


SPECIAL DIRECTIVE 16-11

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: U VISA CERTIFICATION - REVISED

DATE: JULY 19, 2016

Effective immediately, this Special Directive supersedes Special Directives 16-05 and 10-08 and sets forth the policy of the Los Angeles County District Attorney's Office (LADA) regarding the certification of U visa requests.

SUMMARY

Pursuant to federal law, foreign nationals who are victims of specified criminal activity and who assist in the detection, investigation or prosecution of that criminal activity may apply for and receive temporary immigration benefits through the issuance of U visas. Effective January 1, 2016, Penal Code section 679.10 (Section 679.10) provides direction as to the processing of U visa certification requests in the State of California.

In order to receive a U visa, a victim must demonstrate to the United States Citizenship and Immigration Services (USCIS) that he or she has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity.¹ For purposes of determining helpfulness, there is a rebuttable presumption² that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (§ 679.10, subd. (f).)

To be considered, the victim is required to provide to the USCIS a completed petition for a U visa (Form I-918) along with a signed U visa certification form (Form I-918B). The submitted

¹ If the victim was under the age of 16 when the crime occurred, or was incapacitated and unable to provide assistance to the detection, investigation, or prosecution of qualifying criminal activity, a parent, guardian, or next friend of the victim may possess the required information about the crime and be helpful to the detection, investigation, or prosecution of qualifying criminal activity on behalf of the victim. (See 8 U.S.C. § 1101, subds. (a)(15)(U)(i)(II), (III).)

² Evidence Code section 600(a) provides that "[a] presumption is an assumption of fact that the law requires to be made from another fact or group of acts.... A presumption is not evidence."

U visa certification form must be signed by a judge or a designated supervisor³ from a prosecutorial or law enforcement agency. (8 C.F.R. § 214.14, subds. (a)(2), (a)(3); § 679.10, subds. (a), (b).)

To be eligible for a U visa, the victim⁴ of qualifying criminal activity must:

- have suffered substantial physical or mental abuse⁵ as a result of being a victim of qualifying criminal activity;
- have specific knowledge and details of qualifying criminal activity that was committed in the United States; and
- have been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity.

QUALIFYING CRIMINAL ACTIVITY

Victims of the following crimes may be eligible for U visas:

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| 1. Rape | 15. Slavery |
| 2. Torture | 16. Kidnapping |
| 3. Human trafficking ⁶ | 17. Abduction |
| 4. Incest | 18. Unlawful criminal restraint |
| 5. Domestic violence | 19. False imprisonment |
| 6. Sexual assault | 20. Blackmail |
| 7. Abusive sexual conduct | 21. Extortion |
| 8. Prostitution | 22. Manslaughter |

³ Bureau Directors are designated by the District Attorney as those authorized to issue U visa certifications on behalf of the District Attorney.

⁴ An indirect victim of qualifying criminal activity who has suffered direct and proximate harm as a result of the qualifying criminal activity may file as the principal applicant in a U visa petition when the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated and therefore unable to provide information or be helpful in the investigation or prosecution of specified criminal activity. Eligible indirect victims include spouses, children under 21 and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years old. (8 C.F.R. § 214.14, subd. (a)(14)(i).)

⁵ 8 U.S.C. § 1101(a)(15)(U)(i)(I).

⁶ A victim of a severe form of human trafficking may also be eligible for a T visa, which provides relief similar to that accorded by a U visa. To qualify for a T visa, the victim must have complied with any reasonable request for assistance from law enforcement in the investigation or prosecution of human trafficking (or is a minor, or is unable to cooperate due to physical or psychological trauma), and would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101, subd. (a)(15)(T).) Our Office's protocol for certification of a T visa form (Form I-914B) – which petitioner would submit to the USCIS with a petition for a T visa (Form I-914) – shall be the same as the procedures required for a U visa certification, with the exception that the Bureau Director is to consult with the Head Deputy of the Organized Crime Division prior to issuing or denying a T visa certification.

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| 9. Sexual exploitation | 23. Murder |
| 10. Female genital mutilation | 24. Felonious assault |
| 11. Being held hostage | 25. Witness tampering |
| 12. Peonage | 26. Obstruction of justice |
| 13. Perjury | 27. Fraud in foreign labor contracting |
| 14. Involuntary servitude | 28. Stalking |

Qualifying crimes also include attempts, solicitations, or conspiracies to commit any of the listed offenses, as well as any substantially similar criminal activity. (8 U.S.C. § 1101, subd.

(a)(15)(U)(iii).)

PROCESSING OF U VISA REQUESTS

A deputy district attorney who receives a request for U visa certification shall immediately notify his or her Head Deputy or Deputy-in-Charge (DIC) and forward the original request to his or her Bureau Director. The Head Deputy or DIC shall designate a deputy district attorney to review the LADA case file and any other relevant information, such as law enforcement reports and court records, and, within 60 days of receiving the certification form – or within 10 days, if the requestor is in removal proceedings – the handling deputy shall prepare and submit a memorandum to the Director, through his or her Head Deputy or DIC.⁷

The memorandum shall include all of the following information, if available:

- The name and date of birth of the victim, and any known alternate names and dates of birth indicated in police reports, the LADA case file, PIMS, and Bureau of Victim Services (BVS) records
- A summary of the facts of the case, including the victim's role and any injuries, including mental abuse, sustained by the victim
- Whether any request for information or assistance from the victim has been made by the LADA or at the direction of the LADA
- Facts supporting the victim's helpfulness, or lack thereof, to the detection, investigation or prosecution of qualifying criminal activity
- A statement from the BVS as to whether an advocate was assigned to the victim and whether the BVS advocate possesses any additional information regarding the victim's helpfulness
- The original charges filed
- The charges upon which the defendant was ultimately convicted
- The stage of the proceedings during which the conviction occurred
- The sentence imposed
- Whether the petitioner is in removal proceedings (if known)

⁷ A certifying entity is required to process a U visa certification request within 90 days, unless the petitioner is in removal proceedings, in which case the certification must be processed within 14 days of the request. (§ 679.10, subd. (h).)

If the U visa request is initially received by a Bureau Director, he or she is to forward a copy to the Head Deputy or DIC of the office where the prosecution took place, noting whether the petitioner is in removal proceedings (if known). The Head Deputy or DIC shall designate a deputy district attorney to review the LADA case file and any other relevant information, such as law enforcement reports and court records and, within 60 days of receiving the certification form – or within 10 days, if the requestor is in removal proceedings – the handling deputy shall then prepare and submit a memorandum to the Director, through his or her Head Deputy or DIC, as described above.

Upon receipt of the U visa certification request and accompanying memorandum, the designated Bureau Director shall determine whether a sufficient basis exists to establish that the requestor was the victim of qualifying criminal activity and, if so, whether the victim was helpful or is likely to be helpful to the detection, investigation, or prosecution of the criminal activity in consideration of the presumption of helpfulness established by Section 679.10. Directors are required to maintain the database⁸ of all U visa requests, logging: the date the request was received; the name of the victim and the suspect or defendant; the case number, if any; whether certification was granted or denied; and the date the certification was signed or the decision to decline to sign the certification was made.⁹

A copy of the memorandum prepared by the handling deputy and any notification of the Director's certification decision shall be placed in the LADA file. If the case is an open prosecution, the Director shall notify, in writing, the handling deputy district attorney of the decision to grant or deny certification.

If the petitioning victim subsequently fails to provide assistance or otherwise becomes uncooperative, the handling deputy shall prepare a supplemental memorandum that is to be sent to the appropriate Director, through the Head Deputy or DIC, detailing the victim's refusal to assist in the investigation or prosecution of the qualifying criminal activity of which he or she was a victim when reasonably requested to do so. (See § 679.10, subd. (j).) The Director must then notify the USCIS of the victim's failure to cooperate through a written statement that identifies the petitioner by name, date of birth, and A-number (if available).

REQUEST FOR UPDATED CERTIFICATION

The LADA may receive a request for an updated certification, even after a request for certification has already been granted, submitted by a victim who failed to deliver his or her application to the USCIS in a timely manner or by a recipient of a U visa who is filing for permanent resident status. In these instances, The Head Deputy or DIC shall designate a deputy

⁸ The LADA has created a UVISA Log to capture information regarding U visa requests. This information includes the applicant's name, date of birth, the criminal act involved, defendant's name, case number, date request was received, date of decision, outcome of the decision, and the name of the Director making the decision.

⁹ The LADA is required to report to the Legislature on the first day of each calendar year the number of victims that requested U visa certifications from the LADA, the number of certification forms that were signed, and the number of forms that were denied. (§ 679.10, subd. (l).)

district attorney to review the LADA case file and any other relevant information, such as law enforcement reports and court records, and, within 60 days of receiving the certification form – or within 10 days, if the requestor is in removal proceedings – the handling deputy shall then prepare and submit a supplemental memorandum to the Director, through his or her Head Deputy or DIC. The supplemental memorandum shall include the following information:

- Whether any additional requests for information or assistance from the victim have been made by or at the direction of the LADA since the date of the original memorandum
- Any additional facts supporting the victim’s helpfulness, or lack thereof, to the detection, investigation, or prosecution of qualifying criminal activity since the date of the original memorandum
- Any additional statements from the BVS as to whether an advocate was assigned to the victim and whether the BVS advocate possesses any additional information regarding the victim’s helpfulness
- Any changes in the status of the original case since the date of the original memorandum

DISCOVERY OBLIGATIONS

*Brady v. Maryland*¹⁰ and Penal Code section 1054.1(e) mandate that potentially exculpatory evidence be provided to the defense. A request for U visa certification by a victim or the victim’s representative during the pendency of the case is considered discoverable pursuant to our constitutional and statutory obligations. If a request for certification is made during the pendency of the case to the LADA or the handling law enforcement agency, this information must be disclosed to the defense. Any decision regarding the request for certification must also be disclosed. The handling deputy shall document the request for certification and all disclosures to the defense in the LADA case file. In an abundance of caution, if the victim requesting U visa certification in a current case was previously the victim of the same defendant in a prior case for which the victim also requested a U visa certification, it is recommended that such information be disclosed to the defense.¹¹ Post-conviction certification requests do not need to be disclosed to the defense.¹²

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¹⁰ (1963) 373 U.S. 83.

¹¹ Admissibility of such evidence may be the subject of a motion pursuant to Evidence Code section 402.

¹² In *United States v. Mills* (11th Cir. 2009) 334 Fed.Appx. 946, a federal court affirmed the proposition that the prosecution’s failure to disclose the post-trial issuance of a Special Public Benefit Parole Visa to an informant who testified at trial is not a *Brady* violation and would not require a new trial because the document did not exist prior to trial. The court also held that even if the post-trial issuance of the visa could be considered *Brady* evidence, its impeachment value in that case was not material to the outcome of the trial.