

Superior Court of California
County of San Francisco
Civil Division

U-Visa Certification Protocol
October 27, 2017

Congress created the U-Visa program for certain victims of criminal activity with the enactment of the Victims of Trafficking and Violence Protection Act of 2000.¹ Under the statute, a non-citizen may be entitled to a U-Visa if the Secretary of the Department of Homeland Security determines that the applicant has suffered substantial physical or mental abuse as a result of a having been a victim of a qualifying criminal activity, and was helpful, is being helpful or is likely to be helpful to law enforcement, prosecutors, judges, or government officials in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity.²

In order to be eligible for a U-Visa, the applicant must obtain a certification from a certifying agency or official³ explaining that the victim has been helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity.⁴

The Presiding Judge will assign all U Visa certification requests received by the Civil Division of the San Francisco Superior Court to a Judge designated to sign U Visa certifications.⁵ This approach helps ensure uniformity of decision and a clear transparent process for the applicant.

United States Citizenship and Immigration Services (USCIS) Form I-918, Supplemental B, is the document by which an applicant requests a judge's certification.⁶ In order to be entitled to a U-Visa certification, the only three elements the applicant must establish are that they:

- (1) are a victim of a qualifying crime;

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

² Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5), (c)(2)(i); **U.S. Dep't of Homeland Security, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement, Prosecutor, Judges, and Other Government Agencies** 4 (2017) [hereinafter **DHS U Visa Resource Guide**], https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

³ Approved certifying agencies or officials include (1) federal, state or local law enforcement officials, (2) federal, state or local prosecutors, and (3) federal or state judges, administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors. 8 U.S.C. § 1101(a)(15)(U)(i)(III); **DHS U Visa Resource Guide**, *supra* note 2, at 16.

⁴ Admission of Nonimmigrants, 8 U.S.C. § 1184(p)(1); **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

⁵ Courts may select a judicial officer receive and sign U visas on behalf of the court in addition to individual judicial officers being authorized by federal statutes and regulations to sign U visas. No delegation of authority is needed or required in the context of judicial certification. **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁶This form is available at <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>.

(2) possesses information concerning a qualifying crime; and

(3) has been, are being, or are likely to be helpful in the investigation or prosecution of a qualifying crime.⁷

Department of Homeland Security (DHS) regulations define “investigation or prosecution” to include detection, investigation, prosecution, conviction or sentencing of a criminal activity.⁸

DHS takes the position that judges make findings and issue orders not only in criminal cases, but in other types of civil and family court proceedings. For example, in civil protection order, custody and child abuse cases, judges “detect” criminal activity in order to issue protection order, make determination in child abuse proceedings, or award custody.⁹

Qualifying criminal activity includes any one or more of the following enumerated crimes, “or *any similar activity*”: “rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes”.¹⁰ “Similar activity” refers to a criminal activity that may be named differently in a state statute where the nature and elements of the criminal activities are comparable.¹¹

Conviction or even prosecution of the offender are not necessary to obtain a certification. Any investigation, the filing of charges, a prosecution, or a conviction is not required.¹² Seeking a protection order or providing information about the criminal activity in a custody or civil court case is sufficient for certification.¹³ There is no statute of limitations on a certification request.¹⁴ Instead, the applicant must only demonstrate that they possess information concerning the criminal activity enumerated in the statute, and that they are being, has been or is likely to be helpful to in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.¹⁵ “Helpful”, for the purpose of U-Visa applications, “includes providing assistance when reasonably requested.”¹⁶ The helpfulness requirement is an ongoing obligation on the part of the victim to be helpful. Thus, anyone who unreasonably refuses to assist after reporting a

⁷ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); **DHS U Visa Resource Guide**, *supra* note 2, at 6.

⁸ Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. 214.14(a)(5); **DHS U Visa Resource Guide**, *supra* note 2, at 8.

⁹ *See* New Classification for Victims of Criminal Activity U Visa Regulations; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,020 (September 17, 2007) (to be codified at 8 C.F.R. pt. 103, 212, 214, 248, 274a, 299) [hereinafter U Visa Regulations].

¹⁰ Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(iii); *see* Attachment A. California Penal Code Sections.

¹¹ *See* U Visa Regulations, 72 Fed. Reg. at 53,018; **DHS U Visa Resource Guide**, *supra* note 2, at 7-8.

¹² **DHS U Visa Resource Guide**, *supra* note 2, at 7, 22.

¹³ **DHS U Visa Resource Guide**, *supra* note 2, at 19, 22-23.

¹⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 7, 19.

¹⁵ *See* Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i)(II-III); **DHS U Visa Resource Guide**, *supra* note 2, at 4, 7.

¹⁶ **DHS U Visa Resource Guide**, *supra* note 2, at 5, 7.

crime are not eligible for a U-Visa. The duty to remain helpful to law enforcement exists even after a U visa is granted.¹⁷ Federal regulations require federal officials to decide whether a victim’s refusal to cooperate was unreasonable examining the totality of the circumstances including but not limited to force, fraud or coercion the victim was subjected to, the nature of the victimization and the specific circumstances of the victim’s fear, trauma, age, and maturity.¹⁸ Certifying agencies should inform USCIS of the victim’s unreasonable refusal to provide assistance.¹⁹

Whether or not the applicant has suffered substantial mental or physical harm as a result of having been a victim of a qualifying criminal activity—is adjudicated by the USCIC and is not a requirement of the certifying official.²⁰

The official’s decision to sign a certification application is discretionary.²¹ Signatures should be in blue ink, photocopies are not acceptable.²² A signed original certification form 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 unsigned document with a cover memo explaining why the certification was not signed.

All California Courts are required to report the number of U visa certifications that were signed and the number of certifications that were not signed to the California Legislature. Decisions on certification requests must be made with 90 calendar days of the request. If the

¹⁷ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

¹⁸ Adjustment of Aliens in U Nonimmigrant Status, 8 C.F.R. 245.24(a)(5).

¹⁹ **DHS U Visa Resource Guide**, *supra* note 2, at 7.

²⁰ **DHS U Visa Resource Guide**, *supra* note 2, at 6, 24.

²¹ **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²² **DHS U Visa Resource Guide**, *supra* note 2, at 8.

²³ **DHS U Visa Resource Guide**, *supra* note 2, at 13, 25.

²⁴ **DHS U Visa Resource Guide**, *supra* note 2, at 25.

requestor is in removal proceedings the decision on the certification must be made within 14 days.²⁵

Attachments [Can attach following documents to the protocol for additional guidance]:

Department of Homeland Security U and T Certification Resource Guide available at:
https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

Penal Code List

Infographic (See Protections for Immigrant Victims infographic available at:
<http://library.niwap.org/wp-content/uploads/DHS-Protections1.6-links-121516.pdf>)

Sample Certification Form (I-918 Supplement B Form, available at:
<https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>

²⁵ Immigrant Victims of Crime Equity Act, California Penal Code 679.10.