

Round Table #2
What do they mean by..
“Helpfulness”

April 28, 2016

Introduction

- Sgt. Tony Flores
 - Inspector San Francisco PD
- Officer Michael LaRiviere
 - Salem Police Department

Helpfulness

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

- Understand the scope of the helpfulness standard
- Apply the helpfulness standard to U visa certifications



U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

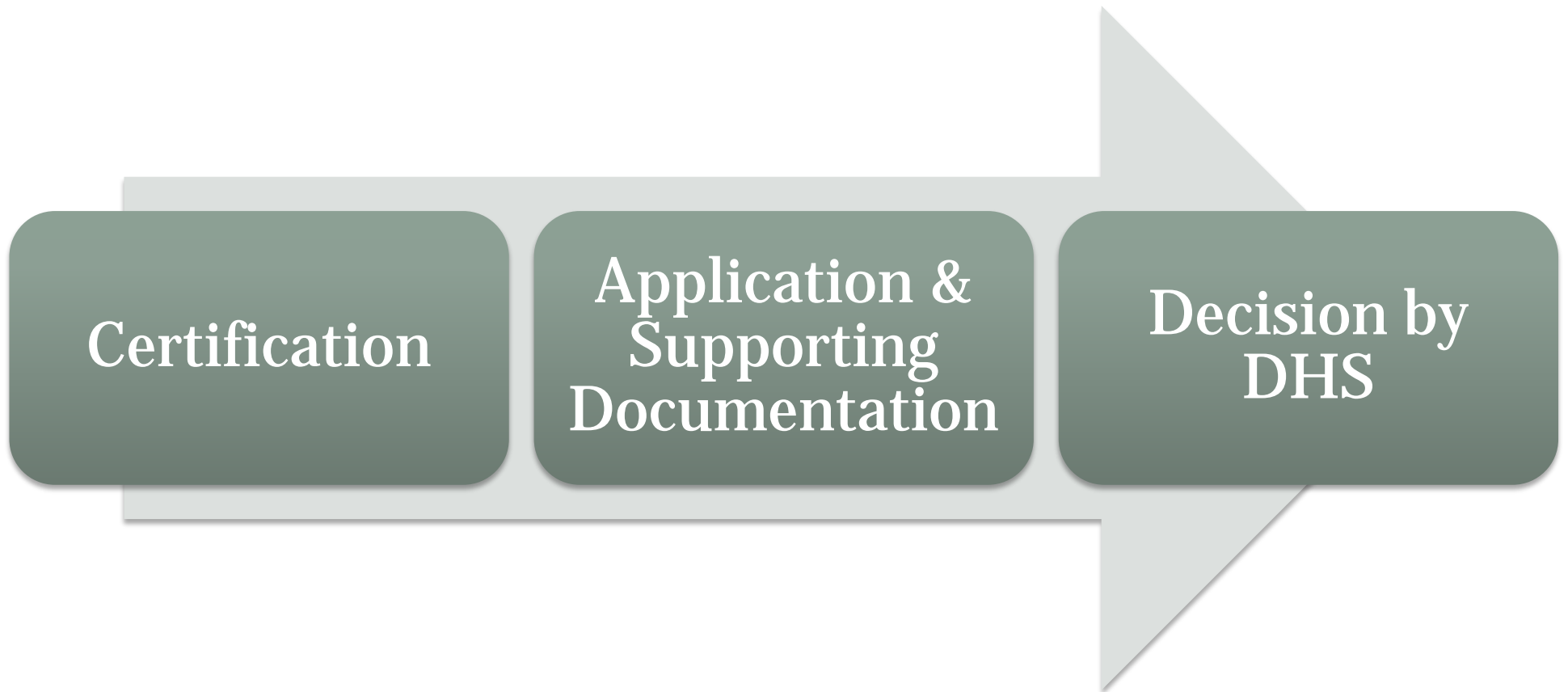
U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- **Determine helpfulness of the victim**
- Determine if any family members were implicated in the crime

Things to Know About Certifying

- “Do I believe this person was a victim of a qualifying crime?”
- “Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?”
- Question is **NOT**:
 - Can we prosecute the crime?
 - Can I arrest the offender?
 - Do I have proof beyond a reasonable doubt?
 - Will the prosecutor’s office file charges?
 - Is this within the statute of limitations?
 - Did we get a conviction?

The U Visa Application Process



Typical length of process = 12 -14 months

DHS Decision

- Were they a victim of a qualifying crime?
- Did they suffer substantial harm as a result of victimization?
- Assess whether the victim unreasonably did not comply with requests from law enforcement (helpfulness)
- Is the victim admissible?
 - Review of criminal history
 - Review of immigration history

Part 6. Certification

I am the head of the agency listed in **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed in **Part 3**. 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 the 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 qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (*mm/dd/yyyy*)

REMEMBER: This is merely a certification that you believe they were a victim of a crime. This does not automatically mean that the victim will be granted immigration relief.



Helpfulness

Part 4. Helpfulness of the Victim

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

- | | | |
|--|------------------------------|-----------------------------|
| 1. Possesses information concerning the criminal activity listed in Part 3 . | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. <i>(Attach an explanation briefly detailing the assistance the victim has provided.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Has not been requested to provide further assistance in the investigation and/or prosecution. <i>(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. <i>(Attach an explanation.)</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

What does “helpful” mean?

Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation or prosecution can still be ongoing

Helpfulness can be satisfied even if:

- Victim reports a crime where there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is subject to immigration removal
- The perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history or is subject to immigration enforcement
- Victim fully discloses story after better understanding rights, the U-visa and meaningful language access

Examples of Helpfulness

- Calling 911 to report a crime
- Providing a statement to the police
- Filing a police report
- Seeking a protection order
- Providing information to prosecutors
- Serving as a witness in a prior prosecution or investigation

**But what if ____, can the survivor still
be considered helpful?**

Anyone have a scenario to fill in blank??

Helpfulness can be satisfied even if

- **Survivor reports a crime where there's no further investigation**
- **Report is of past crime, where survivor did not know or feel safe to report**
- **Perpetrator absconds or is subject to immigration removal**
- **The perpetrator is being prosecuted for a different crime**
- **Survivor is not needed as a witness**
- **Victim is dead (indirect victim qualifies)**
- **Perpetrator is dead**
- **Survivor has a criminal history**
- **Survivor is subject to immigration enforcement**
- **Survivor fully discloses story after better understanding rights, the U visa and meaningful language access**

-
4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (*Attach an explanation.*) Yes No

What does it mean for a victim to “unreasonably refuse” to provide assistance?

Why would a victim report a crime and then refuse to participate in the ensuing investigation and trial?

Reasons for Refusing to Cooperate

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

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 of the abuser
- trauma suffered
- force, fraud or coercion

Witness Tampering

- Work with prosecutors to detect signs
 - Change in frequency of contact
 - Missed appointments
 - Recantation or minimization
- Investigate
 - Follow up with victim
 - Contact victim advocate, immigration attorney, others that had contact with victim
 - Jail calls
 - Interview friends, neighbors, and family

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

Hypothetical Case Scenario: 1

Lara



Lara entered the United States seven years ago with a student visa. One night after the visa had expired; she was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she had done if she told anyone. Four months later, Lara realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss encouraged her to contact the police, and helped her call the police. Lara told the police everything she knew, but said she would not testify in court because she feared retaliation.

Hypothetical Case Scenario:2

Amelia and Carlos



Amelia and Carlos were living in poverty in their home country. Together they saved, borrowed and planned to pay a “coyote” \$3,000 to bring each of them into the United States. Once they arrived in the U.S., the “coyote” demanded an additional \$3,000 to release and transport them to family members living in Louisiana. After the “coyote” had held Amelia and Carlos in an abandoned house for 5 days, without food or water, their family was able to send the additional money. The coyote agreed to drive Amelia and Carlos to their family. The coyote had been drinking heavily before the drive, and just before they reached their destination, the coyote’s van crashed into oncoming traffic. Amelia was sitting in the passenger seat and died instantly. The passengers in the other car had minor injuries. Police arrived on the scene, and took both Carlos and the “coyote” into custody. Carlos told the police many details of the coyotes’ illegal business enterprises.

Resources

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457
- ▶ Email: niwap@wcl.american.edu

- ▶ **Materials on U visa and Immigrant Victims Legal Rights**

- ▶ Visit <http://niwaplibrary.wcl.american.edu>
- ▶ U Visa Certification Toolkit
- ▶ DHS Answers to Law Enforcement Reasons for Not Certifying
- ▶ USCIS Q & A on U Visa Certification
- ▶ Roll call training videos
- ▶ All available at:
<http://niwap.org/go/lawenforcement>

Thank You!

The logo for NIWAP (Northwest Indian Water and Power) is located at the bottom of the slide. It features a dark blue silhouette of a mountain range with a jagged top edge. The letters "NIWAP" are written in a white, serif font across the bottom of the silhouette.

NIWAP