



**NEW YORK STATE DEPARTMENT OF LABOR
MEMORANDUM & ORDER REGARDING CERTIFICATION OF U VISA PETITIONS**

1. PURPOSE

The purpose of this order is to establish guidelines and procedures for U visa certifications signed by the New York State Department of Labor (NYSDOL).¹

2. BACKGROUND

Congress created the U visa in 2000 in recognition of the fact that many undocumented immigrant crime victims do not cooperate with law enforcement out of fear that such contact could lead to their deportation. The U visa encourages these victims to report crimes and cooperate in criminal investigations by offering temporary legal status and work authorization. The U visa was created with the express purpose of strengthening the ability of law enforcement agencies to detect, investigate and prosecute crimes committed against undocumented immigrants, while simultaneously offering protection to the victims.

While it is the policy of the NYSDOL not to inquire into the immigration status of claimants or witnesses, or to share witness information with the immigration authorities, the NYSDOL recognizes that undocumented victims of labor-related criminal offenses may nevertheless be reluctant to assist in the investigation or prosecution of that criminal activity out of fear of deportation. The U visa allows the NYSDOL to more aggressively pursue perpetrators of criminal labor violations while building trust in immigrant communities.

**3. THE NEW YORK STATE DEPARTMENT OF LABOR IS AN APPROPRIATE
CERTIFYING AGENCY**

Crime victims applying for a U visa must submit a certification completed by a law enforcement agency to the United States Citizenship and Immigration Services (“USCIS”) affirming that the applicant has been, is being, or is likely to be helpful to that agency in the investigation or prosecution of the criminal activity. As a state law enforcement agency with the jurisdiction to detect and/or investigate certain U visa-qualifying crimes under the New York State Labor Law, the NYSDOL is an appropriate U visa certifying agency.

¹ This order may be applied to U visas created by future amendments to relevant immigration statutes.

4. PROCEDURE

a. WHEN A U VISA IS APPROPRIATE

- i. The NYSDOL must have jurisdiction to investigate the case (i.e., the case must contain allegations of violations of New York State Labor Law) and the allegations, if proven, must make the claimant a victim of one of the offenses listed in the U visa statute. These offenses include

Rape	Being held hostage	Manslaughter
Torture	Peonage	Murder
Trafficking	Involuntary servitude	Felonious assault
Incest	Slave trade	Witness tampering
Domestic violence	Kidnapping	Obstruction of justice
Sexual assault	Abduction	Perjury
Abusive sexual contact	Unlawful criminal	Attempt, conspiracy, or
Prostitution	restraint	solicitation to commit
Sexual exploitation	False imprisonment	any of the above
Female genital	Blackmail	mentioned crimes
mutilation	Extortion	

The above list of qualifying criminal activities is a list of “general categories” of qualifying crimes which are not tied to any particular statutory definition. The list is not exhaustive and 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.

- ii. The request for certification must be submitted at any time during, or within a reasonable time after the conclusion of, the NYSDOL’s investigation or involvement in the detection of the qualifying crime.
- iii. The potential U visa applicant must currently be, have been, or be likely to be helpful in the NYSDOL’s investigation. The individual must have actually provided, or be willing to provide, relevant testimony to the NYSDOL during its investigation, even if that testimony is not subsequently used at trial. There is no requirement that the crime be charged or prosecuted; if the case is prosecuted there is no requirement that the victim testify or the perpetrator be convicted.

b. SUBMITTING A REQUEST FOR U VISA CERTIFICATION

If all the factors listed in Section 4(a)(i) through (iii) are present, the NYSDOL may prepare a law enforcement certification form (USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification) for the claimant/witness' submission to the USCIS.

i. PROCEDURE

1. The Commissioner of Labor may delegate her/his authority to issue U visa certifications on behalf of the NYSDOL.²
2. Claimants or witnesses in a NYSDOL investigation who believe they have been victims of a qualifying criminal activity and are being, have been, or are likely to be helpful to the NYSDOL detection or investigation of that criminal activity may submit a request for U Visa certification to the Commissioner of Labor or her/his designee.
3. In submitting the request for U visa certification, the claimant or witness should include the NYSDOL claim number and the name of any NYSDOL staff involved in the claim, if known. The claimant or witness should also fill out as much of the certification form (USCIS Form I-918, Supplement B) as possible, including:
 - a. The victim's personal data;
 - b. The details of the crime, including
 - i. Any known dates,
 - ii. A description of the criminal activity being investigated and the victim's knowledge of and involvement in the investigation, and
 - iii. A description of any known or documented injuries to the victim, including physical or mental abuse; and
 - c. The victim's statement as to his or her helpfulness in the investigation and/or prosecution of the criminal activity.

Claimants or witnesses may attach additional pages as necessary, including copies of any relevant reports or findings.

² Please refer to *Letter of designation of certifying authority*.

4. Requests for U Visa certification will also be accepted from advocates representing NYSDOL claimants or witnesses. For the NYSDOL to communicate with said advocate regarding the claim and/or the request for U Visa certification, the claimant or witness should submit a written statement to the NYSDOL authorizing the NYSDOL to communicate directly with the advocate.

5. TIMELINE

In order to protect eligible victims from deportation, certifications should be sought as soon as potential applicants meet the eligibility requirements listed in Section 4(a).

The individual designated by the Commissioner to issue U visa certifications shall issue or deny a certification as soon as possible, but no later than thirty (30) days from the date the request was received.

6. ADDITIONAL CONSIDERATIONS

- a. NYSDOL enforces New York's Labor Laws regardless of the immigration status of any individuals involved. NYSDOL staff will not question claimants or witnesses about their immigration status, unless it is to discuss the possibility of a U Visa certification. Pursuant to Sec. 4(b)(i)(3) of this order, NYSDOL staff will not discuss the possibility of U Visa certifications with claimants or witnesses until after receiving authorization to do so from a supervisor, who would have by then discussed the matter with the Commissioner of Labor or her/his designee. In any conversation regarding the possibility of U Visa certification, NYSDOL staff shall explain to the claimant or witness that NYSDOL does not make referrals to the USCIS or ICE. Under no circumstances will NYSDOL staff give immigration legal advice to any victim.
- b. The role of the NYSDOL in the U Visa process is to certify the helpfulness of the claimant or witness in the NYSDOL investigation, not to determine the applicant's eligibility for a U visa or whether the applicant has suffered sufficient harm to merit a visa. USCIS will adjudicate the U Visa petition.
- c. In addition to direct victims, the U Visa encompasses certain indirect victims, such as the victims of witness tampering, obstruction of justice and perjury, which are not crimes against a person. The claimant or witness may be considered a victim of

witness tampering, obstruction of justice, or perjury, including any attempt, conspiracy, or solicitation to commit one or more of those offenses if:

- i. The victim has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
 - ii. 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:
 1. To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
 2. To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.
- d. If the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, even after the certification has been submitted to the USCIS, the NYSDOL may notify the USCIS by sending a written statement to the address listed on the USCIS Form I-918, Supplement B.