December 1, 2015

2015 I-918 and I-192 Cap Case Processing Summary and Reminders

T-Files:

- If you are updating a T-file, check for A-file location and for a T-file adjudication memorandum reviewed and signed by a SISO
  - If there is no T-file adjudication memorandum, do not approve the case until
    - you obtain the related A-file,
    - review EDMS,
      - add an EDMS memorandum,
    - **or** have a SISO review and sign the T-file adjudication memorandum

I-918A Validity Dates:

- U-2, U-4, and U-5 updates:
  - I-918A validity dates: **10/1/2015 to 9/30/2019**
  - GUI (a)(20) I-765 dates: No backdating
    - Enter **day of I-765 approval to 9/30/2019**
- U-3 updates:
  - I-918A validity date: **Day of approval for 4 years minus 1 day**
    - Same dates on I-918A petition and in GUI
  - GUI (a)(20) I-765 dates: **Same as I-918A petition**
  - [Eg approval on 10/21/2015 would have an end date of 10/20/2019]

Overseas Approvals, GUI Biometrics Incomplete:

- If the I-918 has "N" in the photo field, then GUI will not produce an EAD
  - Do **not** waive the biometrics
  - In this case, approve the overseas I-918 as normal
  - Do **not** change the address to VSC

Overseas Approvals With GUI Biometrics:

[*Note change when no G-28 w/ overseas biometrics case]

- Within 48 hours of GUI approval, follow the "Stop Card Production instructions"
- Please note that this must be done within 48 hours of approving the case.

Step	Action
1	Email **VSC, Stop Card Production** with "Stop Card Production" in the subject line. This must be done **within 48 hours** of the approval update. Copy your supervisor on the email. Provide the following information:

	- Receipt number - Date and time the case was updated as approved - Important – include that it is a **VAWA** case **RESULT**: Records will perform the necessary steps to remove the card request from the queue. Records will email you upon completion of stopping the card.

- Once you receive the e-mail confirming card stoppage, you may send the file to records

GUI Errors:

- "Cap reached" error:
  1. Update GUI with *Reopen on Service Motion No Appeal*
  2. Note the **time** you updated the case and the **zip code**
  3. Create a service ticket using EZ Ticket for notice pull
  4. E-mail VSC, Metaframe
     - Subject line: *Please Pull Notice From Queue*
     - Body: Provide **service ticket #**
       - **I-918/A Receipt number**
       - **Zip code**
       - **Time of update**
  5. IT will e-mail you when the notice is pulled or destroyed
  6. Once the above has been completed, then complete the GUI approval
- POC for questions: St. Albans: Rachelle Rose-Forcier
  - Essex: Carson Carroll

Types of Work During Cap:

- During cap updating, only work I-918s identified as being on the wait list and forwarded for updating
  - For any other cases, check with a SISO before approving
- If you receive a newly approved expedite case, work that case

Workflow – Essex/38 River Road

Officers will be provided with an initial work order; 50 principals and accompanying derivatives for those officers working in the office, 100 principals and accompanying derivatives for those working from home. Subsequent work orders will be filled by picking up work for the bulk storage area created for CAP filings just inside the records room. Officers should not cherry pick through the crates as they are organized in date order. Please look for the marker (a wooden arrow) indicating where officers should begin pulling from and pull an appropriate amount of work. Officers are responsible for auditing the work to their NFTS code immediately upon bringing it back to their

workstation or before taking the work home, if appropriate. Officers should **NOT** be using NOVA to place a work order during the CAP updating period. Please see Carson with any workflow questions for Essex.

Workflow – St. Albans/Tabor

Officers at Tabor will be responsible for picking up their work orders from the I-918 CAP staging area located on the South Wall in the Humanitarian Division. There is a sign on the South wall indicating where the oldest filings begin. We want to ensure that visas are issued in date order so when picking up your files please take the oldest files on the wall. Officers are responsible to ensure that the oldest work is being updated first. To accomplish this goal we need to ensure that files are not cherry picked for whatever reason and that boxes are not bypassed when picking up work orders. As a reminder all files need to be put in your NFTS code when you pick them up from the staging area. During I-918 CAP updating we will not be using NOVA to request work. If you have any workflow questions in St Albans please email Karen.

Requesting Cap Files:

- If you need a file from the U cap staging areas:
  - E-mail Carson Carroll for files in the Essex U staging area
  - E-mail Karen Lemnah for files in the St. Albans U staging area

Reminders:

- If you create a KCC copy, remember to drop it in FCU on the designated shelf
  - If you don't the petitioner may be stuck outside the U.S.

- An I-918/A approved while in the U.S. receives an I-94
  - An I-918/A approved while abroad does **not** receive an I-94

- Write the 212 grounds on the Form I-192 approval page **clearly and legibly** for the Consular Officers

- Remember to write the validity period on the I-918 or I-918A KCC copy

- Watch out for serious, violent, gang-related or drug-related criminal activity and missing I-192 summaries
  - Refer to the *I-192 SOP* for I-192 summary criteria
    - Apply the current standards to all cases when determining if a summary is required

- Do not send a case to triage only because California PC 211 is listed as the qualifying crime
  - CA PC 211 *can* be sufficient as a QCA—it will be a case-by-case determination
    - For cap update cases, we will require additional reasons for triage review

- **"Review" versus "re-adjudication":**
  - If you check that all required work on the I-918/A was completed
  - The I-918/A checklist was done before wait listing the case,
  - all required initial evidence is in the file,
  - security checks are complete and up-to-date,
  - and you complete the cap processing checklist,
  - if appropriate, an I-192 summary was properly submitted,
    - you have reviewed the file
  - If you read the entire victim statement,
  - decide that the crime does not qualify,
  - decide not all 212 grounds marked on the I-192 were required,
  - determine that the I-192 does not merit a grant,
    - you may be re-adjudicating the case
      - *Please avoid re-adjudicating cap update cases*

Hints:

- Duplicate notices in GUI
- "Send to clerical" in GUI

To enter **KENTUCKY CONSULAR CENTER** for I-192 GUI updates:

Type "KE" + 2x

in the Consulate box

- **Ask your SISO or closest ISO3 any questions about I-918 adjudications and cap processing**

U.S. Citizenship and Immigration Services

I-918 SOP

Prepared by: Center Training Unit
Vermont Service Center

June 1, 2015

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Eligibility Requirement: Qualifying Criminal Activity

Qualifying Criminal Activity Overview

There are 26 crime categories listed in 101(a)(15)(U)(iii) of the INA that constitute qualifying criminal activity. Petitioners must demonstrate that they are a victim of one of these crimes.

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
3. Criminal activity *substantially similar* to those statutorily enumerated crimes.

Statutorily Enumerated Criminal Activity

Qualifying criminal activity consists of one or more of the following, or any similar activity, in violation of Federal, State, or local criminal law:

Abduction	Incest (victim is a minor)	Rape
Abusive Sexual Contact	Involuntary Servitude	Sexual Assault
Blackmail	Kidnapping	Sexual Exploitation
Domestic Violence	Manslaughter	Slave Trade
Extortion	Murder	Torture
False Imprisonment	Obstruction of Justice	Trafficking *
Felonious Assault	Peonage	Unlawful Criminal Restraint
Female Genital Mutilation	Perjury	Witness Tampering
Fraud in Foreign Labor Contracting	Prostitution	Stalking
Hostage		

NOTE: The attempt, conspiracy or solicitation to commit any of these listed crimes also constitutes qualifying criminal activity.

Make a referral to the Bureau of Immigration and Customs Enforcement (ICE) for cases involving trafficking. (See *Trafficking Referrals*).

Continued on next page

Similar Activity

For the purposes of adjudication, "*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.

The wide variety of criminal statutes in Federal, State and local law often result 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 but instead for the non-qualifying criminal activity. However, a qualifying crime must be certified.

Example: In the course of investigating the crime of embezzlement, federal law enforcement discovers that the subject of the investigation also batters his alien wife. The battery could be a qualifying crime if the law enforcement official certifies the battery, whether or not the law enforcement agency chooses to forward those findings for additional investigation.

Evidence of Similar Activity

When the criminal activity is not directly on point with the statutorily listed activity, the petitioner is encouraged to submit evidence demonstrating how the activity is substantially similar to one of the enumerated crimes.

Example: Police certify they are investigating a robbery. In the course of the robbery, the alien victim was beaten with a baseball bat. The only crime on the certification is robbery. However, the attack during the robbery may be considered substantially similar to felonious assault due to the nature and ferocity of the beating. Refer to the essential elements of the specific codified section of law for the crime that was certified to assist in this determination.

Evidence of 'similar activity' may include, but is not limited to:

1. A copy of the criminal statute showing the essential elements of the crime.
2. Factual information about the crime (from police reports, investigations, court transcripts, affidavits, etc.) demonstrating the similarity to the crimes enumerated in 101(a)(15)(U)(iii) of the INA.

Eligibility Requirement: Victim

Victim Overview

The petitioner must demonstrate he/she has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

There are provisions for both direct and indirect victims of qualifying criminal activity. These provisions provide specific guidance for instances involving:

- murder and manslaughter,
- victims of violent crimes who are incapacitated or incompetent, and
- victims of witness tampering, obstruction of justice, and perjury.

Direct Victim

Direct victim means an alien who is directly and proximately harmed by qualifying criminal activity.

Any I-918 may be considered under the definition of direct victim.

Bystanders Who Suffer Unusually Direct Injuries

In rare instances, a bystander during the commission of qualifying criminal activity may be eligible for consideration as a victim. Though the individual was not the one acted upon, the commission of the criminal activity may have harmed the individual in a substantial physical or mental way. See 72 FR 53014.

Example: A pregnant bystander witnesses a violent crime and the resulting stress triggers her to have a miscarriage. This individual may be considered a victim for the purposes of this classification.

Continued on next page

Indirect Victim

- The definition of victim extends beyond those directly acted upon to include those indirectly harmed by the criminal activity, such as cases involving murder and manslaughter.
- This allows for the identification of someone as a victim when the direct victim is not available or not sufficiently able to participate in an investigation or prosecution.
- Broadening the definition of victim also allows for consideration of the crimes not against a person, such as witness tampering, obstruction of justice and perjury.
- If a petitioner does not meet the definition of indirect victim, the petition must be considered in direct victim context (i.e. demonstrating direct and proximate harm based on the qualifying criminal activity).

Example: A 36-year-old woman is murdered. Her mother files the I-918 as the victim. The petitioner does not meet the restrictions for the "indirect victim" category as the deceased is over the age of 21; however, the petition may be considered in the direct victim context.

IMPORTANT: to determine eligibility, look to the age of the victim at the time the crime occurred.

Victim of Murder / Manslaughter

A petitioner may be considered an indirect victim of ***murder*** or ***manslaughter***, if he/she is one of the following in relation to the deceased:

1. Spouse of the deceased
2. Child under age 21 of the deceased
3. (*If the deceased was under the age of 21 years*) the parents of the deceased and unmarried siblings under the age of 18 of the deceased.

Continued on next page

Victim of 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:
   - To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; **or**
   - To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

Victim is incapacitated / incompetent

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/she is one of the following in relation to the incapacitated or incompetent victim of a crime:

1. Spouse
2. Child under age 21
3. (If the incompetent/incapacitated victim is under the age of 21 years) the parent and unmarried siblings under the age of 18.

NOTE: When the direct victim of any qualifying criminal activity is a child under age 21, the parent may qualify as an indirect victim. USCIS will consider a child (under age 21 and unmarried) as incapacitated due to age.

Continued on next page

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. USCIS draws a distinction between being culpable for the qualifying crime versus being culpable for other crimes.

Example One: An alien pays to be smuggled into the United States and illegally enters the country. In the process of the smuggling activity, the alien becomes a victim of involuntary servitude. Such an alien is not excluded as a victim.

***Example Two*:** An alien attempts to rob a bank and is shot by a police officer during the attempted robbery. The alien is excluded from classification as a victim of aggravated assault in relation to the shooting.

Substantial physical or Mental Abuse

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.

The following should be taken into consideration when determining whether physical or mental abuse at issue qualifies as *substantial*:

1. The nature of the injury inflicted;
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.

No single factor is a prerequisite to establish whether the abuse was substantial. The existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

Pre-existing Conditions

Some victims may have a pre-existing physical or mental injury or conditions at the time of the abuse. Consider the extent to which any such conditions were aggravated by the qualifying criminal activity.

Continued on next page

Series of Acts

Some abuse may involve a series of acts or occur repeatedly over a period of time. Consider the abuse in its totality to determine whether it is substantial. A series of acts taken together may be considered to have caused substantial physical or mental abuse even where no single act alone meets that burden.

Required Evidence

Required evidence to establish that an alien has been the victim of substantial physical or mental abuse based on qualifying criminal activity consists of the following:

- A properly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification" will be given significant weight.
- A signed statement by the petitioner describing the facts of the victimization; if the victim is under the age of 16, incapacitated or incompetent, a parent, guardian or next friend may submit the statement on behalf of the petitioner.

NOTE: The certification is not considered conclusive evidence that the petitioner is a victim of substantial physical or mental abuse. Petitioners are required to submit sufficient evidence to demonstrate that they meet this eligibility criterion.

Additional Evidence of Abuse

Additional evidence to demonstrate the abuse suffered may include, but is not limited to:

- Reports and affidavits from police, judges and other court officials
- Reports from medical personnel
- Affidavits from clergy or school officials
- Reports from social workers or other social agencies
- Protection orders
- Photos of the injuries supported by affidavits from individuals who have personal knowledge of the facts regarding the criminal activity.

U.S. Citizenship and Immigration Services

I-918 PETITION FOR U NONIMMIGRANT STATUS

Prepared by: Center Training Unit
Vermont Service Center

January 12, 2015

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6 Eligibility Requirements

6.1 Qualifying Criminal Activity

6.1.1 General

There are 26 crime categories listed in 101(a)(15)(U)(iii) of the INA that constitute qualifying criminal activity. Petitioners must demonstrate that they are a victim of one of these crimes.

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
3. Criminal activity *substantially similar* to those statutorily enumerated crimes.

6.1.2 Statutorily Enumerated Criminal Activity

Qualifying criminal activity consists of one or more of the following, or any similar activity, in violation of Federal, State, or local criminal law:

Abduction	Incest (victim is a minor)	Rape
Abusive Sexual Contact	Involuntary Servitude	Sexual Assault
Blackmail	Kidnapping	Sexual Exploitation
Domestic Violence	Manslaughter	Slave Trade
Extortion	Murder	Torture
False Imprisonment	Obstruction of Justice	Trafficking *
Felonious Assault	Peonage	Unlawful Criminal Restraint
Female Genital Mutilation	Perjury	Witness Tampering
Fraud in Foreign Labor Contracting	Prostitution	Stalking
Hostage		

NOTE: The attempt, conspiracy or solicitation to commit any of these listed crimes also constitutes qualifying criminal activity.

Make a referral to the Bureau of Immigration and Customs Enforcement (ICE) for cases involving trafficking. (See *Trafficking Referrals*).

6.1.3 Similar Activity

For the purposes of adjudication, "*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.

The wide variety of criminal statutes in Federal, State and local law often result 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 but instead for the non-qualifying criminal activity. However, a qualifying crime must be certified.

Example:
In the course of investigating the crime of embezzlement, federal law enforcement discovers that the subject of the investigation also batters his alien wife. The battery could be a qualifying crime if the law enforcement official certifies the battery, whether or not the law enforcement agency chooses to forward those findings for additional investigation.

6.1.4 Evidence of "similar activity"

When the criminal activity is not directly on point with the statutorily listed activity, the petitioner is encouraged to submit evidence demonstrating how the activity is substantially similar to one of the enumerated crimes.

Example:
Police certify they are investigating a robbery. In the course of the robbery, the alien victim was beaten with a baseball bat. The only crime on the certification is robbery. However, the attack during the robbery may be considered substantially similar to felonious assault due to the nature and ferocity of the beating. Refer to the essential elements of the specific codified section of law for the crime that was certified to assist in this determination.

Evidence of 'similar activity' may include, but is not limited to:

1. A copy of the criminal statute showing the essential elements of the crime.
2. Factual information about the crime (from police reports, investigations, court transcripts, affidavits, etc.) demonstrating the similarity to the crimes enumerated in 101(a)(15)(U)(iii) of the INA.

6.2 Victim Definition

6.2.1 General

The petitioner must demonstrate he/she has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

There are provisions for both direct and indirect victims of qualifying criminal activity. These provisions provide specific guidance for instances involving:

- murder and manslaughter,
- victims of violent crimes who are incapacitated or incompetent, and
- victims of witness tampering, obstruction of justice, and perjury.

6.2.2 Direct Victim

Direct victim means an alien who is directly and proximately harmed by qualifying criminal activity.

Any I-918 may be considered under the definition of direct victim.

6.2.3 Bystanders Who Suffer Unusually Direct injuries

In rare instances, a bystander during the commission of qualifying criminal activity may be eligible for consideration as a victim. Though the individual was not the one acted upon, the commission of the criminal activity may have harmed the individual in a substantial physical or mental way. **See 72 FR 53014.**

***Example*:**

A pregnant bystander witnesses a violent crime and the resulting stress triggers her to have a miscarriage. This individual may be considered a victim for the purposes of this classification.

6.2.4 Indirect Victim

- The definition of victim extends beyond those directly acted upon to include those indirectly harmed by the criminal activity, such as cases involving murder and manslaughter.
- This allows for the identification of someone as a victim when the direct victim is not available or not sufficiently able to participate in an investigation or prosecution.
- Broadening the definition of victim also allows for consideration of the crimes not against a person, such as witness tampering, obstruction of justice and perjury.
- If a petitioner does not meet the definition of indirect victim, the petition must be considered in direct victim context (i.e. demonstrating direct and proximate harm based on the qualifying criminal activity).

***Example*:**

A 36-year-old woman is murdered. Her mother files the I-918 as the victim. The petitioner does not meet the restrictions for the "indirect victim" category as the deceased is over the age of 21; however, the petition may be considered in the direct victim context.

Important: to determine eligibility, look to the age of the victim at the time the crime occurred.

6.2.5 Victim of Murder / Manslaughter

A petitioner may be considered an indirect victim of ***murder*** or ***manslaughter***, if he/she is one of the following in relation to the deceased:

1. Spouse of the deceased
2. Child under age 21 of the deceased
3. (*If the deceased was under the age of 21 years*) the parents of the deceased and unmarried siblings under the age of 18 of the deceased.

6.2.6 Victim of 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:

   a) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; **or**

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

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6.2.7 Victim is Incapacitated / Incompetent

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/she is one of the following in relation to the incapacitated or incompetent victim of a crime:

1. Spouse
2. Child under age 21
3. (If the incompetent/incapacitated victim is under the age of 21 years) the parent and unmarried siblings under the age of 18.

6.2.8 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. USCIS draws a distinction between being culpable for the qualifying crime versus being culpable for other crimes.

Example One:
An alien pays to be smuggled into the United States and illegally enters the country. In the process of the smuggling activity, the alien becomes a victim of involuntary servitude. Such an alien is not excluded as a victim.

***Example Two*:**
An alien attempts to rob a bank and is shot by a police officer during the attempted robbery. The alien is excluded from classification as a victim of aggravated assault in relation to the shooting.

6.2.9 Substantial Physical or Mental Abuse

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.

The following should be taken into consideration when determining whether physical or mental abuse at issue qualifies as *substantial*:

1. The nature of the injury inflicted;
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.

No single factor is a prerequisite to establish whether the abuse was substantial. The existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

6.2.10 Pre-existing Conditions

Some victims may have a pre-existing physical or mental injury or conditions at the time of the abuse. Consider the extent to which any such conditions were aggravated by the qualifying criminal activity.

6.2.11 Series of Acts

Some abuse may involve a series of acts or occur repeatedly over a period of time. Consider the abuse in its totality to determine whether it is substantial. A series of acts taken together may be considered to have caused substantial physical or mental abuse even where no single act alone meets that burden.

6.2.12 Required Evidence

Required evidence to establish that an alien has been the victim of substantial physical or mental abuse based on qualifying criminal activity consists of the following:

A properly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification" will be given significant weight.

A signed statement by the petitioner describing the facts of the victimization; if the victim is under the age of 16, incapacitated or incompetent, a parent, guardian or next friend may submit the statement on behalf of the petitioner.

NOTE: The certification is not considered conclusive evidence that the petitioner is a victim of substantial physical or mental abuse. Petitioners are required to submit sufficient evidence to demonstrate that they meet this eligibility criterion.

6.2.13 Additional Evidence of Abuse

Additional evidence to demonstrate the abuse suffered may include, but is not limited to:

- Reports and affidavits from police, judges and other court officials
- Reports from medical personnel
- Affidavits from clergy or school officials
- Reports from social workers or other social agencies
- Protection orders
- Photos of the injuries supported by affidavits from individuals who have personal knowledge of the facts regarding the criminal activity.

6.3 Possesses Information

6.3.1 General

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.

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

6.3.2 Evidence

Evidence to establish that an alien possesses information about qualifying criminal activity consists of the following:

1. Form I-918 Supplement B, "U Nonimmigrant Status Certification"
2. Police reports
3. Affidavits from police or judges
4. Documents from other court officials or law enforcement officials

The certification alone is not considered conclusive to demonstrate that the petitioner meets this eligibility requirement.

Special considerations exist regarding the possessing of information for petitioners under age 16 at the time of the crime, petitioners who are incapacitated or petitioners who are incompetent.

6.3.3 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 law enforcement on behalf of the petitioner:

1. Parent,
2. Guardian; or
3. Next friend.

For visa adjudication 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/she possesses the required information.

6.3.4 Age Exception

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.

6.3.5 Incapacitated or Incompetent Victim

If the petitioner is incompetent or incapacitated, and therefore unable to demonstrate that he/she possesses information about the qualifying criminal activity, the following individuals may provide the required assistance to law enforcement:

1. Parent
2. Guardian
3. Next friend

For visa adjudication purposes, the parent, guardian, or next friend must provide:
- Evidence that he/she possesses information,
- Evidence of his or her qualifying relationship to the petitioner, and
- Evidence of the petitioner's incapacity or incompetence of the petitioner.

6.3.6 Evidence of Incapacitation or Incompetence

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
- Court declaration of incompetence

6.3.7 Evidence Parent/ Guardian/Next Friend Possesses Info

Evidence the parent/guardian/next friend possesses information may include:

- Properly executed Form I-918 Supplement B, "U Nonimmigrant Status Certification"
- Police reports
- Court documents

6.3.8 Evidence of Relationship to Petitioner

Evidence of the relationship to the petitioner may include:

- Birth certificate of the petitioner
- Court documents demonstrating recognition of the individual as "next friend"
- Court documents demonstrating recognition of the individual as the guardian

---

6.4 Helpfulness to Law Enforcement Authorities

6.4.1 General

The petitioner must demonstrate that he or she has been, is being or is likely to be helpful to a government official or authority in the investigation or prosecution of the qualifying criminal activity.

6.4.2 Helpfulness

Helpful means assisting law enforcement authorities in the investigation or prosecution of the crime of which he or she is a victim.

In order for the petitioner to remain eligible for U nonimmigrant status, he or she cannot refuse or fail to provide reasonably requested information and assistance. USCIS interprets the statue to impose an *ongoing responsibility* to provide assistance when there is an ongoing need.

If the petitioner only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, this does not constitute helpfulness.

In order to qualify for permanent residence based on U nonimmigrant status, the alien must not have unreasonably refused to provide assistance in the criminal investigation or prosecution.

6.4.3 Evidence of Helpfulness

Evidence to establish that an alien meets the helpfulness eligibility criteria includes but is not limited to following:

1. Form I-918 Supplement B, "U Nonimmigrant Status Certification"
2. Police reports
3. Affidavits from police or judges
4. Documents from other court officials or law enforcement officials.

Special considerations exist regarding helpfulness for petitioners:
- under age 16 at the time of the crime,
- who are incapacitated or
- who are incompetent.

Special considerations also exist for the certification for those individuals previously accorded interim relief.

6.4.4 Helpfulness in question

USCIS believes it is in the best position to determine whether the petitioner is fulfilling the helpfulness requirement for this visa. Claims of helpfulness made on a certification may be considered primary but not presumptive evidence of helpfulness. You may question these claims when a review of the record warrants it. Such a determination will be made on a case-by-case basis and be driven primarily by evidence contained in the record.

6.4.5 Certifying Official Responsible for Veracity of Certifications

The alien may choose which law enforcement agency to ask for his/her certification. USCIS is not in a position to contact every prosecution district after receiving certifications from investigating authorities to verify that the prosecutor agrees with the original investigator's certification. Certifying officials are responsible for the veracity of the certifications they provide. If a certifying agency's stance changes on any given certification, the certifying agency is responsible for contacting USCIS.

6.4.6 Ongoing Helpfulness

The statute governing the helpfulness requirement (8 USC 1101(a)(15)(U)(i)(III)) is written in several verb tenses. This allows for aliens to file for U nonimmigrant status at various times in the investigation or prosecution.

This creates an on-going 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.

If USCIS is made aware that the alien ceased cooperating with law enforcement in regard to the qualifying criminal activity, then USCIS will contact the certifying agency to obtain information to determine whether the alien is satisfying the on-going helpfulness requirement.

The helpfulness requirement is written in several verb tenses which allows for helpfulness at the start of an investigation but also requires the on-going cooperation through the sentencing phase, if it should reach that stage, as the investigation and prosecution is interpreted to include the sentencing phase of the justice system.

6.4.7 Disagreement between law enforcement agencies:

The range of certifying agencies covers Federal, State and local law enforcement as well as certain other agencies who have criminal investigative jurisdiction in their respective areas of expertise. This array has the potential to create contradicting opinions within law enforcement over which entity has the dominate power to determine helpfulness at various stages of criminal cases.

The question of hierarchy within the Federal, State or local law enforcement systems is not relevant in the context of USCIS adjudication. The merits and weight of the evidence the various agencies can provide is the determinative factor.

Example:
You receive a certification from a judge citing an alien was helpful during the sentencing phase of a qualifying crime of which that alien is a victim. You also receive opposing information from the attorney who prosecuted the qualifying crime. Review the contradictory assessments from the law enforcement authorities in light of the totality of the evidence provided for the I-918. If additional evidence is needed to clarify the contradicting law enforcement authorities, follow the steps described in ***Procedure for Contacting Law Enforcement*** to obtain such information. Review the evidence received on a case-by-case basis to determine whether the alien meets the helpfulness requirement.

Weigh the offerings of the contradicting agencies/officials in light of the requirements of the visa.

6.4.8 Law Enforcement Withdraws Certification

If the original certifying agency withdraws or disavows its certification, the alien can no longer be considered to meet the helpfulness requirement.

If the withdrawal is received after the petition is approved, the petition and all derivative petitions may be revoked.

6.4.9 Other Instances

Whenever you can articulate concerns regarding the helpfulness of a petitioner, you may seek authorization from a supervisor to contact the certifying agency or any other related law enforcement agency. You do not need to seek authorization to request additional evidence from the petitioner.

Incidents beyond the alien's control may affect the course of an investigation or prosecution. The alien's eligibility shall not be adversely affected for circumstances of that nature.

Example:
The alien submits a certification from a police officer for the crime of battery. The perpetrator is killed in a car accident prior to the charge going to trial. USCIS receives a letter from the prosecutor stating the case is no longer open due to the death of the defendant so that the alien can no longer be considered helpful. The alien victim is not at fault in the failure to prosecute in this case. The alien may still rely on the initial certification to demonstrate he/she met the helpfulness criteria.

6.4.10 Procedure for Contacting Law Enforcement

If you have reason to believe the petitioner's helpfulness to, or continuing cooperation with the investigation or prosecution should be questioned, you may contact the certifying official for further information.

Stage	Description
1	The officer forwards all requests to contact the certifying agency to the ISO 3 assigned to the U program.
2	The ISO 3 reviews the filing and determines whether the law enforcement agency should be contacted.
3	If contact is warranted, the ISO 3 forwards the file and relevant questions to the Center Fraud Detection Operations Unit (CFDO).
4	CFDO will initiate and conduct all contact with the certifying agency or other related law enforcement officials and provide results of the contact.

The results of the contact and any documentation it generates will also be placed in the record.

6.5 Criminal activity violated U.S. law or occurs in the United States

6.5.1 General

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.

6.5.2 Criminal activity occurred in the United States

USCIS interprets the phrase "occurred in the United States" to mean qualifying criminal activity that occurred in the United States that is in violation of U.S. law.

6.5.3 Criminal activity violated the laws of the United States

USCIS interprets the phrase "violated the laws of the United States" to mean criminal activity that occurred outside the United States that is in violation of U.S. law.

This entails criminal activity that occurred outside the United States but that fits within a type of criminal activity listed in section 101(a)(15)(U)(iii) of the Act. Such activity will be considered to violate U.S. law if it violates a federal statute that specifically provides for extraterritorial jurisdiction.

Example:
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.

6.5.4 Evidence

Evidence to establish that the criminal activity violated U.S. law or occurred in the United States includes but is not limited to the following:

1. Properly executed Form I-918 Supplement B, "U Nonimmigrant Status Certification" stating where the criminal activity occurred
2. Police reports
3. Affidavits from police or judges
4. Documents from other court officials or law enforcement officials

If the criminal activity on Form I-918, Supplement B, occurred outside the United States, there must also be evidence demonstrating the statutory authority providing extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

U.S. Citizenship and Immigration Services

I-918 SOP

Prepared by: Center Training Unit
Vermont Service Center

August 12, 2015

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Eligibility Requirement: Qualifying Criminal Activity

Qualifying Criminal Activity Overview

There are 26 crime categories listed in 101(a)(15)(U)(iii) of the INA that constitute qualifying criminal activity. Petitioners must demonstrate that they are a victim of one of these crimes.

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
3. Criminal activity *substantially similar* to those statutorily enumerated crimes.

Statutorily Enumerated Criminal Activity

Qualifying criminal activity consists of one or more of the following, or any similar activity, in violation of Federal, State, or local criminal law:

Abduction	Incest (victim is a minor)	Rape
Abusive Sexual Contact	Involuntary Servitude	Sexual Assault
Blackmail	Kidnapping	Sexual Exploitation
Domestic Violence	Manslaughter	Slave Trade
Extortion	Murder	Torture
False Imprisonment	Obstruction of Justice	Trafficking *
Felonious Assault	Peonage	Unlawful Criminal Restraint
Female Genital Mutilation	Perjury	Witness Tampering
Fraud in Foreign Labor Contracting	Prostitution	Stalking
Hostage		

NOTE: The attempt, conspiracy or solicitation to commit any of these listed crimes also constitutes qualifying criminal activity.

Make a referral to the Bureau of Immigration and Customs Enforcement (ICE) for cases involving trafficking. (See *Trafficking Referrals*).

Continued on next page

Similar Activity

For the purposes of adjudication, "*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.

The wide variety of criminal statutes in Federal, State and local law often result 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 but instead for the non-qualifying criminal activity. However, a qualifying crime must be certified.

Example: In the course of investigating the crime of embezzlement, federal law enforcement discovers that the subject of the investigation also batters his alien wife. The battery could be a qualifying crime if the law enforcement official certifies the battery, whether or not the law enforcement agency chooses to forward those findings for additional investigation.

Evidence of Similar Activity

When the criminal activity is not directly on point with the statutorily listed activity, the petitioner is encouraged to submit evidence demonstrating how the activity is substantially similar to one of the enumerated crimes.

Example: Police certify they are investigating a robbery. In the course of the robbery, the alien victim was beaten with a baseball bat. The only crime on the certification is robbery. However, the attack during the robbery may be considered substantially similar to felonious assault due to the nature and ferocity of the beating. Refer to the essential elements of the specific codified section of law for the crime that was certified to assist in this determination.

Evidence of 'similar activity' may include, but is not limited to:

1. A copy of the criminal statute showing the essential elements of the crime.
2. Factual information about the crime (from police reports, investigations, court transcripts, affidavits, etc.) demonstrating the similarity to the crimes enumerated in 101(a)(15)(U)(iii) of the INA.

Eligibility Requirement: Victim

Victim Overview

The petitioner must demonstrate he/she has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

There are provisions for both direct and indirect victims of qualifying criminal activity. These provisions provide specific guidance for instances involving:

- murder and manslaughter,
- victims of violent crimes who are incapacitated or incompetent, and
- victims of witness tampering, obstruction of justice, and perjury.

Direct Victim

Direct victim means an alien who is directly and proximately harmed by qualifying criminal activity.

Any I-918 may be considered under the definition of direct victim.

Bystanders Who Suffer Unusually Direct Injuries

In rare instances, a bystander during the commission of qualifying criminal activity may be eligible for consideration as a victim. Though the individual was not the one acted upon, the commission of the criminal activity may have harmed the individual in a substantial physical or mental way. See 72 FR 53014.

Example: A pregnant bystander witnesses a violent crime and the resulting stress triggers her to have a miscarriage. This individual may be considered a victim for the purposes of this classification.

Continued on next page

Indirect Victim

- The definition of victim extends beyond those directly acted upon to include those indirectly harmed by the criminal activity, such as cases involving murder and manslaughter.
- This allows for the identification of someone as a victim when the direct victim is not available or not sufficiently able to participate in an investigation or prosecution.
- Broadening the definition of victim also allows for consideration of the crimes not against a person, such as witness tampering, obstruction of justice and perjury.
- If a petitioner does not meet the definition of indirect victim, the petition must be considered in direct victim context (i.e. demonstrating direct and proximate harm based on the qualifying criminal activity).

Example: A 36-year-old woman is murdered. Her mother files the I-918 as the victim. The petitioner does not meet the restrictions for the "indirect victim" category as the deceased is over the age of 21; however, the petition may be considered in the direct victim context.

IMPORTANT: to determine eligibility, look to the age of the victim at the time the crime occurred.

Victim of Murder / Manslaughter

A petitioner may be considered an indirect victim of ***murder*** or ***manslaughter***, if he/she is one of the following in relation to the deceased:

1. Spouse of the deceased
2. Child under age 21 of the deceased
3. (*If the deceased was under the age of 21 years*) the parents of the deceased and unmarried siblings under the age of 18 of the deceased.

Continued on next page

Victim of 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:
   - To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; **or**
   - To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

Victim is incapacitated / incompetent

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/she is one of the following in relation to the incapacitated or incompetent victim of a crime:

1. Spouse
2. Child under age 21
3. (If the incompetent/incapacitated victim is under the age of 21 years) the parent and unmarried siblings under the age of 18.

NOTE: When the direct victim of any qualifying criminal activity is a child under age 21, the parent may qualify as an indirect victim. USCIS will consider a child (under age 21 and unmarried) as incapacitated due to age.

Continued on next page

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. USCIS draws a distinction between being culpable for the qualifying crime versus being culpable for other crimes.

Example One: An alien pays to be smuggled into the United States and illegally enters the country. In the process of the smuggling activity, the alien becomes a victim of involuntary servitude. Such an alien is not excluded as a victim.

***Example Two*:** An alien attempts to rob a bank and is shot by a police officer during the attempted robbery. The alien is excluded from classification as a victim of aggravated assault in relation to the shooting.

Substantial physical or Mental Abuse

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.

The following should be taken into consideration when determining whether physical or mental abuse at issue qualifies as *substantial*:

1. The nature of the injury inflicted;
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.

No single factor is a prerequisite to establish whether the abuse was substantial. The existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

Pre-existing Conditions

Some victims may have a pre-existing physical or mental injury or conditions at the time of the abuse. Consider the extent to which any such conditions were aggravated by the qualifying criminal activity.

Continued on next page

Series of Acts

Some abuse may involve a series of acts or occur repeatedly over a period of time. Consider the abuse in its totality to determine whether it is substantial. A series of acts taken together may be considered to have caused substantial physical or mental abuse even where no single act alone meets that burden.

Required Evidence

Required evidence to establish that an alien has been the victim of substantial physical or mental abuse based on qualifying criminal activity consists of the following:

- A properly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification" will be given significant weight.
- A signed statement by the petitioner describing the facts of the victimization; if the victim is under the age of 16, incapacitated or incompetent, a parent, guardian or next friend may submit the statement on behalf of the petitioner.

NOTE: The certification is not considered conclusive evidence that the petitioner is a victim of substantial physical or mental abuse. Petitioners are required to submit sufficient evidence to demonstrate that they meet this eligibility criterion.

Additional Evidence of Abuse

Additional evidence to demonstrate the abuse suffered may include, but is not limited to:

- Reports and affidavits from police, judges and other court officials
- Reports from medical personnel
- Affidavits from clergy or school officials
- Reports from social workers or other social agencies
- Protection orders
- Photos of the injuries supported by affidavits from individuals who have personal knowledge of the facts regarding the criminal activity.

Eligibility Requirement: Possesses Information

Possesses Information Overview

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.

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

Evidence

Evidence to establish that an alien possesses information about qualifying criminal activity consists of the following:

1. Form I-918 Supplement B, "U Nonimmigrant Status Certification",
2. Police reports,
3. Affidavits from police or judges, or
4. Documents from other court officials or law enforcement officials.

The certification alone is not considered conclusive to demonstrate that the petitioner meets this eligibility requirement.

Special considerations exist regarding the possessing of information for petitioners under age 16 at the time of the crime, petitioners who are incapacitated or petitioners who are incompetent.

Victim Under 17 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 law enforcement on behalf of the petitioner:

1. Parent,
2. Guardian; or
3. Next friend.

For visa adjudication 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/she possesses the required information.

Continued on next page

Age Exception

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.

Incapacitated or Incompetent Victim

If the petitioner is incompetent or incapacitated, and therefore unable to demonstrate that he/she possesses information about the qualifying criminal activity, the following individuals may provide the required assistance to law enforcement:

1. Parent
2. Guardian
3. Next friend

For visa adjudication purposes, the parent, guardian, or next friend must provide:

- Evidence that he/she possesses information,
- Evidence of his or her qualifying relationship to the petitioner, and
- Evidence of the petitioner's incapacity or incompetence of the petitioner.

Evidence of Incapacitation or Incompetence

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
- Court declaration of incompetence

Evidence Parent / Guardian / Next Fried Possesses Information

Evidence the parent/guardian/next friend possesses information may include:

- Properly executed Form I-918 Supplement B, "U Nonimmigrant Status Certification"
- Police reports
- Court documents

Continued on next page

Evidence of Relationship to Petitioner	Evidence of the relationship to the petitioner may include: • Birth certificate of the petitioner • Court documents demonstrating recognition of the individual as "next friend" • Court documents demonstrating recognition of the individual as the guardian

Eligibility Requirement: Helpfulness

Helpfulness to Law Enforcement Authorities Overview

The petitioner must demonstrate that he or she has been, is being or is likely to be helpful to a government official or authority in the investigation or prosecution of the qualifying criminal activity.

Helpfulness

Helpful means assisting law enforcement authorities in the investigation or prosecution of the crime of which he or she is a victim.

In order for the petitioner to remain eligible for U nonimmigrant status, he or she cannot refuse or fail to provide reasonably requested information and assistance. USCIS interprets the statue to impose an *ongoing responsibility* to provide assistance when there is an ongoing need.

If the petitioner only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, this does not constitute helpfulness.

In order to qualify for permanent residence based on U nonimmigrant status, the alien must not have unreasonably refused to provide assistance in the criminal investigation or prosecution.

Evidence of Helpfulness

Evidence to establish that an alien meets the helpfulness eligibility criteria includes but is not limited to following:

1. Form I-918 Supplement B, "U Nonimmigrant Status Certification"
2. Police reports
3. Affidavits from police or judges
4. Documents from other court officials or law enforcement officials.

Special considerations exist regarding helpfulness for petitioners:

- under age 16 at the time of the crime,
- who are incapacitated or
- who are incompetent.

Special considerations also exist for the certification for those individuals previously accorded interim relief.

Continued on next page

Helpfulness in Question

USCIS believes it is in the best position to determine whether the petitioner is fulfilling the helpfulness requirement for this visa. Claims of helpfulness made on a certification may be considered primary but not presumptive evidence of helpfulness. You may question these claims when a review of the record warrants it. Such a determination will be made on a case-by-case basis and be driven primarily by evidence contained in the record.

Certifying Official Responsible for Veracity of Certifications

The alien may choose which law enforcement agency to ask for his/her certification. USCIS is not in a position to contact every prosecution district after receiving certifications from investigating authorities to verify that the prosecutor agrees with the original investigator's certification. Certifying officials are responsible for the veracity of the certifications they provide. If a certifying agency's stance changes on any given certification, the certifying agency is responsible for contacting USCIS.

Ongoing Helpfulness

The statute governing the helpfulness requirement (8 USC 1101(a)(15)(U)(i)(III)) is written in several verb tenses. This allows for aliens to file for U nonimmigrant status at various times in the investigation or prosecution.

This creates an on-going 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.

If USCIS is made aware that the alien ceased cooperating with law enforcement in regard to the qualifying criminal activity, then USCIS will contact the certifying agency to obtain information to determine whether the alien is satisfying the on-going helpfulness requirement.

The helpfulness requirement is written in several verb tenses which allows for helpfulness at the start of an investigation but also requires the on-going cooperation through the sentencing phase, if it should reach that stage, as the investigation and prosecution is interpreted to include the sentencing phase of the justice system.

Continued on next page

The range of certifying agencies covers Federal, State and local law enforcement as well as certain other agencies who have criminal investigative jurisdiction in their respective areas of expertise. This array has the potential to create contradicting opinions within law enforcement over which entity has the dominate power to determine helpfulness at various stages of criminal cases.

The question of hierarchy within the Federal, State or local law enforcement systems is not relevant in the context of USCIS adjudication. The merits and weight of the evidence the various agencies can provide is the determinative factor.

Example: You receive a certification from a judge citing an alien was helpful during the sentencing phase of a qualifying crime of which that alien is a victim. You also receive opposing information from the attorney who prosecuted the qualifying crime. Review the contradictory assessments from the law enforcement authorities in light of the totality of the evidence provided for the I-918. If additional evidence is needed to clarify the contradicting law enforcement authorities, follow the steps described in ***Procedure for Contacting Law Enforcement*** to obtain such information. Review the evidence received on a case-by-case basis to determine whether the alien meets the helpfulness requirement.

Weigh the offerings of the contradicting agencies/officials in light of the requirements of the visa.

Law Enforcement Withdraws Certification

If the original certifying agency withdraws or disavows its certification, the alien can no longer be considered to meet the helpfulness requirement.

If the withdrawal is received after the petition is approved, the petition and all derivative petitions may be revoked.

Continued on next page

Other Instances

Whenever you can articulate concerns regarding the helpfulness of a petitioner, you may seek authorization from a supervisor to contact the certifying agency or any other related law enforcement agency. You do not need to seek authorization to request additional evidence from the petitioner.

Incidents beyond the alien's control may affect the course of an investigation or prosecution. The alien's eligibility shall not be adversely affected for circumstances of that nature.

Example: The alien submits a certification from a police officer for the crime of battery. The perpetrator is killed in a car accident prior to the charge going to trial. USCIS receives a letter from the prosecutor stating the case is no longer open due to the death of the defendant so that the alien can no longer be considered helpful. The alien victim is not at fault in the failure to prosecute in this case. The alien may still rely on the initial certification to demonstrate he/she met the helpfulness criteria.

Procedure for Contacting Law Enforcement

If you have reason to believe the petitioner's helpfulness to, or continuing cooperation with the investigation or prosecution should be questioned, you may contact the certifying official for further information.

Stage	Description
1	The officer forwards all requests to contact the certifying agency to the ISO 3 assigned to the U program.
2	The ISO 3 reviews the filing and determines whether the law enforcement agency should be contacted.
3	If contact is warranted, the ISO 3 forwards the file and relevant questions to the Center Fraud Detection Operations Unit (CFDO).
4	CFDO will initiate and conduct all contact with the certifying agency or other related law enforcement officials and provide results of the contact.

The results of the contact and any documentation it generates will also be placed in the record.

Eligibility Requirement: Criminal Activity Violated U.S. Law

Criminal Activity Overview

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.

Criminal Activity 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.

Criminal Activity Violated the Laws of the United States

USCIS interprets the phrase "violated the laws of the United States" to mean criminal activity that occurred outside the United States that is in violation of U.S. law.

This entails criminal activity that occurred outside the United States but that fits within a type of criminal activity listed in section 101(a)(15)(U)(iii) of the Act. Such activity will be considered to violate U.S. law if it violates a federal statute that specifically provides for extraterritorial jurisdiction.

Example: 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.

Continued on next page

Evidence

Evidence to establish that the criminal activity violated U.S. law or occurred in the United States includes but is not limited to the following:

1. Properly executed Form I-918 Supplement B, "U Nonimmigrant Status Certification" stating where the criminal activity occurred
2. Police reports
3. Affidavits from police or judges
4. Documents from other court officials or law enforcement officials

If the criminal activity on Form I-918, Supplement B, occurred outside the United States, there must also be evidence demonstrating the statutory authority providing extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

U.S. Citizenship and Immigration Services

I-918 SOP

Prepared by: Center Training Unit
Vermont Service Center

March 16, 2015

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Eligibility Requirement: Qualifying Criminal Activity

Qualifying Criminal Activity Overview

There are 26 crime categories listed in 101(a)(15)(U)(iii) of the INA that constitute qualifying criminal activity. Petitioners must demonstrate that they are a victim of one of these crimes.

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
3. Criminal activity *substantially similar* to those statutorily enumerated crimes.

Statutorily Enumerated Criminal Activity

Qualifying criminal activity consists of one or more of the following, or any similar activity, in violation of Federal, State, or local criminal law:

Abduction	Incest (victim is a minor)	Rape
Abusive Sexual Contact	Involuntary Servitude	Sexual Assault
Blackmail	Kidnapping	Sexual Exploitation
Domestic Violence	Manslaughter	Slave Trade
Extortion	Murder	Torture
False Imprisonment	Obstruction of Justice	Trafficking *
Felonious Assault	Peonage	Unlawful Criminal Restraint
Female Genital Mutilation	Perjury	Witness Tampering
Fraud in Foreign Labor Contracting	Prostitution	Stalking
Hostage		

NOTE: The attempt, conspiracy or solicitation to commit any of these listed crimes also constitutes qualifying criminal activity.

Make a referral to the Bureau of Immigration and Customs Enforcement (ICE) for cases involving trafficking. (See *Trafficking Referrals*).

Continued on next page

Similar Activity

For the purposes of adjudication, "*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.

The wide variety of criminal statutes in Federal, State and local law often result 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 but instead for the non-qualifying criminal activity. However, a qualifying crime must be certified.

Example: In the course of investigating the crime of embezzlement, federal law enforcement discovers that the subject of the investigation also batters his alien wife. The battery could be a qualifying crime if the law enforcement official certifies the battery, whether or not the law enforcement agency chooses to forward those findings for additional investigation.

Evidence of Similar Activity

When the criminal activity is not directly on point with the statutorily listed activity, the petitioner is encouraged to submit evidence demonstrating how the activity is substantially similar to one of the enumerated crimes.

Example: Police certify they are investigating a robbery. In the course of the robbery, the alien victim was beaten with a baseball bat. The only crime on the certification is robbery. However, the attack during the robbery may be considered substantially similar to felonious assault due to the nature and ferocity of the beating. Refer to the essential elements of the specific codified section of law for the crime that was certified to assist in this determination.

Evidence of 'similar activity' may include, but is not limited to:

1. A copy of the criminal statute showing the essential elements of the crime.
2. Factual information about the crime (from police reports, investigations, court transcripts, affidavits, etc.) demonstrating the similarity to the crimes enumerated in 101(a)(15)(U)(iii) of the INA.