

U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges, and
Other Government Agencies



U and T Visa Resource Guide

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Introduction

As a federal, state, local, tribal or territorial law enforcement officer, prosecutor, judge, or other government official, you play an important role in the application process for U nonimmigrant status (also known as a U visa) for victims of certain crimes and T nonimmigrant status (also known as a T visa) for victims of human trafficking. U and T visas not only help protect victims of crime, but are also key tools for you in your work. Lack of legal immigration status in the United States may be among the reasons for some victims choosing not to come forward to work with law enforcement. Perpetrators and human traffickers also use victims' lack of legal status as leverage to exploit and control them. By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist you with your law enforcement and prosecutorial efforts.

In order to qualify for the U and T visa, the victim must prove to U.S. Citizenship and Immigration Services (USCIS) that he or she cooperated with law enforcement.¹ USCIS is the federal component of the Department of Homeland Security (DHS) responsible for adjudicating (approving or denying) U and T visa applications. One of the primary ways that a victim may demonstrate cooperation is by submitting a signed statement from law enforcement as part of the application. In the U visa context, this statement is a required part of the petition and is known as USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B or certification). In the T visa context, this statement is known as USCIS Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim in Trafficking of Persons (Form I-914B or declaration). While not required in the T visa context, the signed declaration provides valuable evidence of the victim's cooperation.

Because these signed statements from law enforcement are such critical pieces of U and T visa applications, victims may approach you to request that you certify their cooperation. You may also encounter victims who are afraid or reluctant to cooperate in a criminal investigation because they lack a lawful immigration status, and who are not aware that they may qualify for a U or T visa.

DHS has created this Resource Guide to inform you and address concerns about the role of law enforcement agencies within these visa programs. This Guide includes information about U and T visa requirements; the I-918B certification and I-914B declaration processes; best practices; answers to important and frequently asked questions from judges, prosecutors, law enforcement agencies, and other officials; where to look for more resources; and contact information for DHS personnel on U and T visa issues.

¹ See 8 CFR 1.1, 1.2, 100.1. Exceptions to the cooperation requirement exist for U and T visa applicants who are under age 18 or who have suffered trauma.

U Visa Basics

Why was the U visa created? How does it help law enforcement?

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000² was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the U nonimmigrant status program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but to also strengthen relations between law enforcement and immigrant communities.

What is the U visa? What are the benefits to the victim?

The U visa is an immigration benefit for victims of certain crimes who meet eligibility requirements.³

USCIS may find an individual eligible for a U visa if the victim:

- Is the direct or indirect victim of qualifying criminal activity⁴;
- Has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
- Has information about the criminal activity;⁵ and
- Was helpful, is being helpful, or is likely to be helpful to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.⁶

Additionally, the victim must be admissible to the United States based on a review of his or her criminal history, immigration violations, and other factors. If found inadmissible, an individual may apply for a waiver of inadmissibility for which he or she may be eligible.

The U visa allows eligible victims to temporarily remain and work in the United States, generally for four years. While in U nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement and cannot unreasonably refuse to assist with the investigation or prosecution of the

² Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

³ <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>. See also INA 101(a)(15)(U).

⁴ The criminal activity occurred in the United States or violated U.S. laws.

⁵ If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the criminal activity on the individual's behalf.

⁶ If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist on behalf of the individual.

criminal activity. If certain conditions are met, an individual with a U visa may apply for adjustment to lawful permanent resident status (i.e., seek a green card in the United States) after three years.

Additionally, certain family members of a U visa recipient may also be eligible to live and work in the United States as “derivative” U visa recipients based on their relationship with the principal recipient. These include:

- Unmarried children under the age of 21;
- Spouse;
- Parents of U visa petitioners under age 21; and
- Unmarried siblings under 18 years old of U visa petitioners under age 21.

By law, there is a 10,000 annual cap on U visas for principal applicants. However, USCIS continues to adjudicate applications even after the annual cap has been reached. Cases that qualify for approval after the cap has been reached receive "conditional approval" and work authorization based on "deferred action" until U visas become available.

How does USCIS review U visa petitions?

USCIS takes several steps to determine whether a victim is eligible for a U visa. USCIS reviews the entire application, which includes the petition (Form I-918), Form I-918B certification, the victim’s affidavit, as well as supporting evidence such as police reports, medical records, photographs, court documents, and witness affidavits. If the applicant is inadmissible due to, for example, prior criminal history, immigration violations, or security concerns, USCIS also reviews any application received for a waiver of inadmissibility. However, some inadmissibilities cannot be waived. As a part of its review of the U visa certification (Form I-918B), USCIS may contact the certifying official to ask if the victim has continued to provide assistance reasonably requested or to request other information. USCIS may also contact the certifying agency if any issues or questions arise during the adjudication based on information provided in the certification.

For all U visa petitioners and their qualifying family members, USCIS conducts a thorough background investigation including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS also reviews the petitioner’s immigration records to assess whether any inadmissibility issues exist, such as the petitioner’s criminal history, immigration violations, or any security concerns. The results of these checks, as well as any evidence that certifying officials and immigration authorities possess, may be considered when determining eligibility for a U visa. Because qualifying “derivative” family members are subject to the same background checks, it is possible that a derivative’s adverse criminal or immigration background could result in a denial of derivative status even when the principal’s petition has been approved.

What is a U visa certification?

In order to be eligible for a U visa, the victim must submit a U visa certification completed by a certifying agency or official. USCIS Form I-918, Supplement B (Form I-918B or certification) is the U visa certification that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a victim who is petitioning USCIS for a U visa. The law enforcement certification explains the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case.

Form I-918B and its instructions are available on the USCIS website at www.uscis.gov with the Form I-918

for the U visa. The certification must be signed by the certifying official with an original signature within the six months (6 months minus one day) immediately preceding the U visa petitioner's submission of Form I-918.

What kind of information does the U visa certification provide?

The certification, Form-I-918B, is a required piece of evidence to help demonstrate:

- That a qualifying criminal activity has occurred;
- That the victim has information about the criminal activity; and
- That the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of criminal activity.

Law enforcement may also report information about any known or observed harm sustained by the victim. While Form I-918B asks the law enforcement official to provide information about the injury to the victim, the certifying official is not required to assess whether the victim suffered substantial physical or mental abuse as a result of the criminal activity. This is a requirement that the U visa petitioner must establish to the satisfaction of USCIS.

Without a completed and signed U visa certification, the victim will not qualify for a U visa, as it is a required part of the application, and there is no exception to this requirement. However, by signing a U visa certification, the certifying agency, official, or judge is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. USCIS determines the victim's credibility and whether to approve the petition based on the totality of the evidence and circumstances of each case.

The decision whether to sign a certification is at the certifying agency's discretion. Each certifying agency should exercise its discretion on a case-by-case basis consistent with applicable U.S. laws and regulations, and the policies and procedures outlined in this guide as well as any internal policies of the certifying agency.

Which agencies may sign a U visa certification?

Certifying agencies include all authorities responsible for the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

- Federal, State Local, Tribal, and Territorial law enforcement agencies;
- Federal, State, Local, Tribal, and Territorial prosecutor's offices;
- Federal, State, Local, Tribal, and Territorial Judges;
- Federal, State, and Local Child and Adult Protective Services;
- Equal Employment Opportunity Commission;
- Federal and State Departments of Labor; and
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority.

What does "Helpful" in the detection, investigation, prosecution, conviction, or sentencing mean?

"Helpful" means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim. This includes providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the visa revoked by USCIS. Certifying agencies should contact and inform USCIS of the victim's unreasonable refusal to provide assistance in an investigation or prosecution: LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Law enforcement, prosecutors, judges or government officials can certify a U visa based on past, present, or the likelihood of future helpfulness of a victim. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case. However, the victim must submit a recently signed certification with his or her U visa petition (signed within six months of submission), even if the crime certified did not recently occur.

What constitutes a qualifying crime?

The following table shows the criminal activities that qualify a victim for the U visa.⁷

<ul style="list-style-type: none"> • Abduction • Abusive Sexual Contact • Blackmail • Domestic Violence • Extortion • False Imprisonment • Felonious Assault • Female Genital Mutilation • Fraud in Foreign Labor Contracting 	<ul style="list-style-type: none"> • Hostage • Incest • Involuntary Servitude • Kidnapping • Manslaughter • Murder • Obstruction of Justice • Peonage • Perjury • Prostitution • Rape 	<ul style="list-style-type: none"> • Sexual Assault • Sexual Exploitation • Slave Trade • Stalking • Torture • Trafficking • Witness Tampering • Unlawful Criminal Restraint • Related Criminal Activities⁸
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⁷ These are not specific crimes or citations to a criminal code; various federal, state, and local statutes could fall into these general categories of crime. One exception is "Fraud in Foreign Labor Contracting," which is the federal offense defined at 18 USC 1351.

⁸ Includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes, as well as any similar activity where the elements of the crime are substantially similar. "Substantially similar" typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity. For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation,

Review and Tips for Completing Form I-918B

The following are important notes and tips on filling out the Form I-918B:

- USCIS has the sole authority to grant or deny a U visa. The certification does not guarantee that the U visa petition will be approved by USCIS.
- A certifying official's decision to sign a certification is completely discretionary and under the authority of that agency or official. Neither DHS nor any other federal agency has the authority to require or demand that any agency or official sign the certification. There is also no legal obligation to complete and sign Form I-918B.
- The Form I-918B should be completed by the certifying agency or official (and not the victim, or the victim's advocate or attorney).
- By signing a certification, the certifying agency or official attests that the information is true and correct to the best of the certifying official's knowledge.
- 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. You should only sign the certification if your agency has given you this authority.
- If a certifying agency has a written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.
- Federal, state, local, tribal, or territorial judges may sign U visa certifications. Delegation of authority is not applicable to or required of certifications by judges.
- Return the signed Form I-918B to the victim (or the victim's attorney, representative, etc.). The certifying official should not send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS.
- Be prompt in providing the signed certification to the victim or the victim's attorney or representative. USCIS must receive the U visa petition, which includes the Form I-918B, within six (6) months of the date the Form I-918B was signed.
- If the certifying official is providing additional documents (e.g., a copy of the police report or court order, or judicial findings, additional statements, photos, etc.) along with the certification or if more space is needed to fill out any of the information on the form, the official should provide that additional information as advised by the form instructions.
- When completing the Form I-918B, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case.
- As requested on the Form I-918B, the certifying official should document the helpfulness of the victim and whether that victim refused to be helpful at any time throughout the investigation or prosecution.
- The certification form **must contain an original signature** and should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted by USCIS as an official certification.

or prosecution is armed robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes, therefore armed robbery may be "substantially similar" to the qualifying crime of felonious assault.

T Visa Basics

Why was the T visa created? How does it help law enforcement?

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000⁹ was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status (“T visa”) program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.

What is the T visa? What are the benefits to the victim?

The T visa is an immigration benefit for victims of human trafficking who meet certain eligibility requirements.

USCIS may find an individual eligible for a T visa if the victim:

- Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;¹⁰
- Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking;¹¹ and
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States.¹²

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for a waiver of inadmissibility for which he or she may be eligible.

The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement’s

⁹ Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

¹⁰ “Sex trafficking” is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(10).

¹¹ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

¹² <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>. See also INA 101(a)(15)(T).

reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.

Additionally, certain family members of a T visa recipient may also be eligible to live and work in the United States as “derivative” T visa holders. These are:

- Unmarried children under the age of 21;
- Spouse;
- Parents of principal T visa recipients under age 21 at the time of application;
- Unmarried siblings under 18 years old of principal T visa applicants under age 21; and
- Adult or minor children of certain immediate family members of the T visa recipient

While in the United States, the victim has an ongoing duty to cooperate with law enforcement’s reasonable requests for assistance in the investigation or prosecution of human trafficking.

Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year. However, to date, the annual cap has never been reached and visas remain available to applicants who qualify.

How does USCIS Review T visa applications?

USCIS takes several steps to determine whether a victim is eligible for a T visa. USCIS reviews the victim’s entire application, which includes the Form I-914 as well as the Form I-914B or other evidence of the victim’s cooperation, the victim’s affidavit, and supporting evidence. Supporting evidence may include court documents, witness affidavits, medical reports, and any other credible evidence to show that the victim is eligible for a T visa. If the applicant is inadmissible, USCIS also considers all evidence relevant to any potential waivers of inadmissibility.

For all T visa applicants and their qualifying family members, USCIS conducts a thorough background investigation, including a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS will also review the applicant’s immigration records to assess whether any inadmissibility issues exist, such as criminal history, immigration violations, or security concerns. Any evidence that law enforcement and immigration authorities possess may be used in determining eligibility for a T visa. USCIS may contact the certifying law enforcement agency if there are any issues or questions that arise during the adjudication based on information provided in the law enforcement declaration. Because qualifying family members (derivatives) are subject to the same criminal background review, fingerprint checks, and immigration status checks as the principal victim applicant, it is possible that a derivative’s adverse criminal or immigration background would result in a denial of derivative status even when the principal has been approved.

What Is a T visa declaration?

The T visa declaration is supplementary evidence of a victim’s assistance to law enforcement that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a T visa applicant. The declaration must be provided on Form I-914, Supplement B, and instructions are available on the USCIS website at www.uscis.gov. The T visa declaration is not a required document for a T visa application, but USCIS gives significant weight to the

declaration when reviewing the victim's application.

What kind of information does the T visa declaration provide?

Form I-914B is not a required piece of evidence, but when provided, it is helpful evidence to demonstrate that:

- The victim is or was a victim of a severe form of trafficking in persons; and
- The victim has complied with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.¹³

The T visa declaration is not conclusive evidence that the applicant meets these eligibility requirements, as only USCIS can make this determination. In addition, **by signing a T visa declaration, the certifying agency, official or judge is not sponsoring or endorsing the victim for a T visa. USCIS considers the T visa declaration as one part of the evidence in the T visa application.** USCIS also conducts a full background check and, in considering each T visa application and the applicant's credibility, examines the totality of the evidence and the circumstances of each case.

Signing a declaration is at the certifying agency's discretion which should be exercised on a case-by-case basis consistent with U.S. laws and regulations, and the policies and procedures outlined in this Guide, as well as internal policies of the certifying agency.

If the T visa applicant does not include a law enforcement declaration, the applicant must present credible evidence that he or she meets the cooperation requirement. The applicant must include an original personal statement that indicates the reason the law enforcement declaration doesn't exist or is unavailable and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the law enforcement declaration, including describing the efforts the applicant undertook. USCIS will assess the evidence presented to determine whether the applicant satisfies the cooperation requirement.

Which agencies may sign a T visa declaration?

Certifying agencies include all authorities responsible for the detection, investigation, prosecution, conviction or sentencing of human trafficking, including but not limited to:

- Federal, State Local, Tribal, and Territorial law enforcement agencies;
- Federal, State, Local, Tribal, and Territorial prosecutors' offices;
- Federal, State, Local, Tribal, and Territorial Judges;
- Federal and State Departments of Labor; and
- Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority related to human trafficking.

¹³ Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

Who is a victim of severe forms of trafficking in persons?

A victim of severe forms of trafficking in persons is an individual who is a victim of either:

- Sex Trafficking, which is defined as:
 - the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,
 - or in which the person induced by any means to perform such act has not attained 18 years of age;¹⁴ or
- Labor Trafficking, which is defined as:
 - the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁵

State, local, territorial, and tribal law enforcement officers can play a key role in recognizing potential victims of human trafficking. **If you have identified a potential victim of trafficking, you should contact U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations, which investigates incidents of human trafficking, as soon as possible either through your local ICE office or through the national tipline at 1-866-347-2423 (1-866-DHS-2-ICE).** Specially trained federal agents may be dispatched to make sure the victim is safe and secure, as well as provide the victim with immediate services until longer term relief can be found.

What does “reasonable request for assistance” mean?

Whether a particular law enforcement request to a victim for assistance in the investigation or prosecution of human trafficking is “reasonable” depends on the totality of the circumstances. USCIS is responsible for making this determination. In determining “reasonableness” of the request, USCIS will consider certain factors such as, general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.

There are certain times when a victim is not required to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.

If the T visa applicant does not include a law enforcement declaration, the applicant must present credible evidence that he or she meets the cooperation requirement. The applicant must include an original personal statement that indicates the reason the law enforcement declaration does not exist or is unavailable and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence should demonstrate that good-faith attempts were made to obtain the law enforcement declaration, including describing the efforts the applicant undertook. USCIS will assess the evidence presented to determine whether the applicant satisfies the cooperation requirement.

¹⁴ 22 U.S.C. § 7102(10).

¹⁵ 22 U.S.C. § 7102(9).

Review and Tips for Completing Form I-914B

The following are important notes and tips on filling out the Form I-914B:

- USCIS has the sole authority to grant or deny a T visa. The declaration does not guarantee that the T visa will be approved by USCIS.
- An agency's decision to sign a declaration is completely discretionary and under the authority of that agency or official. Neither DHS nor any other federal agency has the authority to require or demand that any law enforcement agency sign the declaration. There is also no legal obligation to complete and sign Form I-914B.
- The Form I-914B should be completed by the law enforcement agency or official (and not the victim or the victim's advocate or attorney).
- By signing a declaration, the law enforcement agency attests that the information is true and correct to the best of the official's knowledge.
- The head of the agency has the authority to sign declarations or to delegate authority to other agency officials in a supervisory role to sign declarations. You should only sign the declaration if your agency has given you this authority.
- If a certifying agency has a written delegation of authority, provide a copy to USCIS to keep on file by emailing it to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov
- Federal, state, local, tribal, or territorial judges have direct authority to sign T visa declarations. Delegation of authority is not applicable to or required of declarations by judges.
- Return the signed Form I-914B to the victim (or the victim's attorney, representative, etc.). The law enforcement agency should not send the signed declaration separately to USCIS. The victim will send the original signed declaration form along with his or her complete T visa application to USCIS.
- If the law enforcement official is providing additional documents (e.g., a copy of the police report, additional statements, photos) along with the declaration or if more space is needed to fill out any of the information on the form, law enforcement should indicate on Form I-914B a note of "see attachment" or "see addendum." Each additional page should be provided on agency letterhead.
- The official must document on Form I-914B the cooperation of the victim and whether the victim refused to comply with requests at any time throughout the investigation or prosecution.
- The declaration form must contain an original signature. That signature must either be typed or printed legibly in a color other than black ink for verification purposes. Photocopies, faxes, or scans of the declaration form cannot be accepted by USCIS as an official declaration.
- The victim has an ongoing duty to cooperate with law enforcement even after they receive the T visa. If a victim stops cooperating, you can contact USCIS to withdraw or disavow your certification.

Best Practices for Agencies Signing Certifications and Declarations

Across the United States, law enforcement agencies, officials, and judges have taken different procedural approaches to signing U visa certifications and T visa declarations. Some examples of how various agencies or officials educate their officials about U visa certifications and T visa declarations and how they designate a certifier or certifiers in their agencies include:

- Distributing department policy or a general order on the process and use of the U visa certification or T visa declaration;
- Distributing a letter or memorandum from the Chief or Sheriff to the agency's designee in charge of signing U visa certifications or T visa declarations designating a process and authority to certify;
- Designating the head of the Victim Witness Assistance Program as the certifier;
- Sending written notification, via email or other method, from the Chief or Sheriff to the entire department explaining the purpose of the U or T visa, the certification/declaration process, and who is/are designated as the certifier(s); and
- Assigning the Investigations Bureau Chief as the certifier to delegate an officer or supervisor to review requests made by both law enforcement officers and the community and make a recommendation on the certification to the Bureau Chief.

This Resource Guide can be distributed for informational and training purposes. Certifying agencies are not required to have an internal policy or procedure before they can sign U visa certifications or T visa declarations. DHS encourages certifying agencies to implement policies that accurately reflect and conform with the statute, regulations and DHS policies and with the information contained in this and other publications issued by USCIS and DHS on the U visa and T visa programs. If a policy exists, the certifying agency is encouraged to send a copy to the Vermont Service Center of USCIS to keep on file to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Answers to Frequently Asked Questions for U Visa Certifications (Form I-918B) and T Visa Declarations (Form I-914B)

For several years, DHS has been providing training and holding external stakeholder events and outreach, as well as working with law enforcement, judges, and other officials on U visa certifications and T visa declarations. As a result, DHS has developed this list of answers to frequently asked questions grouped by topic. In addition, law enforcement agencies may request additional training and information by emailing USCIS at: T_U_VAWATraining@uscis.dhs.gov.

Questions Regarding the Certification and Declaration Process

Which law enforcement agencies are eligible to sign certifications or declarations?

A federal, state, local, tribal, or territorial law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the detection, investigation, prosecution, conviction or sentencing of a qualifying crime or criminal activity or human trafficking is eligible to sign Form I-918B or Form I-914B. This includes agencies with investigative jurisdiction in their respective areas of expertise, including but not limited to: child and adult protective services, the Equal Employment Opportunity Commission (EEOC), and Federal and State Departments of Labor (DOL). Law enforcement agencies that can provide T visa declarations include components of the Department of Justice (United States Attorney's Offices, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service), components of the Department of Homeland Security (U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)), the Department of Labor, and the Diplomatic Security Service of the Department of State.

In cases where the information provided by the victim led to the detection of criminal activity, a certifying agency may sign a certification. In these cases it does not matter if another agency will be the one to determine whether to pursue a criminal investigation or prosecution. In cases where the police investigated the crime and prosecutors are now prosecuting the case, both police and prosecutors may sign a certification. The authority of the police to sign a certification does not end when the case is referred for prosecution.

Who in the certifying agency can sign Form I-918B or Form I-914B?

Form I-918B: A certifying official(s) can sign Form I-918B. The U visa regulation defines a certifying official as a judge or "[t]he 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." 8 C.F.R. § 214.14(a)(3). Although not required with each certification, it is helpful to include a letter showing the designation of the signing official(s). The letter would be signed by the agency head and would reflect that person with a particular rank or title within the agency is to be the signing official(s).

Form I-914B: A supervising official of a Federal, state or local law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons or other related activity may sign Form I-914B.

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.

Is my agency required to create a policy for reviewing and signing Form I-918B and Form I-914B? Is there a template policy I may refer to in creating my agency's policy?

No. A law enforcement agency is not required under federal regulations to create a policy to review and sign Form I-918B or Form I-914B; however, many agencies have found this to be helpful. There is no federal template for creating an agency policy; however, you may find helpful information among similarly-situated federal, state, and local law enforcement agencies.

I am a designated official, but my agency and/or I have never signed a Form I-918B/I-914B. Should I notify USCIS that I will be signing the form or is there a training I should go through before signing the certification/declaration?

You are not required to submit any information to USCIS in advance or attend a training in order to sign Form I-918, Supplement B or Form I-914, Supplement B. However, if you would like to notify USCIS that you are the designated official, you may contact the Vermont Service Center directly at LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. You may pose questions to USCIS or provide notification that you are the head of your agency and/or the designated official. Also, USCIS provides webinar trainings for law enforcement officials. You may contact T_U_VAWATraining@uscis.dhs.gov to find out information on the next webinar for law enforcement officials.

If I sign a certification or declaration, does the victim automatically get a U visa, T visa or lawful immigration status?

No. There are many additional eligibility requirements that USCIS evaluates based on a victim's U visa petition or T visa application, depending on which visa the victim is seeking (see above sections.) Upon receiving a U visa petition, including Form I-918B, or T visa application, USCIS will conduct a full review of all evidence and a thorough background check of the victim before approving or denying the petition or application. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds.

A victim may be found inadmissible if the victim does not meet required criteria in the Immigration and Nationality Act to gain admission to or lawful immigration status in the United States. Victims may seek a waiver of inadmissibility, which USCIS has discretion to grant. Waivers are considered based on the totality of the evidence in the case and the results of the background check. USCIS may also contact the certifying official for further information if necessary.

Note that, independent of the T and U visa processes, law enforcement agencies may seek "Continued Presence" for trafficking victims. Continued Presence is a form of temporary immigration relief that may be granted by ICE's Homeland Security Investigations, Law Enforcement Parole Unit. Continued

Presence enables the victim to work legally and remain in the United States without accruing unlawful presence. State or local law enforcement officials who identify a victim of human trafficking who is a potential witness should coordinate with their federal law enforcement partners to submit a request for Continued Presence with their local ICE office for a particular individual. Even if the victim may ultimately apply for and be granted a T or U visa, Continued Presence may provide greater stability to the victim before the petition or application is submitted or while it is pending. Please see more information about Continued Presence in this guide under the Other Protections for Victims section.

Am I legally required to sign this declaration or certification?

No. A law enforcement agency is under no legal obligation to complete a declaration or certification. Signing is at the discretion of each law enforcement agency, in accordance with that agency's policy. However, it is important to note that:

- Without a certification, a U visa petition will be denied.
- The declaration is not required for a T visa, but it is an important piece of evidence submitted by the applicant.¹⁶

Will my certifying agency be liable for any future conduct of someone who is granted a U or T visa?

What if I signed a certification or declaration for someone who later commits a crime?

No. A certifying agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or declaration or to whom DHS granted a U or T visa. The U visa certification simply addresses whether the petitioner was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the detection, investigation, prosecution, conviction, or sentencing of that crime. The T visa declaration simply addresses whether the victim was a victim of human trafficking and has complied with all reasonable requests for assistance. The certification and declaration do not guarantee the future conduct of the victim or grant a U or T visa. USCIS is the only agency that can grant a U or T visa. If a victim is granted a U or T visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues. If a certifying agency or official later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency or official wishes to withdraw the certification, the agency or official should contact USCIS by emailing the Vermont Service Center at LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

Who decides which benefit to seek, a U or T visa?

The victim or victim's advocate or attorney should make that decision and indicate the appropriate certification or declaration for law enforcement to sign. It is possible that an individual may qualify for both a U and a T visa.

¹⁶

http://www.uscis.gov/sites/default/files/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAf%20orLawEnforcement.pdf

Helpfulness and Cooperation of the Victim:

A victim is requesting Form I-918B or Form I-914B, but I am unsure whether he or she meets the helpfulness requirement or the compliance with reasonable requests requirement. May I sign this certification or declaration?

Yes. Both the I-918B and the I-914B provide an opportunity for law enforcement to provide information to USCIS about the extent of the victim's assistance in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. You may complete the form including all information you find relevant about the victim's assistance. USCIS will ultimately determine whether the victim meets these requirements.

- Form I-918B asks whether the victim possesses information concerning the criminal activity; was, is, or is likely to be helpful in the investigation and/or prosecution of the criminal activity; was asked to provide further assistance; and has unreasonably refused to provide assistance. You may select "yes" or "no" to these questions and further explain your answers.
- Form I-914B asks the certifying officer to provide information about the victim's cooperation and includes several options to select regarding the victim's cooperation with law enforcement.

What constitutes "helpfulness" or "enough cooperation" for a U visa certification?

USCIS regulation requires that the U petitioner has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. This means that since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or prosecution in connection with a criminal investigation or prosecution.

USCIS will not provide a U visa to those petitioners who, after initially cooperating with the certifying official, refuse to provide continuing assistance when reasonably requested. USCIS also will not approve the petitions of those who are culpable for the qualifying criminal activity.

What constitutes "complying with any reasonable request" for a T visa declaration?

USCIS regulations require that the victim of trafficking comply with reasonable requests from law enforcement officials for assistance in the investigation or prosecution of the acts of trafficking in persons. To determine whether the request from law enforcement is reasonable, USCIS takes into account the totality of the circumstances, such as general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.

Law Enforcement Certification Authority and Timing:

At what stage in the criminal case can I sign a certification?

There is no required time when you may or may not sign a certification. It is possible to sign a certification at any stage in the case, including at the point of detection, during an investigation, when the prosecutor initiates a prosecution, before a trial, whether or not the victim is needed to testify, and

after the case is concluded.

You may sign a certification regardless of the outcome of the qualifying criminal case, including in the following instances:

- the prosecutor decided not to prosecute;
- the grand jury did not issue an indictment;
- the case was dismissed by the prosecutor or a judge;
- a case brought by the EEOC or DOL resulted in a judgment, settlement, or dismissal;
- a judge issued a protection order or custody ruling;
- a child abuse case was settled;
- the defendant entered a plea, whether or not the plea was to an offense that is a qualifying criminal activity; and
- the defendant was found not guilty.

If an investigation or case is closed, may law enforcement still complete Form I-918B or Form I-914B?

Is there a statute of limitations?

Certifying officials may complete Form I-918B or Form I-914B for an investigation or prosecution that is closed. There is no statute of limitations regarding the time frame in which the criminal activity must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity. A crime victim may be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial and whether or not the prosecution resulted in a conviction. A trafficking victim could be eligible to receive a T visa declaration when a case is closed for similar reasons. The petitioner must still meet all the eligibility requirements for a U or T visa to be approved.

Does the victim have to testify to be eligible for certification or declaration?

No. As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U or T visa. While there is no requirement for the victim to testify at a trial to be eligible for a U or T visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with the certifying law enforcement agency. If the victim unreasonably refuses to testify, the agency or official should notify USCIS and may withdraw the previously signed Form I-918B or Form I-914B.

What if the victim or witness has been detained or ordered removed for an immigration violation?

Individuals currently in removal proceedings or with final orders of removal may still apply for a U or T visa. A petitioner for U nonimmigrant status or an applicant for T nonimmigrant status has administrative remedies and is not prejudiced by completion of removal proceedings. Specifically, a victim who is the subject of a final order of removal, deportation, or exclusion may still file a petition or application for U or T nonimmigrant status directly with USCIS. If a victim is granted U or T nonimmigrant status prior to, or after, removal, the regulations provide a procedure whereby the victim may remain in or return to the United States. To avoid deterring individuals from reporting crimes, ICE

officers, special agents, and attorneys are expected to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention is paid to victims of domestic violence, human trafficking, sexual assault, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions. It is common for perpetrators to report immigrant crime victims and witnesses to immigration enforcement officials to gain advantage in a civil or family law case and/or to avoid prosecution in a criminal case. Congress created the U visa as a tool to counter such efforts by perpetrators.¹⁷

If a judge, law enforcement official, prosecutor, or other certifying official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact his or her local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Chief Counsel to make ICE aware of the situation. Specifically with regard to a lodged detainer, the law enforcement official may notify the ICE Law Enforcement Support Center at (802) 872-6020 if the individual may be the victim of a crime or if the officials want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness. If a victim is scheduled to appear in court as a witness in a criminal or civil case, as a party in a protective order case or as a parent in a case involving the victim's children, judges and other certifying officials may contact the Law Enforcement Support Center to arrange for ICE officials to bring the victim to court or to facilitate participation in the court hearing electronically.¹⁸

Can I complete a U visa certification for a victim who is no longer in the United States?

Yes. While the criminal activity must have occurred in the United States, 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 from outside the United States.

Can I complete a T visa declaration for a victim who is no longer in the United States?

Yes. You may note, however, that one requirement of the T visa petition is that the victim be in the United States on account of the severe form of human trafficking. USCIS, not the law enforcement agency, determines whether the victim meets this physical presence requirement. Note that human trafficking victims who have left the United States may be eligible for a U visa because trafficking is a qualifying criminal activity. The decision whether to seek a T or U visa should be made by the victim, or the victim's advocate or attorney.¹⁹

Can I still certify if the perpetrator is no longer in the jurisdiction or prosecution is unlikely for some reason?

¹⁷ VTPA, Pub. L. No. 106-386, §§ 1502(a)(3), 1512(a)(2)(B), 114 Stat. 1464-1548 (2000).

¹⁸ See U.S. Immigration and Customs Enforcement, 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Aug. 23, 2013)(hereinafter "ICE Parental Directive") available at: https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf and U.S. Immigration and Customs Enforcement, *FAQs on the Parental Interests Directive*, available at: <https://www.ice.gov/about/offices/enforcement-removal-operations/parental-directive-faq.htm>.

Yes. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to apply for a U or T visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. A U visa petitioner will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa. A T visa applicant will still have to comply with all reasonable requests for assistance.

Can a victim’s petition still be approved if the defendant is acquitted or accepted a plea to a lesser charge, accepted a plea to an offense that is not qualifying criminal activity, or if the case was dismissed?

Yes. As mentioned above, a conviction is not required for someone to be eligible for a U or T visa. Plea agreements and dismissals do not negatively impact the victim’s eligibility. As long as the victim has been helpful in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity and meets all other eligibility requirements, the victim may petition for a U visa. In the case of a T visa, as long as the individual has been subject to human trafficking and has complied with reasonable requests for assistance, plea agreements and dismissals do not negatively impact the victim’s eligibility. If the victim unreasonably refuses to assist the investigation or prosecution and harms the criminal case, this will negatively impact the victim’s ability to receive an approval. The certifying law enforcement agency should notify USCIS if the victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.

If a victim reports a crime that does not require investigation or cannot be investigated by my agency, because, for example, the victim cannot identify the perpetrator or the perpetrator is deported or fled the jurisdiction, may I certify that the person was helpful?

Yes. The law enforcement agency may sign Form I-918B or I-914B if the victim was helpful in the detection of criminal activity. Each law enforcement agency may determine its own policy on reviewing and signing Form I-918B or Form I-914B. USCIS will review each petition or application on a case-by-case basis to determine whether the victim meets all eligibility requirements, including whether the person is a victim of a qualifying crime or a victim of a severe form of trafficking and whether the person was helpful or complied with reasonable requests for assistance.

What if the victim stops cooperating after I sign his/her certification or declaration?

At its discretion, a certifying agency may withdraw or disavow a Form I-918B or Form I-914B at any time if a victim stops cooperating. When this occurs, the victim’s petition or application will be denied, and all derivative family member applications associated with the original application or petition will also be denied.

To withdraw or disavow a certification, the certifying agency must notify the USCIS Vermont Service Center in writing or via email. Written notification regarding withdrawal or disavowal should include:

- The agency’s name and contact information (if not included in the letterhead);
- The name and date of birth of the individual certified;
- The name of the individual who signed the certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification, including information

- describing how the victim’s refusal to cooperate in the case is unreasonable;
- The signature and title of the official who is withdrawing/disavowing the certification; and
- A copy of the certification the agency signed (if a copy was retained by the agency).

The letter should be either scanned and emailed to the Vermont Service Center at LawEnforcement_UTVAWA.vsc@uscis.dhs.gov, or mailed to:

USCIS-Vermont Service Center
 ATTN: VAWA, T, and U Section
 75 Lower Welden Street
 St. Albans, VT 05479.

U Visa Specific:

For a U visa, if one crime is initially detected or investigated but a different crime is eventually prosecuted, does that have an impact on the certification?

A certification is valid regardless of whether the initial criminal activity detected or investigated is different from the crime that is eventually prosecuted. As long as the person is a victim of a qualifying criminal activity, that person may be eligible for a U visa. Examples include:

- An initial investigation of rape eventually leads to a charge and prosecution of sexual assault. Both rape and sexual assault are qualifying crimes.
- An initial investigation of embezzlement leads to a charge and prosecution of extortion. While embezzlement is not a qualifying crime, the investigation eventually led to a charge of extortion, which is a qualifying crime. If the person assisting in the investigation or prosecution is a victim of extortion, that person may qualify for a U visa.
- In the process of investigating drug trafficking allegations, police determine that the drug trafficker’s wife is a victim of domestic violence. The victim reported the domestic abuse. The state brings a prosecution against the husband for drug offenses but not domestic violence crimes. The wife is cooperating in the drug prosecution. Law enforcement may complete a Form I-918B certification for reporting the domestic abuse case that is not being prosecuted.
- An initial investigation of Fraud in Foreign Labor Contracting leads to a charge and prosecution of obstruction of justice.

Form I-918B certifications may also be submitted for criminal activities similar to the list of qualifying criminal offenses. Examples include:

- An investigation or prosecution into a charge of video voyeurism may fall under the qualifying crime of sexual exploitation. This may be determined by state or local criminal law and the facts and evidence in that specific case. Please note that while video voyeurism is not specifically listed as a qualifying crime, it may be considered a type of sexual exploitation, which is a qualifying crime. The victim would need to show how these crimes are related and present this evidence to USCIS, along with the Form I-918B certification form signed by a certifying law enforcement agency.
- An investigation or prosecution of child abuse or elder abuse may fall under the qualifying criminal activity of domestic violence. This occurs under the state domestic violence protection order statute or criminal domestic violence statute when the abuse experienced by the child, disabled adult, or senior meets the statutory elements of domestic violence. When the perpetrator/victim relationship is covered by the state protection order statute or criminal

domestic violence laws, the child, dependent adult, or elder abuse is considered domestic violence under state law. When this occurs, child, elder and dependent adult abuse cases may be considered a form of domestic violence.

- An investigation or prosecution of dating violence may fall under the qualifying criminal activity of domestic violence or stalking. When a state's domestic violence statute includes dating violence, then dating violence may be considered a form of domestic violence, a qualifying criminal activity. Similarly, stalking can be a part of the pattern of abuse co-occurring with dating violence. When the facts and evidence in the specific case meet the definition of stalking under state criminal laws or under a state's stalking protection order statute, dating violence may be considered stalking which is a qualifying criminal activity.

A victim would need to show how these crimes are related and present this evidence to USCIS, along with the Form I-918B certification signed by a certifying agency or official.

A victim has approached me to request certification of Form I-918B for a crime not listed on the form.

How may I fill out Form I-918B in this circumstance?

A law enforcement official may sign Form I-918B to indicate a person's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of criminal activity. Each jurisdiction uses different terms for criminal activity. Also, each jurisdiction's crime definitions may include slightly different elements. Form I-918B requests the official to list statutory citations for the criminal activity. The official should provide those citations and may also provide information about the elements of the criminal activity and how it involves or is similar to the statutory list of criminal activity for the U visa.

Who would qualify to file for a U visa as an indirect victim?

Under certain circumstances, an indirect victim of a qualifying criminal activity may file as the principal applicant in a U visa petition. These circumstances include:

- In the case of murder, manslaughter, incompetent or incapacitated victims (which include children under 21 years of age):
 - Spouses; and
 - Children under 21 years of age at the time of filing.
- If the victim of the criminal activity is under 21 years of age at the time the qualifying criminal activity occurred:
 - Parents; and
 - Unmarried siblings under 18 years of age at the time of the qualifying criminal activity.

In the case of witness tampering, obstruction of justice or perjury, a victim can demonstrate that he or she has been directly or proximately harmed by one of these criminal activities if he or she can show that there are reasonable grounds to conclude 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 for other criminal activity, or to further his or her abuse, exploitation of, or control over the immigrant through manipulation of the legal system.

If the victim is a child, why would a non-citizen parent ask for a Form I-918B certification stating that the parent was the victim?

In many cases where a child is the victim of criminal activity, the child may not be able to provide law

enforcement with adequate assistance. This may be due to the child's age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting criminal activity, providing information and assisting certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the crime committed against the child. Recognizing this, an alien parent can apply for a U visa seeking to be recognized as an "indirect victim" if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen. The parent(s), in order to qualify as an "indirect victim," must meet the remaining eligibility requirements for a U visa to receive an approval. Therefore, the "indirect victim" parent(s) must have information about the criminal activity, and must have been or be currently helpful, or must be willing to be helpful, to certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity and the criminal activity must have occurred in the United States or violated U.S. law. The parent(s) must also demonstrate that he, she, or they suffered substantial physical or mental abuse as a result of the criminal activity and will be subject to the standard background checks (FBI fingerprint and name/DOB check) and immigration records review as well.

What constitutes "possesses information" for U visa petitioners?

To be eligible for a U visa, the victim of the criminal activity must possess credible and reliable information establishing that the victim has knowledge of the details of the criminal activity or events leading up to the criminal activity, including specific facts about the crime/victimization leading the certifying agency or official to determine that the victim has assisted, is assisting, or is likely to provide assistance in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. If the victim was under 16 years of age or incompetent or incapacitated at the time the qualifying criminal activity occurred, a parent, guardian, or next friend may possess the information. A "next friend" is defined as a person who acts for the benefit of an alien who is under 16 or incompetent or incapacitated. The next friend is someone dedicated to the best interests of a victim who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability. A next friend cannot be a party to a legal proceeding involving the victim and cannot be a court appointed guardian. A next friend also does not qualify for a U visa or any immigration benefit simply by acting as a next friend for the victim, but he or she may possess information about the criminal activity and may provide the required assistance. It is important to note that both "direct" and "indirect" victims can qualify to petition for U visas. Although they were not the direct victim of the criminal activity, indirect victims may possess information that is helpful to the detection, investigation, prosecution, investigation, conviction, or sentencing of criminal activity.

Who determines if the "substantial physical or mental abuse" requirement has been met for the U Visa?

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 do not make this determination. Certifying agencies and officials may, however, provide any information they deem relevant regarding injuries or abuse on the Form I-918B. The Form I-918B asks the certifying official to provide information about any injuries the agency or official knows about, has

documented, or has made findings about. If the certifying agency or 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 law enforcement, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.

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.

USCIS Processing:

What do I do with a completed certification or declaration?

Once the certifying official completes and signs the Form I-918B or Form I-914B, the original should be given to the victim or the victim's legal representative or advocate, so that it can be added to the original U visa petition or T visa application packet before submission to USCIS. Please also note that only a law enforcement official, prosecutor, judge, or other government official authorized to sign certifications/declarations may complete and sign the Form I-918B or Form I-914B. The victim or the victim's attorney or advocate may not sign the Form I-918B or Form I-914B.

I already signed Form I-918B or Form I-914B, but the victim has returned asking for another newly signed form. Why is this happening?

This may occur for two reasons. An application or petition must be submitted within six months after Form I-918B certification has been signed by law enforcement. If the Form I-918B expired before the petitioner was able to file the petition with USCIS, the victim would require a new form in order to properly file the U visa petition.

Also, a victim who has an approved U or T visa may become eligible and apply for lawful permanent resident status (i.e. a green card). To be eligible for adjustment of status, U visa holders cannot unreasonably refuse to provide assistance to an official or law enforcement agency, and T visa holders must continue to cooperate with reasonable requests from law enforcement. As evidence, the victim may request the law enforcement official to provide a newly signed Form I-918B, or Form I-914B or a signed document from the official or law enforcement agency.

Is there an "expiration date" on the Form I-918B or Form I-914B?

Form I-918B expires six months after the certifying official signs the form. USCIS must receive the

properly filed U visa petition including the Form I-918B within six months of the date on the Form I-918B. There is no expiration date for the Form I-914B.

What are the safeguards for protecting the U and T visa program against fraud?

USCIS recognizes that certifying agencies and officials may be in the best position to determine if a qualifying crime has taken place. If, in the normal course of duties, a certifying official or agency has determined that a qualifying criminal activity has taken place, the victim possessed information related to the criminal activity, and the victim has been helpful, law enforcement may sign the U visa certification. Whether a certifying agency or official signs the certification is under the authority of the agency or official. The certification also acts as a check against fraud and abuse, as the certification is required in order to be eligible for a U visa.

USCIS takes fraud and abuse of the U and T visa programs seriously. If USCIS suspects fraud in a U visa petition or T visa application, USCIS may request further evidence from the petitioner and may also reach out to the certifying official or agency for further information. USCIS also has a dedicated unit with the sole purpose of targeting and identifying fraudulent immigration applications. The Fraud Detection and National Security (FDNS) unit of USCIS conducts investigations of cases that appear fraudulent and works with other Federal, State, and local law enforcement agencies when fraud or abuse is discovered.

As an additional check against fraud, a U visa recipient cannot obtain a green card unless the victim proves that he or she cooperated, when requested, with law enforcement or prosecutors. In order to obtain a green card, if the U visa victim did not cooperate, he or she must prove to DHS' satisfaction that his or her refusal to cooperate was not unreasonable. A T visa recipient cannot obtain a green card unless he or she continues to comply with law enforcement's reasonable requests for assistance and has maintained good moral character since issuance of the T visa.

Will USCIS approve a victim with a criminal history?

USCIS may deny a U visa petition or T visa application for a variety of reasons including the victim's criminal history. Denials may occur in cases where a victim has multiple arrests or convictions, or has a serious or violent criminal arrest record. USCIS may also deny a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims to be a victim. USCIS conducts background and security checks (FBI fingerprint check, name/date of birth check, and a check of immigration records) on U visa petitioners and T visa applicants and reviews all available information concerning arrests, immigration violations, and security issues before making a final decision. The fact that a victim has a criminal history does not automatically preclude approval of U or T nonimmigrant status. Each petition or application is evaluated on a case-by-case basis, and USCIS takes into account whether any criminal behavior was related to the victimization. If the certifying official believes USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history with that law enforcement agency or his or her involvement in the crime.

Other Law Enforcement Tools to Assist in Investigations and Prosecutions

There are two significant tools law enforcement agencies can use to benefit immigrant victims who may not qualify for a T or U visa, but who may need a means of temporarily being in the United States lawfully during the course of an investigation. These tools include Continued Presence and Significant Public Benefit Parole.

Continued Presence

Continued Presence (CP) is a form of temporary immigration relief available to individuals who are identified by law enforcement as victims of human trafficking and who are potential witnesses in an investigation or prosecution. CP is authorized by ICE Homeland Security Investigations (HSI) Parole and Law Enforcement Program Unit and *can only be sponsored by a federal law enforcement agent*. **An application for CP should be initiated immediately upon identification of a victim of human trafficking.** CP allows victims of human trafficking to remain in the United States during an ongoing investigation into human trafficking- related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. Recipients of CP also receive work authorization and social service benefits through the Department of Health and Human Services Office of Refugee Resettlement, which provides a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims.

CP is available to all trafficking victims, even if a human trafficking violation is not charged, if charges are never brought, or the victim is not cooperating in a law enforcement investigation. However, once an investigation has ended and a decision not to prosecute has been made, CP is no longer appropriate.

State, local, tribal, and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local HSI office in their area. In addition, Victim Assistance Coordinators can assist law enforcement officials in obtaining referrals to non-governmental victim services providers who can offer a variety of services to assist crime victims, such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training, and case management.

Significant Public Benefit Parole

Significant Public Benefit Parole (SPBP) may be utilized as a means of permitting an individual outside of the U.S. to enter the U.S. temporarily to serve as a witness, defendant, or cooperating source, and if necessary in extremely limited cases, the individual's immediate family members. It must be emphasized that SPBP will only be granted for the minimum period required to accomplish the requested purpose, for example, if a trial is 3 months long, parole will be granted for 3 months. SPBP is a temporary measure used on a case by case basis to allow an individual who is otherwise inadmissible to enter the United States.

Other Forms of Legal Status for Immigrant Victims

Federal law provides additional options for immigration status to victims and witnesses of crime who may or may not be eligible for a T or U visa, including status under the Violence Against Women Act (VAWA) and Special Immigrant Juvenile Status (SIJS):

VAWA

Recognizing that immigrant victims of domestic violence may remain in an abusive relationship when their immigration status is tied to their abuser, the Violence Against Women Act of 1994 (VAWA) created a self-petitioning process that removes control from the abuser and allows the victim to submit his or her own petition for permanent residence without the abuser's knowledge or consent. Those eligible for VAWA protection include the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child or step-child of a U.S. citizen or lawful permanent resident, or the abused parent of a U.S. citizen. VAWA immigration relief applies equally to women and men. To file for VAWA immigration relief, the self-petitioner must send a completed [Form I-360](#) (Petition for Amerasian, Widow(er), or Special Immigrant) along with corroborating evidence to USCIS. A law enforcement certification is not needed in these cases.

Special Immigrant Juvenile Status

Some children present in the United States without legal immigration status may be in need of humanitarian protection because they have been abused, abandoned, or neglected by a parent. The abuse may have occurred in the United States or prior to the child's arrival in the United States. Special Immigrant Juvenile (SIJ) status is an immigration classification that may allow vulnerable children to immediately apply for Lawful Permanent Resident status. To be eligible for SIJ, a child must:

- be unmarried, under 21 years of age at the time of filing Form I-360 with USCIS;
- be physically present in the United States; and
- have an order from a state court with jurisdiction over the child that: (1) declares the child is a dependent of the court/dependent on the court, or legally commits or places the child under the custody of either a state agency or department or an individual or entity appointed by a juvenile court; (2) declares reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and (3) finds it would not be in the child's best interest to be returned to his or her country of origin.

DHS Contact Information

USCIS Contacts

Type of Information/Inquiry	Where to go/Who to contact
For more information about the U and T visa programs and law enforcement certifications and declarations:	www.uscis.gov www.uscis.gov/humantrafficking
To ask a question about a specific case or to rescind a signed certification or declaration:	The question or rescind letter should be scanned and emailed to the Vermont Service Center at: LawEnforcement_UTVAWA.VSC@uscis.dhs.gov. <i>Please note that this e-mail address is for law enforcement personnel only. Any e-mail sent by any person or entity that is not law enforcement to this specific e-mail address will not be answered.</i> or mailed to: USCIS-Vermont Service Center Attn: VAWA,T, & U Section 75 Lower Welden Street St. Albans, VT 05479
To request T or U visa training for your agency:	T_U_VAWATraining@uscis.dhs.gov
To ask specific policy questions about T and U visa certifications:	Call (202) 272-1470
Representatives may submit an inquiry regarding a specific case by emailing:	hotlinefollowupI918I914.vsc@uscis.dhs.gov

Citizenship and Immigration Services Ombudsman

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) is dedicated to improving the quality of citizenship and immigration services delivered to the public by providing individual case assistance, as well as making recommendations to improve the administration of immigration benefits by USCIS. Created by section 452 of the Homeland Security Act of 2002, the Ombudsman is an impartial and confidential resource that is independent of USCIS. Customers can request case assistance by visiting the website listed below. The Ombudsman's Office also has a duty officer available Monday-Friday between 11 a.m. and 3 p.m. to answer emails and phone calls for those who are unable to file through the online process.

Type of Information/Inquiry	Where to go/Who to contact
For more information about the CIS Ombudsman and protections for victims:	www.dhs.gov/cisombudsman
To refer U visa petitioners or T visa applicants who are experiencing problems that have not been able to be resolved through DHS customer assistance avenues:	http://cisomb.dhs.gov/oca/form7001.aspx

To request telephonic case assistance:	Toll Free: (855) 882-8100 Phone: (202) 357-8100
To share specific policy concerns about T and U visa certifications or request information about a pending request for assistance:	cisombudsman@dhs.gov

U.S. Immigration and Customs Enforcement (ICE)

If a law enforcement official is aware of a victim of human trafficking, the official should promptly contact his or her local ICE Homeland Security Investigations (HSI) office. If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact his or her local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Principal Legal Advisor (OPLA) to make ICE aware of the situation.

<i>Type of Information/Inquiry</i>	<i>Where to go/Who to contact</i>
To contact your local ICE HSI office:	http://www.ice.gov/contact/hsi/
To contact your local ICE ERO office:	http://www.ice.gov/contact/ero/
To contact your local ICE OPLA office:	http://www.ice.gov/contact/opla/
Specifically with regard to a lodged detainer, the law enforcement official should notify the ICE Law Enforcement Support Center:	Phone: (802) 872-6050 LESC Computer Services Division 188 Harvest Lane Williston, Vermont 05495 https://www.ice.gov/contact/lesc

Office for Civil Rights and Civil Liberties

<i>Type of Information/Inquiry</i>	<i>Where to go/Who to contact</i>
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 employees and officials of the Department of Homeland Security:	By Mail: Office for Civil Rights and Civil Liberties U.S. Department of Homeland Security Building 410, Mail Stop #0190 Washington, D.C. 20528 By Phone or Email: Phone: (202) 401-1474 Toll Free: (866) 644-8360 TTY: (202) 401-0470 Toll Free TTY: (866) 644-8361 Fax: (202) 401-4708 E-mail: crcl@dhs.gov

To report a violation of T visa, U visa, or VAWA relief confidentiality protections by a federal employee (*see* 8 U.S.C. § 1367(a)(2)).

By Mail:
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security Building 410,
Mail Stop #0190
Washington, D.C. 20528

By Phone or Email:
Phone: (202) 401-1474
Toll Free: (866) 644-8360
TTY: (202) 401-0470
Toll Free TTY: (866) 644-8361
Fax: (202) 401-4708
crcl@dhs.gov
VAWA@hq.dhs.gov

Office for State and Local Law Enforcement

On the recommendation of the 9/11 Commission, Congress created the Office for State and Local Law Enforcement (OSLLE) in 2007 to serve as the liaison between the Department of Homeland Security and non-Federal law enforcement agencies across the country. The primary mission of OSLLE is to lead 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. For more information about DHS coordination with federal, state, local, tribal, and territorial law enforcement, please contact the DHS Office for State and Local Law Enforcement.

Phone: (202) 282-9545
Email: OSLLE@hq.dhs.gov

	<p><u>Roll-Call Video (Part 1) featuring law enforcement experts explaining human trafficking</u></p> <p><u>Roll-Call Video (Part 2) featuring law enforcement experts explaining immigration relief</u></p> <p>The DHS Federal Law Enforcement Training Center (FLETC) offers a <u>web-based human trafficking training course</u> which teaches law enforcement officers how to recognize human trafficking during routine duties, protect victims, and initiate human trafficking investigations.</p>
<p>Non-Governmental Organization Support</p>	<p>Anti-human trafficking task forces comprise federal, state, local, county, and tribal law enforcement and prosecutors, as well as non-governmental organizations (NGOs) providing victim services. To find out whether there is a task force in your area, visit the Bureau of Justice Assistance, <u>Anti-Human Trafficking Task Force Initiative Web page</u>.</p>