

WEBINAR

Understanding Helpfulness for the U Visa Certification and the Ongoing Assistance Requirement

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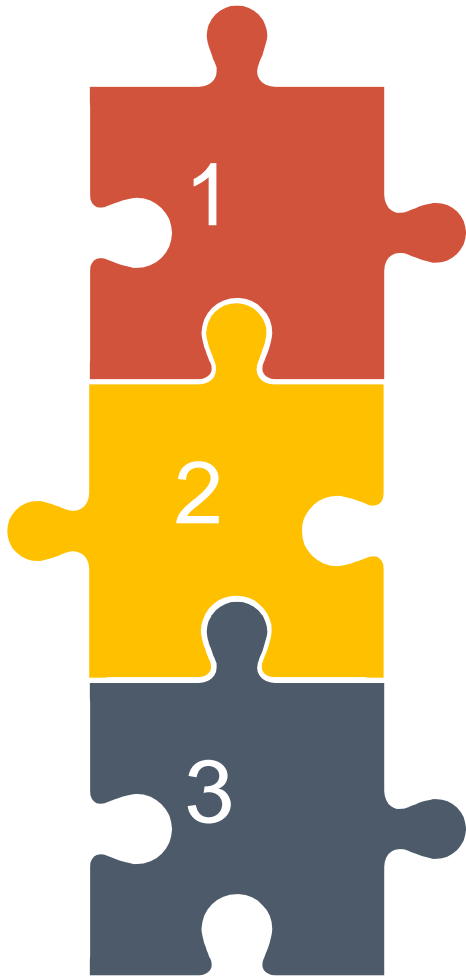
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Learning Objectives

By the end of this webinar participants will be better able to



Assess helpfulness and sign U visa certifications consistent with federal law

Understand the U visa's ongoing assistance requirement and special exceptions

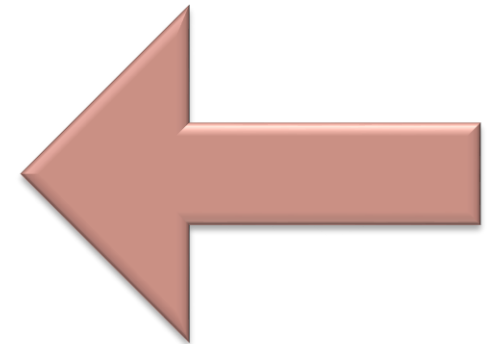
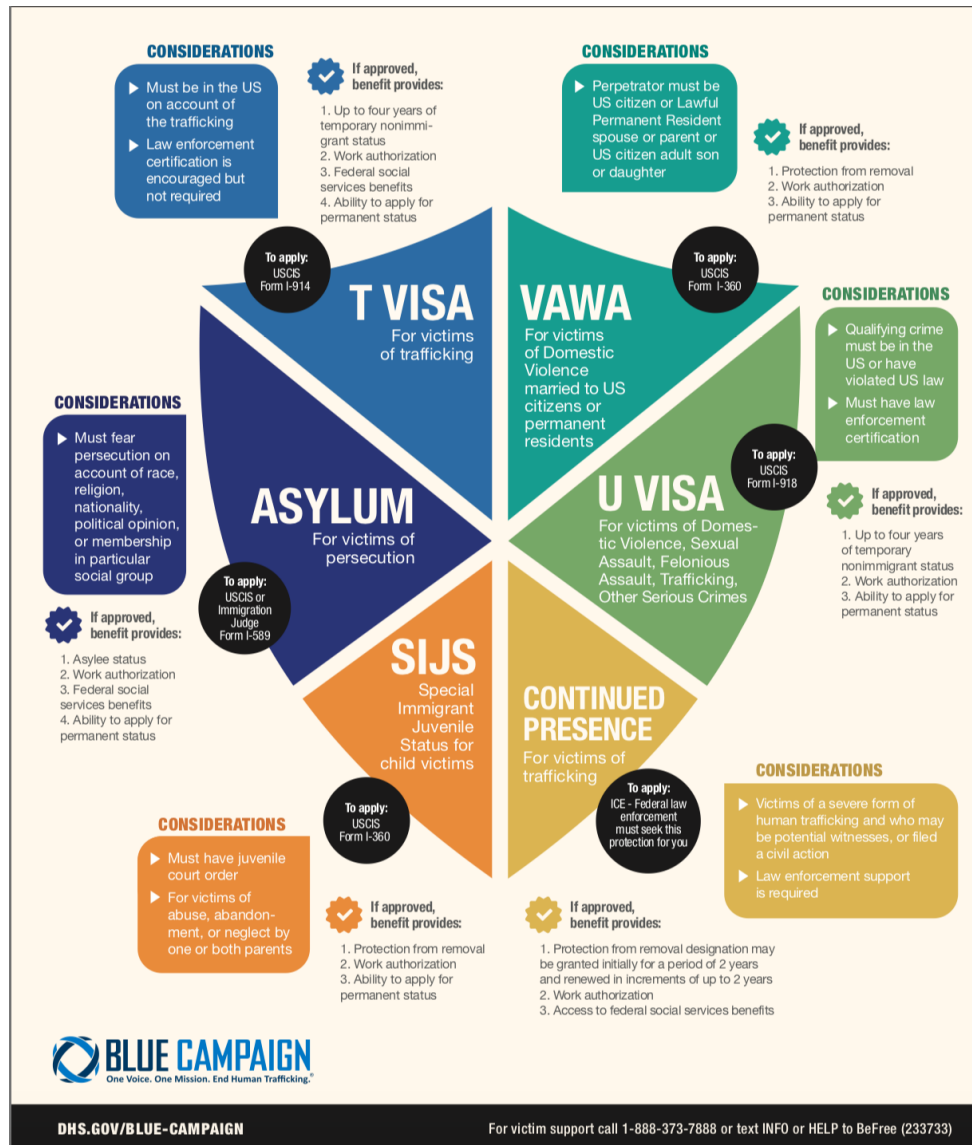
Employ the U visa as a tool to build trust with and support immigrant victims improving outcomes of cases and for victims

Who is Participating?

- A. Law enforcement
- B. Prosecution
- C. Community-based victim services
- D. Systems-based victim services
- E. Judge or court staff
- D. Other

Other – Please type in the Chat Box

Primary Immigration Protections for Victims



*What kind of
Congressional support
was there for the U visa
and what was the
legislative intent?*



Bipartisan Legislative Intent

- We want crimes reported to police and courts
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

DHS Promotes a Victim-Centered Approach

- Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. Equally values
 - The identification and stabilization of victims, including providing immigration relief, and
 - The detection, investigation, and prosecution of perpetrators of serious crimes.
- Promotes use of qualified interpreters

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm (Victim's Application)

- Substantial physical or mental harm as a result of having been a victim of criminal activity

Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners, other judicial official
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is **NO** statute of limitations on signing a certification. However, U visa application must be filed within **six months** of the certification date.

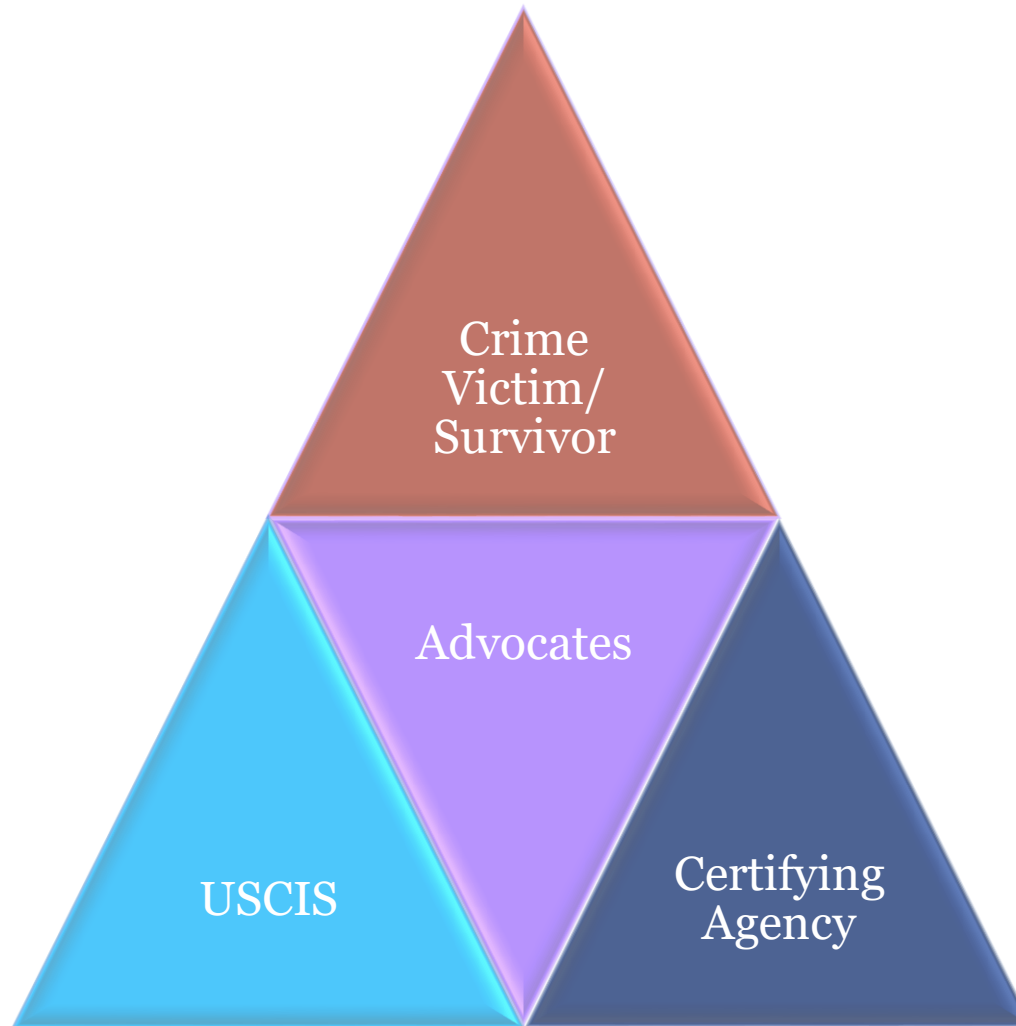
*Why did Congress design
the U visa to authorize
multiple agencies to
provide U visa
certification?*



How does the ability of multiple agencies to certify support the work of Family Justice Centers and collaboration on cases of immigrant survivors?



Roles and Responsibilities



Crime Victim: Roles and Responsibilities

- Provide information to the certifying agency and be helpful in the detection, investigation, prosecution or sentencing of a qualifying crime
- Has an ongoing responsibility to provide assistance in investigation or prosecution of a qualifying crime, when reasonably requested and there is an ongoing need
- Submits U visa application and U visa certification to USCIS

Certifying Agency: Roles and Responsibilities

- Detects U visa qualifying criminal activities, investigates and/or prosecutes, or convicts or sentences the perpetrator
- Determines whether to complete and signs the U visa certification Form I-918B
- Confirms victim is complying with reasonable request for assistance
- Communicates with USCIS if victim unreasonably refuses to assist in the investigation or prosecution

Advocates: Roles and Responsibilities

- Identify eligible crime victims,
- Support crime victims in gathering evidence
- Connect victim with support services
- Build relationships with law enforcement, prosecutors and other certifiers

USCIS: Role and Responsibilities

- Receives and adjudicates U visa petitions
- Determines eligibility for U visa, conducts criminal background check, and an immigration check status check
- Requests additional information from victim if necessary
- Provides U visa status to eligible crime victims



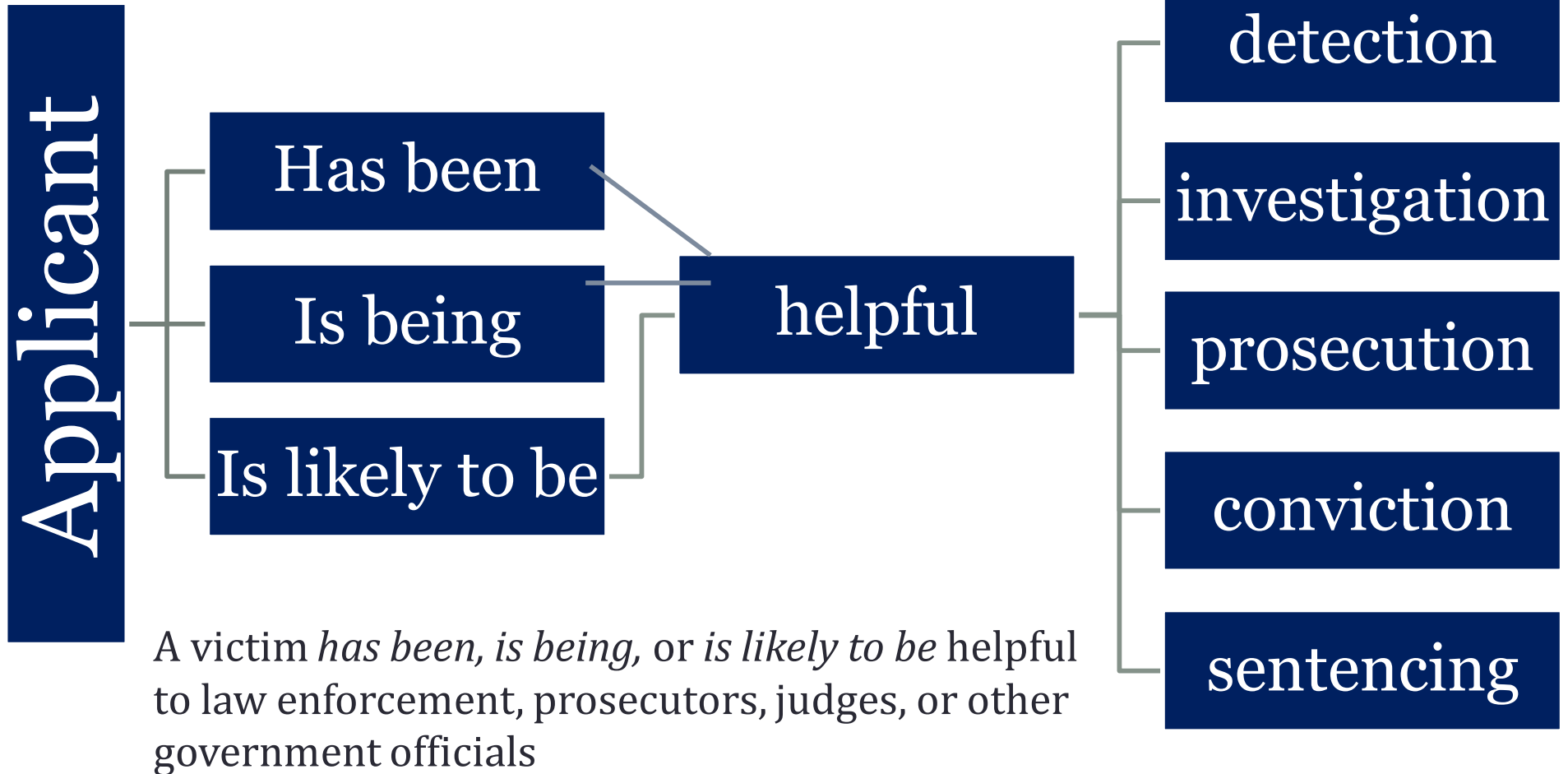
*What are the benefits
for certifying agencies of
completing the U visa
certification form?*



Helpfulness For Certification

Definition of “Helpfulness”

8 C.F.R 214.14(b)(3)



Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness required
 - *DHS adjudicates helpfulness based on– totality of the circumstances*
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

Example of Helpfulness May Include:

Calling 911

Having a Rape Kit performed

Providing a description of offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about "other bad acts"

Providing evidence of abuse in a custody, child welfare, or divorce case

Testifying at a bond hearing, trial, or sentencing

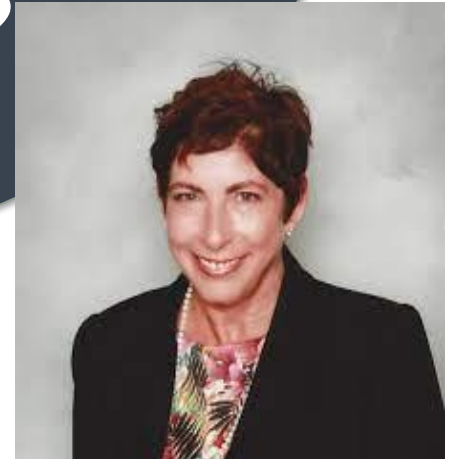
Judges may sign certification based on

Review of court records;

Having conducted the sentencing in a criminal case; or

Having detected a qualifying crime during a family, criminal, or civil proceeding over which they presided.

*In what types of cases
can judges certify?
What are some ways
courts are approaching
judicial certification?*





What are the different ways you see helpfulness?



When should you certify?

- A. Immediately upon receipt of certification
- B. Once your agency has knowledge of a victim's past or present helpfulness or believes a victim is likely to be helpful
- C. When you are certain that the victim will testify at trial
- D. When the defendant is convicted



*What are best practices
on when to certify?*



The following are **Not Required** in order to certify that a victim has been helpful

- Certification signed within the statute of limitations of the qualifying criminal activity
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive
- Case involving offender is open or closed



Victim-centered approach

Why would you want to sign a U visa certification for someone that hasn't been subpoenaed?



Can you discuss successful strategies prosecutors use to counter defense arguments and be able to introduce prior consistent statements?



Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness



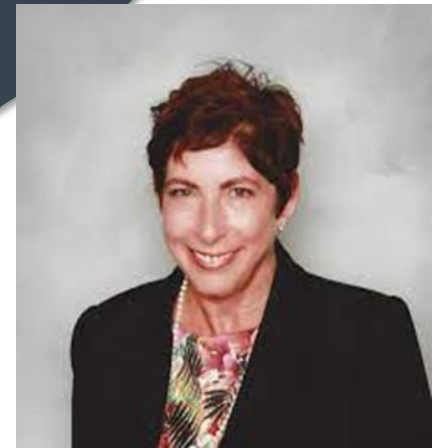
Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation



*What do you look for in
deciding whether to
certify?*



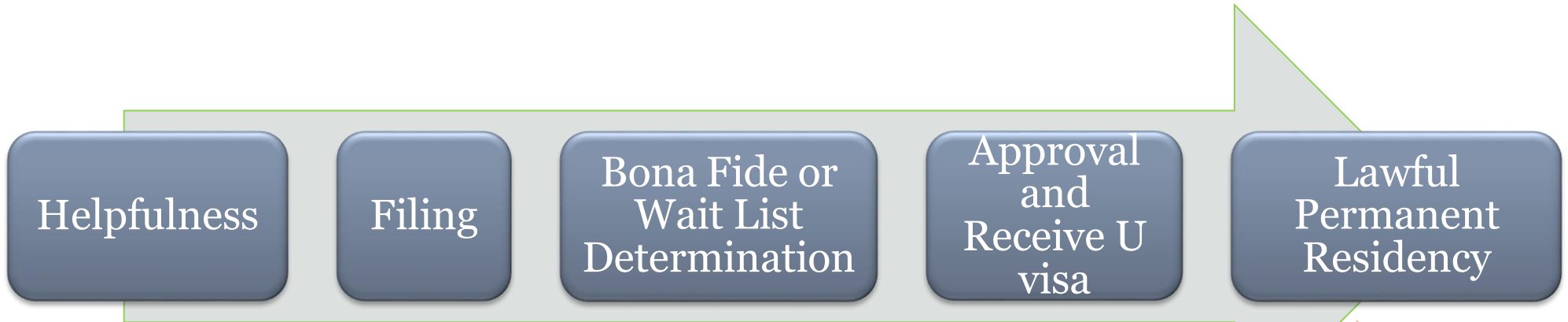
Filing and VAWA Confidentiality

- Original signed certification must be included in the victim's U visa application
 - Certifier keeps a record of certification
 - Sealed original recommended
- Once the initial application is processed:
 - The victim's case is flagged in the DHS system and generates an alert that victim's information is protected by Title 8, United States Code (U.S.C.), Section 1367



- Case is flagged notifying immigration officials about pending or approved VAWA, U visa or T visa case.

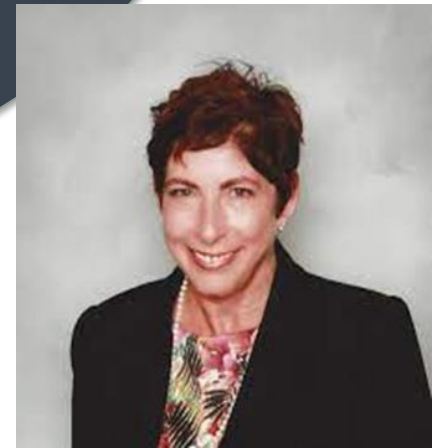
Updated U Visa Process



Continuing obligation to provide assistance when reasonably requested



Why might you want to sign a certification for a crime that happened 20 years ago?



What does research tell us about the effectiveness of the U visa in promoting access to justice and improving the willingness of immigrant crime victims to work with police and prosecutors?



Agencies Signing U Visa and T Visa Certifications See:

- Increases in immigrant victims willingness
 - 70% to call police for help and to cooperate in criminal investigations and prosecutions
 - 29% willing to cooperate if their criminal case went forward
 - 67% to seek protection orders
 - 64% to seek custody of children

Overcoming Fear and Building Trust With Immigrant Communities and Crime Victims (Police Chief Magazine April 2018) https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims; Promoting Access to Justice for Immigrant and LEP Crime Victims in an Age of Increased Immigration Enforcement – National Report (May 2018) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report> ; Leslye Orloff, et. al., U Visa Victims and Lawful Permanent Residency 5 (September 6, 2012) <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12> .

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
 - 67% decline in immigrant victims who were not willing to participate in criminal investigations and prosecutions

Transforming Lives: How the VAWA Self-Petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report>

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

Ongoing Assistance – Post Filing Requirement and Exceptions

Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested by law enforcement or prosecutors

After
applying

U visa bona fide
determination or
waitlist and
receipt of U Visa

Through
receiving lawful
permanent
residency



What happens after signing the U visa certification? How does it promote victim participation in the justice system?



Helpfulness vs. Cooperation/Assistance

For Certification Before Filing the U Visa

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

After Filing the U visa & for Permanent Residency

- Ongoing obligation to provide cooperation or assistance
 - Reasonably requested by law enforcement or prosecutors
- **Exception:** may show that refusal to cooperate or assist was not unreasonable

Analysis

Is the request
reasonable?

8 C.F.R. 214.14(b)(3)

8 C.F.R. 245.24(2)(2)(ii)

Is the refusal
unreasonable?

8 C.F.R. 245.24(a)(5)

Unreasonable Requests

Subjective, but consider if the request:

- Endangers victim, witnesses, family members, or others
- Subjects the victim to greater harm
- Increases trauma to victim
- Negatively affects the victim's ability to support herself or her family
- Is reasonable in light of the perpetrator's force, fraud or coercion of the victim

Ongoing Assistance Statutory and Regulatory Exception

- “Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the criminal activity”
 - 8 CFR 245.24(a)(5)
 - Implementing INA Section 245(m)(1); 8 U.S.C. 1255(m)(1)

Reasonable Refusals

Subjective, but consider if it is reasonable to refuse a request if the victim is:

- In danger
- Unaware of request
- Being intimidated
- Being threatened
- Concerned about the safety of her family
- Under the belief that participating is more dangerous than not

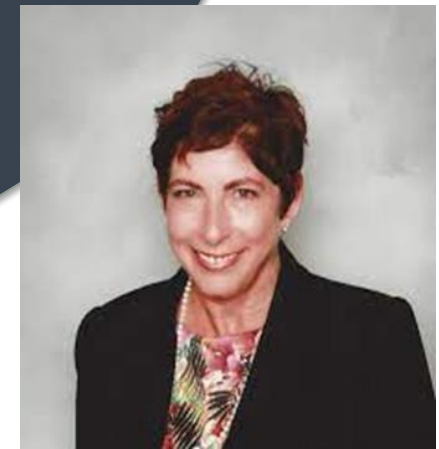
Evaluating Unreasonableness

DHS regulations require affirmative evidence and consideration of:

- Totality of the circumstances
- The nature of the victimization
- Applicable guidelines for victim/witness assistance
- Victim's fear of the abuser
- Trauma suffered (both mental and physical)
- Force, fraud or coercion
- Age, maturity, capacity of the applicant
 - 8 C.F.R. 245.24(a)(5)



Why would a victim report a crime and then refuse to participate in the ensuing investigation, prosecution, trial or court case?



“Only unsuccessful intimidation ever came to the attention of police or prosecutors.”

Kerry Healey, National Institute of Justice, Research in Action, Victim and Witness Intimidation: New Developments and Emerging Responses (Oct. 1995)
<https://www.ncjrs.gov/pdffiles/witintim.pdf>

Practice Tips

- Proactively address witness intimidation
 - Monitor jail phone calls
 - Conduct wellness checks when appropriate
 - Recognize changes in communication patterns
- Collaborate with victim service professionals
- Communicate with victim's immigration attorney or victim advocate
- Establish safe points of contact with friends and family
- Identify tactics used by offender to assert power and control
- Continually safety plan with victim

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 provides the victim an opportunity to explain
- DHS makes the ultimate decision

How does this discussion help you address the following on the U visa certification form?

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

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.

Resources

- ▶ **Technical Assistance**
 - ▶ Call: 202.274.4457
 - ▶ Email: niwap@wcl.american.edu
 - ▶ Web Library: <https://niwaplibrary.wcl.american.edu/>
- ▶ **Materials for certifying agencies on best practices for working with immigrant victims**
 - ▶ <https://niwaplibrary.wcl.american.edu/uvisa-helpfulness-webinar-april2022>
 - ▶ U Visa Certification Toolkit
 - ▶ DHS U Visa Certification Resource Guide
 - ▶ USCIS Information for Certifying Officials: Law Enforcement, Judges and Other Agencies
 - ▶ Roll call training videos
 - ▶ DHS Victim Centered Approach

Thank You!