



DEPARTMENT OF CONSUMER AFFAIRS BACKGROUND AND PROTOCOL FOR U-VISA CERTIFICATIONS

This document provides background and creates a protocol for the intake and assessment of requests for U Nonimmigrant Status Certification (commonly referred to as “U-Visa Certification”) by the New York City Department of Consumer Affairs (“DCA”).

BACKGROUND

U-Visa status is a temporary immigration classification that Congress created with the passage of the Victims of Trafficking and Violence Protection Act of 2000. In order to obtain U-Visa status, an undocumented immigrant must submit an application package to the United States Citizenship and Immigration Services (“USCIS”), a federal agency within the U.S. Department of Homeland Security. The application package must include a Form I-918 Supplement B signed by a certifying agency (the “U-Visa Certification,” a blank copy of which is attached to this memorandum).

The signed U-Visa Certification serves as a statement by DCA that the applicant: (a) was the victim of qualifying criminal activity (the “Qualifying Criminal Activity Requirement”); (b) possesses information about qualifying criminal activity (the “Information Requirement”); **and** (c) has been, is being, or is likely to be helpful in the detection, investigation, or prosecution of qualifying criminal activity (the “Helpfulness Requirement”).

Qualifying Criminal Activity Requirement

The “qualifying criminal activity” includes:

one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment;

blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.¹

This list of qualifying criminal activity is a general list, and not exclusive or specific. “*Any similar activity*” may qualify, meaning “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.”²

Part 3 of the U-Visa Certification requires that an agency, among other things, identify the qualifying criminal activity, list the dates the criminal activity occurred, and provide a brief description of the criminal activity. Part 3 also requests that the agency “[p]rovide a description of any known or documented injury to the victim.”

Information and Helpfulness Requirements

Part 4 of The U-Visa Certification requires that an agency certify that the applicant: (a) “possess[es] information concerning the criminal activity”; (b) has “been helpful” or is “likely to be helpful in the investigation or prosecution of the [qualifying] criminal activity”; and (c) has not “refused or failed to provide assistance reasonably requested in the investigation or prosecution of the [qualifying] criminal activity.”

A U-Visa Certification may be signed even if the crime was not fully investigated, no charges were filed, the perpetrator was not prosecuted or convicted, or the case was otherwise closed.³

¹ 8 U.S.C § 1101(a)(15)(U)(iii) (emphasis added).

² 8 C.F.R. § 214.14 (a)(3)(9).

³ DEP’T OF HOMELAND SEC., U-VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE, at 4, *available at* http://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf.

A signed U-Visa Certification does not, however, automatically grant an immigrant U-Visa status. That determination is made by USCIS based on the individual's full application package.

PROTOCOL

DCA shall follow this U-Visa Certification Protocol:

1. The Commissioner shall designate a representative in the Office of the Commissioner to review, to assess, and, where appropriate, to certify U-Visa applications (the "Designated U-Visa Representative"). The Commissioner should notify USCIS, via letter, of the identity of the Designated U-Visa Representative.
2. An immigrant's legal representative should make a U-Visa Certification request to the Designated U-Visa Representative. If an immigrant or the immigrant's legal representative contacts any other DCA employee, including an attorney in the Office of the General Counsel, requesting a U-Visa Certification, that DCA employee should forward the request to the Designated U-Visa Representative.
3. As part of the U-Visa Certification request, the immigrant's legal representative should submit to the Designated U-Visa Representative the attached U-Visa Certification Application form, summarizing relevant facts and appending supporting documents.
4. Within 30 days of receiving an immigrant's completed U-Visa Certification Application form, the Designated U-Visa Representative will schedule an interview with the immigrant and the immigrant's legal representative to assess the immigrant's U-Visa eligibility.
5. Within 30 days of interviewing the immigrant, the Designated U-Visa Representative shall notify the immigrant and the immigrant's legal representative of the Designated U-Visa Representative's decision whether to execute the U-Visa Certification.

6. The Designated U-Visa Representative shall assess whether:
- The immigrant is the victim of qualifying criminal activity;
 - The immigrant possesses information about the qualifying criminal activity; **and**
 - The immigrant has been, is being, or is likely to be helpful to **DCA's** detection, investigation, or prosecution of qualifying criminal activity,

If the immigrant does not satisfy **all** of these criteria, the Designated U-Visa Representative shall not execute the U-Visa Certification.

If the immigrant does satisfy all of these criteria, the Designated U-Visa Representative **shall** execute the U-Visa Certification, **unless** the Designated U-Visa Representative determines that extenuating circumstances exist that merit not executing the U-Visa Certification.

If the Designated U-Visa Representative declines to certify the U-Visa Certification because of such extenuating circumstances, the Designated U-Visa Representative shall draft a memorandum for that immigrant's file providing the basis for his or her decision.

7. Should the immigrant consent, the Designated U-Visa Representative will refer the immigrant's case to an appropriate partner law enforcement agency for criminal investigation or prosecution of the qualifying criminal activity.
8. All notes, correspondence and communications regarding the U-Visa Certification process will be kept in a separate file within the Office of the Commissioner.
9. Any identifying information provided to DCA in connection with a request for U-Visa Certification shall be protected in a manner consistent with the City's laws and policies on the safeguarding of identifying information.