



The U and T Visa:

A Tool to Support Victims, Communities, and Increase Participation in the Criminal Justice System

Law Enforcement-Based Victim Services Program

This presentation was developed by the International Association of Chiefs of Police (IACP) under 2018-V3-GX-K049, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this presentation are those of the contributors and do not necessarily represent the official position of the U.S. Department of Justice.


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International Association of
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Law Enforcement-Based
Victim Services Program (LEV)

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 - McKallen Leonard You

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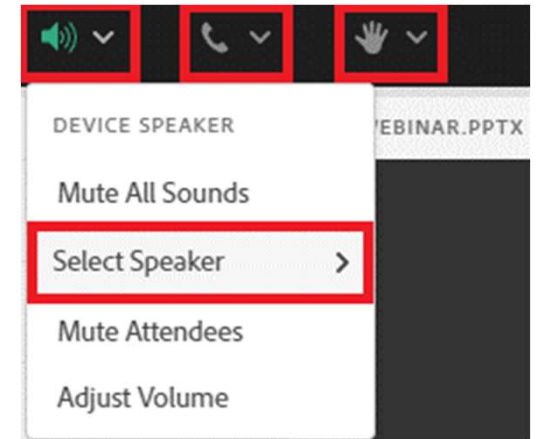
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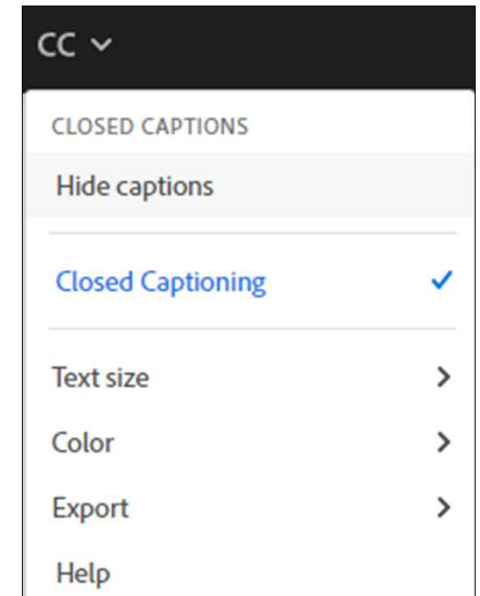
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Who is Participating?

- A. Law enforcement
- B. Community-Based Victim Services
- C. Systems-based Victim Services
- D. Other

Other – Please type in the Chat Box

Learning Objectives

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

- Identify victims who qualify for the U and T Visa
- Increase immigrant victim participation in the criminal justice system by **promoting** the U and T visa as tools to reduce barriers and fears
- Enhance victim, community, and officer safety by combatting crime **perpetrated against immigrant victims**

GS(1)

GS(2)

Slide 9

- GS(1)** promoting? The visas need to be filed by legal providers.
Gilmer, Sara (OJP/OVC), 6/3/2021
- GS(2)** HT does not necessarily involve domestic/sexual violence, so could just say by combatting crime perpetrated
Gilmer, Sara (OJP/OVC), 6/3/2021
- KR2** Recommendations above incorporated. NIWAP please verify that you approve of these changes.
Katie Rossomondo, 6/3/2021
- RM4** We approve these changes
Rocio Molina, 6/7/2021

Immigrant Crime Victim Dynamics, & The U and T Visa

General Caveats

- Women, men, and children can qualify for U and T Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U and T Visas

That said, many examples in this presentation will refer to female victims of domestic violence and/or sexual assault because they make up a large majority of the U and T Visa applications filed



Why is Immigration
Relief Available to
Victims of Crime?

*Please type your answers in the
Chat Box.*

Legislative Intent

- We want crimes reported to police
- 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 dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

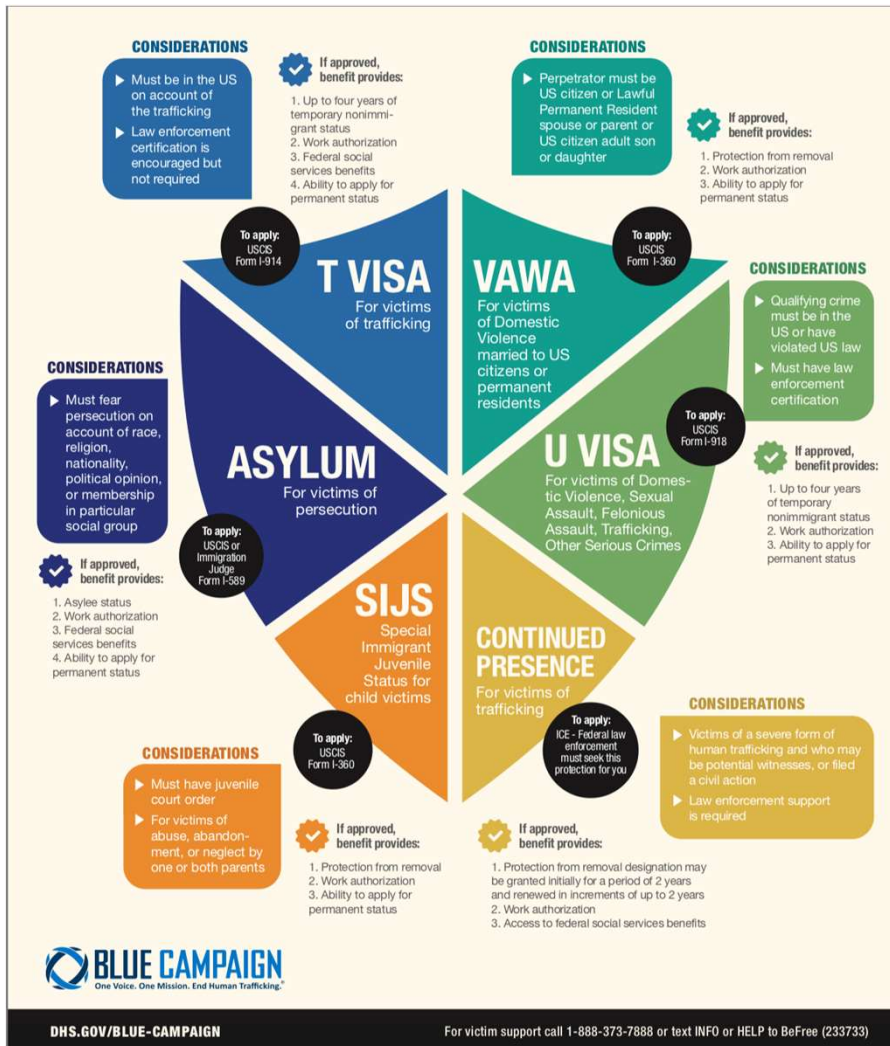
CS/3
FS(1)

Slide 13

- GS(3)** What makes someone the most dangerous offender? Maybe dangerous offenders?
Gilmer, Sara (OJP/OVC), 6/3/2021
- FS(1)** I agree with Sara
Fletcher, Sharron (OJP/OVC), 6/3/2021
- KR3** Katie Rossomondo, 6/3/2021
- KR4** Recommendations above incorporated. NIWAP please verify that you approve of these changes.
Katie Rossomondo, 6/3/2021
- RM5** We approve of this change
Rocio Molina, 6/7/2021

Primary Immigration Protections for Victims

- U Visas and T Visas are one of many “crime fighting” immigration relief pathways.
- Congress created these humanitarian visas to hold perpetrators accountable who target immigrant communities.
- Immigration relief encourages victims to come forward and report abuse and criminal activities.



Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

Goals of Immigration Relief



Immigration relief

Misconceptions

Language access

Fear

Barriers

IACP 2018 Resolution

- Recognizes U and T Visas as significant crime fighting tools and using them as best practice
- Supports training, education, communication and “increased police leadership involvement”
- Committed to increasing collaboration

U Visas are “effective tools for law enforcement agencies that enhance public safety, officer safety and protection of victims nationwide.”

U Visa Basics

- The U Visa grants a temporary 4 year stay
- Only 10,000 U Visas awarded per year
- Application for a U Visa requires a certification from a designated government official
- Certification is one part of the overall application
 - Victim must submit additional documentation and proof in their full application

KD6
RM6

CS/A
EC/7
FS(8)

Slide 19

- GS(4)** Worth sharing orally about how many are requested per year, and why only 10,000 are awarded (legislative cap)?
Gilmer, Sara (OJP/OVC), 6/3/2021
- FS(7)** Agreed. In FY 2019 28,364 applications for U visas (principal) were submitted. 10,010 were approved and 2,733 were denied.
Fletcher, Sharron (OJP/OVC), 6/3/2021
- FS(8)** Its also worth mentioning that U visa applications are still adjudicated after the cap has been reached. Those approved beyond the cap receive 'conditional approval'.
Fletcher, Sharron (OJP/OVC), 6/3/2021
- KR6** NIWAP, please incorporate these statistics in the slide or the notes section to discuss verbally during the webinar
Katie Rossomondo, 6/3/2021
- RM6** done, We always mention that cap is reached and that waitlist approval is an option and protection happens right when victims apply.
Rocio Molina, 6/7/2021

U Visa Requirements

The victim will indicate that they satisfy the three eligibility components in their U visa application

The person is a U visa victim

- Victim of a qualifying criminal activity
- Victim possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Victim is “Helpful”

- Victim “has been, is being, or is likely to be helpful” in “detection, investigation, prosecution, conviction, or sentencing”

Victim suffered harm

- Substantial physical or mental abuse as a result of the qualifying criminal activity

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons CS(5)
FS(4)
 - Sex or labor trafficking involving victim under 18 subject to force, fraud or coercion.
 - Adult subject to force, fraud or coercion
 - Victim is physically present in the U.S. on account of trafficking
 - Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
- Exceptions
- Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship

Slide 21

- GS(5)** this definition is not correct: you still need to prove force, fraud, coercion for minor victims of labor trafficking. Amend accordingly.
Gilmer, Sara (OJP/OVC), 6/3/2021
- FS(4)** Please update
Fletcher, Sharron (OJP/OVC), 6/3/2021
- GS(6)** On this slide or in further slides, it is probably worth sharing resources for a more in depth exploration of the federal HT definition. CAST is OVC's HT legal TTA provider, and you could link to their TTA page or this particular resource.
https://casttta.nationbuilder.com/emp_model
Gilmer, Sara (OJP/OVC), 6/3/2021
- FS(3)** Please mention this and include the link in the resources at the end of the presentation
Fletcher, Sharron (OJP/OVC), 6/3/2021
- GS(7)** Add numbers of available T visas per year versus number granted: good to communicate to audience that the T visa cap has never been reached
Gilmer, Sara (OJP/OVC), 6/3/2021
- FS(2)** Agreed. Please mention that 5,000 T visas are available each year, based on the cap set by Congress. This number has never been reached. In FY 2019, 1,242 applications for T-1 visas were submitted, but only 500 were approved and 365 were denied.
Fletcher, Sharron (OJP/OVC), 6/3/2021
- KR9** NIWAP the definition has been updated, please verify that you approve of these changes and add the statistics noted above (either on the slide or verbally during the presentation)
Katie Rossomondo, 6/3/2021
- RM7** Approve
Rocio Molina, 6/7/2021

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Entices• Harbors• Transports• Provides• Obtains• Advertises• Maintains• Patronizes• Solicits• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• Force• Fraud• Coercion	<ul style="list-style-type: none">• Commercial Sexual Activity

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Harbors• Transports• Provides• Obtains• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• Force• Restraint• Threats of harm• Abuse or threatened abuse of the legal system• Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint	<ul style="list-style-type: none">• Involuntary servitude• Peonage• Debt Bondage• Slavery

Continued Presence and the T Visa Application



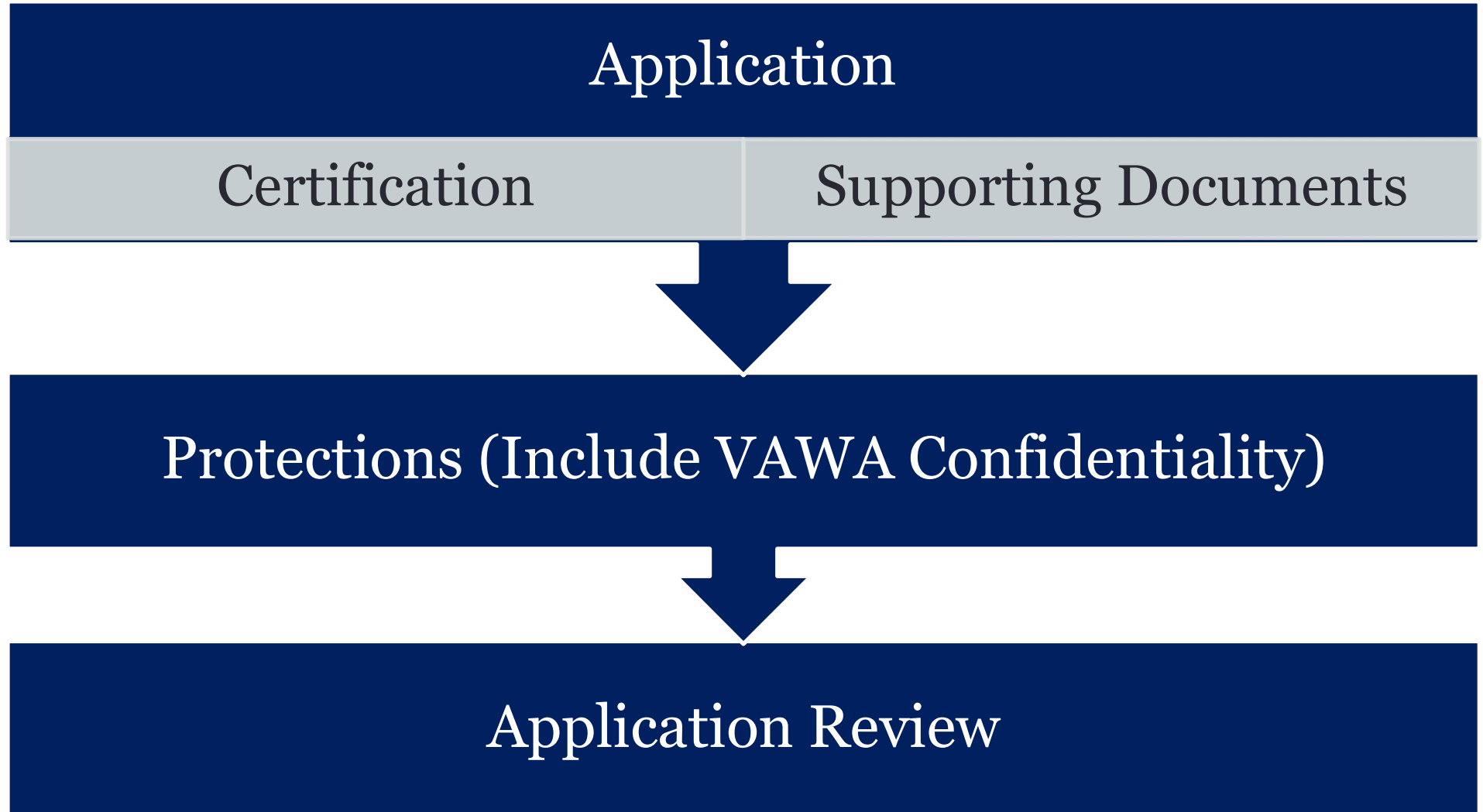
Slide 24

RM10

I added a new slide on T slide to supplement the info on T Visa

Rocio Molina, 6/8/2021

U Visa Protections



U and T Visa Victims “Red Flagged”



- Department of Homeland Security (DHS) computer system “red flags” victims who have filed for, or have been granted victim-based immigration relief
- Reminds DHS staff of legal obligation not to rely on “tips” from perpetrators regarding victims of
 - Domestic violence, sexual assault, stalking, human trafficking

Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims who called police for help arrested for domestic violence
- U visa applicants have over 70% cooperation rates in criminal investigation and prosecutions and have 36% higher future crime reporting rates

Krisztina E. Szabo, et.al., *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014); Rafaela Rodrigues, et. al., *Promoting Access to Justice for Immigrant and Limited English Proficient Victims (2017)*; Leslye E. Orloff, et.aal., *Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (April 12, 2021)

U Visa 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	

Additional U Visa Applicants

- Parents and guardians can apply as an “indirect victim” if:
 - The victim is a child under 21 years of age and/or
 - The victim is incompetent, incapacitated, or deceased due to murder or manslaughter
 - Indirect victims must demonstrate that they were helpful
- Bystander victimization – very limited
- When the victim is a child, the helpfulness requirement can be met by a “next friend” being helpful

Slide 29

GS(8)

There are also T visa derivatives for eligible family members: probably worth including somewhere

Gilmer, Sara (OJP/OVC), 6/3/2021

KR10

NIWAP please add

Katie Rossomondo, 6/3/2021

RM8

This slide is not about derivatives its about other applicants when the victim is a minor we can add a slide about derivatives

Rocio Molina, 6/7/2021

Family Members Can Also Be Protected

- U and T visa victims can also apply for certain family members :
 - If victim under the age of 21:
 - Spouse
 - Child under 21
 - Parent
 - Unmarried siblings under the age of 18
 - If victim is over the age of 21
 - Spouse RM9
 - Child under 21

RM9

New Slides

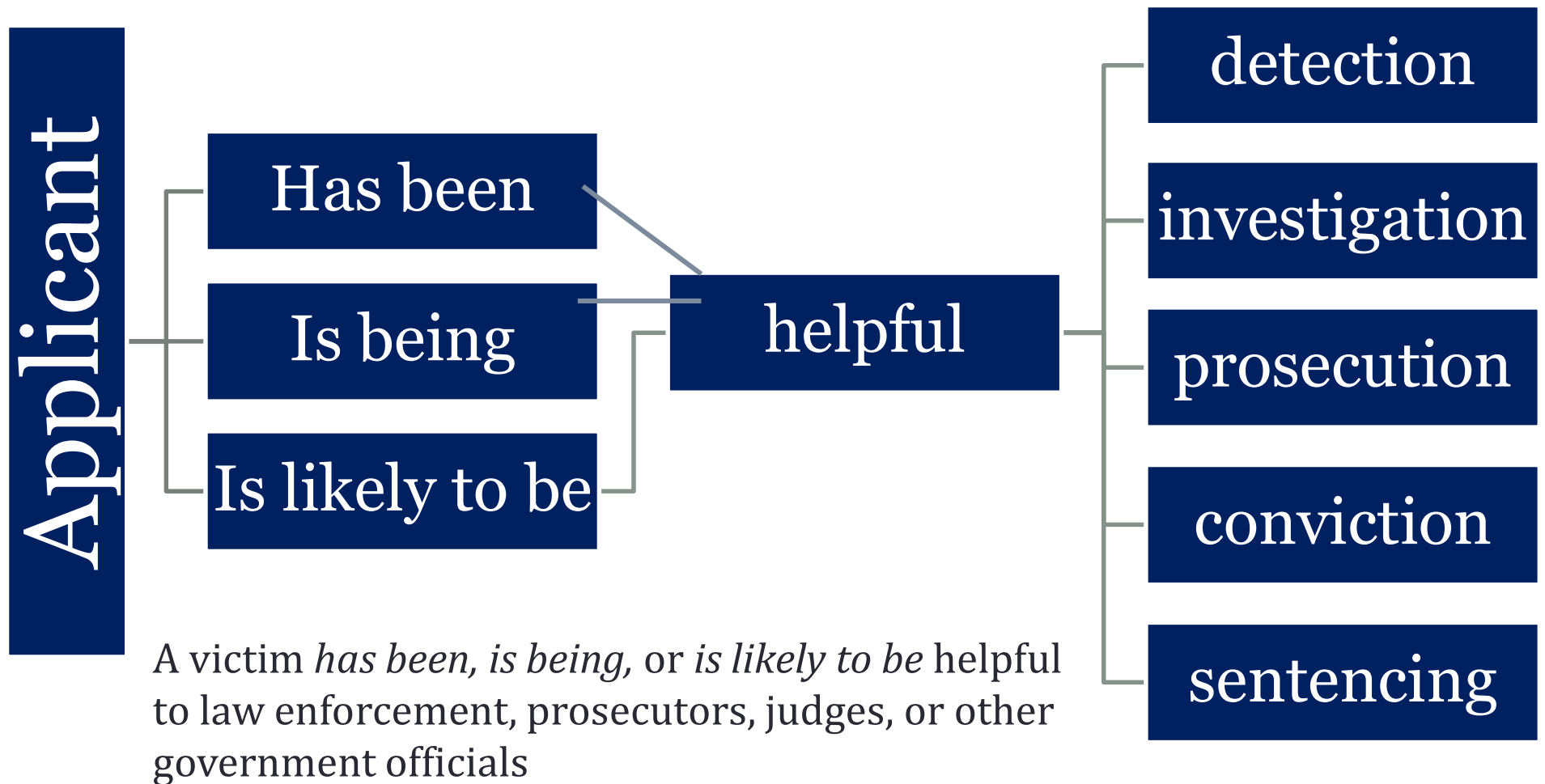
Rocio Molina, 6/7/2021

A closer look at what the U Visa certification attests to:

THE VICTIM'S HELPFULNESS

Definition of “Helpfulness”

INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)



Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree of helpfulness required
 - DHS regulations – totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

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



Victim-centered approach

Helpfulness

Calling 911

Having a Rape Kit performed

Providing a description of offender

Allowing photographs to be taken

Giving information about the offender's whereabouts

Bringing a minor victim to a Child Advocacy Center

Providing a statement about "other bad acts"

Reporting crime in another case against the perpetrator

Testifying at a bond hearing, trial, or sentencing

Who Can Certify?

Head of the agency or someone in a supervisory role who is specifically designated by the head of the agency:

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners
- 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, there is a **six month** window after signing the certification in which the U visa application must be filed.

When should you sign the U Visa certification ?

- 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

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

U Visa qualifying criminal activity occurs

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

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

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

Applicable certifying agency receives U Visa request

Agency requests for all relevant police records to determine eligibility

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

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

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

U visa certification signed by chief/sheriff or designee

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

Slide 39

RM11

New Slide

Rocio Molina, 6/8/2021

U Visa Certification Form Highlights



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



Certification form is available to download at
<https://www.uscis.gov/i-918>

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 |

You can & should certify multiple offenses when present in the case.

“Unreasonable Refuse to Assist”

Part 4:

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

Part 6:

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.

Have you ever had a case where the victim became “uncooperative” at any point?

Please check the box that best describes you:

A. Yes

B. No



If yes, type in the chat what you know about why

Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested

Certification

Application

U Visa

Two Distinct Requirements

“Helpfulness” and “Cooperation/Assistance”

Helpfulness: 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

Cooperation: After Filing the U Visa until Permanent Residency

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

Victim Does Not Unreasonably Refuse to Cooperate

Although a case does not require prosecution or conviction, DHS still requires the victim to cooperate from filing, to receipt of the U visa, until receipt of lawful permanent residency.

The requirement to cooperate is **modified** when the victim's refusal is reasonable. **Look at totality of the circumstances.**

Is the request for cooperation reasonable?

8 C.F.R. 214.14(b)(3)
8 C.F.R. 245.24(2)(2)(ii)

Is the victim's refusal unreasonable?

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

AND

Is the victim's refusal to help unreasonable? 8 C.F.R. 245.24(a)(5)

This question is analyzed from the victim's point of view. Does the victim have a good reason for saying "no" to law enforcement's request?

The victim may refuse in cases where they are:

- In danger
- Unaware of request (e.g. language barrier)
- Being intimidated
- Being threatened or subjected to force, fraud or coercion
- Concerned about the safety of their family
- Under the belief that participating is more dangerous than not
- Increased trauma to the victim
- Due to the victim's age, maturity or capacity

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

Practice Tips

- Identify tactics used by offender to assert power and control including immigration related abuse
- Work with law enforcement to address witness intimidation
 - Check in on victims when appropriate
 - Recognize changes in communication patterns
- Collaborate with victim service professionals
- Communicate with victim's immigration or family law attorney or victim advocate
- Establish safe points of contact with friends and family
- Continually safety plan with victim

U Visa and T Visa Policies

IACP 2018 Resolution

- Improves relationship between law enforcement and immigrant communities
- Increases “trust between law enforcement officials and otherwise reluctant immigrant communities who fear that contacting police will lead to their deportation”
- Provides an opportunity to increase collaboration with victim advocacy groups

What are some
benefits of having U
and T visa
certification policies?

*Please type your answers in the
Chat Box.*

Benefits of a Written Certification Policy

- Ensure consistency throughout the agency
 - Provides certifiers with clear guidance on how to handle these requests
- Ensure continuity through changes in personnel
- Memorialize and make accessible the certification process
- Informs the public about the process and protocol they must follow to have their requests reviewed
- Streamline that process to ensure agency resources are utilized in the best way possible
- Enhances community policing and public safety

Elements of an Effective Certification Policy

- Assignment of agency certifying officials
(supervisors of specialized units recommended)
- Defines the “helpfulness” requirement clearly
- Gives guidance for unique circumstances
(Delayed request, no criminal charges, no official report)
- Identifies the mechanisms for responding to a request
- Follows the spirit of the role DHS intended for law enforcement in the certification process

Implementing a Certification Policy: Tips

- Train designated certifiers and their direct colleagues who may assist with the U visa requests
- Identify a trusted resource to assist with policy implementation and answer specific on-going questions
- Periodic review your policy and practice to look for opportunities for improvement
- Partnering with legal service providers or law enforcement agencies/prosecutors with successful U visa policy



ETHICAL CONSIDERATIONS

True or False

- A. DHS requires law enforcement to complete the U visa or T visa certification.
- B. Signing the certification gives the U visa and T visa victim citizenship.
- C. U visa certifiers are not required to determine substantial physical or mental abuse.
- D. Certifiers cannot sign a U visa or T visa certification for victims with criminal histories.

Are there times it is not appropriate for a certifier to sign the U visa or T visa certification?



Addressing Safeguards Against Fraud

- Applications are adjudicated by a specialized unit
- USCIS conducts FBI fingerprint and background checks, and review of inadmissibility issues
- USCIS may ask for further evidence –supporting evidence
- Additional fraud checks when applying for lawful permanent residency and U.S. Citizenship

Certifying Early

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

~~Reason for immigration benefit~~

Las Vegas Metropolitan Police Department

Response to U-Visa Certification Requests

- Policies & Procedures
- Official Letter Authorizing Signer/s
- Provide Training Department wide to Address the Myths

Lessons Learned

- Develop a Tracking System
- Prepare Letters of Denial on Letterhead
- Have Multiple Authorized Signers

Resources, Training and Technical Assistance

Resources

- **Model Policies and IACP Resolution:**
<https://niwaplibrary.wcl.american.edu/iacp-resolution-u-t-visa-certification-nov2018>
- **NIWAP's Library:**
<http://niwaplibrary.wcl.american.edu>
- **Materials and tools for law enforcement and prosecutors available at:**
<http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/>
- **Annual Report on Immigration Applications and Petitions Made by Victims of Abuse – FY19:**
https://www.uscis.gov/sites/default/files/document/reports/Annual_Report_on_Immigration_Applications_and_Petitions_Made_by_Victims_of_Abuse_-_Fiscal_Year_2019.pdf

OVC Resources

- **Coalition to Abolish Slavery & Trafficking (CAST) TTA Program:**
<https://casttta.nationbuilder.com/>
- **CAST Program Ends-Means-Purpose Model:**
https://casttta.nationbuilder.com/emp_model

Virtual Roundtables

- Only law Enforcement & Prosecutors
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register, visit <https://www.surveymonkey.com/r/85FM5NV>



Trainings

- Onsite training on immigrant crime victim issues and language access
- Available for law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To sign up to have us bring a training to your jurisdiction go to:
<http://www.niwap.org/requesttraining/>

Technical Assistance

- NIWAP
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
- AEquitas at www.aequitasresource.org
 - Jane Anderson
janderson@aequitasresource.org