

U Visa 101: Nuts and Bolts of the Application and Certification

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Introductions

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Learning Objectives

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

- Screen immigrant survivors and identify crime victims the U visa was intended to help
- Play an active role in assisting immigrant survivors of crime file and complete U visa applications
- Anticipate and overcome challenges to obtaining U certifications

Overview: U Visa

What is your knowledge of the U visa?

- Very good
- Good
- Have heard of/seen it
- New to this issue



U Visa Basics

- General facts
- Purpose: Why does it exist?
- Requirements: Who is eligible for it?
- Application process: How does one get it?



General Facts

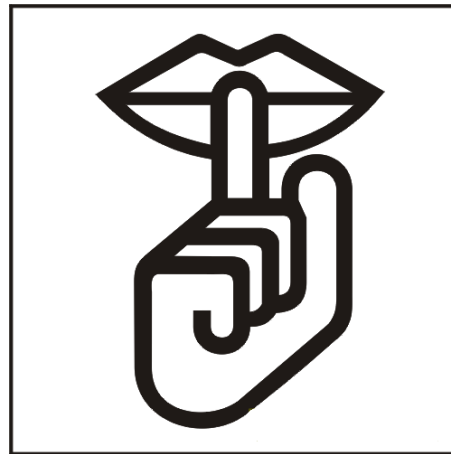
- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4-year stay
- Only some U visa holders will qualify for legal permanent residency– no guarantee
- U.S. citizenship can only be attained after legal permanent residency for 5 years + proof of good moral character
- Protected by VAWA confidentiality

Why does the U visa exist?

Congress created the U visa in 2000 to:

- Increase prosecution of perpetrators of crimes against immigrants
- Improve community policing and community relationships
- Increase immigrant victim crime reporting
- Minimize fear of deportation for immigrant victims of crime
- Enhance victim safety and keep communities safe

Barriers to Reporting



Keeping Communities Safe

Reporting Crime vs. Deportation

Concerns about immigration status result in undocumented immigrant crime survivors being

- **Less likely to:**
 - Report a crime
 - Provide information to police & prosecutors
 - Believe police & prosecutors want to help them
 - Testify
- **More likely to:**
 - Be susceptible to perpetrator's coercion and threats; particularly immigration related threats, coercion, and abuse

Barriers to Reporting

- Threat of deportation
- The perpetrator took the victim's valid documents
- Valid documents replaced with fake documents
- Shame
- Perpetrator was a gang member– victim feared violence
- No access to money
- Made to feel powerless
- Language barriers
- Lack of knowledge about legal rights and U.S. system

Domestic Violence

- Domestic violence in U.S. in general: 35.6% (CDC 2010)*
- Domestic violence among Immigrant women: 30-50%**
- Immigrant women with U.S. citizen spouses abuse rate reaches 59.5%***
- Research has found that immigrant victims
 - Stay longer with their abusers
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

*M.C. Black, K.C. Basile, M.J. Breiding, S.G. Smith, M.L. Walters, M.T. Merrick, J. Chen, & M.R. Stevens. The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (Centers of Disease Control and Prevention 2011)

**Anita Raj & Jay Silverman, Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence (March 2002)

***Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Sexual Assault & Child Abuse

- Immigrant women are particularly vulnerable to sexual assault
- High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers*
 - Including increased risk of recurring sexual assault
- Immigrant children are also particularly susceptible to child abuse

*Michele R. Decker, Anita Raj, & Jay G. Silverman, Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation (May 2007)

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

Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

*Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

Why “Criminal Activity”?

- “Criminal activity” chosen to offer early access to justice system protection
- U visa protection available even when:
 - Investigation does not result in prosecution
 - Victim helpful in investigation, but does not testify at trial
 - Abuser eludes arrest
 - Criminal case is dismissed
 - Victim comes forward makes report and police or prosecutors decide not to prosecute
 - Prosecution, but no conviction
 - Victim of listed criminal activity, but another crime prosecuted
 - Prosecution cannot take place (diplomats, no extradition)

U Visa Criminal Activities*

- 39.4-45.9 % - Domestic violence
- 49.2% - Human trafficking:
 - 25% - labor trafficking
 - 24.2% - sex trafficking
- 9.3% - Rape, sexual assault, or incest
- 9.9% - Felonious assault, murder, or manslaughter
- 8.47% - Kidnapping, being held hostage, unlawful criminal restraint, or torture
- 5.3% - Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, or solicitation

*Krisztina E. Szabo, David Stauffer, Benish Anver, & Leslye E. Orloff, Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants(February 12, 2014)

“Investigation or Prosecution” Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

The U Visa Application Process



Typical length of process = 12 -14 months

U Visa Application



- Law Enforcement Certification- must have one
- Complete and submit application Form I-918, which includes:
 - Identity documents
 - Victim's personal statement
 - Additional documentation on victimization
 - Proof of substantial injury or abuse (affidavit, therapist letter, medical records, etc.)
- Application for Waiver of Inadmissibility, Form I -192 if crime victim has inadmissibility issues (with fee or fee waiver)
- Decision from USCIS takes 9 months to a year, or more in some cases

What is Substantial Physical or Emotional Abuse?

- Decided by DHS based upon each victim's experience
- Case-by-case determination using these factors:
 - Nature of the injury inflicted or suffered;
 - Severity of the perpetrator's conduct;
 - Severity of the harm suffered;
 - Duration of the infliction of harm; and
 - Permanent or serious harm to the victim's
 - Appearance;
 - Health;
 - Physical wellbeing; or
 - Mental soundness

Crime Victim's Personal Statement

- Must submit personal narrative statement describing:
 - When and where criminal activity occurred;
 - Who was responsible;
 - Events surrounding the criminal activity;
 - How it came to be investigated/prosecuted;**AND**
 - Substantial physical and/or mental abuse suffered

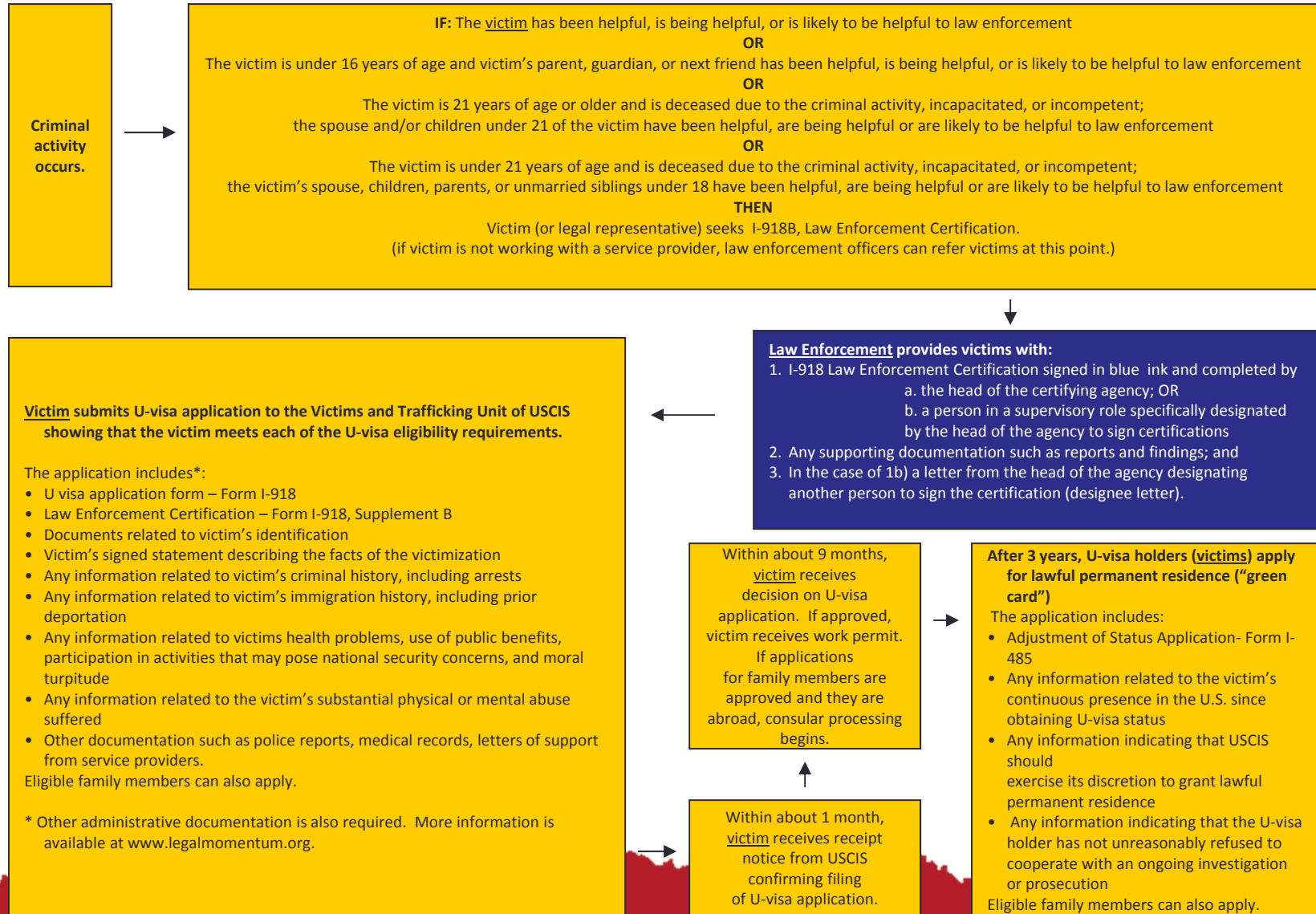
Personal Statement: Unique Opportunity to Promote Healing

- A survivor's "story"
- One of the most important pieces of evidence submitted
- Getting the full story for the immigration case can be a traumatic experience for survivors
- The goal is to develop an approach that:
 - Obtains more complete information to show substantial harm
 - Improves outcomes and helps survivors heal

Survivor Must Additionally:

- Disclose criminal history, if any:
 - Discretionary waivers available
 - No waiver if history of espionage or terrorism
 - Survivor will be fingerprinted
- Show immigration history, including violations, if any:
 - Misrepresentation on an immigration application
 - Removal proceedings
- Background check required for family members who may also apply for U visas

U-visa Application Victim Flow Chart



What protection is there for family members of U visa applicants?

- Adult victims:
 - Spouse
 - Children (under 21)
- Minors victims under 21
 - Spouse
 - Children
 - Parents
 - Unmarried siblings under 18 (at the time of filing)

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

Specialized DHS Unit

- Where to File – Vermont Service Center (VSC)
- Specialized unit trained in victim dynamics
- Any credible evidence standard
- May request further evidence (RFE)

Benefits of U Visa to Crime Victims

- Protection from deportation immediately after filing
 - Deferred action status
- Improves stability for victims
 - Family, custody, and criminal case
- Can apply for immigration status for qualifying family members
- U visa recipients are “lawfully present” - eligible for benefits in some states

Benefits of U Visa to Crime Victims

- Receive employment authorization upon approval
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Can apply for lawful permanent residency 3 years after receiving U visa

Ongoing Duty to Cooperate

- Ongoing duty to cooperate
 - With reasonable requests from law enforcement
 - Victims can show that non-cooperation was not unreasonable (e.g. safety concerns)
 - If victim refuses a reasonable request for continued cooperation from law enforcement
 - DHS may revoke the certification

Case Study

Lola is 11 years old and moved to the U.S. 7 years ago with her parents on a visitor's visa, which has since expired. Paul occasionally visits with her parents. While her parents are at work, Paul, comes over because he needs to borrow the vacuum. While returning the vacuum, he compliments her beauty and says she should be a model someday. Lola likes the attention and is too young to be suspicious of Paul, so she lets Paul take pictures of her in different outfits, including some of her in swimsuits. Sometimes, he visits her at recess or on her way home from school, showing up more frequently over time. Paul plays around with the images of Lola on his computer and superimposes Lola's body onto a picture of a naked girl to circulate among his friends. Lola's father plays on a soccer team with Paul, and one day a teammate shows him the picture. Lola's parents immediately call the police and Lola tells the police everything about the time she spent with Paul. The police arrest Paul and he goes to jail.

U Visa Certification Overview

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

Form I-918 Supplement B,
U Nonimmigrant Status Certification

DHS Terminology: Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

What the U Visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
 - Include any findings regarding injuries (optional)
- Helpfulness of the victim
 - Current;
 - Past; OR
 - Willingness to be helpful
- Any family members implicated in the crime

Key Parts of the Certification Form

- **Identify the victim or indirect victim (Part 1)**
- Include agency and certifier information (Part 2)
- **What criminal activity occurred? (Part 3)**
- **Determine helpfulness of the victim (Part 4)**
- Determine if any family members were implicated in the crime (Part 5)
- **Signature of certifier (Part 6)**

Form I-918 Supplement B, U Nonimmigrant Status Certification

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

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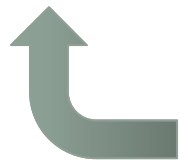
Part 1. Victim Information

Family Name	Given Name	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Names Used (*Include maiden name/nickname*)

Date of Birth (<i>mm/dd/yyyy</i>)	Gender
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female

For USCIS Use Only	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	



This is usually filled out by the victim's immigration attorney or advocate.



This should be left blank

Identify the Victim or Indirect Victims (Part 1)

- Victim was killed or is incapacitated
- Next friend
- Family members of immigrant victims
- Bystanders
- Any state laws regarding indirect victims?

Usually one person within an agency is designated as the “Certifying Official”



Part 2. Agency Information				
Name of Certifying Agency				
<input type="text"/>				
Name of Certifying Official	Title and Division/Office of Certifying Official			
<input type="text"/>	<input type="text"/>			
Name of Head of Certifying Agency				
<input type="text"/>				
Agency Address - Street Number and Name				
<input type="text"/>				
Suite No.				
<input type="text"/>				
City	State/Province	Zip/Postal Code		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Daytime Phone No. (with area code and/or extension)		Fax No. (with area code)		
<input type="text"/>		<input type="text"/>		
Agency Type				
<input type="checkbox"/> Federal		<input type="checkbox"/> State	<input type="checkbox"/> Local	
Case Status				
<input type="checkbox"/> On-going		<input type="checkbox"/> Completed	<input type="checkbox"/> Other: _____	
Certifying Agency Category				
<input type="checkbox"/> Judge		<input type="checkbox"/> Law Enforcement	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Other: _____
Case Number		FBI No. or SID No. (if applicable)		
<input type="text"/>		<input type="text"/>		

Part 3. Criminal Acts

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. *(Check all that apply.)*

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Obstruction of Justice | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Hostage | <input type="checkbox"/> Peonage | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Incest | <input type="checkbox"/> Perjury | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Prostitution | <input type="checkbox"/> Unlawful Criminal Restraint |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Rape | <input type="checkbox"/> Witness Tampering |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Manslaughter | <input type="checkbox"/> Sexual Assault | <input type="checkbox"/> Related Crime(s) |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Murder | <input type="checkbox"/> Sexual Exploitation | <input type="checkbox"/> Other: <i>(If more space needed, attach separate sheet of paper.)</i> |
| <input type="checkbox"/> Attempt to commit any of the named crimes | <input type="checkbox"/> Conspiracy to commit any of the named crimes | <input type="checkbox"/> Solicitation to commit any of the named crimes | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> |

You can & should ask the certifier to certify multiple offenses when present. “Other” can include criminal activity present, but not listed specifically; e.g., “stalking”



Dates do not have to be precise –
months, seasons or years can be used.



Part 3. Criminal Acts *(continued)*

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

--	--	--	--

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

--

4. 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

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

--

c. Where did the criminal activity occur?

--

Part 3. Criminal Acts *(continued)*

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

Make copies of all reports and attach.

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

Be as specific as possible, highlighting visible injuries observed (even if not photographed).
If you are aware of mental injury, include as well.

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**. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)* Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. *(Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)* Yes No

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

5. Other, please specify.

NOTE: This will be discussed in detail in the next section.

Determining Whether the Victim is Helpful (Part 4)

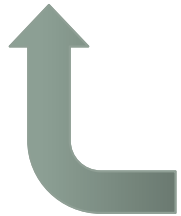
- **Review Statute and DHS Regulations:** has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction, or
 - Sentencing
- There is no degree of helpfulness required
- Law enforcement may complete U visa certification once they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

Part 5. Family Members Implicated in Criminal Activity

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement



Because many applications will include domestic violence, this may likely be the defendant.

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 the certifier believes the survivor was the victim of a criminal activity. This does not automatically mean that the survivor will be granted immigration relief.

What is “Helpfulness?”

-
2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. *(Attach an explanation briefly detailing the assistance the victim has provided.)*
-

Yes

No

Are there any bars to helpfulness?

NO!

- DHS Regulations and Polices:
 - Case may be:
 - Closed
 - Being investigated
 - Being prosecuted
 - Detected/reported, but never pursued
 - Being investigated by EEOC, DOL, APS, CPS only without any report made to the police
 - Perpetrator may have been found not guilty

Helpfulness Can Be Satisfied Even If:

- Survivor reports the crime and there is no further investigation
- Report is of a past crime
- Perpetrator absconds or is subject to immigration removal
- 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 criminal history
- Survivor is subject to immigration enforcement



Identifying and Addressing Difficult Issues for Certifiers



*What challenges have you
experienced with the U
certification?*

Common Concerns of Law Enforcement

- Does not want to confer citizenship on victim
- Certifications are going to create an administrative backlog
- Belief that undocumented immigration status is a criminal federal offense
- It's the responsibility of DHS, not of the local police
- Victim is uncooperative or no longer helpful
- Victim has a criminal history
- Crime occurred a long time ago or the case is closed
- Perpetrator cannot be found, identified, or is dead

U Visa Benefits to Law Enforcement

- Encourages survivors to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhances immigrant community cooperation
- Reduces repeat calls and recanting survivors
- Fosters community policing partnerships
- Enhances officer and community safety



Some Ways to Efficiently Address Common Concerns

- Work with your LE agency to craft a U visa policy that addresses the concerns and creates a process
 - Highlight how the U visa helps law enforcement
- Keep in mind that the application process is extensive
 - the certification is just one piece of evidence that the survivor must provide
- Take note of where your certifications are coming from, create partnerships that are mutually beneficial
- Contact DHS or us – we are a free resource for you

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2013-TA-AX-K009 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/PROGRAM/EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN.