

Unified Statewide U Visa Protocol

NEW YORK STATE'S PROTOCOL REGARDING CERTIFICATION OF USCIS FORM I-918, SUPPLEMENT B

1. PURPOSE

The purpose of this Protocol is to establish guidelines and procedures for certain New York State agencies issuing U Nonimmigrant Status (“U visa”) Certifications.

2. BACKGROUND

Congress created the U visa in 2000 with the express purpose of strengthening the ability of law enforcement agencies to detect, investigate, prosecute, convict, or sentence crimes committed against non-citizen immigrants, while simultaneously offering protection to the victims of those crimes (see Section 6(b)(ii) below for more information on list of qualifying criminal activities). If approved, a U visa is valid for four years and the victim may be able to access a path to lawful permanent resident status. A conditionally approved petitioner, or a person approved to receive a U visa who is waitlisted to receive one, can also receive authorization to work in the United States.

New York State recognizes that a U visa is a particularly powerful tool for agencies tasked with enforcing laws that protect vulnerable non-citizen New Yorkers. This Protocol serves as a general guideline to ensure that all state agencies with the authority to certify have adequate procedures for the receipt and timely processing of requests using United States Citizenship and Immigration Services (“USCIS”) Form I-918, Supplement B, U Nonimmigrant Status Certification (“Form I-918B”). This Protocol addresses when this certification form must be provided by a New York State agency to an eligible petitioner.

3. DEFINITIONS:

- a. **Petitioner:** For purposes of this Protocol, a petitioner is an individual submitting a request for a U visa certification to a certifying agency. Petitioners include the actual victim of the crime, an indirect victim, or a bystander who suffered unusually severe harm. Only victims of certain criminal activities are eligible (see list set forth in Section 6(b)(ii) below). To be eligible, the crime must have occurred in the United States and the petitioner must possess information regarding the qualifying criminal activity, and has been, is being, or is likely to be helpful to law enforcement or government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity.¹

¹ United States Citizenship and Immigration Services. Victims of Criminal Activity: U Nonimmigrant Status (last visited Dec. 12, 2016) available at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

- b. Certifying Agency:** For purposes of this Protocol, an appropriate state “certifying agency” includes state agencies responsible for the detection, investigation, prosecution, conviction, or sentencing of the criminal activity, including but not limited to the New York State Police, the New York State Department of Labor, and the New York State Division of Human Rights. It also includes local departments of social services (LDSS) responsible for investigating child and adult protective matters, supported by the guidance and technical assistance of the New York State Office of Children and Family Services (OCFS).²

- c. Certifying Official:** For purposes of this Protocol, a “certifying official” is any of the following:
 - i.** The head of the certifying agency;
 - ii.** A person in a supervisory role specifically designated by the head of the certifying agency to certify Form I-918B certifications on behalf of the agency; or
 - iii.** An official delegated, by the head of the agency, with the authority to issue U visa certifications on behalf of the agency.

As part of completed Form I-918B, the certifying agency shall include a letter signed by the agency head identifying the official(s) with the authority to sign the certification. In lieu of including a letter with each certification, the certifying agency can email a written delegation of authority to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov for USCIS to keep on file. Certifying Officials should be identified by titles rather than specific individuals by name.

4. GENERAL REQUIREMENTS

Petitioners applying for a U visa must demonstrate their eligibility to USCIS.³ The application must include Form I-918B completed by a law enforcement agency affirming that the petitioner has been, is being, or is likely to be helpful to that agency in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.⁴

²The only State agencies currently engaging in the certification of U visas are the New York State Police, the New York State Department of Labor, and the New York State Division of Human Rights. OCFS does not sign U visa certifications; however, OCFS can provide assistance to LDSS who have the authority to issue U visa certifications, and has issued guidance to LDSS set forth in a Local Commissioners’ Memorandum. See https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf.

³Department of Homeland Security. U and T visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies (last visited Dec. 12, 2016) available at https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf.

⁴*Id.*

The certification should include specific details about the nature of the crime detected, investigated, prosecuted, convicted, or sentenced, and a description of the petitioner's helpfulness or likely helpfulness to the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. The certifying official may provide additional information, if necessary, regarding the criminal activity to complete the Form I-918B certification.

5. CONFIDENTIALITY & NON-DISCLOSURE

- a. **Confidentiality of Process:** The contact information for petitioners requesting a certification of Form I-918B will only be shared with authorized certifying agency staff and USCIS.

- b. **Except as required by state or federal law, or if authorized by the petitioner or the petitioner's attorney or authorized representative, certifying agencies and officials shall not disclose:**
 - i. The immigration status of a petitioner;
 - ii. The existence of a request for certification of Form I-918B; or
 - iii. Other confidential or personal information.

6. PROCEDURE

a. Submitting the Request:

- i. **Timeliness of Submission:** The request for certification of Form I-918B must be submitted at any time during, or within a reasonable time after the conclusion of the certifying agency's investigation or involvement in the detection of the qualifying crime.⁵

- ii. **Appropriate Certifying Agency:** Petitioners may only submit requests to the agency involved in the underlying case. Requests may be submitted by contacting:
 1. **NY State Police:** *Kevin Gagan* , *Kevin.Gagan@troopers.ny.gov*
 2. **NY State Department of Labor:** *Estelle Davis*,
Estelle.Davis@labor.ny.gov
 3. **NY State Division of Human Rights:** *Dilia Travieso*,
Dilia.Travieso@dhr.ny.gov
 4. **Local Departments of Social Services (LDSS)** regulated by the New York State Office of Children and Family Services (OCFS). An alphabetical list of the fifty-eight LDSS Offices available throughout New York State can be found on the OCFS website, here:

⁵ The certifying agency is required to specify a reasonable length of time that an investigation may conclude, in keeping with the customary operative practices within the agency.

<http://ocfs.ny.gov/main/localdss.asp>. To reach the appropriate certifying official, please contact your LDSS office.⁶

b. Eligibility for New York State Agency’s Issuance of Form I-918B:

- i. Jurisdiction:** To certify, the certifying agency must have jurisdiction to investigate an allegation of a violation of law under the agency’s area of enforcement.
- ii. Qualifying Criminal Activity:** The certifying agency must have a reasonable basis to believe, based on credible and reliable evidence, including the petitioner’s self-testimony, that the petitioner is a direct or indirect victim or bystander of one of the qualifying criminal activities listed in the U visa statute.⁷ *Qualifying criminal activity includes:*

Abduction	Incest	Sexual exploitation
Abusive sexual contact	Involuntary servitude	Slave trade
Being held hostage	Kidnapping	Stalking
Blackmail	Manslaughter	Torture
Domestic violence	Murder	Trafficking ⁸
Extortion	Obstruction of justice	Unlawful criminal restraint
False imprisonment	Peonage	Witness tampering
Felonious assault	Perjury	Other related Crimes
Female genital mutilation	Prostitution	<i>Attempt, conspiracy, or</i>
Fraud in foreign labor contracting	Rape	<i>solicitation to commit any of</i>
	Sexual assault	<i>the above mentioned crimes</i>

The above list of qualifying criminal activities are “general categories” of qualifying crimes which are not tied to any particular statutory definition, with the exception of “fraud in foreign labor contracting,” which is a federal offense.⁹ Similar activities may serve as a qualifying criminal activity where

⁶ For technical assistance or clarification of the protocols outlined in the Local Commissioners’ Memorandum provided by the New York State Office of Children and Family Services to Local District Commissioners regarding signing forms for non-immigrant clients applying for U visas, contact Sonia Meyer at OCFS, uandtvisa@ocfs.ny.gov. The Local Commissioners’ Memorandum is available at https://ocfs.ny.gov/main/policies/external/ocfs_2018/LCM/18-OCFS-LCM-15.pdf

⁷ Department of Homeland Security. U and T Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies (last visited Dec. 12, 2016) available at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

⁸ In instances of severe forms of human trafficking, petitioners and their representatives have the discretion of requesting a U visa certification and/or T visa endorsement from the relevant agency. Upon meeting the individual requirements, the agency can decide to issue both a U visa certification and T visa endorsement.

⁹ 18 U.S.C. § 1351.

the nature and elements of the offenses are substantially similar to offenses included in this list. A certifying agency may be in a position to detect the qualifying criminal activity, but lack the jurisdiction to investigate, prosecute, convict, or sentence. In such a case, the certifying agency should consider whether it is appropriate to also make a referral to a criminal law enforcement agency with the jurisdiction to commence an investigation.

- iii. **Petitioner's Helpfulness to Certifying Agency:** The petitioner must have been, is being, or is likely to be helpful in the certifying agency's detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity. Helpfulness includes providing assistance to the certifying agency when reasonably requested. The petitioner has an ongoing responsibility to be helpful. Certifying agencies will consider the totality of all relevant facts and circumstances when making a determination about the petitioner's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of a qualifying crime.

Certifying agencies may also consider whether or not the petitioner has refused or failed to provide information and assistance reasonably requested by the certifying agency, even if the information obtained is not subsequently used at trial or agency proceeding. If the petitioner unreasonably refuses to assist the certifying agency after reporting a crime, the petitioner will not be eligible to receive certification for a U visa. The petitioner's duty to remain helpful to the certifying agency remains even after a U visa is granted.

There is no requirement that the crime be charged or prosecuted. If the case is prosecuted, there is no requirement that the petitioner testify or the perpetrator be convicted for the certifying agency to consider issuing a Form I-918B certification.

c. Issuance of Completed Form I-918B:

If all the criteria listed in Section 6(a) and (b) are met, the certifying agency shall prepare, sign, and issue Form I-918B to the petitioner or the petitioner's authorized representative for the petitioner's submission to USCIS.

- i. **Required Information:** In submitting request for a U visa certification, the petitioner should make every effort to include the claim or case number and the name of any agency staff involved in the claim or case, if known. The petitioner should also provide as much information on Form I-918B as possible, including:

1. The petitioner's personal information;
2. Details of the qualifying criminal activity, including:
 - a. Any known dates;
 - b. Description of the criminal activity being investigated and the petitioner's knowledge of and involvement in the investigation; and
 - c. Description of any known or documented injuries to the petitioner, including physical or mental abuse.
3. The petitioner's statement as to the petitioner's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. The petitioners may attach additional pages as necessary, including copies of any relevant reports or findings.

ii. Processing Time for Request

In order to provide certifications for eligible petitioners, certifications should be processed and completed as soon as eligibility requirements listed in Section 6(b) are met. The certifying official shall issue or deny a certification as soon as possible, but no later than 60 days from the date the request was received, absent exceptional circumstances.

Where the petitioner or a qualifying family member is in removal proceedings or other exigent circumstances exist, the certification shall be processed within 14 days of receiving the request for certification. Where the certifying agency cannot issue a decision within 14 days, the certifying agency may issue a letter indicating that the petitioner has submitted an application for a U visa certification and that it is under review.

iii. Return Original Signed Request to the Petitioner or the Petitioner's Authorized Representative

A certifying agency shall return the original signed Form I-918B to the petitioner or the petitioner's authorized representative. The certifying agency will not send the signed certification separately to USCIS. The petitioner will send the original signed certification along with the petitioner's U visa application to USCIS. For verification purposes by USCIS, the signature must be in blue ink.

7. ADDITIONAL CONSIDERATIONS

- a. New York State agencies enforce state laws regardless of the immigration status of any individuals involved. Agency staff will not question petitioners, claimants, victims, or witnesses about their immigration status, unless it is to discuss the

possibility of eligibility for a U visa certification.¹⁰ Staff will not discuss the possibility of U visa certifications with petitioners until after receiving authorization to do so from a supervisor, who would have already discussed the matter with the appropriate certifying official.

- b.** Certifying agencies shall explain to petitioners that the agency does not make referrals to USCIS or United States Immigration and Customs Enforcement (“ICE”). Under no circumstances will staff at a certifying agency give legal advice to any petitioners or bystanders.
- c.** The role of the certifying agency in the U visa certification process is to certify that the petitioner is the victim, indirect victim or bystander of a qualifying criminal activity, and the petitioner’s helpfulness in the agency’s detection, investigation, prosecution, conviction, or sentencing of a qualifying crime. It is not to determine or assess the petitioner’s eligibility for a U visa, or whether the petitioner has suffered sufficient harm to merit a U visa. USCIS has sole authority to make a determination on whether to approve the U visa petition.
- d.** U visa certifications may also be available to “indirect victims.” Examples of indirect victims may include: a person who cooperates with law enforcement and offers evidence that the spouse, the victim of the qualifying crime, has been murdered; or a parent who provides information on the abuser when a child under 21 is sexually abused and too traumatized to provide any information.

In rare circumstances, a bystander who suffers an unusually direct injury as a result of a qualifying crime can be eligible for a U visa certification. An example would be a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.¹¹

- e.** If the petitioner unreasonably refuses to assist in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which the petitioner is a victim, even after the certification has been submitted to USCIS, the certifying agency, at its discretion, may notify USCIS by email at the Vermont Service Center: LawEnforcement_UTVAWA.vsc@uscis.dhs.gov.

¹⁰ Staff can ask individuals identified as potentially eligible for a certification whether they would be interested in information about *potential* visas for individuals in their circumstances. It is critical that potentially eligible petitioners not be told they are eligible for a visa, since that determination is made by USCIS, or given any information that may influence their statements.

¹¹ 72 Fed. Reg. at 53,016- 53,017.

- f. All petitioners should be offered the opportunity to be referred to appropriate criminal law enforcement agencies. It should be clear that certification is not contingent upon their agreement to be referred to criminal law enforcement agencies.

8. LANGUAGE ACCESS

Executive State agencies are required to obtain interpretation or translation services for interactions with all petitioners who have limited English language proficiency. Interactions include, but are not limited to, intake sessions and interviews. The use of interpreters and translation services are considered vital to the proper processing and execution of a U visa certification and these services are required by Governor Cuomo's Executive Order No. 26.

9. RECONSIDERATIONS

A denial shall not preclude a petitioner from reapplying at a later time if new evidence or new arguments become available. Agencies must provide a petitioner with instructions for reapplying after receiving a denial of a request for a U visa certification.

10. STATEWIDE VISA COORDINATOR

The Statewide U & T Visa Coordinator ("Statewide Visa Coordinator") shall be available to certifying agencies for the implementation of this Protocol, including providing guidance and assistance on the certification process and helping to resolve programmatic issues.

Petitioners may contact the Statewide Visa Coordinator with questions or concerns about the U visa certification process for their specific matter. The Statewide Coordinator can assist the certifying agency with outstanding issues or questions to reach a proper resolution.

The Statewide Visa Coordinator may be reached by emailing: penny.zhu@dos.ny.gov

11. AGENCY INTERNAL PROTOCOL & STAFF TRAINING

- a. **Protocol:** Agencies shall develop any additional internal guidelines, as needed, to accomplish the intent and objective of this Protocol. At a minimum, additional guidelines shall define staff responsibilities, agency-specific definitions, and important considerations for certifying staff or officers when deciding whether to issue a certification.
- b. **Certifying Official Training:** Certifying agencies shall ensure that agency staff designated to issue certifications have a sufficient understanding of the U visa certification requirements, and how to process requests in a timely manner. At a minimum, training should include:
 - i. Protocols for identifying potential petitioners;

