Department of Homeland Security



Office of Investigations

U Nonimmigrant Status Handbook

OI HB 09-04

December 1, 2009

OFFICIAL USE ONLY

Foreword

The U Nonimmigrant Status Handbook is the originating and establishing Handbook for the Office of Investigations (OI) on the U Nonimmigrant Status. It provides a single source of national policies, procedures, responsibilities, guidelines, and controls to be followed by OI Special Agents and Victim Assistance Coordinators, setting forth their responsibilities when applicants for the U Nonimmigrant Status are victims of certain qualifying criminal activity in OI investigations. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among all OI field offices. Oversight over the U Nonimmigrant Status Program resides with the Investigative Support Unit, Investigative Support Division, OI.

The U Nonimmigrant Status Handbook is an internal policy of OI and is not intended to confer any right or benefit on any private person or party. This Handbook contains information which may be exempt from disclosure to the public. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, Mission Support Division, as well as the local Chief Counsel and/or U.S. Attorney are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. Any further request for disclosure of this Handbook or information contained herein should be referred to the OI Information Disclosure Unit.

The OI Policy Unit is responsible for coordinating the development and issuance of OI policy. All suggested changes or updates to this Handbook should be submitted to the OI Policy Unit, which will coordinate all revisions with the Investigative Support Unit.

Kumar C. Kibble

Acting Director/Office of Investigations

U NONIMMIGRANT STATUS HANDBOOK

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U NONIMMIGRANT STATUS HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The U Nonimmigrant Status Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents (SAs), setting forth their responsibilities when applicants for the U Nonimmigrant Status are victims of certain qualifying criminal activity in OI investigations. (Note: The U Nonimmigrant Status is often incorrectly referred to as a "U Visa.")

More specifically, this Handbook explains the U Nonimmigrant Status requirements and the application process; establishes uniform procedures for completing U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B, U Nonimmigrant Status Certification (see Appendix A); and provides guidelines for OI offices to support U Nonimmigrant Status holders who wish to adjust their status.

Chapter 2. INTRODUCTION

2.1 U Nonimmigrant Status Legislation

The U Nonimmigrant Status was created by the Battered Immigrant Women Protection Act (BIWPA) of 2000, Title V, Violence Against Women Act (VAWA), Part B of the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000. The BIWPA addresses the plight of aliens who have been exploited, victimized, and abused, but do not have legal status in the United States and therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal. The U Nonimmigrant Status provides law enforcement officials a means to regularize the status of aliens who assist during investigations or prosecutions of criminal activity.

The U Nonimmigrant Status provides temporary immigration benefits to certain victims of crimes who assist law enforcement officials in investigating and prosecuting those crimes. In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of persons, and other criminal activity of which aliens are victims, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. The U Nonimmigrant Status provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and/or prosecutions. The maximum number of U Nonimmigrant Status available in any 1 year is 10,000 for principal petitioners. There is no limit on the number of U Nonimmigrant Status derivatives. There is no cap on the number of adjustments that USCIS may make each year.

2.2 Establishment of Centralized Processing Location

In August 2001, the former Immigration and Naturalization Service (INS) issued guidance instructing INS field offices not to remove anyone from the United States who appeared to be eligible to apply for U Nonimmigrant Status until he or she had the opportunity to avail himself or herself of the provisions contained in the VTVPA. On October 8, 2003, USCIS issued a memorandum establishing the USCIS Vermont Service Center (VSC) as the centralized location for processing requests for interim relief for applicants seeking U Nonimmigrant Status.

The request for interim relief required a letter of certification from a law enforcement agency attesting to the fact of the helpfulness of the alien in the investigation or prosecution of the qualifying crime. Any law enforcement official investigating or prosecuting the qualifying crime could provide the letter attesting to the fact that the criminal activity occurred years prior to the request or that the case was closed and was not a determinative factor. VSC personnel did not deny interim relief based on the fact that the criminal activity occurred prior to the enactment of the VTVPA. Family members seeking to derive immigration benefits from aliens seeking U Nonimmigrant interim relief were accorded the same treatment from the VSC.

The VSC determined whether to grant a form of interim relief based on an applicant's submission of *prima facie* evidence of each of the U Nonimmigrant Status eligibility requirements. Alien victims (and family members) in the above categories who filed petitions in 2003-2007 with the VSC that met the *prima facie* standard were provided with interim relief, including deferred action, parole, stays of removal, and an opportunity to apply for employment authorization. (See Section 2.4 for the current regulation.)

2.3 Eligibility Criteria

The VTVPA sets four basic eligibility requirements that an alien must satisfy in order to be classified as a principal U Nonimmigrant. The applicant(s) must demonstrate that:

- A. He or she has suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity;
- B. He or she (or, in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning the qualifying criminal activity of which he or she is a victim;
- C. He or she (or, in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful in the federal, state, or local investigation or prosecution of the criminal activity; and
- D. The criminal activity violated U.S. law or occurred in the United States (including Indian country and military installations around the world) or in the Territories and Possessions of the United States.

The criminal activity referred to above is activity involving 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; 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.

2.4 U Nonimmigrant Status Regulation

On September 17, 2007, USCIS published the federal regulation entitled, "New Classification for Victims of Criminal Activity; Eligibility for 'U Nonimmigrant Status; Interim Rule'." The regulation became effective on October 17, 2007. According to the regulation, petitioners for U Nonimmigrant Status must submit an application to the VSC using USCIS Form I-918, Petition for U Nonimmigrant Status. Petitioners must also submit Supplement B of Form I-918 to file for U Nonimmigrant Status. Supplement B is also known as the "U Nonimmigrant Status Certification." Form I-918B must be signed by a qualified "certifying official" in the 6 months before submission of the I-918 petition and requires the "certifying official" to affirm that:

- A. The person signing the certificate is the head of the "certifying agency" or any person in a supervisory role who has been specifically designated by the head of the agency to issue U Nonimmigrant Status certifications on behalf of the agency, or is a federal, state, or local judge; the agency is a federal, state, or local law enforcement agency, or prosecutor, judge, or other authority who has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting;
- B. The petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim;
- C. The petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and
- D. The qualifying criminal activity violated U.S. law or occurred in the United States, its Territories, its Possessions, Indian country, or at military installations abroad.

The certifying official must sign the Form I-918B, attesting (under penalty of perjury) the facts articulated about the alien, the crime, and helpfulness. The certifying official must also attest that he or she provided no promises regarding the alien's ability to obtain a U Nonimmigrant Status from USCIS.

Petitioners who had previously filed for interim relief were encouraged to file Forms I-918 within 180 days of the effective date of the regulation: April 17, 2008.

2.5 Adjustment of Status

On December 12, 2008, USCIS published an Interim Rule entitled, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status." The rule provides for adjustment for aliens who accrued 4 years or more of interim relief status prior to the promulgation of the rule. The rule also provides that aliens with U interim relief whose Form I-918 is approved will be accorded U Nonimmigrant Status as of the date when the request for U interim relief was initially approved. Aliens in this category may apply to adjust status within 120 days of approval of the Form I-918.

In order to facilitate the VSC adjudication of adjustment applications, applicants must substantiate that, during their continuous physical presence in the United States, they did not unreasonably refuse to assist in the investigation or prosecution of the qualifying criminal activity. They must submit evidence to the VSC that demonstrates whether or not they received requests for assistance from an official or law enforcement agency that had responsibility for the investigation or prosecution of the qualifying criminal activity after they were granted U Nonimmigrant Status and whether they provided the assistance.

As other options, the applicant may (1) obtain a document signed by an official who had the responsibility for persons in connection with the investigation or prosecution that affirms that the applicant complied with or did not refuse to comply with a reasonable request for assistance in the investigation during the requisite period; or (2) submit a newly executed Form I-918B. The VSC may also contact the agency that certified the Form I-918B to verify the information.

Victims of qualifying criminal activity can be valuable sources of information for OI investigations. However, benefits should not be discussed to gain a victim's cooperation. The U Nonimmigrant Status may be a primary motivation for some victims to cooperate in an investigation or prosecution of the criminal activity. SAs may not make any promises regarding the alien's ability to obtain a U Nonimmigrant Status from USCIS.

Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook

3.1 Certifying Agency

A "Certifying Agency" is a federal, state, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This also includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor. *See* 8 CFR § 214.14(a)(2).

3.2 Certifying Official

The "Certifying Official" is the head of the certifying agency or any person in a supervisory role who has been specifically designated by the head of the certifying agency to issue U Nonimmigrant Status certifications on behalf of the agency; or a federal, state, or local judge. Certifying officials are under no obligation to sign a U Nonimmigrant Status certification. Certifying officials within OI are the SACs. *See* 8 CFR § 214.14(a)(3).

3.3 Culpability

An alien being investigated or prosecuted for a qualifying criminal activity is excluded from being recognized as a victim of that criminal activity or as a derivative of an alien who received or is seeking U Nonimmigrant Status based on that criminal activity. This exclusion does not apply to an alien who committed a crime other than the one under investigation or prosecution, even if the crimes are related. *See* 8 CFR § 214.14(a)(14)(iii).

3.4 Helpfulness

"Helpfulness" means assisting law enforcement authorities in the investigation or prosecution of the qualifying crime or criminal activity of which he or she is a victim. To obtain or remain eligible for U Nonimmigrant Status, a petitioner cannot refuse or fail to provide *reasonably* requested information and assistance. *See* 8 CFR § 214.14(b)(3).

3.5 Indian Country

"Indian Country" includes all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments. *See* 8 CFR § 214.14(a)(4).

3.6 Indirect Victim

- A. In the case of murder, manslaughter, or incompetent or incapacitated victims, spouses, children under 21 years of age, parents, and unmarried siblings under 18 years of age may apply for U Nonimmigrant Status as primary petitioners if those individuals have valuable information regarding the criminal activity that would not otherwise be available because the direct victim is deceased, incapacitated, or incompetent. See 8 CFR § 214.14(a)(14)(i).
- B. In the case of qualifying crimes such as witness tampering, obstruction of justice, and perjury that are not specifically targeted against a person, an indirect victim will

include a person who has been directly or proximately harmed by a perpetrator who committed one of the three crimes to:

- 1) Avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice for other criminal activity; or
- 2) To further the perpetrator's abuse or exploitation of, or undue influence over, the petitioner through manipulation of the legal system.

See 8 CFR § 214.14(a)(14)(ii).

3.7 Investigation or Prosecution

"Investigation or Prosecution" refers to 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. See 8 CFR § 214.14(a)(5).

3.8 Military Installation

A "Military Installation" is any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control anywhere in the world. *See* 8 CFR § 214.14(a)(6).

3.9 Next Friend

"Next Friend" refers to a person who appears in a lawsuit to act for the benefit of the alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as the result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian. See 8 CFR § 214.14(a)(7).

3.10 Prima Facie Evidence

"Prima Facie Evidence" was the initial criteria that the VSC used to determine whether to grant interim U Nonimmigrant Status relief until September 17, 2007, when 8 CFR Parts 103, 212, et al., New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule was published. See 8 CFR § 214.14(a)(13). Prior to this Interim Rule, the VSC made determinations for interim relief (usually deferred action) based upon the examination of the documents submitted by the alien. The VSC determined that, if there was sufficient evidence to render a reasonable conclusion based on the four basic eligibility requirements that the alien must satisfy in order to be classified as a principal U Nonimmigrant, the alien would be eligible for U Nonimmigrant Status when regulations were published. This was not a final adjudication of the claim.

3.11 Qualifying Crime or Qualifying Criminal Activity

A "Qualifying Crime or Qualifying Criminal Activity" includes one or more of the following, or any similar activity, that occurred in the United States or violated the laws (federal, state, or local criminal laws) of the United States (including in Indian Country and military installations) or occurred in the Territories and Possessions of the United States: 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. *See* 8 CFR § 214.14(a)(9).

3.12 Qualifying Family Member

In the case of an alien victim 21 years of age or older who is eligible for U Nonimmigrant Status, qualifying family members mean the spouse or child(ren). In the case of an alien victim *under* the age of 21 who is eligible for U Nonimmigrant Status, qualifying family members mean the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such alien. *See* 8 CFR § 214.14(a)(10).

3.13 Similar Activity

"Similar Activity" refers to criminal offenses whose nature and elements are substantially similar to the statutorily enumerated list of criminal activities. See 8 CFR § 214.14(a)(9).

3.14 Substantial Physical or Mental Abuse

"Substantial Physical or Mental Abuse" is a determination made by USCIS that the injury or harm caused by the qualifying crime to an alien's physical person or harm to or impairment of the emotional or psychological soundness of the victim constitutes abuse that is *substantial*. The nature of the injury inflicted; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of preexisting conditions, will be considered. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level. *See* 8 CFR § 214.14(a)(8).

3.15 Territories and Possessions of the United States

The Territories and Possessions of the United States are American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnson Atoll, Kingman

Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll. *See* 8 CFR § 214.14(a)(11).

3.16 United States

For the purposes of this Handbook, the United States is defined as the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

3.17 U Nonimmigrant Status Certification

Form I-918, Supplement B, "U Nonimmigrant Status Certification," confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. *See* 8 CFR § 214.14(c)(2).

3.18 U Interim Relief

U Interim Relief refers to interim benefits provided by USCIS to petitioners for U Nonimmigrant Status who requested such benefits and who were deemed *prima facie* eligible for U Nonimmigrant Status prior to the publication of the implementing regulations. *See* 8 CFR § 214.14(a)(13).

3.19 Victim of a Qualifying Criminal Activity

A victim of a qualifying criminal activity is an alien who is directly and proximately harmed as a result of the commission of qualifying criminal activity. Pecuniary crimes are not included in the definition of qualifying crimes for U Nonimmigrant Status. See 8 CFR §§ 214.14(a)(9) and (a)(14).

3.20 Victim Assistance Coordinator

A Victim Assistance Coordinator (VAC) is an SA or a Social Science Program Specialist who has been delegated victim assistance responsibilities in an OI field office.

Chapter 4. AUTHORITIES/REFERENCES

The following authorities govern the U Nonimmigrant Status:

4.1 Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000, Division B, Violence Against Women Act of 2000, Title V, Battered Immigrant Women

This law authorizes the U Nonimmigrant Status for crime victims who have suffered substantial physical or mental abuse flowing from the criminal activity in 26 articulated categories and who

are cooperating with the federal, state, or local officials investigating or prosecuting the criminal activity. *See* Pub. L. No. 106-386, 114 Stat 1464 (2000).

4.2 Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005, Title VIII, Protection of Battered and Trafficked Immigrants

This law provides numerous technical amendments to previous statutes to provide authority to the Department of Homeland Security previously held by the Department of Justice (DOJ). It extended the duration of status for U Nonimmigrant Status to not more than 4 years but allowed further extensions with a certificate from a federal, state, or local law enforcement officer, prosecutor, or judge. The law also extended U Nonimmigrant derivative status to parents, spouses, children, and siblings under 18 for victims under 21 years of age, and to the spouse and children of victims over 21 years of age. *See* Pub. L. No. 109-162, 119 Stat 2960 (2006).

4.3 Title 8, United States Code, Section 1367, Penalties for Disclosure of Information

This statute prohibits the release of any information relating to aliens who are seeking or have been approved for U or T, or VAWA Nonimmigrant Status, prohibits ICE employees from making adverse determinations of admissibility using information provided solely by an abuser or an abuser's family member, and provides for federal disciplinary action or civil penalties.

4.4 Title 8, Code of Federal Regulations, Parts 103, 212, et al., New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule

This federal rule, published on September 17, 2007, establishes procedures for obtaining U Nonimmigrant Status by using USCIS Form I-918 and the Form I-918 Supplement B, U Nonimmigrant Status Certification.

4.5 8 CFR Parts 103, 212, 214, 245, and 299, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status

This federal rule, published on December 12, 2008, permits aliens in lawful T and U Nonimmigrant Status to apply for adjustment of status to that of lawful permanent resident.

4.6 8 CFR § 214.14(a)(3)(i), Delegation of Authorities to the Assistant Secretary for ICE Contained in the Homeland Security Act

This statute provides for delegations of authority within ICE by allowing the certifying official, who is the head of the certifying agency (see Section 3.1), to issue U Nonimmigrant Status certifications.

4.7 Attorney General Guidelines for Victim and Witness Assistance

The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines), issued in May 2005, respond to a requirement in the Victim and Witness Protection Act of 1982 that the Attorney General promulgate guidelines for DOJ regarding victim assistance. *See* Pub. L. No. 97-291, 96 Stat. 1248 (1982). The law also required all other federal agencies to issue like guidelines. Periodically, the AG Guidelines are revised to incorporate new legislative provisions.

4.8 ICE Delegation of Authority to Issue U Nonimmigrant Status Certifications within the Office of Investigations

The ICE Assistant Secretary delegated the authority to sign U Nonimmigrant Status Certifications (USCIS Form I-918B) to the Director of OI on April 15, 2008, in ICE Delegation Order (DO) 73007.1.

4.9 OI Delegation of Authority to Issue U Nonimmigrant Status Certifications within the Office of Investigations

The OI Director delegated the authority to sign U Nonimmigrant Status certifications (Form I-918B) to OI SACs on June 19, 2008, in OI DO 08-03.

Chapter 5. RESPONSIBILITES

5.1 Director, Office of Investigations

The Director of OI has the overall responsibility for the management and implementation of the policies and procedures set forth in this Handbook.

5.2 National Victim Assistance Coordinator

The National Victim Assistance Program Coordinator in the Investigative Support Unit (ISU) at OI Headquarters is responsible for providing technical assistance to field offices on the provisions of this Handbook.

5.3 Special Agents in Charge

SACs are responsible for ensuring compliance with the provisions of this Handbook within their area of responsibility (AOR) and for establishing local protocol to ensure proper implementation within their AOR. As the OI certifying officials (*see* Section 3.2), SACs are responsible for signing U Nonimmigrant Status Certifications.

5.4 Special Agents

SAs are responsible for complying with the provisions of this Handbook.

5.5 Victim Assistance Coordinators in Field Offices

VACs are responsible for participating in the U Nonimmigrant Status vetting process and maintaining records on I-918B certification approvals and denials. As requested, VACs are also responsible for submitting reports to the Victim Assistance Program, ISU, at OI Headquarters. regarding I-918B certifications.

Chapter 6. PROCEDURES

6.1 Certification Review Process Overview

As stated previously, the Director of OI delegated the authority to sign U Nonimmigrant Status certifications to the SACs (see Section 4.9). This delegation was executed because SACs are uniquely situated to: (1) verify jurisdiction; (2) determine whether applicants are victims of qualifying crimes; (3) determine whether applicants are, have been, or are likely to be helpful in the investigation or prosecution of that criminal activity; (4) enhance alien victim cooperation in OI investigations; (5) reduce opportunities for fraud; and (6) receive information for additional investigations.

The certification process is an objective and systematic examination of information provided in support of a request for an I-918B certification. Although certification procedures may differ slightly by field office, each petition should be thoroughly vetted to make an affirmative determination that the petitioner satisfies the eligibility requirements for a U Nonimmigrant Status certification.

The SAC certification process will operate in accordance with the following principles so that it is and is seen to be: (1) objective, so that the recommendations are based on clear, explicit, and straightforward processes and terms of reference; (2) consistent, with procedural guidelines and terms of reference applied in the same way over time; and (3) timely, so that SACs manage requests for certification within the prescribed time period.

The range of certifying agencies covers federal, state, and local law enforcement as well as certain other agencies that have criminal investigative jurisdiction in their respective areas of expertise. This array has the potential to create confusion for petitioners over which entity has the authority to provide a law enforcement certification. Therefore, if the petitioner is a victim of a state or local crime, the SAC should refer the victim to a state or local "certifying agency" for certification.

6.2 Certification Review Vetting Team

SACs will establish U Nonimmigrant Status Certification Review Vetting Teams (CRVTs) within their AOR. A CRVT is a body comprised of OI staff that will determine the validity of the information submitted by U Nonimmigrant petitioners seeking an ICE certification. Each CRVT will consist of a team leader who should be a Resident Agent in Charge (RAC), Group Supervisor, or other senior manager. One team member must be a VAC; other team members may be the involved case agent or appropriate supervisors. The CRVT will consist of an odd number of members. Case agents may be a part of the CRVT to provide information and qualifying data for petitioners from OI investigations; however, they will not be voting members of the CRVT referral process. This is to ensure the integrity of the process and to avoid the appearance of undue influence by SAs with past interactions with petitioners in the course of an investigation.

The CVRT (in SAC, Assistant Special Agent in Charge (ASAC), or RAC offices) will vet requests for U Nonimmigrant Status certifications and provide clear, accurate, and timely recommendations about a petitioner's eligibility for the certification. Members of the CRVT will review information contained in the petition as well as consider any other appropriate source of information in reaching their recommendation. Members of the CRVT will vote independently to determine if the I-918 petition will be recommended for approval or denial. A simple majority vote is needed.

6.3 Certification Review Process

SACs will establish a Certification Review Process for CRVTs within their AOR. A certification review process typically includes the following sequential activities:

Tier 1:

The petitioner delivers Form I-918 to the SAC with a request for a Form I-918B certification. After initial review by the CRVT, the Chair of the CRVT will forward the I-918B application package, including the CVRT's recommendations for concurrence and approval or denial.

- A. VACs from ASAC or SAC offices will participate on the CRVT for certification requests associated with cases in their respective offices.
- B. VACs from RAC offices will participate on the CRVT for certification requests associated with cases in their respective offices.

Tier 2:

An ASAC will review all materials for completion, accuracy, and propriety and forward the I-918B application package to the SAC.

Tier 3:

The final signature will be that of the certifying official, i.e., the SAC. The final application package submitted to the SAC for a U Nonimmigrant Status certification will consist of the following:

- A. Form I-918, Supplement B (see Appendix A);
- B. Certification Review Vetting Sheet (see Appendix B);
- C. Approval/Denial and Adjustment of Status letters as appropriate (see sample letters at Appendices C-F); and
- D. Routing Slip indicating appropriate concurrences.

SACs will certify only Forms I-918B submitted by petitioners involved in an OI investigation. Therefore, it is expected that most requests for Form I-918B submitted to OI will have an OI investigation and case agent already identified. In instances when an I-918B application is submitted by an individual who is not part of an OI investigation, the initial review of the application will be accomplished by the SAC level CRVT to make a determination if an OI investigation should or could be initiated.

- A. If an OI investigation can be initiated, the SAC will forward the issue to the appropriate field office for assignment to an SA.
- B. That office CRVT will then review the application.
- C. The CRVT will complete the review and forward the application package to the SAC.
- D. If no qualifying OI investigation can be opened, the SAC shall refer the petitioner to an appropriate federal, state, or local law enforcement agency, prosecutor, or judge for the certification.

6.4 Certification Review Procedures

6.4.1 Receipt and Certification of Form I-918B

- A. Petitioners should submit applications for Form I-918, Supplement B to the SAC in accordance with SAC office procedures.
- B. SAs and VACs will ensure that petitioners have submitted a copy of a completed Form I-918, Petition for U Nonimmigrant Status, and a blank Form I-918, Supplement B, in support of the request for a U Nonimmigrant Status Certification.

- C. Upon verification that all required materials have been submitted, the request for the certification package will be date stamped and a work folder created.
- D. Fiscal Year (FY) numbers and subsequent application numbers (e.g., I-918B-FYxxxx/001, I-918B-FYxxxx/002) will be assigned.
- E. A tracking system, such as Excel spreadsheets, will be created to capture pertinent tracking information.
- F. If the petitioner is a victim of a qualifying crime that OI is investigating, the work folder will be forwarded to the field office (ASAC or RAC) that has conducted or is conducting the investigation for consideration.
- G. If the application involves an "alleged" victim unknown to OI, an investigation may be opened, if warranted by facts and jurisdiction. The petitioner may also be interviewed to determine whether, among other things, the petitioner reported the criminal activity to or requested an I-918B from another certifying agency.
- H. If the package is incomplete, it will be returned to the sender; it may also be returned to request additional information and resubmission.
- I. If a petitioner is represented by an attorney, all correspondence regarding the certification will be forwarded to the attorney.

6.4.2 Certification Review Vetting Team

- A. A CRVT shall be chaired by a senior manager (below the SAC level) and meet in accordance with locally established procedures.
- B. A CRVT shall be comprised of an odd number of members either 3 or 5, one of whom shall be a VAC.
- C. The chairperson of the CRVT will:
 - 1) Coordinate the work of the CRVT;
 - 2) Manage the continuity of meetings by ensuring that sufficient time is allocated for each request to be adequately considered;
 - 3) Ensure fairness in discussion between CRVT members;
 - 4) Ensure that requests for certification are vetted with the input of all CRVT members;

- 5) Ensure that key deliberations are summarized and recommendations are clearly articulated; and
- 6) Ensure that the CRVT votes are recorded.

D. CRVT Responsibilities

The CRVT makes an important contribution to the SAC's decision-making process. Its general responsibilities are to:

- 1) Examine the Form I-918, Petition for U Nonimmigrant Status, to determine:
 - a) Whether OI has investigated, is investigating, or has the authority to investigate the reported criminal activity;
 - b) Whether the petitioner is a victim of the criminal activity;
 - c) Whether the petitioner has knowledge of the details concerning that criminal activity; and
 - d) The helpfulness of the victim in the investigation;
- 2) Query all relevant OI databases, including the Treasury Enforcement Communications System (TECS) II, for information about the victim's claims;
- 3) Enter U Nonimmigrant Status certifications (approved or denied) into TECS for management accountability purposes; and
- 4) Determine whether the petitioner has failed to provide reasonably requested information and assistance in the investigation or prosecution of the crime of which he or she is a victim.

E. CRVT Recommendations

- 1) The CRVT's examination and recommendation to the SAC must be sound and defensible. For these purposes, the CRVT shall:
 - a) Judge each petition on its own merits;
 - b) Use a logic model to assess the petition (see sample Certification Review Vetting Sheet at Appendix B); and

- c) Make a recommendation to the SAC regarding the eligibility of each petitioner for a law enforcement certification and the reasons for the findings and recommendation.
- 2) In conducting its examination and in formulating its recommendation, the CRVT:
 - May obtain the assistance of the local Office of the Chief Counsel (OCC) to ensure the legal sufficiency of the recommendations to be sent to the SAC; and
 - b) Provide recommendations to the SAC to approve or deny the victim's request for certification.
- 3) The CVRT will prepare and forward the completed Form I-918B and additional written explanations, if necessary, regarding the petitioner to the ASAC or SAC within 30 calendar days of its receipt of a request for a certification.
- 4) The CRVT package forwarded through the ASAC to the SAC will include the completed Form I-918B and an appropriate approval or a denial letter for signature. (*See* sample letters at Attachments C and D.)
- 5) CRVT meetings and their deliberations are not open to either petitioners or the public. The CRVT recommendation should be made by consensus whenever possible; if consensus is unable to be reached, both the majority's recommendation and the minority's view will be part of the CRVT certification report to the SAC.

6.4.3 Assistant Special Agent in Charge Review

- A. If the SAC office's U Nonimmigrant Status certification procedures include a review by the appropriate ASAC prior to submission to the SAC, the appropriate ASAC will review the entire package for completeness, accuracy, and propriety.
- B. The ASAC will resolve any issues or seek clarification from the vetting team.
- C. The ASAC will endorse and forward the complete package to the SAC.

6.4.4 Certifying Official

- A. A SAC's decision to provide a certification is entirely discretionary.
- B. SACs are under no legal obligation to complete Form I-918B. If the SAC determines that the petitioner has met the requirements for a law enforcement

- certification, he or she may sign the Form I-918B, certifying the petitioner's eligibility and notify the petitioner of this decision.
- C. SACs may request assistance, as necessary, from the OCC to ensure the legal sufficiency of final approval or disapproval of a petition for a law enforcement certification.
- D. SACs will review and sign the law enforcement certification or issue a denial letter within 45 calendar days.
- E. If the Form I-918B is signed (denoting approval of the law enforcement certification), the SAC will also sign the approval letter.
- F. If the petitioner's request is denied, the SAC will sign a letter of denial.
- G. SACs shall not discriminate against any U Nonimmigrant Status petitioner because of his or her race, color, religion, sex, or national origin.

6.5 Administrative Procedures for Completed Certifications

- A. When the certification form has been completed by the SAC, it will be maintained for records management purposes. Form I-918B should not be mailed separately to USCIS. The petitioner is required to submit the Form I-918B with his or her application (Form I-918) to the VSC for adjudication of a request for U Nonimmigrant Status.
- B. Copies of the signed original I-918B and approval letter will be made.
- C. The signed I-918B and the approval letter shall be forwarded to the petitioner or his or her attorney.
- D. The work folder containing copies of the I-918B, approval letter, U Certification Vetting Document, TECS copies, document routing form showing written concurrences, and all related notes will be properly filed.
- E. If the I-918B is not approved, the appropriate denial letter will be sent to the petitioner or his or her attorney.
- F. Copies of denial letters will be filed in the appropriate work folder.
- G. The Excel database or other recordkeeping used will be updated.
- H. The closed work folders will be maintained in numerical order by FY in a locked cabinet.

Chapter 7. ADJUSTMENT OF STATUS

7.1 Overview

Recipients of a U Nonimmigrant Status from USCIS may apply for adjustment of status pursuant to the federal rule, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status," Interim Rule (December 12, 2008), if they have been physically present in the United States for either:

- A. A continuous period of at least 3 years since the date of admission as a U Nonimmigrant; or
- B. A continuous period of 4 years or more in U interim relief status prior to the promulgation of the "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status; Interim Rule" (September 17, 2007). There is a maximum duration in U Nonimmigrant Status of 4 years, unless the U Nonimmigrant received a law enforcement certification that the U Nonimmigrant's presence is necessary to assist in the investigation or prosecution.

USCIS created a transition rule that allows victims who have already accrued 4 years in U interim relief status to apply for adjustment of status within 120 days of the date of approval of the Form I-918.

7.2 Eligibility Requirements

Following are the eligibility requirements for a U Nonimmigrant seeking adjustment of status. The individual must:

- A. Have been admitted as a U Nonimmigrant and hold such status at the time of the application;
- B. Meet the requirements for continuous physical presence for the requisite period;
- C. Prove that he or she has not unreasonably refused to assist in an investigation or prosecution; and
- D. Be admissible at the time of adjustment or otherwise have been granted a waiver by USCIS for any applicable ground of inadmissibility.

The continuous presence requirement also provides that an absence for any period in excess of 90 consecutive days or in excess of 180 days in the aggregate is permissible only if the excessive absence is necessary to assist in the investigation or prosecution of persons in connection with the qualifying activity or if an official involved in the investigation or prosecution certifies that the absence is otherwise justified. Absences of less than 90 days at one time or 180 days in the aggregate will not be deducted from the

requisite continuous presence period required to establish eligibility for adjustment of status and will not be deemed an interruption of the period.

If the application for adjustment of status of the U Nonimmigrant principal alien is denied by USCIS, this will result in the automatic denial of a derivative family member's adjustment of status application.

A U Nonimmigrant Status principal alien will need to submit evidence that demonstrates whether or not he or she received requests for assistance from an official or law enforcement agency that had the responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the applicant was granted U Nonimmigrant Status and the applicant's response to such requests.

As options, the applicant can submit: (1) a document signed by an official or law enforcement agency that had the responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity, or (2) a newly signed Form I-918B.

7.3 Requests for Letters of Support for Victims Seeking Adjustment of Status

It is anticipated that victims will request statements or newly signed Forms I-918B from SACs regarding their continued compliance with reasonable requests for assistance in any ongoing or closed OI investigation. Accordingly, victims and/or their attorneys who are seeking adjustment of status for the victim may request that OI supply a statement attesting to the fact that, during the requisite period of continuous physical presence, the victim "did not unreasonably refuse to assist in the OI investigation or prosecution."

If OI provided the original U Nonimmigrant Status law enforcement certification (Form I-918B) and the victim continued to cooperate, upon a request from a victim, the certifying official will provide a letter stating that the victim did not refuse to assist. A letter may be supplied even if the case never resulted in a criminal prosecution. If victims request a newly signed Form I-918B, the certifying official may prepare a new I-918B or send a letter.

In cases where a victim initially cooperated and subsequently refused to assist, the certifying official should send a letter to both the victim and to: *USCIS – Vermont Service Center, Attn: VAWA Unit, Box 1000, 75 Lower Welden Street, St. Albans, VT 05479-0001*, informing of the determination that the victim should not be eligible for adjustment of status based upon the refusal to assist in the investigation or prosecution. (*See* sample letter at Appendix F.)

Chapter 8. CONFIDENTIALITY/DISCLOSURE OF INFORMATION

Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, codified at Title 8, United States Code (U.S.C.), Section 1367, is applicable to all U Nonimmigrant Status cases. OI employees are prohibited from making an adverse determination of inadmissibility or removability of aliens using information provided solely by the perpetrator

of the substantial physical or mental abuse and the criminal activity. The use or disclosure (other than to a sworn officer or employee of the Department, or agency of the Department, for legitimate department or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U Nonimmigrant Status is prohibited unless the disclosure falls within specified exceptions. Form I-918 will contain sensitive personal information about the U Nonimmigrant Status petitioner. Such information shall be treated and retained securely within the appropriate OI field office.

8.1 Exceptions for Disclosure of Information

The statutory exceptions to the disclosure of information relating to U Nonimmigrant Status are as follows:

- A. By the Secretary of Homeland Security, at his or her discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce;
- B. By the Secretary of Homeland Security, at his or her discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;
- C. In conjunction with a judicial review of a determination in a manner that protects the confidentiality of such information;
- D. After adult petitioners for U Nonimmigrant Status or U Nonimmigrant Status holders have provided written consent to waive the restrictions prohibiting the release of information;
- E. To federal, state, and local public and private agencies providing benefits, to be used solely to make determinations of eligibility for benefits;
- F. After a petition for U Nonimmigrant Status is denied in a final decision;
- G. To the chairmen and ranking members of the committee on Judiciary of the Senate, or the Committee on Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided that the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including location information about individuals);
- H. With prior consent from the principal petitioner or derivative family members, to nonprofit, nongovernmental victim service providers for the sole purpose of assisting the victim in obtaining services from programs with expertise working with immigrant victims; or

I. To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

8.2 Disciplinary Action for Violation

Appropriate disciplinary action must be taken and a monetary penalty of up to \$5,000 may be imposed on anyone who willfully uses, publishes, or permits information to be disclosed in violation of nondisclosure provisions. *See* 8 U.S.C. § 1367.

Chapter 9. MONITORING AND REVIEW

9.1 Purpose

The purposes of monitoring and reviewing U Nonimmigrant Status certifications are many. The most important purpose is that of management accountability. This is important for the following reasons:

- A. Performance indicators reveal a great deal about the state of OI certifications; and
- B. Monitoring mechanisms are needed if OI is to evaluate the efficiency, effectiveness, accountability, and fairness of the certification process.

9.2 Process

The Director of OI shall provide independent assurance to the Assistant Secretary on the fairness, consistency, and potential impact that the U Nonimmigrant Status certification process may have on petitioners to whom it is applied. The Director of OI will monitor SAC certifications and denials, provide specialized training and technical assistance, and ensure uniformity of the certification approval function through the prescribed vetting process.

SACs shall ensure that certification procedures are established to implement the provisions of this Handbook and facilitate accurate, consistent, and complete information on U Nonimmigrant Status certifications. SAs shall provide support and guidance to crime victims and ensure that objective and timely certification recommendations are made available to SACs.

Chapter 10. SUPPLEMENTAL U NONIMMIGRANT STATUS INFORMATION

The following information may be used by a CRVT to support its assessment of the merits of a request for Form I-918, Supplement B, Nonimmigrant Status Certification.

10.1 Vermont Service Center

Petitions for U Nonimmigrant Status will be filed with the VSC, which has sole jurisdiction for the adjudication of petitions for U Nonimmigrant Status.

10.2 Victim of Qualifying Criminal Activity

There are 26 categories of criminal activities listed in the statute. To meet the requirements for qualifying criminal activity, the certified crime must be: (1) one of the statutorily enumerated crimes; (2) the attempt, conspiracy, or solicitation to commit one of those crimes; or criminal activity *substantially similar* to those statutorily enumerated crimes. (*See* Section 3.19.)

10.3 Similar Activity

For the purpose of an investigation, a "similar activity" refers to criminal offenses in which the nature and the elements of the offense(s) are substantially similar to the statutorily enumerated list of criminal activities. (See Section 3.13.) The wide variety of criminal statutes in federal, state, and local law often results in criminal activity being named differently despite the nature and the elements of the crime being comparable. Qualifying criminal activity may also occur during the commission of a non-qualifying criminal act, though a perpetrator may not be charged with or prosecuted for the qualifying criminal activity.

When the criminal activity is not similar to the statutorily listed activity, the petitioner must submit evidence in the Form I-918, demonstrating how the activity is substantially similar to one of the enumerated qualifying crimes.

When making a determination on the merits of whether or not a qualifying "Similar Activity" exists, the severity and qualitative nature of the offense should be considered and not just its similarities in deciding if the act is to be considered a "Similar Activity" under the provision.

10.4 Witness Tampering, Obstruction of Justice, or Perjury

A petitioner may be considered a victim of witness tampering, obstruction of justice or perjury, if: (1) the petitioner has been directly or proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and (2) there are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means of:

- A. Avoiding or frustrating efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice for other criminal activity; or
- B. Furthering the perpetrator's abuse or exploitation of, or undue influence over, the petitioner through manipulation of the legal system.

(See Section 3.6.)

10.5 Incapacitated or Incompetent Victims

The broader definition of victim allows for consideration of certain family members of individuals who are incapacitated or incompetent. This allows those certain family members to fully participate in an investigation and/or prosecution of crimes committed against the incapacitated or incompetent victim.

An alien may be considered a "victim" if he or she is one of the following in relation to the incapacitated or incompetent victim of a crime: (1) spouse; (2) child under age 21; or, (3) if the incompetent or incapacitated victim is under the age of 21, the parent and unmarried siblings under the age of 18. (See Section 3.12.)

Evidence of the incapacitation or incompetence may include medical reports regarding the incapacitation, reports of licensed medical professionals demonstrating the incapacity or incompetence of the petitioner, or court declaration of incompetence.

10.6 Culpability

An alien being investigated or prosecuted for the qualifying criminal activity is excluded from being recognized as a victim of that criminal activity. Additionally, an alien being investigated or prosecuted for the qualifying criminal activity is excluded as a derivative of an alien who received or is seeking U Nonimmigrant Status based on that criminal activity. This exclusion does not apply to an alien who committed a crime other than the one under investigation or prosecution, even if the crimes are related. (*See* Section 3.3.) USCIS draws a distinction between being culpable for the qualifying crime versus being culpable for other crimes.

<u>Example 1:</u> An alien pays to be smuggled into the United States and illegally enters the country. After being smuggled, the alien becomes a victim of human trafficking or involuntary servitude. Such an alien is not excluded as a victim.

<u>Example 2</u>: An alien attempts to rob a bank and is shot by a security guard during the attempted robbery. The alien is excluded from classification as a victim of aggravated assault in relation to the shooting.

10.7 Substantial Physical or Mental Abuse

A petitioner is eligible for U Nonimmigrant Status if he or she demonstrates that he or she has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The "substantial" standard in this eligibility requirement addresses both the severity of the injury suffered by the victim and the severity of the abuse inflicted by the perpetrator. (*See* Section 3.14.)

Whether abuse is substantial is based on a number of factors, including but not limited to: (1) the nature of the injury inflicted or suffered; (2) the severity of the perpetrator's conduct;

(3) the severity of the harm suffered; (4) the duration of the infliction of harm; and (5) the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including the aggravation of preexisting conditions.

No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.

10.8 Possesses Information

The petitioner must possess information about the qualifying criminal activity of which he or she is a victim. A petitioner will be considered to possess information about qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning that criminal activity that would assist in the investigation or prosecution of that criminal activity.

Evidence to establish that an alien possesses information about qualifying criminal activity includes, but is not limited to, "specific facts" that would lead to the identification of a person or persons who committed a qualifying crime; the location of such persons; testimony at proceedings against such persons; police reports; affidavits from police or judges; or documents from court officials or law enforcement officials.

Possessing information about a crime of which the petitioner is not the direct or indirect victim does not satisfy this requirement.

10.9 Helpfulness to Law Enforcement Authorities

Being helpful means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. (See Section 3.4.) There is ONLY an ongoing responsibility on the part of the victim to be helpful, assuming there is an ongoing need for the victim's assistance. Also, the fact that the criminal activity occurred a number of years before the current request or that a case in which that applicant is the victim is closed is not a bar to certification. The statute contemplates that a person may be eligible for U Nonimmigrant Status as a result of having been a victim of a crime that occurred at some point in the past.

The SAC will make the initial determination as to the helpfulness of the petitioner, but it will not be considered conclusory evidence that the victim has met the eligibility requirements.

10.10 Petitioner Requirements

The petitioner must demonstrate that he or she has been, is being, or is likely to be helpful to the government official or authority in the investigation or prosecution of the qualifying criminal activity. The helpfulness requirement requires ongoing cooperation from the initiation of the investigation through the sentencing phase, if it should reach that stage. Aliens may file for U

Nonimmigrant Status at various times in the investigation or prosecution. This creates an ongoing requirement that the alien remain cooperative with the certifying agency (as it pertains to the alien's qualifying criminal activity) while applying for and throughout the alien's time in U Nonimmigrant Status. Since certifying officials are responsible for the validity of the certifications they provide, a certifying agency is responsible for contacting USCIS should a certifying agency's stance change on any given certification.

<u>Example</u>: An alien is smuggled into the United States, caught, and then is willing to assist in the investigation and prosecution of the smuggler. *Smuggling is not a qualifying crime and the possession of the information and assistance in a smuggling prosecution does not qualify.* The alien is also not a crime victim.

10.11 Criminal Activity Violated U.S. Law or Occurred in the United States

In order to qualify for U Nonimmigrant Status, the criminal activity that resulted in the victimization of the petitioner must either violate the laws of the United States or occur in the United States.

10.12 Criminal Activity Violated the Laws of the United States

The phrase "violated the laws of the United States" means criminal activity that occurred outside the United States but that fits within a type of criminal activity listed in law. Such activity will be considered to violate U.S. law if it violates a federal statute that specifically provides for extraterritorial jurisdiction.

<u>Example</u>: Per 18 U.S.C. § 2423(c), the United States has the jurisdiction to investigate and prosecute cases involving U.S. citizens or nationals who engage in illicit sexual conduct outside the United States, such as sexually abusing a minor. Prosecution of the certified crime does not need to actually occur as the statute only requires the petitioner to be helpful in the *investigation* or prosecution of the criminal activity. Prosecution may not be possible in some cases due to factors such as an inability to extradite the defendant.

10.13 Criminal Activity in the United States

The phrase "occurred in the United States" means qualifying criminal activity that occurred in the United States that is in violation of U.S. law.

10.14 Intervening Circumstances

It is understood that incidents beyond the alien's control may affect the course of an investigation or prosecution. The alien's eligibility shall not be adversely affected by circumstances of that nature.

<u>Example</u>: The petitioner submits a request for a certification to OI regarding a human trafficking case. The perpetrator was killed in a car accident prior to the case going to trial. The alien

victim is not at fault in the failure to prosecute in this case. SACs may sign the Form I-918B if the alien victim assisted in the investigation until the time of the death of the perpetrator.

10.15 Victim Under 16 Years of Age

When the victim is under 16 years of age, the requirement to possess information about the criminal activity can be satisfied by the following individuals providing the necessary evidence to OI on behalf of the petitioner: (1) parent; (2) guardian; or (3) next friend (*see* Section 3.9).

For U Nonimmigrant Status certification purposes, the parent, guardian, or next friend must provide evidence of his or her qualifying relationship to the petitioner as well as demonstrate that he or she possesses the required information about the criminal activity.

Evidence of the relationship may include a birth certificate of the petitioner who is or was younger than 16 years of age showing the parents' names, court documents demonstrating recognition of the individual as "next friend," or court documents demonstrating recognition of the individual as the guardian. For instances where the age exception is being utilized, the age of the victim on the day on which an act constituting an element of the qualifying criminal activity first occurred is the applicable age to consider for triggering the exception for the Form I-918B.

10.16 Procedure for Contacting Law Enforcement

USCIS may contact a certifying official for further information if it has reason to believe that the petitioner's helpfulness to, or continuing cooperation with, the investigation or prosecution should be questioned.

10.17 Law Enforcement Withdraws Certification

A certifying agency may withdraw a certification at any time if the alien can no longer continue to meet the helpfulness requirement. If the withdrawal is received by USCIS after the petition is approved, it will result in the revocation of the petition and all derivative petitions.

10.18 Filing from Outside the United States

Petitioners for U Nonimmigrant Status do not need to be physically present in the United States to file Form I-918. Petitioners filing from outside the United States must meet the same eligibility requirements, including applying for a Form I-918B, as those filing from within the United States. Evidentiary requirements and standards are the same.

10.19 Inadmissibility

To be eligible for U Nonimmigrant Status, an alien must be admissible to the United States. Aliens who are inadmissible, or who become inadmissible for conduct that occurs while a petition for U Nonimmigrant Status is pending, will not be eligible for U Nonimmigrant Status unless the ground of inadmissibility is waived by USCIS. USCIS may waive many grounds of

inadmissibility but must first determine that such waiver would be in the public or national interest. See 8 CFR § 212.17.

BIWPA created a waiver specific to the U Nonimmigrant Status. Under the waiver, any ground of inadmissibility may be waived for the U Nonimmigrant Status except participation in Nazi persecutions, genocide, acts of torture, or extraterritorial killings.

10.20 Evidentiary Weight of the Law Enforcement Certification (I-918B)

USCIS will give significant weight to the law enforcement certification but it will not be considered conclusive evidence that the petitioner has met the eligibility requirements. The victim must also prove "substantial harm." Petitioners may be requested to submit additional supporting evidence to establish their claims.

10.21 Employment Authorization

Aliens granted U Nonimmigrant Status are eligible for an Employment Authorization Document (EAD). See 8 CFR § 214.14(c)(7). USCIS will automatically issue an initial EAD to petitioners who are in the United States. Petitioners who apply from outside the United States will receive the initial EAD after the petitioner has been admitted to the United States in the U Nonimmigrant Status. After admission, the petitioner may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, Arrival Departure Record, to the VSC.

10.22 Unlawful Presence

Time on the U Nonimmigrant waiting list (while granted deferred action or parole) will not result in the accrual of unlawful presence. *See* 8 CFR § 214.14(d)(3). A petitioner may be removed from the waiting list and deferred action or parole may be terminated at the discretion of USCIS.

10.23 Duration of Status

The initial approval of U Nonimmigrant Status will be for a period of 4 years minus 1 day from the date of approval of Form I-918. *See* 8 CFR § 214.14(g)(1). Extensions of this Nonimmigrant Status beyond the 4-year period are available upon attestation by the certifying official that the petitioner's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. *See* 8 CFR § 214.14(g)(2).

In order to obtain an extension of U Nonimmigrant Status based upon such an attestation, the petitioner must file Form I-539, Application to Extend/Change Nonimmigrant Status, and a newly signed Form I-918, Supplement B, in accordance with the instructions to Form I-539.

10.24 Revocation

Approvals of U Nonimmigrant Status can be revoked. See 8 CFR § 214.14(h). The alien shall immediately inform USCIS of any changes in the terms and conditions of his or her

circumstances that may affect eligibility. Revocation may occur at any time after the approval of the U Nonimmigrant Status, even after the status of validity has expired.

There are two types of revocation: automatic and by notice.

A. Automatic revocation

An automatic revocation occurs when the principal alien, with an approved U Nonimmigrant petition who applied from outside the United States, notifies USCIS that he or she will not use the approved petition to enter the United States. Automatic revocations cannot be appealed.

B. Revocation by Notice

A petition for U Nonimmigrant Status may be revoked following a notice of intent to revoke based on one or more of the following:

- 1) The certifying official withdraws the U Nonimmigrant Status certification (I-918B) or disavows the contents in writing;
- 2) The approval of the petition was in error;
- 3) There was fraud in the petition;
- 4) In the case of derivative family members, the relationship to the principal has terminated; or
- 5) In the case of derivatives, the principal alien's U Nonimmigrant Status is revoked.

10.25 Notice to Appear

If USCIS denies or revokes Form I-918 for an alien who was in removal proceedings that were terminated, a new Notice to Appear may be filed.

10.26 Immigration Proceedings

USCIS may institute removal proceedings for petitioners and derivatives for U Nonimmigrant Status. Aliens in removal proceedings may petition for U Nonimmigrant Status.

10.27 Open Proceedings at the Time of Filing

Aliens in removal proceedings or in exclusion or deportation proceedings may petition for U Nonimmigrant Status. The OCC may, as a matter of discretion and at the request of the alien petitioner, agree to file a joint motion to terminate or administratively close proceedings with the

immigration judge or Board of Immigration Appeals (BIA), whichever is appropriate, while the I-918 is being adjudicated.

10.28 Final Orders of Removal, Deportation, or Exclusion

Aliens with a final order of removal, deportation, or exclusion are not precluded from filing for U Nonimmigrant Status directly with USCIS. Filing for U Nonimmigrant Status has no effect on OI's authority to execute the final order. Aliens may file USCIS Form I-246, "Stay of Removal," with ICE. ICE may grant a stay or removal or deportation to a U Nonimmigrant Status applicant whose application sets forth a *prima facie* case for approval until the application is adjudicated. If the alien is in detention pending the execution of the final order, the time during which the stay is in effect will extend the period of detention necessary to bring about the alien's removal.

10.29 Effect of Approvals on Proceedings

Upon approval of Form I-918, orders of exclusion, deportation, or removal issued by the Secretary of Homeland Security for that alien will be deemed canceled as an operation of law as of the date of USCIS's approval of Form I-918. Those subject to an order of execution, deportation, or removal issued by an immigration judge or the BIA may seek cancellation of such order by filing a motion to reopen and terminate proceedings with the immigration judge or the BIA. The OCC may agree, as a matter of discretion, to join in such a motion to overcome any applicable time and numerical limitations.

10.30 Trafficking Referrals

USCIS will make referrals to OI for all U Nonimmigrant petitions that involve, appear to involve, or claim to involve human trafficking.

USCIS adjudicators will issue a letter referring qualifying cases to OI. Along with this letter, USCIS will forward copies of supporting documentation. This referral will occur as soon as a USCIS adjudicator identifies human trafficking indicators within a filing. The original Form I-918, petition and supporting documentation will remain at the VSC for adjudication. Adjudication on the Form I-918 will continue after the referral is made. The alien will *NOT* be notified regarding the referral.

If OI returns findings after the referral and the petition remains pending, that information will be considered in the review of the petition. If OI provides information adverse to the principal alien's (or qualifying family member's) petition after a final decision has been reached, the VSC will decide whether to commence revocation procedures. All referrals will receive USCIS supervisory approval before issuance.

USCIS Form I-918, Supplement B – U Nonimmigrant Status Certification

U Nonimmigrant Status Certification

U.S. Citizenship and Immigration Services

START HERE - Please type or p	orint in black ink.		For USCIS Use Only.
Part 1. Victim informat	ion,		Returned Receipt
Family Name	Given Name	Middle Name	Date
Other Names Used (Include maide	n name/nickname)	J [Date
			Resubmitted
Date of Birth (mm/dd/yyyy)	Gender		Date Approximation 1
Suit of Butter (minutery)		Male Female	
		viute	Date Reloc Sent Date
Part 2. Agency informat	ion.		Notice Scill
Name of Certifying Agency			Date
Name of Certifying Official	Title and Division/Office	e of Certifying Official	Date Reloc Rec'd
Name of Head of Certifying Agend	су		Distribution
			Date
Agency Address - Street Number	and Name	Juite #	Remarks
City	State/Province	Zip/Postal Court	
	WAS TO SEE THE SECOND	**	
Daytime Phone # (with area code of	and/or extension) Fax # Arith	na code)	
	and/or extension) Fax # Nith		
A construction			
Agency Type	State Cocal	•	
	The state of the s		
On-going Comple	Other		
Contibute Assert Colorest			
Certifying Agency Category			
Case Number Law Enforcem			
Case Number	FBI # or SID # (if ap)	olicable)	
	/		
Part 3. Criminal acts.			
1. The applicant is a victim of eri criminal offenses.	minal activity involving or simila That apply.)	ır to violations of one of	the following Federal, State or local
Abduction	Female Genital Mutilation	Obstruction of Justic	e Slave Trade
Abusive Sexual Contact	Hostage	Peonage	Torture
Blackmail	Incest	Perjury	Trafficking
Domestic Violence	Involuntary Servitude	Prostitution	Unlawful Criminal Restraint
Extortion	Kidnapping	Rape	Witness Tampering
False Imprisonment	Manslaughter Manslaughter	Sexual Assault	Related Crime(s)
Felonious Assault	Murder	Sexual Exploitation	Other: (If more space needed, attach seperate sheet of paper.)
Anempt to commit any of the named crimes	Conspiracy to commit any of the named crimes	Solicitation to common of the named crimes	ill any
			Form I-918 Supplement B (08/31/07)

_					
P	art 3. Criminal acts. (C	Continued.)			
2.	Provide the date(s) on which the	criminal activity occurred.			
	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd	/s>>>)
3,	List the statutory citation(s) for	the criminal activity being inves	tigated or prosecuted, or that wa	s investigated o	r prosecuted.
				A N	
4.	Did the criminal activity occur in or the territories or possessions of		dian country and military install	ations,	s No
	a. Did the criminal activity vio	late a Federal extraterritorial juri	isdiction statute?	□ Y	☐ No
	b. If "Yes," provide the statuto	ry citation providing the authori	ty for extraterritorial illigitation	ı. <u> </u>	
	c. Where did the criminal activ	rity occur?			
5.	Briefly describe the criminal act Attach copies of all relevant rep		rosecuted and the involvement	of the individual	named in Part 1.
	Transfer copies of an internative				
				R	
6.	Provide a description of any kno	wn or documented injury in the	victim. Attach copies of all rele	vant reports and	l findings.
	art 4. Helifulness of the v			· <u>·</u>	
The	e victim (or parent, guardian of no	ext friend, if the victim is under	the age of 16, incompetent or in	capacitated.):	
1.	Possesses information concerning	g the criminal activity listed in l	Part 3.	☐ Yes	□ No
2.	Has been, is being or is likely to criminal activity detailed above. victim has provided.)			☐ Yes	□ No
3.	Has not been requested to provid (Example: prosecution is barred			☐ Yes	□ No
4.	Has unreasonably refused to proof the crime detailed above. (Att		estigation and/or prosecution	☐ Yes	□ No

Part 4. Helpfulness of the victim.	(Continued.)	
5. Other, please specify.	10011111111111	
		Ala.
		again.
		The state of the s
		ac yu
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	•	
Part 5. Family members implicat	ad in animin de ativit	y.
1. Are any of the victim's family member		
which he or she is a victim?		Yes No a reports or extra sheet(s) of paper if necessary.)
2. If "Yes." list relative(s) and criminal	involvement (Aimer Air)	reports or extra sheet(s) of paper if necessary)
Full Name		
	Relationship	Involvement
	JP	
Sandlin	100	
AllHimm		
Part 6. Certification.		
am the head of the agency listed in Part 2	or I am the person in the a	gency who has been specifically designated by the head of the gency. Based upon investigation of the facts, I certify, under
		victim of one or more of the crimes listed in Part 3. I certify
		dge, and that I have made, and will make no promises regarding
he above victim's ability to obtain a visa fro ertify that if the victim unreasonably refuse	om the U.S. Citizenship and	d Immigration Services, based upon this certification. I further ion or prosecution of the qualifying criminal activity of which
he above victim's ability to obtain a visa fro ertify that if the victim unreasonably refuse	om the U.S. Citizenship and	d Immigration Services, based upon this certification. I further ion or prosecution of the qualifying criminal activity of which
he above victim's ability to obtain a visa fro	om the U.S. Citizenship and es to assist in the investigat	d Immigration Services, based upon this certification. I further

U.S. Citizenship and Immigration Services

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Allen Registration Number (A #), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.

What Is the Purpose of This Form?

You should use Forth 1-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosection of that activity.

When Should I Use Form I-918, Supplement B?

If you, the certifying official, determine that this individual (better known as the petitioner) is, has been, or is likely to be helpful in your invesugance.

complete this supplement form. The petitioner must be submit the supplement to USCIS with his or her petition for the submit the supplement to USCIS with his or her petition for the submit the supplement to USCIS with his or her petition for the submit the supplement to USCIS with his or her petition for the submit the supplement to USCIS with his or her petition for the

NOTE: An agency's decision to provide a certification is entirely discretionary; the agency is under no legal to have to complete a Form I-918, Supplement B, for any particular alien. However, without a completed Form I-918, Supplement B, the alien will be ineligible for U nonimmigrant status.

To be eligible for U nonimmigrant status, the alien must be victim of qualifying criminal activities. The term "victim" generally means an alien who has suited street and proximate harm as a result of the commission of criminal activity.

The alien spousifiummarried children under 21 years of age and, if the pictim is under 21 years of age, parents and unmarried tiblings under 18 years of age, will be considered victims of the state of activity where:

The direct victim is deceased due to murder or manslaughter, og

2. Where a violent qualifying criminal activity has caused the direct victim physical harm of a kind and degree that makes the direct victim incompetent or incapacitated, and, therefore, unable to provide information concerning the criminal activity or to be helpful in the investigation or prosecution of the criminal activity.

An alien may be considered a victim of witness temperal postruction of justice, or perjury, including any attempt conspiracy, or solicitation to commit one timere of the offenses if:

- 1. The victim has been directly and proximately harmed by the perpetrates of the witness tampering, obstruction of justice, or perjuly
 - pends to the the are reasonable supplies to gone tide that the rater committed of with the sampering, obstruction of perjury offensis, at least in principal part, as a at least in principal part, as a means:\

Lessivoid or frustrate efforts to investigate, arrest, secute, or otherwise bring to justice the perpetrator ger criminal activity; or

D. To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

Apperson who is culpable for the qualifying criminal actions being investigated or prosecuted is excluded from being recognized as a victim.

A victim of qualifying criminal activity must provide evidenc that he or she (or in the case of an alien under the age of 16 years or who is incapacitated or incompetent, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a certifying official in the investigation or prosecution of the qualifying criminal activity as listed in Part 3 of this form. Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

General Instructions

Fill Out the Form I-918, Supplement B

- 1. Type or print legibly in black ink
- 2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.

3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none. write "none."

This form is divided into Parts 1 through 7. The following information should help you fill out the form.

Part 1 - Victim information.

- A. Family Name (Last Name) Give victim's legal name.
- B. Given Name (First name) Give victim's full first name, do not use "nicknames." (Example: If victim's name is Albert, do not use Al.)
- C. Other Names Used Provide all the names the victim has used that you are aware of, including maiden name if applicable, married names, nicknames, etc.
- D. Date of Birth Use eight numbers to show his or her date of birth (example: May 1, 1979, should be written 05/01/1979).
- E. Gender Check the appropriate box.

Part 2 - Agency information.

A. Name of certifying agency - The certifying agen must be a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or Sti judge, that has responsibility for the investigation prosecution, conviction or sentencing of the qualifying criminal activity of which the petitic

This includes traditional law enforcement bri within the criminal justice system, and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, such as the child protective services, Employment Opportunity
Commission, and Departure of Labor.

B. Name of certifying official A certifying official is:

 The head of the certifying agency or any person in a supervisory role, who has been specifically designated by the head of the certifying agency to Monimmigrant Status Certification on gency; or

2. A Federal, state or local judge.

If the certification is not signed by the head of the certifying agency, please attach evidence of the agency head's written designation of the certifying official for this specific purpose.

C. Agency address - Give the agency's mailing address.

Part 3 - Criminal acts.

- A. Check all of the crimes of which the petitioner is a victim that your agency is investigating. prosecuting, or sentencing - If the crime(s) of which the petitioner is a victim is not blind, please list the crime(s) and provide a writted explanation regarding how it is similar to one of the listed climes. Similar activity refers to criminal diffuses in which the nature and elements of the offenses by prostantially smilar to the list of criminal activity found the certification form itself.
- B. Indicate whether the qualifying crimmal activity violated the laws of the United States or assured to laws of the United States or occurred within the United States (including in Indian country and unitary installations) or the territories and increasings of the United States. mulifying criminal interior of which the applicant is a him had to violate U.S. law or occur within the dited States.

Please indicate whether the qualifying criminal activity ocurred within the United States (including in Indian childen and military installations) or the territories and essions of the United States.

United States means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands.

- 2. Indian country refers to all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.
- 3. Military installation means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

4. Territories and possessions of the United States means American Samoa, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

If the qualifying criminal activity did not occur within the United States as discussed above, but was in violation of U.S. law, it must violate a Federal extratefritorial jurisdiction statute. There is no requirement that a prosecution actually occur. Please provide the statutory citation for the extraterritorial jurisdiction.

Part 4 - Helpfulness of the victim.

A. Indicate whether the victim possesses information about the crime(s). A politioner must be in possession of information about the qualifying criminal activity of which he or she is a victim. A petitioner is considered to possess information concerning qualifying criminal activity of which he or she is a victim if he or she has knowledge of details concerning that criminal activity

activity. The parent, guardian, or "next frients of the minor petitioner may provide that information. Next minor petitioner may provide that information. friend is a person the appears in a lawsuit to action the benefit of an alies within. The "next friend" is not a party to the legal proceeding that is not appointed as a guardian.

B. Progide an explanation of the victim's helpfulness to the stigation or prosecution of the criminal activity. A victim must provide evidence to USCIS that he or the (or, in the case of an alien child under the is being, or is lighly to be helpful to a certifying law enforcement official in the investigation or prosecution of the qualifying criminal activity.

Being "helpful" means assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. Alien victims who, after initiating cooperation, refuse to provide continuing assistance when needed will not meet the helpfulness requirement. There is an ongoing responsibility on the partlef the victim to be helpful, assuming there is an offgoing need for the victim's assistance.

You, the certifying official, all make the initial determination as to the helpfulled of the petiti determination as to the helpfulless of the petitisher.
USCIS will give a properly executed Supplement B, U
Nonimmigrant Status Certification and Intelligent weight, Nonimmigrant Status Certification and Hospit weight, but it will not be considered conclusors evidence that the vigil has met the eligibility requirements. USCIS will look lithe totality of the circumstances surrounding the alien's involvement with your agency and all other interpretation known to USCIS in accommining whether the matter meets the elements of the lighting whether the surrounding the lighting whether the surrounding was a surrounding whether the surrounding was a surrounding with the surrounding was a surrounding was a surrounding with the surrounding was a surrounding

Family members implicated in criminal activity.

that would assist in the investigation of the criminal activity. Victims with information around a cime of which they are not the victim will not be considered to possess information concerning prohibited from petitioning for derivative status on behalf of a qualifying family member who committed battery or extreme cruelty or trafficking against the alien victim which established his or her eligibility for the alien victim which e committed qualifying criminal activities in a family violence of trafficking context.

Part 6 - Certification.

Please read the certification block carefully. NOTE: If the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, even after this form is submitted to USCIS, you must notify USCIS by sending a written statement to: USCIS - Vermont Service Center, 75 Lower Welden Street, St. Albans, VT ()5479-0001. Please include the victim's name, date of birth, and A-number (if available) on all correspondence.

Appendix B

Certification Review Vetting Sheet

-- Law Enforcement Sensitive -- Certification Review Vetting Sheet

Name:	
Alien #	
DOB (m/d/y)	
Date Received:	

Question	Considerations		Next Steps	Comments
1. Has the alien submitted the information required for the U Certification Review?	Yes	No If no, helpfulness not proven.	Request additional information or deny	
2. Is the victim represented by counsel?	Yes	No	All responses through counsel	
3. Is there an OI investigation into a <u>federal qualifying crime</u> or can an OI investigation be initiated for a <u>federal qualifying crime</u> based upon information from the alien? □ Assault □ Child sexual exploitation/child	Yes	No	Note statutory citations List TECS #	This category – OI qualifying investigation and OI victims of qualifying criminal activity = recommend favorable consideration to requests from aliens whose helpfulness resulted in the identification, apprehension, or prosecution of offenders in OI cases.
pornography/child sex tourism ☐ Extortion ☐ Hostage taking ☐ Human Trafficking (Not Smuggling) **	Is the alien a victim of the qualifying criminal activity? Yes	No	List the criminal activity List dates of activity	
☐ Kidnapping ☐ Obstruction of justice ☐ Torture ☐ Other (please specify:)	Does the alien possess information about the criminal activity that may lead to the identification, apprehension, or prosecution of the offenders? Yes	No		

	Has the alien been helpful, is currently helpful, or likely to be helpful in the investigation? Yes	No	Articulate the elements of the helpfulness	Helpfulness is an ongoing responsibility, assuming there is a need for the victim's assistance.
4. Is there an OI investigation into a <u>federal non-qualifying crime</u> (e.g., smuggling or worksite enforcement) and OI has detected or identified a victim of a qualifying crime (e.g., rape or kidnapping) as part of the OI investigation.	Yes	No		This category – an OI non-qualifying investigation but detected or identified victims of qualifying criminal activity = analysis by Special Agents in Charge (SACs) of the helpfulness to the OI investigation of the information provided by the victim. Victims who have information about a crime for which they are not a victim will not be considered to possess information concerning qualifying activities. Ensure "crime" victim status. A person who suffers harm as a result of other activities – deaths resulting from car crashes or from summer heat in smuggling operations is not a "crime" victim.

5. In the clien a victim of one of the smallful a suitable 1				
5. Is the alien a victim of one of the qualifying criminal	37	N	A .: 11	
activities?	Yes	No	Articulate the	
			qualifying activity	
Qualifying Criminal Activity			or crime	
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				
Unlawful Criminal Restraint				
False Imprisonment				
Blackmail				
Extortion				
Manslaughter				
Murder				
Felonious Assault				
Witness tampering				
Obstruction of Justice				
Perjury				
Attempt, Conspiracy, or Solicitation to commit any of the above				
mentioned crimes				
6. Does the alien possess information about either the non-	Yes	No		
qualifying or qualifying criminal activity that may lead to the		110		
identification, apprehension, or prosecution of the offenders?	Has the alien been helpful, is			
dentification, apprenension, or prosecution of the orienters:	currently helpful, or likely to			
	be helpful in the investigation?	No		
	Yes	No		
7 In the manual family and Gradient with the second			Defends state an	Fan anomala a damenti di interna
7. Is the request for U certification a case that has no nexus to an	37	N	Refer to state or	For example, a domestic violence
OI investigation but may be a violation of state crimes?	Yes	No	local law	case identified in a deportation
			enforcement	scenario. OI unable to certify
			agency	because not relevant to any OI
				investigation.

8. Is there a request from a person who is not the direct victim (e.g., murder or manslaughter) or the parent of a child victim?	Yes	No		
	Does the person requesting the certification qualify per the regulation as a petitioner? Yes	No		
	Does the petitioner possess information about the qualifying criminal activity that may lead to the identification, apprehension, or prosecution of the offenders? Yes	No		
	Has the petitioner been helpful, is currently helpful, or likely to be helpful in the investigation? Yes	No		
9. Did the criminal activity occur in the U.S. or U.S. territories or U.S. possessions?	Yes	No	Note locations	
10. Did the criminal activity violate a federal extraterritorial statute, e.g., sex tourism?	Yes	No	List statute providing jurisdiction	
11. Are any of the victim's family members involved in the criminal activity of which he or she is a victim?	Yes	No	List relatives and criminal involvement	Victims are prohibited from petitioning for family members who committed crimes against the victim.
11. Has any OI employee made promises to the victim about his or her ability to obtain a U Nonimmigrant Status?	Yes	No		

Recommendation:	
1. Certify I-918B	
I-918B and draft approval letter to victim/attorney from SAC ▶ 2 nd Tier 918B and letter to victim/attorney	reviewer ► SAC signature on I-918B and letter ► Send I-
2. Deny I-918B	
Draft denial letter \triangleright 2 nd Tier reviewer \triangleright SAC signature on denial letter \triangleright	► Send letter to victim/attorney
Comments:	
Vetting team chairperson's name	Date
Vetting team chairperson's signature	
2 nd level reviewer name	Date
2 nd level reviewer signature	

Sample U Nonimmigrant Status Certification Letter

SAMPLE

U NONIMMIGRANT STATUS CERTIFICATION LETTER

Dear Mr. or Ms.:

Your request for a signed U Nonimmigrant Status Certification is approved. Please note that U.S. Citizenship and Immigration Services (USCIS), in its adjudication of your Petition, will give significant weight to this certification; however, it will not be considered conclusive evidence that you have met the eligibility requirements for U Nonimmigrant Status. See 8 CFR § 214.14(c).

This certification creates an ongoing requirement that you remain cooperative with U.S. Immigration and Customs Enforcement (ICE) in the investigation or prosecution of the qualifying criminal activity of which you are a victim. Your cooperation must continue while you apply for U Nonimmigrant Status and throughout your time, if applicable, in U Nonimmigrant Status. This law enforcement certification may be withdrawn if ICE has reason to believe that your helpfulness to, or continuing cooperation with, the investigation or prosecution should be questioned. ICE may also notify USCIS.

Please be aware that, if ICE withdraws its certification, you can no longer meet the helpfulness requirement necessary to qualify for U Nonimmigrant Status. Furthermore, if the withdrawal is received after the U Nonimmigrant Status petition is approved, it may result in the revocation of the petition and all derivative petitions.

Attached please find Form I-918, Supplement B, U Nonimmigrant Status Certification. It should be submitted with your application for U Nonimmigrant Status to the USCIS Vermont Service Center, 75 Lower Welden Street, Box 1000, St. Albans, VT 05479-0001.

If you have any questions,	, please contact me	at (xxx) xxx-xxxx	or Special	Agent
, Vi	ictim Assistance Co	oordinator, at (xxx)	XXX-XXXX.	

Sincerely,

[Signature]
Special Agent in Charge

Sample Form I-918B Denial Letters

SAMPLE Denial Letter for Possible Victim of a Qualifying State Crime No ICE Jurisdiction

Dear Mr. or Ms.____:

I regret to inform you that your [DATE OF REQUEST] request to U.S. Immigration and Customs Enforcement (ICE) for an approved and signed U Nonimmigrant Status Certification has been denied.
In order be eligible for a U Nonimmigrant Status Certification, you must satisfy the requirements set forth in Section 214.14 of Title 8 of the Code of Federal Regulations. Paragraph (2) requires petitioners to demonstrate that they possess information (or, in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) concerning certain criminal activity described in section $101(a)(15)(U)(iii)$ of the Immigration and Nationality Act.
To satisfy this requirement, you have the burden of stating the specific facts about what you either heard or saw or, in the alternative, providing a statement which contains enough detail to create an inference of personal knowledge about the activity if you possess it. The evidence submitted with your petition does not indicate that you possess sufficient information about criminal activity over which ICE has investigative jurisdiction. You might be considered a victim of crime under state law. Accordingly, we urge you to file a report with the law enforcement agency, prosecutor, judge, or authority that has responsibility for the investigation or prosecution of the crime or criminal activity of which you claim to be a victim.
My decision not to provide a Certification is entirely discretionary; therefore, ICE is under no legal obligation to complete a Form I-918, Supplement B, for any particular petitioner.

Sincerely,

[Signature]

Special Agent in Charge

On behalf of ICE, I thank you for your interest in public safety.

SAMPLE

Denial Letter for Possible Victim of a Crime Committed Outside the United States No ICE Jurisdiction

Dear Mr. or Ms:	
I regret to inform you that your [DATE OF REQUEST] re Customs Enforcement (ICE) for a U Nonimmigrant Status	•
In order be eligible for a U Nonimmigrant Status Certifical requirements set forth in Section 214.14 of Title 8 of the Cowhich requires that an individual must be a victim of a crist United States." This means that criminal activity that occumust violate U.S. law. Statutes establishing extraterritorial some nexus between the criminal activity and U.S. interest	Code of Federal Regulations, me that "violates the law of the ars outside the United States I jurisdiction generally require
To satisfy this requirement, you must provide information where ICE has statutory authority to investigate the crime your petition indicates criminal activity that occurred outs which ICE has no investigative authority.	The evidence submitted with
My decision not to provide a certification is entirely discre- no legal obligation to complete a Form I-918, Supplement	
On behalf of ICE, I thank you for your interest in public sa	afety.
Since	rely,
- 8	ature] al Agent in Charge

SAMPLE Denial Letter for Non-qualifying Crime

Dear Mr. or Ms.

I regret to inform you that your [DATE OF REQUEST] request for a U Nonimmigrant Status Certification has been denied.

In order to be eligible for a U Nonimmigrant Status Certification, you must satisfy the requirements set forth in Section 214.14 of Title 8 of the Code of Federal Regulations (CFR). This Section states that the alien must demonstrate that:

- (1) he or she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii) of the Immigration and Nationality Act (INA) Section 101(a)(15)(U);
- (2) he or she possesses information (or, in the case of an alien under the age of 16, the parent, guardian, or next friend of the alien) concerning certain criminal activity described in clause (iii) of INA section 101(a)(15)(U);
- (3) he or she has been helpful, is being helpful, or is likely to be helpful to a federal, state, or local law enforcement official; to a federal, state, or local prosecutor; to a federal or a state judge; to U.S. Immigration and Customs Enforcement (ICE); or to other federal, state, or local authorities investigating or prosecuting criminal activity described in clause (iii) of INA Section 101(a)(15)(U);
- (4) the criminal activity described in clause (iii) of Section 101(a)(15)(U) of the INA violated the laws of the United States (including Indian country and military installations) or the territories and possessions of the United States; and
- (5) the criminal activity referred to involves 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; 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.

The crime(s) indicated on your request for a U Nonimmigrant Status Certification is not among those specifically listed in Section 101 (a)(15)(U)(iii) of the INA. In addition, the evidence provided with your request does not include sufficient information to indicate that the noted criminal activity is substantially similar to those enumerated crimes. Therefore, you are not a victim of qualifying criminal activity under 8 CFR § 214.14.

My decision not to provide a certification is entirely discretionary; therefore, ICE is under no legal obligation to complete a Form I-918, Supplement B, for any particular petitioner.

On behalf of ICE, I thank you for your interest in public safety.

Sincerely,

[Signature] Special Agent in Charge



SAMPLE Denial Letter for "Information About Other Crimes"

I record to inform you that your IDATE OF DECLIECTI request for a LINer.	

Dear Mr. or Ms. :

I regret to inform you that your [DATE OF REQUEST] request for a U Nonimmigrant Status Certification has been denied.

In order to be eligible for a U Nonimmigrant Status Certification, you must satisfy the requirements set forth in Section 214.14 of Title 8 of the Code of Federal Regulations (CFR). This section states that the alien must demonstrate that:

- (1) he or she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii) of the Immigration and Nationality Act (INA) Section 101(a)(15)(U);
- (2) he or she possesses information (or, in the case of an alien under the age of 16, the parent, guardian, or next friend of the alien) concerning certain criminal activity described in clause (iii) of INA section 101(a)(15)(U);
- (3) he or she has been helpful, is being helpful, or is likely to be helpful to a federal, state, or local law enforcement official; to a federal, state, or local prosecutor; to a federal or a state judge; to U.S. Immigration and Customs Enforcement (ICE); or to other federal, state, or local authorities investigating or prosecuting criminal activity described in clause (iii) of INA section 101(a)(15)(U);
- (4) the criminal activity described in clause (iii) of Section 101(a)(15)(U) of the INA violated the laws of the United States (including Indian country and military installations) or the territories and possessions of the United States; and
- (5) the criminal activity referred to involves 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; 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.

You have submitted information about criminal activity in which you are not a crime victim. The possession of information and/or willingness to cooperate in criminal investigations does not comply with the requirements for a U Nonimmigrant Status Certification unless the information and cooperation is linked to a qualifying crime over which ICE has jurisdiction. The crime(s) indicated on your request for a U Nonimmigrant Status Certification is not among those specifically listed in section 101(a)(15)(U)(iii) of the INA. In addition, the evidence provided with your request does not include sufficient information to indicate that the noted criminal activity is substantially similar to those enumerated crimes. Therefore, you are not a victim of qualifying criminal activity under 8 CFR § 214.14.

My decision not to provide a certification is entirely discretionary; therefore, ICE is under no legal obligation to complete a Form I-918, Supplement B, for any particular petitioner.

On behalf of ICE, I thank you for your interest in public safety.

Sincerely,

[Signature] Special Agent in Charge



SAMPLE Denial Letter for Culpability

Dear Mr.	or ivis.	:
	_	

D - - - 1 M - - - 1 M -

I regret to inform you that your [DATE OF REQUEST] request for a U Nonimmigrant Status Certification has been denied.

In order to be eligible for a U Nonimmigrant Status Certification, you must satisfy the requirements set forth in Section 214.14 of Title 8 of the Code of Federal Regulations (CFR). This Section states that the alien must demonstrate that:

- (1) he or she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii) of the Immigration and Nationality Act (INA) section 101(a)(15)(U);
- (2) he or she possesses information (or, in the case of an alien under the age of 16, the parent, guardian, or next friend of the alien) concerning certain criminal activity described in clause (iii) of INA section 101(a)(15)(U);
- (3) he or she has been helpful, is being helpful, or is likely to be helpful to a federal, state, or local law enforcement official; to a federal, state, or local prosecutor; to a federal or a state judge; to U.S. Immigration and Customs Enforcement (ICE); or to other federal, state, or local authorities investigating or prosecuting criminal activity described in clause (iii) of INA Section 101(a)(15)(U);
- (4) the criminal activity described in clause (iii) of section 101(a)(15)(U) of the INA violated the laws of the United States (including Indian country and military installations) or the territories and possessions of the United States; and
- (5) the criminal activity referred to involves 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; 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.

The term "victim of qualifying criminal activity" is defined generally in 8 CFR § 214.14(a)(14) as an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The definition also includes a restriction set forth in 8 CFR § 214.14(a)(14)(iii) which states: A person who is culpable for the qualifying criminal activity being investigated is excluded from being recognized as a victim of qualifying criminal activity.

You bear the burden of establishing eligibility for the certification. [You have submitted information or ICE has information in its files] that indicates that you were involved in the criminal activity of which you are claiming to be a victim. Therefore, the record does not establish that you qualify for the desired classification.

My decision not to provide a certification is entirely discretionary; therefore, ICE is under no legal obligation to complete a Form I-918, Supplement B, for any particular petitioner.

On behalf of ICE, I thank you for your interest in public safety.

Sincerely,

[Signature] Special Agent in Charge



Sample U Adjustment Support Letter

SAMPLE

U ADJUSTMENT SUPPORT LETTER

U.S. Citizenship and Immigration Services Vermont Service Center 75 Lower Welden Street, Box 1000 St. Albans, VT 05479-0001

Dear Sir or Madam: This letter is submitted in support of the application of _____ A # ______, to register permanent residence or adjust status. According to U.S. Immigration and Customs Enforcement (ICE) records, _______ is a citizen and national of [name of country]. He or she resides in the City/County of _____, State of _____. He or she is a crime victim of On or about (DATE), _____ was smuggled into the United States, falsely imprisoned and forced to work against his/ or her will. _____suffered extreme physical and emotional abuse as a result. Applicant gave detailed statements and physical descriptions to ICE Office of Investigations Special Agents regarding these crimes, and the principal perpetrator was arrested for On (DATE), ICE issued a Form I-918, Supplement B, to certifying that he or she possessed information concerning the qualifying criminal activity and had been helpful to ICE in its investigation of the criminal activity. The victim remains willing to cooperate with any further investigation into the crimes in support of his or her application for U Nonimmigrant Status. If you have any questions, please contact me at (xxx) xxx-xxxx or Special Agent , Victim Assistance Coordinator, at (xxx) xxx-xxxx. Thank you for your consideration in this matter. Sincerely, [Signature] Special Agent in Charge

Sample U Adjustment Refusal to Assist Letter

SAMPLE

U ADJUSTMENT REFUSAL TO ASSIST LETTER

Vermont Service Center USCIS/VAWA Unit 75 Lower Welden Street, Box 1000 St. Albans, VT 05479-0001

Dear Sir or Madam: This letter is submitted to make you aware that ______ A # ______, an applicant for permanent residence or adjustment status, has unreasonably refused and otherwise ceased to cooperate with U.S. Immigration and Customs Enforcement (ICE) in its investigation of ______ of which he or she is a crime victim. According to ICE records, ______ is a citizen and national of Mexico.

He or she resides in the City/County of ______, State of On or about (DATE), _____ was smuggled into the United States, falsely imprisoned, and forced to work against his or her will. gave statements to ICE Office of Investigations Special Agents regarding these crimes, and the principal perpetrator was arrested and indicted for On (DATE), ICE issued a Form I-918, Supplement B, to ______, certifying that he or she was a victim of qualifying criminal activity, possessed information concerning the qualifying criminal activity, was helpful to ICE in its investigation or prosecution of the criminal activity, and remained willing to cooperate with any further investigation into the crimes in support of his or her application for U Nonimmigrant Status. ICE attached a cover letter notifying ______ that the certification created an ongoing requirement that recipients remain cooperative with ICE, as it pertains to the investigation or prosecution of the qualifying criminal activity while applying for and throughout their time, if applicable, in U Nonimmigrant Status. The letter also indicated that, if ICE had reason to believe that _____ failed to continue to be cooperative with the investigation or prosecution, ICE could withdraw the certification and notify U.S. Citizenship and Immigration Services (USCIS). In addition, if the certification were withdrawn, it might result in the revocation of the petition and all derivative petitions. On (DATE), four months after USCIS granted _____ U Nonimmigrant Status, ICE forwarded a letter to _____ in an effort to gain additional facts or documents relating to the investigation of the qualifying criminal activity. Through a letter dated ______, _____stated

assistance in the investigation.	est or otherwise continue to provide		
On (DATE), ICE (the undersigned) mailed a second indicating that such refusal or failure to provide the ICE being unable to [produce sufficient evidence to qualifying criminal activity.]	e information requested could result in		
If you have any questions, please contact me at (xxx) xxx-xxxx or Special Agent, Victim Assistance Coordinator, at (xxx) xxx-xxxx. Thank you for your consideration in this matter.			
	Sincerely,		
	[Signature] Special Agent in Charge		

ACRONYMS

A

AG Attorney General AOR Area of Responsibility

ASAC Assistant Special Agent in Charge

В

BIA Board of Immigration Appeals
BIWPA Battered Immigrant Protection Act

 \mathbf{C}

CFR Code of Federal Regulations

CRVT Certification Review Vetting Team

D

DO Delegation Order DOJ Department of Justice

 \mathbf{E}

EAD Employment Authorization Document

F

FY Fiscal Year

G-H

I

ICE U.S. Immigration and Customs Enforcement INS Immigration and Naturalization Service

ISU Investigative Support Unit

J-N



0

OCC Office of the Chief Counsel OI Office of Investigations

P-Q

R

RAC Resident Agent in Charge

S

SA Special Agent

SAC Special Agent in Charge

T

TECS Treasury Enforcement Communications System

 \mathbf{U}

USC United States Code

USCIS U.S. Citizenship and Immigration Services

 \mathbf{V}

VAC Victim Assistance Coordinator VAWA Violence Against Women Act VSC Vermont Service Center

VTVPA Victims of Trafficking and Violence Protection Act

W-Z