

## Model

### U and T Visa Certification Protocol for State Courts

*Adapted from Superior Court of California, County of San Francisco Civil Division U-Visa<sup>1</sup> Certificate Protocol – October 27, 2017*

Congress created the U-Visa and T-Visa programs for certain victims of criminal activity with the enactment of the Victims of Trafficking and Violence Protection Act of 2000.<sup>2</sup> 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.<sup>3</sup>

A non-citizen may be eligible for a T Visa if the Secretary of the Department of Homeland Security determines that the applicant was a victim of trafficking in persons (sex or labor trafficking) who is in the U.S. due to human trafficking, the victim complied with reasonable requests for assistance with a human trafficking investigation or prosecution, and the victim would suffer extreme hardship if removed from the United States.<sup>4</sup>

In order to be eligible for a U-Visa, the applicant must obtain a certification from a

<sup>1</sup> San Francisco Superior Court Civil Division U-Visa Certification Protocol (October 27, 2017)

<https://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol>.

This adaptation to include T visa declarations by judges was developed by Leslye E. Orloff and Corrin Chow, NIWAP, American University, Washington College of Law (October 29, 2020).

<sup>2</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) [hereinafter VTTPA 2000]; 8 U.S.C. § 1101(a)(15)(U); Immigration and Nationality Act, Pub. L. No. 116-159, § 101(a)(15)(U), 2020 Stat. (enacted October 1, 2020) [hereinafter INA]; 8 U.S.C. § 1101(a)(15)(T); INA § 101(a)(15)(T).

<sup>3</sup> Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); Violence Against Women Act of 2002, Pub. L. No. 106-386, 114 Stat. 1533-1534; 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 and T Visa Resource Guide**], [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)].

<sup>4</sup> VTTPA 2000 § 101(a)(15)(T)(i); 8 C.F.R. § 214.1((b)); New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status; Final Rule, 67 Fed. Reg. 4,784, 4,784-85 (Jan. 31, 2002) (codified at 8 C.F.R. pt. 103, 212, 214, 274a, 299) [hereinafter **T Visa Regulations 2002**]; **DHS U and T Visa Resource Guide** *supra* note 2, at 9.

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certifying agency or official<sup>5</sup> 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.<sup>6</sup> In Maryland, approved certifying agencies or officials include federal, state, or local law enforcement officials and prosecutors. Officials with delegated authority from a federal or state court to decide cases including magistrates, judges, and administrative law judges may also certify.<sup>7</sup> These same officials may also sign T Visa declarations that are not a required document but provide helpful evidence that USCIS gives significant weight of a T visa victims’ assistance in the investigation or prosecution of a human trafficking case.<sup>8</sup>

Each court is encouraged to designate a judge to handle U Visa certification and T Visa declaration requests.<sup>9</sup> This approach helps ensure uniformity of decision and a clear transparent process for the applicant. Even if a court designates a certifying judge, another judge or authorized official (e.g., a magistrate) involved in case is not precluded from signing a certification.

United States Citizenship and Immigration Services (USCIS) Form I-918, Supplemental B, is the document by which an applicant requests a judge’s certification.<sup>10</sup> 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;
- (2) possesses information concerning a qualifying crime; and
- (3) has been, are being, or are likely to be helpful in the investigation or prosecution

<sup>5</sup> 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 and T Visa Resource Guide**, *supra* note 2, at 16.

<sup>6</sup> Admission of Nonimmigrants, 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(a)(10); *see also* New Classification for Victims of Criminal Activity U Visa Regulations; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,014, 53,015 (September 17, 2007) (to be codified at 8 C.F.R. pt. 103, 212, 214, 248, 274a, 299) [hereinafter U Visa Regulations]. **DHS U and T Visa Resource Guide**, *supra* note 2, at 5, 7;

<sup>7</sup> 8 C.F.R. § 214.14(a)(3)(i, ii); U Visa Regulations 72 Fed. Reg. at 53,019.

<sup>8</sup> 8 C.F.R. § 214.11(d)(3)(i); T Visa Regulations 2002 67 Fed. Reg. at 4,798; **DHS U and T Visa Resource Guide** *supra* note 2, at 10-11.

<sup>9</sup> 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 and T Visa Resource Guide**, *supra* note 2, at 8.

<sup>10</sup> This form is available at <https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf>.

of a qualifying crime.<sup>11</sup>

United States Citizenship and Immigration Services (USCIS) Form I-914 Supplemental B, is the document by which an applicant requests a judge’s declaration<sup>12</sup> In order to be entitled to a T-Visa declaration, the only two elements the applicant must establish are that:

- The victim is or was a victim of a severe form of human trafficking; and
- The victim has complies with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.<sup>13</sup>

Department of Homeland Security (DHS) U Visa regulations define “investigation or prosecution” to include detection, investigation, prosecution, conviction or sentencing of a criminal activity.<sup>14</sup> DHS takes the position that judges make findings and issue orders not only in criminal cases, but also in other types of civil and family court proceedings. For example, in civil protection order, peace order, custody, child welfare, and child abuse cases, judges “detect” criminal activity in order to issue protection orders, make determinations in child abuse proceedings, or award custody.<sup>15</sup> Criminal activity may also arise in divorce, landlord tenant, employment and labor, bankruptcy, debtor-creditor cases, dating violence, elder abuse, and disabled or dependent adult abuse cases.<sup>16</sup>

U Visa 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;

<sup>11</sup> Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i); U Visa Regulations, 72 Fed. Reg. at 53014-15; **DHS U and T Visa Resource Guide**, *supra* note 2, at 6.

<sup>12</sup> This form is available at <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>.

<sup>13</sup> 8 C.F.R. § 214.11(h)(1,2); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92,274, 92,274-75 (Dec. 19, 2016) (codified at 8 C.F.R. pt. 212, 214, 245, 274a) [hereinafter “T Visa Regulations 2016”]; T Visa Regulations 2002, 67 Fed. Reg. at 4,787-88; **DHS U and T Visa Resource Guide**, *supra* note 2, at 10.

<sup>14</sup> Alien Victims of Certain Qualifying Criminal Activity, 8 C.F.R. § 214.14(a)(5); U Visa Regulations, 72 Fed. Reg. 53,020; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 8.

<sup>15</sup> *See* U Visa Regulations, 72 Fed. Reg. at 53,014, 53,020.

<sup>16</sup> 8 C.F.R. 214.14(a)(9); U Visa Regulations, 72 Fed. Reg. at 53,015, 53,019; *see also* **DHS U and T Visa Resource Guide**, at 15, 19, 22, 23.

fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes”.<sup>17</sup> “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.<sup>18</sup>

Conviction or even prosecution of the offender are not necessary to obtain a U Visa certification or T Visa declaration. Any investigation, the filing of charges, a prosecution, or a conviction is not required.<sup>19</sup> Seeking a protection order or providing information about the criminal activity in a custody or civil court case is sufficient for certification.<sup>20</sup> There is no statute of limitations on a certification or declaration request.<sup>21</sup> Instead, the U Visa 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.<sup>22</sup> “Helpful”, for the purpose of U-Visa applications, “includes providing assistance when reasonably requested.”<sup>23</sup> While in the United States, an over 18 year old T Visa victim has an ongoing duty to cooperate with law enforcement’s reasonable requests for assistance in the investigation or prosecution of human trafficking, unless the victim has experienced physical or psychological trauma that prevents the victim from complying with reasonable requests.<sup>24</sup>

The U Visa 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 crime are not eligible for a U-Visa. The duty to remain helpful to law enforcement exists even after a U visa is granted.<sup>25</sup> Federal regulations require federal officials to decide whether a victim’s refusal to

<sup>17</sup> Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9).

<sup>18</sup> 8 C.F.R. § 214.14(a)(9); U Visa Regulations, 72 Fed. Reg. at 53,018; **DHS U Visa Resource Guide**, *supra* note 2, at 7-8.

<sup>19</sup> 8 C.F.R. § 214.11(d)(3)(i); 8 C.F.R. § 214.14(a)(12), (c)(2)(i); T Visa Regulation 2016, 81 Fed. Reg. at 92,276; U Visa Regulations, 72 Fed. Reg. at 53,015; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 7, 21, 22.

<sup>20</sup> 8 C.F.R. § 214.14(b)(2); U Visa Regulations, 72 Fed. Reg. at 53,016, 53,024; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 19, 22-23.

<sup>21</sup> 8 C.F.R. § 214.14(b); U Visa Regulations, 72 Fed. Reg. at 53,019; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 7, 19.

<sup>22</sup> *See* Aliens and Nationality, 8 U.S.C. § 1101(a)(15)(U)(i)(II-III); U Visa Regulations, 72 Fed. Reg. at 53,018-19; *see also* **DHS U Visa Resource Guide**, *supra* note 2, at 4, 7;

<sup>23</sup> 8 C.F.R. § 214.14(b)(3); U Visa Regulations, 72 Fed. Reg. at 53,019; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 5, 7.

<sup>24</sup> INA § 101(a)(15)(T)(i)(III)(bb)-(cc); 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb)-(cc); 8 C.F.R. § 214.11(b)(3)(i)-(ii); 8 C.F.R. § 214(h)(4)(i); T Visa Regulations 2016, 81 Fed. Reg. at 92,274, 92,289; T Visa Regulations 2002, 67 Fed. Reg. at 4,788; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 10.

<sup>25</sup> INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III); 8 C.F.R. § 214.14(b)(3); U Visa Regulations, 72 Fed. Reg. at 53,019; *see also* **DHS U and T Visa Resource Guide**, *supra* note 2, at 7.

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.<sup>26</sup> Certifying agencies should inform USCIS of the victim's unreasonable refusal to provide assistance.<sup>27</sup>

A T Visa victim also has an ongoing duty to cooperate with reasonable requests from law enforcement for assistance in the investigation or prosecution of human trafficking.<sup>28</sup> Special exceptions to this requirement were created for human trafficking victims under age 18 and for those who are unable to cooperate due to physical or psychological trauma.<sup>29</sup>

Whether or not the U visa 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.<sup>30</sup> The official's decision to sign a U Visa certification or T visa declaration application is discretionary.<sup>31</sup> Signatures should be in blue ink, photocopies are not acceptable.<sup>32</sup> A signed original certification form together with any attachments (e.g. a copy of a court order, photo)<sup>33</sup> should be returned directly to the applicant (or counsel), not to USCIS.<sup>34</sup>

Judges sign certifications and declarations based on information from a variety of sources that include but are not limited to:

- court's records
- any temporary order or interim order
- transcripts
- evidence

<sup>26</sup> Adjustment of Aliens in U Nonimmigrant Status, 8 C.F.R. § 245.24(a)(5); 8 C.F.R. § 214.11(h)(2); T Visa Regulations 2016, 81 Fed. Reg. at 92,274-75; T Visa Regulations 2002, 67 Fed. Reg. at 4,788, 4,796.

<sup>27</sup> 8 C.F.R. § 214.11(m)(2)(iii); T Visa Regulations 2016, 81 Fed. Reg. at 92,287; see also **DHS U and T Visa Resource Guide**, supra note 2, at 7.

<sup>28</sup> 8 C.F.R. § 214.11(b)(3); T Visa Regulations 2016, 81 Fed. Reg. at 92,274; see also **DHS U and T Visa Resource Guide**, supra note 2, at 9-10.

<sup>29</sup> 8 C.F.R. § 214.11(h)(4)(i, ii); T Visa Regulations 2016, 81 Fed. Reg. at 92,275; see also **DHS U and T Visa Resource Guide**, supra note 2, at 9.

<sup>30</sup> 8 C.F.R. §§ 204.2(c), 214.14(b)(1); U Visa Regulations, 72 Fed. Reg. at 53,018; see also **DHS U and T Visa Resource Guide**, supra note 2, at 6, 24.

<sup>31</sup> INA § 214(p)(1); 8 U.S.C. 1184(p)(1); 8 C.F.R. §§ 214.11(d)(3)(i), 214.14 (b)(4); U Visa Regulations, 72 Fed. Reg. at 53,019; see also **DHS U and T Visa Resource Guide**, supra note 2, at 8, 13.

<sup>32</sup> **DHS U and T Visa Resource Guide**, supra note 2, at 8, 13.

<sup>33</sup> **DHS U and T Visa Resource Guide**, supra note 2, at 5, 8, 13, 25.

<sup>34</sup> **DHS U and T Visa Resource Guide**, supra note 2, at 25.

- court findings
- court orders
- testimony
- Conversations with and notes from any judicial officer involved with the matter.
- Transcript of oral decisions

Since judges sign certifications and declarations based on factors other than their “investigation of the facts”<sup>35</sup> judges signing U visa certifications and T visa declarations may need to amend the U visa certification and T visa declaration forms to reflect the judges’ basis for certification or declaration, which can include amendments similar to the following examples:

- Based on my review of the court records
- Based upon my presiding over the case and hearing evidence
- Based on my finding in a (custody/divorce/child abuse) case
- Based on my findings and issuance of a protection order
- Based on my finding of probable cause

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 or declaration 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 or declaration was not signed.

If the requestor is in removal proceedings the decision on the certification or declaration should be made within 14 days.

**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/19\\_0731\\_uscis\\_u-visa-law-enforcement-resource-guide.pdf](https://www.dhs.gov/sites/default/files/publications/19_0731_uscis_u-visa-law-enforcement-resource-guide.pdf)

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<sup>35</sup> USCIS, Form I-918, Supplement B, U Nonimmigrant Status Certification, Part 6. Certification, 4 (2019); USCIS, Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Part F Attestation, 3 (2019).

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

U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates, and Other Judicial Officers (August 12, 2020)  
<https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2020>

Sample Judicial U Visa Certification I-918B (August 12, 2020)  
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-cert-sample-judicial>

Sample Judicial T Visa Declaration I-914B (August 12, 2020)  
<https://niwaplibrary.wcl.american.edu/pubs/sample-t-visa-declaration-judges>