



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
DIRECTIVE**

**DIRECTIVE NUMBER
317**
**DISTRIBUTION DATE
October 17, 2016**

1. **SUBJECT: COMPLETING U VISA CERTIFICATIONS IN DFEH CASES**

2. **PURPOSE:** To set forth the procedures for certifying requests for I-918 Supplement B Certification in Petitions for U Non-Immigrant Status (U Visa petitions).

3. **BACKGROUND:** The federal Victims of Trafficking and Violence Protection Act of 2000 created the U Visa, which is available to immigrant victims of serious crimes. The purpose behind the U Visa is to recognize that many undocumented crime victims fear that assisting law enforcement could lead to deportation. The U Visa encourages these victims to report crimes and assist in their prosecution by offering temporary legal status and work authorization in appropriate cases. To obtain a U Visa, victims must demonstrate to United States Citizenship and Immigration Services (USCIS), via certification by a law enforcement agency, their willingness to cooperate in a qualifying investigation or prosecution, among other requirements.

The Department of Fair Employment and Housing (DFEH) investigates claims under the Fair Employment and Housing Act (FEHA), the Ralph Civil Rights Act, the California Trafficking Victims Protection Act, and related civil rights statutes. The DFEH is a law enforcement agency with authority to certify victim helpfulness to USCIS.

4. **PROCEDURES:**

A. **When a U Visa Certification May be Completed:**

- 1) Before completing a U Visa certification, DFEH must first identify alleged acts that, if proven, would constitute a “qualifying” criminal activity as defined by the U Visa statute: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false

imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in [section 1351 of Title 18](#)); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. 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.¹ Most commonly, DFEH will identify qualifying criminal activity in the course of an investigation. However, a “current investigation” is not required for a victim to request and obtain the Form I-918 Supplement B certification from DFEH.²

- 2) The second step is for DFEH to determine that the complainant “has been helpful, is being helpful or is likely to be helpful” in the investigation or prosecution. There is a rebuttable presumption under California law that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested.³
- 3) The complainant or his/her representative must request that DFEH complete the U Visa certification on his or her behalf.

B. Preparing the U Visa Certification:

- 1) If all the factors listed in 4.A. above are present, DFEH will prepare a law enforcement certification form (Form I-918, Supplement B, U Nonimmigrant Status Certification).
- 2) The Director or his or her designee, in consultation with legal or investigative staff working directly with the complainant, shall complete the form including the following information:
 - a. Details of the crime;
 - b. Complainant’s personal data;
 - c. Knowledge of the incident; and
 - d. Helpfulness to the investigation or prosecution.

¹ 8 U.S.C. § 1101(a)(15)(U)(iii), and United States Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, page 3, available at: http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf.

² California Penal Code Section 679.10(i).

³ California Penal Code Section 679.10(f).

- 3) Signing the form does not indicate DFEH's sponsorship for the complainant/immigrant.
- 4) DFEH may only withdraw a certification if the complainant refuses to provide information and assistance when reasonably requested.⁴
- 5) DFEH must fully process the certification request within 90 days of the request except in cases where the complainant is in immigration removal proceedings, in which case the process must be completed within 14 days of the request.
- 6) DFEH staff members do not question complainants regarding their immigration status and the Department's U Visa certification authority does not change this approach. However, if a complainant or advocate voluntarily raises immigration status with DFEH staff, and DFEH staff believes that issuing a U Visa certification for the complainant would be appropriate under the circumstances, then staff should immediately contact the District Administrator/Regional Administrator, Deputy Director, Chief Counsel, or Chief of Enforcement.

5. DATA COLLECTION

- A. The Director or his or her designee will report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of certification requests received, the number of those certification forms that were signed, and the number that were denied.⁵

6. APPROVAL:



Kevin Kish, Director

October 17, 2016

Date

⁴ California Penal Code Section 679.10(j)

⁵ California Penal Code Section 679.10(l).