
U-VISA CERTIFICATION PROCEDURES

4130.1 PURPOSE

These guidelines are designed to assist in completing U-visa certifications and to familiarize department personnel with the U-visa application process.

4130.2 INTRODUCTION

Lawmakers recognize that some non-citizen victims may be reluctant to assist law enforcement in investigative efforts for fear of deportation. In 2000, Congress created the “U-visa” as part of the Victims of Trafficking and Violence Protection Act. The intent of this legislation was to strengthen the ability of law enforcement agencies to detect, investigate and prosecute violent crimes such as cases of domestic violence, sexual assault and human trafficking, while offering protection to victims of such crimes. The U-visa promotes assistance to law enforcement by providing immigrant crime victims an opportunity to obtain temporary legal status and protection against deportation.

4130.3 U-VISA ELIGIBILITY AND LEGAL REQUIREMENTS

By statute, non-citizen victims must meet four requirements to be eligible for a U-visa. The individual must:

- Have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity
- Possess information concerning such criminal activity
- Have been helpful, be helpful, or is likely to be helpful in the investigation or prosecution of a crime
- The crime occurred in the United States or violated a U.S. federal law

Qualifying criminal activity includes one or more of the following violations of federal, state or local criminal law: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual conduct, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, solicitation to commit any of the above mentioned crimes or any attempts or conspiracy to commit any of the listed activities.

Title 8, Section 214.14 (b) (3) of the Code of Federal Regulations requires that the alien victim “has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested.” Victims who cooperate initially but then refuse or fail to provide information and assistance when reasonably requested are excluded from eligibility.

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4130.4 LAW ENFORCEMENT'S ROLE IN U-VISA CERTIFICATION

The U-visa application process requires a non-citizen crime victim to obtain certification by an approved certifying agency verifying the applicant is the victim of qualifying criminal activity and is being helpful or is likely to be helpful to the investigation or prosecution of that criminal activity.

A certifying agency refers to a federal, state or local law enforcement agency, a prosecutor, or a judge. The U-visa regulations allow the head of a qualified certifying agency to grant any supervisory person(s) the authority to sign U-visa certifications.

Prosecution of the criminal activity is not required for a crime victim to be eligible for a U-visa. Congress intended to allow an individual to petition for a U-visa at virtually any stage of the investigation or prosecution. Law enforcement agencies and other government officials are under no obligation to complete U-visa certifications. Law enforcement may issue the certification based on its investigation of the crime or may refer the victim to the prosecutor for certification if he or she is better able to speak to the victim's continuing assistance.

4130.5 PROCEDURES

The Chief of Police or designee is the only personnel permitted to sign and certify a U-visa certification (Form I-918 Supplement B, U Nonimmigrant Status Certification). The Criminal Investigations Division Sergeant and the Criminal Investigations Division will be responsible for the handling of U-Visa certifications.

All citizen inquiries for U-visa certification will be directed to the Records Section in the front lobby where the requestors can obtain copies of police reports listing them as crime victims. The requestor will be required to submit a Form I-918 Supplemental B document and his/her contact information (name, address, phone number) and a copy of the police report listing him/her as a "victim." The Records Section will then forward all information to the Criminal Investigations Division Sergeant for his/her review and disposition.

The following will be the criteria and policy for certifying U-visa documents.

1. All U-visa requests in which the victim's case involved an arrest or where the case was submitted to the Orange County District Attorney's Office for filing purposes may be referred to the District Attorney's office for disposition certification. The Criminal Investigations Division Sergeant will contact the victim and direct him/her to the Orange County District Attorney's Office where the head of court will review the request. The District Attorney's Office is often the more appropriate agency to review certification requests for these types of cases because it can better assess the victim's cooperativeness through the entire prosecution phase and certify that the victim, "since the initiation of cooperation has not refused or failed to provide information and assistance reasonably requested."
2. All other requests will be reviewed by the Criminal Investigations Division Sergeant. The Criminal Investigations Division Sergeant will review each case independently and objectively determine if the victim met the eligibility requirements outlined in "U-Visa Eligibility and Legal Requirements."

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3. As of January 1, 2016, Section 679.10 is added to the Penal Code to read that the certifying official shall process an I-918 Supplement B certification within 30 days of request, unless the non-citizen is in removal proceedings, in which case the certification shall be processed within 7 days of request.
4. The Criminal Investigations Division will provide a report to the California State Legislature, commencing January 1, 2017, and annually thereafter, containing the number of victims that requested Supplement B certifications, the number that were signed and the number denied. The report shall comply with Government Code section 9795.
5. Department members are prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification. [Penal Code 679.10(k)]

4130.6 SUMMARY

The U-visa is available to non-citizen crime victims who are helpful in the investigation or prosecution of a qualifying crime. In addition to the certification, the U-visa applicant must meet several other eligibility requirements which will be considered by the U.S. Citizenship and Immigration Services (USCIS). The USCIS of the Department of Homeland Security has sole jurisdiction over adjudication of petitions for U-visa applicants.