

Andrew M. Cuomo Governor

52 WASHINGTON STREET RENSSELAER, NY 12144

Sheila J. Poole Acting Commissioner

## **Local Commissioners Memorandum**

Transmittal:	18-OCFS-LCM-15
То:	Local District Commissioners
Issuing Division/Office:	OCFS Office of Legal Affairs
Date:	August 14, 2018
Subject:	Dueto colo for Cigning Forms for Non-Immigrant Cliente
Subject.	Protocols for Signing Forms for Non-Immigrant Clients Applying for U Visas and T Visas
Contact Person(s):	

## I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to advise local departments of social services (LDSSs) on guidelines and procedures for issuing U non-immigrant status visa (U visa) certifications and T non-immigrant status visa (T visa) endorsements.

## II. Background

A U visa is a temporary immigration classification that was created by Congress in 2000, through the Trafficking Victims Protection Act (TVPA), in recognition that many non-citizen persons who are victims of crimes may hesitate to contact or cooperate with law enforcement, or child or adult protective agencies, out of fear that their lack of immigration status may make them vulnerable.

A T visa is a temporary immigration classification that was created by Congress in 2000 also through the TVPA to (1) protect victims of human trafficking, and (2) strengthen law enforcement's ability to investigate and prosecute human trafficking crimes.

New York State recognizes that U and T visas are particularly powerful tools for agencies tasked with enforcing laws that protect vulnerable non-citizen New Yorkers, including victims of human trafficking. In the context of child and adult protective services, U and T visas strengthen an LDSS's ability to effectively investigate and pursue civil prosecution of child and adult protective cases involving non-citizen children or family members, as well as protect non-citizen victims of qualifying crimes—including human trafficking and crimes related to child abuse, adult abuse, domestic violence, sexual assault, and certain other crimes listed below in Section IV(3)(b)(ii)—who assist with the LDSS's child or adult protective investigation and prosecution.

Crime victims who wish to apply for a U visa must include a certification completed by a certifying agency, along with their full application, to the United States Citizenship and Immigration Services (USCIS), which is a federal agency within the United States Department of Homeland Security. For trafficking victims who wish to apply for a T visa, submission of an endorsement is not required, but USCIS gives great weight to the T visa endorsement when reviewing the victim's application.

As the investigating entity of child and adult protective matters, an LDSS qualifies as a U visa certifying agency and a T visa endorsing agency. Certain designated LDSS staff may sign U visa certifications and T visa endorsements. A U visa certification serves as a statement by the LDSS that the petitioner was the victim of a qualifying crime, possesses information about a qualifying crime, and is being helpful, has been helpful, or is likely to be helpful to the LDSS in the detection, investigation, or prosecution of a qualifying crime. A T visa endorsement is one piece of evidence that can be submitted by a trafficking victim to show that the victim is or was a victim of a severe form of trafficking, and that the victim has cooperated with any reasonable requests from law enforcement or the endorsing agency in an investigation or prosecution of human trafficking. A signed U visa certification or T visa endorsement does not automatically grant a non-citizen crime victim U or T non-immigrant status, as that determination is made by USCIS based on the full application package.

U and T visas are two of many forms of potential immigration relief options that may be available to the children and vulnerable adults that LDSSs encounter. If approved by USCIS, a U or T visa is valid for up to four years and may provide a path to lawful permanent resident status. A conditionally approved U visa petitioner or T visa applicant can also receive authorization to work lawfully in the United States. Other forms of

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<sup>&</sup>lt;sup>1</sup> The current certifying agencies of U and T visas in New York State are the New York State Police, the New York State Department of Labor, and the New York State Division of Human Rights. Through this LCM, the New York State Office of Children and Family Services (OCFS) is advising LDSSs of their responsibilities as the investigating entities of child and adult protective matters in certifying U visas and endorsing T visas, as provided for in law, see <a href="https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016">https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016</a> State of the State Bo ok.pdf.

immigration relief that may be available include Special Immigrant Juvenile Status (SIJS) or relief under the Violence Against Women Act (VAWA). However, this LCM only addresses an LDSS's authority to certify U visas and endorse T visas, and does not address any other forms of immigration relief.

This LCM serves as a general guideline to enable LDSSs to have adequate procedures for the receipt and timely processing of requests for U visa certifications and T visa endorsements.

## III. Definitions

- 1. Petitioner: For purposes of this LCM, petitioners are victims of certain qualifying crimes who are seeking U visa relief and submit a request for a U visa certification to an LDSS. Petitioners include the direct and indirect victims of a qualifying crime, which includes crimes related to child abuse and maltreatment, as well as crimes related to elder abuse. In some circumstances, petitioners can be witnesses or bystanders, including a parent who can testify to a child being abused by another person.
- **2. Applicant:** For purposes of this LCM, an applicant is an individual submitting a request for a T visa endorsement to an endorsing agency.
- 3. Certifying Agency: Pursuant to the federal regulations governing U visas, a certifying agency is the agency "that has responsibility for the investigation or prosecution" of the qualifying crime or criminal activity (8 CFR 214.14(a)(2)). USCIS has indicated that governmental agencies that investigate child and adult protective cases meet the criteria as a certifying agency for U visa purposes.
- **4. Endorsing Agency:** Pursuant to the federal guidelines governing T visas, endorsements must be submitted by an appropriate law enforcement agency "that has the authority for the investigation or prosecution of human trafficking."<sup>2</sup>
- **5. Certifying or Endorsing Official:** For purposes of this LCM, a certifying or endorsing official is any of the following:
  - a) A local commissioner of social services; or
  - b) A person in a supervisory role, designated by the local commissioner of social services to issue a USCIS Form I–918 Supplement B, U Nonimmigrant Status Certification (hereinafter referred to as "Form I-918B") or a USCIS Form I-914

 $\underline{4344\%20U\%20 and\%20T\%20V is a\%20 Law\%20 Enforcement\%20 Resource\%20 Guide\%2011.pdf}$ 

<sup>&</sup>lt;sup>2</sup> The federal guidelines are available at: https://www.dhs.gov/sites/default/files/publications/PM\_15-

Supplement B, *Declaration of Law Enforcement Officer for Victim in Trafficking of Persons* (hereinafter referred to as "Form I-914B") on behalf of the agency. A local commissioner of social services may delegate the authority to issue U visa certifications or T visa endorsements on behalf of the LDSS to another appropriate individual. LDSSs can exercise discretion in determining whether one or more persons employed by the LDSS should be designated to issue certifications or endorsements.

- **6. Labor Trafficking** is "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."<sup>3</sup> A severe form of trafficking in persons includes labor trafficking.
- **7. Sex Trafficking** is "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." A severe form of trafficking in persons includes "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age." 5

## IV. Program Implications

## 1. GENERAL REQUIREMENTS

a) <u>U Visa</u>: The certifying official must fully complete and sign the Form I–918B certification and include specific details about the nature of the crime(s) detected, investigated, prosecuted, convicted, or sentenced, and a detailed description of the petitioner's helpfulness or likely helpfulness to the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. The certifying official may provide additional information, if necessary, regarding the qualifying criminal activity to complete the certification.

Along with each Form I-918B certification, the LDSS should include a letter, signed by the local commissioner of social services, showing the designation of the signing official(s). This letter should state that a person with a supervisory role within the LDSS is the signing official(s). In lieu of including a letter with each certification, the LDSS can email a written delegation of authority to LawEnforcement UTVAWA.VSC@uscis.dhs.gov for USCIS to keep on file.

b) <u>T Visa:</u> A T-visa applicant must submit evidence to USCIS that fully establishes, among other criteria, that the applicant has complied with any "reasonable request

<sup>3 22</sup> USC 7102(9).

<sup>&</sup>lt;sup>4</sup> 22 USC 7102(9) and (10).

<sup>&</sup>lt;sup>5</sup> Ibid.

for assistance" in the detection, investigation, prosecution, conviction, or sentencing of human trafficking. While this evidence can be established by the applicant's own statements of cooperation with law enforcement, USCIS gives great weight to the inclusion of Form I-914B, signed and completed by an appropriate endorsing agency.

To obtain an endorsement from an endorsing agency, applicants must be victims of a severe form of trafficking in persons, and have complied with any reasonable request from the LDSS for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking.

#### 2. CONFIDENTIALITY AND NON-DISCLOSURE

- a) Confidentiality of process: The contact information for petitioners requesting a Form I-918B certification and applicants requesting a Form I-914B endorsement will only be shared as authorized under law, which may include sharing it with authorized LDSS staff, certifying agencies, endorsing agencies, and USCIS.
- b) Except as required by federal, state or local law, or if authorized by the petitioner or applicant or the petitioner's or applicant's attorney or legal representative, certifying agencies or endorsing agencies and officials shall not disclose:
  - i. the immigration status of a petitioner or an applicant; or
  - ii. the existence of a request for certification of Form I–918B or endorsement of Form I-914B.

#### 3. PROCEDURE

a) Timeliness of Submission: The request for certification of Form I-918B or endorsement of Form I-914B can be submitted at any time during the LDSS's investigation or involvement in the detection of the qualifying crime, severe form of human trafficking, or within a reasonable time after such investigation or involvement.

## b) Eligibility Standards for Issuing Form I-918B (U visa):

- **i. Jurisdiction:** The LDSS must have jurisdiction to investigate an allegation of a violation of law under the LDSS's area of authority.
- ii. Existence of a Qualifying Criminal Activity: The LDSS must have some credible evidence, which may include the petitioner's selftestimony, that the petitioner is a direct or indirect victim of one of the qualifying criminal activities listed in the U visa statute, or any other evidence deemed appropriate by the LDSS. Qualifying criminal activity includes:

Abduction	Incest	Sexual exploitation
Abusive sexual contact	Involuntary servitude	Slave trade
Being held hostage	Kidnapping	Stalking
Blackmail	Manslaughter	Torture
Domestic violence	Murder	Trafficking <sup>6</sup>
Extortion	Obstruction of justice	Unlawful criminal restraint
False imprisonment	Peonage	Witness tampering
Felonious assault	Perjury	Other related crimes
Female genital mutilation	Prostitution	Attempt, conspiracy, or
Fraud in foreign labor	Rape	solicitation to commit any of
contracting	Sexual assault	the above-mentioned crimes

The above list of qualifying criminal activities contains general categories of qualifying crimes, which are not tied to any particular statutory definition except "fraud in foreign labor contracting," which is a federal offense. Similar activities may serve as qualifying criminal activity where the nature and elements of the offenses are substantially similar to offenses included in the list. In the context of child and adult protective agencies, qualifying criminal activity may include assault, abusive sexual contact, sexual assault, domestic violence, unlawful criminal restraint, and other related crimes. In New York, it is the LDSS that is legally responsible for child and adult protective investigations (Social Services Law §§424 and 473.1(a)). As a result, LDSSs are deemed appropriate certifying agencies to certify U visas. Some of the qualifying criminal activities may not be within the LDSS's jurisdiction to detect or investigate. However, this does not preclude the LDSS from referring the petitioner to another certifying agency.

It is important to note that an individual may be eligible for a U visa even if the qualifying criminal activity is not the subject of the child or adult protective case. For example, if an LDSS determines during the course of an investigation of a child protective case that a child's parent is the victim of domestic violence and that parent assists the LDSS by cooperating with the child protective case, the LDSS may provide a U

<sup>&</sup>lt;sup>6</sup> In instances of severe forms of human trafficking, petitioners and their representatives have the discretion of requesting a U visa certification and/or T visa endorsement from the relevant agency.

<sup>7 18</sup> USC 1351.

visa certification to the child's parent based on the qualifying crime of domestic violence.

In addition, U visa certifications may also be available to "indirect victims," such as a person who cooperates with law enforcement and offers evidence when the petitioner's spouse has been the victim of the qualifying crime of murder or manslaughter. Another example involves a parent who provides information on the abuser when a child under 21 years of age is sexually abused and too traumatized to provide any information; that parent may also qualify to file for a U visa as an indirect victim. Further elaboration on indirect victims is provided under Additional Considerations in section IV(4)(d) of this LCM.

**iii.** Petitioner's Helpfulness to the Certifying Agency: The petitioner must be helpful, have been helpful, or be likely to be helpful in the LDSS's detection, investigation, or prosecution of the qualifying criminal activity. There is no requirement that the crime be charged or prosecuted. If the case is prosecuted, there is no requirement that the petitioner testify or the perpetrator be convicted.

To determine helpfulness, LDSSs will presume that a petitioner is being helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of a qualifying crime if the petitioner has provided information and assistance reasonably requested by the LDSS, even if the testimony obtained is not subsequently used at trial or an agency proceeding. The petitioner has an ongoing responsibility to be helpful. If a petitioner unreasonably refuses to assist the LDSS after reporting a crime, the petitioner will not be eligible for a U visa certification.

The petitioner's duty to remain helpful to the LDSS remains even after a U visa is granted. Once the petitioner has been granted a certification, if the petitioner unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which the petitioner is a victim, even after the certification has been submitted to USCIS or after the U visa has been issued, the LDSS, at its discretion, may notify USCIS by email, at the Vermont Service Center: LawEnforcement UTVAWA.vsc@uscis.dhs.gov.

#### c) Eligibility Standards for Issuing Form I-914B (T Visa)

**i. Jurisdiction**: The LDSS must have jurisdiction to investigate an allegation of a violation of law under the LDSS's area of authority.

ii. Trafficking Victim: The LDSS must have a reasonable basis to believe, based on credible and reliable evidence, including the applicant's self-testimony, that the applicant is a victim of a severe form of trafficking in persons, as defined by the federal TVPA (which may include sex or labor trafficking); and

**iii.** Reasonable Assistance to the Endorsing Agency: The applicant has complied with any reasonable request from the endorsing agency for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking.

The determination of whether an endorsing agency's request to an applicant for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking is "reasonable" depends on the totality of the circumstances. Factors that USCIS will take into consideration include general law enforcement and prosecutorial practices; the nature of the victimization; and the applicant's specific circumstances, including fear, severe traumatization, and the age and maturity of young applicants. Exception to "reasonable assistance" requirement may be made when the applicant is:

- (1) under 18 years old, or
- (2) unable to cooperate due to physical or psychological trauma.8

# d) Petitioner or Applicant Requirements for Submitting a Request for U Visa Certification or T Visa Endorsement Submitting the Request:

A petitioner or applicant may only submit a request for a U visa certification or T visa endorsement to the LDSS involved in the underlying case. Requests should be submitted by the legal representative of the petitioner or applicant and specify whether a U visa certification or T visa endorsement is sought. A petitioner or applicant without legal representation may be referred by the LDSS to legal service providers to obtain proper legal representation or the LDSS may consider a direct request from a petitioner or applicant due to the petitioner or applicant's extenuating circumstances (such extenuating circumstances may include, but are not limited to the unavailability of legal representation to the petitioner or applicant or available legal representation will not accept immigration cases until the applications have attained a U visa certification or T visa endorsement).

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<sup>&</sup>lt;sup>8</sup> In instances when the exception applies due to the applicant's inability to cooperate because of physical or psychological trauma, the endorsing agency may write a letter on behalf of the applicant that may be used as secondary supporting evidence to show the applicant's physical or psychological trauma.

i. technical assistance resources is provided on the OCFS foster care form entitled *Immigration and Special Immigrant Juvenile Status (SIJS) Legal* Resources that is available on the OCFS website at <a href="http://ocfs.ny.gov/main/documents/docs.asp?document-type=1&catego-ry-number=10">http://ocfs.ny.gov/main/documents/docs.asp?document-type=1&catego-ry-number=10</a>

- ii. Required Information: In submitting a request for a U visa certification or T visa endorsement, a petitioner or applicant should include the case number(s) of the child or adult protective case(s) and the name(s) of any LDSS staff involved in the case(s), if known. The petitioner or applicant should provide as much information for Form I-918B or Form I-914B as possible, including the following:
  - (1) The petitioner's or applicant's personal information
  - (2) Details of the qualifying criminal activity or severe form of trafficking in persons, including:
    - a. any known dates,
    - **b.** description of the criminal activity or severe form of trafficking in persons being investigated and the petitioner's or applicant's knowledge of and involvement in the investigation, and
    - c. Description of any known or documented injuries to the petitioner, applicant, or other victim of the qualifying crime or severe form of trafficking in persons, including physical or mental abuse.
  - (3) The petitioner's or applicant's statement as to the petitioner's or applicant's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity. Petitioners and applicants may attach additional pages as necessary, including copies of any relevant reports or findings.
- e) LDSS Process for Issuing a Completed Form I-918B or Form I-914B If all the elements listed above in Section (IV)(3)(a), (b), (c), and (d) are present, the LDSS should prepare, sign, and issue a Form I-918B or Form I-914B to the petitioner or applicant for submission to USCIS.

## i. Processing Time for Requests

In order to provide timely certifications and endorsements for eligible petitioners and applicants, certifications and endorsements should be processed and completed as soon as the eligibility requirements listed in Section IV(3)(a), (b), (c), and (d) are met. The certifying or endorsing official should issue or deny a certification or endorsement as soon as possible, but it is recommended that the decision be made no later than

60 days from the date the request was received, absent exceptional circumstances.

Where a petitioner, applicant, or a qualifying family member submits documentation to the LDSS showing that the petitioner, applicant, or qualifying family member is in removal proceedings or there are other exigent circumstances, the certification or endorsement should be processed within 14 days of receiving the request for certification or endorsement. Where the LDSS cannot issue a decision within 14 days, the LDSS may offer to issue a letter to the petitioner, applicant, or a qualifying family member indicating that the petitioner, applicant, or qualifying family member has submitted an application for a U visa certification or T visa endorsement and that it is under review.

# ii. Return Original Signed Form I-918B or I-914B to the Petitioner or Applicant

The LDSS shall return the original signed Form I-918B or Form I-914B to the petitioner or applicant. An LDSS shall not send the signed certification or endorsement separately to USCIS. The petitioner or applicant will send the original signed certification or endorsement as part of the petitioner's or applicant's application package to USCIS. For verification purposes by USCIS, the signature must be in blue ink.

## iii. Denials for Requests for Certifications or Endorsements

Where a petitioner, applicant, or a qualifying family member requests a certification or endorsement and the LDSS intends to deny such request, the LDSS must submit justification for such denial to OCFS along with supporting documentation prior to issuing a denial letter to the requestor. All intended denials, justification and supporting documentation must be submitted to <a href="mailto:UandTvisa@ocfs.ny.gov">UandTvisa@ocfs.ny.gov</a> as soon as possible, but no later than 30 days from the date the request was received.

## 4. ADDITIONAL CONSIDERATIONS

- a) LDSSs must explain to petitioners and applicants that LDSSs do not make referrals to USCIS or United States Immigration and Customs Enforcement (ICE).
- **b)** Under no circumstances will staff at an LDSS give legal advice to any petitioners, applicants, or witnesses.
- c) The role of the LDSS in the U visa process is, when applicable, to certify that an individual is a victim of a qualifying criminal activity and to certify the

helpfulness of the petitioner in the agency's detection, investigation, or prosecution of a qualifying crime. In the T visa process, the LDSS endorsement provides evidence that the applicant is a victim of a severe form of trafficking in persons and has cooperated with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking. The LDSS's role does not include determining the petitioner's or applicant's eligibility for a U or T visa, nor does an LDSS determine whether the petitioner or applicant has suffered sufficient harm to merit a U or T visa. USCIS has sole authority to make a determination on whether to approve the U and T visa petitions.

- d) Under certain circumstances, persons sometimes referred to as "indirect victims" may apply for U visa certifications. Where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity, the following persons may qualify for a U visa as indirect victims:
  - i. the alien spouse and children under 21 years of age of the direct victim of the crime; and
  - ii. if the direct victim is under 21 years of age, the parents and unmarried siblings under 18 years of age may also qualify.

In many cases where a child is the victim of criminal activity, the child may not be able to provide adequate assistance due to the child's age, trauma suffered, or other reasons. Parents of a child victim play a crucial role in detecting and reporting criminal activity, providing information, and assisting certifying officials in the detection, investigation, prosecution, conviction, or sentencing of the crime committed against the child. For purposes of determining eligibility when the direct victim is a child, USCIS will consider the age of the direct victim at the time the qualifying criminal activity occurred. The immigration status of the child is not relevant; Form I-918B can be submitted whether or not the child victim is a United States citizen.

In rare circumstances, a bystander who suffers an unusual direct injury because of a qualifying crime can be a petitioner. An example would be a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.

Indirect victims must meet the remaining eligibility requirements for a U visa to receive approval. Therefore, indirect victims must have information about the criminal activity, and have been, are being, or are willing to be helpful to certifying officials in the detection, investigation, conviction, sentencing, or

prosecution of the criminal activity. The criminal activity must have occurred in the United States.

#### 5. LANGUAGE ACCESS

LDSSs are strongly encouraged to obtain interpretation or translation services for interactions with all U visa petitioners and T visa applicants who have limited English language proficiency. Interactions include, but are not limited to, intake sessions and interviews.

## 6. REQUESTS FOR RECONSIDERATION

A denial from an LDSS of a request for a U visa certification or T visa endorsement shall not preclude a petitioner or applicant from reapplying to the LDSS at a later time if new evidence or new arguments become available. LDSSs must provide petitioners and applicants with information on reapplying after issuing a denial of a request for a U visa certification or T visa endorsement.

## 7. STATEWIDE VISA COORDINATOR

The statewide visa coordinator shall be available to certifying and endorsing agencies for the implementation of this protocol, including providing guidance and assistance on the certification and endorsement processes and helping to resolve programmatic issues.

Petitioners and applicants may contact the statewide visa coordinator with questions or concerns about the U visa certification or T visa endorsement process for their specific matter. The statewide visa coordinator can assist certifying agencies and endorsing agencies with outstanding issues or questions to reach a proper resolution. The statewide visa coordinator may be reached by emailing: <a href="mailto:penny.zhu@dos.ny.gov">penny.zhu@dos.ny.gov</a>.

## 8. AGENCY STAFF TRAINING

LDSSs are strongly encouraged to develop internal policies regarding U and T visas and to require certifying officials and endorsing officials to participate in regularly offered training opportunities made available by the state or USCIS on the following:

- a) The purpose of U and T visas and the laws and regulations governing U and T visas
- **b)** The role of the LDSS in providing U visa Form I-918B certifications and T visa Form I-914B endorsements
- c) Internal protocols for receiving and processing of Form I-918B and Form I-914B requests
- **d)** Staff responsibilities and considerations for certifying officials and endorsing officials

LDSSs must provide frontline child protective services and adult protective services staff with written documentation provided by the State concerning the purposes and availability of U visa certifications and T visa endorsements.

## 9. RECORD KEEPING AND REPORTING REQUIREMENTS

LDSSs must maintain information on the number of requests received for U visa certifications and T visa endorsements, including the number of requests granted for each type of visa. LDSSs are required to submit this information to OCFS on an annual basis as part of the county Child and Family Services Annual Plan update process.

## V. Effective Date

/S/ Suzanne E. Miles-Gustave, Esq.

Issued By:

Name: Suzanne E. Miles-Gustave, Esq.

Title: Deputy Commissioner and General Counsel, OCFS

Division/Office: OCFS Office of Legal Affairs