

California Department of Justice
DIVISION OF LAW ENFORCEMENT
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INFORMATION BULLETIN

Subject:

**Update to Information Bulletin No. 2015-DLE-04:
New and Existing State and Federal Laws Protecting
Immigrant Victims of Crime**

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TO: All California Law Enforcement Agencies

The purpose of this bulletin is to update information provided in Information Bulletin DLE-2015-04, dated October 28, 2015, titled “New and Existing State and Federal Laws Protecting Immigrant Victims of Crime.” Information Bulletin DLE-2015-04 provided a summary of a new state law that required agencies that investigate or prosecute criminal matters to assist crime victims without authorized immigration status in applying for a U nonimmigrant visa – a federal immigration visa set aside for victims of crime who have suffered substantial mental or physical abuse because of criminal activity, and who are willing to assist federal, state, and local law enforcement agencies or government officials in the investigation of that criminal activity. The California’s Immigrant Victims of Crime Equity Act (Senate Bill 674, Stats. 2014, Ch. 721), which took effect on January 1, 2016, required state and local law enforcement agencies, prosecutors, and other officials to certify the helpfulness of victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918 Supplement B), also known as a “U visa certification.”

Since then, Assembly Bill (AB) 917 (Stats. 2019, Ch. 576) has been enacted into law, effective on January 1, 2020. Among other amendments to Penal Code sections 679.10 and 691.11, AB 917 reduces the timeline for the certification process. **Unlike federal law, which provides certifying state and local agencies and officials with discretion in determining whether and when to complete the certification, California’s new law mandates that state and local agencies and officials submit certifications within 30 days in most cases, when certain conditions are met.** U.S. Citizenship and Immigration Services (USCIS) requires these certifications in order to grant a qualifying immigrant a U nonimmigrant visa (U visa).

In addition to providing guidance on the new state law, this bulletin summarizes existing federal and state law governing U visas, answers relevant questions regarding U visa eligibility, and encourages state and local law enforcement agencies and officials to be vigilant in identifying and supporting immigrant crime victims who may be eligible for U visas. These visas are an important tool for encouraging the cooperation of witnesses; investigating, prosecuting, and convicting criminals; and increasing public safety.

Federal Law Governing U Visas for Certain Crime Victims

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000¹ is a federal law that, among other things, provides temporary immigration benefits to individuals without immigration status who are victims of specified qualifying crimes. Under the VTVPA, an immigrant victim of certain crimes can file a Petition for U Nonimmigrant Status (Form I-918) with USCIS. The U visa provides eligible victims with nonimmigrant status (including victims who are no longer in the United States) the opportunity to be temporarily present in the United States to help law enforcement in the investigation or prosecution of the criminal activity at issue.

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

Under certain circumstances, a person with a U visa may be able to adjust to lawful permanent resident status if USCIS determines that the individual qualifies for that status.

In order to file a Petition for U Nonimmigrant Status (Form I-918), an immigrant victim *must* provide a certification form (Form I-918 Supplement B) from a federal, state, or local law enforcement official certifying that he or she has knowledge of the following:

- The victim has been a victim of qualifying criminal activity;
- The victim possesses information about the qualifying criminal activity; and
- The victim has been, is being or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.

The petitioner is ineligible for a U visa without the certification, which the petitioner must file with his or her U visa petition. The VTVPA was designed both to encourage victims of crime to report crimes and assist in the investigations and prosecutions of those crimes regardless of their immigration status *and* to support law enforcement efforts in investigating and prosecuting crimes committed against immigrant victims.

California Law Regulating U Visa Certifications by Law Enforcement - Effective January 1, 2020

AB 917 (Stats. 2019, Ch. 576) was signed by Governor Gavin Newsom on October 8, 2019. The law amends California Penal Code sections 679.10 and 679.11.

Significantly, the amendments require that certifying state and local agencies and officials:

- Complete U visa certifications, upon request, for immigrant crime victims who have been helpful, are being helpful, or are likely to be helpful in the **detection, investigation, or prosecution of specified qualifying crimes** within 30 days in most cases (formerly 90 days), and 7 days for victims in removal proceedings (formerly 14 days).
- Certify “victim helpfulness” or “victim cooperation” **when requested by the victim, the victim’s family member, a licensed attorney representing the victim, or a representative fully accredited by the United States Department of Justice** authorized to represent the victim in immigration proceedings.
- Provide a copy of the police report to the victim, the victim’s attorney, or a United States Department of Justice fully accredited representative of the victim **within 7 days of the request**.

Provisions of state law that have remained unchanged include that:

- There is still a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
- A certifying official may only withdraw a previously granted certification if the victim refuses to provide information and assistance when reasonably requested.
- A certifying official must fully complete and sign the U visa certification and include “specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.”

- Certifying agencies are prohibited from disclosing the immigrant status of a victim or person requesting a U visa certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the certification.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the certification from a certifying official.
- Certifying agencies that receive certification requests must annually report to the Legislature the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied

State law applies to the following California state and local entities and officials:

- State and local law enforcement agencies;
- Prosecutors;
- Judges (civil or criminal judges who detect qualifying criminal activity);
- Agencies with criminal detection or investigative jurisdiction in their respective areas of expertise, including but not limited to child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations; and
- Any other authority responsible for the detection or investigation or prosecution of a qualifying crime or criminal activity.

Questions and Answers Regarding Eligibility for U Visas

1. Who is eligible for a U visa?

Eligibility for U visas is governed by the VTVPA and determined by USCIS. Under those federal provisions, individuals without authorized immigrant status are eligible to apply for a U visa if they: (1) are victims of specified qualifying crimes, (2) have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, (3) have specific knowledge and details of a qualifying crime committed within the United States, and (4) are currently assisting, have previously assisted, or are likely to be helpful in the detection, investigation, or prosecution of the qualifying crime. Victims may apply for a U visa even if they are no longer in the United States. Individuals presently in removal proceedings or with final orders of removal can also apply.

Where the direct victim of qualifying criminal activity is deceased due to manslaughter or murder, or is incompetent or incapacitated and therefore unable to provide information concerning the criminal activity, a victim of qualifying criminal activity includes the direct victim of the commission of the qualifying criminal activity *and* the direct victim's spouse, children under 21 years of age, parents, and unmarried siblings under 18 years of age. For purposes of determining eligibility under this definition, the age of the victim will be considered at the time the qualifying criminal activity occurred.²

Moreover, a parent without authorized immigrant status can petition for their own U visa as an "indirect victim" of the qualifying crime, if their child is: (1) under 21 years of age, (2) the victim of a qualifying crime, and (3) incompetent or incapacitated such that she or he is unable to provide law enforcement with adequate assistance in the investigation or prosecution of the crime. (An immigrant parent can petition for a U visa regardless of his/her child's citizenship status or whether his/her child died as the victim of murder or manslaughter.)

2. 8 CFR § 214.14(a)

2. What is a qualifying crime?

Under the relevant state and federal laws, qualifying crimes include rape, torture, human trafficking, incest, domestic violence (including violations of domestic violence restraining orders), sexual assault, abusive sexual conduct, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slavery, kidnaping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, fraud in foreign labor contracting, stalking, and other related crimes which include any similar activity where the elements of the crime are substantially similar to the above specified offenses.

Bystanders who suffer unusually direct injury as a result of a qualifying crime may be considered eligible victims as well. An example provided by USCIS includes a pregnant woman who suffered a miscarriage as a result of trauma she experienced witnessing a violent crime.³

California law, consistent with federal law, states that a qualifying crime includes the attempt, conspiracy, or solicitation to commit any of the specified and *other related offenses*.

3. Is an arrest, prosecution, or conviction necessary to certify a U visa petition?

No. California's Immigrant Victims of Crime Equity Act makes clear that a current investigation, the filing of charges, and a prosecution or conviction are not required to sign the law enforcement certification. Many situations exist where an immigrant victim reports a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. For example, the perpetrator may have fled the jurisdiction, cannot be identified, or has been deported by federal law enforcement officials. In addition, neither a plea agreement nor a dismissal of a criminal case affects a victim's eligibility. Furthermore, a law enforcement certification is valid regardless of whether the crime that is eventually prosecuted is different from the crime that was investigated, as long as the individual is a victim of a qualifying crime and meets the other requirements for U visa eligibility.

4. Can an agency deny a U visa certification request based on timeliness?

No. There is *no statute of limitations* that bars immigrant crime victims from applying for a U visa. Law enforcement agencies' duty to sign a certification is not time-limited, even if the investigation or case is already closed.

5. Will certifying a U visa petition automatically grant the victim an immigration benefit?

No. Federal, state, and local law enforcement agencies cannot legally grant or guarantee an immigrant crime victim a U visa or any other type of immigration status by signing a U visa certification (Form I-918 Supplement B). Instead, U visa petitions are adjudicated by USCIS, which conducts a full review of the victim's petition and a thorough background check of the petitioner before approving or denying the petition. USCIS will also 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 petition. By signing a certification, the law enforcement official states: (1) under penalty of perjury, that the individual is or has been a victim of one of the qualifying crimes, and (2) the remaining information provided in the certification is true and correct to the best of the certifying official's knowledge. **Without a completed U visa certification, victims will not be**

3. Preamble at Federal Register, Vol. 72, No. 179, p. 53016-53017 (Sept. 17, 2017).

eligible for a U visa.

6. If a certifying agency denies a U visa certification request, what information must the agency provide?

There is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. To comply with the rebuttable presumption of helpfulness in the VTVPA, the reason for denial of certification should be clearly articulated and specific (i.e. non-cooperative because of three unreturned phone calls on dates X, Y, and Z). Further, any denials of certification should be based upon issues within a particular law enforcement agency's jurisdiction/investigation; each law enforcement agency should focus exclusively on its investigation to determine cooperation and should make a determination based on its investigation regardless of whether there is an investigation, referral, and/or prosecution by another law enforcement agency.

Recommendations and Additional Resources for Law Enforcement

Attorney General Xavier Becerra is committed to seeking justice for every crime victim in California regardless of the victim's immigration status. Undocumented immigrants are often among the most vulnerable victims of crime across California. Fear of deportation is a significant deterrent to reporting crime for many undocumented immigrants. As such, the Attorney General encourages all agencies and officials subject to California's new law to immediately establish and implement a U visa certification policy and protocol that is consistent with California law and the guidance provided in this law enforcement bulletin. As such, a U visa certification policy and protocol may address the following:

1. Ensuring decisions are made as soon as possible within the 30-day or 7-day windows, especially in urgent cases (i.e. where a qualifying family member will otherwise lose eligibility).
2. An appeals process for certification denials through which (1) an individual other than the initial supervisor that approved the "denial" reviews the certification to ensure impartiality and (2) the appeals process is made public to provide transparency.
3. A review of the entire police report and file to independently consider whether or not all potential victims are eligible for certification (i.e. some police reports do not always list all potential victims and sometimes categorize victims as witnesses).
4. Signing single-sided I-918B U Visa Certification forms with a signature and date clearly written in blue ink, and providing the original signature to the requestor.
5. A consistent way of handling when parents of minors under 16 years of age have effectively cooperated with law enforcement by making the minor available to law enforcement or encouraged the minor's cooperation with law enforcement, and may also be eligible for obtaining certification if they have also cooperated with law enforcement in the investigation of the crime(s).

The **USCIS web site** includes useful information regarding U visa eligibility, qualifying criminal activities, and applying for a U visa. See <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

The **Form I-918 Supplement B Certification** can be found here: <http://www.uscis.gov/i-918>.

We look forward to working with you to ensure that California continues to set an example across the nation

for building and preserving the relationship of trust between our peace officers and the communities we are sworn to serve, including immigrant communities.

Please direct questions regarding this Bulletin to the Department of Justice, Division of Law Enforcement at (916) 210-6300.