

	WEST ORANGE POLICE DEPARTMENT WRITTEN DIRECTIVE SYSTEM		7:48
	VICTIMS OF TRAFFICKING AND PROTECTION ACT		
	Effective Date: 02 25 19		Supersedes: N/A

7:48-1 PURPOSE

The purpose of this directive is to establish the role of with agency with respect to the certifying “U or T-Visa” pursuant to the Victims of Trafficking and Violence Protection Act.

7:48-2 POLICY

It is the policy of this department to assist eligible crime victims in applying for U & T Visas, as appropriate, consistent with the provisions of the Victims of Trafficking and Protection Act, 22 USC 7101.

7:48-3 GENERAL

In October 2000, the U.S. Congress passed the Victims of Trafficking and Violence Protection Act, which created U and T visas. The U visa is available to immigrant victims of certain qualifying crimes, such as sexual exploitation, false imprisonment, and abduction, who have suffered substantial physical or mental abuse as a result of being a victim, have information about the criminal activity, and who are helpful in the investigation or prosecution of the crime. T visas are intended for individuals who are victims of trafficking, comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking, and can demonstrate that they would suffer extreme hardship if they were removed from the United States. In addition, victims of human trafficking may be eligible for temporary immigration status, referred to as continued presence, which allows them to remain in the United States because they are a potential witness. Law enforcement agencies are a crucial part of the process for victims to obtain these types of immigration relief. Agencies are encouraged to refer to available resources on this topic from the Department of Homeland Security.

Congress created both visas to (1) strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, human trafficking, and other criminal activities; and (2) to protect immigrant victims of such activities. Lawmakers recognized that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes. Both visa programs aim to encourage victims to report crime and participate in the various stages of the investigation. This process fosters increased trust between law enforcement agencies and the immigrant populations they serve. As a crime-fighting tool, both visa programs reinforce a law enforcement agency's commitment to hold offenders accountable, promote victim safety, enhance protection, and assist victims in their recovery from trauma as a result of criminal activity. Without the temporary legal immigration status that both visa programs afford to some immigrant crime

victims, the victims may be afraid to seek assistance from law enforcement and instead risk continued exploitation and ongoing victimization.

7:48-4 GENERAL

- a. Applicants for U or T-Visa are administered by the U.S. Citizenship and Immigration Services (USCIS) which is a component of the United States Department of Homeland Security (DHS).
- b. The U visa is an immigration benefit for victims of certain crimes who meet eligibility requirements.
- c. The T visa is an immigration benefit for victims of human trafficking who meet certain eligibility requirements.
- d. With respect to the applicant for U or T-Visa, the term “Helpful” means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim. This includes providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the visa revoked by USCIS.
- e. For the purposes of this directive and the associated application for T or U Visas; the term “certifying official” shall be narrowly construed to be the Chief of Police.
- f. U or T-Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies shall be permanently affixed to this directive. This manual provides a plethora of related information related to qualifying offense and the certification and review processes.

7:48-5 U-VISA

- a. USCIS may find an individual eligible for a U-visa if the victim:
 1. Is the direct or indirect victim of qualifying criminal activity;
 2. Has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
 3. Has information about the criminal activity; and
 4. Was helpful, is being helpful, or is likely to be helpful to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity
- b. Additionally, the victim must be admissible to the United States based on a review of his or her criminal history, immigration violations, and other factors. If

found inadmissible, an individual may apply for a waiver of inadmissibility for which he or she may be eligible.

- c. The U visa allows eligible victims to temporarily remain and work in the United States, generally for four years. While in U nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement and cannot unreasonably refuse to assist with the investigation or prosecution of the criminal activity. If certain conditions are met, an individual with a U visa may apply for adjustment to lawful permanent resident status (i.e., seek a green card in the United States) after three years.
- d. Additionally, certain family members of a U visa recipient may also be eligible to live and work in the United States as “derivative” U visa recipients based on their relationship with the principal recipient. These include:
- Unmarried children under the age of 21;
 - Spouse;
 - Parents of U visa petitioners under age 21; and
 - Unmarried siblings under 18 years old of U visa petitioners under age 21.
- The following table shows the criminal activities that qualify a victim for the U visa. These are not specific crimes or citations to a criminal code; various federal, state, and local statutes could fall into these general categories of crime. One exception is “Fraud in Foreign Labor Contracting,” which is the federal offense defined at 18 USC 1351.

e. Qualifying Crimes:

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

NOTE: These include attempt, conspiracy, or solicitation to commit any of the above and other related crimes, as well as any similar activity where the elements of the crime are *substantially similar*. “Substantially similar” typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity. For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation, or prosecution is armed robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes, therefore armed robbery may be “substantially similar” to the qualifying crime of felonious assault.

7:48-6 T-VISA

- a. USCIS may find an individual eligible for a T-visa if the victim:
 - Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;
 - Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
 - Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
 - Would suffer extreme hardship involving unusual and severe harm if removed from the United States.
- b. The victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for a waiver of inadmissibility for which he or she may be eligible.
- c. The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking.
- d. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.
- e. Certain family members of a T visa recipient may also be eligible to live and work in the United States as "derivative" T visa holders. These are:
 1. Unmarried children under the age of 21;
 2. Spouse;
 3. Parents of principal T visa recipients under age 21 at the time of application;
 4. Unmarried siblings under 18 years old of principal T visa applicants under age 21; and
 5. Adult or minor children of certain immediate family members of the T visa recipient
- f. While in the United States, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking.

7:48-7 PROCEDURES

- a. USCIS has the sole authority to grant or deny a T or U-visa. The certification does not guarantee that the visa petition will be approved by USCIS.
- b. A certifying official's decision to sign a certification is completely discretionary.

- c. Neither DHS nor any other federal agency has the authority to require or demand that any agency or official sign the certification. There is also no legal obligation to complete and sign the certification form.
- d. The certification form should be completed by the certifying agency or official (and not the victim, or the victim's advocate or attorney).
- e. By signing a certification, the certifying agency or official attests that the information is true and correct to the best of the certifying official's knowledge.
- f. The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications.
- g. Federal, state, local, tribal, or territorial judges may sign U visa certifications.
- h. Return the signed form to the victim (or the victim's attorney, representative, etc.). The certifying official should not send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS.
- i. Be prompt in providing the signed certification to the victim or the victim's attorney or representative. USCIS must receive the visa petition, which includes the appropriate form within six (6) months of the date the form was signed.
 - The victim or the victim's attorney or representative, must receive the form back from this agency within 120 days of receipt.
- j. If the certifying official is providing additional documents (e.g., a copy of the police report or court order, or judicial findings, additional statements, photos, etc.) along with the certification or if more space is needed to fill out any of the information on the form, the official should provide that additional information as advised by the form instructions.
- k. When completing the Form, certifying officials are encouraged to check the boxes for all qualifying criminal activities detected based on the facts of the case at the time of certification. Certifying officials should not limit the boxes that are checked to the criminal activities that the agency has decided to investigate or prosecute and should check all qualifying criminal activities present in the case.
- l. As requested on the form, the certifying official should document the helpfulness of the victim and whether the victim refused to be helpful at any time throughout the investigation or prosecution.
- m. The certification form must contain an original signature and should be signed in a color other than black for verification purposes.
- n. Officials may ask any questions necessary to complete a T or U-visa certification. They may generally not disclose the immigration status of a person requesting T or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant. Nothing in this section shall be construed to restrict, prohibit, or in any way prevent a law enforcement agency or official from

sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

7:48-7 SUPPLEMENTAL

The decision whether to sign a certification is at the certifying agency's discretion. Each certifying agency should exercise its discretion on a case-by-case basis consistent with applicable U.S. laws and regulations, and the policies and procedures outlined in this guide as well as any internal policies of the certifying agency. Nothing within this Directive shall remove the discretion to refer the victim to the appropriate County Prosecutor's Office, Judge, or Government official who may have more detailed knowledge of the case or the applicant. If a law enforcement officer does not feel comfortable with completing/submitting a certification on a particular case, they should defer the decision to the prosecutor or judge.

This agency shall post information for the public regarding its T- and U-Visa procedures on its website.