



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
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Title: U/T Visa Certification Policy

Effective Date: January 8, 2024; February 18, 2025 (Revised)

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I. Introduction

The HCAO strives to ensure victims and witnesses, regardless of immigration status, feel safe reporting crimes and assisting in the prosecution of cases. Fear of adverse immigration consequences should not be a barrier to justice for victims or witnesses.

Under this policy, the HCAO will continue to take steps necessary to respect and uphold the rights of immigrant communities and pursue protections for immigrant victims of crime. The intention of this policy is to avoid added collateral impact to victims when assisting in the detection and prosecution of crimes.

Because the HCAO seeks to be a safe space for immigrant victims, this policy and its related processes are intended to be trauma informed and culturally responsive.

II. Certification Policies

a. U/T Visa Authority & Background

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) promotes community safety by minimizing adverse immigration consequences for immigrant victims. To that end, the TVPA authorizes U visas for victims of crime and T visas for victims of human trafficking.

i. U Visas

The I-918B form that the HCAO completes for certification is only one component of a U visa petition. The HCAO’s role is not to determine the applicant’s ultimate eligibility, but rather to describe a victim’s helpfulness and the physical or mental abuse the victim suffered. The HCAO does not grant immigration relief by certifying an I-918B form. The only agency that can grant relief on a U visa petition is the U.S. Citizenship and Immigration Services (USCIS).

USCIS takes years to process a U visa petition, but USCIS can grant an applicant deferred

action in the form of work authorization as part of a waiting list determination after about four years. The annual statutory cap for U visas is 10,000. Consequently, final issuance of U-nonimmigrant status takes more than a decade but does result in up to 4 years of temporary nonimmigrant status with work authorization. The applicant may then be eligible to apply for a green card.

ii. T Visas

Unlike U visas, a T visa petition does not require a certification from a law enforcement agency. But applicants may still request certification from such agencies to support their petition. Once USCIS grants a T visa, the applicant receives up to 4 years of temporary nonimmigrant status with work authorization and access to federal benefits. The applicant may be eligible to apply for a green card. The annual statutory cap for T visas is 5,000. USCIS can grant an applicant deferred action in the form of work authorization as part of a waiting list determination.

Because survivors of human trafficking frequently suffer from intense trauma, law enforcement agencies are allowed to waive the “helpfulness” standard when certifying I-914B forms for T visa petitions. The HCAO will use trauma-informed practices and certify I-914B forms in every credible case of sex trafficking, labor trafficking, or forced labor, regardless of an individual’s helpfulness in investigating or prosecuting criminal activity.

T and U visa certification requests are not mutually exclusive. When the HCAO certifies an I-914B form for a T visa petition, it will also process an I-918B form for a U visa petition.

b. U/T Visa Review

The County Attorney will designate an Assistant County Attorney, Senior Assistant County Attorney, or Managing Attorney to serve as the primary Certifying Official. The Certifying Official is authorized to review, process, and sign certification requests as legally appropriate. When possible, the primary Certifying Official should have lived experience in or with an immigrant or refugee community or familiarity with immigration laws. The HCAO will also appoint additional Certifying Officials as part of a contingency plan to ensure timely responses to certification requests. See Minn. Stat. § 611A.95, subd. 2(b). The designated Certifying Officials will exercise sound discretion and judgment and process each certification request on a case-by-case basis, taking into consideration all relevant factors.

c. Timeliness of Certifications

The HCAO will place a certification decision in the interoffice mail system within 30 calendar days of receiving a U/T visa certification request.

If an applicant informs the HCAO that they are in removal proceedings, that the certification request is in response to a request for evidence from an immigration agency, or that a beneficiary is at risk of no longer qualifying for immigration relief due to age, the HCAO will respond to the U/T visa certification request within seven calendar days. The HCAO does not require any supporting documents to justify an expedited review.

The HCAO will record requests, the date the request was made, and the date the request was certified to ensure compliance with Minn. Stat. § 611A.95.

d. Brady/Giglio Compliance

When the HCAO receives a certification request related to an active criminal case that the HCAO is prosecuting, the HCAO's Immigration Policy Unit will notify the prosecutor of record who will disclose to the defense counsel that the HCAO received the request. The prosecutor of record will also disclose redacted request materials and certified forms. Other information related to the certification request may be disclosed as required by the *Brady/Giglio*.

When the HCAO receives a certification request related to an active criminal case that is being prosecuted in another jurisdiction, the HCAO will notify the prosecutor of record that the HCAO received the request and may, on a case-by-case basis disclose redacted request materials and certified forms upon request by the prosecutor of record.

e. Guidelines for Processing U/T Visa Applications

i. U Visa Qualifying Criminal Activity

Pursuant to INA 101(a)(15)(U)(iii) and 8 U.S.C. 1101(a)(15)(U)(iii), the HCAO will issue a certification to qualified applicants who are victims of one or more of the following violations of federal, state, or local criminal law, or other related crimes:¹

¹ "Other related crimes," means any similar activity where the elements of the crime are substantially similar to those listed in this section. See Department of Homeland Security's U Visa Law Enforcement Certification Resource Guides at 3, available at [https://www.dhs.gov/xlibrary/assets/dhs u visa certification guide.pdf](https://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf).

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Abduction	Female Genital Mutilation	Murder	Sexual Exploitation
Abusive Sexual Contact	Fraud in Foreign Labor Trafficking (18 U.S.C. 1351.)	Obstruction of Justice	Slave Trade
Blackmail	Hostage	Peonage	Stalking
Domestic Violence	Incest	Perjury	Torture
Extortion	Involuntary Servitude	Prostitution	Trafficking
False Imprisonment	Kidnapping	Rape	Unlawful Criminal Restraint
Felonious Assault	Manslaughter	Sexual Assault	Witness Tampering (8 CFR 214.14(a)(14)(ii).)

Pursuant to 8 CFR 214.14(a)(11), criminal activity includes attempt, conspiracy, or solicitation to commit any of the above qualifying crimes. The HCAO will mark every qualifying crime on the I-918B form that is credibly supported.

ii. Qualified Applicants

Direct, indirect, and bystander victims of a qualifying criminal activity may request certification.

Indirect victims can request certification regardless of the direct victim’s immigration status as follows:

- If the direct victim is incompetent, incapacitated, or deceased because of homicide or manslaughter, the next of kin can request certification;
- If the direct victim is 21 years old or older on the offense date, their spouse and unmarried children can request certification; or
- If the direct victim is under 21 years old on the offense date, their spouse, children, parents, and unmarried siblings can request certification.

The HCAO will consider U/T visa certification requests when the applicant or qualifying criminal activity has a nexus to Hennepin County including, but not limited to:

- Some or all the qualified criminal activity took place within the boundaries of Hennepin County;
- The applicant lives in Hennepin County, regardless of where the crime occurred;
- A nonprofit organization, medical clinic, or hospital in Hennepin County provided a service to the applicant;
- The applicant retained an immigration attorney who offices in Hennepin County;
or
- The Fort Snelling Immigration Court, which is located within the county lines of Hennepin County, would have or has jurisdiction over the applicant’s immigration case.

iii. Helpfulness Standard

To obtain a U visa, applicants must show USCIS that they have been helpful, are being helpful, or are likely to be helpful to, among others, local authorities investigating or prosecuting certain criminal activity. See INA 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

When the HCAO reviews a request for U/T visa certification, it will employ a rebuttable presumption that the victim is likely to be helpful unless there is evidence that: (1) a victim unreasonably refused to cooperate; or (2) a victim unreasonably failed to provide information and assistance reasonably requested by law enforcement or the prosecution.

Applicants who show evidence of other compelling circumstances, such as further threats of violence, housing issues, or illness, that prevented cooperation may be able to show that their decision or inability to continue cooperating was not unreasonable, and therefore, that they remain eligible for certification.

The staff member assigned to process a certification will prepare a description of the applicant’s past, present, and/or future helpfulness to law enforcement and/or prosecutors, using information available to the HCAO. To the extent possible, the certification will document all helpfulness on the part of the applicant.

When possible, the staff member processing the certification request will seek input about helpfulness from the prosecutor and victim services specialist of record.

Examples of helpfulness include, but are not limited to:

Calling 911	Providing a statement to law enforcement	Participating in a forensic interview or supporting a victim at a forensic interview
Filing a restitution claim	Submitting a Crime Victims Reimbursement Program (CVRP) claim	Attending court
Meeting with a prosecutor	Meeting with a victim services specialist	Participating in trial preparation
Signing a release of information for medical records	Testifying in court	Providing plea input
Providing a victim impact statement	Providing input to probation (e.g., pre-sentence investigation)	Providing evidence for a sexual assault kit / SANE
Following up with a victim services specialist	Supplying helpful information to a victim services specialist	Responding to a subpoena
Supplying updates on injuries	Filing an order for protection or harassment/restraining order	Following up with law enforcement about an incident

iv. No Statute of Limitations

Federal U/T visa regulations do not set a specific statute of limitations for certifying I-918B and I-914B forms, respectively. See Department of Homeland Security’s U and T Visa Law Enforcement Certification Resource Guides.² The HCAO will process certification requests regardless of case status or age.

² Available at https://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf and https://www.dhs.gov/sites/default/files/publications/t_lea_guide_10182021_v2_508_sp_5_08.pdf, respectively

v. Factors Not to be Considered

The HCAO will not impose requirements for certification beyond those that are statutorily enumerated in 8 U.S.C. 1101(a)(15)(U).

Accordingly, the HCAO will process certifications without considering doubts as to whether an applicant will ultimately qualify for a U/T visa, an applicant’s criminal or civil court history, whether the incident was charged, the outcome of the case in which the victim was involved, or whether the perpetrator was apprehended.

f. Data Privacy

The HCAO will keep electronic records of all certification requests and decisions indefinitely, as required by Minn. Stat. § 611A.95.

Pursuant to Minn. Stat. § 611A.95, subd. 4, the HCAO will not disclose the immigration status or personal information of an applicant except as authorized by law.

g. Declining to Certify U/T Visas

Prior to declining to certify a U/T visa, the primary Certifying Official will notify the Director of the Division of Professional Standards (DOPS) and a secondary Certifying Official. If both Certifying Officials both agree that the HCAO should decline the request, the HCAO will decline the request and notify the applicant. If there is disagreement among the Certifying Officials as to whether to decline the request, the County Attorney will decide how to respond to the request.

h. Withdrawing Certification

The HCAO may withdraw a U/T visa certification if an applicant unreasonably obstructs the HCAO’s ability to enforce the law. Whether an applicant unreasonably obstructs the HCAO’s ability to enforce the law will be assessed pursuant to section II(e)(3) of this policy. Prior to a withdrawal, the HCAO will make reasonable efforts to notify the applicant and provide them with an opportunity to respond. The County Attorney must approve any withdrawal before the HCAO sends the withdrawal notification to USCIS.

i. Recertification Requests

USCIS requires that victims file U/T visa petitions within 6 months of the HCAO’s certification date. Consequently, certifications can expire. Upon request by the applicant,

the HCAO will issue a recertification if an applicant misses their filing deadline.

Victims may also request a recertification after the initial certification when applying for a green card as a way for the HCAO to attest to their helpfulness.

The HCAO will issue recertifications unless an applicant has unreasonably obstructed the HCAO's ability to enforce the law, as described in Section II(h).

III. Victim Services

a. Language Access

The HCAO will provide language access training to all staff, including attorneys, on best practices in working with interpreters.

The HCAO will recruit for, hire, and retain victim services specialists who are culturally responsive, multilingual, and dedicated to advocating for immigrant victims. The HCAO will strive to assign multilingual victim services specialists to any case where victims or their family members benefit from language access services. The HCAO will document language preferences for all victims and witnesses.

b. Outreach to Victims and Community

Pursuant to Minnesota Statute § 611A.95, subd. 3, and to properly serve victims, the HCAO will provide multilingual, culturally responsive information about the right to request U/T visa certifications and the HCAO's certification policy and process to all victims in person and in writing.

c. Immigration Counsel Referrals

The HCAO will maintain a list of *pro bono* and affordable immigration counsel for victims and witnesses. The list will include information on eligibility requirements, types of cases accepted, and intake instructions.

d. Monitoring Cases with Potentially Eligible Victims

The HCAO will not inquire about the immigration status of victims and witnesses.

The HCAO attorneys and staff, including staff in the Domestic Abuse Service Center, will alert the primary Certifying Official when a case-involved party could be eligible for immigration relief. When appropriate, the HCAO will follow up and provide information

regarding *pro bono* and affordable immigration counsel.

IV. For Applicants/Representatives of Applicants: Guidance for Submitting Requests for U/T Visa Certification.

a. Contents of Certification Requests

Unless otherwise requested by the HCAO, applicants and/or their representatives for U/T visa certification are not to submit any documentation as part of their requests other than the following:

<input type="checkbox"/> Full legal name and aliases	<input type="checkbox"/> Case-identifying information (for example: court file, police report, or law enforcement CCN numbers) and name of investigating agency
<input type="checkbox"/> Date of birth	<input type="checkbox"/> Whether the applicant is requesting expedited processing (See Section II(c) of this policy)
<input type="checkbox"/> Gender	<input type="checkbox"/> Whether the representative represents other indirect victims/qualified applicants (See Section II(e)(ii) of this policy) related to the matter, and, if so, whether they wish to have separate I-918B or I-914B forms for any indirect victims
<input type="checkbox"/> Release of Information (in an appropriate language for the applicant)	<input type="checkbox"/> Optional: Alien Registration Number (“A--Number”)

b. Disclosure and Discoverability of Certification Requests

Pursuant to Section II(d) of this policy, any information an applicant or their representative provides as part of a certification request may be disclosed to the defense, and in some circumstances, the court and the public during an open court proceeding, even in criminal cases where the HCAO is not the prosecuting agency.

c. How to Send Certification Requests to the HCAO

The HCAO prefers that applicants and/or their representative send all certification requests and immigration relief inquiries via email to visa@hennepin.us.

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If an applicant or their representative must instead send requests via U.S. Mail, those requests should be sent to:

Hennepin County Attorney's Office
Attn: Immigration Policy Unit - U/T Visa Request
300 South 6th Street, MC 153
Minneapolis, MN 55487

Please do not provide us with pre-paid return postage.