded Child Care:</u> Varies by state. Depends on whether the state provides benefits for qualified immigrants during the 5 year bar.</p>	<p>All immigrants, regardless of immigration status, are eligible for CCDF child care when:</p> <ul style="list-style-type: none"> Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private childcare provided after school or during school holidays. Child care is subject to Head Start performance standards. Eligibility for child care services is determined by a nonprofit charitable organization.
State Public Benefits	Not available until the U visa holder becomes a Lawful Permanent	With ORR certification or eligibility letter eligible for 7 years. With	VAWA self-petitioners are qualified immigrants eligible for state funded benefits.	SIJS recipients upon receipt of lawful permanent residency are qualified immigrants	Not available to DACA recipients.

¹⁷ For information, see National Conference of State Legislators, Undocumented Student Tuition: Overview (June 9, 2021), available at <https://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>.

¹⁸ Have same access to non-governmental and state scholarships as described for U visa victims.

²¹ Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access*, NIWAP (March 13, 2013) available at <https://niwaplibrary.wcl.american.edu/pubs/pb-chart-childcare>.

	Resident and completes the 5 year bar. Some states provide state funded benefits to qualified immigrants during the 5 year bar. A very limited number of states provide state funded benefits to U visa applicants who are PRUCOL (present under color of law) or U visa victims with U visas or deferred action status, as U visa victims with conditional approval who are considered lawfully present. ²²	bona fide determination or approval of a T visa eligible beyond 7 years.	Whether and which state funded benefits states provide to qualified immigrants varies by state and by benefit. ²³	eligible for state funded benefits. Whether, and which state funded benefits states provide to qualified immigrants varies by state and by benefit. ²⁴	
Driver's Licenses²⁵	Varies by state. In most states upon receipt of work authorization. Maine: Letter or notice acknowledging that the person is a U visa victim	Varies by state: In most states upon receipt of ORR certification or eligibility letter, work authorization or T visa approval.	Varies by state. In most states upon receipt of work authorization. Maine: Upon receiving a prima facie determination in a VAWA self-petitioning case	Varies by state. In most states upon receipt of work authorization. Maine: Evidence of a pending SIJS application.	Varies by state. In most states upon receipt of work authorization.
Access to Means-Tested Benefits²⁶					
Temporary Assistance for Needy Families (TANF)	Not available until 5 years after attaining Lawful Permanent Residency.	Eligible with HHS Certification (based on continued presence or a bona fide determination on a T visa application) and an HHS certification letter or with HHS eligibility determination (under 18).	Eligible with prima facie determinations as qualified immigrants to receive TANF after a 5-year bar. Some states provide state-funded TANF.	Eligible upon receipt of lawful permanent residency.	Not eligible
Food Stamps (SNAP)	Not eligible	Eligible with HHS Certification (based on continued presence or a bona fide determination on a T visa application)	Eligible with prima facie determinations as qualified immigrants to receive SNAP after a 5-year bar.	Eligible upon receipt of lawful permanent residency until the child turns 18.	Not eligible

²² For an overview of public benefits available by state and state demographics see Public Benefits Charts and Map, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²³ For an overview of public benefits available by state, see Public Benefits Charts and Map, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²⁴ For an overview of public benefits available by state, see Public Benefits Charts and Map, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²⁵ Angela Baker and Leslye Orloff, *Acceptable Forms of Identification for State Drivers License/Identification Card*, NIWAP (March 2013) available at <https://niwaplibrary.wcl.american.edu/pubs/drivers-license-access>; see also Public Benefits Charts and Map, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²⁶ For an overview of public benefits available by state, see Public Benefits Charts and Map, available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

		and an HHS certification letter or with HHS eligibility determination (under 18).	Child VAWA self-petitioners with prima facie determinations are eligible for SNAP.		
Medicaid/CHIP	Generally not available. U visa holders and wait-list approved U visa applicants with deferred action status may be able to receive subsidized healthcare for children, and pregnant women as lawfully present immigrants in some states.	Eligible with HHS Certification (based on continued presence or a bona fide determination on a T visa application) and an HHS certification letter or with HHS eligibility determination (under 18).	Eligible with prima facie determinations as qualified immigrants to receive after a 5-year bar. Medicaid or CHIP may be available depending on the state without a 5-year bar. As qualified immigrants, VAWA self-petitioners may be able to receive subsidized health care in some states, most often for child health care and prenatal care.	Eligible upon filing the SIJS application as lawfully present children to access health care through the health care exchanges and are eligible for CHIP funded health care if available in their state of residence. ²⁷	Not eligible

²⁷ For an overview of health care benefits available to lawfully present persons by state see Carly Erickson and Leslye E. Orloff, *Federal, Partnership, and State Exchanges That Provide State and State-Option Funded Medicaid or Medicaid-Like Services*, NIWAP (June 16, 2014) available at <https://niwaplibrary.wcl.american.edu/pubs/pb-qref-exchangesprovidemedicaidservices-06-16-14>.

Comparison Chart of VAWA and U visa Immigration Relief

By: Emily McCabe & Leslye E. Orloff
June 20, 2014

	Violence Against Women Act (VAWA) Self-Petition	U Visa
ELIGIBILITY		
Applicant		
Typical Recipients	<p>The immigrant (or the immigrant’s child or step-child) has been battered or subjected to extreme cruelty by the immigrant’s:</p> <ul style="list-style-type: none"> ▪ U.S. citizen- <ul style="list-style-type: none"> ○ Spouse ○ Former spouse (within 2 years) ○ Parent ○ Step-parent ○ Over 21 year old child, adopted child or step-child ▪ Lawful permanent resident <ul style="list-style-type: none"> ○ Spouse ○ Former spouse (within 2 years) ○ Parent ○ Step-parent 	<p>Victims of certain criminal activities (i.e. fraud and violent criminal activity), including:</p> <ul style="list-style-type: none"> ▪ <i>Direct victims</i>: individuals who experienced substantial physical and mental abuse as a result of the qualifying criminal activity ▪ <i>Indirect victims</i>: certain family members* of direct victims where the direct victim is: <ul style="list-style-type: none"> ○ Deceased due to manslaughter or murder, or ○ Incompetent, or incapacitated and therefore not able to give information concerning the qualifying criminal activity (i.e. parent of a sexually abused child)
*Family Members Who May Qualify as Indirect Victims	Not applicable	<p>If direct victim is over 21: spouse, and children under 21 years old.</p> <p>If direct victim is under 21: parents, and unmarried siblings under 18 years old.</p>
Proof of Good Moral Character	Required for self-petition	Proof of good moral character is not required for the U visa application, but is required to be granted lawful permanent residency.
Applicant's Criminal History	<p>Any arrest,* conviction,* or otherwise criminal involvement* may make the applicant ineligible to obtain an approved VAWA self-petition on good moral character grounds.</p> <p>Many types of convictions may also bar access to lawful permanent residency based on an approved self-petition.</p>	The applicant may apply for a discretionary waiver for crimes they may have committed. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.
*Applicant's Criminal History That Is Related to Domestic Violence Suffered	<p>In determining good moral character as part of the VAWA self-petition adjudication, crimes related to the domestic violence may not bar victims from being found to have good moral character.</p> <p>Domestic violence convictions are deportable offenses that could also bar access to lawful permanent residency. A domestic violence victim with a conviction for domestic violence may be able to obtain a special domestic violence victim waiver if the battered immigrant was acting in self-defense; was found to have violated a protection order intended to protect the person; or committed, was arrested</p>	The applicant may apply for a discretionary waiver for crimes they may have committed including domestic violence. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

	Violence Against Women Act (VAWA) Self-Petition	U Visa
Criminal History Related to Domestic Violence Suffered	for, was convicted of, or pled guilty to committing a crime – <ul style="list-style-type: none"> ▪ that did not result in serious bodily injury; and ▪ where there was a connection between the crime and the person’s having been barred of subject to extreme cruelty 	
Criminal Activity Suffered by Victim		
Qualifying Criminal Activity	Not applicable	Any of the following: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, 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 criminal (including attempt, conspiracy, or solicitation to commit any of the above and other related criminal activity).
Proof of Harm	Must show battery or extreme cruelty <ul style="list-style-type: none"> • Extreme cruelty includes forms of emotional abuse that do not have to rise to the level of physical violence, sexual violence or criminal activity. 	Must show substantial physical or emotion abuse as a result of the criminal activity.
Perpetrator		
Applicant's Relationship to Perpetrator	Applicant must have or had one of the following relationships with the abuser: <ul style="list-style-type: none"> ▪ Spouse ▪ Former spouse (must file within 2 years) ▪ Parent of child victim ▪ Step-parent of child victim ▪ Parent abused by over 21-year-old son or daughter. 	Any individual
*If Applicant Is/Was Married to Perpetrator	Applicant must show the couple was legally married in good faith (i.e. not solely to gain immigration status).	Not required
Effect of Marriage for Child Applicant	Cannot marry until the self-petition is approved and the child receives lawful permanent residency.	No effect
Requirement of Applicant and Perpetrator's Shared Residence	Applicant must currently reside or have resided with the abuser at any point (no specific duration of residence required).	Not required
Perpetrator's Immigration Status	Abuser must be either a United States Citizen or a Lawful Permanent Resident spouse, former spouse, parent or step parent. The abuser may also be an over 21 year old citizen son or daughter.	Any status (including undocumented)
Cooperation with Law Enforcement Requirements	Not required	Applicant must submit a U visa certification (Form I-918 Supplement B) signed by a designated law enforcement officer, judge, prosecutor, or other state or federal government official involved in detection, investigation, conviction, prosecution, conviction or sentencing of a listed criminal activity. Applicant may be certified if she is a victim of a qualifying criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, prosecution conviction or sentencing of criminal activity. Certification is encouraged as soon as

	Violence Against Women Act (VAWA) Self-Petition	U Visa
Cooperation with Law Enforcement Requirements		possible and certifying helpfulness does not hinge on a case proceeding beyond detection or investigation of a criminal activity.
PROCESS		
What to File	VAWA Self-Petition (Form I-360).	U visa Application. Title: Application for U Nonimmigrant Status (Form I-918; including I-918 Supplement B).
Where to File	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).
Family Members Whom Applicant Can Include in His or Her Application	<p>If applicant is over 21: unmarried children under the age of 21 at the time of filing.</p> <p>If applicant is under 21: children under the age of 21 at the time of filing</p>	<p>If applicant is over 21: spouse and unmarried children under the age of 21 at the time of filing.</p> <p>If applicant is under 21: spouse, children under the age of 21 at the time of filing, parent(s), unmarried siblings under the age of 18 at the time of filing.</p>
Number of Visas Given Out Per Year	No limit.	10,000 each fiscal year.
Average Case Processing Times	As of April 2014, 7 months.	As of April 2014, 7 months.
	Prior to December 2013: research shows that processing times vary between 6-24 months from filing.	Prior to December 2013: research shows that processing times vary between 6-18 months from filing.
How Long Relief Lasts	Indefinitely – must request Deferred Action every year	4 years – may be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a DHS delay in issuing regulations.
What Wait-List Approval Provides	Not applicable	<p>Pursuant to the limit of 10,000 U visas a year, the Department of Homeland Security provides immigrants whose cases are favorably adjudicated with conditional "wait-list" approvals until such time as a U visa becomes available. This classification does not grant the individual with all benefits that come with a U visa status, but it does provide deferred action, which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization
What Approval Provides	<p>Approval provides deferred action which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization ▪ May be renewed until self-petitioner is eligible to apply for lawful permanent residence. ▪ Eligibility to apply for lawful permanent residency either <ul style="list-style-type: none"> ○ Immediately if the perpetrator is a citizen; or ○ When the victim's priority date becomes current, if the perpetrator is a lawful permanent resident. As of April 2014 the wait times for a priority date to come current to apply for lawful permanent residency was 9 months to 2 years depending on the victim's country of origin. 	<p>Conditional approval provides deferred action, which:</p> <ul style="list-style-type: none"> ▪ Protects against removal/deportation ▪ Provides basis for work authorization <p>U visa approval provides</p> <ul style="list-style-type: none"> ▪ U visa that lasts for 4 years ▪ Ability to apply for lawful permanent residency after 3 years ▪ *May be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a DHS delay in issuing regulations.

	Violence Against Women Act (VAWA) Self-Petition	U Visa
BENEFITS		
Immigration Benefits		
Protection Against Deportation	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.
Applicant's Access to Work Authorization <i>It is important to consider WA even for children under the legal working age as it provides eligibility to apply for an SSN</i>	If abuser is a United States Citizen: Employment authorization upon prima facie finding, provided the applicant is admissible and has jointly filed an application for lawful permanent residency (I-485) as an immediate relative of a U.S. citizen. If abuser is a Lawful Permanent Resident: Applicant receives employment authorization upon approval of VAWA petition.	Work authorization upon conditional approval based on deferred action status if cap is reached. Work authorization for 4 years upon receipt of the U visa.
	Form to file: Employment Authorization (Form I-765) – fee waiver available.	Form to file: None required for approvals. Application for Employment Authorization (Form I-765) is required for wait-list approvals with deferred action status.
Waivers Available for Ineligibility Factors So That Victim Can Receive Lawful Permanent Residency	There is an exception to the public charge grounds of inadmissibility. There are a range of inadmissibility waivers that are available specifically for VAWA self-petitioners: <ul style="list-style-type: none"> • <i>Fraud</i> – may be waived if self-petitioner can show extreme hardship to self and/or children, spouse, and parents • <i>Immigration violations</i> – may be waived if self-petitioner can establish substantial connection between the immigration violation and the abuse • <i>Other crimes</i> – may affect the good moral character requirement, unless self-petitioner can show connection between the crime and the abuse suffered. • <i>Domestic violence victim waiver</i> – for self-defense; violation of protection order²⁷ intended to protect the victim; or committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury; and where there was a connection between the crime and the alien's having been barred of subject to extreme cruelty 	There is an exception to the public charge grounds of inadmissibility. Discretionary waiver of inadmissibility available if it is in the public or national interest. No waiver available for participants in Nazi persecution, genocide, torture, or extrajudicial killing.
Applicant's Access to Lawful Permanent Residency <i>Also known as a "Green Card"</i>	If abuser is a United States Citizen: eligible following approval if admissible. If abuser is a Lawful Permanent Resident and self-petitioner must wait until their priority date becomes current. Wait times vary by the victim's country of origin and in April 2014 ranged from 9 months to 2 years.	A U visa holder can apply for lawful permanent residence, if the applicant has: <ol style="list-style-type: none"> 1. Maintained continuous presence in the U.S. for 3 years; 2. Complied with reasonable requests to cooperate in investigation or prosecution; 3. Good moral character; and 4. Is admissible or qualifies for a waiver of inadmissibility. 5.
Access to Services Not Considered Public Benefits Open to All Immigrants¹		
Life and Safety Services²	Eligible	Eligible

	Violence Against Women Act (VAWA) Self-Petition	U Visa
Transitional Housing	Eligible	Eligible
Emergency Medicaid	Eligible	Eligible
Healthcare from HHS-funded Community Clinics www.HRSA.gov	Eligible	Eligible
Assistance from a Legal Services Corporation Funded Program	<p>Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from battering or extreme cruelty.</p> <p>Upon filing an application for lawful permanent residency based on VAWA, VAWA self-petitioners are eligible for all legal assistance offered with no relationship to the abuse required.</p>	<p>Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from any U visa criminal activity.</p> <p>Upon filing an application for lawful permanent residency based upon a U visa the victim is eligible for all legal assistance offered with no relationship to the abuse required.</p>
Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	Eligible	Eligible
Federal and State Public Benefits³		
General Access to Public Benefits	<p>VAWA self-petitioners who entered on or after 8/22/1996, are "qualified immigrants," but must wait 5 years before they can access federal means-tested benefits.</p> <p>VAWA self-petitioners who entered the United States before 8/22/1996, are "qualified immigrants," and are eligible to receive federal public benefits and federal means-tested public benefits.</p>	U visa holders are not "qualified immigrants," and are not eligible to receive federal public benefits or federal means-tested public benefits.
Post-secondary Education	Eligible as qualified immigrants for postsecondary grants and loans.	U visa holders are not able to file for FAFSA or other governmental scholarships, grants, or loans, until they become Lawful Permanent Residents. However, recipients may be eligible to apply for non-governmental scholarships, grants, and loans. ⁴ Recipients may also be eligible to receive in-state tuition in certain states. ⁵
Public and Assisted Housing	Eligible as qualified immigrants for Section 8 Subsidized Housing and Public and Assisted Housing.	Not eligible
Child Care⁶	<p><u>Child Care Development Fund (CCDF)</u>: Children, who are self-petitioners or included in their parent’s self-petition upon receiving a prima facie determination, are eligible for CCDF child care as qualified immigrants.</p> <p><u>TANF Funded Child Care</u>: Varies by state. Depends on whether the state provides benefits for qualified immigrants during the 5 year bar.</p>	<p>All immigrants, regardless of immigration status, are eligible for Child Care Development Fund (CCDF) child care when:</p> <ul style="list-style-type: none"> • Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private child care provided after school or during school holidays. • Child care is subject to Head Start performance standards. • Eligibility for child care services is determined by a nonprofit charitable organization.

	Violence Against Women Act (VAWA) Self-Petition	U Visa
State Public Benefits	VAWA self-petitioners are qualified immigrants eligible for state funded benefits. Whether and which state funded benefits states provide to qualified immigrants varies by state and by benefit. ⁷	Not available until the U visa holder becomes a Lawful Permanent Resident and completes the 5 year bar. Some states provide state funded benefits to qualified immigrants during the 5 year bar. A very limited number of states provide state funded benefits to U visa applicants who are PRUCOL (present under color of law) or U visa victims with U visas or deferred action status, as U visa victims with conditional approval who are considered lawfully present. ⁸
Driver's Licenses⁹	Varies by state. In most states upon receipt of work authorization. Maine: Upon receiving a prima facie determination in a VAWA self-petitioning case	Varies by state. In most states upon receipt of work authorization. Maine: Letter or notice acknowledging that the person is a U visa victim
Access to Means-Tested Benefits¹⁰		
Temporary Assistance for Needy Families (TANF)	Eligible as qualified immigrants to receive TANF after a 5-year bar. Some states provide state-funded TANF.	Not available until 5 years after attaining Lawful Permanent Residency.
Food Stamps (SNAP)	Eligible as qualified immigrants to receive SNAP after a 5-year bar. Children VAWA self-petitioners are eligible for SNAP.	Not eligible
Medicaid/CHIP	Eligible as qualified immigrants to receive after a 5-year bar. Medicaid or CHIP may be available depending on the state without a 5-year bar. As qualified immigrants, VAWA self-petitioners may be able to receive subsidized health care in some states, most often for child health care and prenatal care.	Generally not available. U visa holders and wait-list approved U visa applicants with deferred action status may be able to receive subsidized healthcare for children, and pregnant women as lawfully present immigrants in some states.

¹ Leslye Orloff, Aditi Kumar and Krisztina Szabo, *Public Benefits Toolkit*, NIWAP (March 2014) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/Public%20Benefits%20Toolkit%20FINAL%203%2024%2014%20leo.pdf/view> (Hereinafter "Public Benefits Toolkit").

² For more information about the benefits available to all immigrants regardless of status, see Catherine Longville and Leslye E. Orloff, *Programs Open To Immigrant Victims And All Immigrants Without Regard To Immigration Status*, NIWAP (June 2014) available at <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/Programs%20Open%20To%20All%20Immigrants%20Regardless%20of%20Status.pdf/view>.

³ This section highlights some of the public benefits available to qualified immigrants for a more complete list of benefits available see Public Benefits Toolkit, *supra* note 2.

⁴ For resources on financial aid and scholarships regardless of immigration status, please see <http://www.nilc.org/eduaccess toolkit10.html#aid> and <http://www.maldef.org/leadership/Scholarships/>.

⁵ For information, see National Conference of State Legislators, *Undocumented Students: State Action* (June 14, 2014), available at <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx>.

⁶ Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access*, NIWAP (March 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

⁷ For an overview of public benefits available by state see Public Benefits Toolkit, *supra* note 2, and NIWAP's state by state interactive demographics and benefits map available at <http://niwaplibrary.wcl.american.edu/public-benefits/public-benefits-toolkit/Map%20Document%20backup%202.swf/view>.

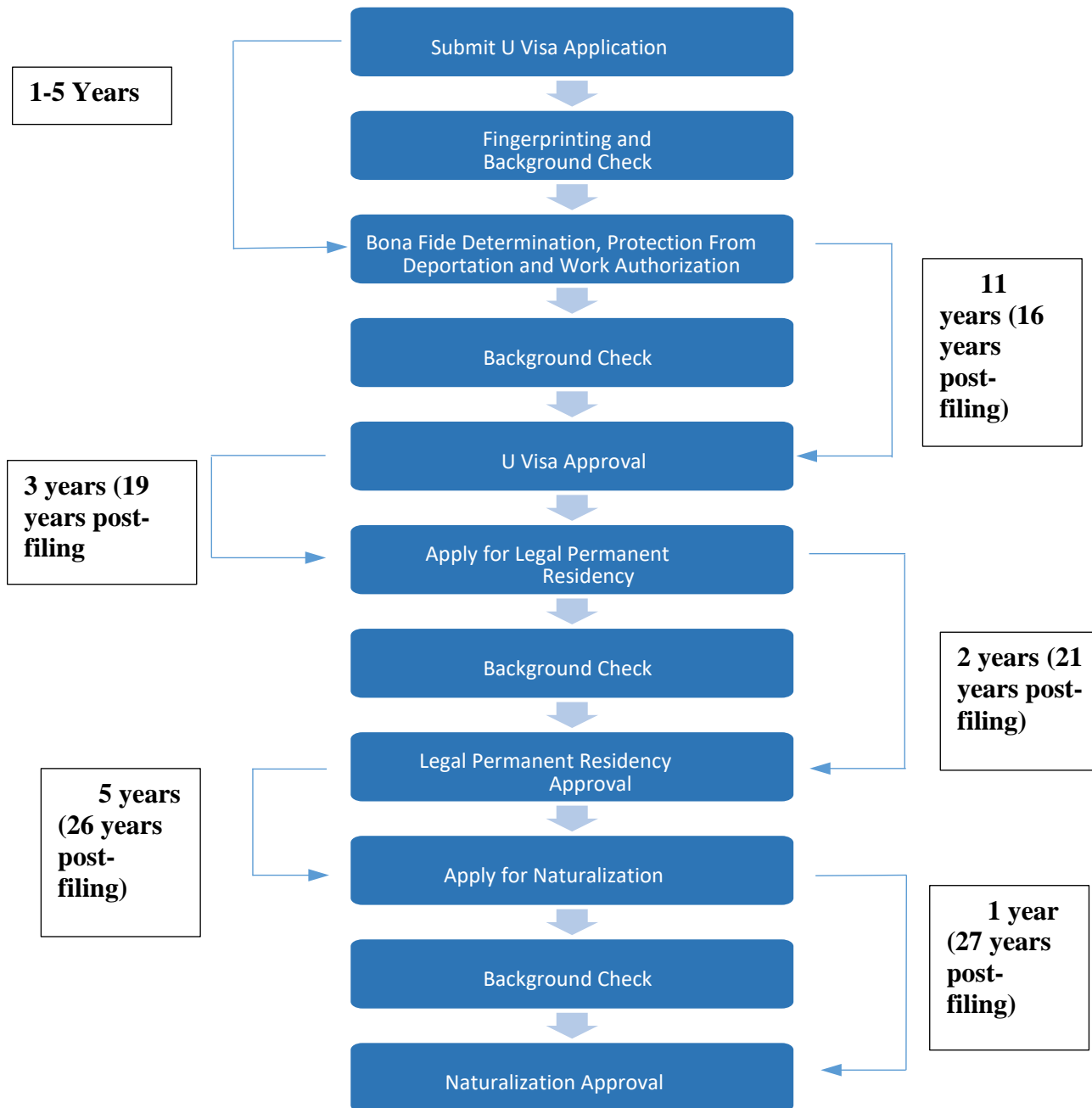
⁸ *Id.*

⁹ Angela Baker and Leslye Orloff, *Acceptable Forms of Identification for State Drivers License/Identification Card*, NIWAP (March 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>

¹⁰ For a full discussion of qualified immigrant access to federal means tested public benefits see Public Benefits Toolkit, *supra* note 2.

U Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff
September 15, 2021



National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

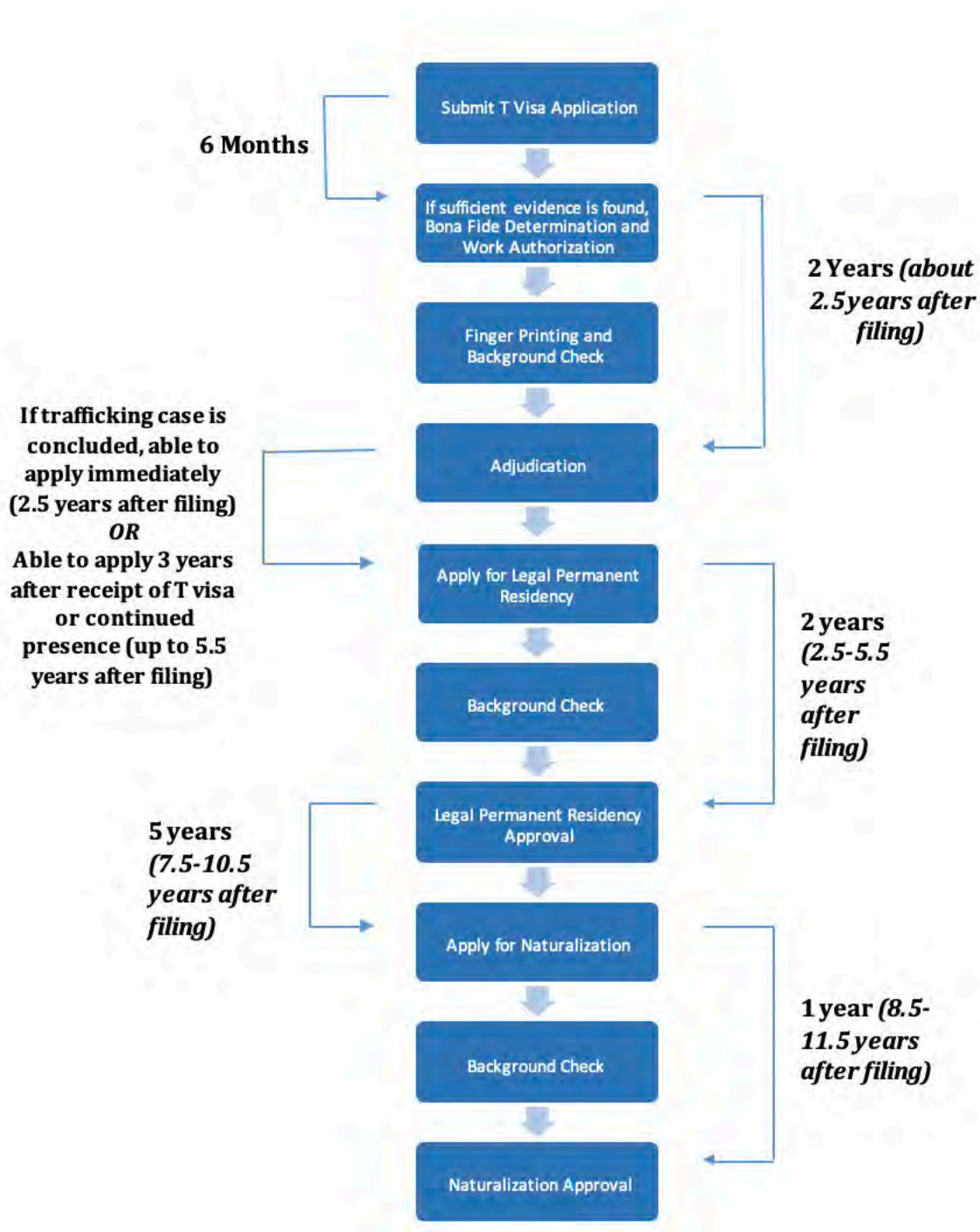
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(o) 202.274.4457 · niwap@wcl.american.edu · wcl.american.edu/niwap · <http://library.niwap.org/>

T Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

June 12, 2021



National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

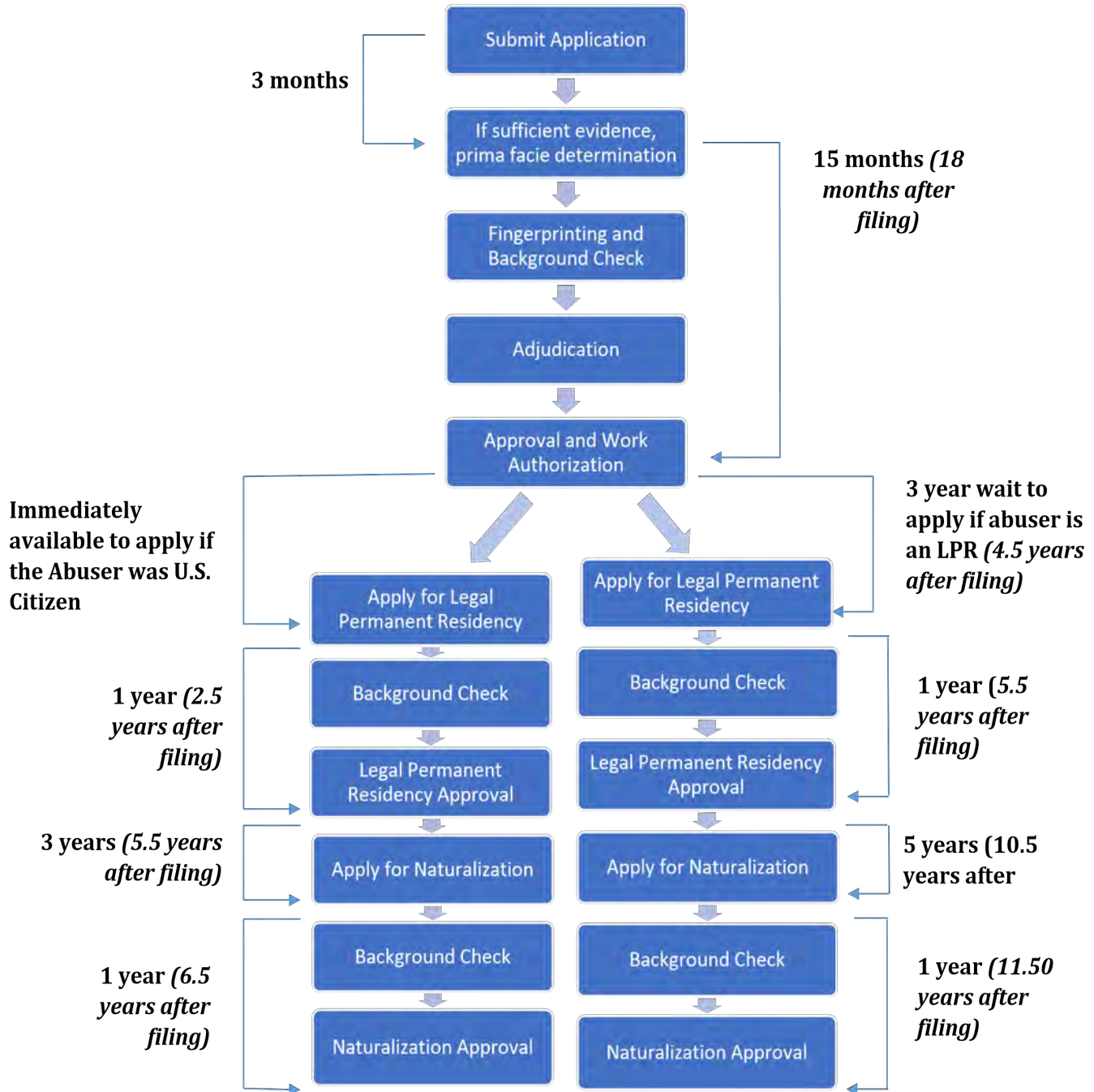
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VAWA Self-Petition Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

June 12, 2021



National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4300 Nebraska Avenue, N.W., N100B, Washington, D.C. 20016

(o) 202.274.4457 · niwap@wcl.american.edu · wcl.american.edu/niwap · <http://library.niwap.org/>



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 06/30/2023

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, Office of Policy and Strategy, Regulatory Coordination Division, 5900 Capital Gateway Drive, Mail Stop #2140, Camp Springs, MD 20588-0009; 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 06/30/2023

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-

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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

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.

HRS sec. 709-906 Abuse of a Family or Household Member

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?
Washington, DC

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.

I have probable cause to believe
Husband strangled Mrs. Orloff during a
domestic dispute and has been
following her and tracking her
movements.

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

As a result of Mrs. Orloff being
assaulted and strangled she suffered
injuries to her neck (attached are
copies of photographs submitted to the
court and the protection order I
issued).

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



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 12/31/2023

What Is the Purpose of Form I-914 Supplement B?

Federal, state, local, and tribal 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, local, or tribal law enforcement official) will decide whether the applicant meets the eligibility requirements for T nonimmigrant status. A formal investigation or prosecution is not required in order for your agency to complete this declaration.

By signing the Form I-914, Supplement B, you are not conferring an immigration benefit. Submitting this declaration does not lead to an automatic approval of the T visa application. 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, local, or tribal 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 B. **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 submit Supplement B, to USCIS with his or her application for T nonimmigrant status.

You must complete Supplement B 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 Supplement B if an investigation does not lead to an arrest or a prosecution. Completing Supplement B is not contingent on the outcome of a prosecution or investigation. Completing Supplement B is at your discretion. There is no statute of limitations related to completing Supplement B.

Your agency may have its own procedures related to completing 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 Supplement B, **Part 3**. 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, local, or tribal 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.

USCIS (not the certifying Federal, state, or local, and tribal law enforcement official) determines whether the evidence is sufficient and whether the applicant meets each eligibility requirement. A signed declaration provides valuable evidence of the victim's cooperation. However, the applicant may establish eligibility without submitting the Supplement B, as it is not a required form of evidence.

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. Type or print the victim's name and Alien Registration Number (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, type or print "None."

This form is divided into **Parts 1. - 6.** The following information will help you fill out the form::

Part 1. Victim Information

1. **Full Legal Name.** Provide the legal name of the victim, as shown on his or her birth certificate, passport or other legal name change document. If the victim has two last names, include both and use a hyphen (-) between the names, if appropriate. Type or print the victim's last, first and middle names in each appropriate field.
2. **Other Names Used.** You should provide all the names the victim has used, including maiden name, nicknames, aliases, 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 or Sex.** Select 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 2. Agency Information

1. **Name of Certifying Agency.** The certifying agency must be a Federal, state, local, or tribal 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. 8 CFR 214.11.
2. **Name, Title, and Division/Office of Certifying Official.** Give your name, title, and division or office
3. **Agency Mailing Address.** Give the agency's mailing address.
4. **Daytime Telephone Number and Fax Number.** Give your phone number and fax number with area code.
5. **Agency Type.** Select the appropriate box.
6. **Case Information.** Provide the case status information and case identification number, if applicable.

Part 3. Statement of Claim

1. In order to qualify for T nonimmigrant status, the applicant must be or have been a victim of a severe form of trafficking in persons. Select the box that describes the applicant's victimization.

-
-
- A. Sex trafficking where the commercial sex act was induced through the use of force, fraud or coercion. Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of inducing a commercial sex act.
 - B. Sex trafficking where the victim is under 18 years of age. Inducing an individual under 18 years of age to perform a commercial sex act is considered sex trafficking, regardless of the use of force, fraud or coercion.
 - C. Labor trafficking: 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.
 - D. Other. Attach additional sheets to explain.
2. Describe the victimization the applicant's claim is based on and identify the relationship of the victimization to the crime investigated or prosecuted by attaching additional sheets. Attach the results of any name or database inquiry and any relevant reports or findings. Attach additional sheets if necessary.
 3. Explain if the individual has expressed any fear of retaliation or revenge if they are removed from the United States.
 4. Provide the dates on which the acts of trafficking occurred.
 5. List the statutory citations that are or were being investigated or prosecuted.
 6. Provide the date on which the investigation or prosecution was initiated.
 7. Provide the date on which the investigation or prosecution was completed.

Part 4. 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, local, or tribal 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). It is not necessary for you to demonstrate that the cooperation of the victim led to a formal investigation, arrest, or prosecution. If the applicant is unable to cooperate with law enforcement's reasonable request due to physical or psychological trauma or age, the applicant must provide evidence to this effect.

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

Part 5. 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.

A principal applicant is prohibited from filing for derivative T nonimmigrant status on behalf of a family member who participated in the trafficking that established the principal applicant's eligibility. Therefore, USCIS will not grant an immigration benefit to a family member who committed trafficking.

Part 6. Attestation

The law enforcement officer filling out this form (identified in **Part 2.** of Supplement B), and their supervisor, must sign and date the form in this section.

Supplement B must have an original signature. A photocopy of a signed declaration or a typewritten 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
38 River Road
Essex Junction, 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. Department of Homeland Security (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.

CONFIDENTIALITY: Information concerning principal applicants for T nonimmigrant status and the family members they apply for is protected under 8 U.S.C. Section 1367.

ROUTINE USES: DHS may, where allowable under relevant confidentiality provisions, including 8 U.S.C. Section 1367, 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 3.58 hours 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, Office of Policy and Strategy, Regulatory Coordination Division, 5900 Capital Gateway Drive, Mail Stop #2140, Camp Springs, MD 20588-0009. 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 12/31/2023

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

PART 1. Victim Information

1. Full Legal Name

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

2. Other Names Used

Provide any other names you have used since birth, including aliases, maiden names, and nicknames. If you need extra space to complete this section, use the space provided in **Part 9. Additional Information.**

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

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

4. Gender or Sex

Male Female Other

5. Alien Registration Number (A-Number) (if any)

▶ A-

6. U.S. Social Security Number (SSN) (if any)

▶

Part 2. Agency Information

1. Name of Certifying Agency

2. Name of Certifying Official

3. Title of Certifying Official

4. Division/Office of Certifying Official

5. Agency Mailing Address

Street Number and Name

 Apt. Ste. Flr. Number

City or Town

 State ZIP Code

6. Daytime Telephone Number

7. Fax Number

For USCIS Use Only

Returned

Date

Date

Resubmitted

Date

Date

Reloc Sent

Date

Date

Reloc Rec'd

Date

Date

Receipt

Remarks

[\(USPS ZIP Code Lookup\)](#)

Part 2. Agency Information (continued)

8. Agency Type
 Federal State Local Tribal
9. Case Status
 On-going Completed
10. Certifying Agency Category
 Judge Law Enforcement Prosecutor Other _____
11. Case Number
12. FBI or SID Number

Part 3. 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: (Select all that apply. Base your analysis on the victimization the applicant experienced 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, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.
 - Sex trafficking and the victim is under 18 years of age.
 - 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.
 - Other, specify on attached additional sheets.
2. Please describe the victimization the applicant's claim is based on and identify the relationship between that victimization and the crime investigated or prosecuted. 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.
-

Part 3. Statement of Claim (Continued)

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)

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.

Date (mm/dd/yyyy)

Part 4. Cooperation of Victim

1. The applicant:

A. Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. (If you select **Item A.**, provide an explanation below in **Item Number 2.**)

B. Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. (If you select **Item B.**, provide an explanation below in **Item Number 2.**)

C. Has not been requested to assist in the investigation/prosecution of any crime of trafficking.

D. Has not yet attained the age of 18.

E. Other, specify on attached additional sheets.

2. If you selected **Item A.** or **Item B.** above, provide an explanation for your selection.

Part 5. Family Members Implicated In Trafficking

1. Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States?

Yes No

If you answered "Yes" to **Item Number 1.**, list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement

Part 6. 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 (USCIS), based upon this certification. I further certify that if the victim refuses to comply with reasonable requests for assistance in the investigation or prosecution of the acts of trafficking of which he/she is a victim, I will notify USCIS.

1. Signature of Law Enforcement Officer (identified in **Part 2.**) Date of Signature (mm/dd/yyyy)
2. Signature of Supervisor of Certifying Officer Date of Signature (mm/dd/yyyy)
3. Printed Name of Supervisor



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)**

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	
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.

I have probable cause to believe Ms. Orloff was subjected to sex trafficking from December 2018 to May 2019. In December 2018, Ms. Orloff 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. Orloff was forced to stay until she called 911 in May 2019. Attached are court reports and findings.

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. Orloff 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			

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

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. Orloff called 911 for help and provided information about her trafficker, which helped the police locate the trafficker. She also testified in court (attached are court documents).

Part E. Family Members Implicated In Trafficking

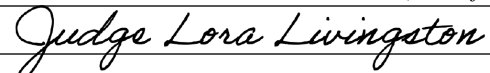
Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement

Part F. Attestation

Based upon probable cause,
~~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)*

07/03/2020

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

Date *(mm/dd/yyyy)*

07/03/2020

Printed Name of Supervisor

Appendix O: Sample Designee Letter

[APS AGENCY 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 **[Title]** of **[Agency Name]**, located in **[State]**. I am the head of this Adult Protective Services agency which is responsible for detecting, investigating, and assisting in the investigations of perpetrators of abuse of adults with disabilities, and older adults, neglect, exploitation and other criminal activity committed against certain individuals in **[State]**. The agency is a certifying agency, as such term is defined at 8 C.F.R. §214.14(a)(2).

Pursuant to 8 C.F.R. § 214.14(a)(3) and 8 C.F.R. § 214.14(c)(2)(i), I hereby specifically designate **[List name(s) of each authorized person(s)]**, all of whom have supervisory responsibilities, to sign I-918 Supplement B, U Visa Status Certification forms on my Department's [or Agency's] behalf. This specific designation shall remain in force until revoked in writing.

Sincerely,

[Name]
[Title]
[Agency Name]
[State]

Appendix P: Sample U and T Visa Certification Adult Protective Services Officials' Duties

[APS AGENCY LETTERHEAD]

U VISA CERTIFICATION OFFICIAL'S DUTIES⁴⁹⁶

GENERAL PURPOSE

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

SUPERVISION EXERCISED

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

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Serves as liaison between the APS agency and APS agency staff seeking U visa certification
- Reviews and signs I-918 Supplement B certification forms and I-194 Supplement B declaration forms prepared by APS agency staff
- Completes and signs I-918 Supplement B certification forms and I-194 Supplement B declaration forms
- Assists the APS agency in developing programs and practices that will enhance community-outreach activities related to the U and T visa and noncitizen crime victims
- Oversees programs to educate the public about APS agency's U and T visa certification function and purposes
- Meets and acts as a liaison with community groups
- Liaises with other local government agencies on U and T visa issues as assigned
- Supports APS agency staff with U and T visa information, materials, and outreach activities
- Completes monthly reports of activities detailing the number of U and T visa certification requests and grants

PERIPHERAL DUTIES

- Serves on various APS agency and other committees as assigned
- Performs related U and T visa work as assigned

DESIRED MINIMUM QUALIFICATIONS

⁴⁹⁶ 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.

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 and T visa statute and regulations, the U and T visa certification process, and other victim-based forms of immigration relief available to immigrant crime victims (e.g., VAWA self-petitions).
- (C) Experience working with individuals age 60 and older and disabled adults
- (D) 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
- (E) Knowledge and command (reading, writing, and speaking) of one or more foreign languages prevalent in the community

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, camera, outreach materials (pamphlets, palm cards) with information for noncitizen crime victims.

SELECTION GUIDELINES

Written application by existing APS agency employee; 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.

Appendix Q: 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 and T visas, that can protect you from being deported—if you are willing to help the government in the detection, investigation or prosecution of alleged criminal activity including [State’s] Adult Protective Services agency.

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, 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 contracting⁴⁹⁷, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law

You may be eligible for a T visa if you or your family member were victims of human trafficking including sex trafficking and/or labor trafficking.

Were you a victim of a criminal activity listed above?

Was a close family member of yours a victim of a criminal activity listed above?

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

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

The U and T visas are a temporary visa for victims who make a report or are helpful to [**APS agency**]. The U and T visas allow you to remain in the United States for four years, work legally during this time and gives you the option to obtain lawful permanent residency (green card) after three years in U or T status.

If you have an emergency, call 911 right away.

*The [**APS Agency**] wants to assist victims who report criminal activity committed against them. This helps us protect the individuals who are harmed (physically, sexually, emotionally, psychologically or financially) or neglected and increases public safety. To learn more about the [**APS Agency’s**] U and T visa programs, contact _____ at _____.*

⁴⁹⁷ 8 U.S.C. § 1351

¿FUE VÍCTIMA DE UN CRIMEN?

Si usted—o un miembro familiar cercano—fue víctima de un crimen, puede calificar para obtener una visa temporal, la visa U. La visa U previene la deportación si usted está dispuesto a ayudar al gobierno en la detección, investigación y procesamiento de un crimen.

Para calificar para una visa U, si usted o un miembro familiar cercano fue víctima de cualquiera de estos crímenes:

violación, tortura, tráfico de personas, incesto, violencia doméstica, asalto sexual, contacto sexual abusivo, prostitución, explotación sexual, acoso, mutilación sexual femenina, toma de rehenes, servidumbre por deudas, servidumbre involuntaria, trata de esclavos, secuestro, rapto, detención criminal ilegal, encarcelamiento falso, chantaje, extorsión, homicidio imprudencial, homicidio, asalto con mala intención, alteración de testigos, obstrucción de justicia, perjurio, fraude en contratos laborales extranjeros, sollicitación para cometer cualquier de los crímenes aquí mencionados, o *cualquier actividad similar* que viole la ley.

¿Fue usted víctima de algún crimen mencionado anteriormente?

¿Fue un familiar cercano, víctima de algún crimen mencionado anteriormente?

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

Si su respuesta es **SI**, usted y/o su familiar pueden calificar para recibir una visa U.

La visa U es una visa temporal para víctimas que reportan su crimen o le ayudan a la policía o a una entidad gubernamental investigar y procesar su caso. Si usted ha sido víctima de un crimen, la visa U le da estatus legal de inmigración, y le permite trabajar de forma legal y te protege de la deportación durante cuatro años. La visa U también le da la opción de obtener la residencia permanente legal (tarjeta verde) después de tres años en estatus U.

Para emergencias llame al 911 inmediatamente.

Para más información sobre la visa U, contacte a un abogado de inmigración, un centro de servicios para víctimas, un centro de justicia para la familia, o una persona con experiencia en las leyes de inmigración.

Appendix R: Resource List and Training Materials for Adult Protective Services⁴⁹⁸

If you are a victim advocate, attorney, judge, or other professional working with an immigrant victim 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.

To receive updates, sign up for NIWAP's outreach list.

<https://secure.campaigner.com/CSB/Public/Form.aspx?fid=1682905&ac=fohe>

You can elect NIWAP's general outreach list to receive notices of trainings, webinars, new materials, resources and policies. Judges, court staff, law enforcement and prosecutors can sign up for lists exclusively open to staff working at one of these government agencies.

For more information on any of the immigration protections for immigrant crime victims and the U visa, including statutes, regulations, policies, and government publications, *see generally*

<http://niwaplibrary.wcl.american.edu/topic/immigration/> and <http://niwaplibrary.wcl.american.edu/topic/immigration/u-visa/>.

NIWAP's Technical Assistance for Law Enforcement, Prosecutors, and Systems-Based Victim Advocates

- Technical Assistance and Training Flyer - Law Enforcement and Prosecutors (September 27, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/ta-flyer-lea>
- Technical Assistance and Training on Legal Rights of Immigrant Crime Victims (September 27, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>

Forms of Immigration Relief for Crime Victims and Children

- 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>
- Immigration Relief for Abused Children
http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure
- 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>
- Bench Card: DHS Enforcement Priorities Information for State Court Judges
<http://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard/>
- 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/>

⁴⁹⁸ 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.

- Policy Alert June 14, 2021: Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-bona-fide>

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims
<https://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>
- Immigration Options for Victims of Crime -DHS Brochure
<http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>
- Multilingual Materials for Victims and Advocates
<https://niwaplibrary.wcl.american.edu/multilingual-materials-by-language>
- Pathways to Immigration Relief for Students
<http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigraiton-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
- Office on Trafficking in Persons Child Certification Handout
https://niwaplibrary.wcl.american.edu/pubs/child_eligibility_handout
- VAWA Confidentiality Protections, Courthouse Enforcement, and Sensitive Locations Policies at a Glance (December 27, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/victims-and-protected-locations-policies-at-a-glance>

Glossary of Terms for Work with Immigrant Survivors

<https://niwaplibrary.wcl.american.edu/pubs/appendix-z-glossary-of-terms>

U and T Visa

General Information

- 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/>
- Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U visa, T visa, and Special Immigrant Juvenile Status Cases
<https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>
- Bench Card on Trafficking Victim Benefits Eligibility Process
<https://niwaplibrary.wcl.american.edu/pubs/t-visa-benefits-eligibility>
- Bench Card on U Visa Victim Eligibility Process
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>
- T Visa Quick Reference for Law Enforcement & Prosecutors
<https://niwaplibrary.wcl.american.edu/pubs/t-visa-quick-refernece-for-law-enforcement-prosecutors>
- T visa Process Timeline with Background Checks
<https://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>
- T visa Law Enforcement Resource Guide (October 20, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>
- Sample Questions for Identifying a Trafficked/Enslaved Person
<https://niwaplibrary.wcl.american.edu/pubs/questions-for-identifying-trafficked-or-enslaved-persons>

- U Visa Timeline with Background Checks
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline>
- U visa Quick Reference Guide for Judges (October 14, 2020)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>
- U Visa Flow Chart
<http://niwaplibrary.wcl.american.edu/pubs/uvisaflowchart/>
- Collection of U Visa News Articles
http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Tool_UVisaNewsArticles-10-1-13.pdf
- Battering or Extreme Cruelty in the Context of Elder Abuse from APS Tool Kit
<https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-elder-abuse-aps-tool>
- ASISTA Policy Alert: Bona Fide Employment Authorization for U Visa Petitions
https://asistahelp.org/wp-content/uploads/2021/06/Policy-Alert_-_Bona-Fide-Employment-Authorization-for-U-petitioners-1.pdf
- Press Release on the U Visa – Template
<https://niwaplibrary.wcl.american.edu/pubs/imm-qref-policedeptstraining>
- Toolkit for Adult Protective Services’ (APS) Use of The U-Visa (Feb. 2014)
<https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit>
- U Visa Resource List
<https://niwaplibrary.wcl.american.edu/pubs/resource-list-with-logo>

U visa Certification & T visa Declaration

- New U and T Visa Application and Certification Forms
<https://niwaplibrary.wcl.american.edu/2017-u-cert-forms/>
- U visa Certification and T visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors
<https://niwaplibrary.wcl.american.edu/u-visa-toolkit-police-prosecutors>
- U visa Certifications, T visa Declarations, and Continued Presence: Range of Potential Certifiers at the Local, State, and Federal Government Levels
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-certifiers>
- U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, and Magistrates and Other Judicial Officers:
<https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>
- U-Visa: "Helpfulness" Checklist
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>
- State U Visa Certification Laws
<http://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws/>
- Understanding the Judicial Role in U-Visa Certification, American Journal of Family Law
<http://niwaplibrary.wcl.american.edu/judicial-role-u-visa-cert/>
- Guide to Obtaining U visa Certifications Practice Advisory (July 2017)
<https://niwaplibrary.wcl.american.edu/ilrc-u-visa-practice-advisory>
- Building Trusting Relationships: A Guide for Advocates/Attorneys Working With Law Enforcement On U-Visa Certification Issues
<https://niwaplibrary.wcl.american.edu/pubs/advocate-law-enforcement-guide>
- Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations
<https://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

<https://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016>

- International Association of Chiefs of Police 2018 Resolution on Education and Awareness of U and T Visa Certifications
<https://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>

U and T visa and VAWA Confidentiality

- Legislative History of VAWA (94,00,05) T and U visas, Battered Spouse Waivers, and VAWA Confidentiality
https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/VAWA_Leg-History_Final.pdf
- 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.civresearchinstitute.com/online/article.php?pid=6&iid=1270>
- Court Rulings Confirm Federal VAWA Confidentiality Protections Bar Discovery of VAWA Confidentiality Protected Information in State Family Court Proceedings
<https://niwaplibrary.wcl.american.edu/pubs/conf-vawa-tool-hawkedemajfactsheet>
- Courthouse Immigration Enforcement: Steps State Courts Are Taking (2018)
<https://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims>
- Family Court Bench Card on VAWA Confidentiality
<http://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality>
- VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2.23.17)
<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>

Department of Homeland Security Publications

Resource Guides

- U visa Law Enforcement Resource Guide (2022)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-resource-guide-2022>
- DHS: U and T Visa Law Enforcement Resource Guide (2015)
<http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>
- USCIS U Visa Certification Factsheet Q&A
<http://niwaplibrary.wcl.american.edu/pubs/imm-relief-victims-trafficking-and-other>
- USCIS, T Visa Certification Resource Guide (October 20, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/t-visa-law-enforcement-resource-guide>
- U and T Visa Law Enforcement Resource Guide DHS published resource guide for law enforcement, prosecutors, judges, and other certifying officials
<http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>
- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom
<http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- USCIS Continued Presence & Temporary Immigration Status for Victims of Human Trafficking
<http://niwaplibrary.wcl.american.edu/pubs/continued-presence-temp-imm-status>
- USCIS: U Visa Demographics: U Visa Report (March 2020)
<https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics>

- USCIS U Visa Report: U Visa Filing Trends (April 2020)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-filing-trends>
- USCIS: Trends in U Visa Law Enforcement Certifications, Qualifying Crimes and Evidence of Helpfulness (July 2020)
https://niwaplibrary.wcl.american.edu/pubs/u_vis_a_lea-certs-report
- USCIS U Visa Report Technical Appendix (July 2020)
https://niwaplibrary.wcl.american.edu/pubs/technical_appendix_for_u_vis_a_report

Policy Updates and Directives

- Using a Victim-Centered Approach with Noncitizen Crime Victims (August 10, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>
- Prosecutorial Discretion: Certain Victim, Witnesses and Plaintiffs
<http://niwaplibrary.wcl.american.edu/pubs/discretion-victims-witnesses-plaintiffs/>
- USCIS Policy Manual Chapter 5—Bona Fide Determination Process (Jun 14, 2021)
https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process-_-uscis
- USCIS Policy Manual Chapter 6—U visa Waiting List (June 14, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-waiting-list>
- USCIS Policy Manual Chapter 5 –Bona Fide Determination Process USCIS (June 14, 2021)
https://niwaplibrary.wcl.american.edu/pubs/chapter-5-bona-fide-determination-process-_-uscis
- USCIS Bona Fide Determination Process Flowchart (June 14, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/u-bona-fide-flowchart>
- USCIS Policy Manual Updates: T visa Status for Victims of Severe Forms of Trafficking in Persons (October 20, 2022)
<https://niwaplibrary.wcl.american.edu/pubs/uscis-policy-manual-t-visa-update-10-20-21>
- DHS Policy Answers to Law Enforcement Reasons for Not Certifying
<http://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying>

Forms

U visa Forms

- DHS: Form I-918 for U visa Applicant
<https://niwaplibrary.wcl.american.edu/pubs/form-i-918>
- DHS: Form I-918, Supplement A for Qualifying Family Member,
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-qualifying-family-member-form-december2021>
- DHS: Instructions for I-918 and Supplement A
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-and-qualifying-family-supplement-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-i918-unonimm-status>

T visa Forms

- DHS: Form I-914
<https://niwaplibrary.wcl.american.edu/pubs/form-i-914>
- DHS: Instructions for Form I-914
<https://niwaplibrary.wcl.american.edu/pubs/i-914-instructions>
- DHS: Form I-914, Supplement B for T visa Endorsement
<http://niwaplibrary.wcl.american.edu/pubs/i-914-supplement-b-instructions>

- DHS: Instructions for Form I-914, Supplement B
<http://niwaplibrary.wcl.american.edu/pubs/i-916-supplement-b-instructions>

Webinars

- Pro Bono Institute “U Visa” Online Training Module (Online Course):
<http://niwaplibrary.wcl.american.edu/pbti-u-visa-module>
- October 14, 2022: “What Judges, Attorneys, and Prosecutors Need to Know About How VAWA Confidentiality Impacts Discovery in Cases Involving Immigrant Survivors:
<https://niwaplibrary.wcl.american.edu/vawa-confidentiality-webinar-oct-22>
- August 24, 2021: “Legal Rights of Immigrant Survivors: Immigration Relief, Public Benefits, and Protection Orders” (Webinar)
<https://niwaplibrary.wcl.american.edu/otsego-part-ii-21>
- February 20, 2020: “The U Visa As a Crime-Fighting Tool: How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions” (Webinar)
<http://niwaplibrary.wcl.american.edu/u-visa-2020>
- January 30, 2020: “Best Practices and Tools That Build the Capacity of Adult Protective Services to Serve Immigrant Domestic and Sexual Violence Victims” (Webinar)
<http://niwaplibrary.wcl.american.edu/webinar-aps>
- November 19, 2019: In Accordance with the Law: When Your Victim Witness Speaks Limited English
<https://niwaplibrary.wcl.american.edu/in-accordance-lep-nov19>
- October 31, 2017: “VAWA Confidentiality and Protections for Immigrant Victims of Domestic Violence” (Webinar)
<http://niwaplibrary.wcl.american.edu/oct2017vawaconfidentialitywebinar>
- February 18, 2015: “Battered Women’s Justice Project (BWJP) Immigrant Crime Visas: Law Enforcement’s Tool to Strengthen Community Policing” (Webinar)
<http://niwaplibrary.wcl.american.edu/february-18-2015-crime-visas-bwjp>
- April 10, 2015: “Assessing Helpfulness for Immigrant Crime Victims Battered Women’s Justice Project (BWJP)” (Webinar)
<http://niwaplibrary.wcl.american.edu/april-10-2015-assessing-helpfulness-bwjp>
- December 1, 2014: “Expert Advice for Judges: How to Handle U Visa Certification and T Visa Endorsement Requests” (Webinar)
<http://niwaplibrary.wcl.american.edu/december-1-2014-expert-advice-for-judges-webinar>
- March 19, 2014: “Trauma-Informed Care, Part 2: The Nuts and Bolts of Immigration Story Writing Intervention” (Webinar)
<http://niwaplibrary.wcl.american.edu/march2014trauma2webinar>
- February 24, 2014: “Helping Survivors in Crisis: Hands On Training for Advocates and Attorneys on Trauma-Informed Work with Immigrant Women Who Are Survivors of Domestic Violence and Sexual Assault (Video)
<http://niwaplibrary.wcl.american.edu/february-24-2014-hands-on-training-for-advocates-and-attorneys-on-trauma-informed-work-with-immigrant-women-who-are-survivors-of-domestic-violence-and-sexual-assault>
- February 20, 2014: “Obtaining U Visa Certification from Judges in Protection Order, Family, Criminal, and Other State Court Proceedings” (Webinar)
<http://niwaplibrary.wcl.american.edu/webinar-u-visa-certification-by-state-court-judges>
- September 26, 2013: “Roll Call Videos for Law Enforcement on U Visa Certification and T Visa Endorsement”
<http://niwaplibrary.wcl.american.edu/dhs-roll-call-videos>

- February 15, 2013: “Lessons Learned from Law Enforcement: How Collaborations That Result in U visa Certifications Support Safer Communities”
<https://niwaplibrary.wcl.american.edu/lessons-learned-from-le-webinar>
- October 5, 2011: “Law Enforcement and Advocates Partnering to Better Serve Immigrant Crime Victims” (Webinar)
<http://niwaplibrary.wcl.american.edu/webinar-law-enforcement-collaboration>
- July 18, 2011: “Law Enforcement Use of the U Visa” (Podcast)
<http://niwaplibrary.wcl.american.edu/uvisa-podcast-bja>
- February 10, 2011: “An Introduction to Law Enforcement Use of the U-Visa” (Webinar)
<http://niwaplibrary.wcl.american.edu/uvisa-intro-webinar-bja>

U Visa as a Crime-Fighting Tool

- Stories From the Field: The Crime Fighting Effectiveness of the U Visa (August 23, 2021)
<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
- Transforming Lives Study Provides Evidence-Based Support for The Effectiveness of the VAWA and U Visa Programs and the DHS U Visa Bona Fide Policy That Provides Earlier Access Deferred Action and Work Authorization To Applicants (June 14, 2021)
<https://niwaplibrary.wcl.american.edu/transforming-lives-study-21>
- 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/>
- Tip Sheet for Courts Developing U Visa Certification Protocols
<https://niwaplibrary.wcl.american.edu/pubs/tips-for-courts-u-visa-cert-protocols>
- The U visa: An Important Tool for Community Policing
<https://niwaplibrary.wcl.american.edu/pubs/uvisa-community-policing-tool>
- How Law Enforcement is Using the U visa: Practice Brief
<https://niwaplibrary.wcl.american.edu/pubs/imm-qref-uvisapracticebrief-10-11>
- U Visa Legal Advocacy: Overview of Effective Policies and Practices
<https://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief>
- State U Visa Certification Laws
<https://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws/>

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-vaawa-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/case-law-quick-reference-tool-7-24-17-final-w-logo/>
- How VAWA Confidentiality Impacts Discovery in Cases Involving Immigrant Survivors
<https://niwaplibrary.wcl.american.edu/discovery>
- How to Argue or Rule on VAWA Confidentiality Protections in Discovery Involving Immigrant Survivors
<https://niwaplibrary.wcl.american.edu/pubs/how-to-va-wa-confidentiality-discovery>
- Discovery and Use of Immigration Information in Court Checklist
<https://niwaplibrary.wcl.american.edu/pubs/ca-discovery-va-wa-confidentiality-bench-card>

Language Access

- Immigrant and LEP Victims' Access to the Criminal Justice System
<https://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims>
- Serving Limited English Proficient Immigrant Victims**
<https://www.civicsresearchinstitute.com/online/article.php?pid=6&iid=1269>
- Language Access Materials for Police and Prosecutors (Updated 10/16/2019)
<https://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors>
- Language Access Training Materials (Updated June 18, 2019)
<https://niwaplibrary.wcl.american.edu/language-access-materials>
- Questions to Use for Crime Scene Identification of LEP
<http://niwaplibrary.wcl.american.edu/pubs/crime-scene-identification-of-lep-persons>
- Why Using an Interpreter is Beneficial to Law Enforcement
<https://niwaplibrary.wcl.american.edu/pubs/law-enforcement-benefits-of-qualified-interpreters>
- Dos and Don'ts to Help Law Enforcement Identify Victims, Witnesses, and Other Persons Who Are Limited English Proficient and Need An Interpreter
<https://niwaplibrary.wcl.american.edu/pubs/dos-and-donts-to-identify-lep-persons>
- Important Tips to Remember When Using an Interpreter
<https://niwaplibrary.wcl.american.edu/pubs/interpretation-tips>
- Working Effectively with Telephone Interpreters
<https://niwaplibrary.wcl.american.edu/pubs/imm-qref-workingwithtelephoneinterp>
- 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>
- Federal Register: Improving Access to Services for Persons with Limited English Proficiency: Executive Order 13166 (August 11, 2000)
<http://niwaplibrary.wcl.american.edu/pubs/lang-gov-exor1316608-11-00>
- 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>

VAWA Self-Petition

- VAWA Self-Petitioning Introduction and Flow Charts
<http://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioning-intro-and-flow-charts-pdf/>
- 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
<https://niwaplibrary.wcl.american.edu/pubs/imm-chart-vawaselfpetitionelders>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults
<https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-flow-chart-for-adults>
- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases
<https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>
- VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents (Webinar – April 22, 2020, with Materials and Q & A Answers)
<https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>
- VAWA Self-Petition Timeline with Background Checks (June 12, 2021)
<https://niwaplibrary.wcl.american.edu/pubs/vawa-timeline>

Public Benefits for Systems-Based and Other Victim Advocates

- Public Benefits Flow Charts: VAWA Self-Petition and Cancellation, U visas, T visas, and SIJS
<https://niwaplibrary.wcl.american.edu/pubs/public-benefits-flow-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/>
- State by State Demographics
<https://niwaplibrary.wcl.american.edu/demographics/>
- Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status
<https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>
- Privacy Protections for Immigrants Applying for Public Benefits
<https://niwaplibrary.wcl.american.edu/pubs/limits-on-required-government-agency-reporting#>
- Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services
<https://niwaplibrary.wcl.american.edu/pubs/pb-bchcrd-pubbenefits>
- Flow Chart Public Charge Test and Housing Benefits
<https://niwaplibrary.wcl.american.edu/pubs/flow-chart-public-charge-test-housing-benefits-2>
- All State Public Benefits Charts and Interactive Public Benefits Map (2022)
<https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>
- Multilingual Materials for Victims and Advocates
<https://niwaplibrary.wcl.american.edu/multilingual-materials-by-language>
- Anti-Discrimination Provisions that Apply to Programs Receiving Federal Funding Serving Victims of Violence Against Women Crimes
<https://niwaplibrary.wcl.american.edu/pubs/pb-tool-antidiscrimlaws>

Family Law

- Glossary of Terms (Appendix Z of SIJS Bench Book)
<https://niwaplibrary.wcl.american.edu/pubs/appendix-z-glossary/>
- Battered Immigrants and Civil Protection Orders (Chapter 05.1 of Breaking Barriers)
<https://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders/>
- Ensuring Access to Protection Orders for Immigrant Victims of Family Violence (Chapter 05.2 of Breaking Barriers)
<https://niwaplibrary.wcl.american.edu/pubs/ch5-2-access-protection-orders/>
- Protection Orders for Immigrant Victims of Sexual Assault (Chapter 14 of Empowering Survivors)
<https://niwaplibrary.wcl.american.edu/pubs/ch14-protectionorders-sa/>

- Jurisdictionally Sound Civil Protection Orders (Chapter 05.3 of Breaking Barriers)
<https://niwaplibrary.wcl.american.edu/pubs/ch5-3-jurisdictionallysound-cpos/>
- Guardianship Appointment of Guardian Chart (Appendix V of SIJS Bench Book)
<https://niwaplibrary.wcl.american.edu/pubs/appendix-v-guardianship-appointment-of-guardian-chart/>

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Appendix S: Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations^{499 500 501}

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.⁵⁰² 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

⁴⁹⁹ 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.

⁵⁰⁰ 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).

⁵⁰¹ 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>

⁵⁰² 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.”)

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.

a. Definitions- U Visa⁵⁰³

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.⁵⁰⁴

⁵⁰³ 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>

⁵⁰⁴ For instructions on how to withdraw a previously signed Certification, please see Section V, “Procedure: Encountering Immigrant Victims of Crime (U Visa).”

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 • Incest • Domestic Violence • Sexual Assault • Abusive Sexual Contact • Prostitution • Sexual Exploitation • Stalking 	<ul style="list-style-type: none"> • Female Genital Mutilation • Being Held Hostage • Peonage • Involuntary Servitude • Slave Trade • Kidnapping • Abduction • Unlawful Criminal Restraint • False Imprisonment • Blackmail 	<ul style="list-style-type: none"> • Extortion • Manslaughter • Murder • Felonious Assault • Witness Tampering • Obstruction of Justice • Perjury • Fraud in Foreign Labor Contracting⁵⁰⁵ • Other Similar Activity
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b. Definitions- T Visa/Continued Presence⁵⁰⁶

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—

⁵⁰⁵ As defined in 18 U.S.C. § 1351 (2013).

⁵⁰⁶ 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.

- “(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.”⁵⁰⁷

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.⁵⁰⁸

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 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.⁵⁰⁹

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.

⁵⁰⁷ Victims of Trafficking and Violence Protection Act, 22 U.S.C.A. § 7102(9)(2013).

⁵⁰⁸ See Appendix B, “Definitions of T Visa/Continued Presence Terminology” for the complete Federal Penal Code sections that define human trafficking.

⁵⁰⁹ For instructions on how to withdraw a previously signed Declaration, please see Section VII, “Procedure: Encountering Immigrant Victims of Human Trafficking (T Visa).”

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:

- 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 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 visa⁵¹⁰ and a list of local victim services/resources.⁵¹¹
- 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.⁵¹² In exigent circumstances, personnel should use the most

⁵¹⁰ For a DHS brochure that can be distributed to victims describing immigration relief for crime victims, please refer to Appendix C.

⁵¹¹ 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>

⁵¹² 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

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.⁵¹³
- 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

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.

⁵¹³ 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.")

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
 - 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 visa⁵¹⁴ and other local victim services/resources.⁵¹⁵
- 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 care and obtain the help of an interpreter to understand and communicate with the LEP person.⁵¹⁶ 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.

⁵¹⁴ 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>

⁵¹⁵ 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>

⁵¹⁶ 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.

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

- i. Obtain the help of an interpreter to understand and communicate with the LEP crime witness interview.⁵¹⁷
- 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.⁵¹⁸
- 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/Certifying Officer Responsibilities

- a. The supervising/certifying 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

⁵¹⁷ 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.")

⁵¹⁸ For examples of questions for each category, please refer to Appendix D "Sample Questions for Identifying a Trafficked/Enslaved Person."

- iii. The victim has complied with any reasonable requests for assistance in a trafficking investigation or prosecution.
- 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

Appendix T: Discussion Paper for Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking

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Signing of U Visa Certifications and T Visa Declarations^{519 520 521}

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 attachments, 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.

⁵¹⁹ 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.

⁵²⁰ 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).

⁵²¹ 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-prosecutors/>

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, 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.⁵²² 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.”⁵²³

⁵²² Leslye E. Orloff & Paige E. Feldman, *National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients* (Nov. 29, 2011), available at <http://library.niwap.org/wp-content/uploads/2015/National-Survey-on-Types-of-Criminal-Activities-Updated2011.pdf>.

⁵²³ 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—

- 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.⁵²⁴ 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

(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;

(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.

⁵²⁴ 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* (Apr. 2013), available at <http://niwap.org/training/DHS-roll-call/>

identification and screening of immigrant victims of violent criminal activities and human trafficking.⁵²⁵

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 victims⁵²⁶ and provide immigrant victims with information about local or national immigrant victim services or resources that support immigrant victims⁵²⁷ 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.⁵²⁸ This trusting relationship is "central to overall public safety."⁵²⁹ 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;

⁵²⁵ 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* (Apr. 2013), available at <http://www.niwap.org/2015/06/dhs-roll-call-videos/>.

⁵²⁶ 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>.

⁵²⁷ 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/>

⁵²⁸ 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/>

⁵²⁹ 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).

- 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 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.⁵³⁰ 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 to sign a Certification or Declaration.⁵³¹ 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.⁵³²

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

⁵³⁰ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (Oct. 22, 2011), available at http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

⁵³¹ Department of Homeland Security, *Information for Law Enforcement Officials: Immigration Relief for Victims or Human Trafficking and Other Crimes 1* (Oct. 22, 2011), available at http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf

⁵³² 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/>

a criminal investigation, signing Certifications or Declarations does not add additional burden on police departments.

ATTACHMENT A: DEFINITIONS OF U VISA TERMINOLOGY

U Visa Status⁵³³: 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.⁵³⁴ 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.⁵³⁵

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.⁵³⁶

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.⁵³⁷ 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.

⁵³³ 8 C.F.R. § 214.14.

⁵³⁴ 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

⁵³⁵ 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_QAforLawEnforcement.pdf

⁵³⁶ 8 C.F.R. § 214.14(a)(3)(i) & (ii).

⁵³⁷ 8 C.F.R. § 214.14(a)(2).

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 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.”⁵³⁸ 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 restraint
Female genital mutilation	Perjury	Witness tampering
Felonious assault	Prostitution	Other similar criminal activity
Fraud in foreign labor contracting	Rape	

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.⁵³⁹

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.⁵⁴⁰ An immigrant victim has an ongoing responsibility to provide assistance

⁵³⁸ 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_visa_certification_guide.pdf

⁵³⁹ 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.

⁵⁴⁰ 8 C.F.R. § 214.14(b)(3).

reasonably requested by law enforcement while in U visa status and in order to qualify for permanent resident status.⁵⁴¹ An exception to the helpfulness requirement applies to victims under 16 years of age.⁵⁴² 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.⁵⁴³

Indirect Victim may 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

⁵⁴¹ 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_QAforLawEnforcement.pdf

⁵⁴² 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.")

⁵⁴³ 8 C.F.R. § 214.14(a)(14).

- 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
- 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.⁵⁴⁴

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.⁵⁴⁵ 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.⁵⁴⁶

ATTACHMENT B: DEFINITIONS OF T VISA/CONTINUED PRESENCE TERMINOLOGY

T Visa Status⁵⁴⁷: 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

⁵⁴⁴ 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>

⁵⁴⁵ 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>

⁵⁴⁶ 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* (Apr. 2013), *available at* <http://www.niwap.org/2015/06/dhs-roll-call-videos/>

⁵⁴⁷ 8.C.F.R. § 214.11.

stay in the United States legally. Continued presence also connects victims to services that provide support and stabilized the victim.

T Visa Law Enforcement Declaration⁵⁴⁸: 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 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.”⁵⁴⁹
- **Federal Penal Code Definition**

⁵⁴⁸ 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.

⁵⁴⁹ 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).

- § 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor⁵⁵⁰
 - (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 coercion⁵⁵¹
 - (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 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.”⁵⁵²

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

⁵⁵⁰ 18 U.S.C.A. § 1590.

⁵⁵¹ 18 U.S.C.A. § 1591.

⁵⁵² 8 C.F.R. § 214.11(a).

they choose to partake in the endorsement process.⁵⁵³ 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.⁵⁵⁴

⁵⁵³ 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>

⁵⁵⁴ 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/>

ATTACHMENT 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?

Appendix U: Screening Tools

Department of Homeland Security Infographic⁵⁵⁵

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 Relief⁵⁵⁶

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.

⁵⁵⁵ 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>.

⁵⁵⁶ National Immigrant Women’s Advocacy Project, “Screening for Victims Who Qualify for Immigration Protective Relief,” *available at* <http://niwaplibrary.wcl.american.edu/pubs/squadcarscreeningbluecard/>.

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

ASYLUM

For victims of persecution

To apply:
USCIS
Form I-589

T VISA

For victims of human trafficking

To apply:
USCIS
Form I-914

VAWA

For victims of domestic violence and abuse

To apply:
USCIS
Form I-360

SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

To apply:
USCIS
Form I-360

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

To apply:
USCIS
Form I-918

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

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...

- 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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Appendix V: 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,”⁵⁵⁷ and a document entitled “Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know.”⁵⁵⁸ The first two documents are available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

⁵⁵⁷ 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>.

⁵⁵⁸ 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/>.



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.

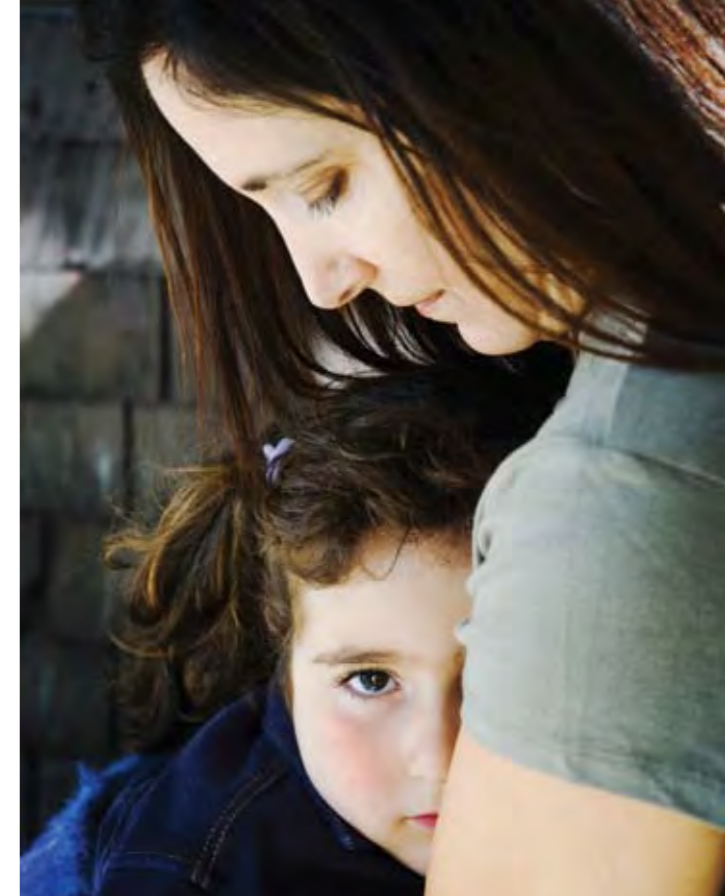


U.S. law provides several protections for legal and undocumented immigrants who have been victims of a crime. Often victims are unaware of such protections, thus frontline workers serve as a critical link for immigrant victims. There are specific protections for victims of domestic violence, victims 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



U.S. Citizenship and Immigration Services



U.S. Citizenship and Immigration Services

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.

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:

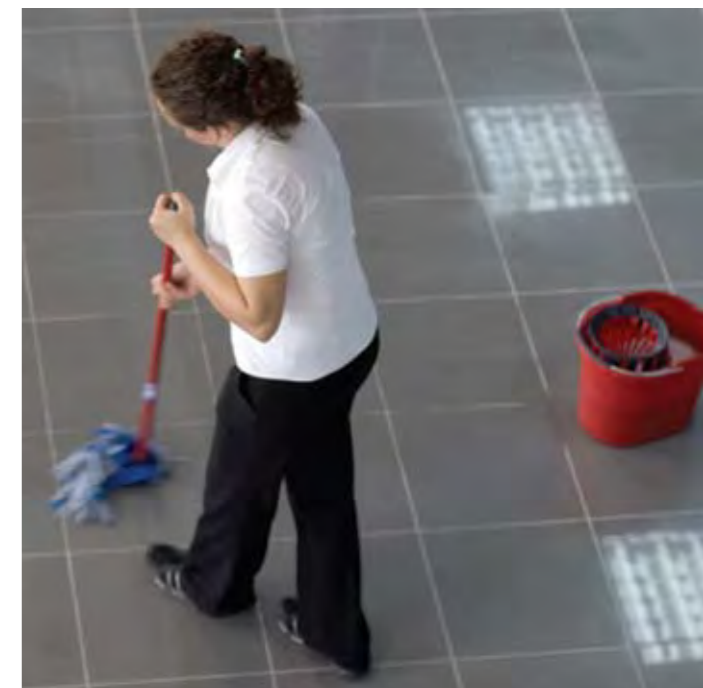
Abduction	Manslaughter
Abusive Sexual Contact	Rape
Blackmail	Murder
Domestic Violence	Obstruction of Justice
Extortion	Witness Tampering
False Imprisonment	Prostitution
Female Genital Mutilation	Sexual Assault
Perjury	Slave Trade
Felonious Assault	Torture
Hostage Taken	Trafficking
Incest	Sexual Exploitation
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 4888**

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.

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%](http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20)

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



The United States
Department of Justice

Domestic Violence and the International Marriage Broker Regulation Act:

What Every Law Enforcement Officer and Domestic Violence Advocate Should Know





Fact Sheet

Oct. 27, 2010

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 to domestic violence because they may 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 fact sheet 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 with information about their legal rights as well as about the 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.

Questions & Answers

PART I:

Legal Rights and Resources Available to Immigrant Victims of Domestic Violence and Other Crimes in the United States

1. What is domestic violence?

Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Domestic violence may include physical harm, forced sexual relations, psychological and emotional abuse, tactics of isolation (such as controlling who you talk to or where you go) or intimidation, economic abuse (such as withholding support) and/or immigration related abuse or threats (such as refusing to file applications to give you legal immigration status, or threatening to call immigration authorities to get you removed from the United States if you report abuse). Domestic violence often increases victims' dependence on abusers, making it difficult for victims to leave. 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. It includes unwanted touching of your intimate parts as well as rape or attempted rape. 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, national origin, 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 also be eligible for immigration related 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.

2. 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. U.S. laws that apply to families give you:

- 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 and an immigration lawyer who works with immigrant victims of domestic violence to understand 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 to obtain a protection order.

Call the police (dial “911”) if you or your child(ren) are in danger. The police officers may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police officers about any abuse that has happened, even in the past, and show any injuries. If the police officers do not speak your language, find a safe person to interpret for you, or to help you ask the police officers to get an interpreter. 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. Through a protection order (also called a “restraining order”), the court can order your abuser not to call, contact, or hurt you, your child(ren), or other family members. If your abuser violates the protection order, you can call the police. Applications for protection orders are available at most courthouses, women’s shelters, and legal service offices, as well as at some police stations.

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 government will appoint one for you if you cannot afford one); the right to not answer questions without a lawyer present; and the right to speak in your defense. It is very important to consult with both an immigration lawyer and a criminal lawyer to understand how a criminal plea or conviction could affect your immigration status.

Remember: a protection order does not guarantee your safety. In fact, taking action to end an abusive relationship can often lead to greater danger because it angers the abuser to lose control over the victim. To help improve your safety, you should work with a domestic violence specialist to prepare a “safety plan” that considers all possible escape routes from your home, identifies places you can go for help, and sets aside critical items you need to take with you (such as money, emergency contact information, and important documents, including immigration related documents).

3. 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 non-governmental agencies, which may include counseling, interpreters, safety planning, emergency housing, and even monetary assistance.

The “hotlines” listed below have operators trained to help victims 24 hours a day, 7 days a week. “Helplines” that operate during normal business hours can also assist victims. All use “toll-free” numbers (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 assistance. If you cannot afford to pay a lawyer you may qualify for free or low-cost legal assistance for immigrant victims of domestic violence or other crimes.

Hotlines (available 24 hours a day, 7 days a week):

National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.ndvh.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

Helpline (available 8:30 am to 8:30 pm (Eastern Standard Time)):

The National Center for Victims of Crime
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.ncvc.org

If you are in danger, do not call a hotline or helpline – dial “911” to reach your local police immediately.

4. What is human trafficking? What services are available to victims of human trafficking in the United States?

Human trafficking is also known as “modern-day slavery,” and is illegal in the United States. Human trafficking and other forms of exploitation can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts. Victims can access many of the same free services described above. For help regarding human trafficking, contact the following toll-free hotline and complaint line (interpreters are available):

National Human Trafficking Resource Center
1-888-373-7888
(Available 24 hours a day, 7 days a week)

Trafficking in Persons and Worker Exploitation Task Force Complaint Line, U.S. Department of Justice
1-888-428-7581
(Available Monday through Friday, 9 am to 5 pm (Eastern Standard Time))

PART II:
**Facts about Immigrating on a Marriage-Based Visa and
Immigration-Related Options for Immigrant Victims of Domestic Violence and Other Crimes**

5. 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 who sponsored your visa within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen-sponsor, 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 (a conditional “green card” holder). 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 (Form I-130). Once the Form I-130 is approved, you are entitled to lawful permanent residence (a “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 www.uscis.gov.

6. 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 a conditional permanent residence status or “green card” from USCIS. Ninety (90) days before the second anniversary of your conditional permanent residence, you and your spouse must apply together (Form I-751) to remove the conditions on your lawful permanent residence. To do so, you must prove the marriage is in “good faith” and valid. Once the conditions are removed, you have lawful 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 lawful 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 permanent residents to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions:

- 1) Your spouse died or the marriage was terminated due to divorce or annulment; OR
- 2) The termination of your status and your removal from the U.S. would result in extreme hardship; OR
- 3) During the marriage you were battered or subjected to extreme cruelty by your U.S. citizen or lawful permanent resident spouse.

All three waivers are also filed on Form I-751 and require you to prove your marriage was in “good faith” and not fraudulent.

7. If I am a victim of domestic violence, sexual assault, or other crimes, what immigration options are available to me?

Depending on the circumstances, there are several ways that 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 under the Violence Against Women Act (VAWA)** (Form I-360):
 - For spouses and children of abusive U.S. citizen or lawful permanent residents who have subjected them to battery or extreme cruelty.
 - Also available to parents of abusive U.S. citizen children (if children are over 21).
 - Allows the victim to apply for legal permanent residency without the help or knowledge of the abuser.
- **Battered Spouse Waivers under VAWA** (Form I-751):
 - For a conditional permanent resident who has been subjected to battery or extreme cruelty by a U.S. citizen or lawful permanent resident spouse.
 - Allows the victim to remove the conditions on permanent residence without the help or knowledge of the abusive U.S. citizen or lawful permanent resident spouse.
- **Cancellation of Removal under VAWA** (requested in immigration court):
 - For spouses and children of abusive U.S. citizens who have subjected them to battery or extreme cruelty and who are in removal proceedings before an immigration judge.
 - Also available to the parent of a child or step-child who is abused by a U.S. citizen.
 - Among other requirements, victim must have been in the United States for longer than 3 years, and show that removal will cause the victim extreme hardship.
 - Allows the victim to request that the immigration judge cancel the removal proceedings and grant the victim lawful permanent residency.
- **U-nonimmigrant status (crime victims)** (Form I-918)
 - For victims of certain serious crimes, including domestic violence, who have suffered substantial mental or physical abuse as a result of criminal activity in the United States.
 - Requires victims to cooperate in the criminal investigation or prosecution.
 - Allows victims to receive a “U visa,” and, after 3 years, if they can prove humanitarian need, public interest, or family unity reasons, to apply for lawful permanent residency.
- **T-nonimmigrant status (victims of human trafficking)** (Form I-914)
 - For victims who have been subjected to severe forms of sex or labor trafficking.
 - Requires victims to cooperate in the criminal investigation or prosecution.
 - Allows victims to receive a “T visa,” and, after 3 years, to apply for lawful permanent residency.

These immigration options each have further specific requirements that must be established. For more information and a flyer specifically on “Immigration Options for Victims of Crimes,” please visit the “Humanitarian” section of the USCIS website (www.uscis.gov).

Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration options may affect or assist you.

8. In what other ways does the U.S. government try to inform foreign fiancé(e)s and spouses about their rights and protect them and their children from abuse?

As mentioned above, 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 responded to concerns that some U.S. citizen-sponsors of foreign fiancé(e) and spouse visas have a history of domestic violence, sexual assault, child abuse, or other crimes of which their foreign fiancé(e) or spouse is unaware. 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 who could help them 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 simultaneously sponsoring visas for multiple foreign fiancé(e)s, and places overall limits on how many times (twice) and how often (2 years apart) U.S. citizens may sponsor such visas. A U.S. citizen may seek a waiver of these limits. However, a waiver will ordinarily not be granted if the U.S. citizen has 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.

9. How does the U.S. government regulate “International Marriage Brokers”?

If an agency offering dating or matchmaking services qualifies as an “international marriage broker,” it is prohibited from doing business with you if you are under 18 years of age. The international marriage broker is required to give you certain marital and criminal 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 international marriage broker is also required to give you a copy of this pamphlet.

10. Can I rely on the criminal background information on my U.S. citizen fiancé(e) or spouse?

The criminal background information compiled by the international marriage broker is self-disclosed by the U.S. client, or comes from various public sources. The criminal background information compiled by USCIS is also self-disclosed by the U.S. citizen-sponsor on immigration applications, or comes from a limited set of government databases. USCIS does not have access to all criminal history databases in the United States. The U.S. client or citizen-sponsor may not tell the truth to the international marriage broker or on the sponsorship application. It is also possible the U.S. client or citizen-sponsor has a history of abusive behavior but was never arrested or convicted.

Therefore, the criminal background information you receive, either from the international marriage broker or from USCIS, may not be complete. The intent of IMBRA is to provide available information and resources to foreign nationals using international marriage brokers and to immigrating fiancé(s) and spouses. Ultimately, you are responsible for deciding whether you feel safe in the relationship.

11. What are the penalties for marriage fraud?

Immigrants cannot receive immigration benefits (such as legal status) if they knowingly enter into a marriage for the purpose of evading immigration law or solely for an immigration benefit. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency). Immigrants who commit marriage fraud may be removed from the United States and may be permanently barred from the United States.

More information can be found at our website at www.uscis.gov or by calling the toll-free number 1-800-870-3676.