

# GUIDE FOR LAW ENFORCEMENT: HOW TO RESPOND TO A U VISA CERTIFICATION REQUEST

## Introduction

Although all certifiers can hopefully find this guide useful regarding U visa certification, it refers to law enforcement because they are the certifiers most commonly interacting with immigrant victims.

## What is the purpose of U Visa Certification?

The Congressional intent behind the U Visa was to help support law enforcement in their efforts to investigate and prosecute crimes committed against immigrant victims, and to build relationships between the immigrant community and law enforcement so that immigrant victims feel they can call and report crimes without threat of deportation.

The U visa certification allows an immigrant victim to file a U Visa application. Without a signed certification, Form I-918 Supplement B, the immigrant cannot submit the full U Visa application to U.S. Citizenship and Immigration Services, or USCIS.

USCIS alone determines whether a person is eligible for a U Visa. Through the certification, law enforcement is providing the following information:

- That the immigrant is a victim of a qualifying crime;
- That they have information about the qualifying crime; AND
- That the immigrant has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity.

## Step 1: Qualifying Crimes

Identify the qualifying crimes. Please see the crimes chart below and include ALL relevant crimes on Form I 918 Supplement B (\*perpetrator does not need to have been convicted of all of them or any of them for that matter — they just need to have been eligible to be charged with them). Crimes listed at INA § 101(a)(15)(U)(i), 8 U.S.C. § 1101 (a)(15)(U)(i).

List the state statute. List all the charges and their corresponding statutes.

\*Tip: When looking at non gender-based crimes, a police report may state a certain crime such as “common assault” which may not seem to qualify at first glance, but review all the details to see if something else occurred such as a theft to make it rise to the level of a felonious assault.

\*Tip: Second-degree assault or common assault by itself, with no other factors to make it rise to a felonious assault will typically not be a qualifying crime *unless* it was domestic violence. Domestic violence does not

have to be a first-degree assault charge. It can merely be labeled as second-degree assault, common assault, or a “domestic incident.” It does not matter — it is its own crime, so if a partner was violent against the immigrant in some way, shape or form, the crime qualifies.

\*Tip: You can have more than one crime! Be sure to check off **every** crime that was committed against the victim (even if it was not explicitly listed on the police report or officially charged). Sometimes the requestor will include a hospital report or other information that will show the crime was more serious than originally believed.

Abduction	Hostage	Rape
Abusive Sexual Contact	Incest	Sexual Assault
Blackmail	Involuntary Servitude	Sexual Exploitation
Domestic Violence	Kidnapping	Slave Trade
Extortion	Manslaughter	Stalking
False Imprisonment	Murder	Torture
Female Genital Mutilation	Obstruction of Justice	Trafficking
Felonious Assault	Peonage	Witness Tampering
Fraud in Foreign Labor Contracting	Perjury	Unlawful Criminal Restraint
Hostage	Prostitution	Other Related Crimes* †

\*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

### Step 2: Who is the Victim?

Direct Victims. In most cases, the victim is going to be the direct victim (in other words, the person who suffered that crime).

Indirect Victims. However, there can be cases where indirect victims can be applying for certification instead of the direct victim. An example of this is sexual assault of a minor child. Due to the young nature of the child, as long as the crime occurred before the victim turned 16 years of age, an older sibling or a parent can apply for a U Visa. The child will be included as a derivative (unless the child is a U.S. citizen since obviously, they do not require immigration status. The indirect victim is still allowed to apply for the U Visa even when the direct victim is a U.S. citizen). For indirect victims, they will be listed rather than the direct victim on the certification request. You will explain their cooperation on the form, and how they assisted the direct victim in cooperating (oftentimes, it is the parent(s) who finds out about the assault and initiates contact with law enforcement, takes their child to all their appointments, etc. Include all of this in the certification if you are signing).

Witnesses. Witnesses can also request U Visa certification.

### Step 3: Evidence

Be sure to have a process that is easily accessible to victims and their representatives that describes what you want in a U Visa certification request.

The process should describe the average length of time it will take to certify, whether e-mail or a mailed copy is preferred, the point of contact, whether the Requestor should pre-complete the form and only leave the signing and dating to the certifier, if you prefer the Requestor to include a pre-addressed and stamped return envelope, etc.

Normally with a certification request, you can ask the victim to include (if they have it):

- a) A copy of the police report;
- b) Evidence of the crime (hospital report, protective order, etc.);
- c) If the case has gone to court, a copy of subpoenas and any other court documents.

\*You should also provide the victim with copies of any information you have, as oftentimes they do not know to ask for it and you will be the victim's best option in obtaining said documentation.

#### **Step 4: Filling out the I-918 Supplement B, U Nonimmigrant Status Certification**

A. Prepare I-918 B. If you need a copy of the I-918 B, go to the USCIS website: [uscis.gov/I-918](https://uscis.gov/I-918). Ensure that the date in the top right corner shows that the form is current. Complete the form following instructions provided by USCIS on that page.

B. Complete the form. Ensure that all qualifying crimes that apply are checked. Note any assistance the victim provided (and please be sure to include not just one meeting if there were multiple follow-ups where the victim cooperated).

**The most important part of this form is that you sign and date correctly (best to sign in blue ink).**

Return the form to the victim or their representative, as they will need to mail the original signed form to USCIS.

C. Include copies of the police report, court documents, hospital records, etc. Many immigrant victims will not speak English and will not know what you have. This information could be very important to them so please be sure to share this when certifying.

D. What is "reasonably requested"? The [statute](#) states that the victim should not refuse or fail "to provide information and assistance reasonably requested." Victims have been through very traumatic events – especially if it was for a qualifying crime. It is important that certifiers be trauma informed and not refuse to certify when in general the victim has cooperated. (For example, a victim telling a judge – when asked – that she would not like to see the father of her children go to prison, should not be viewed as refusing to provide assistance. Likewise, if a victim has assisted but is unwilling or unable to relive the details of a sexual assault in court, that should not be seen as refusing).

#### **Step 5: Follow-up with Requestor in Case of Delays**

Call or e-mail immigrant victim or their representative. If the certification cannot be completed and signed in a timely fashion (either dictated by state law, certifier policy, or victim request), then reach out and communicate with Requestor to ensure both parties are aware of any delays and outstanding deadlines.

#### **Step 6: Return Completed Certification to Requestor**

Mail back the ORIGINAL to the Requestor, as they will need to submit this to USCIS when they send in the U Visa application.

# U VISA CERTIFICATION FREQUENTLY ASKED QUESTIONS

## General U Visa FAQs

### 1) What is a U Visa?

- a. The U Visa is a visa for victims of a [qualifying criminal activity](#).
- b. The U Visa was created through the [Victims of Trafficking and Violence Protection Act \(VTVPA\)](#) of 2000, Pub. L. No. 106-386.
- c. According to the VTVPA, the purpose was “to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.”

### 2) What is the purpose of U Visa Certification?

- a. To allow an immigrant victim to file a U visa application. Without a signed certification, Form I-918 Supplement B, the immigrant cannot submit the full U visa application to U.S. Citizenship and Immigration Services (USCIS) meaning they are at greater risk of being apprehended.  
Often, individuals in abusive relationships will receive threats that the abuser will call immigration enforcement on the victim if they report the crime. Knowing that there is a visa that will offer them protection — should they come forward — is incredibly important to public safety. If immigrants know of the visa, but are unable to apply because a certifier does not certify (or does not certify in a timely fashion), word travels among the community. The immigrant community stops trusting local law enforcement, which leads to less crime being reported and investigated.

### 3) What does certification entail?

- a. The certifier (either the head of the agency or a designated certifier by the head of the agency) signs and dates the I-918 Supplement B forms. \*\*It is extremely important that the document be dated, as it is only valid for six months.
- b. Through certification, law enforcement is providing:
  - That the immigrant was a victim of a qualifying crime;
  - That they have information about that crime; AND
  - That the immigrant has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity.
  - In addition, the certifier can report information about any harm the victim sustained that law enforcement has knowledge of or has observed.

#### **4) Who can certify?**

- a. The certifier is the head of the agency — so the actual State’s Attorney or Sheriff, or Police Chief, etc. That person can designate others as certifiers by writing a letter, signing, and dating it. It is useful to provide this to requestors so that USCIS will not challenge valid certification that could result in getting recertification requests.

#### **5) Does my certification grant the victim a U visa?**

- a. No. The certification is only the ticket to being able to submit an application with USCIS. USCIS conducts a thorough background investigation and asks for other evidence. It makes the determination on whether to grant a U visa.

#### **6) If the victim also has a criminal record, should I deny certification?**

- a. No. This is something that USCIS will look at and will determine whether the individual qualifies for the U visa. Certifiers are just providing information about the crime, that the victim had information about the crime, and helpfulness.
- b. Personal feelings, concerns about immigration status, criminal records should not factor into certification.

## **Importance of Certification**

#### **7) Does certification actually encourage trust among immigrant populations towards local law enforcement?**

- a. It does. 73 percent of immigrants are more likely to [participate in the criminal case](#) if they have received a certification and filed a U visa application.
- b. They are 50 percent more likely to file police reports if they experience future crimes.

#### **8) What happens if a certifier tends not to sign certifications?**

- a. “When helpfulness happens but certification is not given, it can erode immigrant trust. Their bid for relief and security can turn into a nightmare of anxiety and bureaucracy, due to the unwillingness or inability of local law enforcement officers to comply with their role in the process.” - [When It’s Up to the Cops if You Get Your Visa](#), by CHENG Yilun, SLATE, April 14, 2021.
- b. “It helps people to come out of the shadows and report the crimes that they are victims of. In Frederick County, this U Visa is extremely underutilized. The State’s Attorney’s Office that has pretty much self-delegated to being the agency responsible for signing these certificates is not using them, not granting them when necessary and so there are tragic cases of people who have been brave enough of not only reporting crimes to the police but proceed all the way to the trial of that defendant.”

“After already putting so much on the line. Risking your safety, security, going to court – showing your face in this very terrifying situation. Just to be told, at the end, once they’ve already gotten what they needed from you which is your support in helping prosecute this person and eventually get them convicted to be told thank you, but you weren’t helpful

enough so we're not going to sign this certificate allowing you to apply for status with immigration." - Interview with Sara Movahed, ACLU Board Member and founding partner at Movahed & Fisher Law, LLC, April 1, 2021 [Thinking Freely](#), ACLU of Maryland.

## Qualifying Crime

### 9) The victim was subjected to various crimes — should I just pick one?

- a. Check all the crimes that could be applicable.

## Helpfulness

### 10) What does it mean to be helpful?

- a. Helpfulness is normally left to the discretion of the certifier — unless one's state has specific law on the matter. However, know that news travels in the immigrant community and if you are not certifying when an immigrant comes forward and assists in an investigation/prosecution, there is likely to be a chilling effect regarding cooperation.

### 11) At what stages can law enforcement sign a certification?

- a. Law enforcement may sign a certification at any time, including after detection of the criminal activity, while the prosecution is pending, after the case is closed, (regardless of how long ago the case was closed).

## Apprehension, Conviction Unnecessary

### 12) Does the perpetrator need to have been apprehended and convicted?

- a. No, a conviction, prosecution, or arrest is not necessary for a victim to be eligible for relief and for law enforcement to certify.
- b. As the DHS [U Visa Law Enforcement Certification Guide](#) states that certification can occur in cases where "the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances."

## Withdrawal of Certification

### 13) Can certification be withdrawn?

- a. Yes, law enforcement may reach out to the Vermont Service Center after the U visa has been filed if the victim stops cooperating in their investigation or prosecution. It is not, however, a requirement to withdraw certification.

## Substantial harm

### 14) I know substantial harm is a part of the U visa – do the police determine this?

- a. No. This is something to be left for the full filing to immigration. USCIS — and only USCIS — determines whether the harm was substantial.

## Indirect Victim

### 15) What is an indirect victim?

- a. Normally the victim on the certification request will be the direct victim (aka — the person who suffered that crime). However, there can be cases where indirect victims apply for certification and are listed on Form I-918 Supplement B. Indirect victims must have a qualifying family relationship to the direct victim, while at the same time the direct victim was unable to assist law enforcement because they are deceased or incompetent or incapacitated due to injury, trauma, or age. Please see USCIS's U Visa Law Enforcement Resource Guide for more information.
- b. Example: During sexual assault cases of a minor, a parent or older sibling may apply in lieu of the child — as long as the crime occurred before the victim turned 16 years of age. It does not matter if the child victim is a U.S. citizen or an immigrant — their family member can still be the indirect victim.

## Statute of Limitations

### 16) Is there a statute of limitations at USCIS on signing certification?

- a. No. The Vermont Service Center has previously expressed on public calls that it has received cases from the 70s and as long as it is certified, they accept it.

## Resources

- [USCIS Page on Victims of Criminal Activity: U Nonimmigrant Status](#)
- [USCIS Page on I-918, Petition for U Nonimmigrant Status](#)
- [Visa Denied: The Political Geography of the U Visa: Eligibility as a Matter of Locale](#)
- [USCIS U Visa Law Enforcement Resource Guide Released February 2022](#)
- [U Visa Law Enforcement Certification Guide](#)
- [U Visa Law Enforcement Resource Guide - 2019](#)

# TIPS FOR CERTIFIERS ON HAVING A SUCCESSFUL U VISA CERTIFICATION PROCESS/POLICY

## Certifier

- Ensure that there is a designated certifier and a certification letter from the head of the agency (Police Department, State's Attorney's Office, Sheriff's Office, Child Protective Services, etc.) listing the designated certifier(s).

## Process

- Decide what you want requestors to include in their certification request:
  - If they should include a pre-completed certification, or if you prefer for only the biographical information to be filled out, or if you prefer to have one of each to decide which to use.
  - To e-mail or physically mail the request and the contact information for the chosen method of communication.
  - Whether to include a stamped return envelope for the mailing of the U visa once completed (requestor needs to send immigration the signed original certification).

## Post Online

- Post the process online where it is easily accessible by the public.
- Ensure that the information is up-to-date.
- Have language access that is responsive and culturally sensitive to the needs of one's community. Ensure the information is available in many languages.
- Have a point of contact for certification requests and ensure that the rest of the team is informed (certain requestors have been inaccurately told by Police Departments and State's Attorneys' Offices that they do not consider U visa certification in their agency when they do).

## Immigration Status

- Include a statement in one's process/policy that explicitly states that information regarding the victim will not be disclosed unless required to do so by law.
- To allay victim fears, include a reference to not making inquiries regarding the immigration status of not only the victim, but of friends or family of the victim who are not suspected of the criminal activity reported.
- Agencies should also have a policy that victims and others assisting in the case should not be required to prove their citizenship status, country of origin, or information related to their immigration status in the United States. Baltimore City Police Department includes the following useful information:
  - **NOTE:** In *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 468 (4th Cir. 2013), the Fourth Circuit held that "absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law."

## I-918, Supplement B – U Nonimmigrant Status Certification

- Ensure information is accurate (do not assume one's records are correct as oftentimes the police and/or State's Attorney's Office ends up with misspellings and omissions). To ensure that there are no issues with USCIS, double-check the spelling of the victim's name if you are completing the form.

- Sign in blue ink so that there is no question that the certification is the original.
- Date the certification as it is valid for six months from that date so it must be included.
- Provide copies of any documents that show harm victim has suffered to victim or representative.

### **Turnaround Times**

- 90 days is a reasonable amount of time to process a regular request unless state law requires less time.
- 14 days is adequate for most expedited requests (but having flexibility for pressing needs is highly recommended).

### **Delays/Expedited Requests**

- Include a process for delays for when emergencies happen.
- Be sure to contact the requestor immediately and have good communication about a reasonable timeline.
- Ask for any requestor deadlines regarding court hearings, derivatives to be included in the application aging out, etc.

### **Tracking Denials & Approvals**

- Ensure all denials and approvals are tracked in an internal log
- If a denial, include the reason for it.
- Transparency is a best practice — post the information online to build more trust and accountability.

### **Denials**

- If denying certification, document this in the case file and inform the victim or their representative as to why the denial is occurring.
- Give them the opportunity to fix.

### **Training**

- Be sure to train those in your agency on the basics of U visa certification as well as who is the point of contact within their agency for these determinations.
- Reach out to Community Based Organizations for training on the U visa for new certifiers or for refreshers. (CBOs will designate someone from their ranks to be the contact for certifiers on this).

### **Tips for Internal Policy**

- Avoid blanket policies that exclude certification based on how old a case is.
  - It is important to note that there is a difference between reporting a case twenty years after the crime happened (and long after the state statute of limitation has expired), and someone requesting certification many years after the crime occurred but where they fully cooperated.
    - Many victims will not learn of the U Visa until much later.
    - Trauma is also a factor in whether an immigrant victim is ready to go forward with their case.
    - Representation can also factor into the U Visa as most will want to be represented but will be unable to cover the costs of a private attorney.

\*Victims should not be penalized for these real-world challenges that impede them from requesting certification soon after the crime occurs.

- Ensure helpfulness is understood to be broad and that a perpetrator does not need to be arrested or convicted in order for a victim to be given certification.
- Make clear that the victim can obtain certification regardless of whether the case has been closed or not.