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## **DRAFTING U VISA CERTIFICATION LAWS: 10 ESSENTIAL POINTS TO INCLUDE IN AN EFFECTIVE BILL**

**This part of the toolkit is to provide a quick reference on the top ten items to include in a good U visa certification bill as you draft/advocate for such legislation. It is always important to take into consideration the political will and climate in your state when drafting.**

### **Introduction:**

The U visa was created in 2000 in order to provide safety for immigrant victims of certain qualifying crimes. In order to submit an application for a U visa, U.S. Citizenship and Immigration Services, or USCIS, requires that a certifier sign form I-918 Supplement B, U Nonimmigrant Status Certification. These I-918B certification forms are necessary to allow crime victims to submit an application when they have cooperated with certain government officials including prosecutors, law enforcement, courts, child and adult protective services, a department of labor, or any other agency that can assist in the detection, investigation, or prosecution of criminal activity.

The visas enhance cooperation and trust between immigrants and law enforcement by relieving immigrants' fears that they will be referred to ICE for deportation if they file a police report or provide testimony regarding criminal activity.

### **Policy Points:**

It is important to have law on U visa certification so that 1) immigrant trust is maintained, which is both important for public safety as well as immigrant integration; 2) certifiers have clear guidelines on process which in turn helps immigrants and their attorneys know what to expect from the request; 3) immigrant victims are able to get relief and protection as soon as possible — particularly after ICE's [Victim Centered Approach Directive](#) from Aug. 10, 2021; and 4) there is accountability.

### **1) Include Set Turnaround Times**

Having set processing times is key in a well-drafted bill as it allows the immigrant and their representation to plan accordingly. It is important to know an approximate time as to when the certification will be signed (or rejected) so that they can either prepare the entire U visa application which is due 180 days after the date on the certification, or make an alternative plan.

Many states have a longer turnaround time to process normal certification requests, but then have a shorter turnaround time for requests for immigrants who are in removal proceedings and/or have an order of

removal. A well-drafted bill can include different timelines, but turnaround times on all cases should be as short as possible in order to ensure safety and security of U visa applicants.

- a. *Ideally, normal processing time should be capped at 90 days. State laws vary on normal processing times from 30 -120 days normally but currently 10 of the 16 states cap it at 90.*
  - i. If possible and appropriate, prior to introducing your bill, be in touch with your local police stations, sheriff's office or state's attorney's office to discuss timelines and to emphasize underlying policy goals and values. You can also use this opportunity to request they submit testimony in support of the bill or otherwise support.
- b. *Quick turnaround times for immigrants with order of removal or in removal proceedings should not exceed 14 days.*
  - i. This allows the local immigration judge to know if the U visa will be a probable form of relief, and gives him/her a better idea as to when the certification will be granted, and when the U visa application will be filed.
- c. *Special Circumstances*
  - i. Language should also be included to provide fast processing for special circumstances (for example, a family member may be aging out of being able to apply for a U visa as a derivative or if the survivor is turning 21 — as they will no longer be able to apply for their parents or siblings under 18).

## **2) No Statute of Limitations on Certification**

- a. Be sure the law clarifies that there is no statute of limitations for signing certifications. Some certifiers may erroneously believe that U visa regulations set a specific statute of limitations for signing Form I-918 Supplement B. That is not the case, which has been acknowledged in the [2019 U Visa Law Enforcement Certification Resource Guide](#) as well as its predecessor.
- b. Furthermore, different certifiers should not have blanket policies that dismiss being able to certify if the crime occurred a certain amount of time ago. It should be a case-by-case analysis.

## **3) Rebuttable Presumption of Helpfulness**

- a. An immigrant survivor should meet the helpfulness requirement if there is no evidence that the survivor refused or failed to provide information and assistance reasonably requested by law enforcement.

## **4) Privacy**

- a. Have a clause that prohibits the certifying entity from disclosing the immigration status of the person requesting a certification, except to comply with federal law or legal process.

## **5) No Conviction Necessary**

- a. Insert a clause stating that no arrest needs to have taken place, charges do not have to have been filed, and no prosecution or conviction has to have occurred for the certifier to sign certification.

## **6) Status of Crime**

- a. It is important to include that certification should not be dependent on whether the case is closed or if it is ongoing.

## **7) Any Investigatory Body Can Certify**

- a. No potential certifier takes precedence over another. A common issue in serving U visa applicants is that police say they will not certify because the request went to the State's Attorney's Office. Bill language should make clear that anyone can (and should) certify if they have investigatory powers.

## **8) Establish a Process and Training**

- a. Require that certifiers establish a process that mirrors the requirements set forth by the law and which includes posting that certification process, the certifier(s), and contact information so that those seeking certification can readily find the information. There should also be a requirement that the information be updated whenever a new certifier is added.
- b. Ensure training will be provided on U visa certification; have community-based organizations work closely with certifiers to provide this training (request funding as needed to accomplish this).

## **9) Tracking Mechanism and Data Disclosure**

- a. Certifiers should keep a record of certification requests along with whether the requests were approved or denied. For denials, the reason for the denial should also be recorded.
- b. Ensure that this information is disclosed on a yearly basis — whether to a state legislative body, a state's Attorney General, etc.

## **10) Accountability**

- a. There should be an enforcement mechanism to hold certifiers accountable — especially those refusing to certify in bad faith. If immigrants cannot count on law enforcement to certify when they are victims of qualifying crimes, they will stop coming forward.
- b. Unfortunately, some certifiers will not certify even in very cut and dry cases because they “do not want to get involved in giving out visas” (a misnomer), or they do not feel an immigrant “deserves” a visa. Unfortunately, in some cases, certifiers will refuse to sign the I-918b due to their own prejudices and biases. The final adjudication of the U visa is left to USCIS. It is not up to the certifier to make such judgments, which is why it is imperative that there be an accountability mechanism.
- c. With no accountability, one of the most vulnerable groups in society become afraid to report some of the worst crimes. Without the help of immigrant victims, these crimes will not be reported, investigated or prosecuted. In order to avert this public safety issue, it is important that immigrants and their representatives have a way of enforcing these laws. Example language regarding accountability mechanisms can be found in the [Practice Advisory](#) from July 1, 2021 entitled *Using Virginia's Law Enforcement Agency Certification Law to Obtain LEA Certification for U and T Visa Applicants*.