



**24.16 U VISA/T VISA NON-IMMIGRANT STATUS CERTIFICATION REQUESTS**

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. Penal Code § 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. For purposes of determining helpfulness, there is a rebuttable presumption 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. (PC § 679.10 (f).)

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(a)(15)(T).) The 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.

### Processing Requests for Certification of U Visa Documents

A deputy 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 to review the case file and any other relevant information, such as law enforcement reports and court records, and, within 21 days of receiving the certification request, or within three days, if the requestor is in removal proceedings, the handling deputy shall prepare and submit a memorandum to the Bureau Director, through his or her Head Deputy or DIC. If the handling deputy is required to review sealed juvenile records in order to prepare the memorandum, all information contained within the sealed juvenile records is confidential and may not be shared with any outside agency or individual. Pursuant to Penal Code § 679.10, a certifying entity is required to process a U visa certification request within 30 days, unless the petitioner is in removal proceedings, in which case the certification must be processed within seven days of the first business day following the day the request is received. The memorandum shall include all 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 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 Office or at the direction of the Office;
- 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).

If the U visa request is initially received by a Bureau Director, he or she shall 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 same procedure shall then be followed as described above.

Upon receipt of the U visa certification request and accompanying memorandum, the 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 Penal Code § 679.10. Directors are required to maintain the database 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

A copy of the memorandum prepared by the handling deputy and any notification of the Director's certification decision shall be placed in the case file. If the case is an open prosecution, the Director shall notify, in writing, the handling deputy 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. (PC § 679.10 (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 Office 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 same procedures described above shall be followed. 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 Office 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* and Penal Code § 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 constitutional and statutory obligations. If a request for certification is made during the pendency of the case to the Office or the handling law enforcement agency, this information shall be disclosed to the defense. Any decision regarding the request for certification shall also be disclosed. The handling deputy shall document the request for certification and all disclosures to the defense in the 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. Post-conviction certification requests do not need to be disclosed to the defense.

