

U VISA CERTIFICATION
and
T VISA DECLARATION
TOOLKIT
for
FEDERAL, STATE AND LOCAL
JUDGES, COMMISSIONERS,
MAGISTRATES AND OTHER JUDICIAL
OFFICERS

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Questions and comments regarding this tool kit, the U visa program and U visa certification may be directed to The National Immigrant Women's Advocacy Project, American University, Washington College of Law at niwap@wcl.american.edu or by calling (202) 274-4457

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U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR JUDGES AND MAGISTRATES

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What is the Role of Judges in U Visa Certifications and T Visa Declarations?

Congress recognized in the Violence Against Women Act of 2000 (VAWA 2000) and the Trafficking Victims Protection Act of 2000⁴ that without some form of immigration status to protect immigrant crime victims from retaliation, few undocumented victims are willing to pursue civil or criminal claims against crime perpetrators.⁵ The integrity of the justice system is compromised when perpetrators take advantage of immigration related fears to escape accountability. Congress created the U visa (under the Violence Against Women Act of 2000) and the T visa (under the Trafficking Victims Protection Act of 2000) to provide lawful status for immigrant victims of crime.

Judges play a vital role in protecting the integrity of the justice system. In the U visa context, in VAWA 2000, Congress specifically listed judges as government officials authorized to sign U visa certifications.⁶ U visa certifications verify that the immigrant has been a victim and that victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity.⁷ Judges are authorized to sign U visa certifications in a wide range of criminal, civil and family law cases.⁸ The U visa certification is a mandatory piece of evidence that the immigrant victim must include in the U visa application.⁹ The Department of Homeland Security (DHS) reviews the full application, including the certification and the additional evidence which the immigrant victim applicant is required to submit as part of the application, and determines whether the applicant will be granted a U visa.¹⁰ The U visa does not confer permanent immigration status, but instead grants victims a temporary visa for four years that protects them from deportation and grants temporary legal work authorization.¹¹

In the T visa context, the T visa regulations specifically list judges as officials authorized to sign T visa declarations.¹² The declaration helps demonstrate that the immigrant is or was a victim of a severe form of trafficking, and has complied with any requests from law enforcement officers and/or prosecutors in the detection,¹³ investigation, or prosecution of human trafficking (special exceptions are made for victims who are under 18, or

⁴ The Violence Against Women Act of 2000 (Division B Sections 1001–1603) (hereinafter VAWA 2000) and The Trafficking Victims Protection Act of 2000 (Division A Sections 101-113) (hereinafter TVPA 2000) became law together as the two major parts of the Trafficking and Violence Protection Act of 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

⁵ See Victims of Trafficking and Violence Protection Act of 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

⁶ *Id.*, § 1513(c).

⁷ U visa relief is available to adult immigrant victims of crime as well as child victims. However, some children may have easier access to immigration status through Special Immigrant Juvenile Status (SIJS). For more information on SIJS please refer to Leslye E. Orloff & Rafaela Rodrigues, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A GUIDE TO BEST PRACTICE FOR JUDGES AND COURTS (2018), <http://niwaplibrary.wcl.american.edu/pubs/sijs-bench-book-complete>. Some U visa applicants may have children who also qualify for Deferred Action for Childhood Arrivals (DACA). Applying for DACA can provide children greater protection from removal and work authorization while the child has a case pending U visa adjudication. For more information on DACA, please refer to Carson Osberg et al., *Deferred Action for Childhood Arrivals: How is it Helpful for Immigrant Crime and Violence Survivors?* (2014), <http://niwaplibrary.wcl.american.edu/pubs/dacaforvictims>.

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

⁹ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)(2)(i)) (2007).

¹⁰ 72 Fed. Reg. 53013, 53038 (codified at 8 C.F.R. § 214.14(c)(4)) (2007).

¹¹ 8 U.S.C. § 1184(p)(6).

¹² 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016); DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE 11 (2015) [hereinafter *DHS U and T Visa Resource Guide*], <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>. The T and U visa regulations and the U visa statute explicitly list judges and other judicial officials as certifiers and recognize that judicial officials are not law enforcement officers. Despite this statutory and regulatory fact, the generic term for certifying officials for both visa programs in the regulations and in literature published by the U.S. Department of Homeland Security is “law enforcement agency,” “law enforcement official,” or “LEA.” It is important for courts to focus on the statutory (Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464) and regulatory definitions (8 CFR 214.14(a)(2); 8 CFR 214.11(a)) and not be misled by the generic terms used to describe all certifiers.

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

those who are unable to cooperate due to physical or psychological trauma).¹⁴ Unlike the U visa certification, the T visa declaration is not a required document for a T visa application, but DHS considers it useful evidence¹⁵ and valuable evidence of a victim's cooperation.¹⁶ However, the declaration is only considered one part of the evidence, and the certifying judge is not sponsoring or endorsing the victim for a T visa by signing the declaration.¹⁷ If the application is approved, the victim is awarded a T visa, which is a temporary visa for four years that protects them from deportation and grants temporary legal work authorization.¹⁸

Why Seek Certification from the Courts?

Congress created a system designed to promote U visa certifications and T visa declarations by a range of federal, state, and local officials with experience determining whether there is probable cause to believe that a criminal activity was perpetrated and that a particular individual has been the victim of said criminal activity. All government officials authorized to sign U visa certifications and T visa declarations detect, investigate, prosecute, convict, sentence, make probable cause determination, hear cases, and/or issue rulings on facts and other evidence relating to criminal activity.¹⁹ A key goal of the two systems was to promote access to justice for immigrant victims of criminal activity.²⁰ Improving access to justice includes improving access to courts, police, prosecutors and state and federal government agencies with authority to enforce labor, employment, and other state and federal laws that could involve detection or investigation of facts about one or more of the listed criminal offenses. There are instances in which the other entities authorized by Congress to issue U visa certifications and T visa declarations have declined to exercise that authority for various reasons.²¹ Congress understood that this would occur and designed the list of agencies with authority to sign certifications to include first responders and other potential justice system entry points that immigrant crime victims may turn to for assistance either before, after or instead of contacting police (e.g., protection order courts, the Equal Employment Opportunity Commission, the U.S. Department of Labor, and child and adult protective services agencies).

The two systems track and are consistent with U.S. Department of Justice Access to Justice Initiative principles by providing immigrant victims of criminal activity the ability to access justice. Certification and declaration from courts promote accessibility and eliminate barriers that prevent people, regardless of their immigration status, limited English proficiency, length of time in the United States, educational background or economic means access to the courts and receive fair and just outcomes.²² Congress designed the two systems to provide support at the early stages of detection and investigation to remove the perpetrator's ability to control an immigrant victim's access to justice through threats, retaliation, and coercion related to deportation.²³ Removing that control opens the doors of

¹⁴ *Id.*; 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. See DHS, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-914B (expires 04/30/2021), https://www.uscis.gov/system/files_force/files/form/i-914supbinstr.pdf.

Special exceptions to the requirement that victims comply with reasonable requests are statutorily provided for victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma. See INA § 101(a)(15)(T)(i)(III), 8 U.S.C. 1101(a)(15)(T)(i)(III).

¹⁵ 72 Fed. Reg. 92266, 92276 (2016).

¹⁶ *DHS U and T Visa Resource Guide* at 3, 10.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 4.

¹⁹ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007); 81 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)(3)) (2016).

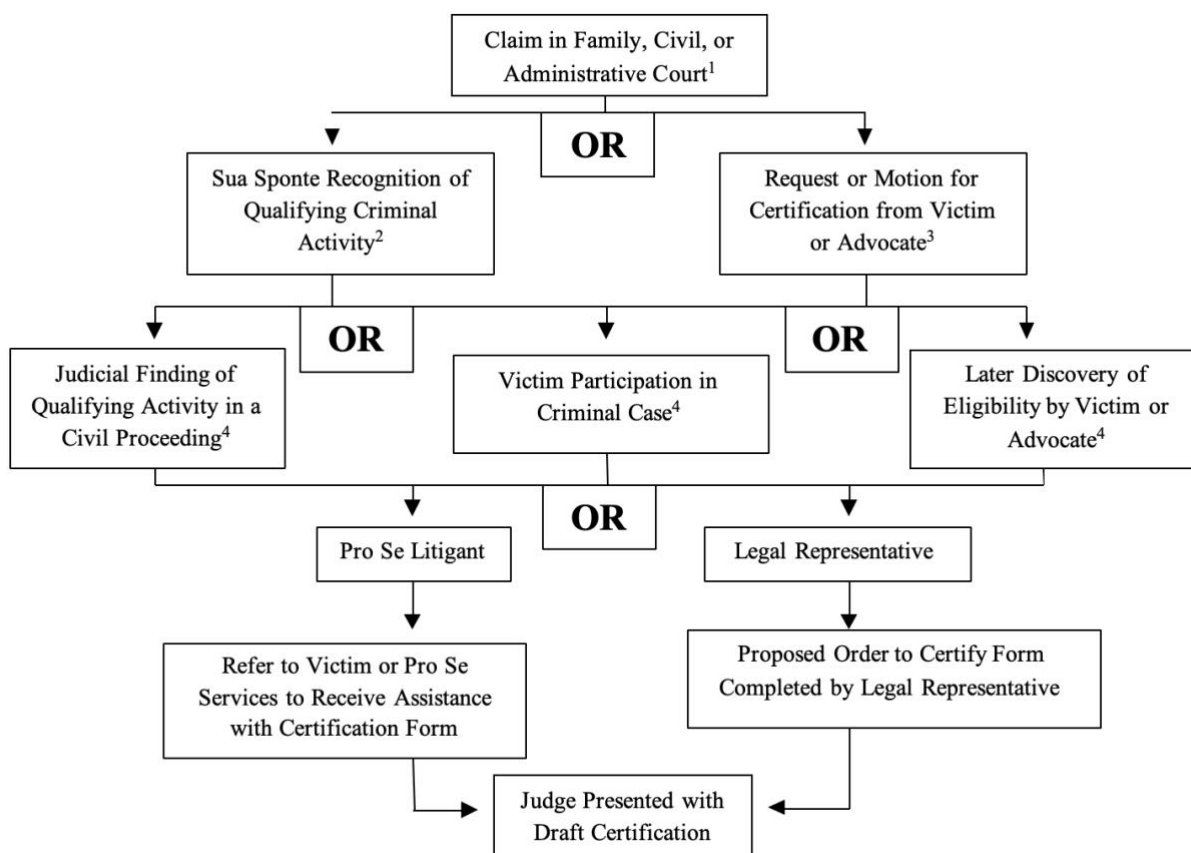
²⁰ See VAWA 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

²¹ “Judges should be aware of potential trafficking victims in the courtroom because other justice stakeholders may have failed to identify red flags, so the judge may be the last hope for a victim.” JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

²² See *DHS U and T Visa Resource Guide* at 4.

²³ See VAWA 2000, § 1513(a)(2)(A), Pub. L. No. 106-386, 114 Stat. 1464.

the justice system to a vulnerable population that would otherwise hesitate in reporting criminal activity or participating in the justice system.²⁴



¹ **Courts:** Judges and magistrates in any forum that decides legal matters may sign certifications. Domestic violence, sexual assault, and trafficking issues can be raised in a wide variety of courts, including but not limited to state and federal criminal and civil courts, immigration courts, family courts, small claims courts, probate courts, and departments of labor.

² **Qualifying Criminal Activity:** Congress used the term “qualifying criminal activity” as opposed to “crime” to allow for certification without regard to conviction. Qualifying activity includes domestic violence, sexual assault, trafficking, and involuntary servitude.

³ A sample **motion** for certification/declaration is included in this packet.

⁴ **Timing:** Victim participation in a criminal case would be appropriate evidence to warrant certification. Civil judges may decide to certify once a court has made a finding that domestic violence or other qualifying criminal activity has been committed. There is no time limit on U visa certification as long as the victim meets U visa eligibility requirement.

²⁴ *Id.*, § 1513(a)(1)(B); See also Deborah W. Smith et al., TRENDS IN STATE COURTS 2018, NAT’L CTR. FOR STATE COURTS (2018), <http://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings>.

U Visa Quick Reference for Judges

By Leslye E. Orloff, Alina Husain, Alisha Lineswala, Benish Anver, and Sylvie Sheng
October 14, 2020

Purpose of the U visa¹	<ul style="list-style-type: none"> The U visa facilitates the reporting of criminal activities to government officials including but not limited to: courts, law enforcement, prosecutors, 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, human trafficking, and other U visa listed criminal activities. This ensures immigrant victims have access to justice in civil, family, criminal and administrative law cases.
Benefits of the U visa²	<ul style="list-style-type: none"> The U visa strengthens the ability of courts, law enforcement, prosecutors, and state and federal government agencies to detect, investigate, prosecute, convict and 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 like deportation, that keep victims from participating in the civil, family, and criminal justice systems. The U visa certification promotes access to justice by enhancing accessibility to these systems 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;³ 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 have been perpetrated in the U.S. or its territories and possessions.⁴ To prove helpfulness, the applicant must obtain a certification from a law enforcement official, prosecutor, judge, DHS official, or other federal, state or local government authority involved in detecting, investigating, prosecuting, convicting or sentencing any of the qualifying criminal activities.⁵
Eligible Family Members	<ul style="list-style-type: none"> The victim may apply for their eligible family members to receive derivative 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).⁶ For victims who are 21 years of age or older, qualifying family members include their spouse and children.⁷

¹ See VAWA 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464.

² *Id.*

³ 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).

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

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

⁶ I.N.A. § 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I).

⁷ I.N.A. § 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

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 familial relationship between the victim and the perpetrator. The 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.
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-exhaustive list:⁸ <ul style="list-style-type: none"> Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting,⁹ solicitation to commit any of the above-mentioned criminal activity, or <i>any similar activity</i> in violation of federal, state, or local criminal law and solicitation, attempts, or conspiracy to commit any such criminal activity. The term <i>any similar activity</i> accounts for the wide variety of state and federal criminal laws, which may be named differently than the enumerated criminal activity in the statute but are comparable in nature and elements to the U visa listed 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 the 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.”¹⁰ For example, the statute lists domestic violence as a U visa qualifying crime. Immigration laws define domestic violence as battering or extreme cruelty.¹¹ 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, stalking, child abuse, elder abuse, or malicious property damage.¹² Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.
Why Judges are Certifiers and Which Judges Can Certify	<ul style="list-style-type: none"> Which judges can certify. Federal or state criminal, civil, family court judges, administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, chancellors and any other person with delegated authority from the court to issue decisions can be U visa certifiers. A judicial officer who heard the case involving the victim could certify based on the court proceedings. Additionally, any other judicial officer may certify based on the court records and/or court orders, findings or rulings made by another court. Some courts have designated one judge to sign certifications and have issued U visa certification protocols or policies.¹³ Judges have legal training and experience with crime victims and witnesses. Judges are certifiers because they are familiar with administering justice as a neutral party and often have considerable training on issues affecting crime victims.¹⁴

⁸ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(9)) (2007).

⁹ 8 U.S.C. § 1351.

¹⁰ 72 Fed. Reg. 53013, 53018 (2007).

¹¹ Battering or extreme cruelty is defined broadly to include all activities that would qualify as domestic violence under all state protection order, family, and criminal laws and to include forms of abuse that is not criminal under state laws. For more information on the definition of battering or extreme cruelty, including the definition in the immigration regulations and the types of activities and actions that can contribute to proof of battering or extreme cruelty see, <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.

¹² 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), <http://niwaplibrary.wcl.american.edu/pubs/hofstra-dv-symposium>.

¹³ See e.g., San Francisco Superior Court Civil Division, U VISA CERTIFICATION PROTOCOL, <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol/>.

¹⁴ See Kendall Niles, Veronica Thronson and Leslye Orloff, *Understanding the Judicial Role in U Visa Certification*, AM. J. FAM. L., V. 31 N. 4 Winter 208–37 (2018). Copies available from NIWAP niwap@wcl.american.edu.

Certification Requirements

- U.S. Citizenship and Immigration Services (USCIS) Form I-918 Supplement B, must be completed by a qualifying certifier, such as a judge. On the I-918B certification form the certifying official verifies that the victim applying for a U visa meets the following four criteria:¹⁵
 - The individual 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, investigation, prosecution, conviction, or sentencing of one or more qualifying criminal activities;
 - Helpfulness includes providing information about the criminal activity in a pleading, testimony, or other statements or a victim's appearance in court in a civil, family, criminal, or administrative law case.¹⁶
- The criminal activity may have occurred at **any time** in the past.¹⁷ There is no statute of limitations and certification can be made even when the state statute of limitations for the criminal activity has passed. Once the certification is complete, the victim is required to file the U visa application within six (6) months of the date the certification was signed.¹⁸
- 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.¹⁹
- U visa certification does not require the criminal prosecution to be completed or successful, nor does it require law enforcement to investigate the criminal activity.²⁰ U visa certification can be based solely on the victim having taken any number of actions including but not limited to: seeking a civil protection order, providing evidence of the abuse in a custody case, testifying about the abuse in a divorce, custody, protection order, child abuse, housing, employment or criminal court action, calling police for help, making a police report, or speaking with investigators. The certification only attests to the U visa victim's helpfulness in one or more of the following: detection, investigation, prosecution, conviction or sentencing.

¹⁵ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)(2)(ii)) (2007).

¹⁶ See also Peter Helein et al., *U-Visa: "Helpfulness" Checklist*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Oct. 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

¹⁷ *DHS U and T Visa Resource Guide* at 15.

¹⁸ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)(2)(ii)) (2007).

¹⁹ 72 Fed. Reg. 53013, 53024 (2007).

²⁰ *DHS U and T Visa Resource Guide* at 19.

Judges as U Visa Certifiers

- Judges are specifically listed in the federal statute as possible certifiers to complete the U visa Certification Form I-918, Supplement B.²¹
- The certification is necessary to establish eligibility for the U visa, but by itself does not grant a visa to the victim.²² To obtain a U visa, a victim must meet eligibility requirements, in addition to obtaining a U visa certification.²³ The Department of Homeland Security (DHS) has sole authority to grant or deny a U visa and completes a full background check on all applicants.²⁴
- Judges may amend the language of the form to accurately reflect the findings upon which the judge is signing the certification. In Part 6 of the Certification form, “Based upon investigation of the facts, I certify...” may be amended with the following examples:
 - “Based upon my findings and issuance of a civil protection order...I certify”
 - “Based upon my finding of probable cause in...I certify”
 - “Based on my having presided over the criminal case ... I certify”
 - “Based upon my findings of [domestic violence/child abuse/stalking/ in a [custody/divorce/dependency] case... I certify”
- **The unique role of judges in the U visa certification process:**
 - **Judges make a range of determinations and findings under probable cause.** By regulation, the terms “investigation or prosecution” include the *detection* of criminal activities, giving effect to Congress’ intent to include judges as certifiers.²⁵ Detection of criminal activities is a part of the initial proceedings that take place in a court, both civil and criminal. It, like probable cause findings, is the first step in a criminal or civil case. Under DHS regulations, judges are authorized under federal law to sign certifications at detection (e.g. when the judge has made findings that a criminal activity occurred, when the judge has probable cause to believe the immigrant has been a victim of criminal activity) as well as when the judge has been involved in conviction and/or sentencing. A certification can be signed by a judge at any stage in the process from “detection”) by the court through or after sentencing in a criminal case or the issuance of the court’s final order in a civil or family court case.²⁶
 - **Judges make findings and issue orders based on qualifying criminal activities.** In civil protection order, custody, divorce, and child abuse cases, family court judges “detect” criminal activity when issuing protection orders, making determinations in child/elder abuse or juvenile court proceedings, or when making findings in custody, divorce, adoption, and employment cases.²⁷
 - **Judges were included as certifiers to increase victims’ access to relief.** Immigrant crime victims – especially those with limited English proficiency (LEP) – do not always know or understand the range of available relief.²⁸ A judge may be the first certifying official the victim encounters who is knowledgeable about the U visa that the victim has encountered. In some jurisdictions, certifiers such as police and prosecutors have not been adequately trained on how the U visa supports crime detection, investigation and prosecution. In other jurisdictions, the courts will be the first agency that LEP victims can communicate effectively with because the court provides the victim a qualified interpreter. There are cases in which the only potential certifier will be a judge.²⁹ Since the victim is not required to pursue a remedy in the criminal justice system, victims who turn to the courts for help in civil or sexual assault protection order, domestic violence or child abuse related custody or divorce cases, or in sexual assault based employment and/or other civil matters will seek judicial certification.

²¹ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

²² *DHS U and T Visa Resource Guide* at 6.

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

²⁴ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)(1)) (2007); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 1 (expires 04/30/2021).

²⁵ 72 Fed. Reg. 53013, 53020 (2007).

²⁶ *DHS U and T Visa Resource Guide* at 18–19.

²⁷ See DHS BLUE CAMPAIGN, WHAT CAN YOU DO? RECOGNIZING AND SUPPORTING VICTIMS IN THE COURTROOM (2019), <https://www.dhs.gov/sites/default/files/publications/blue-campaign/materials/pamphlet-judicial/bc-pamphlet-judicial-english.pdf>; JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

²⁸ See *DHS U and T Visa Resource Guide* at 4.

<p>When Judges are Able to Grant U visa Certification</p>	<ul style="list-style-type: none"> • If the judge finds or has probable cause to believe that criminal activity occurred and that the victim was helpful, is being helpful or is willing to be helpful in detection, investigation, prosecution, conviction or sentencing, a certification can be signed at any of the following stages of the court case. <ul style="list-style-type: none"> ○ Arraignment ○ Preliminary hearings or grand jury proceedings <ul style="list-style-type: none"> ▪ Judge to whom the grand jury presents the true bill of indictment can sign a certification based on those findings. ○ Pre-trial motions ○ During all stages of the criminal trial/civil or family court proceeding ○ After the criminal/civil/family proceeding has closed • Judges may certify regardless of whether the certifying judge continues to preside over the case. Judges signing U visa certifications in open cases may need to consider whether state judicial ethics rules will allow the judge to continue to hear the case in the future. • Judicial authority to certify exists whether or not law enforcement opens an investigation or the prosecutor ultimately pursues prosecution of the perpetrator for the U visa criminal activity.³⁰
<p>Assessing the Helpfulness of the U visa Applicant³¹</p>	<ul style="list-style-type: none"> • “Helpful” means the victim has been, is presently, 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.³² • There is no degree of helpfulness required; instead, the standard is that the victim must not unreasonably refuse to provide help, cooperation, or assistance to law enforcement and prosecutors that is reasonably requested. • Judges need only assess the helpfulness using the same standard the judge uses in issuing temporary protection orders or making probable cause determinations. DHS advises that certification be granted on “any credible evidence.”³³ • The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of the case including providing information that helps courts or other government officials detect, investigate, prosecute, convict or sentence, including past helpfulness and willingness to be helpful in the future.³⁴ Congress intended for individuals to be eligible for U visa at the very early stages of a case.³⁵ • If a U visa victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing, the certifying official may prepare the certification even when investigation or prosecution efforts have been abandoned or did not result in conviction.³⁶ A judge may also certify when the only case the victim participated in was a family or civil court matter.³⁷ • 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. • DHS confirms that judges 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.³⁸

²⁹ “Judges should be aware of potential trafficking victims in the courtroom because other justice stakeholders may have failed to identify red flags, so the judge may be the last hope for a victim.” JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

³⁰ *Id.* at 19.

³¹ See also Peter Helein et al., *U-Visa: “Helpfulness” Checklist*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Oct. 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

³² 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.”

³³ DHS is required to consider “any credible evidence.” I.N.A. § sec. 214(p)(4); 8 U.S.C. 1184(p)(4); 8 C.F.R. 214.14(c)(4) & (f)(5). As per Congress’s intention that evidentiary rules alone should not be used to block an immigrant victim’s access to U visa, “any credible evidence” would suffice to establish helpfulness. See Lesley E. Orloff et al., *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigrant Protections and Its “Any Credible Evidence” Rules — A Call for Consistency*, 11 GEO. J. GENDER & L. 619, 621 (2010).

³⁴ 72 Fed. Reg. 53013, 53019 (2007).

³⁵ *Id.*

³⁶ *DHS U and T Visa Resource Guide* at 7; 72 Fed. Reg. 53013, 53020 (2007).

³⁷ *DHS U and T Visa Resource Guide* at 19, 22.

³⁸ *DHS U and T Visa Resource Guide* at 18.

<p>Attesting to Helpfulness on the Certification Form</p>	<p>Judges should provide on the certification form a general description of victim helpfulness which may include any of the following examples:</p> <ul style="list-style-type: none"> • Victim called police to report the crime. • Victim spoke freely with responding officers. • Victim sought a protection order. • Victim provided photographs of any injuries. • Victim presented evidence in court that lack of qualified interpreters interfered with the victim’s efforts to report the crime, call the police for help and cooperate with police or prosecutors. • Court observed evidence of the victim’s helpfulness in a court case including: attending hearings, testifying, speaking with police or prosecutors, seeking court orders or other evidence of the victim’s past or present willingness to be helpful. • Victim testified in court before the grand jury or at any other stage of a criminal case.
<p>Applicant’s Responsibility After Helpfulness Is Established</p>	<ul style="list-style-type: none"> • In order to obtain a U visa, the victim must provide continuing assistance when reasonably requested,³⁹ or the certifier may revoke the certification.⁴⁰ 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.⁴¹ 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 from a judge, only the victim’s helpfulness or likelihood of future helpfulness should be considered. • Note: If the victim’s ongoing cooperation in the criminal investigation or case may jeopardize the victim’s safety or the safety of family members in the U.S. or abroad, then the victim’s failure to cooperate is not unreasonable. The victim’s helpfulness must be examined in the totality of the circumstances including the nature of the victimization, victim’s fear of the abuser, trauma suffered, and the abuser’s use of force, fraud, coercion, threats, and/or ongoing abuse.⁴²
<p>Timing of U visa Certification</p>	<ul style="list-style-type: none"> • Judges may certify at any time the court has information about the helpfulness of a person who has been a victim of a U visa listed criminal activity.⁴³ • Judges may prefer to sign certifications after the completion of a case, but can grant certifications after arraignment, during a probable cause hearing (grand jury or preliminary hearing), or while the case is still pending. • 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. • A completed certification will be valid for six months from the date of signature.⁴⁴

³⁹ 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).

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

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

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

⁴³ *DHS U and T Visa Resource Guide* at 18–19.

⁴⁴ DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 2 (expires 04/30/2021).

U visa, Time Line & Attaining Lawful Permanent Residency	<ul style="list-style-type: none"> • Within a few weeks after filing the U visa, the victim’s case is logged in a specialized computer VAWA confidentiality system at DHS that offers victims some protection from deportation.⁴⁵ DHS will run a background check based on the applicant’s fingerprints.⁴⁶ • Approximately 4-6 years⁴⁷ after filing, DHS will adjudicate the case and conduct another finger print check. Approvable cases receive wait-list approval, “deferred action status” which provides formal protection from deportation and legal work authorization.⁴⁸ • The victim is then placed on a waitlist for a U visa. Only 10,000 visas can be issued each year and the current waiting time is at least 11 years.⁴⁹ 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 holder may be able to travel abroad.⁵⁰ • 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: <ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ▪ 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 the 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. The certification must be from the original U visa certifying agency verifying that the victim’s absence was necessary for the investigation or prosecution or otherwise justified. ○ Fingerprint checks are run as part of this adjudication.⁵¹
More Information	<ul style="list-style-type: none"> • Please visit NIWAP’s web library for more information http://niwaplibrary.wcl.american.edu/ and for training or technical assistance contact NIWAP at (202) 274-4457 or niwap@wcl.american.edu.

⁴⁵ 72 Fed. Reg. 53013, 53022 (2007).

⁴⁶ *DHS U and T Visa Resource Guide* at 5.

⁴⁷ The time frames in this section were current as of October 2019.

⁴⁸ 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(d)(2)) (2007).

⁴⁹ I.N.A. § 214(p)(2); 8 U.S.C. 1184(p)(2); 72 Fed. Reg. 53013, 53039 (codified at 8 C.F.R. § 214.14(d)(1)) (2007).

⁵⁰ 72 Fed. Reg. 53013, 53030 (codified at 8 C.F.R. § 212.1) (2007).

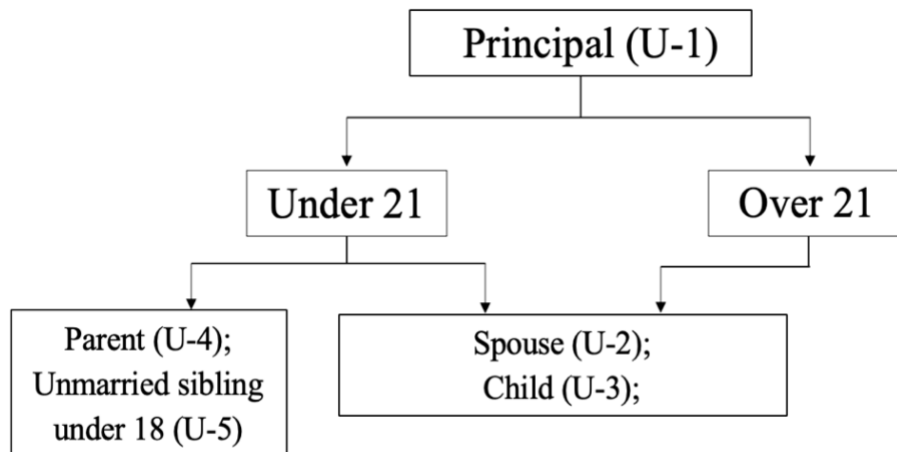
⁵¹ 73 Fed. Reg. 75540, 75560 (codified at 8 C.F.R. § 245.24(b)) (2008).

U Visa Protections for Family Members

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

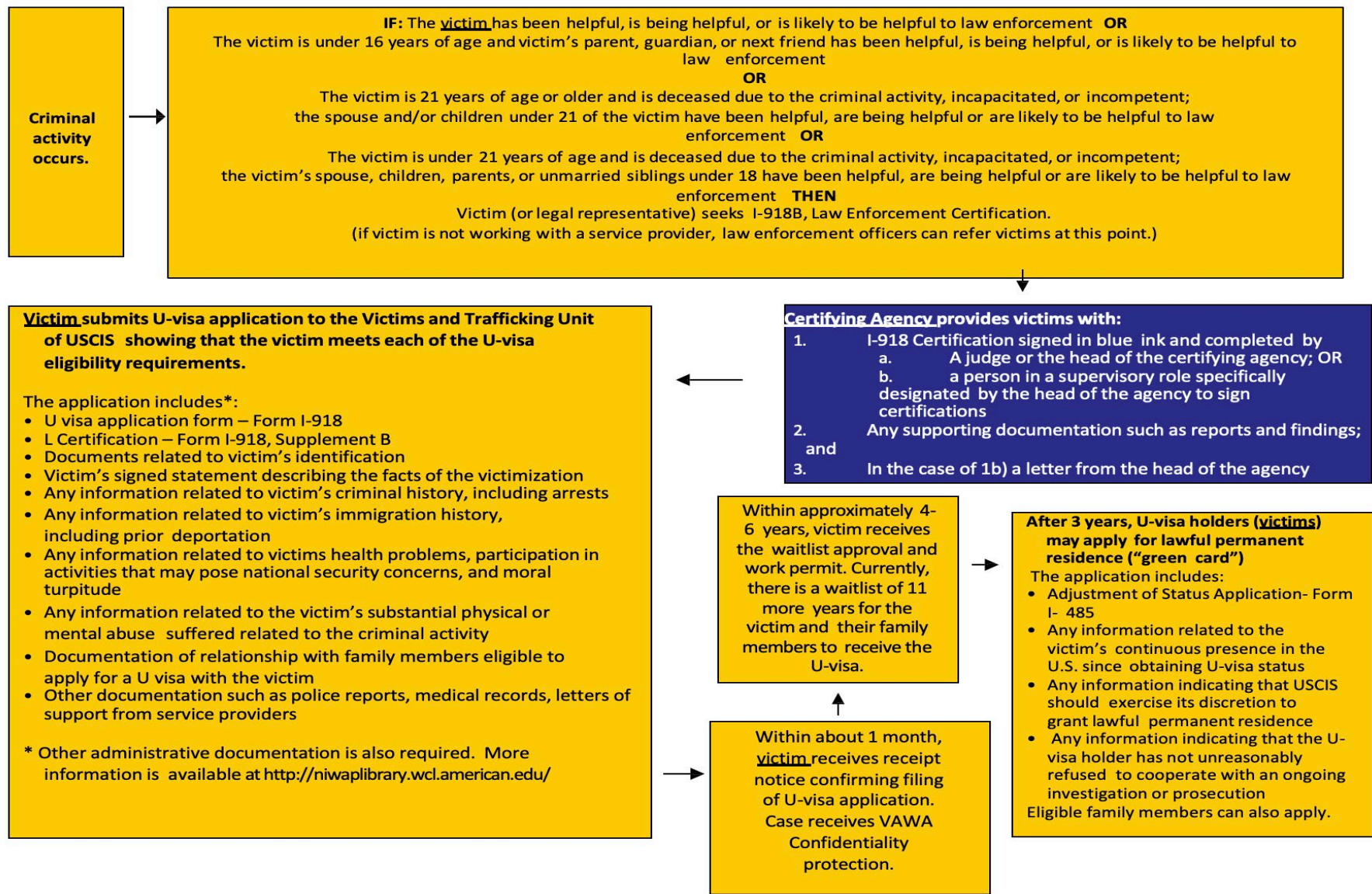
An immigrant crime victim filing a U visa application may file applications seeking that their eligible family members be granted derivative U visas. Under immigration laws, the applicant is called a principal, and the family members are called derivatives. The following chart outlines each of the types 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 include in their applications (derivatives) who are under 18 or 21 years of age.⁷⁶

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)



⁷⁶ See INA § 214(p)(7); 8 U.S.C. § 1184(p)(7).

U Visa Application Victim Flow Chart (October 14, 2020)



T Visa Quick Reference for Judges

By Sylvie Sheng and Leslye E. Orloff

October 14, 2020

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.¹ Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.²
Benefits of the T visa	<ul style="list-style-type: none"> • The T visa strengthens the ability of the courts, law enforcement, prosecutors, 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.³ • 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.⁴ 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.⁵
T visa Qualifying Criminal Activities⁶	<ul style="list-style-type: none"> • A victim of a severe form 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.⁷ • 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.⁸ 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.⁹

¹ See TVPA 2000 § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

² DHS *U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002).

³ 72 Fed. Reg. 92266, 92269 (2016).

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

⁵ See generally 73 Fed. Reg. 75540 (2008).

⁶ DHS *U and T Visa Resource Guide* at 12.

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

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

⁹ 72 Fed. Reg. 92266, 92270 (2016).

<p>Who is eligible for a T visa?¹⁰</p>	<ul style="list-style-type: none"> • U.S. Citizenship and Immigration Services (USCIS) of DHS may find an individual eligible for a T visa if the victim: <ul style="list-style-type: none"> ○ Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law; ○ Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to human trafficking; ○ Has complied with any reasonable request from a law enforcement or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking;¹¹ and ○ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.¹² • In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which they may be eligible.¹³ • Individuals currently in removal proceedings or with final orders of removal are eligible for a T visa.¹⁴ • Certain family members of a T visa recipient may also be eligible to live and work in the United States. These are: <ul style="list-style-type: none"> ○ Children; ○ Spouse; ○ Parents of child trafficking victims who are under age 21 at the time of application, or any victim's parents who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement; ○ Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim's unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement; and ○ Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement.¹⁵ • While in the United States, the victim has an ongoing duty to comply with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking.¹⁶
<p>Status of Criminal Case Against Crime Perpetrator</p>	<ul style="list-style-type: none"> • The 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.¹⁷

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

¹¹ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

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

¹³ 72 Fed. Reg. 92266, 92283 (2016).

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

¹⁵ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

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

¹⁷ 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.

What Is a T visa Declaration?¹⁸

- The T visa declaration is supplementary evidence that law enforcement agencies and judges can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests¹⁹ for assistance in the detection, investigation or prosecution of human trafficking.²⁰
- The T visa declaration is not a required document or conclusive evidence for a T visa application, but when provided, it is useful evidence.²¹ DHS applies the Violence Against Women Act's "any credible evidence" standard to T visa cases to encourage government officials including judges, law enforcement and prosecutors to sign T visa declarations.²²
- Signing a declaration is at the judge's discretion, and it does not mean the judge is sponsoring or endorsing the victim for a T visa.²³ 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.²⁴
- 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:
 - The victim is or was a victim of a severe form of trafficking in persons; and
 - The victim has met the "assistance requirement" by either having complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or by being exempt from the requirement because the victim is under 18 years of age, or because the victim is unable to assist due to physical or psychological trauma.²⁵
- The criminal activity may have occurred at **any time** in the past.²⁶ 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 judge signs the form.

¹⁸ *DHS U and T Visa Resource Guide* at 10–11.

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

²⁰ *DHS U and T Visa Resource Guide* at 18–19.

²¹ 72 Fed. Reg. 92266, 92276 (2016).

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

²³ *DHS U and T Visa Resource Guide* at 11.

²⁴ 72 Fed. Reg. 92266, 92276 (2016).

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

²⁶ See 72 Fed. Reg. 92266, 92278 (2016). "USCIS will accept applications regardless of when the applicant was victimized."

Judges as T visa Certifiers

- Judges are specifically listed in the T visa regulations²⁷ as authorized certifiers to complete the T visa Declaration Form I-914, Supplement B.
- The declaration is not required to establish eligibility for the T visa, and does not by itself grant a visa to the victim. To obtain a T visa, a victim must meet eligibility requirements. USCIS has sole authority to grant or deny a T visa and completes a full background check on all applicants.²⁸
- **The unique role of judges in the T visa certification process:**
 - ***Judges make a range of determinations and findings under probable cause.*** By regulation, the terms “investigation or prosecution” include the *detection* of criminal activities, giving effect to Congress’ intent to include judges as certifiers.²⁹ Detection of criminal activities is a part of the initial proceedings that take place in a court, both civil and criminal. It, like probable cause findings, is the first step in a criminal or civil case. Judges are authorized to sign declarations at detection (e.g. when the judge has made findings that a criminal activity occurred, when the judge has probable cause to believe the immigrant has been a victim of human trafficking) as well as when the judge has been involved in conviction and/or sentencing. A declaration can be signed by a judge at any stage in the process, from “detection” by the court through or after sentencing in a criminal case or the issuance of the court’s final order in a civil or family court case.³⁰
 - ***Judges make findings and issue orders based on qualifying criminal activities.*** In civil protection order, custody, divorce, and child abuse cases, family court judges “detect” criminal activity when issuing protection orders, making determinations in child/elder abuse or juvenile court proceedings, or when making findings in custody, divorce, adoption, and employment cases.³¹
 - ***Judges were included as certifiers to increase victims’ ability to access relief.*** Immigrant crime victims – especially those with limited English proficiency (LEP) – do not always know or understand the range of available relief.³² A judge may be the first certifying official the victim encounters who is knowledgeable about the T visa that the victim has encountered. In some jurisdictions, certifiers such as police and prosecutors have not been adequately trained on how the T visa supports crime detection, investigation and prosecution. In other jurisdictions, the courts will be the first agency that LEP victims can communicate effectively with because the court provides the victim a qualified interpreter. There are cases in which the only potential certifier will be a judge.³³ Since law enforcement and prosecutors are not required to open criminal investigations against human traffickers or may not be able to successfully prosecute the trafficker, there may be no case in the criminal justice system. Victims who turn to the courts for help in civil or sexual assault protection order, domestic violence or child abuse related custody or divorce cases, or in sexual assault based employment and/or other civil matters will seek judicial declaration.
 - ***Which judges can certify.*** Federal or state criminal, civil, and family court judges, administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, chancellors and any other person with delegated authority from the court to issue decisions can issue T visa declarations.³⁴ A judicial officer who heard the case involving the victim could certify based on the court proceedings. Additionally, any other judicial officer may certify based on the court records and/or court orders, findings or rulings made by another court. Some courts have designated one judge to sign certifications and have issued U visa certification protocols or policies.³⁵
 - ***Judges have legal training and experience with crime victims and witnesses.*** Judges are certifiers because they are familiar with administering justice as a neutral party and often have considerable training on issues affecting crime victims.

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

²⁸ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016); *DHS U and T Visa Resource Guide* at 10; DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS at 1 (expires 04/30/2021), https://www.uscis.gov/system/files_force/files/form/i-914supbinstr.pdf.

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

³⁰ *DHS U and T Visa Resource Guide* at 19.

**When Judges
are Able to
Grant
T visa
Declaration**

- If the judge finds or has probable cause to believe that criminal activity occurred and that the victim was cooperative, a declaration can be signed at any stage of the court case and may also sign the declaration after the conclusion of the case.³⁶ Any of the possible stages:
 - Arraignment
 - Preliminary hearings or grand jury proceedings
 - Judge to whom the grand jury presents the true bill of indictment can sign a certification based on those findings.
 - Pre-trial motions
 - During all stages of the criminal trial/civil or family court proceeding
 - After the criminal/civil/family proceeding has closed
- Judges may certify regardless of whether the certifying judge continues to preside over the case. Judges signing T visa declarations in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.
- Judicial authority to certify exists whether or not law enforcement opens an investigation or the prosecutor ultimately pursues prosecution of the perpetrator for the T visa criminal activity.³⁷ The authority also exists when the criminal investigation or prosecution of the human trafficking case is closed.

³¹ See DHS BLUE CAMPAIGN, WHAT CAN YOU DO? RECOGNIZING AND SUPPORTING VICTIMS IN THE COURTROOM (2019), <https://www.dhs.gov/sites/default/files/publications/blue-campaign/materials/pamphlet-judicial/bc-pamphlet-judicial-english.pdf>; JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

³² See *DHS U and T Visa Resource Guide* at 4.

³³ “Judges should be aware of potential trafficking victims in the courtroom because other justice stakeholders may have failed to identify red flags, so the judge may be the last hope for a victim.” JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

³⁴ *DHS U and T Visa Resource Guide* at 16.

⁹⁸ See e.g., San Francisco Superior Court Civil Division U Visa Certification Protocol, <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol>.

³⁶ *DHS U and T Visa Resource Guide* at 18.

³⁷ 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.

Assessing the Assistance Requirement

- The T visa requires that the victim comply with any reasonable requests from law enforcement in detection, investigation, or prosecution of human trafficking and/or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.³⁸
- 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 fear, severe traumatization, and the age and maturity of young victims.³⁹ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.⁴⁰ It is generally reasonable for law enforcement to ask a trafficking victim similar things they would ask other comparably situated crime victims, such as domestic violence victims.⁴¹
- 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.⁴²
- 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.⁴³ A judge may also certify when the only case the victim participated in was a family or civil court matter.
- If a judge 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.⁴⁴
- 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.⁴⁵ At their discretion, a certifying judge may revoke or disavow a declaration if a victim stops assisting; after revocation or disavowal, the declaration will no longer be considered as evidence.⁴⁶

³⁸ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

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

⁴⁰ 72 Fed. Reg. 92266, 92275 (2016).

⁴¹ *Id.*

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

⁴³ DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS 1 (expires 04/30/2021), https://www.uscis.gov/system/files_force/files/form/i-914supbinstr.pdf; *DHS U and T Visa Resource Guide* at 17, 19.

⁴⁴ *Id.* at 18.

⁴⁵ 72 Fed. Reg. 92266, 92274 (2016).

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

T visa, Time Line & Attaining Lawful Permanent Residency	<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,⁴⁷ and access to state and federal public benefits.⁴⁸ DHS will run a background check based on the applicant’s fingerprints before granting bona fide determination.⁴⁹ • 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.⁵⁰ • 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; and ○ That they are admissible to the United States or have been granted a waiver by USCIS of any waivable grounds of inadmissibility.⁵¹ • Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year.⁵² However, to date, the annual cap has never been reached and visas remain available to all applicants who qualify.⁵³
More Information	<ul style="list-style-type: none"> • Please visit NIWAP’s web library for more information http://niwaplibrary.wcl.american.edu/ and for training or technical assistance contact NIWAP at (202) 274-4457 or niwap@wcl.american.edu.

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

⁴⁸ To look up what federal and state public benefits human trafficking victims are eligible for in each state see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *All State Public Benefit Charts* (2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

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

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

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

⁵² I.N.A. § 214(o)(2)–(3), 8 U.S.C. § 1184(o)(2)–(3).

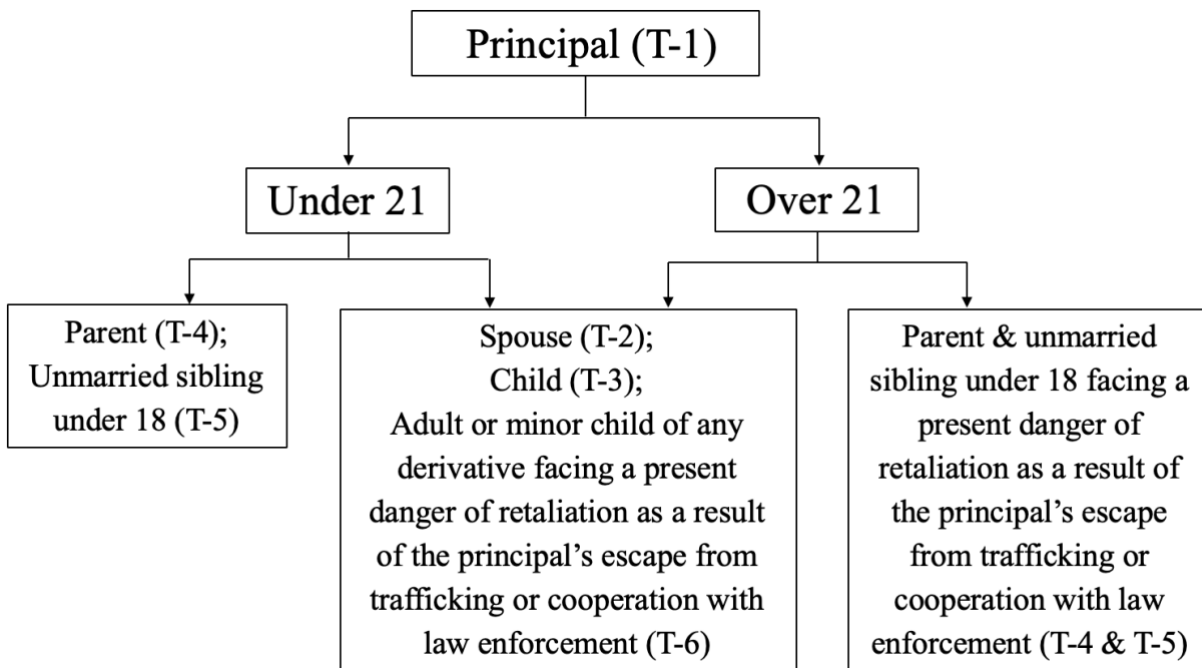
⁵³ *DHS U and T Visa Resource Guide* at 10.

T Visa Protections for Family Members

(8 CFR § 214.11(k)(1))

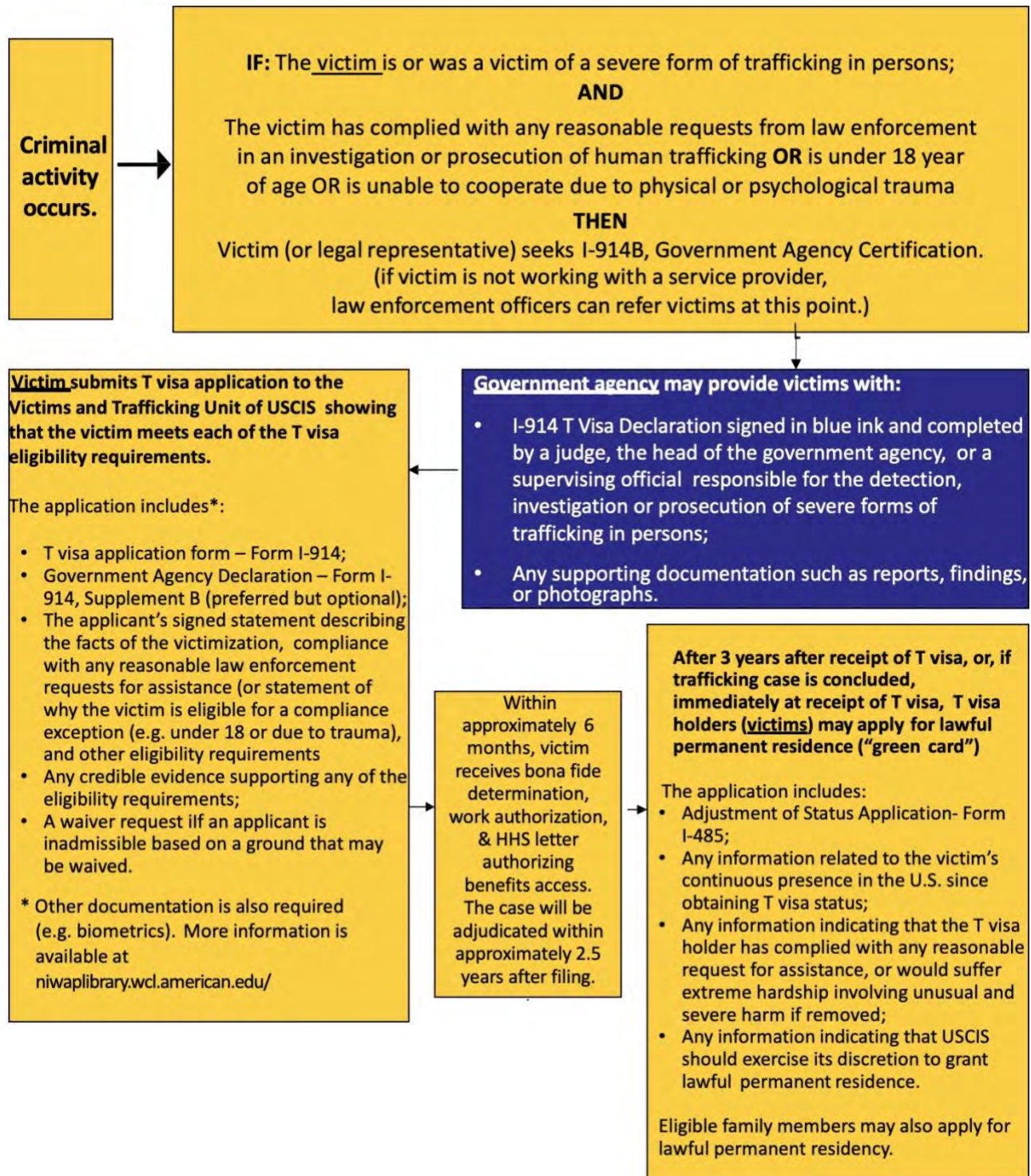
An immigrant victim of human trafficking filing a T visa application may file applications seeking that their eligible family members also be granted derivative T visas. Under immigration laws, the applicant is called a principal, and the family members are called derivatives. The following chart outlines each of the types T visas available to immigrant victims of human trafficking and their family members. Age-out protections are provided for T visa principal applicants and for the family members they included in their applications (derivatives) who are under 18 or 21 years of age.¹³⁰

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)



¹³⁰ See I.N.A. § 214(o)(4)–(5), 8 U.S.C. 1184(o)(4)–(5); 8 C.F.R. 214.11(k)(5)(ii)–(iii).

T Visa Application Victim Flow Chart



U Visa Certification and T Visa Declaration: Overview

(Last Updated June 2020)

As part of the Violence Against Women Act of 2000 (VAWA), Congress created the U visa, designed to provide access to legal immigration status for immigrant crime victims who have been, are being or are willing to be helpful in crime detection, investigation, prosecution, conviction or sentencing of the criminal activity. Congress specifically listed state and federal judges (including commissioners, magistrates, and other judicial officials) sitting in criminal, family, civil or administrative law courts among the government officials authorized and encouraged to sign U visa certifications.¹³¹

As part of the Trafficking Victims Protection Act of 2000 (TVPA), Congress created the T visa to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country.¹³² DHS specifically lists judges among the government officials authorized and encouraged to sign T visa declarations.¹³³

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

Overview of the U visa

When Congress created the U visa in the Violence Against Women Act of 2000 (VAWA), its intent was (1) to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes; and (2) to offer protection to victims of such crimes.¹³⁴

Lawmakers recognized that a victim's helpfulness, cooperation, assistance, and safety are essential to the effective detection, investigation, prosecution, conviction and sentencing of crimes.¹³⁵ Victims who fear deportation, however, will be unlikely to come forward to help government officials detect crimes, cooperate and assist in investigative efforts, and/or participate in criminal prosecutions of crime perpetrators. Thus, Congress provided a specific avenue through which immigrant crime victims who offer helpfulness to a government official in detecting criminal activity or who

¹³¹ I.N.A. § 214(p)(1); 8 U.S.C. § 1184(p)(1).

¹³² Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464; *DHS U and T Visa Resource Guide* at 9.

¹³³ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016); *DHS U and T Visa Resource Guide* at 11. (2015).

¹³⁴ 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).

¹³⁵ 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.

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.

Overview of the T visa

Congress, in the Trafficking Victims Protection Act of 2000 (TVPA) created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the detection, investigation or prosecution of this human trafficking related criminal activities.¹³⁶

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.¹³⁷ Accordingly, in both the TVPA and VAWA, Congress sought not only to prosecute perpetrators of crimes, including human trafficking, committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.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 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

Who is eligible for a U visa?

To be eligible for a U visa, immigrant victims must meet four statutory requirements. They must also include in their application a certification from a certifying official or agency describing that they have been, are being, or are likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a qualifying criminal activity.¹⁴¹ 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

¹³⁶ *DHS U and T Visa Resource Guide* at 4.

¹³⁷ *Id.*

¹³⁸ *Id.*; See Victims of Trafficking and Violence Protection Act of 2000, § 1513(c), Pub. L. No. 106-386, 114 Stat. 1464.

¹³⁹ I.N.A. § 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B).

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

¹⁴¹ I.N.A. § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U visa eligibility and contains non-exhaustive list of qualifying criminal activities. Congress used the term “criminal activity” rather than “crime” to provide victims access to U visa protection as early as possible after the crime was committed or was reported.); I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

(4) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity.¹⁴²

In addition, the victim must be admissible to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible. The Violence Against Women Act of 2000 created a waiver specific to U visa, under which DHS has the discretion to waive any ground of inadmissibility except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.¹⁴³ However, DHS first must determine that such a waiver would be in the public interest.¹⁴⁴

Who is eligible for a T visa?

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

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

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.

- (2) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- (3) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking¹⁴⁵ (except victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma¹⁴⁶);
- (4) Would suffer extreme hardship involving unusual and severe harm if removed from the United States.¹⁴⁷

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible.¹⁴⁸

¹⁴² I.N.A. § 101(a) (15) (U), 8 U.S.C. § 1101(a) (15) (U). If the petitioner is under 16 years of age, incapacitated, or incompetent, the victim is not required to personally possess information regarding the qualifying criminal activity. In these cases, an exception permits a parent, guardian, or “next friend” of the minor, incapacitated, or incompetent petitioner to provide information and assist in the investigation or prosecution. *See* INA § 101(a)(15)(U)(i), 8 U.S.C. § 1101(a)(15)(U)(i).

¹⁴³ I.N.A. § 212(d)(14), 8 U.S.C. 1182(d)(14).

¹⁴⁴ *Id.*

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

¹⁴⁶ *See* I.N.A. § 101(a)(15)(T)(i) (III), 8 U.S.C. 1101(a)(15)(T)(i)(III).

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

¹⁴⁸ *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 & Leslye E. Orloff, *Chart on Waivers of Inadmissibility for Immigrant Crime Victims*, National Immigrant Women's Advocacy Project (2020), <https://niwaplibrary.wcl.american.edu/pubs/chart-on-waivers-of-inadmissibility>.

The U visa certification requirement

The U visa statute states that federal, state, or local judges are listed as qualified to provide certifications for victims filing U visa applications.¹⁴⁹ Judges sitting in criminal, family law, domestic violence protection order, custody, and child support courts are most likely to encounter immigrant crime victims who qualify to file U visas. Just as judges make probable cause determinations, judges are well positioned to detect criminal activity in the early stages of trials or proceedings and can sign certifications based on findings made in family, civil and/or criminal court proceedings.¹⁵⁰ At the conclusion of the case, a judge of a case where facts regarding abuse are revealed as part of the evidence in court will often have information that the court credits regarding the fact that a person before the court has been a victim of criminal activity. Judges will have information in the record in a criminal case, a civil protection order case, a family law case, a civil employment related case or other civil court cases regarding the victim's helpfulness. In court cases, judges observe victim's helpfulness in coming to court to file pleadings, attend hearings, seek a protection order, have the protection order served on the perpetrator, providing testimony in a family, civil or criminal case and/or participating in investigations, prosecutions, or sentencing of the perpetrator. Judges are well positioned to provide U visa certifications and verify a victim's helpfulness or willingness to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the perpetrator of qualifying criminal activity.

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.¹⁵¹ The U visa certification attests to the existence of certain facts that the victim is required to establish. Obtaining a U visa certification is a prerequisite to filing a U visa application and applications filed without a certification are rejected. However, U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS) treats the U visa certification as evidence that assists the victim in meeting eligibility requirements for the victim's application.¹⁵² **Judges, magistrates, commissioners and other judicial officers who sign certifications do not confer any visa upon the victim.**¹⁵³ Only DHS has the discretion to grant or deny the U visa to the victim.¹⁵⁴

The T visa declaration

The T visa declaration is supplementary evidence of a victim's assistance to law enforcement that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, **judge**, or other government official can complete for a T visa applicant.¹⁵⁵ DHS adopts an "any credible evidence"

¹⁴⁹ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹⁵⁰ 72 Fed. Reg. 53013, 53019 (2007).

¹⁵¹ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

¹⁵² 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).

¹⁵³ *DHS U and T Visa Resource Guide* at 6.

¹⁵⁴ "USCIS has the sole authority to grant or deny a U visa. The certification does not guarantee that the U visa petition will be approved by USCIS." *DHS U and T Visa Resource Guide* at 8.

¹⁵⁵ *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

standard for the T visa;¹⁵⁶ the declaration is not a required document for a T visa application, and is not given any special evidentiary weight.¹⁵⁷ DHS encourages judges and other government officials to sign T visa certifications and by assuring certifiers that the declaration is useful, rather than controlling evidence in the case should result in judges and other certifiers “more likely to sign endorsements, increasing the likelihood that T visa will be utilized as the law enforcement tool that it is intended to be.”¹⁵⁸

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.¹⁵⁹ **Judges who sign declarations do not confer any visa upon the victim, nor do they decide whether the victim meets the eligibility standards.**¹⁶⁰ The declaration is not conclusive evidence that the applicant meets the eligibility requirements. Only USCIS has the discretion to grant or deny T visa to the victim.¹⁶¹

Which Court Officials are Authorized to Sign U Visa Certifications and T Visa Declarations Under Federal Law

Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases meets the definition of a “judge” authorized to sign certifications and declarations under the U and T visa statutes. The definition includes but is not limited to: **administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.**¹⁶² Court officials who do not have authority to decide court cases (e.g., clerks, senior court officials, and other court staff) cannot be assigned by judges the authority to sign certifications and declarations. Judges are the only government certifiers that are each individually authorized to certify.¹⁶³ The requirement for other agencies that the certification or declaration be signed by the head of the agency or by an official with supervisory authority that the agency head designates does not apply to judicial certifications and declarations.¹⁶⁴

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

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

¹⁵⁸ 72 Fed. Reg. 92266, 92276 (2016).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*; 72 Fed. Reg. 92266, 92276 (2016); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS at 1 (expires 04/30/2021), https://www.uscis.gov/system/files_force/files/form/i-914supbinstr.pdf.

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

¹⁶² *DHS U and T Visa Resource Guide* at 16.

¹⁶³ 72 Fed. Reg. 53013, 53036 (codified at 8 C.F.R. § 214.14(a)(2)) (2007); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)(2016)).

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

Judges and the U Visa Certification/T Visa Declaration

Last Updated August 2020

I. INTRODUCTION

The U visa is a temporary visa for noncitizen victims of criminal activity who have suffered substantial mental and physical abuse resulting from the criminal activity and are willing to cooperate with law enforcement in the detection, investigation, prosecution, conviction or sentencing of said criminal activity.¹⁶⁵ The T visa is a temporary visa for noncitizen victims of severe forms of trafficking in persons who have complied with any reasonable request from law enforcement (with exceptions for victims under 18 and victims who are unable to cooperate due to physical or psychological trauma) and would suffer extreme hardship if removed.¹⁶⁶

Congress recognized in creating the U and T visas that it is virtually impossible for local, state and federal law enforcement, justice system and government enforcement agency officials to punish and hold perpetrators of crimes against noncitizens accountable if the abusers and other criminals could have their victims deported.¹⁶⁷ Congress also recognized that victims would not come forward to seek assistance from the courts and from law enforcement if victims feared that seeking such assistance would lead to their detention and/or deportation.¹⁶⁸ The U and T visa programs encourage immigrant victims to report criminal activity by protecting them from deportation and provides safety to the community at large by holding perpetrators accountable for criminal activity that might otherwise go undetected.

The U visa application process requires an immigrant crime victim to obtain a certification by a judge or other authorized certifying government agency official. The certification verifies the type of criminal activity perpetrated against the U visa applicant and attests to the fact that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of that criminal activity.¹⁶⁹ The T visa application process allows a victim to obtain a declaration by a judge or other approved certifying government agency official. The declaration confirms that the victim is or was a victim of a severe form of trafficking in persons, and that the victim has complied with reasonable requests from law enforcement and/or prosecutors in an investigation or prosecution of human trafficking.¹⁷⁰ Unlike in U visa cases, the T visa declaration is not a prerequisite for filing a T visa application. The declaration is considered a useful and helpful form of evidence.¹⁷¹ Congress and DHS explicitly included federal, state, and local judges in the list of certifiers to increase victim access to

¹⁶⁵ “Investigation or prosecution” are used in the statute. In implementing the statute, the Department of Homeland Security this term interpreted broadly to include detection, investigation, prosecution, conviction or sentencing qualifying criminal activity and the perpetrator of such criminal activity. 8 C.F.R. § 214.14(a)(5). *See also* DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-918 at 1 (expires 04/30/2021).

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

¹⁶⁷ *See* Victims of Trafficking and Violence Protection Act of 2000, § 1513(a)(2)(B) & § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

¹⁶⁸ *See Id.*, § 102(17); 72 Fed. Reg. 53013, 53014 (2007).

¹⁶⁹ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1).

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

¹⁷¹ 72 Fed. Reg. 92266, 92276 (2016).

certifications and declarations.¹⁷² This document outlines the significance of the role of judges as U visa and T visa certifiers.

II. WHAT ARE THE U VISA AND T VISA? WHY WERE THEY CREATED?

In October 2000, Congress passed the Victims of Trafficking and Violence Protection Act. The Act is organized into three divisions. In Division B (Violence Against Women Act of 2000), Congress reauthorized the Violence Against Women Act (VAWA). As part of this legislation, Congress sought to strengthen the ability of courts, law enforcement, prosecution and other government agencies with investigative authority agencies to detect, investigate, prosecute, convict and sentence perpetrators of crimes committed against immigrants. The Act recognizes that without some form of visa that protects immigrant crime victims from retaliation few undocumented victims and lawfully present immigrant victims who had temporary legal immigration statuses without a path to lawful permanent residency would be willing to assist in reporting crimes suffered, or in the detection, investigation or prosecution efforts.¹⁷³ Thus, Congress provided a specific avenue for immigrant crime victims to obtain a visa. Congress did so by amending sections of the Immigration and Nationality Act to create the U visa.¹⁷⁴

In Division A of the Act (Trafficking Victims Protection Act of 2000), Congress similarly noted the urgent need to ensure just and effective punishment of human traffickers, and to protect victims of human trafficking perpetrated in the United States.¹⁷⁵ Therefore, Congress amended the Immigration and Nationality Act to create the T visa for individuals who are or were victims of a severe form of trafficking in persons.¹⁷⁶

If approved, an applicant for a U visa or T visa will receive a visa that provides legal immigration status for up to four years.¹⁷⁷ The visa will permit the crime victim to live and work legally in the United States for the duration of the visa.¹⁷⁸ At the end of the third year, the visa recipient may be eligible to apply to apply for lawful permanent residence (commonly known as a “green card”).¹⁷⁹ Receiving a U or T visa does not directly or necessarily lead to the victim being granted lawful permanent residency. The authority to issue U and T visas rests solely with the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS).¹⁸⁰

¹⁷² See generally 72 Fed. Reg. 53014, 53023–24 (2007); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

¹⁷³ Victims of Trafficking and Violence Protection Act of 2000, div. A § 1513(a), Pub. L. No. 106-386, 114 Stat. 1464, 1533 (detailing Congress’ findings and purpose for the U visa statutes).

¹⁷⁴ See I.N.A. § 101(a)(15)(U), 8 U.S.C. § 1101 (a)(15)(U).

¹⁷⁵ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

¹⁷⁶ I.N.A. § 101(a)(15)(T), 8 U.S.C. § 1101 (a)(15)(T).

¹⁷⁷ I.N.A. § 214(p)(6), 8 U.S.C. § 1184 (p)(6); I.N.A. § 101(a)(15)(T)(ii), 8 U.S.C. § 1101 (a)(15)(T)(ii).

¹⁷⁸ 72 Fed. Reg. 53013, 53038 (codified at 8 C.F.R. § 214.14(c)(7)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(11)) (2016).

¹⁷⁹ 73 Fed. Reg. 75540, 75558–59 (codified at 8 C.F.R. § 245.24(b)(2) & 245.23(a)(2)) (2008).

¹⁸⁰ 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)(1)) (2007); 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(5)) (2016).

To qualify for lawful permanent residency each of the two visa programs has separate requirements that are in addition to having been granted a U or T visa. Lawful permanent residency will be granted only to:

- U visa recipients who can provide evidence that they have:
 - not unreasonably refused to provide assistance reasonably requested by law enforcement or prosecutors in any criminal investigation or prosecution; and
 - that their continuous presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.
- T visa recipients who:
 - have complied with any reasonable request for assistance, or would suffer extreme hardship involving unusual and severe harm upon removal from the United States.¹⁸¹

III. WHO QUALIFIES FOR A U OR T VISA?

U Visa

To qualify for a U visa, an applicant must demonstrate that they meet each of the following requirements:¹⁸²

- The applicant must be a victim of a U visa listed criminal activity occurred in the United States or violated the state or federal laws of the United States;
- the applicant must possess information concerning such criminal activity;
- the applicant must be helpful, have been helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
- the applicant must have suffered substantial physical or mental abuse as a result of having been the victim of certain qualifying criminal activity.¹⁸³

In addition to meeting these four requirements, a U visa applicant must obtain a certification from a law enforcement official, prosecutor, judge, or other federal or state agency authorized to detect, investigate, prosecute, convict or sentence any of the criminal activities listed in the U visa statute.¹⁸⁴

An applicant must also be admissible to the United States. If inadmissible, the individual may apply for any waiver of inadmissibility for which the victim may be eligible. The Violence Against Women Act of 2000 created a waiver specific to U visa, under which DHS has the discretion to waive any ground of inadmissibility except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.¹⁸⁵ However, DHS first must determine that such a waiver would be in the public or national interest.¹⁸⁶

¹⁸¹ *Id.*

¹⁸² I.N.A. § 101(a)(15)(U); 8 U.S.C. 1101 (a)(15)(U) and at I.N.A. § 214(p)(1), 8 U.S.C. 1184(p)(1); I.N.A. § 101(a)(15)(U), 8 U.S.C. 1101 (a)(15)(U).

¹⁸³ I.N.A. § 101(a)(15)(U), 8 U.S.C. 1101 (a)(15)(U).

¹⁸⁴ I.N.A. § 214(p)(1), 8 U.S.C. 1184(p)(1).

¹⁸⁵ I.N.A. § 212(d)(14), 8 U.S.C. 1182(d)(14).

¹⁸⁶ *Id.*

- *Qualifying Criminal Activities*

A “non-exclusive” list of qualifying criminal activities is provided in the statute.¹⁸⁷ The list includes: 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,¹⁸⁸ solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.

This list also includes attempts or conspiracy to commit any of the listed activities. 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.”¹⁸⁹ 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, stalking, child abuse, elder abuse, or malicious property damage.¹⁹⁰ Even though these crimes are not specifically enumerated in the U visa, they are incorporated within the qualifying crime of domestic violence.

The U visa does not require the actual initiation of a criminal investigation by law enforcement, nor does it require a successful prosecution or victim testimony.¹⁹¹ Courts may detect qualifying criminal activity in state family or civil court proceedings in which domestic violence (or child abuse), sexual assault, or other criminal activity is revealed in pleadings, evidence or testimony in the case. In some cases, investigation or prosecution of criminal activity is impossible because the offender cannot be located, has been deported, or has diplomatic immunity. Moreover, U visa applications can be granted even when prosecutors decline to charge perpetrators, or if they decide to prosecute unrelated crimes.¹⁹² The discretion that investigators and prosecutors have with regard to decide what to investigate and what or even whether to prosecute criminal activity does not negate the fact that an immigrant victim can provide or is currently providing helpfulness, assistance, and/or cooperation

¹⁸⁷ I.N.A. § 101(a)(15)(U)(iii), 8 U.S.C. 1101 (a)(15)(U)(iii); 72 Fed. Reg. 53014, 53018 (2007) (explaining that the list is non-exclusive).

¹⁸⁸ 8 U.S.C. § 1351.

¹⁸⁹ 72 Fed. Reg. 53014, 53018 (2007).

¹⁹⁰ See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 849-876 (1993).

¹⁹¹ 72 Fed. Reg. 53014, 53020 (2007).

¹⁹² *Id.* (“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 I.N.A. §§ 101(a)(15)(U)(i)(III) and 214(p)(1), 8 U.S.C. 1101(a)(15)(u)(i)(III) and 1184(p)(1)).

regarding the criminal activity the victim suffered as well as victims' willingness to be helpful if the case were to be investigated or prosecuted.

Additionally, "qualifying criminal activity may occur in the commission of non-qualifying criminal activity."¹⁹³ An illustrative example is provided in the U visa regulations:

- If an investigator is in the process of investigating federal embezzlement charges and learns that the offender is abusing his wife, despite an absence of federal domestic violence laws, the immigrant victim wife may qualify for the U visa as a victim of domestic violence, even though her husband is charged only with the non-qualifying federal embezzlement crimes.¹⁹⁴

- ***The Helpfulness Requirement***¹⁹⁵

The certification signed by a judge or other certifying officials demonstrates 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."¹⁹⁶ The helpfulness requirement was written using several verb tenses, recognizing that an applicant may apply for a U visa at different stages of an investigation or prosecution of a state court case involving the victim.¹⁹⁷ Congress intended to allow an individual to petition for a U visa at very early stages of an investigation and at each successive step.¹⁹⁸ The definition of "investigation or prosecution" in the statute is interpreted broadly¹⁹⁹ to include victim assistance in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁰⁰ Some examples of helpful actions include, but are not limited to, the victim calling 911 to report the crime, the victim providing a statement to the police, filing a police report, or seeking a protection order.

It is important to note that a victim who received certification and was granted a U visa has an ongoing obligation to provide assistance or cooperation reasonably requested by law enforcement or

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ See also Peter Helein et al., *U-Visa: "Helpfulness" Checklist*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Oct. 2019), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>.

¹⁹⁶ 8 U.S.C. § 1184(p)(1).

¹⁹⁷ 72 Fed. Reg. 53013, 53019 (2007). *DHS U and T Visa Resource Guide* at 19.

¹⁹⁸ *Id.*

¹⁹⁹ The Department of Homeland Security broadly interprets the term "investigation or prosecution to include detection, conviction and sentencing activities that are routine part of a judges' functions. Judges "detect" criminal activities when they make probable cause determinations, hear testimony, make findings, observe individuals during many stages of the court process, and review evidence and court case files that may include documentary evidence including police reports. Judges also convict and sentence in criminal court cases." Leslye Orloff & Spencer Cantrell, "Memorandum to the Hon. Pendleton re: Proposed Advisory Opinion 2015-1-U Visa Certifications," NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT at 3 (Jun. 12, 2015). See also, "Referring to the AG Guidelines, USCIS is defining the term to include the detection of qualifying criminal activity ... conviction and sentencing of the perpetrator because these extend from the prosecution.... Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C.

1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications. INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term 'investigation or prosecution' should be interpreted broadly as in the AG Guidelines." 72 Fed. Reg. 53013, 53020 (2007) (codified at 8 CFR 214.14(a)(5)).

²⁰⁰ *Id.*

prosecutors.²⁰¹ Certifiers can also inform DHS if a victim is no longer cooperating and being helpful.²⁰² However, such notification is appropriate only if the certifier determines that the victim's unwillingness to provide ongoing helpfulness was unreasonable.²⁰³ Whether the victim's lack of helpfulness is unreasonable is to be assessed in light of the totality of the circumstances.²⁰⁴

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 upon the visa holder when reasonably requested. However, recognizing that dangers to crime victims posed by perpetrators and the dynamics of domestic violence, child abuse, sexual assault and human trafficking cases in particular, Congress created an exception to this cooperation/assistance requirement when victims can show that they did not unreasonably refuse to cooperate. 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.

It is important to understand that the standard for certification is whether the victim has been, is being or is likely to be helpful. This is different than the assistance/cooperation requirement imposed by regulations on victims once their U visa case has been filed. The congressional goal was first to get victims to come forward and give government agencies a tool that encouraged them to do so. Once victims file for the U visa the ongoing cooperation/assistance requirement, and its safety promoting exceptions apply.²⁰⁵

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

²⁰¹ *Id.*

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

²⁰³ "There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request." *DHS U and T Visa Resource Guide* at 12.

²⁰⁴ 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).")

²⁰⁵ Research has found that this statutory and regulatory structure with its safety focused victim protection based exception results over time in high levels of U visa victim participation in criminal investigations and prosecutions of perpetrators. See generally Leslye Orloff, Levi Wolberg, and Benish Anver, *U Visa Victims and Lawful Permanent Residency*, (Sept. 6, 2012), <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12> (70% of U visa applicants and U visa holders provided continued cooperation with law enforcement and prosecutors. Further, another 29.5% of U visa applicants and recipients wanted to offer additional ongoing cooperation but such assistance was not requested by law enforcement officials or prosecutors. This occurs for many reasons including, because the criminal case had stalled (e.g. the perpetrator could not be identified or served), police and/or prosecutors did not end up pursuing criminal prosecution of the perpetrator, or the perpetrator took a plea ending the criminal case.

assistance was unreasonable, the official can notify DHS.²⁰⁶ 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.

T Visa

To qualify for a T visa, an applicant must demonstrate that they meet each of the following requirements:²⁰⁷

- the applicant is or has been a victim of a severe form of trafficking in persons;
- the applicant is physically present in the United States or at a port-of-entry thereto;
- the applicant either:
 - has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons;
 - is under 18 years of age; or
 - due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance; and
- the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for a waiver of inadmissibility for which they may be eligible.²⁰⁸

- ***Victimization***

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

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
 - (2) sex trafficking in which the person induced to perform such an act is under the age of 18;
- or

²⁰⁶ Judges, due to the nature of their role in the justice system and judicial ethical rules, generally are not in a position to and would not be able to ethically follow up with victims after U visa certifications are signed. Additionally, most judicial certifications are made after the judge has issued findings in the case or made a ruling and the certification is based on that ruling. Many judges strike out the line on the certification form that regarding reporting the victim's future non-cooperation to DHS on judicial ethics grounds and DHS accepts these changes on judicial certifications. As a result, judicial certifiers are not often in the position to know about a victim's ongoing cooperation with law enforcement or prosecutors if a criminal case was initiated against the perpetrator. *See* MODEL CODE OF JUDICIAL CONDUCT 1.2 & 2.9(c) (AM. BAR ASS'N 2020). Should a judge encounter a circumstance where the judge needs to revoke a certification the judge would 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.

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

²⁰⁸ *DHS U and T Visa Resource Guide* at 9.

(3) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.²⁰⁹

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.²¹⁰ 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.²¹¹

USCIS will accept any credible evidence of victimization, including but not limited to a T visa declaration signed by a judge or other authorized government agency.²¹² The judges or government agency official signing the 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.²¹³

- ***The Assistance Requirement***

The T visa requires that the victim has complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.²¹⁴ USCIS will accept any credible evidence of assistance, including but not limited to a T visa declaration signed by a judge or other authorized government agencies.²¹⁵

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 fear, severe traumatization, and the age and maturity of young victims.²¹⁶ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.²¹⁷ It is generally reasonable for law enforcement to ask a victim similar things they would ask other similarly situated crime victims, such as domestic violence or sexual assault victims.²¹⁸

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

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

²¹¹ 72 Fed. Reg. 92266, 92270 (2016).

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

²¹³ 72 Fed. Reg. 92266, 92272 (2016).

²¹⁴ I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

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

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

²¹⁷ 72 Fed. Reg. 92266, 92275 (2016).

²¹⁸ *Id.*

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.²¹⁹ At their discretion, a certifying judge may revoke or disavow a declaration if a victim stops cooperating; after revocation or disavowal, the declaration will no longer be considered as evidence.²²⁰

- ***Continued Presence and It's Relationship to the T Visa***

Continued Presence (CP) is a temporary form of immigration protection provided by DHS to individuals identified by federal, state or local law enforcement or prosecution officials as potential victims or witnesses in human trafficking investigations or prosecutions.²²¹ It allows victims to remain in the U.S. temporarily, to work and have access to public benefits that stabilize the victim by allowing them to remain temporarily in the United States lawfully during the course of an investigation.²²²

The Department of Homeland Security (DHS) urges law enforcement and prosecution officials to “make an expeditious initial determination of CP eligibility and to complete the application as soon as practicable upon encountering a victim. Best practice is for law enforcement to bring the paperwork to an interview, if the individual credibly appears to be a victim and law enforcement will take any additional actions, then CP should be requested...Law enforcement should not be selective but should request CP for every identified victim who lacks legal immigration status and may be a potential witness to be available, if necessary, for the investigation. CP should be used for labor trafficking and sex trafficking victims.”²²³

DHS also states that continued presence

“alleviates fears about removal and economic support, which not only stabilizes victims but also improves victims’ ability to cooperate with law enforcement. CP is therefore also an important tool for federal, state and local law enforcement in their investigations of human trafficking-related crimes, leading to more successful prosecutions. The routine use of CP for victims also engenders trust with service providers and organizations who may be a source of

²¹⁹ 72 Fed. Reg. 92266, 92274 (2016).

²²⁰ 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016). Judges, due to the nature of their role in the justice system and judicial ethical rules, generally are not in a position to and would not be able to ethically follow up with victims after T visa certifications are signed. Additionally, most judicial certifications are made after the judge has issued findings in the case or made a ruling and the certification is based on that ruling. Many judges strike out the line on the certification form that regarding reporting the victim’s future non-cooperation to DHS on judicial ethics grounds and DHS accepts these changes on judicial certifications. As a result, judicial certifiers are not often in the position to know about a victim’s ongoing cooperation with law enforcement or prosecutors if a criminal case was initiated against the perpetrator. See MODEL CODE OF JUDICIAL CONDUCT 1.2 & 2.9(c) (AM. BAR ASS’N 2020). Should a judge encounter a circumstance where the judge needs to revoke a certification the judge would 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.

²²¹ DHS BLUE CAMPAIGN, CONTINUED PRESENCE (2019), https://www.dhs.gov/sites/default/files/publications/blue-campaign/19_1028_bc-pamphlet-continued-presence.pdf.

²²² *DHS U and T Visa Resource Guide* at 27.

²²³ DHS BLUE CAMPAIGN, CONTINUED PRESENCE (2019), https://www.dhs.gov/sites/default/files/publications/blue-campaign/19_1028_bc-pamphlet-continued-presence.pdf.

referrals for law enforcement that victims will be protected if they come forward. Ultimately this increases law enforcement's ability to identify even more victims and traffickers.”²²⁴

CP is provided to individuals identified by law enforcement as victims of a “severe form of trafficking in persons” who may be potential witnesses.²²⁵ It allows trafficking victims to lawfully remain in the U.S. temporarily and work during the investigation into the human trafficking-related crimes committed against them and during any civil action under 18 U.S.C. § 1595 filed by the victims against their traffickers.²²⁶ CP is initially granted for two years and may be renewed in up to two-year increments.²²⁷ CP recipients also receive federal benefits and services.²²⁸

Judges who identify immigrant victims of human trafficking can refer victims to federal law enforcement officials who are responsible for filing continued presence requests. These continued presence requests must be sponsored by a federal agency with the authority to conduct investigations or prosecutions that could include uncovering facts that human trafficking is occurring (e.g., HIS, FBI, DSS, DOL, EEOC and any U.S. Attorney's Offices). These federal agencies ultimately have the responsibility for filing continued present requests with U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), which is the DHS component that investigates human trafficking.²²⁹

When state and local law enforcement and prosecution agencies investigate and prosecute cases involving human trafficking, these agencies regularly ask a federal agency counterpart to sponsor the victim they are working with for continued presence. Judges may also refer a human trafficking victim to a state or local law enforcement agency or prosecutor asking them to interview the victim, initiate the process of securing continued presence for the victim, and report to the court on the results. Judges may also play a leading role in identifying agencies in working in the court's jurisdiction who could work together on human trafficking issues. In jurisdictions where the local collaborations or taskforces working on human trafficking include both state and federal law enforcement officials and prosecutors, the process for referring human trafficking victims for continued presence can be much more efficient and effective.

Continued presence is the first form of immigration relief available to help immigrant victims of human trafficking. Continued presence is appropriate if the totality of the circumstances indicate the individual is a trafficking victim and may be a potential witness.²³⁰ To be eligible for continued presence a person must be:²³¹

²²⁴ DHS BLUE CAMPAIGN, CONTINUED PRESENCE (2019), https://www.dhs.gov/sites/default/files/publications/blue-campaign/19_1028_bc-pamphlet-continued-presence.pdf.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

- Identified as a “victim of a severe form of human trafficking” (the definition is identical to the definition that applies for T visa eligibility); and
- The individual may be a potential witness in an investigation or prosecution of human trafficking.

Compared to the T visa, continued presence has a lower standard of proof offering protection to a broader number of victims than may ultimately qualify for a T visa. Unlike the T visa,²³² there is no requirement that the victim prove that they would suffer extreme and unusual hardship upon removal or meet the T visa cooperation/assistance requirement for a continued presence application. Continued presence was created to provide temporary protection for victims who may be too traumatized to initially cooperate.²³³ However, due to its short-term nature continued presence does not provide a path to lawful permanent residency.

Continued presence and the T visa are related but independent from each other. In early stages of a case, the victim may apply for continued presence first and receive its temporary protection while putting together their T visa application. However, some continued presence recipients never apply for a T visa, and some T visa recipients never applied for continued presence. Finally, continued presence is not a guarantee that a victim who was granted continued presence and applied for a T visa will receive T visa approval.²³⁴

IV. VISA APPLICATION PROCESS

The United States Citizenship and Immigration Services (USCIS) of the United States Department of Homeland Security (DHS) has sole jurisdiction over all petitions for U and T visas.²³⁵ A person seeking a U visa must submit, by mail, Form I-918, “Petition for U Nonimmigrant Status” and include with it Form I-918 Supplement B, along with supporting documents establishing eligibility.²³⁶ Form I-918 Supplement B must be signed by a qualifying certifier, such as a federal, state, or local judge, within the six months immediately preceding the filing of Form I-918.²³⁷

²³² *DHS U and T Visa Resource Guide* at 27.

²³³ DHS BLUE CAMPAIGN, CONTINUED PRESENCE (2019), https://www.dhs.gov/sites/default/files/publications/blue-campaign/19_1028_bc-pamphlet-continued-presence.pdf.

²³⁴ *Id.*

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, official, or judge is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim’s credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.” *DHS U and T Visa Resource Guide* at 6.

²³⁷ “Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.” *DHS U and T Visa Resource Guide* at 8; 72 Fed. Reg. 53013, 53037 (codified at 8 C.F.R. § 214.14(c)) (2007).

A person seeking a T visa must submit Form I-914, “Application for T Nonimmigrant Status” and supporting documents establishing eligibility.²³⁸ A T visa declaration (Form I-914 Supplement B) may be submitted with the application and is helpful but is not required.²³⁹ The applicant sends the petition and supporting materials to the Victims and Trafficking Unit of USCIS located in Vermont. This specialized unit is trained to adjudicate cases involving crime victims and is the only adjudication unit within DHS that can grant U visas or T visas.²⁴⁰

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

For the U visa, the certification is a mandatory part of the evidence the victim must submit to USCIS to prove eligibility to receive a U visa. The certification is limited to verification that the individual is a victim of a qualifying criminal activity and that the victim has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁴¹ In addition to the certification, the applicant must meet several other eligibility criteria, including demonstrating that they suffered substantial mental or physical abuse²⁴² as a result of having been a victim of qualifying criminal activity and providing a statement describing the facts of the victimization in the victim’s own words.²⁴³

For the T visa, the declaration is not mandatory and is just one type of evidence of victimization and assistance.²⁴⁴ The declaration is limited to helping demonstrate victimization and compliance with reasonable requests.²⁴⁵ Even if the declaration, along with other evidence the applicant submits, successfully demonstrate these two prongs, the applicant must meet several other requirements, including demonstrating victim of human trafficking would suffer extreme hardship involving unusual and severe harm upon removal.²⁴⁶

JUDGES AS U/T VISA CERTIFIERS

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

²³⁹ 72 Fed. Reg. 92266, 92276 (2016).

²⁴⁰ Even where a case is before an immigration judge, adjudication for visas may still only be conducted by the USCIS Vermont Service Center.

²⁴¹ See Janell Ross, *Metro Nashville Police Block Visas for Crime Victims, Witnesses*, THE TENNESSEAN (Apr. 18, 2010), <http://www.tennessean.com/article/20100418/NEWS01/4180357/1001/NEWS>. (quoting DHS spokeswoman clarifying that the role of certifying officials including police filling out U visa certifications is to verify that an individual was a crime victim).

²⁴² U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (stating that USCIS will make the determination as to whether the victim has met the “substantial physical or mental” standard on a case-by-case basis during its adjudication of the U visa petition).

²⁴³ “While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS.” *DHS U and T Visa Resource Guide* at 6.

²⁴⁴ 72 Fed. Reg. 92266, 92272 (2016).

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

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

Judges are specifically enumerated by statute and regulation as U and T visa certifiers.²⁴⁷ In criminal court cases, including when protection orders have been violated, judges are well positioned to be certifying officials because they observe the victim's participation in the criminal case, make findings based on probable cause, take evidence and issue ruling and sentences. However, Congress included all judges (state, federal, civil, family, criminal, magistrate, and administrative) as approved certifying officials.²⁴⁸ Thus, family, juvenile and civil court judges may also sign U visa certifications and T visa declarations. Civil, family and juvenile court judges routinely encounter cases involving U or T visa qualifying criminal activities.

In civil, family and juvenile court cases, judges are in a unique position to *detect* criminal activity²⁴⁹ in pleadings, testimony, and a wide range of evidence presented in civil protection order, divorce, custody, child or spousal support and child abuse and neglect cases.²⁵⁰ For example, where domestic violence is involved, victims might seek a protection order as a civil remedy in family court. In most states, the underlying activity that permits the issuance of the civil protection order is a criminal activity. The detection of this criminal activity by the family court judge issuing the civil protection order would enable the judge to act as a certifying official for an applicant. Similarly, judges may find themselves capable of certification in a number of family, juvenile and civil court cases, for example in:

- temporary or emergency protection order cases,
- custody order cases where there has been family violence,
- divorce cases awarding spousal support,
- child abuse or neglect proceedings,
- elder abuse or neglect proceedings,
- preliminary injunctions in a sexual assault tort action,
- small claims action for an unmarried couple seeking division of property when there has been domestic violence
- finding of child abduction,

²⁴⁷ I.N.A. § 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); 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

²⁴⁸ *DHS U and T Visa Resource Guide* at 16.

²⁴⁹ Recognizing that judges do not participate in investigations and prosecutions, USCIS interprets the term “investigation and prosecution” to include “conviction and sentencing”: “USCIS is defining the term [investigation and prosecution] to include conviction and sentencing of the perpetrator because these extend from the prosecution. Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications. Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term “investigation and prosecution” should be interpreted broadly” 72 Fed. Reg. 53014, 53020 (2007). *See* 8 C.F.R. § 214.14(a)(5) (stating, “*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.”) (second emphasis added). MINNESOTA BOARD ON JUDICIAL STANDARDS, *Opinion 2015-2: U Visa Certification* at 2 (2015), <http://niwaplibrary.wcl.american.edu/pubs/mn-board-judicial-standards-opinion-2015-2-final/> [hereinafter “Minnesota Board on Judicial Standards Opinion”].

²⁵⁰ *See* DHS BLUE CAMPAIGN, WHAT CAN YOU DO? RECOGNIZING AND SUPPORTING VICTIMS IN THE COURTROOM (2019), <https://www.dhs.gov/sites/default/files/publications/blue-campaign/materials/pamphlet-judicial/hc-pamphlet-judicial-english.pdf>; JUDICIAL COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 45 (2017).

- cases involving labor exploitation,
- employment discrimination cases involving sexual assault or other criminal activities,
- finding that a protection order has been violated,
- landlord-tenant proceedings involving housing exploitation, and
- probate hearings with a finding of domestic violence.

The above are only some examples. Judges may hear evidence in other cases that disclose the existence of qualifying criminal activity, and judges may certify in any case where they detect such activity.

Congress allowed for a wide range of certifiers so that victims could easily and safely access certifications. Judges are in a unique position as neutral fact finders to assess whether the criminal activity occurred and whether the victim has been or is being helpful²⁵¹ in the detection, investigation or prosecution of that activity.²⁵² Because judges must be impartial, they are sometimes the most trusted officials with whom victims come in contact within the justice system.²⁵³ Judges can be neutral in assessing helpfulness/assistance requirements.

Judges also are included as certifiers based, in part, on the understanding that language barriers prevent some immigrant victims from successfully communicating with police or other law enforcement officials when trying to report crimes. Although federal laws require both courts and law enforcement to provide language access to their services, courts in many communities have a more accessible and established language access programs that provide interpretation for parties with limited English proficiency appearing before their courts.²⁵⁴ The increased possibility of language access in courtrooms allows a judge to assist with certification. When a victim eventually gets to court, a judge may be the only certifying official the victim will encounter who is both language accessible and able to provide assistance.

Timing of Judicial Certification

Judges may complete U visa certification or T visa declaration as soon as they are able to assess that the applicant is a victim who has helped the court detect the criminal activity the victim suffered.²⁵⁵ It

²⁵¹ Although certifications can also be signed for victims who are likely in the future to be helpful, generally the vast majority of judicial certifications are based on helpfulness the victim is currently provided or has provided in the past. Examples include: having filed for a protection order, testifying about child abuse at a juvenile court hearing, testimony or evidence of abuse provided in a custody or divorce action.

²⁵² “Even as to a pending or impending matter, a certification is not likely ‘to affect the outcome or impair the fairness of a matter,’ because, among other things, the I-918B certification would not come to a jury’s attention.” Minnesota Board on Judicial Standards Opinion at 5.

²⁵³ “Although it is true that the certification advances an alien’s interests, the judicial ethics boards do not believe that certification involves the ‘prestige’ of judicial office, as opposed to the office itself. Federal regulations contemplate that a judge may sign an I-918B form on behalf of an alien victim. *See* 8 C.F.R. § 214.14(c)(4). Federal courts have recognized certifications by judges as authorized. Abuse is not involved when the law and the courts countenance judicial certifications.” Minnesota Board on Judicial Standards Opinion at 4. *Additionally*, “In the Board’s opinion, a certification does not vouch for an alien’s character. Instead, the certification pertains to the alien’s helpfulness to the prosecution. A helpful alien may or may not have good character.” *Id.* at 5.

²⁵⁴ Laura Abel, *Language Access in State Courts*, Brennan Center for Justice (2009).

²⁵⁵ DHS encourages certifiers to “[b]e prompt in providing the signed certification to the victim or the victim’s attorney or representative. USCIS must receive the U visa petition, which includes the Form I-918B, within six (6) months of the date the Form I-918B was signed.” *DHS U and T Visa Resource Guide* at 8.

qualifying crimes in other ways. Under the statute and regulations, judges would be appropriate certifiers in these cases.

The protection order system was developed to assure that victims can receive protection based on findings, uncontested pleadings, the admission of abusers, or after courts hold evidentiary hearings. Protection orders are issued without regard to whether criminal cases have been initiated.²⁵⁸ Similarly, U and T visas were created to provide an immigration remedy for crime victims that is independent of whether or not a criminal case is opened or prosecuted. U visa certification or T visa declaration alone does not give a victim a U visa or T visa. The victim must file a complete application with DHS and must meet the eligibility requirements for the U or T visa.²⁵⁹

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

Benefits

In general, U visas and T visas are issued for a period of four years.²⁶⁰ A U or T visa holder can live and work legally in the United States without fear for deportation, and gains access to legal work authorization. Victims of human trafficking who have continued presence or file T visa applications gain broad access to federal, state and local public benefits. U visa victims access to public benefits is much more limited. However, victims in some states gain access to state funded public benefits, wait-list approved U visa victims in some states gain some access to health care, and U visa victims with lawful permanent residency gain additional access over time to other public benefits programs.²⁶¹

A U or T visa holder can include petitions with their application seeking U visas or T visas for eligible family members.²⁶² For the U visa, if the victim is under 21 years of age, qualifying family members include the principal victim's spouse, parents, and children, unmarried siblings under 18 years of age (on the filing date of the principal victim's petition).²⁶³

²⁵⁸ See Leslye Orloff et al., *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RESOURCES FOR BATTERED IMMIGRANTS* (Leslye Orloff & Kathleen Sullivan eds.) (2004).

²⁵⁹ U.S. Immigration and Customs Enforcement, *Protecting the Homeland, Toolkit for Prosecutors*, April 2011, available at, <http://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>. But see, U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 11, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (clarifying that certifying officials *do not* need to determine whether the victim witness has suffered substantial mental or physical abuse due to a qualifying crime before they can sign the certification. USCIS will make the determination on a case-by-case basis during its adjudication of the U visa petition).

²⁶⁰ See I.N.A. § 214(p)(6), 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7)(A), 8 U.S.C. § 1184(o)(7)(A).

²⁶¹ NIWAP has developed a series of tools to assist courts, victim advocates working in law enforcement and prosecution agencies and non-profit based victim advocates and attorneys determine which immigrant victims qualify for which public benefits and services in each state. See NIWAP, *A Guide to Public Benefits Map for Immigrant Survivors of Crime* (June 11, 2019), <http://niwaplibrary.wcl.american.edu/pubs/benefits-map-guide>; NIWAP, *Interactive Public Benefits Map* <http://map.niwap.org/>; NIWAP, *All State Public Benefits Charts* (June 7, 2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>; Jordan Tacher, Aditi Kumar, and Leslye E. Orloff, *U-Visa Victim Benefits Eligibility Process* (Oct. 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>.

²⁶² 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).

²⁶³ I.N.A. § 101(a)(15)(U)(ii)(I); 8 U.S.C. § 1101(a)(15)(U)(ii)(I).

- For the U visa if the victim is 21 years of age or older, qualifying family members include their spouse and children.²⁶⁴
- For the T visa, eligible family members include:
 - Children;
 - Spouse;
 - Parents of child trafficking victims who are under age 21 at the time of application, or any victim's parents who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement;
 - Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim's unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim's escape from trafficking or cooperation with law enforcement; and
 - 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.²⁶⁵

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

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

T and U visas are granted for a period of 4 years. Once a victim is granted the visa, both U and T visas can be extended beyond 4 years. Extensions are permitted in three circumstances:²⁶⁶

- 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.

²⁶⁴ I.N.A. § 101(a)(15)(U)(ii)(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

²⁶⁵ Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i) (2016)).

²⁶⁶ I.N.A. § 214(p)(6); 8 U.S.C. § 1184(p)(6); I.N.A. § 214(o)(7); 8 U.S.C. § 1184(o)(7).

For the U visa, the government official can demonstrate the need for the U visa extension by completing a new U visa certification form.²⁶⁷ For the T visa, government officials may demonstrate the need for the T visa extension by signing a new T visa declaration or by sending a letter, fax or email to DHS.²⁶⁸ 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

After three years of continuous presence in the U.S. since receiving the U visa, a U visa holder is eligible to apply for lawful permanent residency.²⁶⁹ Not all U visa holders will qualify for lawful permanent residency. To qualify, a U visa holder must also provide evidence that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution and that the victim's continued presence in the country is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.²⁷⁰

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.²⁷¹

Applying for Lawful Permanent Residency: T Visa

A T visa holder is eligible to apply for lawful permanent residency after three years of continuous presence in the U.S. since receiving the T visa, or, when the trafficking case has been concluded.²⁷² If at the time the victim is granted a T visa, any criminal investigation or prosecution of their trafficker has already been concluded, the victim receiving the T visa is immediately eligible to apply for lawful permanent residency. Not all T visa holders will qualify for lawful permanent residency. To qualify, a T visa holder must also provide evidence that they have complied with any reasonable request for assistance, and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.²⁷³

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.²⁷⁴ Unlike the U visa, T visa holders are not permitted to exceed the maximum time allowed by statute for being outside of the United States for any reason.²⁷⁵

²⁶⁷ I.N.A. § 214(p)(6); 8 U.S.C. § 1184(p)(6).

²⁶⁸ See 72 Fed. Reg. 92266, 92311 (codified at 8 C.F.R. § 214.11(l) (2016)).

²⁶⁹ Under immigration law the process of applying for lawful permanent residency with the application filed while the immigrant is living in the United States is called *adjustment of status*.

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

²⁷¹ I.N.A. § 245(l)(3); 8 U.S.C. § 1255(l)(3).

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

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

²⁷⁴ I.N.A. § 245(m)(2); 8 U.S.C. § 1255(m)(2).

²⁷⁵ 73 Fed. Reg. 75540, 75541(2008).

U Visa Statutory and Regulatory Background

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

Statutory Authority: Purpose of the U visa

“Congress makes the following findings:

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

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.”²⁷⁶

“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.”²⁷⁷

“(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.”²⁷⁸

“[I]t is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”²⁷⁹

²⁷⁶ Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) § 1513, Pub L. 106-386.

²⁷⁷ *Id.*

²⁷⁸ 146 Cong. Rec. S10196 (2000)

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

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.”²⁸⁰

“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.”²⁸¹

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

Regulatory Authority: Judge Certification

“To qualify for the U nonimmigrant classification...the alien must be of assistance to a Federal, State, or local law enforcement official or prosecutor, a *Federal or State judge*, the Department of Homeland Security (DHS), or other Federal, State, or local authority investigating or prosecuting criminal activity.”²⁸²

“The rule defines a ‘certifying agency’ as a Federal, State, or local law enforcement agency, prosecutor, *judge*, or other authority, that has responsibility for the investigation or prosecution of the qualifying criminal activities designated in the [Violence Against Women Act of 2000].”²⁸³

“This rule defines ‘certifying official’ as the head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, *or a Federal, State, or local judge*.”²⁸⁴

Regulatory Authority: Investigation or Prosecution Includes Detection

“The rule provides that the term ‘investigation or prosecution,’ used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity...[DHS] is defining the term to include the detection of qualifying activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties...[DHS] is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution... Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which *permits judges to sign certifications* on behalf of U nonimmigrant status applications... Judges neither investigate crimes nor prosecute perpetrators. Therefore, [DHS] believes that the term ‘investigation or prosecution’ should be interpreted broadly.”²⁸⁵

²⁸⁰ 72 Fed. Reg. 53013, 53014 (2007).

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

²⁸² 72 Fed. Reg. 53013, 53015 (2007) (emphasis added).

²⁸³ 72 Fed. Reg. 53013, 53019 (2007) (emphasis added).

²⁸⁴ 72 Fed. Reg. 53013, 53020 (2007) (emphasis added).

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

Statutory Authority: Helpfulness

“[T]he alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a *Federal or State judge*, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity...”²⁸⁶

Regulatory Authority: Helpfulness

“USCIS [United States Citizenship and Immigration Services] interprets ‘helpful’ to mean assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.”²⁸⁷

“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 [VAWA 2000] is not furthered.”²⁸⁸

“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.”²⁸⁹

“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.”²⁹⁰

²⁸⁶ 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).

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

²⁹⁰ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Interim Rule. DHS Docket USCIS-2006-0067, 25 (December 8, 2008).

“Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”²⁹¹

“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.”²⁹²

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

²⁹² 73 Fed. Reg. 75540, 75554 (2008).

T Visa Statutory and Regulatory Background

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.”²⁹³

“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.”²⁹⁴

“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.”²⁹⁵

“Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”²⁹⁶

“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.”²⁹⁷

“[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

²⁹³ Victims of Trafficking and Violence Protection Act of 2000, § 102(a), Pub. L. No. 106-386, 114 Stat. 1464.

²⁹⁴ *Id.*, § 102(b)(4)–(5).

²⁹⁵ *Id.*, § 102(b)(14), (17), (19).

²⁹⁶ *Id.*, § 102(b)(20)).

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

they are seeking service and protection.”²⁹⁸

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.”²⁹⁹

“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.”³⁰⁰

Regulatory Authority: Judge Declaration

An government agency endorsement (T visa declaration) is “optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests.”³⁰¹

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

“Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, **judge**, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.”³⁰²

Regulatory Authority: Nature of Declaration

Note: Judges are included in the definition of the government agencies authorized to sign T visa declarations. (see above).

A government agency (LEA) “endorsement is not mandatory and is not given any special evidentiary weight. An LEA endorsement itself does not grant a benefit and is one form of possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA endorsement must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status. The decision whether to complete an LEA endorsement is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA endorsement.”³⁰³

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

²⁹⁹ 67 Fed. Reg. 4782, 4784 (2002).

³⁰⁰ 67 Fed. Reg. 4782, 4785 (2002).

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

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

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

“An LEA may revoke or disavow the contents of a previously submitted endorsement in writing. After revocation or disavowal, the LEA endorsement will no longer be considered as evidence.”³⁰⁴

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

U Visa Certification/T Visa Declaration by Judges and Magistrates: Frequently Asked Questions³⁰⁵

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.”³⁰⁶

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.³⁰⁷ 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.³⁰⁸

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.³⁰⁹

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.³¹⁰ The U visa specifically includes the following criminal activities: ³¹¹

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;

³⁰⁵ 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.

³⁰⁶ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a), Pub. L. 106–386, 114 Stat. 1464.

³⁰⁷ 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).

³⁰⁸ I.N.A. § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2000).

³⁰⁹ *Id.* at 10; 72 Fed. Reg. 92266, 92304 (codified at 8 C.F.R. § 214.11(a)) (2016).

³¹⁰ 72 Fed. Reg. 53014, 53015 (2007).

³¹¹ 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).

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 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.³¹²

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.³¹³ USCIS will conduct a de novo review of all evidence submitted, and will determine, in its sole discretion, the evidentiary value of the evidence.³¹⁴ The rules reflect the broad protections and flexible evidentiary standards envisioned by Congress.³¹⁵

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

The federal law permits certain qualifying family members accompanying or following to join the immigrant victim to obtain a U or T visa. USCIS refers to such family members as derivatives, and the immigrant victim as the principal. The determination of which family members are considered “qualifying” depends on their relationship to the principal immigrant victims and the age of the principal immigrant victim.³¹⁶

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

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

³¹³ 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).

³¹⁴ *Id.*

³¹⁵ *See, e.g.*, H.R. REP. NO. 103-395, at 38 (1993).

³¹⁶ USCIS, Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions, PM-602-0102 (April 15, 2015), <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVPA-2013-PM.pdf>.

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.³¹⁷

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.³¹⁸

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 year years of age.³¹⁹

CERTIFICATION/DECLARATION PROCESS

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

Any agency that detects, investigates, prosecutes, convicts, or sentences criminal activity or perpetrators of criminal activity may sign a certification/declaration.³²⁰ 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.³²¹ 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.³²²

Which officials meet the definition of a judge for U Visa Certification and T visa declaration purposes?

³¹⁷ I.N.A. § 101(a)(15)(U)(ii)(I)–(II); 8 U.S.C. § 1101(a)(15)(U)(ii) (I)–(II).

³¹⁸ I.N.A. § 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); 8 C.F.R. 214.11(k)(1)(ii)–(iii).

³¹⁹ I.N.A. § 214(p)(7), 8 U.S.C. § 1184(p)(7); I.N.A. § 214(o)(4)–(5), 8 U.S.C. § 1184(o)(4)–(5).

³²⁰ I.N.A. § 214(p)(1), 8 U.S.C. § 1184(p)(1); *DHS U and T Visa Resource Guide* at 15.

³²¹ 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.

³²² 8 C.F.R. 214.14(a)(2). Unlike other certifying officials, no approval by any supervisor is needed for judicial certifications. Each individual judge or magistrate is authorized to sign certifications.

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. Arbitrators, mediators, and conciliators may also be considered judges if appointed or elected by law to administer justice.³²³

Why is certification/declaration by a judge or magistrate so important to immigrant victims?

The U visa and T visa programs afford immigrant crime victims temporary legal immigration status. Without this, victims may be afraid to seek assistance from law enforcement, prosecutors, and courts when they are victimized by a spouse, family member, employer, or a stranger. Undocumented victims fearing deportation may risk exploitation and ongoing victimization rather than coming forward to report crimes, seek protection, and/or cooperate in the detection, investigation, prosecution, conviction, or sentencing of crime perpetrators. The U and T visa programs were designed to help two groups of immigrant crime victims:

- Undocumented victims of criminal activity
- Immigrant crime victims who are lawfully present in the United States, but whose legal status is not permanent. Examples include but are not limited to
 - Student visa holders
 - Work visa holders including those whose visas are tied to a particular employer
 - Children and youth with Deferred Action for Childhood Arrivals (DACA)
 - Spouses and children of diplomats and international organization staff

U and T visas provide a victim with employment authorization and protection against deportation, critical tools in establishing economic independence and long-term safety. These visa programs enhance the stability of immigrant victims and have the effect of promoting and supporting their willingness and ability to seek access to justice from the courts and to provide help to law enforcement and prosecutors. Their willingness to help in criminal cases affects not only in the criminal case that led to their U or T visa eligibility, but also extends into the future with victims making police reports and helping law enforcement in criminal cases they witness or are victimized by.³²⁴

Why did Congress authorize multiple certifiers?

In designing both the U and T visa, 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 individual was identified as a crime victim. Congress understood that immigrant victims come into initial contact with the justice system in a variety of ways. Some victims find their way to advocates who assist them in filing for a civil protection order and only after receiving the protection order do victims feel able to cooperate in the criminal prosecution of their abuser. Other victims call the police to report domestic violence, sexual assault, or other crimes

³²³ *DHS U and T Visa Resource Guide* at 16.

³²⁴ Krisztina E. Szabo et al., *Early Access to Work Authorization For VAWA Self-Petitioners and U-Visa Applicants* (Feb. 12, 2014), http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12, pp. 29–31; Krisztina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending* (July 29, 2014), <http://niwaplibrary.wcl.american.edu/pubs/imm-qref-safetyplanning>.

committed against them and victim witness staff at the police department inform them about the U or T visa program. In another example, a victim of sexual assault in the work place may turn to the EEOC or a state department of labor seeking employment related help and in the course of that case reveals the facts of the sexual assault to the federal or state investigators. 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 or not there was 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 design of the federal statute provides multiple avenues to certification/declaration so that eligible victims could obtain a certification even when they lived in a jurisdiction in which one agency eligible to issue certifications/declarations as a matter of practice never issues them.³²⁵

Is a judge required to sign the certifications/declarations?

No. Judges are not required to sign the certifications or declarations.³²⁶ The decision to sign is discretionary.³²⁷ However, Congress enacted the protections with the expectation that judges are in a good position to detect criminal activity and assess the victim's helpfulness and assistance in civil, family and criminal cases.³²⁸ A victim cannot file for a U visa without a certification.³²⁹ The declaration is not required for a T visa, but it is a helpful piece of evidence submitted by the applicant.³³⁰

Is my court required to create a policy for reviewing and signing Form I-918B and Form I-914B?³³¹

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

³²⁵ 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-visa-certification-laws>. See also Oregon Senate Bill 962 (2019), <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB962/Enrolled>; Alison Kamhi and Sarah Lakhani, *A Guide to State Laws on U Visa and T Visa Certifications*, IMMIGRANT LEGAL RES. CTR. (Apr. 2020) (listing IN, NY, RI, VT, Virgin Islands, and WY laws), https://www.ilrc.org/sites/default/files/resources/u-visa_and_t-visa_pa-04.2020.pdf.

³²⁶ See *Orosco v. Napolitano*, 598 F.3d 222 (5th Cir. 2010) (holding that the decision to decline to issue certification is discretionary); *DHS U and T Visa Resource Guide* at 17.

³²⁷ *Id.* See also, "Although a judge has the discretion whether or not to sign an I-918B form, "duties" in Rule 2.10(D) should not be interpreted to refer only to non-discretionary duties." Minnesota Board on Judicial Standards Opinion at 5.

³²⁸ Victims of Trafficking and Violence Prevention Act of 2000, § 1513(a)(2)(B), Pub. L. 106-386, 114 Stat. 1464.

³²⁹ INA § 214(p)(1); 8 U.S.C. § 1184 (p)(1).

³³⁰ See 81 Fed. Reg. 92266, 92276 (2016).

³³¹ *DHS U and T Visa Resource Guide* at 16.

training and polices.³³² A number of police departments collaborated on the development of a model U and T visa certification policy³³³ and the San Francisco Superior Court developed and implemented a U visa certification policy that is serving as a model for courts nationally.³³⁴ Receiving training on U visa and T visa certification is recommended for courts and for staff at any government agency signing certifications.³³⁵

If I sign a certification or declaration, does the victim automatically get a U visa, T visa or lawful immigration status?³³⁶

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

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

Will my certifying agency be liable for any future conduct of someone who is granted a U or T visa? What if I signed a certification or declaration for someone who later commits a crime?³³⁷

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,

³³² International Association of Chiefs of Police, 2018 Resolutions – Support for Education and Awareness on U Visa Certification and T Visa Declaration, <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

³³³ The model policies for law enforcement and prosecution agencies are available at <http://niwaplibrary.wcl.american.edu/pubs/iacp-support-for-education-and-awareness-on-u-visa-certifications-and-t-visa-declarations>.

³³⁴ San Francisco Superior Court, Civil Division, U Visa Certification Protocol (Oct. 2017), <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol>.

³³⁵ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

³³⁶ *Id.*

³³⁷ *Id.* at 17.

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 and declaration do 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?³³⁸

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

U VISA HELPFULNESS AND T VISA ASSISTANCE REQUIREMENTS

What constitutes *helpfulness* for U visa certification purposes?

"Helpful" means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which they are a victim.³³⁹ Helpfulness can be as simple as a victim reporting a crime to the police or the victim's filing for a protection order or a temporary protection order. Victims who seek civil protection orders demonstrate willingness to be helpful by revealing the facts of the abuse they have suffered to the court and by coming to court to obtain the order. With a protection order, the victim is obtaining an order that the violation of which is a crime that they can enforce by calling the police to report future protection order violations. Some of those future protection order violations will be crimes in and of themselves (e.g. assault, threats to kill) other protection order violations become crimes because the actions violate the protection order issued by the judge against the perpetrator. (e.g. violation of a no contact provision). Victims may also demonstrate helpfulness through evidence in the protection order application, by providing the court a copy of a police report they made, or by testimony before the court about steps they have taken to help police or prosecutors.

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

The U visa helpfulness requirement allows an individual to seek U visa relief at various stages of the case, including past helpfulness and willingness to be helpful in the future.³⁴⁰ Congress intended for

³³⁸ *Id.*

³³⁹ 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."

³⁴⁰ 72 Fed. Reg. 53013, 53019 (2007).

individuals to be eligible for a U visa at the very early stages of an investigation.³⁴¹ 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 6 months of receiving the certification. If the victim needs more time to document their U visa case before filing, they will need to return to the judge or agency that issued the U visa certification and request reissuance of a new certification.

After the victim has provided helpfulness, received certification and filed for the U visa, the victim is required by the U visa regulations to provide ongoing assistance to law enforcement and prosecution officials when reasonably requested. This requirement to offer ongoing assistance or cooperation applies from the time the victim files their U visa application, through adjudication of the U visa case, receipt of wait list approval, receipt of the U visa, and through the time the victim applies for and is granted lawful permanent residency.³⁴²

To prevent further harm to victims however 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.³⁴³ 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's movement being physically restrained or monitored by the perpetrator.³⁴⁴ If a victim has been helpful in detection or investigation of criminal activity, judges, law enforcement and other certifying officials can issue U visa certification even if the victim later found it too difficult to continue cooperating.

It is important to distinguish “continuing assistance” from “helpfulness” because “continuing assistance” is a standard used *after* the victim files for and after the victim obtains their U visa. For the purpose of obtaining an initial certification from a judge, only the victim's past helpfulness, current helpfulness, or the likelihood of future helpfulness can be considered. In actual practice, judges are almost always being asked to issue U visa certifications based on helpfulness the victim has already provided. That helpfulness often has been provided or is being provided to the courts in the filing for a protection order or providing evidence of abuse in a pleading, testimony or related to a court proceeding. The court may have also received information or evidence about helpfulness the victim provided to law enforcement or prosecution officials in a criminal investigation or prosecution of a crime the victim suffered.

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

USCIS regulations require that the victim of trafficking comply with reasonable requests from law enforcement or prosecution officials for assistance in the detection, investigation or prosecution of the acts of trafficking in persons.³⁴⁵ To determine whether the request from law enforcement is reasonable,

³⁴¹ *Id.*

³⁴² 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)).

³⁴³ U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, 4, January 2012, available at, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

³⁴⁴ 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).

³⁴⁵ I.N.A. § 101(a)(15)(T)(i)(III)(aa); 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa).

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.³⁴⁶ DHS emphasizes that the proper standard is the reasonableness of the request, not whether a victim unreasonably refused to assist.³⁴⁷ It is generally reasonable for law enforcement to ask a victim similar things they would ask other comparably situated crime victims, such as domestic violence victims.³⁴⁸

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

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

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

CERTIFICATION/DECLARATION SCENARIOS

Can a judge certify an application for a crime that happened long ago?

Yes. There is no applicable statute of limitations that precludes signing a certification or declaration.³⁴⁹ 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.³⁵⁰ In addition, T visa regulations were not promulgated until 2002 and the U visa regulations were not issued until September 2007.³⁵¹ 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

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

³⁴⁷ 72 Fed. Reg. 92266, 92275 (2016).

³⁴⁸ *Id.*

³⁴⁹ "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).

³⁵⁰ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386.

³⁵¹ 72 Fed. Reg. 53013 (2007).

of the regulations delays was mitigated and victims who have provided helpfulness remain eligible to file for U and T visas with no requirements imposed regarding the length of time that may have passed between the commission of the crime and date the victims files their U or T visa application.³⁵²

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.³⁵³ The congressional goal of improving trust between law enforcement, courts and immigrant crime victims was best met by providing access to U and T visa certification to any immigrant crime victim who mustered the courage and overcame fear to seek help from the courts, law enforcement, prosecutors and other government officials. When victims who report crimes and seek help from courts get U and T visa protections, the word spreads that the courts and justice system officials are willing to help immigrants with the result that more immigrant victims come forward to report crimes and seek help from courts.

Court cases and justice system records contain evidence that may be useful to include in the U visa certification that could help USCIS in adjudicating the U visa case. This includes any information about the case number of prior cases dealing with the qualifying activity.³⁵⁴

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

An immigrant in removal proceedings and/or detention may still be eligible for and granted a U or T visa.³⁵⁵ Many circumstances, 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, and other serious violent crimes.³⁵⁶ Judges should encourage immigrants in removal proceedings to obtain legal advice from an experienced immigration attorney.³⁵⁷ The fact that an immigrant victim is in immigration detention or is in

³⁵² 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).

³⁵³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a).

³⁵⁴ “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).

³⁵⁵ 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 procedure whereby the victim may remain in or return to the United States.” *DHS U and T Visa Resource Guide* at 19.

³⁵⁶ NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *ICE Confirms Continued Effectiveness of Victim Witness Protections* (April 19, 2019), <http://niwaplibrary.wcl.american.edu/pubs/ice-confirmation-of-continued-effect-victim-witness-memo>; DEP’T OF HOMELAND SECURITY, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011), <http://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

³⁵⁷ *Id.* at 20.

immigration proceedings before an immigration judge is not relevant to whether a judge signs the U visa certification or T visa declaration.

Can a judge sign a certification/declaration if the victim is not needed in the course of any criminal investigation or prosecution?

Yes. Congress determined that the certification process does not hinge on or require, that a criminal case be initiated, a victim's testimony, or completion of a prosecution.³⁵⁸

Can a judge sign a certification/declaration 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 is able to access U/T visa protections regardless of whether the perpetrator is investigated or prosecuted.³⁵⁹ Prosecutors do not prosecute many cases in instances where the alleged offender has absconded, the alleged offender enjoys diplomatic immunity, or the alleged offender may be a perpetrator whom law enforcement has not yet fully built a case against. 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.

Can a judge sign a certification/declaration if the perpetrator is not convicted?³⁶⁰

Yes. Prosecutors must build a case considering the full evidence, including the victim's statement. Ultimately, obtaining a conviction depends on many factors. Regardless of how the prosecution moves forward, however, the victim is at risk. The victim may be at a greater risk if the perpetrator is not convicted. The certification/declaration is designed to be issued when the judge believes that the individual is a victim of a qualifying criminal activity who has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. The criminal burden of proof does not apply and an acquittal in a criminal case does not affect certification, which requires only an assessment of victimization and helpfulness/assistance.

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

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

³⁵⁸ *DHS U and T Visa Resource Guide* at 19.

³⁵⁹ *Id.* at 21; U.S. Citizenship and Immigration Services, *Information for Law Enforcement Officials, Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at: http://www.uscis.gov/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf.

³⁶⁰ *DHS U and T Visa Resource Guide* at 21.

record when actually the victim's statements in their own language to police and to the courts were the same.

Can a judge sign a certification/declaration if there is evidence that the victim is also a criminal perpetrator?

Yes. Certification can be granted when a judge believes that the immigrant has been the victim of criminal activity, even if the victim has been arrested as a criminal perpetrator in the past.³⁶¹ Victims filing U or T visa applications are required to disclose their criminal history and their fingerprints are taken before their case is adjudicated by DHS. Congress anticipated that some applicants may have a history that includes a criminal conviction and gave DHS the discretion to decide whether to grant waivers of inadmissibility on a case-by-case basis to victims when the waiver is in the public or national interest.³⁶² Many immigrant crime victims have been controlled in such a way that they end up being arrested based on information from the perpetrator or because of poor interpretation or fear of disclosing the truth about abuse to law enforcement.³⁶³ 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.³⁶⁴ Such arrests fail to acknowledge the overall power and control dynamic that exists in abusive relationships.³⁶⁵ DHS will screen the criminal background of every applicant and the agency will investigate every arrest. If an applicant is found to be the perpetrator of the crime (e.g., someone identified as a trafficking victim is actually the trafficker), DHS will decline to grant discretionary waivers and will deny these individual's applications for U visa or T visa relief.³⁶⁶

Can a judge sign a certification/declaration if there are concerns about the victim's credibility?

The judge is responsible for ensuring that the information on the certification/declaration is true and complete.³⁶⁷ If the judge believes that a crime was committed, the applicant is the victim, and the victim meets the helpfulness requirement in U visas cases or the cooperation requirement in T visa cases, the judge can sign the certification/declaration even when the victim may not turn out to be the

³⁶¹ *DHS U and T Visa Resource Guide* at 26 ("The fact that a victim has a criminal history does not automatically preclude approval of U or T nonimmigrant status. Each petition or application is evaluated on a case-by-case basis, and USCIS takes into account whether any criminal behavior was related to the victimization.").

³⁶² 72 Fed. Reg. 53014, 53015 (2007); *DHS U and T Visa Resource Guide* at 26.

³⁶³ DEP'T OF HOMELAND SECURITY, *Implementation of Section 1367 Information Provisions* at 3 (Nov. 1, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-section-1367/> ("Adverse determinations of admissibility or deportability against an alien are not made using information furnished solely by prohibited sources associated with the battery or extreme cruelty, sexual assault, human trafficking or substantial physical or mental abuse, regardless of whether the alien has applied for VAWA benefits, or a T or U visa... If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees should treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information. Further, DHS employees receiving information solely from a prohibited source do not take action on that information unless there is an independent source of corroboration.").

³⁶⁴ Victims of Trafficking and Violence Protection Act of 2000, § 102(17), Pub. L. No. 106-386, 114 Stat. 1464. ("[v]ictims are repeatedly punished more harshly than the traffickers themselves.").

³⁶⁵ 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.

³⁶⁶ 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(5)) (2016).

³⁶⁷ *DHS U and T Visa Resource Guide* at 8, 13.

best witness and prosecutors decide not to use this victim as a trial witness. The application submitted to DHS also includes a detailed affidavit from the crime victim, evidence of the criminal activity, and fingerprints from which DHS does a full criminal background check.³⁶⁸ DHS employs rigorous standards to check the credibility of every applicant.³⁶⁹

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

Judges may sign certifications or declarations for victims who have not yet secured legal representation or victim advocate assistance.³⁷⁰ Judges and other certifiers should refer crime victims to agencies in the community with experience assisting immigrant victims who can assist in determining which crime victim remedies the victim qualifies for, can provide social services and can help the victim file applications with DHS.³⁷¹ Judges are encouraged to sign certifications/declarations, provide the victim a copy, and refer victims to community groups or organizations that can provide legal advice, representation, and victim advocacy support.

Can the judge maintain relationships with community organizations that work with immigrant victims of violence?

A report funded by the National Institute of Justice recommends that courts work with community-based organizations as part of an effective response to the needs of domestic violence victims with limited-English proficiency. The report suggests coordination with justice system partners, domestic violence service providers, and organizations working with immigrant communities. It further encourages courts to proactively reach out to community-based organizations in order to discover barriers to access for immigrant domestic violence victims.³⁷²

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

This may be a concern for prosecutors. NIWAP at American University, Washington College of Law working in collaboration with AEQUITAS, the Prosecutors Resource has developed a series of tools and training for prosecutors working on cases involving immigrant crime victims.³⁷³ Please refer any prosecutors to NIWAP and AEQUITAS by sending an e-mail to niwap@wcl.american.edu or calling (202) 274-4457.

³⁶⁸ *Id.* at 26.

³⁶⁹ *Id.*

³⁷⁰ 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 expired due to delays in the victim attaining legal representation. Note, victims are not required to because the attorney has to apply for the U visa.

³⁷¹ See *National Directory of Programs With Experience Serving Immigrant Victims* at <http://iwp.legalmomentum.org/reference/service-providers-directory> (for a list of victims services, victim advocates, and legal representation programs with experience working with immigrant victims in your state or local jurisdiction).

³⁷² See Brenda K. Uekert et al., *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders* 10 (2006).

³⁷³ For training tools see, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *Training Materials Prosecutors* (last updated May 2019), <http://niwaplibrary.wcl.american.edu/training-materials-prosecutors>.

U Visa Specific

Can a judge sign a certification when the crime being investigated or prosecuted is not listed as a qualifying crime under the U visa statute?

Yes. There are many instances in which the crime being prosecuted (e.g., drug distribution) is not a crime listed in the U visa, but where a witness in that prosecution has also been a victim of a U visa listed crime (e.g., domestic violence perpetrated by the drug dealer).³⁷⁴ When the victim has come forward and is willing to assist with the detection, investigation, or prosecution of the domestic violence, the certification can be based on the domestic violence case. The certifying judge need only state that the individual is a victim of a qualifying crime.³⁷⁵ It is not necessary that the qualifying criminal activity³⁷⁶ be the crime that law enforcement and prosecutors have chosen to investigate or prosecute.³⁷⁷

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

No. If the judge does not believe that the individual seeking certification is a victim of a qualifying criminal activity, the judge should not sign the certification unless it is for an indirect victim (see below). The Department of Homeland Security recognizes that a “qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity.”³⁷⁸ Whether an immigrant has been a victim of a qualifying criminal activity is not determined by the alleged crime being that the prosecutor would base its case on. A victim of domestic violence can be a witness in a drug, gang, or firearms prosecution. Drug, gang, and firearms crimes are not U visa crimes. However, in some instances the witness that the prosecution needs in the drug case, is the “girlfriend” of the drug dealer who was also a victim of domestic violence. When the immigrant victim witness has been helpful or is willing to be helpful in

³⁷⁴ *DHS U and T Visa Resource Guide*, note 7 at 7 (“These are not specific crimes or citations to a criminal code; various federal, state, and local statutes could fall into these general categories of crime. One exception is “Fraud in Foreign Labor Contracting,” which is the federal offense defined at 18 USC 1351.”).

³⁷⁵ 72 Fed. Reg. 53013, 53038 (2007).

³⁷⁶ *DHS U and T Visa Resource Guide*, note 8 at 7–8 (“Includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes, as well as any similar activity where the elements of the crime are substantially similar. “Substantially similar” typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity. For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation, or prosecution is armed robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes, therefore armed robbery may be “substantially similar” to the qualifying crime of felonious assault.”).

³⁷⁷ 72 Fed. Reg. 53013, 53018 (2007) (“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.”).

³⁷⁸ 72 Fed. Reg. 53013, 53018 (2007).

a domestic violence case, there need not be a separate case brought against the perpetrator for the domestic violence. The immigrant victim witness in the drug case can receive certification based the domestic violence. The crime being prosecuted against the perpetrator of a qualifying criminal activity is not the determining factor in the certification. The controlling factor is what criminal activities the victim/witness has suffered and their willingness to be helpful.³⁷⁹

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), incompetency, incapacitation, or under the age of 18.³⁸⁰ The indirect victims can include spouses, children under 21 years of age, and parents of the direct victim. If the direct victim is or was under 21 years of age, parents and unmarried siblings under 18 years of age can also apply as indirect victims.³⁸¹ Parents of U.S. citizen crime victims can be considered indirect victims. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, family members are encouraged to fully participate in the investigation or prosecution and may provide valuable information that would otherwise not be available.³⁸²

AFTER THE CERTIFICATION HAS BEEN SIGNED

Once a certification/declaration is signed, what are the ongoing obligations for a judge?

A judge cannot be held liable for the future actions of a victim for who the judge signed a certification or declaration to whom DHS granted a U or T visa.³⁸³ The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa.³⁸⁴

Although other certifying officials are encouraged to contact DHS under certain circumstances regarding an immigrant victim who received certification, judicial ethical rules and the need to remain impartial preclude judges who sign certifications from any responsibility to follow up with or keep track of victims receiving certifications.³⁸⁵

What DHS expects of non-judicial certifiers is the following:

If a victim later appears not to be a victim or is no longer being helpful/cooperative, a certifying officer may contact the Victims and Trafficking Unit at the Vermont Service

³⁷⁹ *DHS U and T Visa Resource Guide* at 8 (“When completing the Form I-918B, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case.”).

³⁸⁰ 72 Fed. Reg. 53013, 53017 (2007).

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *DHS U and T Visa Resource Guide* at 17.

³⁸⁴ *Id.*

³⁸⁵ As a result of these judicial ethics rules requirements many judicial certifiers cross out the line on the certification form in which the certifier promises to report certain future information about the victim to DHS. See MODEL CODE OF JUDICIAL CONDUCT 1.2 (AM. BAR ASS’N 2020) (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety”).

Center of the U.S. Citizenship and Immigration Services to report any such changes, and may disavow the certification or declaration in writing.³⁸⁶ 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.³⁸⁷ However, such notification is appropriate only when the victim's lack of cooperation is not reasonable. A victim may choose not to continue to provide information or testimony for a number of reasons, including the 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.³⁸⁸ The regulations use a "totality of circumstances" test to assess whether a U visa holder unreasonably refused to provide assistance.³⁸⁹ Some factors to consider in ascertaining whether the victim's lack of cooperation is reasonable are the amount of time that has passed since the victimization, the level of trauma, the availability of victim services and resources, and financial stability.³⁹⁰

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

DHS will investigate the arrest of every person with a pending application. Certifying officials have no duty to track the criminal history or future criminal activity of victims receiving a visa certification or declaration. U and T visa applicants with criminal convictions must disclose these convictions and apply for a waiver related to criminal convictions as part of the U and T visa adjudication process. USCIS has the discretion to grant waivers if it is in the national or public interest to do so. After the U or T visa is granted, DHS will review an individual's updated criminal history when the U or T visa holder applies for lawful permanent residency.³⁹¹ If the U or T visa holder is arrested, fingerprint sharing agreements between DHS and local law enforcement will bring the case to the attention of DHS officials. Once an immigrant is granted lawful permanent residency, a criminal conviction can have immigration consequences that may lead to the immigrant convicted of a crime losing their lawful permanent residency and being removed from the United States. Criminal convictions are closely monitored by the Department of Homeland Security.

³⁸⁶ 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.

³⁸⁷ 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).

³⁸⁸ *DHS U and T Visa Resource Guide* at 18 ("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.").

³⁸⁹ 8 C.F.R. 245.24(a)(5) (2009).

³⁹⁰ 73 Fed. Reg. 75540, 75547 (2008).

³⁹¹ I.N.A. §245(m) (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.).

FOR TECHNICAL ASSISTANCE AND TRAINING

If a judge has questions about a particular case, who can provide guidance? Where might training be available?

The Department of Homeland Security has created a U and T Visa hotline for certifying officials only. Judges with questions about U and T visa certification can call (202) 272-8178 for assistance. There is also a certifying agency 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 not limited to law enforcement officials and is for use by all certifiers. 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. 1367.³⁹²

For judges and court staff seeking technical assistance, training, support or consultation, please contact the National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law at niwap@wcl.american.edu or call (202) 274-4457. NIWAP provides this technical assistance and training in collaboration with a national team of judges who are participating in NIWAP’s Judicial Training Network.³⁹³

³⁹² Zachary B. Perez, Alina Husain, and Leslye E. Orloff, *Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies* (Mar. 29, 2019), http://niwaplibrary.wcl.american.edu/pubs/federal-law-quotes-awa-confidentiality-protections_3-29-19; Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (last updated Apr. 4, 2018), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

³⁹³ On-line webinars on U visa certification by judges and other state and federal government agency certifiers are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training materials for judges on U visa and T visa certification and a range of other topics that arise in cases involving immigrant crime victims and immigrant children are available at <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>. Training is available for judges and court staff by contacting NIWAP, American University, Washington College of Law at (202) 274-4457 or niwap@wcl.american.edu. Details on the technical assistance and training available to judges and court staff is available at <http://niwaplibrary.wcl.american.edu/pubs/training-ta-flyer>.

U-Visa: “Helpfulness” Checklist³⁹⁴³⁹⁵

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 law³⁹⁶ as:

- | | | |
|---|--------------------------|-------------------------------|
| • Abduction | • Hostage | • Rape |
| • Abusive Sexual Contact | • Incest | • Sexual Assault |
| • Blackmail | • Involuntary Servitude | • Sexual Exploitation |
| • Domestic Violence | • Kidnapping | • Slave Trade |
| • Extortion | • Manslaughter | • Stalking |
| • False Imprisonment | • Murder | • Torture |
| • Female Genital Mutilation | • Obstruction of Justice | • Trafficking |
| • Felonious Assault | • Peonage | • Witness Tampering |
| • Fraud in Foreign Labor Contract (8 U.S.C. 1351) | • Perjury | • Unlawful Criminal Restraint |
| | • Prostitution | • 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.³⁹⁷

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 agency³⁹⁸

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³⁹⁶ Department of Homeland Security, U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. <http://niwaplibrary.wcl.american.edu/pubs/dhs-u-visa-guide-2012/> (Hereinafter DHS U and T Visa Resource Guide)

³⁹⁷ DHS U and T Visa Resource Guide at 13.

³⁹⁸ 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/>.

- Prosecutor, including city and states' attorneys and state attorneys' general³⁹⁹
- Federal or State Judge,⁴⁰⁰ commissioner, magistrate,⁴⁰¹ or other judicial officer in a civil, family, juvenile, criminal or administrative law case⁴⁰²
- Child Protective Services⁴⁰³
- Equal Employment Opportunity Commission (EEOC)⁴⁰⁴
- Department of Labor (DOL)⁴⁰⁵
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority⁴⁰⁶

Certifiers can either detect or receive helpfulness.

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

- State police, local police, and sheriffs' offices will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Prosecutors, child/adult protective services, FBI, EEOC
- Prosecutors will receive helpfulness directly and will also be able to detect helpfulness to others. Examples include:
 - Police, child/adult protective services; FBI, EEOC
- Judges, Commissioners, Magistrates and other judicial officials for example will:
 - Detect helpfulness to police, prosecutors, child/adult protective services, the EEOC, or other state, local or federal agencies that the court observes or learns about through pleadings, court filings, and evidence offered
 - Observe helpfulness when victims seek help from the justice system and/or provide evidence of crime victimization in a criminal case, a protection order, divorce, custody, employment enforcement, housing, administrative law or other civil or family court proceeding
 - Observe helpfulness when a victim discloses criminal activity in pleadings, motions or other documents filed with the court
 - Detect helpfulness when victims register with VINE or other victim notification networks or receive Victims of Crime Act (VOCA) assistance
 - Observe helpfulness when victims attend court proceedings and/or work with sheriffs/police who serve protection orders

³⁹⁹ U Visa Rule at 53019.

⁴⁰⁰ U Visa Rule at 53019.

⁴⁰¹ DHS U and T Visa Resource Guide at 16 ("Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.").

⁴⁰² 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/>.

⁴⁰³ 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).

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

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

⁴⁰⁶ DHS U and T Visa Resource Guide at 6.

- 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 statute⁴⁰⁷ and regulations⁴⁰⁸ 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.*”⁴⁰⁹

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 science⁴¹⁰ that in many criminal cases, particularly victims of domestic violence and sexual assault, often find, for very compelling reasons that they cannot further cooperate with requests from law 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 efforts⁴¹¹ or part of the trauma due to crime victimization.⁴¹² These retaliation and witness tampering efforts with immigrant victims often include immigration related abuse — threats of deportation and abusers contacting immigration enforcement officials to provide “tips” designed to trigger immigration enforcement actions, detention, and deportation of the crime victim.

Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of immigrants and other crimes while offering protection to victims⁴¹³ who might “be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”⁴¹⁴ U-visas are intended, in part, to help overcome this reluctance.⁴¹⁵

⁴⁰⁷ I.N.A. Section 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

⁴⁰⁸ 8 C.F.R. 214.14(b)(3).

⁴⁰⁹ DHS U and T Visa Resource Guide at 7. The U visa regulations in 8 C.F.R. 214.14(5) define “investigation or prosecution” as follows:

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

⁴¹⁰ 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).

⁴¹¹ 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>.

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

⁴¹³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,015 (2007).

⁴¹⁴ New Classification for Victims of Criminal Activity; 72 Fed. Reg. 53,014 (2007).

⁴¹⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,552.

*“The findings that Congress expressed in sections 1513(a)(1) and (2) of the [VAWA] make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.”*⁴¹⁶

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

*“There are a number of ways DHS employees might receive “tips” from an abuser or an abuser’s family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.”*⁴¹⁷

In order to ensure that the U visa would properly offer protection for victims in light of Congress’s findings, legislation⁴¹⁸ and regulations⁴¹⁹ were established so that victims would be eligible to file for U visa protections at the very early stages of an investigation. Therefore, victims can receive certification once they demonstrate that they have been, are being, or are likely to be helpful.⁴²⁰

Once the victim obtains a certification based on their past helpfulness, present helpfulness, or likely future helpfulness and file their U visa application, the U visa regulations impose a responsibility upon the U visa applicant/recipient to provide ongoing assistance when reasonably requested.⁴²¹ Those who unreasonably refuse to assist after reporting a criminal activity will not be eligible for a U visa.⁴²²

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

⁴¹⁶ New Classification for Victims of Criminal Activity, 72 Fed. Reg. at 53,018.

⁴¹⁷ 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/>.

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

⁴¹⁹ 8 C.F.R. 214.14(a)(12).

⁴²⁰ 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.”).

⁴²¹ 8 C.F.R. § 214.14(b)(3).

⁴²² DHS U and T Visa Resource Guide at 7.

- Encourage more victims to come forward and report criminal activity;⁴²³
- Offer U visa protection early in the case soon after a victim offered helpfulness;⁴²⁴
- Encourage ongoing cooperation in investigations and prosecutions when reasonably requested;⁴²⁵ and
- Recognize that few victims of domestic violence, sexual assault, child abuse, elder abuser and human trafficking due to trauma, the perpetrator's threat and action, and/or safety concerns may not be able to consistently provide ongoing cooperation every time requested.⁴²⁶

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

- U visa applicants and recipients can receive waitlist approval, be granted the U visa, and be granted lawful permanent residency as U visa holders if they provide ongoing cooperation or if they demonstrate to DHS that they did not refuse to provide help, assistance, or cooperation in an unreasonable manner.⁴²⁷ 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.⁴²⁸
 - 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.⁴²⁹
- Being helpful is **not** related to whether the perpetrator of the criminal activity has a warrant issued, whether the case is ongoing or closed, or whether the perpetrator is charged, arrested, convicted, etc.

⁴²³ Kristina E. Szabo & Leslye E. Orloff, *The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending*, National Immigrant Women's Advocacy Project at 2-3 (2014) (Research has found that once immigrant victims file for immigration relief, they are more willing to turn to the justice system (police, prosecutors, courts) for help), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Qref-SafetyPlanning-06.18.14.pdf>; Kristina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, National Immigrant Women's Advocacy Project at 29-30 (2014), http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/FINAL_Report-on-Early-Access-to-EAD_02.12.pdf.

⁴²⁴ 53019 Fed. Reg. Vol. 72, No. 179. (2007).

⁴²⁵ *Id.*

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

⁴²⁷ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; Department of Homeland Security. 8 C.F.R. Parts

103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view;

⁴²⁸ 8 C.F.R. 245.24(a)(5); 75547 Fed. Reg. Vol. 73, No. 240. (2008); Department of Homeland Security, 8 C.F.R. Parts 103, 212, 214, 245 and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status Vol. 73, No 240 Fed Reg. 75540, 75547(December 12, 2008)(Here in after T and U Adjustment Rule) http://niwaplibrary.wcl.american.edu/immigration/human-trafficking/regulations/HT_Regulations_T%20and%20U%20Adjustment%20Rule%20Fed%20Reg%2012.08.08.pdf/view

⁴²⁹ Leslye E. Orloff, Alina Husain, Alisha Lineswala and Benish Anver, U Visa Quick Reference for Judges (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-judges>; Leslye E. Orloff, Alina Hussain, Alisha Lineswala, Benish Anver and Daniel Enos, U Visa Quick Reference for Law Enforcement and Prosecutors (October 21, 2019) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-quick-reference-guide-for-law-enforcement-and-prosecutors>; NIWAP, American University, Washington College of Law, The Vera Institute Of Justice, Legal Momentum, *U Visa Toolkit for Law Enforcement Agencies and Prosecutors* (2018)(Funded by the Bureau of Justice Assistance and the Office on Violence Against Women, U.S. Department of Justice and the State Justice Institute) (U Visa Toolkit) <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; NIWAP, American University, Washington College of Law, U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officials (2018) <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>.

- Being “helpful” is **independent** from the results of the case.⁴³⁰ Once the victim has provided helpfulness, the “helpfulness” requirement is satisfied even if:
 - An arrest or prosecution cannot take place due to evidentiary or other circumstances;⁴³¹
 - 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;⁴³²
 - The victim has cooperated with law enforcement and the case is dismissed due to the mishandling of evidence or an unlawful search;⁴³³
 - 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);⁴³⁴
 - 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;

⁴³⁰ USCIS Information for Law Enforcement Officials. Immigration Relief for Victims of Human Trafficking and Other Crimes. http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view; NIWAP: U-Visas - Victims of Criminal Activity. http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa-certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view; *U visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement. Homeland Security.* http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u-visa_certification_guide.pdf/view.

⁴³¹ DHS U and T Visa Resource Guide at 11.

⁴³² U Visa Toolkit at 5.

⁴³³ DHS U and T Visa Resource Guide at 11-12.

⁴³⁴ *Information for Law Enforcement Agencies and Judges: Important Things to Remember*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

- Victim is reticent at first to cooperate, but later discloses events or offers helpfulness after better understanding rights or after being provided meaningful language access;
- Victim did not initially report to EEOC, but was identified as a similarly situated class member of the qualifying criminal activity.

Documents that can be used to prove helpfulness:

- Photographs of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity⁴³⁵
- Trial transcripts⁴³⁶
- Court Findings, rulings and other documents⁴³⁷
- Police reports⁴³⁸
- News articles ⁴³⁹
- Copies of Reimbursement form for travel to and from court.⁴⁴⁰
- Affidavits of other witnesses or officials⁴⁴¹

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:⁴⁴²
 - 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: ⁴⁴³
 - 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

⁴³⁵ U Visa Rule at 53024.

⁴³⁶ U Visa Rule at 53024.

⁴³⁷ U Visa Rule at 53024.

⁴³⁸ U Visa Rule at 53024.

⁴³⁹ U Visa Rule at 53024.

⁴⁴⁰ U Visa Rule at 53024.

⁴⁴¹ U Visa Rule at 53024.

⁴⁴² 8 C.F.R. 214.14(b)(2) & (3)

⁴⁴³Department of Homeland Security. 8 C.F.R. Parts 103, 212, et al. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule. September 17, 2007. http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view.

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 victim is willing to sign a medical release form
- Participating in a forensic medical, rape kit, or SART medical examination
- Registering for VINE or other victim notification system
- Victim is willing to answer follow-up questions at a later time
- Identifying and providing background information about the perpetrator
- Providing a history of violence perpetrated by the offender
- Disclosing or reporting prior violence and/or criminal activity to others
- Disclosing criminal activity that the suspect may be involved in
- Disclosing whether the suspect has an existing criminal record or any pending charges
- Victim sought a criminal protection order
- Cooperating as a witness for whom prosecutors seek a criminal stay away as part of bond
- Participating in pre-arrest identification of photo array
- Attending a line-up to identify the perpetrator
- Providing a statement to police, even if there is no arrest
- Providing photographs of injuries
- Providing restitution information
- Attending preparation sessions with the prosecutor
- Testifying at or attending the initial appearance, bond hearing, preliminary hearing, or arraignment
- Testifying as a witness before a grand jury
- Testifying at or attending pre-trial motions
- Testifying at or attending the trial
- Testifying at or attending post-trial motions
- Testifying at or attending sentencing
- Providing a victim impact statement
- Reporting parole/ probation violations
- Testifying at or attending parole hearings
- Testifying at or attending parole/probation violation hearings
- Working with social services, if required
- Serving as a witness in another prosecution or investigation involving the perpetrator

Checklist of Family Law Cases

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

- Victim sought a civil protection order
- Victim sought and/or received a temporary, interim, or ex parte protection order⁴⁴⁴
- 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 or providing any other helpfulness to law enforcement or prosecutors listed on the law enforcement/prosecutors checklist above
- Victim provides the court information about filing or participating in and revealing the U visa listed criminal activity in a civil case including the activities listed in the civil court check list below.

Checklist for Civil Court Cases

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

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

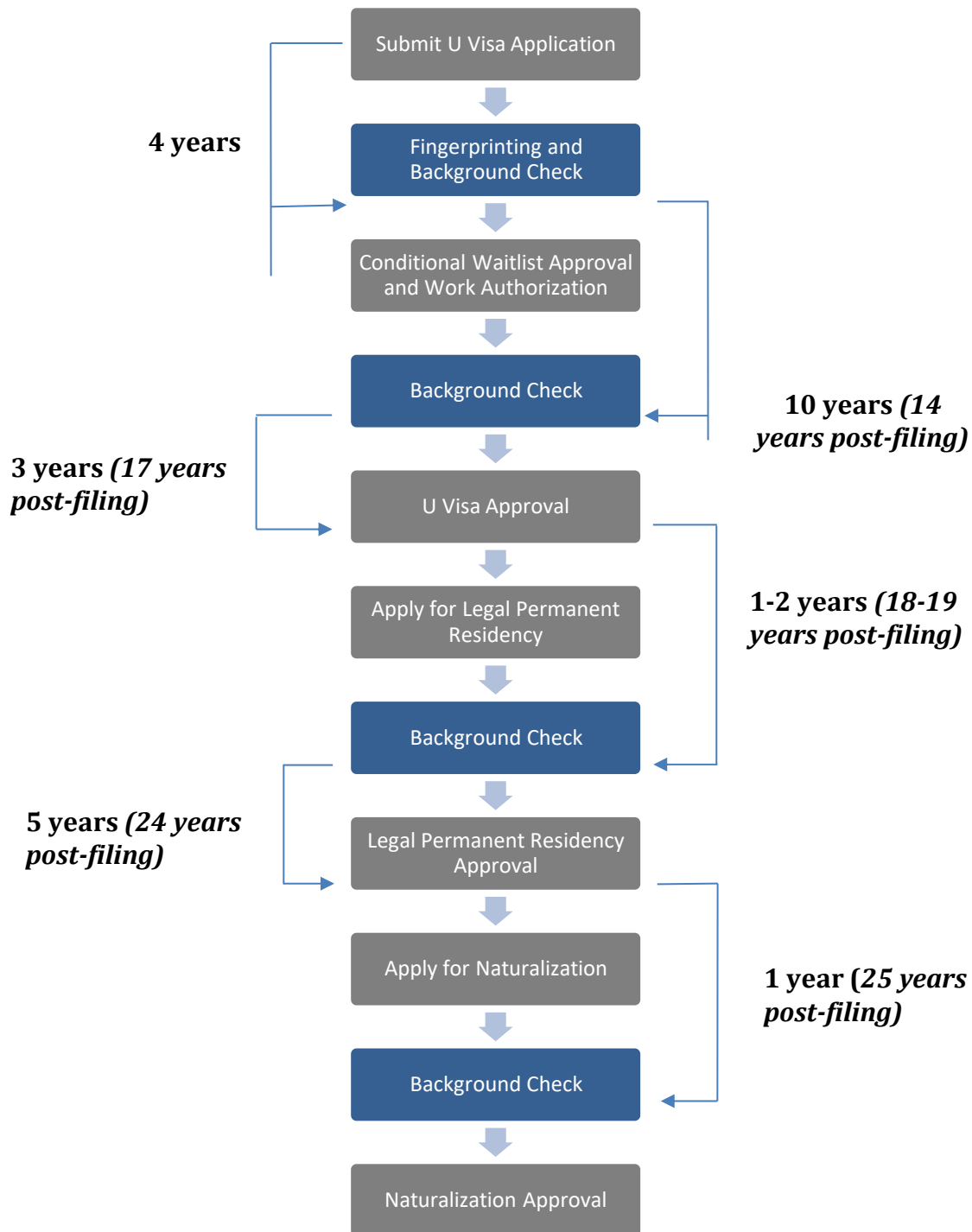
⁴⁴⁴ Certifications signed after the court proceeding has concluded or after the court has issued its final appealable order are signed as an administrative function of the court. Courts considering requests for certification while a civil, family or criminal case is pending will need to provide the parties an opportunity to be heard on the certification request. Judges signing U visa certifications in open cases may need to consider whether judicial ethics rules will allow the judge to continue to hear the case in the future.

- Victim 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.

U Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

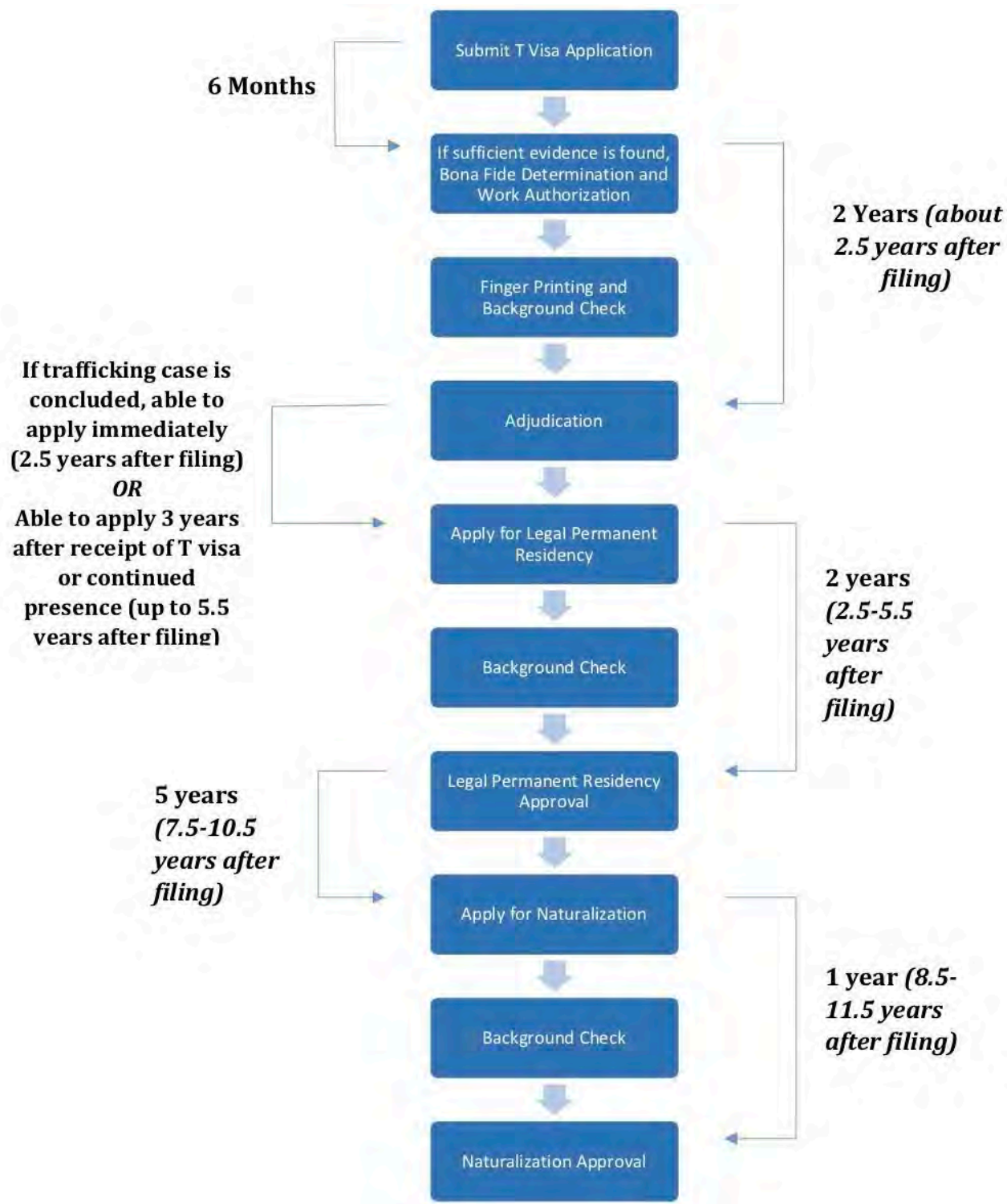
April 9, 2019



T-Visa Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

March 29, 2019





Instructions for Supplement B, U Nonimmigrant Status Certification

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

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

What Is the Purpose of Supplement B?

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

Who May File Supplement B?

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

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

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

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

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

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

USCIS will consider a petitioner a victim of witness tampering, obstruction of justice, or perjury, including any attempt, conspiracy, or solicitation to commit one or more of those offenses if:

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

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

A victim of qualifying criminal activity must provide evidence that he or she has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity as listed in **Part 3.** of this supplement. In the case of a petitioner under 16 years of age or a petitioner who is incapacitated or incompetent, the parent, guardian, or “next friend” of the petitioner may provide evidence on behalf of the petitioner to be helpful to a certifying official’s investigation. “Next friend” is a person who appears in a lawsuit to act for the benefit of a victim under 16 years of age or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian. Being “helpful” means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

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

General Instructions

How to Fill Out Supplement B

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

Specific Instructions

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

Part 1. Victim Information

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

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

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

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

Item Number 5. Gender. Select the appropriate box.

Part 2. Agency Information

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

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

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

A certifying official is:

1. The head of the certifying agency or any person in a supervisory role, who was specifically designated by the head of the certifying agency to issue a U Nonimmigrant Status Certification on behalf of that agency; or
2. A Federal, state, or local judge.

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

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

Part 3. Criminal Acts

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

Item Numbers 4.a. - 7. Indicate whether the qualifying criminal activity violated the laws of the United States or occurred within the United States (including in Indian country and military installations) or the territories and possessions of the United States. Qualifying criminal activity of which the petitioner is a victim had to violate United States law or occur within the United States.

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

4. Territories and possessions of the United States means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

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

Part 4. Helpfulness of the Victim

Item Number 1. Indicate whether the victim possesses information about the crimes. A petitioner must possess information about the qualifying criminal activity of which he or she is a victim. A petitioner is considered to possess information concerning qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning criminal activity that would assist in the investigation or prosecution of the criminal activity. Victims with information about a crime of which they are not a victim will not be considered to possess information concerning qualifying criminal activities.

When the victim is under 16 years of age, incapacitated, or incompetent, he or she is not required to personally possess information regarding the qualifying criminal activity. The parent, guardian, or next friend of the petitioner may provide that information.

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

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

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

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

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

Part 5. Family Members Culpable In Criminal Activity

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

Part 6. Certification

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

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

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

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

Part 7. Additional Information

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

DHS Privacy Notice

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

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

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

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

Paperwork Reduction Act

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



Supplement B, U Nonimmigrant Status Certification

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

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

For USCIS Use Only	Remarks

► **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

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

► A-

--	--	--	--	--	--	--	--	--	--

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

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

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

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

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

5. Gender ☐ Male ☐ Female

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Agency Address

5.a. Street Number and Name

5.b. ☐ Apt. ☐ Ste. ☐ Flr.

5.c. City or Town

5.d. State

5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type

☐ Federal ☐ State ☐ Local

7. Case Status

☐ On-going ☐ Completed

☐ Other

8. Certifying Agency Category

☐ Judge ☐ Law Enforcement ☐ Prosecutor

☐ Other

9. Case Number

10. FBI Number or SID Number (if applicable)

Part 3. Criminal Acts

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

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

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

☐ 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.

Provide a description of any known or documented injury

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

Part 4. Helpfulness Of The Victim

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

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

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

Additional Information.

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

[illegible]

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 7. Additional Information

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

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name	
-------------------------	--

3. A-Number (if any) ▶ A-

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

[illegible]

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

[illegible]

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

[illegible]



Supplement B, U Nonimmigrant Status Certification

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

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

For USCIS Use Only	Remarks

► **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
► A- 12345678

2.a. Family Name (Last Name) Orloff

2.b. Given Name (First Name) Leslye

2.c. Middle Name N/A

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) N/A

3.b. Given Name (First Name) N/A

3.c. Middle Name N/A

4. Date of Birth (mm/dd/yyyy) 08/28/1966

5. Gender ☐ Male ☒ Female

Part 2. Agency Information

1. Name of Certifying Agency
Washington, D.C.

Name of Certifying Official

2.a. Family Name (Last Name) Livingston

2.b. Given Name (First Name) Lora

2.c. Middle Name N/A

3. Title and Division/Office of Certifying Official
Superior Court Judge

Name of Head of Certifying Agency

4.a. Family Name (Last Name) N/A

4.b. Given Name (First Name) N/A

4.c. Middle Name N/A

Agency Address

5.a. Street Number and Name 555 Indiana Avenue NW

5.b. ☐ Apt. ☐ Ste. ☐ Flr. N/A

5.c. City or Town Washington

5.d. State DC 5.f. ZIP Code 20005

5.g. Province N/A

5.h. Postal Code 20005

5.i. Country
USA

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
H-62632-11

10. FBI Number or SID Number (if applicable)
N/A

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)

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

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy) **12/19/2012**
- 2.b. Date (mm/dd/yyyy) **N/A**
- 2.c. Date (mm/dd/yyyy) **N/A**
- 2.d. Date (mm/dd/yyyy) **N/A**

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.

N/A

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 4. Helpfulness Of The Victim

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

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

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

Additional Information.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck. She came to court seeking a protection order, which was granted.

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

(Additional information)

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)	Orloff
2.b.	Given Name (First Name)	William
2.c.	Middle Name	N/A
2.d.	Relationship	Husband
2.e.	Involvement	Defendant
3.a.	Family Name (Last Name)	
3.b.	Given Name (First Name)	
3.c.	Middle Name	
3.d.	Relationship	
3.e.	Involvement	N/A
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)

➡ Judge Lora Livingston

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

07/03/2020

3. Daytime Telephone Number

2025555555

4. Fax Number

2025555556

Part 7. Additional Information

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

1. Agency Name

Washington, D.C.

Petitioner's Name

2.a. Family Name
(Last Name) Orloff

2.b. Given Name
(First Name) Leslye

2.c. Middle Name E

3. A-Number (if any)

► A- 12345678

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

4.d.

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

5.d.

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

Specify
if any;
or N/A



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

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

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

What Is the Purpose of This Form?

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

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

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

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

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

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

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

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

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

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

General Instructions

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach an additional sheet of paper. Write the victim's name and A-Number, if known, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "None."

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

Part A. Victim Information

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

Part B. Agency Information

1. **Name of Certifying Agency.** The certifying agency must be a Federal, State, or local law enforcement agency; prosecutor or authority; or Federal or State judge that has responsibility for the investigation or prosecution, conviction, or sentencing of the trafficking in persons of which the applicant was a victim.
2. **Name of Certifying Official.** Give your name, title, and division or office.
3. **Agency Address.** Give the agency's mailing address.
4. **Daytime Phone Number and Fax Number.** Give your phone number and fax number with area code.
5. **Agency Type.** Mark the appropriate box.
6. **Case Information.** Provide the case status information and case identification number, if applicable.

Part C. Statement of Claim

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

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

Part D. Cooperation of Victim

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

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

Part E. Family Members Implicated in Trafficking

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

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

Part F. Attestation

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

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

How Can I Provide Further Information at a Later Date?

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

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

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

DHS Privacy Notice

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

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

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

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

Paperwork Reduction Act

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



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

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

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

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

PART A. Victim Information

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

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Other Names Used (include maiden name/nickname)

--

Date of Birth (mm/dd/yyyy)

Gender

--

☐ Male ☐ Female

A # (if known)

Social Security # (if known)

--	--

Part B. Agency Information

Name of Certifying Agency

--

Name of Certifying Official

Title and Division/Office of Certifying Official

--	--

Agency Address - Street Number and Name

Suite Number

--	--

City

State/Province

Zip/Postal Code

--	--	--

Daytime Phone # (area code and/or extension)

Fax # (with area code)

[\(USPS ZIP Code Lookup\)](#)

--	--

Agency Type

☐ Federal

☐ State

☐ Local

Case Status

☐ On-going

☐ Completed

☐ Local

Certifying Agency Category

☐ Judge

☐ Law Enforcement

☐ Prosecutor

☐ Other

Case Number

FBI or SID Number (if applicable)

--	--

Part C. Statement of Claim

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

☐ Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

☐ Sex trafficking and the victim is under the age of 18.

For USCIS Use Only

Returned

Receipt

Date

Date

Resubmitted

Date

Date

Reloc Sent

Date

Date

Reloc Rec'd

Date

Date

Remarks

Part C. Statement of Claim (Continued)

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

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

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

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

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

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

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

Date (mm/dd/yyyy)

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

Date (mm/dd/yyyy)

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

The applicant:

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

--

Part E. Family Members Implicated In Trafficking

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

Full Name	Relationship	Involvement

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTPA. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make, no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the acts of trafficking of which he/she is a victim, I will notify USCIS.

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

Date *(mm/dd/yyyy)*

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

Date *(mm/dd/yyyy)*

Printed Name of Supervisor



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

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

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

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

PART A. Victim Information

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

Tobias

Leslye

N/A

Other Names Used (include maiden name/nickname)

N/A

Date of Birth (mm/dd/yyyy)

08/28/1976

Gender

☐

Male

☒

Female

A # (if known)

A-12345678

Social Security # (if known)

123-45-6789

Part B. Agency Information

Name of Certifying Agency

Washington DC

Name of Certifying Official

Lora Livingston

Title and Division/Office of Certifying Official

Superior Court Judge

Agency Address - Street Number and Name

555 Indiana Avenue NW

Suite Number

N/A

City

Washington

State/Province

DC

Zip/Postal Code

20005

[\(USPS ZIP Code Lookup\)](#)

Daytime Phone # (area code and/or extension)

2025555555

Fax # (with area code)

2025555556

Agency Type

☐

Federal

☐

State

☒

Local

Case Status

☐

On-going

☒

Completed

☐

Local

Certifying Agency Category

☒

Judge

☐

Law Enforcement

☐

Prosecutor

☐

Other

Case Number

H-62632-11

FBI or SID Number (if applicable)

N/A

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

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

Date (mm/dd/yyyy)

12/18/2018

Date (mm/dd/yyyy)

N/A

Date (mm/dd/yyyy)

N/A

Date (mm/dd/yyyy)

N/A

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

DC. Code § 22-1834

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

Date (mm/dd/yyyy)

05/09/2019

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

Date (mm/dd/yyyy)

06/03/2020

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

The applicant:

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

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

Part F. Attestation

Based upon probable cause/findings of fact/preponderance of the evidence,

~~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 VTPA. 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)*

Judge Lora Livingston

Date *(mm/dd/yyyy)*

07/03/2020

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

N/A

Date *(mm/dd/yyyy)*

07/03/2020

Printed Name of Supervisor

N/A

Superior Court of California
County of San Francisco
Civil Division

U-Visa Certification Protocol
October 27, 2017

Congress created the U-Visa program for certain victims of criminal activity with the enactment of the Victims of Trafficking and Violence Protection Act of 2000.¹ Under the statute, a non-citizen may be entitled to a U-Visa if the Secretary of the Department of Homeland Security determines that the applicant has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity, and was helpful, is being helpful or is likely to be helpful to law enforcement, prosecutors, judges, or government officials in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity.²

In order to be eligible for a U-Visa, the applicant must obtain a certification from a certifying agency or official³ explaining that the victim has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity.⁴

The Presiding Judge will assign all U Visa certification requests received by the Civil Division of the San Francisco Superior Court to a Judge designated to sign U Visa certifications.⁵ This approach helps ensure uniformity of decision and a clear transparent process for the applicant.

United States Citizenship and Immigration Services (USCIS) Form I-918, Supplemental B, is the document by which an applicant requests a judge's certification.⁶ In order to be entitled to a U-Visa certification, the only three elements the applicant must establish are that they:

- (1) are a victim of a qualifying crime;

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

² Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5), (c)(2)(i); **U.S. Dep't of Homeland Security, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement, Prosecutor, Judges, and Other Government Agencies** 4 (2017) [hereinafter **DHS U Visa Resource Guide**], https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

³ Approved certifying agencies or officials include (1) federal, state or local law enforcement officials, (2) federal, state or local prosecutors, and (3) federal or state judges, administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors. 8 U.S.C. § 1101(a)(15)(U)(i)(III); **DHS U Visa Resource Guide**, *supra* note 2, at 16.

⁴ Admission of Nonimmigrants, 8 U.S.C. § 1184(p)(1); **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

⁵ Courts may select a judicial officer receive and sign U visas on behalf of the court in addition to individual judicial officers being authorized by federal statutes and regulations to sign U visas. No delegation of authority is needed or required in the context of judicial certification. **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁶ This form is available at <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>.

- (2) possesses information concerning a qualifying crime; and
- (3) has been, are being, or are likely to be helpful in the investigation or prosecution of a qualifying crime.⁷

Department of Homeland Security (DHS) regulations define “investigation or prosecution” to include detection, investigation, prosecution, conviction or sentencing of a criminal activity.⁸

DHS takes the position that judges make findings and issue orders not only in criminal cases, but in other types of civil and family court proceedings. For example, in civil protection order, custody and child abuse cases, judges “detect” criminal activity in order to issue protection order, make determination in child abuse proceedings, or award custody.⁹

Qualifying criminal activity includes any one or more of the following enumerated crimes, “or *any similar activity*”: “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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes”.¹⁰ “Similar activity” refers to a criminal activity that may be named differently in a state statute where the nature and elements of the criminal activities are comparable.¹¹

Conviction or even prosecution of the offender are not necessary to obtain a certification. Any investigation, the filing of charges, a prosecution, or a conviction is not required.¹² Seeking a protection order or providing information about the criminal activity in a custody or civil court case is sufficient for certification.¹³ There is no statute of limitations on a certification request.¹⁴ Instead, the applicant must only demonstrate that they possess information concerning the criminal activity enumerated in the statute, and that they are being, has been or is likely to be helpful to in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.¹⁵ “Helpful”, for the purpose of U-Visa applications, “includes providing assistance when reasonably requested.”¹⁶ The helpfulness requirement is an ongoing obligation on the part of the victim to be helpful. Thus, anyone who unreasonably refuses to assist after reporting a

⁷ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); **DHS U Visa Resource Guide**, *supra* note 2, at 6.

⁸ Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5); **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁹ See New Classification for Victims of Criminal Activity U Visa Regulations; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,020 (September 17, 2007) (to be codified at 8 C.F.R. pt. 103, 212, 214, 248, 274a, 299) [hereinafter U Visa Regulations].

¹⁰ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(iii); see Attachment A. California Penal Code Sections.

¹¹ See U Visa Regulations, 72 Fed. Reg. at 53,018; **DHS U Visa Resource Guide**, *supra* note 2, at 7-8.

¹² **DHS U Visa Resource Guide**, *supra* note 2, at 7, 22.

¹³ **DHS U Visa Resource Guide**, *supra* note 2, at 19, 22-23.

¹⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 7, 19.

¹⁵ See Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i)(II-III); **DHS U Visa Resource Guide**, *supra* note 2, at 4, 7.

¹⁶ **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

crime are not eligible for a U-Visa. The duty to remain helpful to law enforcement exists even after a U visa is granted.¹⁷ Federal regulations require federal officials to decide whether a victim's refusal to cooperate was unreasonable examining the totality of the circumstances including but not limited to force, fraud or coercion the victim was subjected to, the nature of the victimization and the specific circumstances of the victim's fear, trauma, age, and maturity.¹⁸ Certifying agencies should inform USCIS of the victim's unreasonable refusal to provide assistance.¹⁹

Whether or not the applicant has suffered substantial mental or physical harm as a result of having been a victim of a qualifying criminal activity—is adjudicated by the USCIC and is not a requirement of the certifying official.²⁰

The official's decision to sign a certification application is discretionary.²¹ Signatures should be in blue ink, photocopies are not acceptable.²² A signed original certification form together with any attachments (e.g. a copy of a court order, photo)²³ should be returned directly to the applicant (or counsel), not to USCIS.²⁴

Judges sign certifications based on information from a variety of sources that include but are not limited to: court's records, transcripts, evidence, court findings, court orders, testimony, and conversations with and notes from any judicial officer involved with the matter. Since judges sign certifications based on factors other than their "investigation of the facts" judges signing U visa certifications may need to amend the U visa certification form to reflect the judges' basis for certification, which can include amendments similar to the following examples:

- Based on my findings and issuance of a protection order
- Based on my finding of probable cause
- Based on my finding in a (custody/divorce/child abuse) case
- Based upon my presiding over the case and hearing evidence
- Based on my review of the court records

The certifying judicial officer may request additional information and/or documents from the applicant, if necessary. If approved the court will return the signed and dated certification to the applicant. If the request is not approved the judicial officer will return the document unsigned document with a cover memo explaining why the certification was not signed.

All California Courts are required to report the number of U visa certifications that were signed and the number of certifications that were not signed to the California Legislature.

Decisions on certification requests must be made with 90 calendar days of the request. If the

¹⁷ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

¹⁸ Adjustment of Aliens in U Nonimmigrant Status, 8 C.F.R. 245.24(a)(5).

¹⁹ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

²⁰ **DHS U Visa Resource Guide**, *supra* note 2, at 6, 24.

²¹ **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²² **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²³ **DHS U Visa Resource Guide**, *supra* note 2, at 13, 25.

²⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 25.

requestor is in removal proceedings the decision on the certification must be made within 14 days.²⁵

Attachments [Can attach following documents to the protocol for additional guidance]:

Department of Homeland Security U and T Certification Resource Guide available at:
https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

Penal Code List

Infographic (See Protections for Immigrant Victims infographic available at:
<http://library.niwap.org/wp-content/uploads/DHS-Protections1.6-links-121516.pdf>)

Sample Certification Form (I-918 Supplement B Form, available at: <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>

²⁵ Immigrant Victims of Crime Equity Act, California Penal Code 679.10.

Sample Information Flyer for Victims

WERE YOU THE VICTIM OF A CRIME?

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

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 contracting¹, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law

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

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

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

If your answer is YES, you and/or your family member may be able to apply for a U visa.

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

If you have an emergency, call 911 right away.

To learn more about the U visa program, contact an immigration attorney, a victim services or family justice center, or someone with expertise in immigration law.

¹ § 8 U.S.C. 1351

¿FUE VÍCTIMA DE UN CRIMEN?

Si usted—o un familiar cercano—fue víctima de un crimen, puede calificar para obtener una visa-U temporal que le proteja de la deportación, si ayuda en la investigación y procesamiento de un crimen.

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

violación, tortura, tráfico de personas, 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, solicitud para cometer cualquier de los crímenes aquí mencionados, o *cualquier actividad similar* que viole la ley.

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

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

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

Si su respuesta es Sí, 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 a la policía. La visa-U le protege de la deportación durante cuatro años. La visa-U le da status legal de inmigración si usted ha sido víctima de un crimen y le permite trabajar legalmente. Si usted ayudó o va a ayudar en la investigación o procesamiento de un crimen.

Para emergencias llame al 911 inmediatamente.

Para más información sobre el programa de 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.

Resource List

Last updated: June 19, 2020

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/>

E-Learning Resources

- Pro Bono Institute “U Visa” Online Training Module (Online Course):
 - Link: <http://niwaplibrary.wcl.american.edu/pbti-u-visa-module>
- February 20, 2020: “The U Visa As a Crime-Fighting Tool: How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions” (Webinar)
 - Link: <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)
 - Link: <http://niwaplibrary.wcl.american.edu/webinar-aps>
- February 18, 2015: “Battered Women’s Justice Project (BWJP) Immigrant Crime Visas: Law Enforcement’s Tool to Strengthen Community Policing” (Webinar)
 - Link: <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)
 - Link: <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)
 - Link: <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)
 - Link: <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)”
 - Link: <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)

- Link: <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”
 - Link: <http://niwaplibrary.wcl.american.edu/dhs-roll-call-videos>
- October 5, 2011: “Law Enforcement and Advocates Partnering to Better Serve Immigrant Crime Victims” (Webinar)
 - Link: <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)
 - Link: <http://niwaplibrary.wcl.american.edu/uvisa-intro-webinar-bja>
- October 31, 2017: “VAWA Confidentiality and Protections for Immigrant Victims of Domestic Violence” (Webinar)
 - Link: <http://niwaplibrary.wcl.american.edu/oct2017vawaconfidentialitywebinar>

Immigration Relief for Crime Victims and Children

Know Your Rights Information

- DHS Interactive Infographic on Protections for Immigrant Victims
<http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516>
- 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
<http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>
- Pathways to Immigration Relief for Students
<http://niwaplibrary.wcl.american.edu/pubs/screening-students-for-immigration-protections/>
- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa
<http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>

Forms of Immigration Relief

- Bench Card: Overview of Types of Immigration Status
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstatustypes>
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims
<http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>
- 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/>
- Courthouse Immigration Enforcement: Steps State Courts Are Taking (2018)
<http://niwaplibrary.wcl.american.edu/pubs/courtroom-enforcement-steps-courts-are-taking/>
- Prosecutorial Discretion: Certain Victim, Witnesses and Plaintiffs
<http://niwaplibrary.wcl.american.edu/pubs/discretion-victims-witnesses-plaintiffs/>

- 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/>
- Glossary of Terms for Work with Immigrant Survivors
<http://niwaplibrary.wcl.american.edu/pubs/glossary-of-terms/>

U and T Visa Certification

Government Materials

- 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>
- USCIS U Visa Certification Factsheet Q&A
<http://niwaplibrary.wcl.american.edu/pubs/imm-relief-victims-trafficking-and-other>
- DHS: Instructions for Form I-914, Supplement B
<http://niwaplibrary.wcl.american.edu/pubs/i-916-supplement-b-instructions>
- DHS: Form I-914, Supplement B for T visa Endorsement
<http://niwaplibrary.wcl.american.edu/pubs/i-914-supplement-b-instructions>
- DHS: Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/i918-supb-certification>
- DHS: Instructions for Form I-918, Supplement B, for U visa Certification
<http://niwaplibrary.wcl.american.edu/pubs/instructions-i1918-unonimm-status>
- Blue Campaign: What You Can Do- Recognizing and Supporting Trafficking Victims in the Courtroom <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-judicial-english>
- **Brochure: Continued Presence & Temporary Immigration Status for Victims of Human Trafficking** <http://niwaplibrary.wcl.american.edu/pubs/continued-presence-temp-imm-status>

Training Materials and Tools

- U Visa Certification Tool Kit for Federal, State, and Local Judges, Commissioners, and Magistrates
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates>
- U Visa Quick Reference for Judges (September 4, 2018)
<http://niwaplibrary.wcl.american.edu/wp-content/uploads/Judges-Toolkit-Quick-Reference.pdf>
- U-Visa Toolkit for Law Enforcement Agencies and Prosecutors
<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors>
- U-Visa: "Helpfulness" Checklist
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-helpfulness-chcklist/>
- State Laws
<http://niwaplibrary.wcl.american.edu/state-u-visa-certification-laws/>
- U-Visa Flow Chart <http://niwaplibrary.wcl.american.edu/pubs/uvisaflowchart/>
- DHS Policy Answers to Law Enforcement Reasons for Not Certifying
<http://niwaplibrary.wcl.american.edu/pubs/dhs-answers-to-reasons-for-not-certifying>
- Collection of U Visa News Articles

http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Tool_UVisaNewsArticles-10-1-13.pdf

- 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/>

- Glossary of Terms for Work with Immigrant Survivors
<http://niwaplibrary.wcl.american.edu/pubs/glossary-of-terms/>
- 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/
- Understanding the Judicial Role in U-Visa Certification, American Journal of Family Law
<http://niwaplibrary.wcl.american.edu/judicial-role-u-visa-cert/>
- Protecting Our Communities and Officer Safety
http://niwaplibrary.wcl.american.edu/pubs/may_june_sheriff
- Sample Questions for Identifying a Trafficked/Enslaved Person
<http://niwaplibrary.wcl.american.edu/pubs/t-visa-screening-tool-7-6-12>
- 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/>

U Visa Certification and State Court Discovery

Criminal

- What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>
- VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-vawa-confidentiality-tool-final-7-24-17/>
- Certifying Early: When Should You Sign a U or T Visa Certification for a Victim?
<http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>
- Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law <http://niwaplibrary.wcl.american.edu/pubs/case-law-quick-reference-tool-7-24-17-final-w-logo/>

Family and Civil Court Discovery

- 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/>
- 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-ava-confidentiality-history-purpose/>
- Utilizing VAWA Confidentiality Protections in Family Court Proceedings**
<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1270>

VAWA Self-Petition

Government

- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the US and Facts about Immigrating on a Marriage-based Visa
<http://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>

Training Materials and Tools

- [VAWA Self-Petitioning Introduction and Flow Charts](http://niwaplibrary.wcl.american.edu/pubs/ava-self-petitioning-intro-and-flow-charts-pdf/)
<http://niwaplibrary.wcl.american.edu/pubs/ava-self-petitioning-intro-and-flow-charts-pdf/>
- VAWA Self-Petitioning Flow Chart for Child Applicants
<http://niwaplibrary.wcl.american.edu/pubs/ava-flow-chart-child/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-ava-selfpet-elder-abuse/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-ava-selfpet-adults>
- Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases

<http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

Language Access

- DOJ Letter to State Chief Justices and State Court Administrators on Access for Limited English Proficient Persons to State Court Proceedings
<http://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter>
- Judicial Bench Card for Court Interpretation

<http://niwaplibrary.wcl.american.edu/pubs/ncsc-bench-card-language-access>

- Serving Limited English Proficient Immigrant Victims**

<https://www.civicresearchinstitute.com/online/article.php?pid=6&iid=1269>

**If you have difficulty accessing this publication please contact for assistance NIWAP at (202) 274-4457 or info@niwap.org

Quick Reference Guide for Judges: VAWA Confidentiality and Discovery Related Case Law

By: Limayli Huguet, Benish Anver, Jane Anderson, and Leslye E. Orloff
March 26, 2019

This quick reference tool has been developed to assist judges ruling on discovery requests in family, civil and criminal court cases. The state and federal court cases listed below provide information and the court's analysis describing how courts ruled when a party seeks to obtain information contained in federal immigration case filed that covered by federal Violence Against Women Act (VAWA) confidentiality laws. The cases also describe courts' responses to attempts to discredit immigrant crime victim witnesses by raising immigration status issues in state criminal and family court cases. While the following state or federal court decisions may not be binding, the legal analysis and rulings made by the courts in the cases below may be applicable and helpful in to judicial decision-making.¹

- I. Federal court decisions addressing discoverability of the U Visa certification, the U Visa case file, the VAWA self-petition case file, and/or other application materials that are protected by VAWA confidentiality:
 - a. Demaj v. Sakaj, No. 3:09 CV 255 JGM, 2012 WL 476168 (D.Conn. Feb. 14, 2012). Motion to Compel U Visa file in child custody case was denied, finding that the disclosure would undermine the purpose of the statute meant to protect the confidentiality of applications. Disclosure of documents relating to the victim's U Visa contradicts the purpose of 8 U.S.C. § 1367 which is "to protect the confidentiality of the applications by preventing disclosure of these documents to alleged criminals as disclosure would allow. . . to interfere with or undermine [victim's] immigration case." *Id.* at 5.
 - b. Hawke v. U.S. Dep't of Homeland Sec., No. C-07-03456 RMW, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008). Finding that the defendant does not have the right to receive absolutely privileged information such as the VAWA self-petition and related records contained in Department of Homeland Security case files. The defendant's Sixth Amendment right to compulsory process does not permit access to such absolutely privileged information. VAWA Confidentiality protects all cases unless the application was denied on the merits. *Id.* at 9.
 - i. "[W]hen an application is denied because it is moot, the petition may contain sensitive information that the policy behind VAWA still urges remain secret."
 - ii. "While Mr. Hawke's Sixth Amendment right to Compulsory Process permits him access to some information held by the government, it does not permit him to receive absolutely privileged information like any records held by DHS here."
 - iii. "Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer."
 - c. U.S. v. Brown, 347 F.3d 1095, 1099 (9th Cir. 2003). Finding that the defendant's right to confront witnesses was not violated when he was denied access to the witness's immigration file and was not allowed to call an expert witness regarding the unusual immigration

¹ Please note: The case law cited in this document is current as of July 2017. When you are working on a case involving the issues discussed in this document it is important to check for additional cases that may have been decided since the publication of this document. If you need technical assistance on a cases involving an immigrant crime victim please contact NIWAP at (202) 274-4457 or info@niwap.org.

circumstances of the witness. The court found that the cross-examination of the witness sufficiently addressed bias/motive.

- i. “Brown sought to subpoena de la Torre’s complete immigration file [and]. . .The district court quashed the subpoena but ordered delivery of selected documents from Brown’s A-File that were in the possession of the prosecution.”
 - ii. “Brown’s cross-examination, even without the benefit of de la Torre’s complete A-File. . .enabled the jury sufficiently to assess de la Torre’s credibility in order to satisfy Brown’s Sixth Amendment rights.”
- d. U.S. v. Locascio, 6 F.3d 924, 949 (2d Cir. 1993). Finding that the prosecution was not in possession of information acquired by federal agencies uninvolved in the state’s investigation or trial.
- e. Cazorla v. Koch Foods of Miss., L.L.C., 838 F.3d 540, (5th Cir. 2016). In an employment action, discovery of U visa case file was limited because the court was concerned that full discovery might intimidate individual claimants, compromise the U visa program, and law enforcement efforts more broadly. The Fifth Circuit directed the district court to craft an approach to discovery that ensures identifying information about individual victims was not revealed. Note: This type of anonymity may not be possible in a criminal prosecution or family court matter.
 - i. “In addition, 8 C.F.R. § 214.14, which implements the U visa program, provides that ‘[a]gencies receiving information under this section. . .are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.’ “
 - ii. “Allowing U visa discovery from the claimants themselves in this high-profile case will undermine the spirit, if not the letter, of those Congressionally sanctioned assurances and may sow confusion over when and how U visa information may be disclosed, deterring immigrant victims of abuse—many of whom already mistrust the government—from stepping forward and thereby frustrating Congress’s intent in enacting the U visa program.”
 - iii. “In sum, allowing discovery of U visa information may have a chilling effect extending well beyond this case, imperiling important public purposes.”

II. State court decisions addressing discoverability of the U visa certification and/or other application materials that are protected by VAWA confidentiality

- a. State v. Marroquin-Aldana, 2014 ME 47, 89 A.3d 519, 531 (Me. 2014). The Supreme Judicial Court of Maine found that the lower court did not err in denying the defendant access to the victim’s entire immigration file. This Court found it sufficient that U visa certification was provided in discovery and that the defendant had the opportunity to cross-examine the victim and call credibility into question. It also noted the heightened protections given to “documents filed with immigration authorities pursuant to federal law.” *Id.* at 525.
 - i. “[T]he court concluded that there was insufficient justification for disclosure of the documents because the State had already produced a copy of the District Attorney’s certification in support of Lissette’s U visa application, and Marroquin-Aldana could therefore call Lissette’s credibility into question based on her assistance with Marroquin-Aldana’s prosecution.”

III. State court decisions addressing defense counsel’s use of lack of immigration status and/or pursuing immigration relief during cross-examination:

- a. Guardado v. State, No. 2397, 2015 WL 5968756 (Md. App. Oct. 14, 2015). Holding that the trial judge properly limited the scope of the cross-examination of the victim about her immigration status where the “defense offered no evidence that [the victim] lacked stable immigration status, that she could be eligible for some sort of favorable immigration treatment as a crime victim, or, if it exists, that she was aware of the program at the time she identified [the defendant] as her assailant.”

IV. State court decisions regarding the admissibility of the victim’s U visa application:

- a. State v. Buccheri-Bianca, 312 P.3d 123, 127-128 (Ariz. Ct. App. 2013), review denied (Feb. 11, 2014). Holding that the trial court did not err in excluding the immigration status of the victims because it found that the possible grant of a U visa was not the motivation for the disclosure of the crime and therefore, was irrelevant.
 - i. “As discussed above, the trial court properly excluded evidence of Maya’s U-Visa application after finding that the possibility of immigration relief did not motivate the accusations in this case.”
- b. Briggs v. Hedgpeth, No. C 11-3237 PJH, 2013 WCL 245190, at *15 (N.D. Cal. Jan. 22, 2013) aff’d, 585 F.App’x 454 (9th Cir. 2014). Finding that it was erroneous to preclude the defense from asking about U visa benefits that were offered to the victim, but also found that it was harmless error because there was substantial evidence of the crime.

V. Other relevant case law

- a. People v. AlvarezAlvarez, No. G047701, 2014 WL 1813302, at 5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014). Finding that the trial court was well within its discretion to exclude reference to the U visa and that the defendant had other opportunity to question the credibility of the witness.
 - i. “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status. . .which was completely irrelevant to this case.”

Sample Memorandum in Support of Motion for U Visa Certification

(begins on the next page)⁴⁴⁶

⁴⁴⁶ Developed by Jennie Pasquarella, ACLU of Southern California; Madhu Sharma, Stone & Grzegorek LLP (California); Brianna Fuller, Jeffrey Aaron & Kay Otani, Federal Public Defender for the Central District of California; and Legal Momentum.

[INSERT COURT NAME AND JURISDICTION]

[INSERT PARTY NAME]

v.

[INSERT PARTY NAME]

.

NO. [INSERT DOCKET NUMBER]

**MEMORANDUM IN SUPPORT OF
MOTION FOR U VISA
CERTIFICATION**

Judge: [INSERT JUDGE NAME]

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C. Applicants are detected to be victims of qualifying crimes that this Court is "investigating or prosecuting."	X
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INTRODUCTION

[*Insert applicant name*] (hereinafter "Applicants") file this motion to respectfully request this Court to sign [*his/her/their*] certification form[s] so that the [*he/she/they*] may apply for the U visa.

The U visa is a form of immigration relief specially designed to protect victims of certain criminal activity who are helpful to the investigation, prosecution, detection, conviction, or sentencing of criminal activity. With the required certification, which may be signed by a state or federal judge, Applicants can then apply for the U visa with the U.S. Citizenship and Immigration Service ("USCIS").

Applicants currently reside in the United States. However, they have not received any immigration protection to legalize their status and enable them to work to support themselves despite their helpfulness in the [*investigation/prosecution/detection/sentencing/conviction*] of criminal activity. The U visa would provide them lawful status for a four-year period, as well as employment authorization.

U visa certification is appropriate in this case because Applicants are detected victims of qualifying criminal activity and [*have been helpful/will be helpful*] in the [*detection/investigation/prosecution/conviction/sentencing*] of the perpetrators. Applicants' need for protection against deportation, immigration relief and a work permit has grown more exigent. [*explain exigent circumstances*] Given the exigencies of their circumstances, we ask this Court to consider this motion and sign Applicants' U visa certifications on an expedited basis.¹ Attached as Exhibit[s] are a proposed completed certification form and a blank form for the court's convenience..

FACTUAL BACKGROUND

[*Describe the qualifying criminal activity that was perpetrated against the victim. Qualifying criminal activity includes: 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 crimes, or any similar activity in violation of federal, state, or local criminal law. Describe any evidence of applicants' helpfulness or willingness to be helpful to the detection, investigation, or prosecution of the criminal activity. 2]*

¹ Although Immigration and Customs Enforcement ("ICE") and law enforcement agencies are also certifying officials for the purpose of the U visa certification, this Court is the most appropriate certifying entity because it can neutrally execute the certification in accordance with the statute and the governing regulations.

² Since VAWA Confidentiality 8 U.S.C. 1367 protect U and T visa case files and prohibit release of information about U and T visa cases, it is important that the fact of the case described here be the facts already contained in the records of the court from with counsel is seeking U or T visa certification. Additional information included in the motion that goes beyond what is already contained in court records could become discoverable in a criminal case brought against the perpetrator.

ARGUMENT

I. This Court Has Jurisdiction to Consider this Motion and Certify Applicants for the U visa.

This Court has jurisdiction to consider this motion. Congress has authorized the granting of U visas, and regulations implementing that provision make clear that judges can certify victims for the U visa. 8 C.F.R. § 214.14(c)(2)(i) (certifying official may be a “Federal, State, or local judge”); 8 U.S.C. § 1101(a)(15)(U)(i)(III). *See also Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008) (“It is undisputed that a federal judge is qualified to ‘certify’ U visa applications.”).

II. This Court Should Certify Applicants for U visa Relief.

Congress created the U visa in order to “strengthen the ability of law enforcement agencies to investigate and prosecute” certain crimes, while offering “protection to victims of such offenses in keeping with the humanitarian interests of the United States.” 72 Fed. Reg. 53015; Violence Against Women Act of 2000, §1513(a)(2)(A), 114 Stat. at 1533–34 (codified at 8 U.S.C. § 1101 (2000)). “Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.” 72 Fed. Reg. 53015.

In order to apply to USCIS for a U visa, an applicant must obtain a certification of “helpfulness” from a “certifying agency” on Supplement B to Form I-918, also known as “U Nonimmigrant Status Certification.” 72 Fed. Reg. 53020; *see* 8 C.F.R. § 214.14(c)(2)(i). The “U Nonimmigrant Status Certification” confirms that the applicant “has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.” 8 C.F.R. § 214.14(a)(12).³

The crimes that qualify for U visa protection include “one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States”:

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

³ An individual is eligible for the U visa if they (1) suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; (2) possesses information concerning the qualifying criminal activity; (3) was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal act to, *inter alia*, a federal law enforcement official, a federal prosecutor, or a federal judge; and (4) the criminal activity violated the laws of the United States or occurred in the United States. 8 U.S.C. § 1101(a)(15)(U)(i) (eligibility criteria); 8 C.F.R. § 214.14(b)(1)-(4) (same). An applicant must demonstrate to the satisfaction of the USCIS that he or she meets all of the U visa eligibility requirements in order for USCIS to grant the U visa application. 8 C.F.R. § 214.14(c)(4). At the certification stage, however, a certifying official need only consider the requirements for certification. *See* 8 C.F.R. § 214.14(c)(2)(i) (certification requirements).

to commit any of the above mentioned crimes.⁴ 8 C.F.R. § 214.14(a)(9). “The term ‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” *Id.*

To certify a victim for the U visa, the certifying official must be able to attest that five factors are present: (1) the person certifying is “the head of the certifying agency or is a Federal, State, or local judge” and that the authority is responsible for the “detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity;” (2) that the applicant has been a victim of a qualifying criminal activity; (3) that the petitioner possesses information concerning the qualifying criminal activity; (4) that the petitioner “has been, is being, or is likely to be helpful to the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity”; and (5) that the qualifying criminal activity violated U.S. law or occurred within the United States. 8 C.F.R. § 214.14(c)(2)(i).

U visa certification is appropriate in this case because the five factors required for certification are present.

1. The Honorable Judge [insert name] is a “certifying official.”

The first factor is satisfied because a judge is a “certifying official” who may sign the certification. 8 C.F.R. § 214.14(c)(2)(i) (certifying official may be a “Federal, State, or local judge”). *See also Garcia v. Audubon Communities Management, LLC*, 2008 WL 1774584 (E.D. La. 2008) (“It is undisputed that a federal judge is qualified to ‘certify’ U visa applications.”); 72 Fed. Reg. 53023–24.

2. This Court has before it sufficient evidence establishing that there is probable cause to believe that the immigrant has been a victim of qualifying criminal activity.

The second factor is satisfied because this Court is authorized by the Department of Homeland Security to detect of qualifying criminal activity in the case before the court anytime the court hears a case or at any stage of a case has probable cause to believe that a non-citizen has been a victim of criminal activity and has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of a criminal, civil, family or administrative law case in which the facts of the criminal activity are revealed by the victim.⁵ *[Describe the court’s role in the present case. This may include participation in a criminal case, a judicial finding of violence in a protection order or custody case, detection of criminal activity in a civil, probate, small claims, immigration, or employment case. It is important to note that the judge from which certification is being sought may or may not be the judge who heard the criminal, civil, or family law case involving the victim.]*

⁴ As amended by the Violence Against Women Reauthorization Act of 2013.

⁵ 8 C.F.R. § 214.14(a)(5). In defining the U visa statutory requirement regarding the victim’s helpfulness in a “investigation or prosecution”, the Department of Homeland Security determined that “Investigation or prosecution should be interpreted broadly” in order to give effect to the statute, which authorizes judges to sign certifications. The DHS rule defines “investigation or prosecution” to include helpfulness in detection, investigation, prosecution, conviction or sentencing. 72 Fed. Reg. 53020.

The U visa regulations explicitly provide that judges, whether state or federal, can certify for the U visa at the outset of the case, before a finding of fact or criminal disposition in the case, by requiring only that the criminal activity be *detected*. Detection is akin to probable cause. Indeed, the regulations state “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 they may be helpful at some point, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation.” 72 Fed. Reg. 53019. *See Audubon Communities Management*, 2008 WL 1774584, *3 (E.D. La. 2008) (discussing when certification is appropriate).⁶

First, this court has [*made findings or probable cause to believe*] and has under DHS rules therefore *detected* that one or more the qualifying criminal activities occurred, including, *inter alia*, [*Insert each of the types of qualifying criminal activities that apply in the case.*]⁷

[*Define the applicable qualifying criminal activity. Include relevant statutory offenses, judicial interpretation of those offenses, and other authorities. It is important to cite state law. The judge will need to include those state law citations in the certification form.*]

Here, the court has [*found or has probable cause to believe*], and under DHS rules has therefor *detected* that the Applicants [*is/are*] are victims of these criminal activities. [*Explain how the activity perpetrated against the victim constitutes the specified qualifying criminal activity.*]

Second, this Court is “investigating or prosecuting” these qualifying crimes within the meaning of the U visa statute and the U visa regulations. Recognizing that “[j]udges neither investigate crimes nor prosecute perpetrators,” USCIS interprets the term “investigation or prosecution” broadly, 72 Fed. Reg. 53020, to encompass “the *detection* ...of qualifying crime or criminal activity” as well as the “prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” 8 C.F.R. 214.14(a)(5) (emphasis added). Accordingly, when this court has [*issued rulings, made findings, or has probable cause to believe*] that a qualifying criminal activity occurred and that he applicants are victims of one or more of these criminal activities, the Court has *detected*, under the DHS rules, the qualifying criminal activity based on the facts before it in order to certify at the outset of a case. This Court has [*Insert court actions that represent detection of qualifying criminal activity, or involvement in conviction or sentencing*] that is able to confirm that the criminal activity occurred and that the applicant is the victim of the criminal activity.

3. Applicants possess information concerning the qualifying criminal activity.

⁶ The government need not be prosecuting the qualifying crimes in order for a judge to “detect” that the victims suffered qualifying criminal activity. *See, e.g., Audubon Communities Management*, 2008 WL 1774584 (E.D. La. 2008) (judge in a civil case involving labor exploitation granted Plaintiffs’ motion for U visa certification and signed the certifications even though the government was not prosecuting the qualifying criminal activity).

⁷ This Court need only “detect” that Applicants were victims of one of the qualifying crimes, even if they may be victims of more than one qualifying crime. 8 C.F.R. § 214.14(a)(9) (qualifying crimes include “one or more” of the enumerated crimes).

The third factor is satisfied because Applicants possess information concerning the qualifying criminal activity. The regulations explain that a U visa applicant must have “knowledge of the details” and “possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution.” 8 C.F.R. § 214.14(b)(2). *[Explain how the victim has knowledge of the details of the criminal activity.]*

4. Applicants are “helpful” to the investigation or prosecution.

Similarly, the fourth factor is satisfied. *[Explain how the victim has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity. Include instances where the victim provided information regarding the qualifying criminal activity to law enforcement authorities, investigative agencies, and/or to the courts in pleadings, at hearings, in testimony, by appearing at court, by bringing their children to court proceedings involving the children.]*

5. Applicants are victims of qualifying criminal activity that violated U.S. law or occurred within the United States.

Finally, the fifth factor is clearly satisfied as the qualifying criminal activity was perpetrated in *[Insert location]* and, as discussed above, violated numerous *[state and/or federal]* criminal laws.

CONCLUSION

Applicants are detected to be victims of serious criminal activity and have *[Insert explanation of helpfulness or willingness to be helpful]*. Congress created the U visa precisely for this situation: to enable immigrant victims of crimes, such as Applicants, to safely remain in the United States and to pursue justice through the *[civil/family/criminal]* court system. This is particularly true where, as here, an immigration benefit precisely designed for this purpose is available.

For these reasons, we respectfully request that the Court sign Applicants’ certification forms for the U visa. A set of proposed completed Form I-918 Supplement B corresponding to each Applicant is attached hereto as Exhibits X-XX. USCIS instructions regarding Form I-918 Supplement B are also attached as Exhibit X.

DATED:

Respectfully Submitted,

Sample Declaration for Motion for Certification

(begins on next page)

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PARTY])	
)	
Plaintiffs,)	
)	
v.)	Action No. [DOCKET NUMBER]
)	
[INSERT NAME OF PARTY])	
)	
Defendants.)	
)	

DECLARATION OF [INSERT NAME OF APPLICANT]

Declarant, [*Insert name of applicant*], comes now upon penalty of perjury and declares that the following is true to his knowledge, recollection and belief.

1. My name is [*Insert name of applicant*], and I am over eighteen years old and am in all respects competent to give this Declaration. This Declaration is submitted in support of Petitioners' motion for certification.

2. I am an applicant for a U visa. The application for a U visa requires a certification from the head of a certifying agency or a Federal, State, or local judge.

3. On or about [*Insert date of criminal activity. If criminal activity occurred on multiple dates, include the phrase "and on dates prior" or the date of the most recent criminal activity*], in [*Insert location of criminal activity*], [*Describe criminal activity. Provide descriptions of physical*

conditions, length of conditions, actions of the perpetrators, injuries, subsequent effects on the victim, etc. Description of the actions of the perpetrators should include physical violence committed against the victim or the victim's family members or property; verbal abuse; withholding of food, water, or money; and threats, including, but not limited to, threats of violence, threats to report the victim to immigration authorities. The description should be limited to the information in the court record. In cases where the court has already ruled in the case best practice would be to state here that the victim was involved in a court proceeding and they attach and incorporate by reference the court order issued by the judge in the case. If the judge issued their ruling on the record the affidavit could identify the court proceeding by case number and provide the date, time and name of the judge that issued the oral ruling in the case. ⁴⁵⁴]

4. *[Describe other instances of criminal activity committed against the victim by the same perpetrators.]*

5. *I possess information about the criminal activity described. [Describe how the victim possesses such information.]*

6. *I [have been/am being/am likely to be] helpful in the detection, investigation and/or prosecution of the criminal activity described. [Describe reports about the specific criminal activity made to police, government agencies, or courts, including police report, interviews with police investigators and prosecutors, phone calls, formal complaints, pleadings filed attesting to the criminal activity in protection order, divorce, custody, child abuse, or other court actions, testimony in civil, criminal, or family proceedings. There is no time limit on when these reports were made as long as the reports were about the criminal activity described above. Highlight any prior contact with the court from which the victim is seeking certification.]*

⁴⁵⁴ Since VAWA Confidentiality 8 U.S.C. 1367 protect U and T visa case files and prohibit release of information about U and T visa cases, it is important that the fact of the case described here be the facts already contained in the records of the court from with counsel is seeking U or T visa certification. Additional information included in the motion that goes beyond what is already contained in court records could become discoverable in a criminal case brought against the perpetrator.

7. Despite my willingness to help [*Federal/state/local*] law enforcement, I live in fear of deportation. A U visa certification will allow me to apply to the Department of Homeland Security for the U visa. Without temporary lawful immigration status, I do not have employment authorization and cannot work to support my family and myself. [*Describe circumstances that make immigration status critical to the victim, such as safety and family concerns.*]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [*Enter date*].

Sample Memorandum in Support of Motion for T Visa Declaration

(begins on the next page)

[INSERT COURT NAME AND JURISDICTION]

[INSERT PARTY NAME]

v.

[INSERT PARTY NAME]

.

NO. [INSERT DOCKET NUMBER]

**MEMORANDUM IN SUPPORT OF
MOTION FOR T VISA
DECLARATION**

Judge: [INSERT JUDGE NAME]

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INTRODUCTION

[*Insert applicant name*] (hereinafter “Applicants”) file this motion to respectfully request this Court to sign [*his/her/their*] declaration form[s] for the T visa application.

The T visa is a form of immigration relief specially designed to protect victims of a severe form of trafficking in persons who have complied with any reasonable request from a law enforcement agency (including a judge) for assistance in the investigation or prosecution of human trafficking, or is under 18 years of age, or is unable to assist due to physical or psychological trauma. 8 C.F.R. § 214.11(d)(3)(i). To apply for the T visa with the U.S. Citizenship and Immigration Service (“USCIS”), Applicants can submit a T visa declaration, a useful form of evidence that may be signed by a state or federal judge.

Applicants currently reside in the United States. However, they have not received any immigration protection to legalize their status and enable them to work to support themselves despite their assistance in the [*detection/investigation/prosecution/detection/sentencing/conviction*] of human trafficking. The T visa would provide them lawful status for a four-year period, as well as employment authorization.

T visa declaration is appropriate in this case because Applicants are detected victims of a severe form of trafficking in persons and have complied with any reasonable request from a law enforcement agency for assistance in the [*detection/investigation/prosecution/sentencing/conviction*] of human trafficking, [*or is under 18 years of age, or is unable to assist due to physical or psychological trauma*]. Applicants’ need for protection against deportation, immigration relief and a work permit has grown more exigent. [*explain exigent circumstances*] Given the exigencies of their circumstances, we ask this Court to consider this motion and sign Applicants’ T visa declarations on an expedited basis.¹ Attached as Exhibit[s] are a proposed completed certification form and a blank form for the Court’s convenience.

FACTUAL BACKGROUND

[*Describe the qualifying criminal trafficking activity that was perpetrated against the victim. Qualifying criminal trafficking activity includes: 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. 8 C.F.R. § 214.11(a).*]

¹ Although Immigration and Customs Enforcement (“ICE”) and law enforcement agencies are also certifying officials for the purpose of the T visa declaration, this Court is the most appropriate certifying entity because it can neutrally execute the declaration in accordance with the statute and the governing regulations.

Describe any evidence of applicants' compliance with any reasonable request from a law enforcement agency, or their age (under 18), or their physical or psychological trauma that prevents them from assisting. ^{2]}

ARGUMENT

I. This Court Has Jurisdiction to Consider this Motion and Certify Applicants for the T visa.

This Court has jurisdiction to consider this motion. Congress has authorized the granting of T visas, and regulations implementing that provision make clear that judges can certify victims for the T visa. 8 C.F.R. § 214.11(a) (“Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children’s protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.”); 8 C.F.R. § 214.11(d)(3)(i) (“An LEA endorsement is optional evidence that can be submitted to help demonstrate victimization and/ or compliance with reasonable requests.”)

II. This Court Should Certify Applicants for T visa Relief.

Congress created the T visa in order to strengthen the ability of law enforcement 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. Trafficking Victims Protection Act of 2000, § 102(b); 72 Fed. Reg. 92266, 92269.

The T visa declaration is supplementary evidence that law enforcement agencies including judges can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests. 8 C.F.R. § 214.11(d)(3)(i). It is not a required document or conclusive evidence for a T visa application, but when provided, is useful evidence. 72 Fed. Reg. 92266, 92276. In 2016, DHS has adopted the Violence Against Women Act’s “any credible evidence” standard with the intention to encourage state and federal government agencies and judges to sign more declarations. *Id.*

To certify a victim for the T visa, the certifying official must be able to attest that four factors are present: (1) the person certifying is a “law enforcement agency;” (2) that the person has the responsibility and authority for the “detection, investigation, and/or prosecution of severe forms of trafficking in persons;” (3) that the applicant has been a victim of a severe form of trafficking in persons; and (4) that the applicant has complied with any reasonable request from a law enforcement agency (including a judge) for assistance in the detection, investigation, and/or prosecution of human trafficking, or is under 18 years of age, or is unable to assist due to physical or psychological trauma. 8 C.F.R. § 214.11(d)(3)(i).

² Since VAWA Confidentiality 8 U.S.C. 1367 protect U and T visa case files and prohibit release of information about U and T visa cases, it is important that the fact of the case described here be the facts already contained in the records of the court from with counsel is seeking U or T visa certification. Additional information included in the motion that goes beyond what is already contained in court records could become discoverable in a criminal case brought against the perpetrator.

T visa declaration is appropriate in this case because the four factors required for declaration are present.

A. The Honorable Judge [insert name] is a “law enforcement agency.”

The first factor is satisfied because a judge is a “law enforcement agency” who may sign the declaration. 8 C.F.R. § 214.11(a); 72 Fed. Reg. 92266, 92276 (“this rule ... expands the definition of “Law Enforcement Agency (LEA)” to allow for any Federal, State or local law enforcement agency, prosecutor, judge, labor agency, or other authority that has responsibility for the detection, investigation, and/or prosecution of severe forms of trafficking in persons to complete an LEA endorsement.”)

B. The Honorable Judge [insert name] has the responsibility and authority for the “detection, investigation, and/or prosecution of severe forms of trafficking in persons.”

The second factor is satisfied because this Court is authorized by the Department of Homeland Security to detect severe forms of trafficking in persons in a criminal, civil, family or administrative law case before the Court anytime the Court hears a case or at any stage of a case has probable cause to believe that a non-citizen has been a victim of a severe form of trafficking in persons. *[Describe the court’s role in the present case. This may include participation in a criminal case, a judicial finding of violence in a protection order or custody case, detection of criminal trafficking activity in a civil, probate, small claims, immigration, or employment case. It is important to note that the judge from which certification is being sought may or may not be the judge who heard the criminal, civil, or family law case involving the victim.]*

C. Applicants have been victims of a severe form of trafficking in persons.

The T visa regulations explicitly provide that judges, whether state or federal, can certify for the T visa at the outset of the case, before a finding of fact or criminal disposition in the case, by requiring only that the criminal activity related to human trafficking be *detected*. Detection is akin to probable cause. Indeed, the regulations state “A formal investigation or prosecution is not required” for a government officials to complete a declaration. 8 C.F.R. § 214.11(d)(3)(i).

This Court has *[made findings/probable cause to believe]*, and has under DHS rules therefore *detected* that one or more the qualifying criminal activities occurred, including, *inter alia*, *[Insert each of the types of qualifying criminal activities that apply in the case, e.g. 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.]* *[Define the applicable qualifying criminal trafficking activity. Include relevant statutory offenses, judicial interpretation of those offenses, and other authorities. It is important to cite state law. The judge will need to include the state law citations on the declaration form.]*

Here, the court [*found or has probable cause to believe*], and under DHS rules has therefore detected that the Applicant[s] [*is/are*] are victims of these criminal human trafficking activities. [*Explain how the activity perpetrated against the victim constitutes the specified qualifying criminal trafficking activity.*]

D. Applicants have complied with any reasonable request from a law enforcement agency [*or are under 18 years of age or are unable to assist due to physical or psychological trauma*].

[*Explain how Applicants have complied with any reasonable request from law enforcement in an investigation or prosecution of human trafficking. Include instances where law enforcement authorities, investigative agencies, and courts requested Applicants to cooperate in pleadings, at hearings, in testimony, or by appearing at court.*]

[*Or explain Applicants are under 18 years of age or how their physical or psychological trauma prevents them from complying with requests.*]

CONCLUSION

Applicants are detected to be victims of a severe form of trafficking in persons and have complied with any reasonable request from law enforcement in an investigation or prosecution of human trafficking [*or are under 18 years of age or are unable to assist due to physical or psychological trauma*]. Congress created the T visa precisely for this situation: to enable immigrant victims of crimes, such as Applicants, to safely remain in the United States and to pursue justice through the [*civil/family/criminal*] court system. This is particularly true where, as here, an immigration benefit precisely designed for this purpose is available.

For these reasons, we respectfully request that the Court sign Applicants' declaration forms for the T visa. A set of proposed completed Form I-914 Supplement B corresponding to each Applicant is attached hereto as Exhibits X-XX. USCIS instructions regarding Form I-914 Supplement B are also attached as Exhibit X.

DATED:

Respectfully Submitted,

Sample Declaration for Motion for T Visa Declaration

(begins on next page)

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PARTY])	
)	
Plaintiffs,)	
)	
v.)	Action No. [DOCKET NUMBER]
)	
[INSERT NAME OF PARTY])	
)	
Defendants.)	
)	

DECLARATION OF [INSERT NAME OF APPLICANT]

Declarant, [*Insert name of applicant*], comes now upon penalty of perjury and declares that the following is true to his knowledge, recollection and belief.

1. My name is [*Insert name of applicant*], and I am over eighteen years old and am in all respects competent to give this Declaration. This Declaration is submitted in support of Petitioners' motion for T visa declaration.

2. I am an applicant for a T visa. A Federal, State, or local judge can sign a T visa declaration to support the application.

3. On or about [*Insert date of criminal trafficking activity. If criminal trafficking activity occurred on multiple dates, include the phrase "and on dates prior" or the date of the most recent criminal trafficking activity*], in [*Insert location of criminal trafficking activity*], [*Describe criminal trafficking activity. Provide descriptions of the severe form of trafficking in persons, length of*

conditions, actions of the perpetrators, injuries, subsequent effects on the victim, etc. The description should be limited to the information in the court record. In cases where the court has already ruled in the case best practice would be to state here that the victim was involved in a court proceeding and then attach and incorporate by reference the court order issued by the judge in the case. If the judge issued their ruling on the record the affidavit could identify the court proceeding by case number and provide the date, time and name of the judge that issued the oral ruling in the case. 457]

4. I have complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking *[Describe reports about the specific criminal trafficking activity made to police, government agencies, or courts, and requests received from them. Evidence may include the police report, interviews with police investigators and prosecutors, phone calls, pleadings filed attesting to the criminal activity in protection order, divorce, custody, child abuse, or other court actions, formal complaints, protection orders, testimony in civil, criminal, or family proceedings. There is no time limit on when the assistance happened, as long as the assistance was related to the criminal trafficking activity described above. Highlight any prior contact with the court from which the victim is seeking declaration.]*

5. Despite my assistance to Federal/state/local law enforcement, I live in fear of deportation. A T visa declaration will strengthen my case for the T visa. Without temporary lawful immigration status, I do not have employment authorization and cannot work to support my family and myself. *[Describe circumstances that make immigration status critical to the victim, such as safety and family concerns.]*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on *[Enter date]*.

⁴⁵⁷ Since VAWA Confidentiality 8 U.S.C. 1367 protect U and T visa case files and prohibit release of information about U and T visa cases, it is important that the fact of the case described here be the facts already contained in the records of the court from with counsel is seeking U or T visa certification. Additional information included in the motion that goes beyond what is already contained in court records could become discoverable in a criminal case brought against the perpetrator.

SCREENING TOOLS

Department of Homeland Security Infographic⁴⁵⁸

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 Relief⁴⁵⁹

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.

⁴⁵⁸ Department of Homeland Security, “Protections for Immigrant Victims,” *available at* <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>.

⁴⁵⁹ National Immigrant Women’s Advocacy Project, “Screening for Victims Who Qualify for Immigration Protective Relief,” *available at* <http://niwaplibrary.wcl.american.edu/pubs/squadcarscreeningbluecard/>.

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/>.

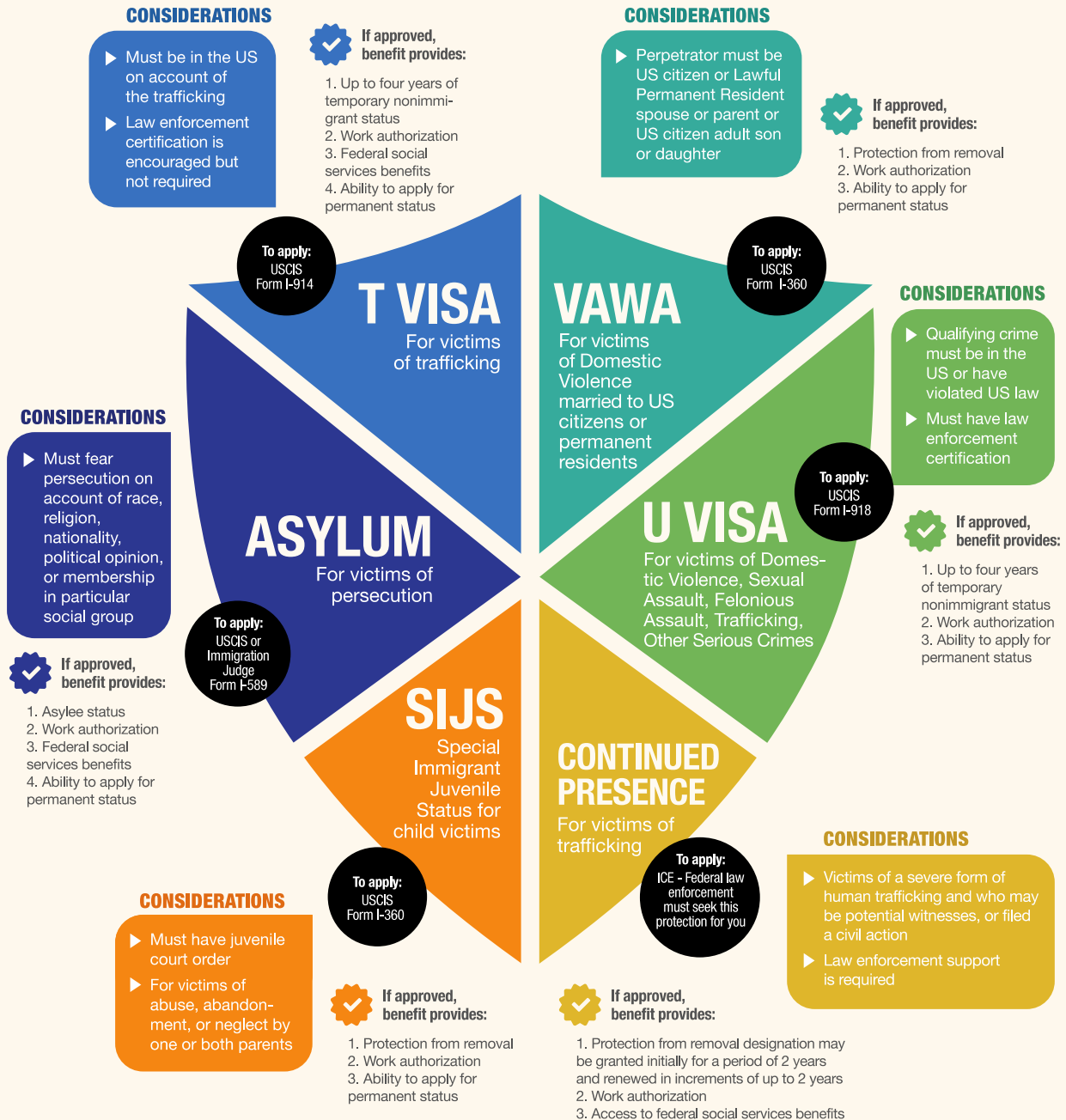
The following pages include a DHS infographic entitled “Protections for Immigrant Victims,”⁴⁶⁰ a brochure on “Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others,”⁴⁶¹ and a document entitled “Domestic Violence and the International Marriage Broker Regulation Act: What Every Law Enforcement Officer and Domestic Violence Advocate Should Know.”⁴⁶² The first two documents are available in multiple languages at <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

⁴⁶⁰ DEP’T OF HOMELAND SECURITY, *Protections for Immigrant Victims*, <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

⁴⁶¹ 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>.

⁴⁶² 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/>.

PROTECTIONS FOR IMMIGRANT VICTIMS



[DHS.GOV/BLUE-CAMPAIGN](https://dhs.gov/blue-campaign)

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose:

Immigrants are particularly vulnerable because many do not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This pamphlet will explain domestic violence and inform you of your legal rights in the United States. The International Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiancé(e)s and spouses immigrating to the United States information about their legal rights as well as criminal or domestic violence histories of their U.S. citizen fiancé(e)s and spouses. One of IMBRA's goals is to provide accurate information to immigrating fiancé(e)s and spouses about the immigration process and how to access help if their relationship becomes abusive.

What is domestic violence?

Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), economic and/or immigration related threats. While most recorded

incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. Child abuse includes: physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, or immigration status) are guaranteed protection from abuse under the law. Any victim of domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?

All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:

- The right to obtain a protection order for you and your child(ren).
- The right to legal separation or divorce without the consent of your spouse.
- The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of

children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer who works with immigrants to discuss how any of these family law options may affect or assist you.

Under U.S. law any crime victim, regardless of immigration or citizenship status, can call the police for help or obtain a protection order.

Call police at 911 if you or your child(ren) are in danger. The police may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police about any abuse that has happened, even in the past, and show any injuries. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence you can apply to a court for a protection order. A court-issued protection order or restraining order may prohibit your abuser from calling, contacting, approaching, or harming you, your child(ren), or other family members. If your abuser violates the protection order, you can contact the police, who may arrest the abuser. Applications for protection orders are available at most courthouses, police stations, women's shelters, and legal service offices.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer; the right to not answer questions without a lawyer present; the right to speak in your defense. It is important to talk with both an immigration lawyer and a criminal lawyer.

What services are available to victims of domestic violence and sexual assault in the United States?

In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.

The national telephone numbers or "hotlines" listed below have operators trained to help victims 24 hours a day free of charge. Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.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

The National Center for Victims of Crime
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.ncvc.org

NOTE: These are organizations whose primary mission is safety and protection.

If I am a victim of domestic violence, sexual assault, or other crime, what immigration options are available to me?

There are three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren). A victim's application is confidential and no one, including an abuser, crime perpetrator or family member, will be told that you applied.

- Self-petitions for legal status under the Violence Against Women Act (VAWA)
- Cancellation of removal under VAWA
- U-nonimmigrant status (crime victims)

These immigration benefits each have specific requirements that must be established. Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration benefits may affect or assist you.

How does the marriage-based immigration process work?

The marriage-based immigration process involves several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. These steps depend on the type of marriage-based visa you travel on to the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

K-1 nonimmigrant status (as the fiancé(e) of a United States citizen): You are required to either marry the United States citizen within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen fiancé(e) who petitioned for you, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident. You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

K-3 nonimmigrant status (as the spouse of a United States citizen): You are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (I-130). Once the I-130 is approved, you are entitled to lawful permanent

residence (green card) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at <http://www.uscis.gov>.

What are the penalties for marriage fraud?

Immigrants who commit marriage fraud may be subject to removal proceedings and may be barred from receiving future immigration benefits in the United States. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency).

If I am married to a U.S. citizen who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive conditional residence status from USCIS. Ninety (90) days before the second anniversary of your conditional residence, you and your spouse generally must apply together to remove the conditions on your lawful residence. To do so, you must prove the marriage is in "good faith" and valid. Once the conditions are removed, you have permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

There are three situations when the law allows conditional residents the option to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions. 1) The removal of the conditional resident from the U.S. would result in extreme hardship; OR 2) The marriage was legally terminated, other than by death, and the applicant was not at fault for failing to file a timely application to remove the conditional basis of his or her status;

OR 3) During the marriage the U.S. citizen or lawful permanent resident spouse subjected the conditional resident to battery or extreme cruelty. All three waivers are filed on Form I-751 and require you to prove your marriage was in "good faith" and not fraudulent.

What other ways does the U.S. government try to inform foreign fiancées and spouses about their rights and protect them and their children from abuse?

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends to escape violence at home.

IMBRA required this pamphlet be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prevents U.S. citizens from sponsoring multiple visas for foreign fiancé(e)s if they have a history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

How does the U.S. government regulate "International Marriage Brokers"?

If an agency qualifies as an "international marriage broker," it is required to give you background information on the U.S. client who wants to contact you, including information contained in Federal and State sex offender public registries, and get your written permission before giving the U.S. client your contact information. The agency is required to give you a copy of this pamphlet. It is prohibited from doing business with you if you are under 18 years of age.

Can I rely on the criminal background information on my U.S. citizen fiancé or spouse?

The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information you receive may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(s) and spouses. Ultimately you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancées or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation including human trafficking can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts.

Help regarding human trafficking may be found at:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours a day, 7 days a week)
www.aclf.hhs.gov/trafficking

Human Trafficking and Worker Exploitation Task Force Hotline, U.S. Department of Justice
1-888-428-7581
(Monday - Friday, 9am to 5pm)
www.dhs.gov/crimqtwefc.php

More information can be found at our website or by calling the toll free number listed below.

USCIS General Information
In the United States, telephone toll free to:
1-800-870-3676 or



Visit our internet website at:
<http://www.uscis.gov>



Victims are not required to be in legal immigration status, but they must:

- Be a victim of a severe form of trafficking in persons,
- Be physically present in the United States on account of the trafficking,
- Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18), and
- Suffer extreme hardship involving unusual and severe harm if removed from the United States.

To apply for a T nonimmigrant status, applicants must file Form I-914, Application for T Nonimmigrant Status. Qualifying family members may also be eligible to apply for benefits.



Many immigrants are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime. Officials such as police officers, healthcare providers, judges, and prosecutors are often the first to see the signs of violence and are therefore in a unique position to provide information and assistance to those who have been victims. This brochure is designed to assist front-line workers in this endeavor.



U.S. law provides several protections for legal and undocumented immigrants who have been victims of a crime. Often victims are unaware of such protections, thus front-line workers serve as a critical link for immigrants.

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**



U.S. Citizenship
and Immigration
Services



**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

M-179 (02/10)

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, Americans, and Special Immigrants. This form is available on USCIS' website, www.uscis.gov.

U Nonimmigrant Status

U nonimmigrant status (or U visa) offers immigration protection for victims and is also a tool for law enforcement. To obtain U status, the victim must obtain a certification from law enforcement, however, law enforcement officials should note that providing a certification does not grant a benefit—only USCIS has the authority to grant or deny this benefit.

Victims are not required to be in legal immigration status, but they must:

- Be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime,
- Possess credible and reliable information about the qualifying criminal activity,
- Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity, and
- Be a victim of criminal activity that violated a U.S. law.



Victims of the following crimes may be eligible for a U nonimmigrant visa:

Abduction	Manslaughter
Abusive Sexual Contact	Rape
Blackmail	Murder
Domestic Violence	Obstruction of Justice
Extortion	Witness Tampering
False Imprisonment	Prostitution
Female Genital Mutilation	Sexual Assault
Perjury	Slave Trade
Religious Assault	Torture
Hostage Taken	Trafficking
Incest	Sexual Exploitation
Peonage	Unlawful Criminal Restraint
Involuntary Servitude	Other Related Crimes
Kidnapping	

To apply for U nonimmigrant status, the victim must file Form I-918, Petition for U Nonimmigrant Status. Law enforcement official must certify Form I-918, Supplement B. Qualifying family members may also be eligible to apply for benefits.

Visit the "Humanitarian" section of the USCIS website
www.uscis.gov

Law Enforcement Officials and Representatives of Record contact USCIS at **1 802 527 4888**
All others should call **1 800 375 5263**



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%20.pdf>

**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

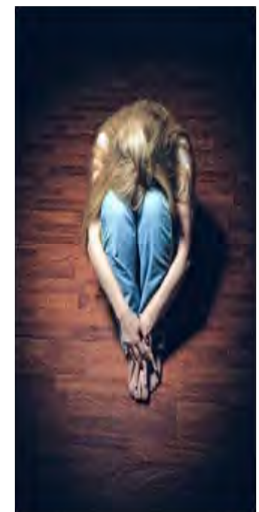
Office of the Associate Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530
Phone: 202-514-9500
E-mail: IMBRA.Questions@usdoj.gov



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*



This is Lana.



Lana is a 28 year old domestic violence victim.* In the course of interviewing Lana you learn that she is originally from South Asia. You also learn that Lana met her fiancé through an international matchmaking agency that recruits South Asian women interested in meeting men in the United States and markets its matchmaking services over the internet. Lana tells you that she emigrated to the United States to join her fiancé — now her batterer and spouse — here. Interesting background information, you think, but does it bear on your investigation or analysis of her domestic violence case? *It should.*

The International Marriage Broker Regulation Act (IMBRA)

IMBRA, 8 U.S.C. §1375a, regulates individuals and companies who charge fees for facilitating introductions between U.S. citizens, nationals, or green card holders (together, “U.S. clients”) and foreign nationals. IMBRA created certain disclosure requirements for international marriage brokers (“IMBs”) and their U.S. clients, and the failure of either to abide by those requirements may give rise to federal civil and/or criminal liability in addition to any other federal or state law charges relating to Lana’s case.

* Lana is a fictional character used for illustrative purposes only.

What is an IMB?

IMBs include individuals, businesses, companies, or other legal entities that charge fees for providing dating, matrimonial or matchmaking services, or social referrals (collectively, “matchmaking services”) by sharing personal contact information or otherwise introducing or facilitating communication between U.S. clients and foreign nationals. (IMBs do not include: (1) non-profit cultural or religious organizations providing matchmaking services; or (2) persons or entities who do not provide these services as their principal business and whose rates and services are the same regardless of the client’s gender or country of citizenship.)

How does IMBRA regulate IMBs?

IMBRA regulates IMBs and U.S. clients in several different ways. Among other things, the law:

- Prohibits IMBs from conducting business with any individual under the age of 18;
- Requires IMBs to search the National Sex Offender Public Website for the names of U.S. clients;
- Obligates IMBs to collect certain background information from their U.S. clients (including, among other things, information about arrests or convictions for assault, battery, domestic violence, murder, prostitution, rape, and sexual assault, as well as civil protection orders);
- Requires IMBs to provide foreign nationals with the results of the sex offender website search, the background information, and a pamphlet including information about domestic violence, sexual assault, and child abuse; the legal rights of immi-

grant victims of these crimes; and a warning about the use of fiancé(e) and spouse visas by U.S. citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes;

- Demands that IMBs obtain the foreign national’s written consent to release his or her contact information to the U.S. client before the IMB shares that information with the U.S. client; and
- Creates civil and/or criminal penalties for IMBs and U.S. clients who fail to abide by their disclosure obligations.

How will I know if an IMB was involved in a particular case?

Discerning an IMB’s involvement in a domestic violence case involving a foreign national may be challenging. Some domestic violence victims may be reluctant to acknowledge that they relied on an intermediary for an introduction; others may have been coached by an IMB to avoid disclosing that fact; still others may not know what an IMB is or understand the legal requirements attaching to IMBs. On the back of this pamphlet you will find a list of questions to ask domestic violence victims who are foreign nationals. If the answers to any of these questions suggest that an IMB was involved and failed to satisfy the requirements identified in this pamphlet, contact us today.



United States
Department of Justice

Office of the Associate Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530
Phone: 202-514-9600
E-mail: IMBRA.Questions@usdoj.gov

Collection of U-visa News Articles⁴⁶³

November 7, 2017 update

The following news articles are provided as references that may assist law enforcement, prosecutors, and judges to better understand the importance of the U visa program and their role as U-visa certifiers.

1. Ivie, Stacey and Nanasi, Natalie. "The U Visa An Effective Resource for Law Enforcement." FBI Law Enforcement Bulletin (2009). Available at: <https://leb.fbi.gov/2009-pdfs/leb-october-2009/view>
Detective Stacey Ivie from the Alexandria (VA) Police Department discusses the advantages of the U-visa for law enforcement and answers several frequently asked questions posed by her peers regarding the U-visa.
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Upon describing what a U visa is and how one can qualify for it, this article describes successful U Visa cases, including a woman who was robbed by three armed men. It also describes how the U visa can help foreign workers in a scenario that is far too common—where they are forced into debt, are stuck with a job with sporadic hours, low wages, and cramped housing conditions.
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