

U visa Certification

414.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and procedures for officers who receive requests for a U visa Certification (Form I-918, Supplement B).

The Chief of Police has designated the Criminal Investigations Division Commander as the certifying officer for the Santa Monica Police Department with the authority to issue Form I-918, Supplement B certification on his/her behalf.

414.2 PROCEDURES

Under certain circumstances, federal law allows victims and witnesses of certain qualifying crimes to receive temporary immigration benefits (8 USC 110(a)(15)(U)). The victim or witness must obtain a declaration/certification form from the law enforcement officials who are responsible for conducting the related criminal investigation in order to file a petition for a U visa with the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). The certification, which is completed on the appropriate form (I-918, Supplement B) must clearly articulate how the victim or witness can assist in a criminal investigation or prosecution.

State law requires law enforcement officials to complete Form I-918, Supplement B, upon the request of a victim or witness of a qualifying crime or upon the request of a family member of the victim or witness (Penal Code §679.10). By completing the necessary document, law enforcement officials are certifying that the victim or witness is, has been, or is likely to be helpful in the detection, investigation or prosecution of the crime under investigation. There is a rebuttable presumption that the 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 that is reasonably requested by law enforcement officials who are conducting the criminal investigation.

Additionally, certain immediate family members and indirect victims of U visa recipients may also be eligible to live and work in the United States as derivative U visa recipients based on their relationship with the principal recipient.

These family members include;

- (a) Unmarried children under the age of 21 of principal U visa recipients;
- (b) Spouses of principal U visa recipients;
- (c) Parents of principal U visa recipients under age 21; and
- (d) Unmarried siblings under the age of 18 of principal U visa recipients under age 21.

Indirect Victims include;

- (a) A parent of a child victim under 21 years of age;
- (b) Parent of a victim that is incapacitated or incompetent to cooperate with the investigation; and,

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- (c) Parent of a deceased child due to murder or manslaughter.

Any request for assistance in applying for U visa status should be forwarded in a timely manner to the Office of the Criminal Investigation's Commander.

The Commander and/or his/her designee shall;

- (a) Consult with the assigned detective to determine whether the victim or witness;
 - 1. Is the victim or witness of a qualifying criminal offense (refer to list of crimes on Form I-918, Supplement B; U Nonimmigrant Status Certification, Part 3: Criminal Acts).
 - 2. The victim possesses information relevant to the crime.
 - 3. The victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of the crime being investigated.
 - 4. Has not refused or failed to provide assistance when requested reasonably by law enforcement officials, and;
 - 5. The crime(s) violated United States law and have occurred within the City of Santa Monica.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed (***NOTE: Requests for a U visa certification by a victim or the victim's representative during the pendency of a case is considered discoverable. If a request for certification is made during the pendency of a case, the handling detective must notify the prosecuting agency. Post conviction certification requests do not need to be disclosed.***).
- (c) Address the request and complete the declaration/certification within 90 days of receipt or within 14 days if the applicant is in immigration removal proceedings.
- (d) Ensure that any decision to complete or not complete the form is documented in the investigative case file. Include a copy of the completed certification in the case file.

The Santa Monica Police Department will not certify the following applications:

- (a) Applications containing false or inaccurate information
- (b) Applications that do not include all required information
- (c) Applicant/victim of qualifying crime was not helpful with the investigation and/or prosecution of the incident.
- (d) Applications that do not meet the qualifying offense criteria

Upon certification, the Criminal Investigations Division Commander or his/her designee will ensure accurate records are kept of U visa certifications and will ensure the application is returned to the applicant or applicant's representative.

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 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.

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There is no statute of limitations that bars immigrant crime victims from applying for a U visa. Law enforcement can sign a certification at any time, and it can be submitted for a victim in an investigation or case that is already closed. This includes victims who are no longer in the United States.

If a certification is issued and the victim subsequently refused to provide information or assistance when reasonably requested, the certification may be withdrawn. Any decision to revoke a previously issued certification, and the justification for doing so shall be documented in the case file.

A certifying agency entity that receives a request for a Form I-918, Supplement B, certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918, Supplement B, certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to Penal Code § 679.10 (I) shall comply with Government Code § 9795.

414.3 APPEALS

The Criminal Investigations Division's Commander will be the final level of appeal and must make a final decision on whether or not to complete and sign the U visa certification.

However, by signing a U visa certification, the Department is not sponsoring or endorsing the victim for a U visa, and the completed certification does not guarantee that USCIS will approve the U visa petition. USCIS considers the U visa certification as only one part of the evidence in support of the U visa petition. Only USCIS has the authority to grant or deny a U visa.