

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 350

3 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

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10 AN ACT

11 RELATING TO CRIME VICTIMS; ENACTING THE U VISA CERTIFICATION
12 ACT; STANDARDIZING THE CERTIFICATION PROCESS FOR U VISA
13 APPLICATIONS.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 31 NMSA 1978 is
17 enacted to read:

18 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
19 "U Visa Certification Act"."

20 SECTION 2. A new section of Chapter 31 NMSA 1978 is
21 enacted to read:

22 "[NEW MATERIAL] DEFINITIONS--As used in the U Visa
23 Certification Act:

24 A. "accredited representative" means a person who:

25 (1) is approved by the United States

1 department of justice to represent a person before the United
2 States department of homeland security; and

3 (2) is employed by a nonprofit, religious,
4 charitable, social service or other similar organization that
5 is recognized by and in good standing with the United States
6 department of justice to represent such persons;

7 B. "certification form" means a United States
8 citizenship and immigration services form I-918 supplement B,
9 or any successor form, required by federal immigration law
10 certifying that a person is a victim of a qualifying crime;

11 C. "certifying entity" has the same definition as
12 in 8 C.F.R. Section 214.14(a)(2) and includes:

13 (1) an agency of the state or local political
14 subdivision of the state that employs certified law enforcement
15 officers, the police department of a tribe that has entered
16 into an agreement with the department pursuant to Section
17 29-1-11 NMSA 1978 or any other authority or agency that has a
18 responsibility for the detection, investigation or prosecution
19 of a qualifying crime;

20 (2) a district attorney's office;

21 (3) a district court, children's court, family
22 court, municipal court or magistrate court;

23 (4) any other agency of the state or local
24 political subdivision of the state that has the jurisdiction to
25 detect, investigate or prosecute crimes; or

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1 (5) any entity that has criminal detection or
2 investigative jurisdiction in the entity's area of expertise,
3 including the human services department, the children, youth
4 and families department and the workforce solutions department;

5 D. "certifying official" means:

6 (1) the principal official of a certifying
7 entity;

8 (2) a person in a supervisory role who has
9 been specifically designated by the principal official of the
10 certifying entity to issue United States citizenship and
11 immigration services form I-918 supplement B certifications;

12 (3) a district court judge, children's court
13 judge, family court judge, municipal court judge or magistrate;
14 or

15 (4) any other certifying official defined
16 under 8 C.F.R. Section 214.14(a)(3);

17 E. "helpfulness" means the victim possesses
18 credible and reliable information based on the victim's
19 knowledge of the details of the qualifying criminal activity or
20 events leading up to the qualifying criminal activity,
21 including specific facts about the qualifying criminal
22 activity, that leads law enforcement to determine that the
23 victim has assisted, is assisting or is likely to provide
24 assistance in the investigation or prosecution of the
25 qualifying criminal activity and includes an ongoing

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1 responsibility of the victim to provide assistance;

2 F. "qualifying criminal activity" has the same
3 definition as in 8 C.F.R. Section 214.14(a)(9) and includes any
4 activity that constitutes a crime as defined pursuant to New
5 Mexico law or local law for which the nature and elements of
6 the offenses are substantially similar to the general
7 categories of offenses enumerated in 8 U.S.C. Section
8 1101(a)(15)(U) or any other similar criminal activities, and
9 the attempt, conspiracy or solicitation to commit any of those
10 offenses, regardless of the statutory language or title used;
11 and

12 G. "victim" means an individual who has suffered
13 direct and proximate harm as a result of the commission of a
14 qualifying criminal activity and has the same meaning as in 8
15 C.F.R. Section 214.14(a)(14), which includes direct, indirect
16 and bystander victims."

17 SECTION 3. A new section of Chapter 31 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] ELIGIBILITY FOR U VISA CERTIFICATION.--

20 A. At the request of a victim, the guardian of a
21 victim or the attorney or accredited representative of a
22 victim, a certifying official shall certify, on the
23 certification form, the occurrence of a qualifying criminal
24 activity against the victim and the helpfulness of the victim;
25 provided that the victim was helpful, is being helpful or is

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1 likely to be helpful to the detection, investigation or
 2 prosecution of the qualifying criminal activity.

3 B. A victim who has neither refused nor failed to
 4 provide information and assistance reasonably requested shall
 5 be entitled to a presumption of helpfulness. If a victim has
 6 refused to provide assistance or cooperation, the certifying
 7 official shall determine if the request for assistance or the
 8 refusal was reasonable.

9 C. More than one victim may be identified and
 10 provided with certification, depending upon the circumstances
 11 of the qualifying criminal activity.

12 D. A certifying official shall not refuse to
 13 complete the certification form or to otherwise certify a
 14 victim's helpfulness when:

- 15 (1) an investigation has already concluded;
- 16 (2) a case has already been prosecuted or
 17 otherwise closed;
- 18 (3) the time for commencing a criminal case
 19 has expired;
- 20 (4) criminal charges were not filed;
- 21 (5) there was no conviction for the alleged
 22 qualifying criminal activity; or
- 23 (6) there was no prosecution for the alleged
 24 qualifying criminal activity.

25 E. The certifying entity shall not consider any

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1 other factors in deciding whether to sign the certification
2 form, except whether the individual was a victim of a
3 qualifying criminal activity and the victim's helpfulness.

4 F. A certifying official or a certifying entity
5 shall not withdraw the certification except when the victim
6 refuses to provide information or assistance after reasonable
7 request as provided in Subsection B of Section 4 of the U Visa
8 Certification Act."

9 SECTION 4. A new section of Chapter 31 NMSA 1978 is
10 enacted to read:

11 "[NEW MATERIAL] U VISA CERTIFICATION PROCEDURES FOR
12 CERTIFYING OFFICIALS.--

13 A. A certifying official who has determined that a
14 victim has been helpful shall:

15 (1) fully complete and sign the certification
16 form, describing:

17 (a) the nature of the qualifying
18 criminal activity detected, investigated or prosecuted; and

19 (b) the victim's helpfulness or likely
20 helpfulness to the detection, investigation or prosecution of
21 the qualifying criminal activity; and

22 (2) process the certification form within:

23 (a) thirty days of a victim's request
24 for certification; or

25 (b) seven days from the first business

1 day following the day the victim requested certification if the
 2 victim is engaged in immigration removal proceedings.

3 B. A certifying official who has determined that a
 4 victim has not been helpful shall provide in writing to the
 5 victim or the victim's attorney or accredited representative
 6 the reasons for that determination. The certifying official
 7 shall submit this written decision to the address provided in
 8 the request, provide the certifying official's contact
 9 information and accept and respond to any appeal of the
 10 decision within thirty business days from the appeal.

11 C. Upon a certifying official's determination that
 12 a victim has not been helpful, the victim or the victim's
 13 attorney or accredited representative may again seek
 14 certification from the same certifying entity or from multiple
 15 certifying entities.

16 D. A certifying entity's or certifying official's
 17 inability to communicate with a victim due to disability or
 18 illness shall not be considered a refusal or failure by the
 19 victim to provide assistance.

20 E. Completion of a certification form by a
 21 certifying official:

22 (1) is not sufficient evidence that a victim
 23 applying for a U Visa has met all eligibility requirements and
 24 does not guarantee that the victim will receive a U Visa;

25 (2) is an attestation that the information

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1 contained in the certification form is true and correct to the
2 best of the certifying official's knowledge; and

3 (3) merely verifies factual information
4 relevant to the federal immigration benefit sought. The
5 determination of whether a victim is eligible for a U Visa is
6 the exclusive responsibility of federal immigration officials.

7 F. A certifying official shall not disclose the
8 immigration status of a victim or a person requesting the
9 certification form, except to comply with federal law or legal
10 process or if authorized by the victim or person requesting the
11 form.

12 G. A certifying official or certifying entity who
13 completes a certification form shall return the signed
14 certification form to the requester along with an unredacted
15 copy of the police report or incident report, free of charge,
16 within seven days of the request, subject to release by law and
17 unless already provided by another entity."

18 SECTION 5. A new section of Chapter 31 NMSA 1978 is
19 enacted to read:

20 "[NEW MATERIAL] REPORTING REQUIREMENTS FOR CERTIFYING
21 ENTITIES.--

22 A. A certifying entity shall publish on the
23 entity's website the entity's procedures for submitting U Visa
24 certification requests.

25 B. A certifying entity shall report to the

1 legislature or the appropriate legislative committee annually:

2 (1) the number of victims that requested a
3 certification form from the certifying entity;

4 (2) the dates on which the certifying entity
5 received each request for certification of a certification
6 form;

7 (3) the dates on which the certifying entity
8 provided either a completed certification form to the requester
9 or a written statement of non-helpfulness;

10 (4) the number of certification forms that
11 were signed;

12 (5) the number of certification forms that
13 were denied;

14 (6) the reason given for each denial of a
15 certification form; and

16 (7) the number of decisions that failed to
17 satisfy the deadlines prescribed in the U Visa Certification
18 Act.

19 C. If there were no requests for completion of a
20 certification form during a reporting period, the certifying
21 entity shall certify and report that it received no requests.

22 D. A certifying entity shall make its report
23 available to the public upon request. A certifying entity
24 shall not disclose any names or other personal identifying
25 information in its reporting pursuant to this section."

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1 SECTION 6. A new section of Chapter 31 NMSA 1978 is
2 enacted to read:

3 "[NEW MATERIAL] ATTORNEY GENERAL ENFORCEMENT.--

4 A. The attorney general shall have authority to
5 conduct investigations of alleged violations of the U Visa
6 Certification Act.

7 B. The attorney general shall have authority to
8 commence, intervene in or continue an action for declaratory,
9 injunctive or any other equitable relief against a law
10 enforcement agency, a law enforcement officer or any other
11 person or entity who violates any provision of the U Visa
12 Certification Act. These remedies are in addition to, and not
13 in substitution for, other available remedies.

14 C. The attorney general may:

15 (1) require a law enforcement agency, a law
16 enforcement officer or any other person or entity to provide a
17 statement or report in writing, under oath, of all information
18 that the attorney general may deem necessary;

19 (2) examine, under oath, a law enforcement
20 officer or any other person alleged to have participated in or
21 with knowledge of the alleged violation; and

22 (3) issue subpoenas, obtain records, conduct
23 hearings or take any other actions in aid of an investigation
24 pursuant to this section.

25 D. The attorney general may petition a court for an

1 order to compel for any failure to comply with a subpoena, in
2 whole or in part, or any other investigative request made
3 pursuant to this section."

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