

## **U Nonimmigrant Status Certification: A Hoop That Every U Visa Beneficiary Needs To Jump Through.**

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A foreign national who has been victim of criminal activity may qualify for U Nonimmigrant Status. The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity.

The U visa was established under the Trafficking Victims Protection Act of 2000 (TVPA),<sup>1</sup> and was subsequently reauthorized in 2003, 2005, and 2008 (Trafficking Victims Protection Reauthorization Act, or TVPRA).<sup>2</sup> The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, it aimed at providing humanitarian relief to a vulnerable population, *most of which do not have lawful status in the United States*. It provides legal status to victims of certain serious crimes who have suffered substantial physical or mental harm and can document cooperation with law enforcement. If favorably adjudicated, the U visa grants permission to remain and work in the U.S. for up to four years, and allows beneficiaries to eventually apply for lawful permanent resident status.

Besides satisfying the basic regulatory requirements,<sup>3</sup> it is mandatory that a petition for U nonimmigrant status submitted to United States Citizenship and Immigration Services (USCIS) must contain a certification of helpfulness from a certifying agency. That means the victim must provide a U Nonimmigrant Status Certification (Form I-918, Supplement B), from a U.S. law enforcement agency.

The Certification must be completed by the certifying official of the agency conducting an investigation or prosecution of the qualifying criminal activity. Certifying official is defined as: (a) the head of a certifying agency (i.e., a federal, state, or local LEA or prosecutor, judge, or other authority involved in the investigation or prosecution of the criminal activity); (b) supervisor who has been designated by the head of the agency to issue U status certifications; or (c) a federal, state, or local judge. The regulations also mention child protective services, Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) as agencies that may certify.

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<sup>1</sup> Pub. L. No. 106-386, 114 Stat. 1464 (2000). The U visa was incorporated in the section of the TVPA known as the Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1518 (2000).

<sup>2</sup> Pub. L. No. 108-193, 117 Stat. 2875 (2003), Pub. L. No. 109-164, 119 Stat. 3558 (2006), Pub. L. No. 110-457, 122 Stat. 5044 (2008); Immigration & Nationality Act (INA) § 101(a)(15)(U).

<sup>3</sup> The individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; The individual must have information concerning that criminal activity; The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and the criminal activity violated U.S. laws.

Additionally, the Certification must contain: (1) how the person qualifies as a certifying official; (2) that the petitioner has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; (3) that the petitioner possesses information concerning the activity; (4) that the petitioner has been, is being, or is likely to be helpful; and (5) that the criminal activity violated a U.S. law or occurred in the U.S.

Qualifying criminal activity is defined as being an activity involving one or more activities that violate U.S. criminal law, including: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or *attempt, conspiracy, or solicitation* to commit any of the above mentioned crimes "*or any similar activity*" also encompassed by statute for related, non-enumerated crimes.

Note that a certifying agency is under no legal obligation to complete this certification. However, the foreign national will be ineligible for U nonimmigrant status without one. The foreign national or his/her legal representative is responsible for filing the completed certification with his/her initial Petition for U Nonimmigrant Status (Form I-918).

Also be mindful of the fact that the Certification must have been signed within the six (6) months immediately preceding the submission of the petition to USCIS, and the signature on the Certification must be an original one.

It is worth pointing out that the certification provided by the certifying agency may be revoked if the foreign national unreasonably refuses to assist in the investigation of the criminal activity, or if the agency wishes to withdraw its certification for any other reason. The agency can directly send that notice of revocation to the USCIS along with the reason(s) for the withdrawal of the certification.