


 **NIWAP** 

U Visa Certification by Judges

Multi-State Training
New Orleans, Louisiana
April 5, 2019

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Faculty

		
Judge Susan Breall	Judge Rosemary Collins (Retired)	Investigator Michael LaRiviere

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Learning Objectives

By the end of this training you will be better able to:

- Recognize the purpose of the U and T visa programs and the judicial role in U and T visa certification.
- Sign U visa and T visa certifications
- Implement procedures for signing U or T visa certifications in civil and criminal cases that are consistent with federal law.

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Purpose and Goals of the U Visa

VAWA 2000 Section 1513(a) & (b)

- Immigrant women and children are often targeted as victims of crimes committed against them in the U.S.
- The must be able to
 - report these crimes
 - Participate in criminal investigations & prosecutions perpetrators
 - Seek help from family courts
 - (protection orders, custody, child support, child welfare cases)
- Purpose of U visa is
 - To strengthen ability of the justice system (civil & criminal) to detect, investigate, prosecute, convict and sentence perpetrators of criminal activities
 - While offering protection to victims in keeping with the humanitarian interests of the U.S.

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Purpose of the U Visa

- Improves access to justice for immigrant crime victims
- Is a tool that helps build immigrant community trust in the courts, police and prosecutors
- Increases prosecution of perpetrators of crimes against immigrant victims
- Allows victims to report crimes without fear of deportation
- Enhances safety for victims, their children, law enforcement and communities

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What are some of the questions and issues you have or see in your state with regard to U visa certification by judges?

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Court Decisions U Visas in Many Jurisdictions

- Published decisions by courts commonly contain legally incorrect information about the U visa program and U visa certification
 - These decisions do not reference or follow Chevron Deference requirements
- Chevron Deference required when courts interpret federal statutes to:
 - Legislative history
 - U visa regulations and regulatory history (Preamble)
 - DHS policies and training materials

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Question: The judge signing the U visa certification must be the judge who presided over a case involving the victim seeking certification?

TRUE
 FALSE

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U Visa Certification May be Signed by any Judicial Official

- Judicial officers who can sign U visa certification:
 - 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.



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Large Group Discussion



What questions would you want to be able to answer about U visa certification by a judge who did not preside over the case involving the victim seeking certification?



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Large Group Discussion



Ethical Considerations:

What are the ethical considerations with regard to U visa certification by judges that you have encountered, have been asked about or have questions about?



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Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
 - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
 - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion:2015-2-final.pdf>
 Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

Inaccuracies in North Carolina Ethics Opinion Not Addressed by Minnesota

- Investigation or prosecution =
 - Detection, investigation, prosecution, conviction or sentencing
- U visa ≠ preferential status
- Judges certify on past or present (not future) helpfulness
- Judges generally sign after having made findings and the case is concluded

Large group discussion: Information Needed for Certification

Where will judge find the information needed to complete the certification form?

- Civil Cases
- Criminal Cases
- Family Cases

Criminal Activities: Types of Proceedings

- Family
 - ✓ Civil Protection Order
 - ✓ Custody Case
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Divorce Case
 - ✓ Paternity Case
- Juvenile
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator



Table Exercise

- Review your scenario with your table and complete the U Visa Certification Immigration Form I-918B
- Complete:
 - Part 3. Criminal Activity-
 - including #7 facts on injury
 - Part 4. Helpfulness
 - Part 6. Certification
- If there is a piece of evidence you believe you need or would like to have to complete the form assume you have it and refer to it

DEBRIEF

- Read and report back on Maria, Olga and Stella –
 - What information helped you complete the form?
 - What information is not required to complete the form?
 - What is helpful to include on the form but not required?

DEBRIEF

- How did you compete Part 6 of the form?
- What amendments if any did you make on the form and why?

Part 6. Certification

I am the head of the agency listed on Part 1, or I am the person in the agency who was specifically designated for this task by the agency, to issue a U.S. Department of Justice Certificate on behalf of the agency. **REMEMBER: I am certifying that the individual identified as the victim, name, identity, of party, that the individual identified as Part 2, is or was a victim of one or more of the crimes listed on Part 3. I certify that the above information is complete, true, and will assist my prosecution regarding the above victim's ability to obtain a civil from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. ~~REMEMBER: I am certifying that the information provided in this certification is true and correct and that I am certifying that the information provided in this certification is true and correct.~~**

1. Signature of Certifying Official (sign in ink)

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

3. District/Department Number

4. File Number

Judges can amend the form
 Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

Returning to the case of Maria who sought a TPO and did not show up for the full CPO ?

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

Why might this not be unreasonable?

Large Group Discussion



From your experience with domestic violence and sexual assault cases why might a victim not follow through with a court case?

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Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils

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Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

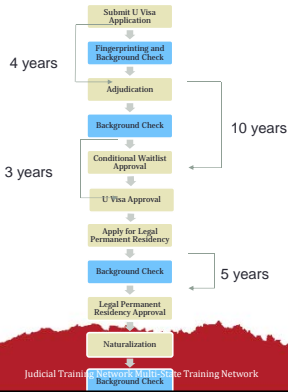
- Considerations:
 - Totality of the circumstances, including the nature of the victimization
 - Victim's fear or the abuser
 - Trauma suffered
 - Force, fraud or coercion

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If you still believe the victim is unreasonably refusing...

- Note on the certification, sign, and return to victim or victim’s attorney
- Burden shifts to victim to prove the refusal is not unreasonable
- DHS makes the ultimate decision

U Visa Process Timeline



2012 U Visa & Lawful Permanent Residency Survey

- 70% U visa applicants/holders provided continued cooperation to law enforcement, prosecutors, or the EEOC
- 29.5% victim was willing to cooperate but officials did not seek further cooperation

After Immigration Case is Filed Immigrant Victim's Justice System Use

- Protection orders – VAWA 47.6%, U visa 43.7%
- Filed a police report - VAWA 36.2%, U visa 50.3%
- Helped in a criminal case - VAWA 33.4%, U visa 73.1%
- Divorce – VAWA 32.1%, U visa 19.5%
- Child custody – VAWA 20.1%, U visa 17.9%
- Child support – VAWA 26.1%, U visa 10.7%

Report in research folder on flash drive

BEST PRACTICES: PROTOCOLS AND POLICES



Resource

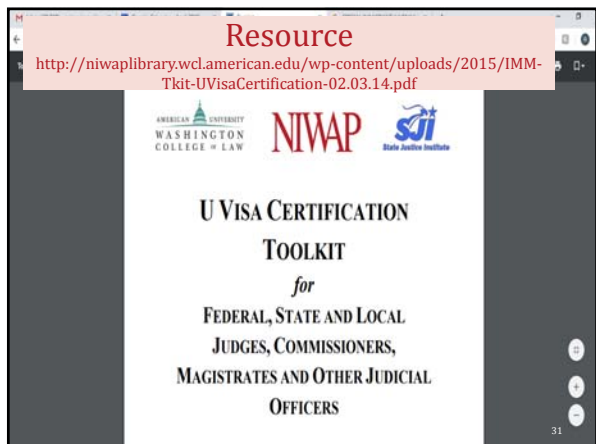
together with any attachments (e.g. a copy of a court order, photo)²³ should be returned directly to the applicant (or counsel), not to USCIS.²⁴

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

San Francisco Superior Court Civil Division
U Visa Certification Protocol



Materials Review – Flash Drive

- U Visa Certification Toolkit for Judges
- Tip Sheet for Courts on U Certification
- San Francisco U Certification Protocol
- Immigration Remedies Identification Tool for Courts
- Article: Understanding the Judicial Role in U Visa Certification –
 - Comparing DHS regulations, policies, publications and court cases
- Chevron handout
- And much more.....



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Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/jtn-nola-2019/>
- Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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