

WEBINAR

The U Visa As A Crime-Fighting Tool: *How Certification Improves Domestic and Sexual Violence Investigations and Prosecutions*

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POLL #1: Who is participating?

- A. Law enforcement
- B. Prosecutor
- C. Systems-based Victim Service Professional
- D. Community-based Victim Service Professional
- E. Victim attorney

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 Visa
- Hold offenders accountable by utilizing immigration relief as a crime fighting tool
- Enhance victim, community, and officer safety by combatting domestic and sexual violence
- Implement pretrial and trial strategies to combat common defenses in cases involving immigrant victims of crime

General Caveats

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

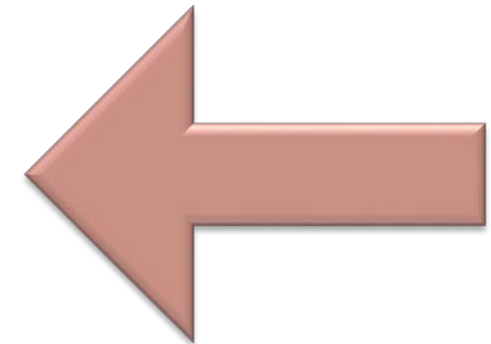
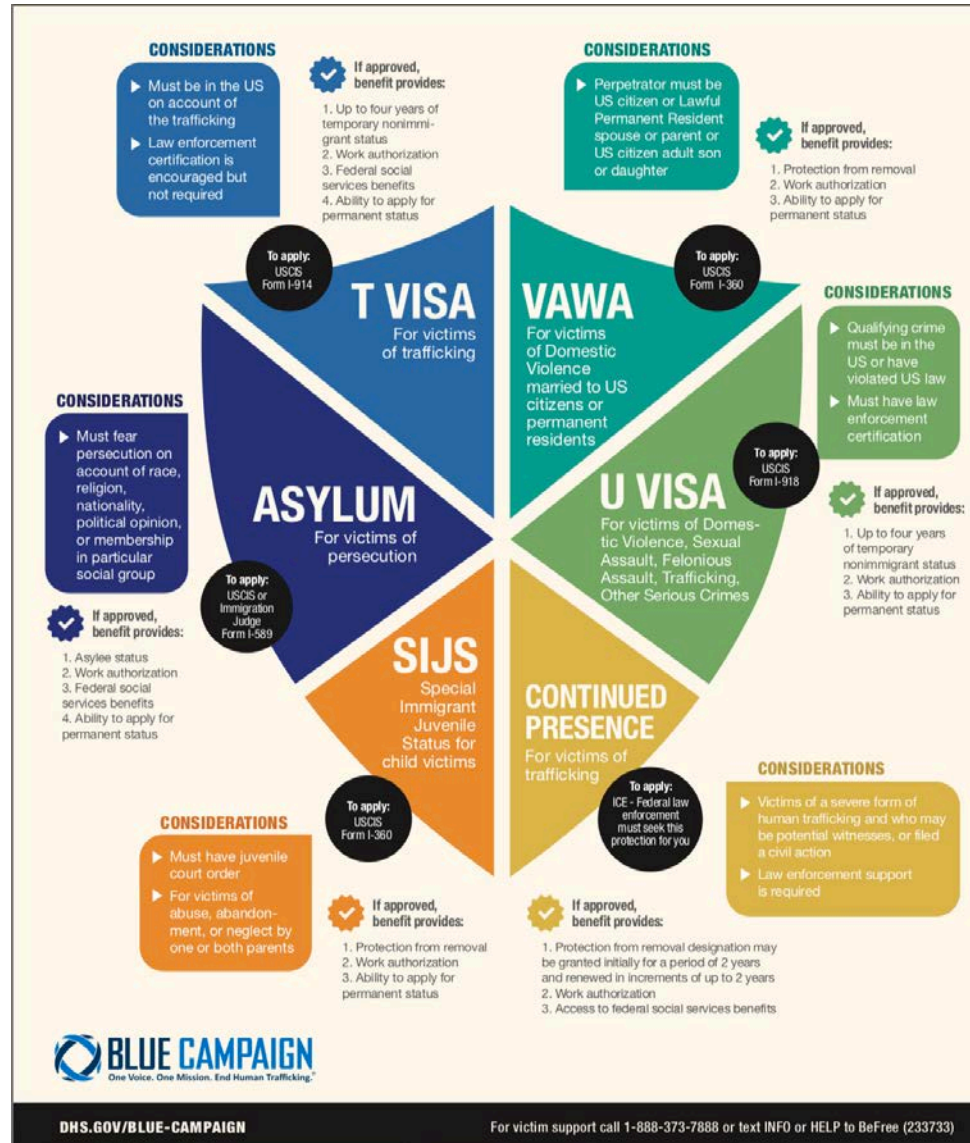
U Visa Statistics

11/2011

% of U Visas	Criminal Activity
76.1% = Domestic Violence & Sexual Violence	
9.9%	Felonious Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

Leslye E. Orloff and Paige E. Feldman, National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients (Nov 29, 2011)

Primary Immigration Protections for Victims



POLL #2:
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 the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

Goals of Immigration Relief



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 Policies

IACP 2018 Resolution

- Improves cooperation 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

Immigrant Victim Dynamics, Officer Safety & the U Visa

POLL #3: Immigrants are uniquely affected by domestic and sexual violence because ...

- A. The U.S. Constitution does not protect them
- B. Resources to help victims are only available in English
- C. State laws do not require police to help immigrant crime victims
- D. Offenders prey upon immigrant victims' fears and misconceptions, count on barriers to prevent the reporting of crime, and manipulate the legal system to assert power and control

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

Prevalence: Coercive Control

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of 3.97 years.

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

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Prevalence: Immigrant Victims

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L., Battered Immigrants and U.S. Citizen Spouses (2006)

Prevalence: Sexual Assault and Immigrant Women

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault

Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007)

- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students

Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000)

Practice Tips

- Screen for immigration-related abuse
 - More likely to exist in relationships where physical and sexual abuse exist (v. psychological abuse)
- Identify immigration-related abuse as a potential predictor of escalating abuse

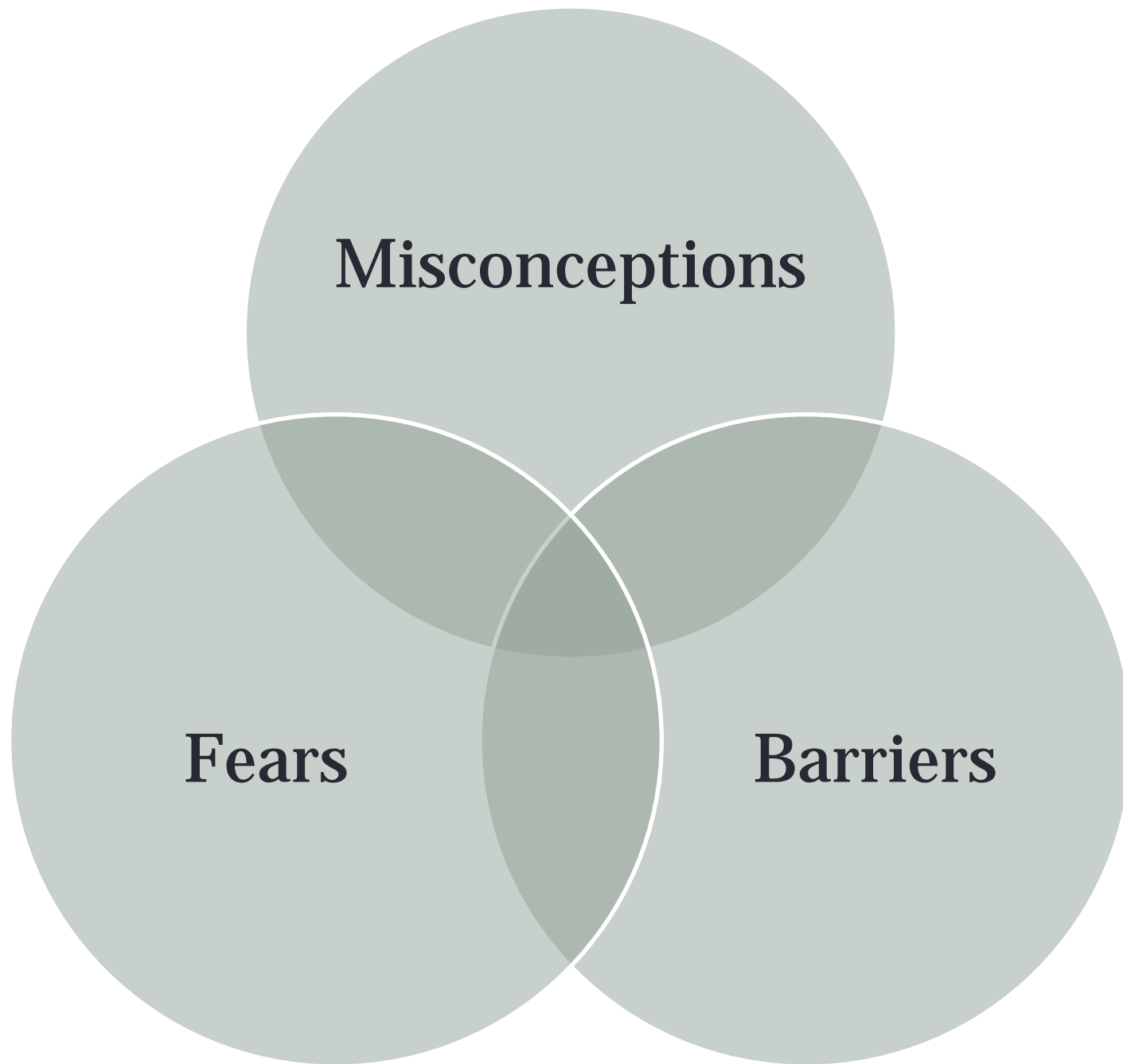
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

- Document to support claims of physical and sexual abuse

POLL #4:
What prevents
immigrant victims from
reporting crime and/or
participating in
investigations and
prosecutions ?



*Please type your answers in the
Chat Box.*



Fears

- Deportation
- Circumstances in their home country
- Separation from children
- Lack of contact with family
- Dangers facing their family in their country of origin
- Ostracism from their community
- Retaliation

Misconceptions

- Lack knowledge of
 - Crime victim legal rights
 - Laws regarding domestic violence, sexual assault
- Do not trust the police
- Believe police will arrest them
- Local police are immigration officers
- No services are available to immigrant victims
- Police are corrupt
- Criminal justice system will do nothing

Barriers

- Do not speak or understand English
- Financially depend on the perpetrator
- Isolation
- Lack of transportation or child care
- Community pressure
- Family pressure
- Religious factors

Immigration relief

Misconceptions

Language access

Fear

Barriers

POLL #5: How many cases have you had involving a U Visa?

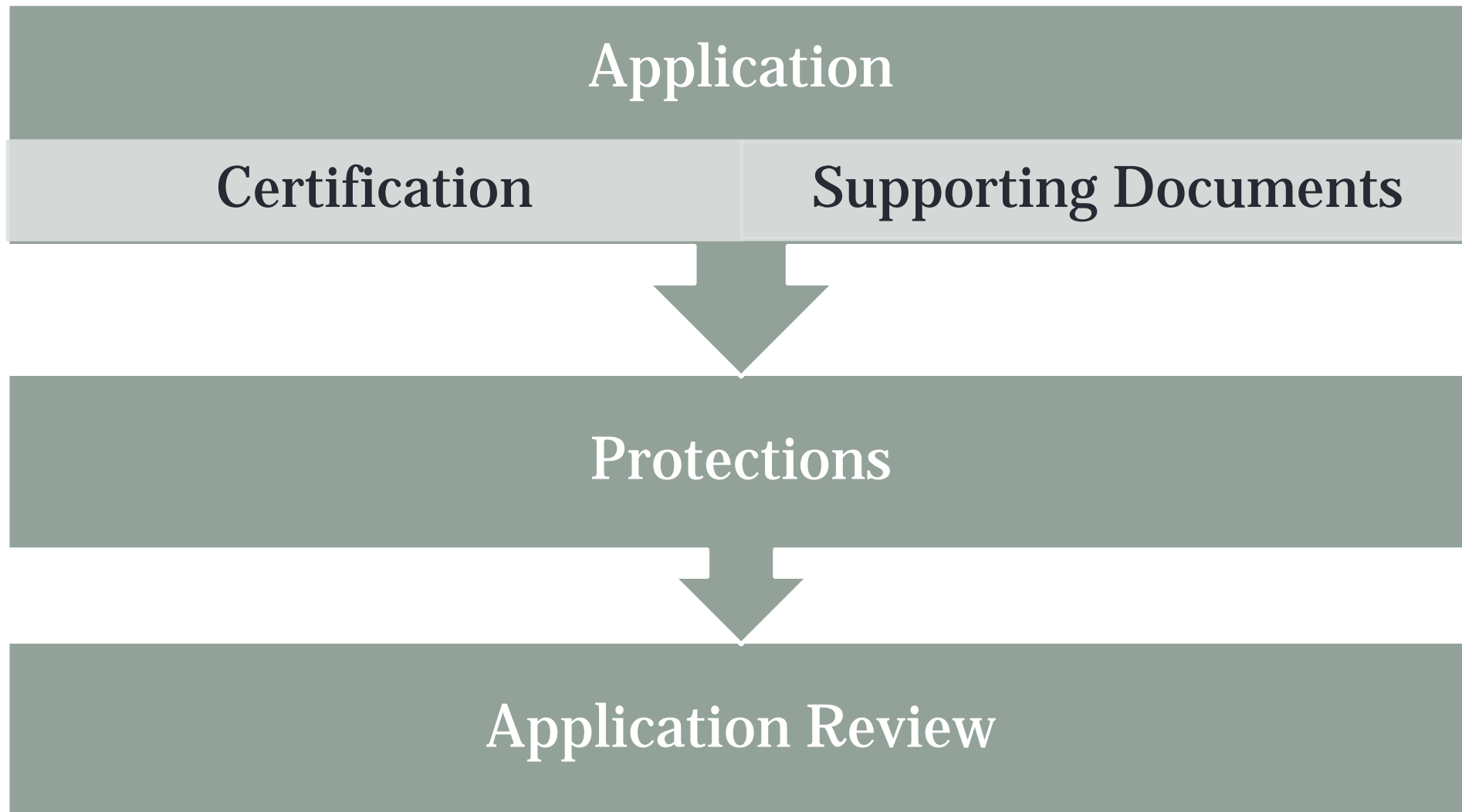
- A. Fewer than 5
- B. Between 6 and 15
- C. Between 16 and 25
- D. More than 25
- E. Do not know

Chat additional information, if you want to expand your answer

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

U Visa Protections



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

VAWA Confidentiality Relief

- Immigration case brought against a victim can be dismissed for VAWA confidentiality violation
 - 8 U.S.C. 1367
- Practice tip: Victims should carry a signed certification form with them at all times

VAWA Confidentiality Prongs

Abuser-Provided Information:

- DHS, DOJ and the State Department are barred from taking action against a victim based solely upon information provided by abusers and crime perpetrators (and their family members)

Location Prohibitions:

- Locational prohibitions to enforcement unless there is compliance with specific statutory and policy safeguards

Non-Disclosure:

- Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone

Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims (2017)*

U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpful

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

Harm

- Substantial physical or mental abuse as a result

Qualifying Criminal Activity

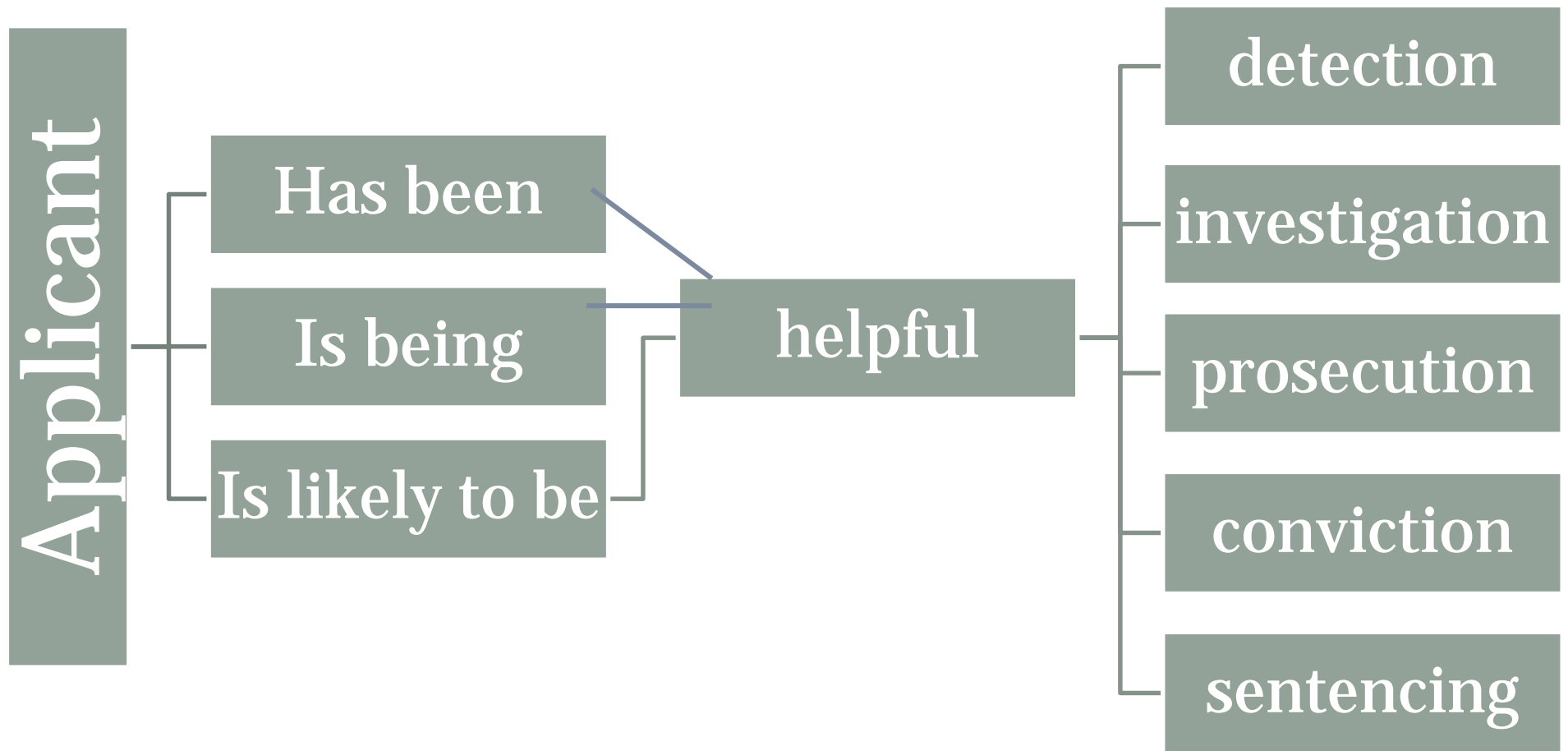
Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	

Additional 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

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”

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

Not Required

- Conviction
- Charges filed
- Offender arrested/prosecuted
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender alive



Victim-
centered
approach

Who Can Certify?

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

- Federal, state, and local
 - Law enforcement
 - 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 with investigative power

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

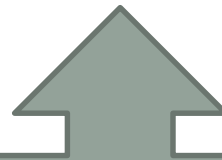
U Visa Certification Form Highlights



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>

▶ **START HERE - Type or print in black or blue ink.**

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)

▶ A-

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2.a. Family Name
(Last Name)

2.b. Given Name
(First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name
(Last Name)

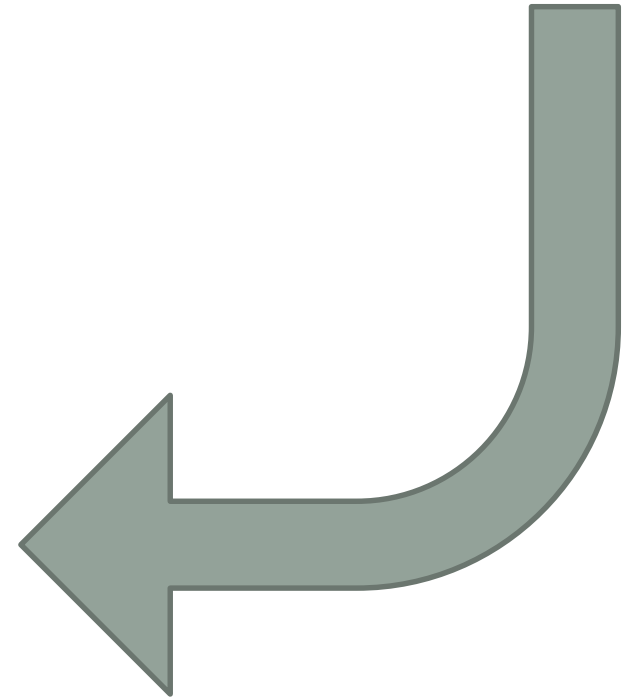
3.b. Given Name
(First Name)

3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender Male Female

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





In addition to the head of the agency, one or more certifying officials can be designated as a “Certifying Official”

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name
(Last Name)

2.b. Given Name
(First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

4.a. Family Name
(Last Name)

4.b. Given Name
(First Name)

4.c. Middle Name

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.

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

Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

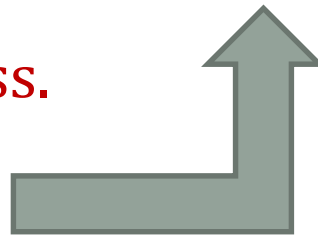
2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

Attaching state statutory language can be helpful

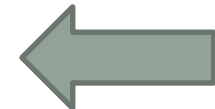
6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

Discuss the victim's helpfulness.
Make copies of all reports and
photographs and attach.



7. 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 and
if you are
aware of
mental injury.



Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3.**? Yes No
2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? Yes No
3. 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

We will
talk
about
this
next

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
- 2.d. Relationship
- 2.e. 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 was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, 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 U.S. Citizenship and Immigration Services (USCIS), 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 or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➔

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

"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"

REMEMBER: This is merely a certification of the above information and does not confer any immigration relief.

“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.

POLL #6

“Raise Your Hand”

If You Have Ever Had a Case Where the Victim
Became “Uncooperative” At Any Point



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

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 or 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)

POLL #7

You are in the best position to determine the reasons the victim may refuse to assist?



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
- Establish safe points of contact with friends and family
- Identify tactics used by offender to assert power and control
- Continually safety plan with victim

“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>

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

POLL #8: 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

Ongoing Assistance

Continuing obligation to provide assistance when reasonably requested

Certification

Application

U Visa

Regulatory Requirement

While case is pending and after the victim is granted a U visa

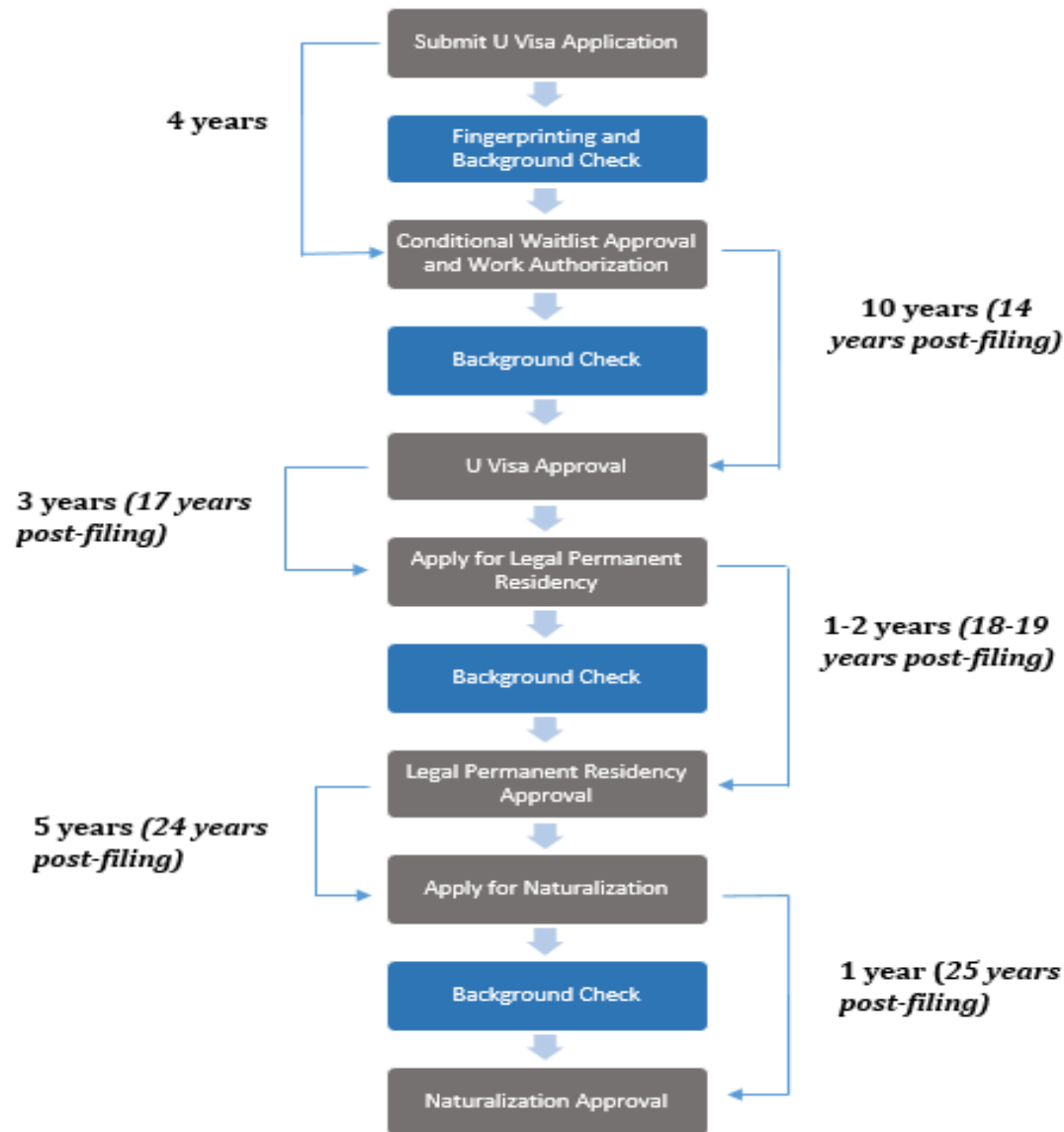
Is the request
reasonable?

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

Is the refusal
unreasonable?

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

U Visa Process Timeline



Prosecutors' Primary Concern

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

Cross Examination

Does it go towards the witness' credibility, bias, or motive to lie?

- Courts take a broad view
- Strategize:
 - Take the “sting” out during direct examination
 - Prepare victim for cross-examination
 - Listen for the defense to “open the door” to rebuttal evidence

Rebuttal Testimony

- Once the defendant has alleged that the victim has a motive to lie, the prosecution can introduce the victim's prior consistent statements about the charged crime
- Door to this testimony can be opened at any time, but is likely done during cross-examination

Prior Consistent Statements

F.R.E. 801(d)(B)

- Non-hearsay
- Not subject to Crawford
- Any consistent statement
 - offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying
 - to rehabilitate the declarant's credibility as a witness when attacked on another ground

Introducing Statements

Establish timeline

- When did the victim learn about the benefit?
- What statements were made before the victim learned about the immigration benefit

Victim statements

- 911 call
- First responder
- Detective
- Friends
- Family
- Victim Advocate
- Others

**Motive
to lie**

Rebut charge that
victim is lying to
get immigration
benefit

Certifying Early

PROS

CONS

Establish trust

Build rapport

Protect from offender

Protect from deportation

~~Reasons for certification benefit~~

Moving Forward

Implement U Visa policies that are consistent with the law and legislative intent

Improve victim, community, and law enforcement safety by utilizing the U Visa as a crime fighting tool

Develop trial strategies to overcome common defenses

Resources, Training and Technical Assistance

Resources

- 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/>

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 <http://www.niwap.org/go/LEArroundtables/>



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