



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
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Title: U/T Visa Policy
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I. Introduction

The HCAO strives to ensure victims and witnesses, regardless of immigration status, feel safe reporting crimes and assisting in the prosecution of cases. Fear of adverse immigration consequences should not be a barrier to justice for victims or witnesses.

Under this policy, the HCAO will continue to take steps necessary to respect and uphold the rights of immigrant communities and pursue protections for immigrant victims of crime. The intention of this policy is to avoid added collateral impact to victims when assisting in the detection and prosecution of crimes.

Because the HCAO seeks to be a safe space for immigrant victims, this policy and its related processes are intended to be trauma informed and culturally responsive.

II. Certification Policies

a. U/T Visa Authority & Background

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) promotes community safety by minimizing adverse immigration consequences for immigrant victims. To that end, the TVPA authorizes U visas for victims of crime and T visas for victims of human trafficking.

i. U Visas

The I-918B form that the HCAO completes for certification is only one component of a U visa petition. The HCAO’s role is not to determine the applicant’s ultimate eligibility, but rather to describe a victim’s helpfulness and the physical or mental abuse the victim suffered. The HCAO does not grant immigration relief by certifying an I-918B form. The only agency that can grant relief on a U visa petition is the U.S. Citizenship and Immigration Services (USCIS).

USCIS takes years to process a U visa petition, but USCIS can grant an applicant deferred action in the form of work authorization as part of a waiting list determination. The annual statutory cap for U visas is 10,000. Consequently, final issuance of U-nonimmigrant status takes more than a decade but does result in up to 4 years of temporary nonimmigrant status with work authorization. The applicant may then be eligible to apply for a green card.

ii. T Visas

Unlike U visas, a T visa petition does not require a certification from a law enforcement agency. But applicants may still request certification from such agencies to support their petition. Once USCIS grants a T visa, the applicant receives up to 4 years of temporary nonimmigrant status with work authorization and access to federal benefits. The applicant may be eligible to apply for a green card. The annual statutory cap for T visas is 5,000.

Because survivors of human trafficking frequently suffer from intense trauma, law enforcement agencies are allowed to waive the “helpfulness” standard when certifying I-914B forms for T visa petitions. The HCAO will use trauma-informed practices and certify I-914B forms in every credible case of sex trafficking, labor trafficking, or forced labor, regardless of an individual’s helpfulness in investigating or prosecuting criminal activity.

T and U visa certification requests are not mutually exclusive. When the HCAO certifies an I-914B form for a T visa petition, it will also process an I-918B form for a U visa petition.

b. U/T Visa Review Committee

i. Certifying Officials

The County Attorney will designate an Assistant County Attorney, Senior Assistant County Attorney, or Managing Attorney to serve as the primary Certifying Official. The Certifying Official is authorized to review, process, and sign certification requests as legally appropriate. When possible, the primary Certifying Official should have lived experience in or with an immigrant or refugee community or familiarity with immigration laws. The HCAO will also appoint a second Certifying Official as part of a contingency plan to ensure timely responses to certification requests. See Minn. Stat. § 611A.95, subd. 2(b). The designated Certifying Officials will exercise sound discretion and judgment and, along with the Review Committee, process each certification request on a case-by-case basis, taking into consideration all relevant factors.

ii. Review Committee

The primary Certifying Official will lead the Review Committee in processing certification requests. The Review Committee should consist of an administrative assistant and multilingual advocates across division assignments. Multilingual advocates should participate, unless excused by the Manager for Victim Services. The Review Committee should meet every three weeks or more frequently, if necessary, to timely process certification requests.

c. Timeliness of Certifications

The HCAO will respond to U/T visa certification requests within 30 calendar days of receiving a request. If an applicant informs the HCAO that they are in removal proceedings, the HCAO will respond to the U/T visa certification request within seven days. The Certifying Official will record requests and the date the request was made to ensure compliance with Minn. Stat. § 611A.95.

d. Brady/Giglio Compliance

When the HCAO receives a certification request related to an active criminal case, the HCAO will notify the defendant that the HCAO received the request. The HCAO will also disclose to the defendant any certification decision. Other information related to the certification request may be disclosed as required by the HCAO's *Brady/Giglio* policy. Applicants will be notified that their requests and any enclosures may be discoverable.

To ensure compliance with this subsection, the Certifying Official will keep the prosecutor informed about any certification decision when the criminal case is still open.

e. Guidelines for Processing U/T Visa Applications

i. U Visa Qualifying Criminal Activity

Pursuant to INA 101(a)(15)(U)(iii) and 8 U.S.C. 1101(a)(15)(U)(iii), the HCAO will issue a certification to qualified applicants who are victims of one or more of the following violations of federal, state, or local criminal law, or other related crimes:¹

¹ "Other related crimes," means any similar activity where the elements of the crime are substantially similar to those listed in this section. See Department of Homeland Security's U Visa Law Enforcement Certification Resource Guides at 3, *available at* https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

Abduction	Female Genital Mutilation	Murder	Sexual Exploitation
Abusive Sexual Contact	Fraud in Foreign Labor Trafficking (18 U.S.C. 1351.)	Obstruction of Justice	Slave Trade
Blackmail	Hostage	Peonage	Stalking
Domestic Violence	Incest	Perjury	Torture
Extortion	Involuntary Servitude	Prostitution	Trafficking
False Imprisonment	Kidnapping	Rape	Unlawful Criminal Restraint
Felonious Assault	Manslaughter	Sexual Assault	Witness Tampering (8 CFR 214.14(a)(14)(ii).)

Pursuant to 8 CFR 214.14(a)(11), criminal activity includes attempt, conspiracy, or solicitation to commit any of the above qualifying crimes. The HCAO will mark every qualifying crime on the I-918B form that is credibly supported.

ii. Qualified Applicants

Direct, indirect, and bystander victims of a qualifying criminal activity may request certification.

Indirect victims can request certification regardless of the direct victim’s immigration status as follows:

- If the direct victim is incompetent, incapacitated, or deceased because of homicide or manslaughter, the next of kin can request certification;
- If the direct victim is 21 years old or older on the offense date, their spouse and unmarried children can request certification; or
- If the direct victim is under 21 years old on the offense date, their spouse, children, parents, and unmarried siblings can request certification.

The HCAO will consider U/T visa certification requests when the applicant or qualifying criminal activity has some nexus to Hennepin County.

iii. Helpfulness Standard

To obtain a U visa, applicants must show USCIS that they have been helpful, are being helpful, or are likely to be helpful to, among others, local authorities investigating or prosecuting certain criminal activity. See INA 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

When the HCAO reviews a request for U/T visa certification, it will employ a rebuttable presumption that the victim is likely to be helpful unless there is evidence that: (1) a victim unreasonably refused to cooperate; or (2) a victim unreasonably failed to provide information and assistance reasonably requested by law enforcement or the prosecution.

Applicants who show evidence of other compelling circumstances, such as further threats of violence, housing issues, or illness, that prevented cooperation may be able to show that their decision or inability to continue cooperating was not unreasonable, and therefore, that they remain eligible for certification.

The advocate assigned to process a certification will prepare a description of the applicant’s past, present, and/or future helpfulness to law enforcement and/or prosecutors, using information available to the HCAO. To the extent possible, the certification will document all helpfulness on the part of the applicant.

When possible, the advocate will seek input about helpfulness from the prosecutor of record.

Examples of helpfulness include, but are not limited to:

Calling 911	Providing a statement to law enforcement	Participating in a forensic interview or supporting a victim at a forensic interview
Filing a restitution claim	Submitting a Crime Victims Reimbursement Program (CVRP) claim	Attending court
Meeting with a prosecutor	Meeting with an HCAO advocate	Participating in trial preparation
Signing a release of information for medical records	Testifying in court	Providing plea input

Providing a victim impact statement	Providing input to probation (e.g., pre-sentence investigation)	Providing evidence for a sexual assault kit / SANE
Following up with advocate	Supplying helpful information to an HCAO advocate	Responding to a subpoena
Supplying updates on injuries	Filing an order for protection or harassment/restraining order	Following up with law enforcement about an incident

iv. No Statute of Limitations

Federal U and T visa regulations do not set a specific statute of limitations for certifying I-918B and I-914B forms, respectively. See Department of Homeland Security’s U and T Visa Law Enforcement Certification Resource Guides.² The HCAO will process certification requests regardless of case status.

v. Factors Not to be Considered

The HCAO will not impose requirements for certification beyond those that are statutorily enumerated in 8 U.S.C. 1101(a)(15)(U).

Accordingly, the HCAO will process certifications without considering doubts as to whether an applicant will ultimately qualify for a U or T visa, an applicant’s criminal or civil court history, whether the incident was charged, the outcome of the case in which the victim was involved, or whether the perpetrator was apprehended.

f. Data Privacy

The Review Committee will keep electronic records of all certification requests and decisions indefinitely, as required by Minn. Stat. § 611A.95.

Pursuant to Minn. Stat. § 611A.95, subd. 4, the HCAO will not disclose the immigration status or personal information of an applicant except as authorized by law.

g. Declining to Certify U/T Visas

² Available at https://www.dhs.gov/xlibrary/assets/dhs_u Visa certification guide.pdf and <https://www.dhs.gov/sites/default/files/publications/t lea guide 10182021 v2 508 sp 5 08.pdf>, respectively

Prior to declining to certify a U or T visa, the Certifying Official will notify the Director of the Division of Professional Standards and the secondary Certifying Official. If the Certifying Officials both agree that the HCAO should decline the request, the HCAO will decline the request and explain the declination to the applicant. If there is disagreement among the Certifying Officials as to whether to decline the request, the County Attorney will decide how to respond to the request.

h. Withdrawing Certification

The HCAO may withdraw a U/T visa certification if an applicant unreasonably obstructs the HCAO's ability to enforce the law. Whether an applicant unreasonably obstructs the HCAO's ability to enforce the law will be assessed pursuant to section II(e)(3) of this policy. Prior to a withdrawal, the HCAO will make reasonable efforts to notify the applicant and provide them with an opportunity to respond. The County Attorney must approve any withdrawal before the HCAO sends the withdrawal notification to USCIS.

i. Recertification Requests

USCIS requires that victims file U or T visa petitions within 6 months of the HCAO's certification date. Consequently, certifications can expire. Upon request by the applicant, the HCAO will issue a recertification if an applicant misses their filing deadline.

Victims may also request a recertification after the initial certification when applying for a green card as a way for the HCAO to attest to their helpfulness.

The HCAO will issue recertifications unless an applicant has unreasonably obstructed the HCAO's ability to enforce the law, as described in Section II(h).

III. Victim Services

a. Language Access

The HCAO will provide language access training to all staff, including attorneys, on best practices in working with interpreters.

The HCAO will recruit for, hire, and retain advocates who are culturally responsive, multilingual, and dedicated to advocating for immigrant victims. The HCAO will strive to assign multilingual advocates to any case where victims or their family members benefit from language access services. The HCAO will consistently document language preferences for all victims and witnesses.

b. Outreach to Victims and Community

Pursuant to Minnesota Statute § 611A.95, subd. 3, and to properly serve victims, the HCAO will provide multilingual, culturally responsive information about the right to request U/T visa certifications and the HCAO’s certification policy and process to all victims in person and in writing.

c. Immigration Counsel Referrals

The HCAO will maintain a list of *pro bono* and affordable immigration counsel for victims and witnesses. The list will include information on eligibility requirements, types of cases accepted, and intake instructions.

d. Monitoring Cases with Potentially Eligible Victims

The HCAO will not inquire about the immigration status of victims and witnesses.

The HCAO attorneys and staff, including staff in the Domestic Abuse Service Center, will alert the primary Certifying Official when a case-involved party could be eligible for immigration relief. When appropriate, the HCAO will follow up and provide information regarding *pro bono* and affordable immigration counsel.

IV. For Applicants/Representatives of Applicants: Guidance for Submitting Requests for U/T Visa Certification.

a. Contents of Certification Requests

Unless otherwise requested by the HCAO, applicants and/or their representatives for U/T visa certification are not to submit any documentation as part of their requests other than the following:

<input type="checkbox"/> Full legal name	<input type="checkbox"/> Case-identifying information (for example, court file, police report, or law enforcement CCN numbers);
<input type="checkbox"/> Date of birth	<input type="checkbox"/> Whether the applicant is in removal proceedings;
<input type="checkbox"/> Gender	<input type="checkbox"/> Whether the representative represents other indirect victims/qualified applicants (as defined in Section II(e)(ii) of this policy) related to the matter.

<input type="checkbox"/> Alien Registration Number (“A-Number”), if applicable	
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b. Possible Discoverability/Disclosure of Certification Requests

Please note that any information an applicant or their representative provides as part of a certification request may be disclosed to the defense, the court, and in some circumstances, the public during an open court proceeding.

c. How to Send Certification Requests to the HCAO

The HCAO prefers that applicants and/or their representative send all certification requests and immigration relief inquiries via email to visa@hennepin.us.

If an applicant or their representative must instead send requests via U.S. Mail, those requests should be sent to:

Hennepin County Attorney’s Office
Attn: U/T Visa Request
300 South 6th Street, MC 526
Minneapolis, MN 55487