

U VISA LAW ENFORCEMENT RESOURCE GUIDE



**FOR FEDERAL, STATE, LOCAL, TRIBAL AND
TERRITORIAL LAW ENFORCEMENT,
PROSECUTORS, JUDGES, AND OTHER
GOVERNMENT AGENCIES**

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The information provided in this Guide is intended for general educational purposes only. It is not intended to provide legal advice. The information in this Guide may or may not apply to individual circumstances. Readers should review local policies and seek legal counsel regarding any specific applications of federal and state laws.

This Guide supersedes all previous versions of the U and U/T Visa Law Enforcement Resource Guides. There is a separate T Visa Law Enforcement Resource Guide.

Promoting a Victim-Centered Approach

DHS strives to use a trauma-informed, victim-centered approach to combat crime. This approach includes practices to minimize victimization and additional trauma, and equally values:

- ☛ The identification and stabilization of victims, including providing immigration relief, and
- ☛ The investigation and prosecution of perpetrators of serious crimes.

For more information and strategies for implementing a victim-centered approach, go to:
<https://www.dhs.gov/blue-campaign/victim-centered-approach>.

INTRODUCTION

Congress recognized that individuals without lawful immigration status may be particularly vulnerable to victimization and may be reluctant to help in the investigation or prosecution of criminal activity due to fear of removal from the United States.¹

Through the Victims of Trafficking and Violence Prevention Act of 2000, Congress created specific immigration benefits, including U nonimmigrant status (also known as the “U visa”) for victims of certain crimes.

U visas:

- ☛ Strengthen law enforcement’s ability to detect, investigate, and prosecute serious crimes, such as domestic violence, sexual assault, and human trafficking;
- ☛ Encourage victims to report crimes committed against them and participate in the investigation and prosecution of those crimes, even if victims lack lawful immigration status; and
- ☛ Offer protections to victims of qualifying crimes in keeping with the humanitarian interests of the United States.

U visas also enable victims of certain crimes to assist investigators or prosecutors by allowing victims to temporarily remain and work in the U.S., generally for 4 years.

U.S. Citizenship and Immigration Services (USCIS) is the federal agency within the Department of Homeland Security (DHS) that adjudicates immigration and citizenship benefits, and has jurisdiction to determine who is eligible for a U visa. Law enforcement agencies assist USCIS by providing certifications on behalf of petitioners seeking U nonimmigrant status. The certification is a tool for law enforcement agencies to use as part of a victim-centered approach.

USCIS provides this guidance to federal, state, local, tribal and territorial law enforcement officers, prosecutors, judges and other government officials who have important roles in identifying and assisting victims, as well as supporting the integrity of the application process for U nonimmigrant status.

This Guide includes information about U visa requirements; the U visa law enforcement certification; best practices for certifying agencies and officials; answers to frequently asked questions from judges, prosecutors, law enforcement agencies, and other officials; additional resources; and contact information for DHS personnel on U visa issues.

¹ See VTVPA, Pub. L. No. 106-386, 1502(a)(3), 114 Stat. 1464-1548 (2000).

IN THIS GUIDE



Brief overview of the U visa program, certifying agencies’ roles and responsibilities, and what you need to know before, during, and after certification



Resources to support you, including contact information, best practices, and links to additional information



Answers to frequently asked questions from certifying officials about the discretionary certification process

Law Enforcement Participation

To qualify for the U visa, the victim must provide evidence to USCIS, among other things, establishing that he or she is assisting, has assisted, or will assist law enforcement if assistance is reasonably requested (certain exceptions apply).

One of the required pieces of evidence to establish eligibility for U nonimmigrant status is USCIS Form I-918, Supplement B, “U Nonimmigrant Status Certification” (Form I-918B). While Form I-918B does not confer any immigration benefits or status, it is an essential confirmation that the qualifying crime occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation, or prosecution of the qualifying criminal activity.

Law enforcement agencies play a key role in the certification process, as they are often in the best position to verify whether the reported crime occurred, and to confirm a victim’s helpfulness.

Supporting the Integrity of Our Immigration System

DHS must ensure that the integrity of the U visa program remains strong so that it serves as a valuable tool for law enforcement and continues to provide meaningful protection to victims. DHS takes fraud and abuse of immigration benefits, including U visas, seriously. DHS will refer those who commit U visa fraud for prosecution to the fullest extent of the law.

USCIS works with other DHS components and federal partners to ensure the integrity of our immigration system. USCIS’ fraud detection units investigate cases where there is suspicion of fraud and work with other federal, state, and local law enforcement agencies when fraud or abuse of the program is discovered. If USCIS suspects fraud in a U visa petition, USCIS may reach out to the certifying agency and request further information. Furthermore, USCIS may contact certifying agencies to confirm the accuracy and source of the information submitted to USCIS on Form I-918B.

Law enforcement agencies, who opt to certify, are important partners in supporting the integrity of the U visa program in many ways, including (but not limited to):

- Attesting that an individual is a victim of a qualifying crime, and whether that individual was, is, or is likely to be helpful to law enforcement’s detection, investigation or prosecution of the crime;
- Notifying USCIS when a victim refuses or fails to provide assistance when reasonably requested;
- Informing USCIS of any known criminal and/or gang-related activity; and
- Alerting USCIS of any suspected fraud.

Note: Please consider USCIS’ recommended best practices (outlined on pages 11-12) when developing certification policies and procedures.

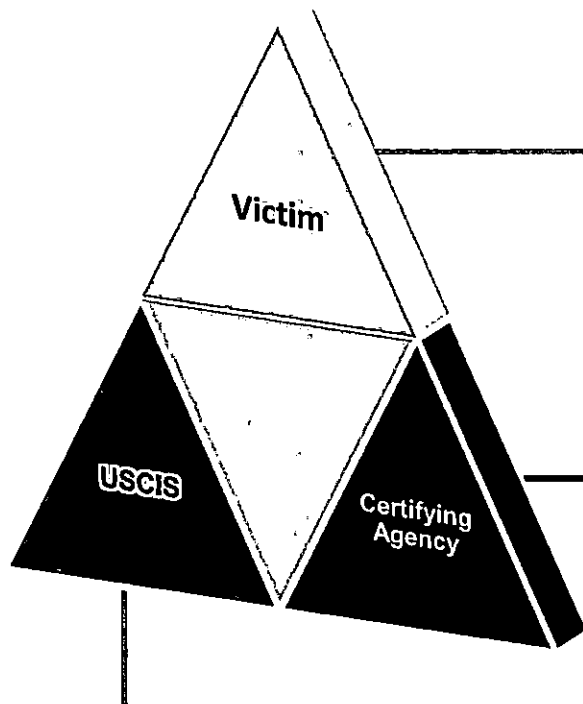
Certifying Agencies

The following types of agencies can certify Form I-918B:

- Any federal, state, tribal, territorial, or local law enforcement office or agency, prosecutor, judge, or other authority that has responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict or sentence the perpetrator.
 - Agencies with criminal investigative jurisdiction, such as child and adult protective services, the Equal Employment Opportunity Commission, and federal and state Departments of Labor.
-

Roles and Responsibilities of Certifying Agency, USCIS, and the Victim

The certifying agency, USCIS, and the victim each have different roles and responsibilities related to U visas.



Victim

- Provides information to the certifying agency to assist with the investigation or prosecution of qualifying crime(s)
- Has an ongoing responsibility to provide continuing assistance in the investigation and prosecution of a qualifying crime(s), after initially cooperating with law enforcement, when reasonably requested and there is an ongoing need²
- Submits completed Form I-918B (required) with his or her Form I-918 to USCIS

Certifying Agency

- Detects, investigates, and/or prosecutes allegations of qualifying crimes
- Determines, within the certifying agency's discretion, whether to complete and sign Form I-918B, pursuant to the agency's procedures and designated signing authority
- Confirms that the victim is complying with reasonable requests for assistance
- Communicates with USCIS if the victim unreasonably refuses to assist in the investigation or prosecution and the agency needs to withdraw or disavow a previously signed Form I-918B

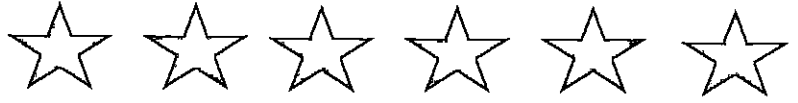
USCIS

- Receives and adjudicates U visa petitions
- Determines eligibility for U visas based on a complete filing, a criminal history background check, and an immigration status check
- Requests additional information from the victim if necessary to make an eligibility determination
- Coordinates with law enforcement to verify the accuracy of Form I-918B submissions, as well as any other evidence submitted with a U visa petition
- Provides nonimmigrant status to eligible victims

² See the discussion regarding helpfulness within Federal Register DHS Docket No. USCIS-2006-0069 (<https://www.federalregister.gov/documents/2007/09/17/E7-17807/new-classification-for-victims-of-criminal-activity-eligibility-for-u-nonimmigrant-status>).

TOP SIX

THINGS TO KNOW ABOUT FORM I-918B



1 Completing is Discretionary

Signing may strengthen your certifying agency's ability to detect, investigate, and prosecute serious crimes. Your certifying agency has discretion over whether to complete a form, which should be exercised on a case-by-case basis consistent with U.S. laws and regulations, as well as the internal policies of your certifying agency.

There is no obligation under federal law to complete and sign Form I-918B.

1

2

2 Signing Means Attesting to the Facts

By signing the certification, you are stating:

- The individual is a victim of a qualifying criminal activity;
- The individual has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity (or is exempt), and has complied with all reasonable requests to assist law enforcement;
- The information listed on the form is accurate to the best of your knowledge; and
- You have direct knowledge of the information listed (or have reviewed relevant records).

Note: Form I-918B must include an original signature in a color other than black.

3

3 Who Completes the Form Matters

The certifying agency – not the victim, or his or her attorney or representative – should complete Form I-918B. Additionally, only sign Form I-918B if:

- I. You are the head of your agency, or in a supervisory role, and your agency has designated you a "certifying official";
or
- II. You are a federal, state, local, tribal, or territorial judge.

4

4 A Victim's Ongoing Responsibility to Assist

Victims have an ongoing responsibility to assist the certifying agency while in U nonimmigrant status. If a victim refuses or fails to assist with reasonable requests, you have the ability to withdraw or disavow your certification by contacting USCIS.

There are some exceptions and special rules for minor (under age 16 for U visas) and disabled victims. Review the Form I-918B instructions for more information.

5

5 Background Checks and Criminal History

USCIS will consider any information you provide in its analysis of eligibility and admissibility. A criminal history does not automatically render a victim ineligible. Also, your agency is not responsible for determining whether an individual is eligible for an immigration benefit.

Certifying agencies with legal authority may choose to run background checks on individuals prior to signing a certification. Provide USCIS with information in the designated section on the form.

6

6 You Can Withdraw At Any Time

You can withdraw any time after signing, including if you later discover information regarding the victim, crime, or certification that your agency believes USCIS should be aware of. If you wish to withdraw the certification, email:

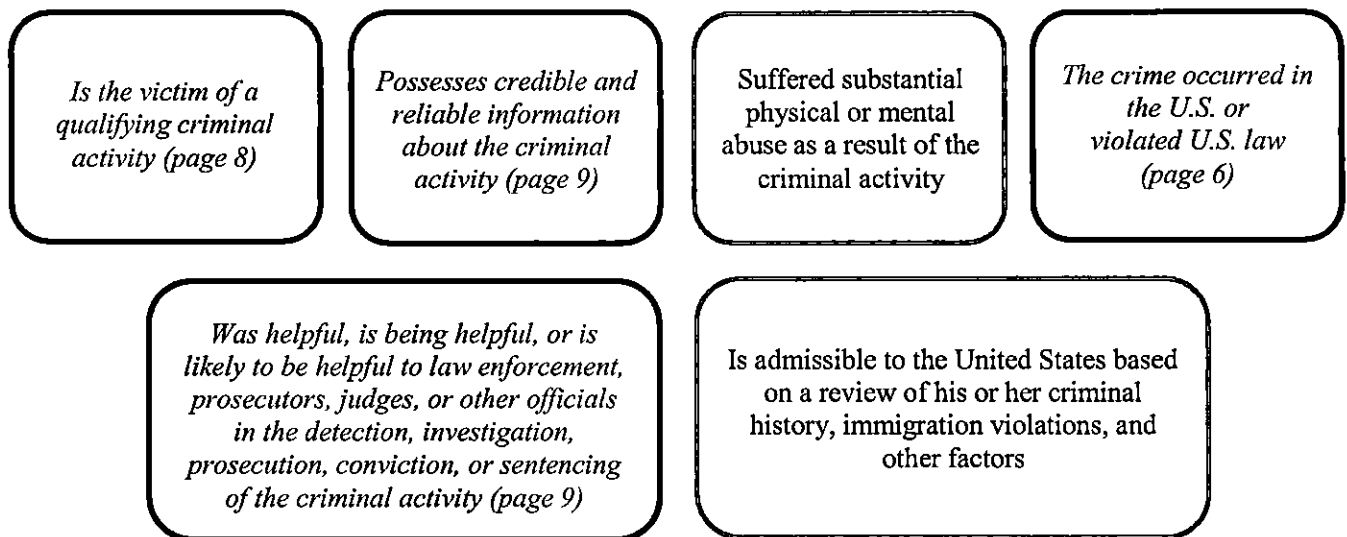
LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

U VISA CERTIFICATION

✦ For up-to-date USCIS U visa policies, forms, and instructions, see the [U Nonimmigrant Status](#)³ page.

✦ The [Information for Law Enforcement Agencies and Judges](#)⁴ page is another helpful resource.

Information provided by law enforcement helps USCIS decide whether a victim is eligible for a U visa. This Guide will discuss the eligibility requirements *italicized and highlighted in blue* more thoroughly, as the law enforcement certification focuses on these areas. An individual is eligible for a U visa if he or she:⁵



Completing Form I-918B does not automatically confer eligibility for a U visa. USCIS will carefully examine all the evidence provided in a U visa petition, including Form I-918B and any attached records.

Answer Questions Completely: USCIS encourages you to answer all form questions as fully as possible. If there is missing information, the victim may ask that you complete Form I-918B a second time with more information due to a request from USCIS for additional information.

Signing Authority: The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications. Federal, state, local, tribal, or territorial judges have direct authority to sign and may not delegate that authority.

Timing: USCIS must receive the U visa petition **within six months** of the date the certifying agency signed Form I-918B. If USCIS receives the U visa petition from the petitioner or his/her attorney more than six months after the form was signed, the Form I-918B has expired and will not be accepted. In these situations, the victim must request a newly executed Form I-918B to support their petition.

³ <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

⁴ <https://www.uscis.gov/tools/resources/information-law-enforcement-agencies-and-judges>.

⁵ See Immigration and Nationality Act (INA) 101(a)(15)(U); 8 U.S. Code (U.S.C.) 1101(a)(15)(U).

Determining Qualifying Criminal Activities

Congress established the qualifying criminal activities⁶ (listed below) in relation to the U visa. These are categories of crime and are not specific crimes or citations to a criminal code; various federal, state, and local statutes could fall into these general categories of crime.⁷ The one exception is “Fraud in Foreign Labor Contracting,” which is a specifically cited federal offense.⁸

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

The criminal activity must have occurred in the U.S., its territories, or possessions, or have violated U.S. law. It may be relevant to your analysis if the statute of limitations has passed; however, U visa regulations do not set a specific statute of limitations for signing the Form I-918B.

A judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which he or she presided.

Child abuse and elder abuse could be considered forms of domestic violence if the perpetrator/victim relationship and the abuse experienced by the child, disabled adult, or senior meets the statutory elements of domestic violence under relevant statutes.

In the case of witness tampering, obstruction of justice, or perjury, a person may be considered a victim of these crimes if he or she can reasonably demonstrate that the perpetrator principally committed the offense as a means to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice, or to further his or her abuse, exploitation of, or control over the immigrant through manipulation of the legal system.

When Similar Criminal Activities May Qualify

There are a wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list of qualifying criminal activities for the U visa, but the nature and elements of those activities are comparable. As such, a victim may also qualify if the crime detected, investigated or prosecuted by a certifying agency involves activity where the nature and elements of the crime are substantially similar to a listed crime.

To determine whether the crime qualifies, USCIS considers information and other documentation provided by law enforcement, such as police reports, charging documents, etc. (if available) regarding the criminal activity that occurred and the statutory violation that it detected, investigated, or prosecuted. USCIS determines whether the crime is substantially similar to a qualifying criminal activity based on the totality of the evidence.

⁶ See INA 101(a)(15)(U)(iii), 8 U.S.C. 1101(a)(15)(U)(iii).

⁷ In addition, a victim may qualify based on an attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

⁸ See 18 U.S.C. 1351.

For example, aggravated robbery and robbery, which are not specifically listed as qualifying criminal activities, could nevertheless be considered a qualifying criminal activity of *felonious assault*, depending on state robbery statutes and evidence of the crime that law enforcement detected, investigated, or prosecuted. For instance, where the state aggravated robbery statute includes assault with a deadly weapon, assault with a threat to cause serious bodily injury, or otherwise includes what could be considered a felonious assault and law enforcement records of the offense show that such an assault actually occurred, USCIS may determine that aggravated robbery is substantially similar to the qualifying criminal activity of felonious assault.⁹

Documenting Crimes Investigated and/or Prosecuted¹⁰

Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in Part 1. Attach copies of all relevant reports and findings.

Jurisdictions use different terms for criminal activity. Also, each jurisdiction’s crime definitions may include slightly different elements. As such, it is important that you provide accurate, precise citations for any crimes you detected, investigated, or prosecuted.

USCIS will examine which qualifying crime(s) you have indicated were detected, investigated, or prosecuted on Form I-918B (more than one qualifying crime may apply) and analyze whether the nature and elements of the crime(s) listed in the statutory citations section are substantially similar to those crimes.

Culpable Individuals Are Not Eligible

An individual is not eligible for a U visa if he or she is culpable for the qualifying criminal activity(ies) being investigated or prosecuted. If you decide to complete a certification for a victim, but you suspect the individual is or may be culpable, you may note your concerns about culpability on the form.

Note: Victims of domestic violence are occasionally accused of committing domestic violence themselves by their abusers as part of the abuser’s attempts to assert power and control over the victim. When evidence suggests these allegations were fabricated by the victim’s abuser, they do not preclude the victim from qualifying for U nonimmigrant status.

⁹ If the state felony assault statute requires an aggravating factor (e.g., presence/use of a weapon, victim’s age or disability, etc.) and no such factor is present, then the crime would generally not be considered substantially similar to felonious assault.
¹⁰ The Form I-918B screenshots depicted in this Guide are from Version 02/07/2017. **Note:** USCIS forms are periodically revised. Check the USCIS website (www.uscis.gov) to ensure that you are certifying the current version of the form.

Victim of a Qualifying Criminal Activity

Various individuals may request certification as a victim, including direct victims and indirect victims.

Direct Victims

The person against whom the crime was perpetrated and who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. Bystanders who suffer an unusually direct injury as a result of a qualifying crime may also qualify.

Indirect Victims

For a family member to be eligible for a U visa as an indirect victim, all of the following requirements must be met:

- 1) The individual must have a *qualifying family relationship* to the direct victim:
 - a. If the direct victim is age 21 or older at time of crime, his or her spouse and unmarried children under age 21 may qualify
 - b. If the direct victim is under age 21 at the time of the qualifying crime(s), his or her spouse, unmarried children under age 21, parents, and unmarried siblings under age 18 may qualify¹¹;
- 2) The direct victim is unable to assist law enforcement because he or she is:
 - a. *Deceased* due to murder or manslaughter, or
 - b. *Incompetent or incapacitated*, including due to injury, trauma, or age.¹²
- 3) The indirect victim must *meet all other eligibility requirements* for U nonimmigrant status.

Note: You may sign Form I-918B for a non-citizen family member regardless of whether the direct victim is a U.S. citizen or a non-citizen (such as a non-citizen parent of a U.S. citizen child who is the direct victim).

Victim Must Have Suffered Substantial Physical or Mental Abuse

Report information about any known or observed physical or mental harm or abuse sustained by the victim. Indicate whether the victim received any medical care to treat his or her injuries.

Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

USCIS encourages you to attach supplemental documentation related to any injuries sustained (e.g., police reports).

USCIS is responsible for determining whether an individual meets this eligibility requirement. USCIS will consider all supporting evidence you provide when determining whether an individual is eligible for U nonimmigrant status, and may request additional information before adjudicating the petition.

¹¹ USCIS considers the age of direct victim at the time the qualifying crime(s) occurred.

¹² For example, USCIS may consider a 13 year old U.S. citizen direct victim to be incompetent or incapacitated due to age, and therefore the parent may assist on the victim's behalf, and may be eligible for a U visa as an indirect victim, if the parent meets all other requirements.

Victim Must Possess Credible and Reliable Information

A victim must possess credible and reliable information, including specific facts about the criminal activity(ies) or events leading up to the victimization. However, when a victim is under 16 years of age on the date the qualifying criminal activity occurred, or a victim is incapacitated or incompetent, a parent, guardian, or next friend¹³ may provide information for them.

A Victim's Responsibility to Assist

A victim seeking a U visa must provide ongoing assistance with the investigation or prosecution related to his or her qualifying crime(s) when reasonably requested, including after reporting a crime and after law enforcement signs Form I-918B. This responsibility continues even if U nonimmigrant status is granted - a victim who does not continue to comply with reasonable requests for assistance will not be eligible for lawful permanent residence based on a U visa.

If your agency chooses to sign Form I-918B for a victim who did not provide ongoing assistance that your agency requested, provide detailed information on Form I-918B. USCIS will decide whether the request was reasonable. Your agency may withdraw or disavow the Form I-918B at any time (including after approval).

Victim Was "Helpful" In the Investigation or Prosecution

Your agency can certify a Form I-918B based on past, present, or the likelihood of a victim's future helpfulness. By signing the form, you are certifying that the victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

Similar to the requirement to possess information, when a victim is under 16 years of age, or incapacitated or incompetent and therefore unable to be helpful in the investigation, a parent, guardian, or next friend may also provide the required assistance in place of the victim.

Certifying agencies generally should not sign Form I-918B when the victim has not been helpful or is not likely to be helpful.

You may also decline to certify, for example, if you believe the case will not require assistance from the victim, if the victim has not clearly demonstrated his or her intent to assist as needed, or if the victim's case does not meet your local certifying agency's requirements for signing the form.

¹³A "next friend" is defined as a person who appears in a lawsuit to act for the benefit of a victim who is under the age of 16, or is incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to a legal proceeding and is not appointed as a guardian. A next friend does not qualify for a U visa or any immigration benefit, but may provide helpful information about the criminal activity(ies).

In determining whether the victim is, has been, or will be helpful, USCIS considers the facts of each case, including:

- The level of assistance that law enforcement requests of the victim;
- The victim’s responsiveness to requests from law enforcement for assistance;
- Law enforcement’s ability to proceed with an investigation and/or prosecution based on a victim’s helpfulness, or lack thereof, when reasonably requested; and
- The victim’s individual circumstances (such as age/maturity, trauma, etc.).

It may also be relevant to the analysis if the statute of limitations has passed. U visa regulations do not set a specific statute of limitations for signing the Form I-918B, or require that a case must have progressed to a certain stage (e.g., prosecution or conviction).

Future Requests

If your agency signed a U visa certification, the victim may request your support in the future for an application to become a lawful permanent resident (i.e., “green card” application). To be eligible for a green card, the victim must demonstrate that he or she did not unreasonably refuse to comply with requests for assistance in the investigation or prosecution since getting a U visa. While re-certification or similar documentation from your agency is not required, it can help the victim meet his or her evidentiary burden. There is no federal requirement that a case must have progressed to a certain stage (e.g., prosecution or conviction) prior to re-certification. Support for a victim’s adjustment of status application may be provided even if the case never resulted in a criminal prosecution.



You can choose whether to sign this second certification, but you are not obligated to sign under federal law, regardless of whether your agency certified the victim’s helpfulness in the past.

To certify the victim’s helpfulness at this stage, you have three options:

- Complete a new Form I-918B;
- Provide a signed letter of support (preferably on agency letterhead), including your badge/identification number, if applicable; or
- Re-sign and newly date a copy of the previously certified Form I-918B.

BEST PRACTICES

FOR CERTIFYING AGENCIES AND OFFICIALS



Establish and Periodically Update Local Procedures and/or Policies

Certifying agencies are not required to have an internal policy or procedure before they can sign a U visa certification. However, USCIS encourages you to develop a policy and train relevant personnel in your agency on that policy to promote consistency and transparency and improve the quality of certifications. Some examples of topics to cover in a certifying agency's internal policy could include:

- Whether the agency will complete discretionary background/criminal checks on a victim before completing a certification (Criminal history does not automatically render a victim ineligible; criminal history is relevant to USCIS' analysis of eligibility and admissibility);
- Whether the agency will establish specific parameters related to certifying cases where a significant amount of time has passed since commission of the crimes (U visa regulations do not set a specific statute of limitations for signing the Form I-918B);
- Expectations regarding attaching relevant police reports and other documentation regarding the victimization and the victim to Form I-918B;
- Procedures regarding the agency's verification of the criminal activity, victimization, and the victim's participation in the investigation or prosecution;
- Procedures to safeguard against fraud, such as requiring that the person who completes and signs the certification is/was not also the investigating officer, and/or in agencies where there are multiple certifying officials, centralizing final review of certifications before they are returned to the victim;
- Procedures for handling future requests for a new or re-signed Form I-918B;
- Establishing general expectations around anticipated response timeframes; and
- Processes for increasing transparency of the agency's certification policies (if any) to the public.

Keep Records of Signed Forms

USCIS may reach out to you or your certifying agency to verify information on a signed Form I-918B. To increase the ease of responding and to provide your own internal data analytics, your agency may find it useful to create and maintain a searchable database or other mechanism to track certification requests and create a historical record of certifications. Some agencies find it useful to include a specific identifier on each page of the form that corresponds to information in the database. For example, a certifying agency could use a meaningful combination of numbers and letters to easily track the signed forms.

Note: Any database should comply with applicable state and federal privacy and confidentiality requirements. DHS, Department of State, and Department of Justice databases should ensure compliance with privacy and confidentiality protections provided by 8 U.S.C. 1367.

USCIS Verifies Proper Signing Authority - Update USCIS When Signing Authority Changes

For U visas, you can assist with this effort by updating USCIS when your certifying agency adds or removes a certifying official by emailing a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.

Provide Specific Details

USCIS carefully considers the information you provide on Form I-918B. Be as specific and detailed as possible when answering the form questions.

Note: Completing the form does not automatically confer eligibility. USCIS will assess eligibility by examining all of the evidence provided by the victim in his or her complete U visa petition, including the information you provide on the form as well as supplemental evidence provided by the victim.

Include Any Background Checks Run By Your Certifying Agency on the Form

If your agency chooses to perform any searches on a victim, please note any names and dates of birth (including aliases) run during the certification process, as well as any criminality or national security concerns identified.

Attach Additional Relevant Documents – and Note This on Form I-918B

If available, provide additional relevant documents (e.g., a copy of the police report or court order, or judicial findings, additional statements, photos, etc.) along with the signed form. Note on the form itself that your agency has attached documents, in case the documents and the form are accidentally separated in transit to USCIS.

Verify All Information on the Form Prior to Signing

Your agency should fully complete the certification form. Prior to signing Form I-918B, ensure that all information is complete and accurate.

Provide an Original Ink Signature in a Color Other Than Black

You must provide an original signature on Form I-918B. Also, you should sign in a color of ink other than black (such as blue ink) for verification purposes. USCIS cannot accept photocopies, faxes, or scans of the forms as “official” evidence.

Return the Form to the Victim

Return the signed Form I-918B to the victim. You should not send the signed form separately to USCIS. If the victim is including a certification, the victim is required to send USCIS the original signed certification along with his or her complete U visa petition.

Email USCIS if a Victim Refuses Help DHS and USCIS Safeguard against Fraud and Misuse

If your agency suspects fraud or misuse of the U visa program, you may report these concerns to USCIS by emailing LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov. Examples of concerns that should be reported include:

- Individuals reporting qualifying crimes that did not take place;
- Individuals staging qualifying crimes in order to appear eligible;
- Individuals incentivizing others to commit a qualifying crime against them;
- Attorneys, victim advocates, or victims intentionally providing erroneous or misleading information on the forms, or significantly altering the forms after they are signed.

Also, please email USCIS if an individual reporting a qualifying crime refuses or fails to provide information and assistance reasonably requested during the investigation or prosecution.

ANSWERS

TO QUESTIONS FREQUENTLY ASKED BY CERTIFYING OFFICIALS



Who decides whether a victim should apply for a U visa?

A victim makes this decision. Neither USCIS nor law enforcement determines whether a victim should apply for a U visa.

How may signing a U visa certification benefit my agency?

Signing may strengthen your agency's ability to investigate and prosecute serious crimes, and may encourage victims to report crimes committed against them and to participate in the investigation and prosecution of those crimes.

How does USCIS determine whether an individual is eligible?

Based on a review of the complete petition, USCIS examines the totality of the evidence and circumstances of each individual case. USCIS considers many factors when determining eligibility, including the signed Form I-918B and a full background check, which includes an FBI fingerprint check, a Name/Date of Birth search in federal databases, and immigration status checks.

Can I certify a form for a victim who is no longer in the U.S.?

For U visa eligibility, the criminal activity must have occurred in the U.S., its territories, or possessions, or have violated U.S. law. Victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply when outside of the country.

Why is a victim requesting another certification when my agency previously provided one?

This may occur for primarily three reasons. Victims applying for a U visa must submit Form I-918B within six months after it is signed by a certifying agency. If the Form I-918B expired before the victim was able to file a petition or application with USCIS, he or she would require a new form. Victims may also request another Form I-918B if the original form was incomplete or when significant additional information regarding the investigation or prosecution, the victimization, and/or the victim's helpfulness becomes available.

Additionally, if a victim applies for lawful permanent resident status (i.e. a green card), he or she must demonstrate continued helpfulness as reasonably requested by law enforcement. As evidence of this, a victim may request a newly signed Form I-918B, or other signed document from a law enforcement agency. There is no federal requirement that a case must have progressed to a certain stage (e.g., prosecution or conviction) prior to re-certification.

Can I say "no" to requests?

There are no federal requirements to certify.

Can agencies working with DHS under the 287(g) program certify?

Law enforcement agencies may sign Form I-918B regardless of whether they have a Memorandum of Understanding with DHS under the 287(g) program.

When certifying for an indirect U visa victim, whose name should I list on the form – the direct victim or the indirect victim (family member)?

Always list the name of the person for whom you are certifying in Part 1 (“Victim Information”) of Form I-918B. When certifying Form I-918B for an *indirect victim*, include that individual’s name and other details in Part 1 of the form. Do not put the direct victim’s name in Part 1 when certifying for an indirect victim. Record the direct victim’s name elsewhere in the document. (See form instructions.)

How do I terminate, withdraw, or revoke a certification?

To terminate, withdraw, or revoke a certification, the certifying official should contact USCIS by emailing LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. This request should include:

- The certifying agency’s name and contact information;
- Victim’s name and date of birth;
- Victim’s alien registration number (A-number), if known;
- Name of person who signed certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification;
- Signature and title of official withdrawing/disavowing; and
- A copy of original certification attached, if available.

Can I run checks (i.e., National Crime Information Center (NCIC)) on those asking for a certification?

Prior to signing Form I-918B, certifying agencies may choose to run background and criminal history checks on individuals asking for a certification, consistent with their legal authority under federal, state, and local law. The fact that a victim has a criminal history does not automatically preclude approval of U nonimmigrant status.

How does USCIS consider criminal history when determining eligibility for a U visa?

Prior to approving or denying a U visa petition, USCIS evaluates each petition on a case-by-case basis. USCIS reviews all available information concerning arrests, immigration violations, gang membership, and security issues before making a final decision. USCIS takes into account whether there is a nexus between a petitioner’s criminal behavior and his or her victimization. USCIS also carefully considers any evidence of rehabilitation that the petitioner provides with his or her U visa petition.

If a certifying official believes USCIS should know something particular about a victim’s criminal history, this information can be included on the certification or with an attached report or statement.

The fact that a victim has a criminal history does not automatically preclude approval of U nonimmigrant status. However, in most cases, an individual will not be able to meet the statutory requirements for approval of a U visa if he or she has a serious or violent criminal record. USCIS also generally will not approve a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims to be a victim.

May I type my responses to Form I-918B?

You may either type or write your response to Form I-918B, except for the signature, **which must be an original and signed by hand in pen in a color other than black**. Please ensure answers are legible.

Does USCIS run background or criminal checks on family members seeking derivative status?

Yes. An individual seeking derivative status as a qualifying family member is subject to the same criminal background review, fingerprint checks, Name/Date of Birth search in federal databases, and immigration status checks as the principal petitioner. USCIS considers the facts of each case separately when determining whether an individual is eligible for a visa. Therefore, USCIS may deny a derivative's case based on his or her adverse criminal or immigration background, even when the principal's petition has been approved.

Which officials meet the definition of a judge for U visa certification purposes?

Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.

What training opportunities are available for certifying officials?

USCIS provides webinar trainings for law enforcement officials. Contact

T_U_VAWATraining@uscis.dhs.gov to find out information on the next webinar for law enforcement officials. Live, on-site trainings may also be available upon request.

How does USCIS determine if the “substantial physical or mental abuse” requirement has been met?

USCIS will make the determination as to whether the victim has met the “substantial physical or mental abuse” standard on a case-by-case basis during its adjudication of the U visa petition. Certifying agencies and officials may provide any information they deem relevant regarding injuries or abuse on the Form I-918B. If the certifying official has documentary evidence of injuries to the victim, the severity of the perpetrator's conduct, or the emotional impact on the victim's mental health as affected by the criminal activity, it is helpful to attach any relevant evidence of these facts, such as, photographs, police reports, findings, or court orders. While USCIS will consider any evidence of substantial physical or mental abuse provided by the certifying agency, the U visa petitioner has the burden of establishing that they meet the substantial physical or mental abuse requirement.

Some factors that USCIS uses to make this determination are:

- The nature of the injury inflicted;
- The severity of the perpetrator's conduct;
- The severity of the harm suffered;
- The duration of the infliction of the harm; and
- The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

The existence of one or more of these factors does not automatically signify that the abuse suffered was substantial.

MORE RESOURCES

FOR CERTIFYING AGENCIES AND OFFICIALS



ICE Homeland Security Investigations (HSI)

This investigative branch of DHS participates in over 120 human trafficking taskforces across the country.

www.ice.gov/contact/hsi/
(866) 872-4973 *or*
victimassistance.ice@ice.dhs.gov

For human trafficking investigations with a transnational nexus, contact HSI by calling your local HSI office or the HSI tip line at 1-866-347-2423 (1-866-DHS-2-ICE).

Office for Civil Rights and Civil Liberties (CRCL):

Toll Free: (866) 644-8360
crcl@dhs.gov *or* VAWA@hq.dhs.gov

Contact CRCL to:

- Refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by DHS employees and officials
- Report a violation of U visa, T visa, or VAWA relief confidentiality protections by a federal employee. See 8 U.S.C. 1367(a)(2).

Office for State and Local Law Enforcement (OSLLE):

(202) 282-9545 *or* OSLLE@hq.dhs.gov

OSLLE serves as the liaison between DHS and non-federal law enforcement agencies across the country. OSLLE leads the coordination of DHS-wide policies related to state, local, tribal, and territorial law enforcement's role in preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disaster within the United States.

Request Technical Assistance via the U and T Visa Hotline for Certifying Agency Inquiries:

(202) 272-8178

This line is for certifying agencies only.

Request Training:

T_U_VAWATraining@uscis.dhs.gov

DHS Federal Law Enforcement Training Center
<https://www.fletc.gov/human-trafficking-training-program>

Ask a Question about a Specific Case, Withdraw/Disavow a Signed Form, or Report Concerns about Fraud in or Misuse of U Visas:

LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov
This e-mail is for law enforcement personnel only.

Immigration and Customs Enforcement (ICE) Resources:

ICE Tool Kit for Prosecutors
<https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>

ICE Law Enforcement Support Center
(802) 872-6050
www.ice.gov/contact/lesc

Local ICE Offices
Enforcement and Removal Operations
www.ice.gov/contact/ero/

Office of the Principal Legal Advisor
www.ice.gov/contact/opla/

For Additional Anti-Trafficking Resources, go to the DHS Blue Campaign page:

<https://www.dhs.gov/blue-campaign>

APPENDIX: U VISA PROCESS

This is the general process to seek a U visa, from the victim’s initial encounter with law enforcement to USCIS’ final eligibility determination. A victim must show that he or she has not refused to comply with reasonable requests for assistance during all stages of the petition process.

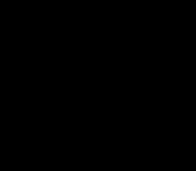
The time between initial filing, review for waiting list placement, and the final adjudication of a case (approval or denial) can vary significantly due to several factors, including USCIS staffing levels and resource availability, U visa availability, and number and complexity of petitions and applications.

By law, USCIS cannot provide U nonimmigrant status to more than 10,000 principal victims (i.e., not including derivative family members) per year. This cap has been reached every year since 2010.

Information about U visa petitioners is protected by specific privacy and confidentiality laws.¹⁴

| Cooperation Step 1 | Filing Step 2 | Waiting List Step 3 | Approval Step 4 |
|--|---|---|--|
| Victim assists law enforcement in the detection, investigation, and/or prosecution of qualifying crime | Victim applies for U visa with USCIS, including valid law enforcement certification | USCIS reviews the petition for eligibility and requests more evidence if needed | Once a visa is available, USCIS reviews the file to verify eligibility |
| Victim requests law enforcement certification and law enforcement decides whether to sign Form I-918, Supplement B | | If determined eligible but the statutory cap for the fiscal year has been met, USCIS places petitioner on a waiting list (and grants deferred action and work authorization if petitioner is in the U.S.) | If determined eligible, USCIS approves the victim’s petition for U nonimmigrant status |

¹⁴ See 8 U.S.C. 1367.



Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select all applicable boxes)

- Abduction
- Abusive Sexual Contact
- Attempt to Commit Any of the Named Crimes
- Being Held Hostage
- Blackmail
- Conspiracy to Commit Any of the Named Crimes
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Female Genital Mutilation
- Fraud in Foreign Labor Contracting
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Solicitation to Commit Any of the Named Crimes
- Stalking
- Torture
- Trafficking
- Unlawful Criminal Restraint
- Witness Tampering

Provide the dates on which the criminal activity occurred.

- 2.a. Date (mm/dd/yyyy)
- 2.b. Date (mm/dd/yyyy)
- 2.c. Date (mm/dd/yyyy)
- 2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States? Yes No

4.b. If you answered "Yes," where did the criminal activity occur?

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in Part 1. Attach copies of all relevant reports and findings.

7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in Part 7. **Additional Information.**)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

2.d. Relationship

2.e. Involvement

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

3.d. Relationship

3.e. Involvement

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

4.d. Relationship

4.e. Involvement

Part 6. Certification

I am the head of the agency listed in Part 2. or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➔

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

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e-CFR data is current as of January 24, 2020

Title 8 → Chapter I → Subchapter B → Part 214 → §214.14

Title 8: Aliens and Nationality
PART 214—NONIMMIGRANT CLASSES**§214.14 Alien victims of certain qualifying criminal activity.**

(a) *Definitions.* As used in this section, the term:

(1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106-386, 114 Stat. 1464, (2000), *amended by* Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

(4) *Indian Country* is defined as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

(6) *Military Installation* means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

(7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation

to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

(10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

(12) *U nonimmigrant status certification* means Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(13) *U interim relief* refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of

age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien 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. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U nonimmigrant status*—(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, by mail, Form I-918, "Petition for U Nonimmigrant Status," applicable biometric fee (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under

the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

(3) *Biometric capture.* All petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

(5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I-918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.

(i) *Approval of Form I-918, generally.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918. For a petitioner who is within the United States, USCIS also will concurrently grant U-1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918. A petitioner who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(A) *Notice of Approval of Form I-918 for U-1 petitioners within the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and include Form I-94 (see §1.4), "Arrival-Departure Record," indicating U-1 nonimmigrant status.

(B) *Notice of Approval of Form I-918 for U-1 petitioners outside the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from outside the United States, USCIS will notify the alien of such approval on Form I-797, "Notice of Action," and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.

(ii) *Denial of Form I-918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I-918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I-918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS' final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U-1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, "Arrival-Departure Record," to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U-1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I-765 in accordance with the instructions to the form.

(d) *Annual cap on U-1 nonimmigrant status*—(1) *General*. In accordance with section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) *Waiting list*. All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

(3) *Unlawful presence*. During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.

(e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification*—(1) *General*. The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

(f) *Admission of qualifying family members*—(1) *Eligibility*. An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U

nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 nonimmigrant status. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

(2) *Filing procedures.* A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, "Petition for Qualifying Family Member of U-1 Recipient," for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date. An alien who has been granted U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I-918, Supplement A for each family member. All Forms I-918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I-918, Supplement A that are not filed at the same time as Form I-918 but are filed at a later date must be accompanied by a copy of the Form I-918 that was filed by the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U-1 nonimmigrant status, as applicable.

(i) *Qualifying family members in pending immigration proceedings.* The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I-918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Qualifying family members with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-2, U-3, U-4, or U-5 nonimmigrant status directly with USCIS. The filing of a petition for U-2, U-3, U-4, or U-5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.

(3) *Initial evidence.* Form I-918, Supplement A, must include the following initial evidence:

(i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;

(ii) If the qualifying family member is inadmissible, Form I-192, "Application for Advance Permission to Enter as a Non-Immigrant," in accordance with 8 CFR 212.17.

(4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

(i) If the U-1 principal alien proves that he or she has become the parent of a child after Form I-918 was filed, the child shall be eligible to accompany or follow to join the U-1 principal alien.

(ii) If the principal alien was under 21 years of age at the time he or she filed Form I-918, and filed Form I-918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.

(5) *Biometric capture and evidentiary standards.* The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.

(6) *Decision.* USCIS will issue a written decision approving or denying Form I-918, Supplement A and send notice of this decision to the U-1 principal petitioner. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U-2, U-3, U-4, or U-5 nonimmigrant status. USCIS will notify the principal of such approval on Form I-797, "Notice of Action," with Form I-94, "Arrival-Departure Record," indicating U-2, U-3, U-4, or U-5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U-2, U-3, U-4, or U-5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I-918, Supplement A unless it has approved the principal alien's Form I-918.

(ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I-797. USCIS will forward the approved Form I-918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.

(iii) *Denial of the Form I-918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may appeal the denial of Form I-918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS' final denial of Form I-918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239 of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(7) *Employment authorization.* An alien granted U-2, U-3, U-4, or U-5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I-765, "Application for Employment Authorization," with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I-765 may be filed concurrently with Form I-918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I-765 only may be filed after admission to the United States in U nonimmigrant status.

(g) *Duration of U nonimmigrant status—(1) In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status.* (i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

(ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.

(h) *Revocation of approved petitions for U nonimmigrant status—(1) Automatic revocation.* An approved petition for U-1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

(2) *Revocation on notice.* (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing;

(B) Approval of the petition was in error;

(C) Where there was fraud in the petition;

(D) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the relationship to the principal petitioner has terminated; or

(E) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the principal U-1's nonimmigrant status is revoked.

(ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.

(3) *Appeal of a revocation of approval.* A revocation on notice may be appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.

(4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I-918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I-918, Supplement A filed for qualifying family members seeking U-2, U-3, U-4, or U-5 nonimmigrant status. Revocation of a qualifying family member's approved Form I-918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I-918 or Form I-918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

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Need assistance?