

T Visa/ U Visa and VAWA for Law Enforcement & Other Certifying Officials

National Engagement
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Questions & Answers

Q1. Is there a contact person to call for additional guidance and questions regarding a case?

A1. Please contact USCIS if you have questions or need technical assistance via the U and T Visa Hotline for Certifying Agency Inquiries at 240-721-3333. This line is for certifying agencies only. To ask a question about a specific case, withdraw/disavow a signed form, or report concerns about fraud or misuse of T/U visas, you can also email inquiries to LawEnforcement_UTVAWA.vsc@uscis.dhs.gov.

Q2. If a petitioner is applying for the victim who is a minor and if U visa is granted, does victim automatically receive U-visa after turning 18?

A2. A minor does not have to wait until they are 18 years of age to receive U nonimmigrant status (U visa). The minor will receive U nonimmigrant status when their petition is approved and a U visa becomes available, regardless of their age.

Q3. Does the victim have to be named in the police report?

A3. There is no requirement that a police report be submitted with the U visa petition. It is best practice for the police report to include the victim's name. However, if the police report does not list the victim's name, the best practice would be to include a note to clarify why the victim's name is not listed.

Q4. How much time does the victim have to apply for the U Visa once a crime has been reported?

A4. There is no statute of limitations that bars noncitizen crime victims from applying for a U visa. A victim can file for a U visa years after the crime occurred. That being said, once the Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B) is signed by the certifying official, USCIS must receive the crime victims' petition along with the certification within 6 months. If the Form I-918B expires, you may receive a second request for a certification or a request to resign and date the previously prepared certification.

Q5. Does the victim have to provide a copy of the Form I-918B to the certifying agency? Or can they request a U-Visa certification over the phone and then the agency just fill it out on behalf of the victim?

A5. Certifying agencies have the discretion to create their own local policies on how victims should request a signed certification. The Form I-918B is available to everyone at www.uscis.gov/I-918 along with the form instructions. The victim does not have to provide a physical copy of a blank Form I-918B to the certifying agency. The victim can request the Form I-918B over the phone or any other way acceptable to the certifying agency, for example, via email, letter, etc. The victim must submit the completed Form I-918B with the petition for U nonimmigrant status.

Q6. What is the category for child abuse? We've just been using felonious assault.

A6. Congress established a list of qualifying criminal activities for the U visa. These are general categories, and not specific crimes or citations to a criminal code. Child abuse is not listed, but it may fall under more than one of the listed crimes depending on the facts of the case and the wide variety of criminal statutes in federal, state, and local law covering child abuse crimes. For example, child abuse could be considered a form of domestic violence if the perpetrator/victim relationship and the abuse experienced by the child meets the statutory elements of domestic violence under relevant statutes.

Often a criminal activity can be named differently despite the nature and the elements of the crime being comparable. When the criminal activity is not directly on point with the statutorily listed activity, the petitioner is encouraged to submit evidence demonstrating how the activity is substantially similar to one of the enumerated crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

Q7. Can a U visa petitioner contest the denial of a certification?

A7. If the victim’s U visa petition does not include a completed Form I-918B, the victim will be ineligible for U nonimmigrant status. However, the decision to complete Form I-918B is at the discretion of the certifying agency. Though there are no federal requirements to certify, please refer to the state’s laws and the agency’s policy regarding certifications. Whether there is a mechanism for the U visa petitioner to contest the certifying agency’s refusal to sign a Form I-918B will depend on the certifying agency’s policy. Completing the Form I-918B when appropriate is a part of a victim-centered approach, creates trust within the community, and encourages others to report serious crimes.

Q8. Footnote 17 of the U Visa Law Enforcement Resource Guide states USCIS may consider 13-year-olds to be incapacitated due to age and therefore the parents may be able to assist on their behalf. Should we use 13 years old as a cap and not consider 14-year-olds and up to be incapacitated due to age?

A8. No. Generally, if a principal petitioner has not yet reached 16 years of age on the date of the qualifying criminal activity, a parent, guardian, or next friend may provide assistance to law

enforcement on their behalf. In addition, if the petitioner is incapacitated or incompetent and unable to be helpful in the investigation or prosecution of the crime, a parent, guardian, or next friend may assist them. Each case is considered on a case-by case basis. Any minor could potentially demonstrate incapacity. Each petitioner will have to establish to USCIS why they were unable to cooperate and needed assistance.

Q9. Often immigrants don't have legal marriages but common law or no documents. Is common law marriage an option? Does it make a difference if Common Law marriage is legal in the country of the petitioner?

A9. USCIS generally considers a marriage as legally valid according to the laws of the place where the marriage was celebrated. A common law marriage may be considered a legally valid marriage for the purpose of establishing eligibility for the Form I-360 Violence Against Women Act (VAWA) self-petition if it is recognized where it occurred and not contrary to U.S. public policy. Additional guidance can be found in the USCIS Policy Manual part on VAWA self-petitions.

Q10. Can you explain how/why investigation or prosecution is not needed for a person to receive a Form I-918B? I coordinate the signing of the Form I-918B for a prosecutor's office. How can we certify that a crime occurred making the applicant a victim if our office determined there is insufficient evidence to prove a crime occurred?

A10. Federal regulations define investigation or prosecution as the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. Therefore, a certifying agency may consider the victim's helpfulness during any one of these stages.

There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance. The initiation or progress of an investigation or prosecution is outside of the victim's control and a victim may be helpful and a determination still be made not to prosecute a particular crime. In determining whether the victim is, has been, or will be helpful, USCIS considers the facts of each case, including:

- The level of assistance that law enforcement requests of the victim;
- The victim's responsiveness to requests from law enforcement for assistance; and
- The victim's individual circumstances (such as age/maturity, trauma, etc.).

Q11. Does the original ink signature have to be a certain ink color?

A11. No. The only requirement is that you provide an original signature on Form I-918B.

Q12. For a U visa, if a qualifying victim has a criminal record, what, if anything, do we do with that information?

A12. USCIS does not require certifying agencies to run background or criminal history checks on people asking for a certification. However, prior to signing Form I-918B, certifying agencies may choose to run background and criminal history checks on people asking for a certification, consistent with their legal authority under federal, state, and local law. The fact that a victim has a criminal history does not automatically preclude approval of a U visa petition.

If a certifying official believes USCIS should know something particular about a victim's criminal history, this information can be included on the certification or with an attached report or statement.

Q13. How long can an agency take to process a U-visa request? Is there a time limit?

A13. There are no federal requirements on how much time a certifying agency has to process a certification request. However, please refer to your state's laws and your agency's policy regarding processing certification requests. Please note, once the Form I-918B is signed by the certifying official, USCIS must receive the I-918 petition along with the certification within 6 months of the signature date.

Q14. Are USCIS cases open to public disclosure or are they confidential?

A14. All information submitted to USCIS is protected. USCIS protects against the unauthorized disclosure of personally identifiable information that it collects, disseminates, uses, or maintains.

Petitioners for U nonimmigrant status, applicants for T nonimmigrant status, and VAWA self-petitioners are entitled to additional special protections regarding privacy and confidentiality under 8 U.S.C. 1367.

This statute prohibits the unauthorized disclosure of any information about petitioners and applicants for, and beneficiaries of T, U, and VAWA-related benefit requests to anyone other than an officer or employee of DHS, the Department of Justice (DOJ), or the Department of State (DOS) who has a need to know, with certain very limited exceptions.

Additionally, in making adverse determinations, DHS may not rely on information furnished solely by an abusive spouse/partner, abusive parent, specific members of that abuser's family, the individual or individuals responsible for the qualifying criminal activity for U visa petitions or the trafficker or associates of the trafficker for T visa applicants.

USCIS policy mandates that USCIS treat any information supplied by accused abusers or perpetrators of qualifying criminal activity as inherently suspect and must independently verify any information before using it in an adjudication.

Prohibition against disclosure of **any** information, even the existence of an application, is protected under this provision. This means applicants and petitioners must follow specialized protocols to verify their identity with USCIS before receiving any information and will not be able to use online systems so that the agency does not inadvertently disclose sensitive information to an abuser.

Q15. Why do certifying agencies see fewer requests for T visa certifications than U visa certifications?

A15. The Form I-914, Supplement B, Declaration of Law Enforcement Officer for victims of trafficking in persons, is not a required form of evidence for T visa applicants.

Although T visa applicants may submit evidence from a certifying agency, this is an optional form of evidence. This is in contrast to the U nonimmigrant status petition requirements, where the Form I-918, Supplement B, U Nonimmigrant Status Certification is required initial evidence.

Q16. Can you describe helpfulness in the U visa context and how it differs from the level of assistance required of T visa applicants?

Q16. T visa applicants must establish that they have complied with any reasonable requests for assistance from law enforcement in an investigation or prosecution of acts of trafficking, or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime. There are certain exceptions to this requirement – specifically, if the victim was under the age of 18 at the time of victimization or is unable to cooperate due to trauma suffered. To establish that they have cooperated with law enforcement’s requests for assistance, T visa applicants must, at a minimum, demonstrate that they have reported their victimization to law enforcement unless an exception or exemption applies. T visa applicants do not need to submit a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, though may do so as evidence supporting their eligibility.

A U visa petitioner must establish that they have been helpful, are being helpful, or are likely to be helpful to a certifying agency in the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity, and that since the initiation of cooperation, they have not refused or failed to provide information and assistance reasonably requested. U visa petitioners are required to submit a Form I-918, Supplement B, U Nonimmigrant Status Certification, which helps demonstrate their cooperation with law enforcement.

Q17. Can you describe the trauma exemption and age exception to the T visa cooperation requirement?

A17. An applicant for T nonimmigrant status is exempt from the requirement that they comply with reasonable law enforcement requests if they were under 18 years of age at the time at least one of the acts of trafficking occurred.

An applicant may qualify for an exception to the requirement to comply with reasonable LE requests if the applicant can establish that their lack of contact with an LE agency or compliance with a reasonable request for assistance is due to physical or psychological trauma.

Q18. What type of evidence demonstrates battery or extreme cruelty with the filing of a Form I-360 VAWA self-petition?

A18. As we discussed earlier, VAWA self-petitioners may submit any credible evidence to demonstrate battery or extreme cruelty, which can include a detailed personal statement from

the self-petitioner. LE agencies and courts can play a critical role in assisting the self-petitioner with documenting the abuse.

Relevant documentation from these agencies includes police reports, affidavits from police, judges, or other court officials, court records, medical records, and protection orders.

This is not an exclusive list. VAWA self-petitioners can (and often) submit credible evidence outside of this context including affidavits and letters from social service providers, therapists and counselors, school officials, or other relevant individuals who may have knowledge of the battery or extreme cruelty. Self-petitioners who obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the related legal documents.

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