



MODEL LANGUAGE FOR DRAFTING A U VISA CERTIFICATION BILL

Definitions

"Certification form":

Means the certification of a Form I-918, Supplement B, U Nonimmigrant Status Certification as required by 8 U.S.C. § 1184(p).

"Certifying agency" means:

- (1) A state or local law enforcement agency;
- (2) A prosecutor;
- (3) A judge; or
- (4) Any other governmental agency that has criminal, civil or administrative investigative or prosecutorial authority.

"Certifying official" is any of the following:

- (1) The head of the certifying entity.
- (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.
- (3) A judge.
- (4) Any other certifying official defined under Section 214.14(a)(2) of Title 8 of the Code of Federal Regulations.

"Qualifying criminal activity":

[Some states just refer to the statute, while others list out the crimes]

Means an offense for which the elements are substantially similar to an offense described in 8 U.S.C. § 1101(a)(15)(U)(iii) or the attempt, solicitation or conspiracy to commit such an offense.

Qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act which includes, but is not limited to, the following crimes:

- (1) Rape.
- (2) Torture.
- (3) Human trafficking.
- (4) Incest.
- (5) Domestic violence.
- (6) Sexual assault.
- (7) Abusive sexual contact.
- (8) Prostitution.
- (9) Sexual Exploitation.
- (10) Female genital mutilation.

- (11) Being held hostage.
- (12) Peonage.
- (13) Perjury.
- (14) Involuntary servitude.
- (15) Slavery.
- (16) Kidnapping.
- (17) Abduction.
- (18) Unlawful criminal restraint.
- (19) False imprisonment.
- (20) Blackmail.
- (21) Extortion.
- (22) Manslaughter.
- (23) Murder.
- (24) Felonious assault.
- (25) Witness tampering.
- (26) Obstruction of justice.
- (27) Fraud in foreign labor contracting.
- (28) Stalking.

"Petitioner"

A person who requests a certification. (This includes indirect victims as well).

What the certifying agency will determine

- Whether the petitioner was the victim of criminal activity; and
- Whether the victim has been helpful, is being helpful or is likely to be helpful to the investigation or prosecution of the criminal activity.

Rebuttable Presumption

For purposes of determining helpfulness pursuant to subdivision (e), there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or 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.

Normal Turnaround time

- 10 of the 16 states with U visa certification laws have a 90-day turnaround time from when the request is received;
- One state has a 120-day turnaround time;
- One state has a 60-day turnaround time;
- Four states have no specific time, but rather say, "as soon as practicable after receiving the request."

Expeditious/Special Circumstances Turnaround time

- Nine of the states have a 14-day turnaround time for expeditious requests;
- Two states have a 21-day turnaround time.
- One state has a 30-day turnaround time.

Denial

"If the law enforcement agency...determines that an individual does not meet the requirements (for certification), that agency shall inform the individual of the reason, and that individual may make another request...and submit additional evidence satisfying the other requirements." (Delaware; North Dakota with similar phrasing)

Language Access

"A certifying agency's inability to communicate with a victim due to the victim's language must not be considered a refusal or failure to provide assistance." (Colorado's law)

"A certifying agency shall develop a protocol to assist petitioners:

- (a) Who have a limited proficiency in the English language.
- (b) Who are deaf, hard of hearing or speech impaired." (Nevada's law)

Providing Reports and Documentation Related to the Crime

"The certifying official shall fully complete and sign the Form I-918, Supplement B Certification and, with respect to victim helpfulness, include:

- (1) Specific details about the nature of the crime investigated or prosecuted;
- (2) A detailed description of the victim's helpfulness or likely helpfulness to the detection, investigation, or prosecution of the criminal activity; and
- (3) Copies of any documents in the possession of the certifying official that evince the harm endured by the victim due to the criminal activity." (Maryland's law)

U and T Visa Adjudication Lies with USCIS

"Notwithstanding any other provision of this section, a certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa, and completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa. Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine for a U or T visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge." (Virginia's law)

Statute of Limitations

Since there is no statute of limitations on signing certifications, this section "prohibits a certifying agency from considering the period of time between when the petitioner was victimized by the criminal activity and when the petitioner requested certification." (Nevada's law)

Status of Case for Certification

Current investigation, filing of charges, prosecution or conviction not required in order to certify. (Massachusetts, Minnesota, Utah laws)

Other Factors

"The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except whether the individual was a victim of qualifying criminal activity and the victim's helpfulness."
(Colorado's law)

Multiple Victims

"More than one victim may be identified and provided with certification, depending upon the circumstances."
(Colorado's law)

Multiple Certifiers

Any agency that can detect, investigate and/or prosecute the qualifying criminal activity is able to certify. No agency takes precedence over another. No agency should wait upon an approval or denial from another agency but rather should determine whether to certify based on the victim's helpfulness with their agency.

Reporting Mechanism

A report to the Attorney General, or a Criminal Justice Commission, or a Legislative Committee should be submitted each year including the following information:

"The total number, within the previous year, of certification requests received, requests granted, and requests denied, and the number of pending certifications on the date of the report; and
For denied certification requests", the reason for each denial. (Oregon's law)

Confidentiality Clause

"A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law, or if authorized by the victim or person requesting the Form I-918 Supplement B certification." (Utah's law)

Establish a Process for Each Certifier which Includes Training and Communication with Community-Based Organizations

[No state has such a clause in their legislation but there are issues with implementation because of this.]

Accountability

"A. A certifying agency or certifying official acting or failing to act in good faith in compliance with this chapter shall have immunity from civil or criminal liability that may otherwise occur as a result of so acting or failing to act, except for gross negligence or willful or wanton misconduct.

B. If a certifying agency fails to respond within the statutory timeframes or refuses to certify that an applicant was a victim of qualifying criminal activity, the applicant may petition a circuit court to review the determination of the certifying agency within 30 days of such determination or within 30 days of the expiration of the statutory timeframe in subsection D. The circuit court shall conduct an evidentiary hearing on such petition within 30 days of the filing of the petition. Upon conducting a hearing and the circuit court being satisfied that the applicant having proven their eligibility for completion of a certification form by a preponderance of the evidence and the circuit court having found that the certifying agency's refusal to sign was unreasonable, a circuit court judge may execute the certification form. In assessing the reasonableness of

the certifying agency's decision or failure to respond, the circuit court may consider whether the applicant has complied with the terms of this section and whether circumstances exist that would justify a deferral of a decision including whether a certification would jeopardize an ongoing criminal investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, result in the destruction of evidence, or the applicant's cooperation is not complete.

Upon finding that the certifying agency denied the application without a factual or legal justification, or failed to respond to the applicant, the circuit court shall make an award of reasonable costs and attorney fees to a prevailing applicant. Such determination shall be without prejudice to any future proceeding premised upon a material change in circumstances.

C. Any petition filed pursuant to subsection B, along with the record of all hearings and all other pleadings and papers filed, and orders entered in connection with such petition shall be kept under seal by the clerk unless otherwise ordered by the court." (Virginia's law)