

## U Visa and T Visa Certification Policy

### 609.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and procedures for U Visa certification (Form I-918, Supplement B) and T Visa certification (Form I-914, Supplement B).

### 609.2 INTRODUCTION

Under certain circumstances federal law allows temporary immigration benefits to victims and certain family members of victims of certain qualifying crimes (8 U.S.C. §1101 (a)(15)(U)). The purpose of the U Visa is to give victims of certain crimes temporary legal status and work eligibility in the United States for up to 4 years. To begin the process of applying for this benefit, a petition for a U Visa from the U.S. Citizenship and Immigration Services must be completed on DHS Form I-918 and be certified by the designated certifying officer.

Similar immigration protection, known as a T Visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). The purpose of the T Visa is give victims of certain crimes temporary legal status and work eligibility in the United States for up to 4 years. To begin the process of applying for this benefit, a petition for a T Visa from the U.S. Citizenship and Immigration Services must be completed on DHS Form I-914 and be certified by the designated certifying officer.

### 609.3 DEFINITIONS

**Human Trafficking:** “Severe forms of trafficking in persons” pursuant to Section 7102 of Title 22 of the United States Code and includes either of the following:

- (a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.
- (b) 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.
- (c) Criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described above, and the attempt, conspiracy, or solicitation to commit any of those offenses.

**Representative Fully Accredited by the United States Department of Justice:** A person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.

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### **609.4 ELIGIBILITY**

Only eligible applicants may request and receive certification from the Department. An applicant may be a Direct Victim. A current investigation, the filing of charges and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification or the Form I-914 Supplement B certification from a certifying official.

#### **609.4.1 QUALIFYING FOR A U VISA**

To be eligible for a U Visa, victims must have suffered substantial physical or mental abuse due to a qualifying criminal activity, possess information concerning the qualifying criminal activity and be able to demonstrate they have been helpful, are being helpful or are likely to be helpful to law enforcement, prosecutors or other authorities in the investigation and that the crime occurred in the United States or violated the laws of the United States.

#### **609.4.2 QUALIFYING FOR A T VISA**

To be eligible for a T Visa, victims must be present in the United States as a result of being recruited, forced, abducted or deceived by the perpetrator of human trafficking and would not have been present in the United States if not for the action of the human trafficker and be able to demonstrate they have been helpful, are being helpful or are likely to be helpful to law enforcement, prosecutors or other authorities in the investigation, would suffer extreme hardship involving unusual and severe harm if removed from the United States. Minor children or persons unable to cooperate due to physical or psychological trauma may be exempt from cooperation.

#### **609.4.3 DIRECT VICTIM**

To be eligible as a Direct Victim, an applicant must meet the following criteria:

1. The applicant must be a victim of a qualifying criminal activity; and
2. The applicant must have been helpful, is being helpful, or is likely to be helpful to the detection, investigation or prosecution of that qualifying criminal activity. For purposes of determining helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by the Department.

Qualifying criminal activities include rape; torture; human trafficking; incest; domestic violence; sexual assault; abusive sexual assault; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slavery; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; stalking; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

A qualifying crime includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity listed above. For example, although not directly listed by title, crimes such as assault with a deadly weapon, assault causing great bodily injury, mayhem, and assault with caustic chemicals would be eligible as a "qualifying crime" for the purposes of this section since they are each types of felonious assaults.

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An applicant may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, conspiracy, or solicitation to commit one or more of those offenses if:

1. The victim has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
2. There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
  - (a) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
  - (b) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The qualifying criminal activity(ies) must have violated the laws of the United States or occurred within the continental United States, Alaska or Hawaii, Puerto Rico, Guam and the U.S. Virgin Islands (including Indian country and military installations) or the territories and possessions of the United States (America Samoa, Bajo Nuevo, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll).

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

### 609.4.4 CERTIFYING AGENCY

The Orange County Sheriff's Department qualifies as a certifying agency.

### 609.4.5 CERTIFYING DEPUTY

The Commander of the Investigations Division is designated by the Sheriff as the certifying deputy of the Orange County Sheriff's Department.

### 609.4.6 RECEIPT OF APPLICATIONS

1. Upon the request of the victim, victim's family member, licensed attorney representing the victim (proof of representation should be requested), or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings (proof of accreditation should be requested), Commander of the Investigations Division or their authorized designee shall certify victim helpfulness on:
  - (a) Form I-918 Supplement B certification when the victim was a victim of qualifying criminal activity or
  - (b) Form I-914 Supplemental B declaration when the victim was a victim of human trafficking.
2. Any application for U Visa or T Visa status should be forwarded in a timely manner to the Commander of the Investigations Division or their authorized designee to

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receive, complete, and process the U Visa or T Visa applications for the Department. Upon receipt of the application, the Commander of the Investigations Division or their authorized designee should:

- (a) Consult with the assigned investigator to determine the current status of any related case.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and confirm victim cooperation. The application for a U Visa or T Visa is discoverable under Cal. Penal Code § 1054.1 et. seq.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
  1. A request for a Form I-918 Supplement B Certification or Form I-914 Supplement B declaration shall be processed within 30 days of request, unless the non-citizen is in removal proceedings, in which case the request shall be processed within 7 days of the first business day following the day the request was received.
  2. A completed request must document victim helpfulness and include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.
  3. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
  4. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
  5. Form I-918 and I-914 require an original signature, an electronic signature is not sufficient.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

### **609.5 REPORTING TO THE LEGISLATURE**

The Commander of the Investigations Division or their authorized designee shall report annually to the Legislature, the number of victims who requested Form I-914 Supplement B declarations, and/or Form I-918 Supplement B certification from the Department, the number of declaration/certification forms that were signed, and the number that were denied. Such reports shall comply with Section 9795 of the Government Code.

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### **609.6 RECEIPT OF REQUEST FOR A PATROL REPORT**

Upon the request of a victim, victim's family member, a licensed attorney representing the victim (proof of representation should be requested), or a representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings (proof of accreditation should be requested), the Commander of the Investigations Division or their designee shall provide a copy of the police report involving the victim within 7 days of the request.

### **609.7 PROHIBITED DISCLOSURE**

The Department is prohibited from disclosing the immigration status of a victim or person requesting the Form I-914 Supplement B declaration or Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-914 Supplement B declaration.

### **609.8 WITHDRAWAL OF PREVIOUSLY APPROVED CERTIFICATION/DECLARATION**

If, in the course of the investigation/prosecution a victim becomes uncooperative by refusing to provide information and assistance that has been reasonably requested, the Department may withdraw its previously submitted certification/declaration (See Form I-918 Supplement B Instructions, dated 4/24/19, at page 5 of 6; Form I-914 Supplemental B Instructions, dated 4/15/19 at page 3 of 4.).