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OFFICE OF INSPECTOR GENERAL

USCIS' U Visa Program Is Not Managed Effectively and Is Susceptible to Fraud (REDACTED)

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January 6, 2022
OIG-22-10



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

January 6, 2022

MEMORANDUM FOR: The Honorable Ur M. Jaddou, Director
U.S. Citizenship and Immigration Services

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V**
Inspector General **CUFFARI**

SUBJECT: *USCIS' U Visa Program Is Not Managed Effectively and Is Susceptible to Fraud* ~~For Official Use Only~~

Digitally signed by
JOSEPH V CUFFARI
Date: 2021.12.27
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Attached for your information is our final report, *USCIS' U Visa Program Is Not Managed Effectively and Is Susceptible to Fraud* ~~For Official Use Only~~. We incorporated the formal comments provided by your office.

The report contains five recommendations aimed at improving U.S. Citizenship and Immigration Services' (USCIS) U visa program. Your office concurred with recommendations 2, 4, and 5, which we consider resolved and open. Your office did not concur with recommendations 1 and 3. Based on information provided in your response to the draft report, we consider recommendations 1 and 3 open and unresolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions.

As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated the recommendations will be considered open and unresolved. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland

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Security. We will post the report on our website for public dissemination. We will post a redacted version of the report on our website.

Please call me with any questions, or your staff may contact Bruce B. Miller, Deputy Inspector General for Audits, (202) 981-6000.

Attachment



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DHS OIG HIGHLIGHTS

USCIS' U Visa Program is Not Managed Effectively and is Susceptible to Fraud

January 6, 2022

Why We Did This Audit

The U visa program allows noncitizens, who are victims of serious crimes, or who cooperate with investigations or prosecutions of such crimes, to temporarily remain and work in the United States. We audited the program to determine whether U.S. Citizenship and Immigration Services (USCIS) adequately managed the program. Specifically, we sought to determine whether USCIS' adjudication process is adequate and assists law enforcement with investigating and prosecuting crimes, as intended.

What We Recommend

We recommended five actions to improve the U visa program.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Congress created the U visa program to protect victims and help law enforcement investigate and prosecute serious crimes. However, USCIS did not adequately manage the U visa program. First, USCIS did not fully address U visa program fraud risks. For example, we identified 10 USCIS approved petitions with forged, unauthorized, altered or suspicious law enforcement certifications. USCIS also did not track outcomes of U visa program fraud referrals. As a result, individuals may be discouraged from reporting suspected fraud and USCIS may miss opportunities to address fraud risks in the program. Second, USCIS did not establish quantifiable and measurable performance goals to ensure the U visa program achieves its intended purpose. Additionally, USCIS did not ensure its data systems accurately captured the number of U visas granted. Without better tracking and accurate data, USCIS cannot properly monitor the program. Finally, USCIS did not effectively manage the growing backlog of petitions. Effective management of the backlog of eligible petitioners awaiting initial adjudication is critical to offer timely protection.

The issues identified occurred because USCIS has not taken steps to address and implement recommendations from previous internal and external U visa program reviews.

USCIS Response

USCIS concurred with three and did not concur with two of our five recommendations.



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Abbreviations

CFDO	Center Fraud Detection Operations
C.F.R.	Code of Federal Regulations
CLAIMS3	Computer Linked Application Information Management System
FDNS	Fraud Detection and National Security
ISO	Immigration Services Officer
SOP	Standard Operating Procedures
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services



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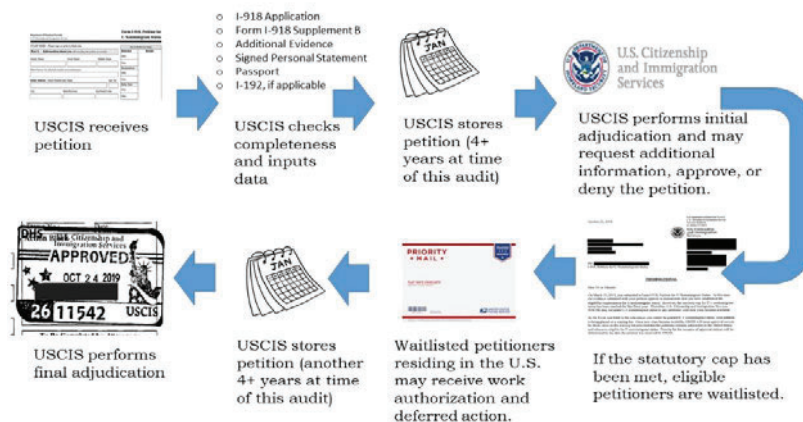
Background

Congress recognized that persons without lawful immigration status may be particularly vulnerable to victimization and may be reluctant to help with the investigation or prosecution of criminal activity due to fear of removal from the United States. Through the *Victims of Trafficking and Violence Prevention Act of 2000*, Pub. L. No. 106-386 (Oct. 28, 2000), Congress created U nonimmigrant status, herein referred to as the U visa, for victims of specific, serious qualifying crimes.¹ U visas are intended to:

- strengthen law enforcement’s ability to detect, investigate, and prosecute serious crimes, such as torture, rape, and domestic violence;
- encourage victims lacking lawful immigration status to report crimes committed against them and participate in investigating and prosecuting those crimes;
- encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against noncitizens; and
- offer protection to victims of such offenses in keeping with the humanitarian interests of the United States.

As part of its mission, U.S. Citizenship and Immigration Services (USCIS) is responsible for overseeing the U visa program. U visas allow victims of serious crimes to temporarily remain and work in the United States for up to 4 years to assist investigators and prosecutors.² USCIS is responsible for collecting, processing, and adjudicating U visa petitions for proper eligibility, as shown in Figure 1.

Figure 1. U Visa Adjudication Process



Source: Office of Inspector General (OIG)-generated from USCIS data

¹ See Appendix C, October 28, 2000, *Victims of Trafficking and Violence Protection Act of 2000*.

² The 4 years may be extended upon certification from an authorized official that the applicant’s presence in the United States is required to assist in the investigation or prosecution.



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According to 8 Code of Federal Regulations (C.F.R.) § 214.14, *Alien Victims of Certain Qualifying Criminal Activity*, an immigrant is eligible for U visa status if the immigrant (1) was a victim of a qualifying criminal activity that occurred in the United States or violated U.S. law; (2) suffered substantial physical or mental abuse as a result of the criminal activity; (3) possesses helpful information concerning the crime; and (4) has been helpful, is helpful, or is likely to be helpful to law enforcement authorities investigating or prosecuting the crime.³ To understand law enforcement authorities' role investigating and prosecuting U visa crimes, we surveyed and interviewed law enforcement agencies around the United States.⁴

Additionally, USCIS' *I-918 Standard Operating Procedures (SOP)*, March 2019, describe circumstances when bystanders and indirect victims may be eligible for a U visa. For example, according to the SOP, if a pregnant bystander witnesses a violent crime and the resulting stress triggers her to miscarry, she may qualify as a victim. In another example, the SOP states that a murder victim is not available to participate in an investigation so family members indirectly harmed by the crime may be eligible.

To apply for U visas, noncitizens must submit Form I-918, *Petition for U Nonimmigrant Status*, certifying they meet eligibility requirements and Form I-918 Supplement B, *U Nonimmigrant Status Certification*, which includes a signature from an authorized agency or law enforcement official certifying the crime happened and attesting to the victim's cooperation. Petitioners must submit the required forms to USCIS, including a statement describing the facts of the victimization. Petitioners are encouraged, but not required, to submit other credible evidence to establish eligibility, such as police reports, injury photographs, and psychological evaluations.

The *U Visa Law Enforcement Resource Guide*, 2019, states "[A] certifying agency has discretion over whether to complete a [Supplement B] form, which should be exercised on a case-by-case basis consistent with U.S. laws and regulations, as well as the internal policies of [the] certifying agency." Law enforcement agencies rely on their state law, local ordinances, and internal policies to determine which Supplement B forms they will certify. State and local policies on what circumstances must exist for law enforcement to certify a supplement B differ significantly across the country.

USCIS' Service Center Operations is responsible for adjudicating U visa petitions. After receiving a petition, USCIS performs initial security check screening and inputs data such as date received, petitioner's name, address,

³ See Appendix C, January 1, 2019, 8 C.F.R. § 214.14, *Alien Victims of Certain Qualifying Criminal Activity*.

⁴ See Appendix B for geographic survey details.
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and country of citizenship into the Computer Linked Application Information Management System (CLAIMS3).

USCIS then transports the hard copy petition to a storage facility where it remains for about 4 years until the petitioner is next in line for review. At the time of this audit, petitions remained in storage for 4 years. After the file is retrieved from storage, Immigration Services Officers (ISO) ensure all required forms are submitted and complete. ISOs then conduct system background checks and verify that biometric fingerprints are acceptable. Finally, ISOs review the petitioner's supporting documents to verify eligibility. If fraud concerns arise, ISOs refer the petition to Center Fraud Detection Operations (CFDO).

Once ISOs complete the background check, they may grant, waitlist, or deny a petition. If ISOs grant a petition, the victim may potentially qualify for lawful permanent resident status 3 years thereafter. According to 8 C.F.R. § 214.14, the victim, or "principal" petitioner, may also sponsor certain family members, known as "derivatives," for lawful nonimmigrant status. Although 8 U.S.C. § 1184(p)(2)(A) prohibits USCIS from granting more than 10,000 U visas per fiscal year for principal petitioners, it does not limit the number of derivative petitioners.

In 2010, USCIS implemented a waitlist process due to the growing number of petitioners. In August 2019, USCIS estimated that petitioners would wait more than a decade to receive a U visa if policies and processing procedures remain the same. While on the waitlist, principal petitioners and their derivatives receive deferred action or parole and may apply for work authorization.

In 2012, USCIS contracted with an independent institute to assess the U visa program. From 2017 through 2020, USCIS internally reviewed its U visa program processes and procedures. Although reviews are not publicly available, USCIS kept them for internal use and shared them with the audit team. These reviews identified and recommended ways USCIS could improve education, outreach, and communication with law enforcement.

We conducted this audit to determine whether USCIS adequately managed the U visa program. Specifically, we sought to determine whether USCIS' adjudication process is adequate and if the program assists law enforcement with investigating and prosecuting crimes, as intended.



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Results of Audit

USCIS Did Not Adequately Manage the U Visa Program or Ensure the Program Met Its Intended Purpose

Congress created the U visa program to protect victims and help law enforcement investigate and prosecute serious crimes. However, USCIS did not adequately manage the U visa program. First, USCIS did not fully address U visa program fraud risks. For example, we identified 10 USCIS approved petitions with forged, unauthorized, altered or suspicious law enforcement certifications. USCIS also did not track outcomes of U visa program fraud referrals. As a result, individuals may be discouraged from reporting suspected fraud and USCIS may miss opportunities to address fraud risks in the program. Second, USCIS did not establish quantifiable and measurable performance goals to ensure the U visa program achieves its intended purpose. Additionally, USCIS did not ensure its data systems accurately captured the number of U visas granted. Without better tracking and accurate data, USCIS cannot properly monitor the program. Finally, USCIS did not effectively manage the growing backlog of petitions. Effective management of the backlog of eligible petitioners awaiting initial adjudication is critical to offer timely protection.

The issues identified occurred because USCIS has not taken steps to address and implement recommendations from previous internal and external U visa program reviews.

USCIS Approved Petitioners with Forged, Unauthorized, Altered or Suspicious Certifications

USCIS did not fully address U visa program fraud risks. We asked 125 law enforcement offices to confirm whether the signature on Supplement B forms certified by their office, was that of an authorized signer. Law enforcement officials confirmed four certifications had forged signatures and three had unauthorized signatures. Federal regulations require a petitioner to submit a Supplement B form with an authorized signature certifying that, under penalty of perjury, the petitioner is a victim of a qualifying crime.

To minimize the risk of approving fraudulent Supplement B forms, CFDO developed a database, called Casebook, to store authorized certifying officials' signatures. According to USCIS' I-918 SOP, ISOs must check the name of the certifying official against Casebook for each U visa petition. However, during our review, we found four Supplement B forms with a law enforcement official's signature that did not match the official's signature in Casebook, three of which USCIS later approved. The law enforcement official confirmed that she



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denied these four Supplement B forms and that the approval signature on them was not hers. Additionally, we determined ISOs failed to question the validity of three other signatures not in Casebook, two of which USCIS later approved. Since USCIS does not require law enforcement officials to submit signed Supplement B forms directly, ISOs risk approving potentially fraudulent forms with unauthorized signatures.

Further, we identified 3 of 83 Supplement B forms that were or appeared altered after being certified by a law enforcement official. According to USCIS' *U Visa Law Enforcement Resource Guide*, once a law enforcement official signs the Supplement B form, the form is returned to the petitioner or the petitioner's legal representative to submit to USCIS. We reviewed law enforcement agencies' forms and compared them to USCIS forms. One Supplement B certification date was altered, likely to meet the 6-month requirement from certification date to submittal. In another instance, the Supplement B form submitted to USCIS was typed and the case status was marked as "completed." However, the Supplement B form obtained from the District Attorney's office was handwritten, the case status was marked both "ongoing" and "completed," and it was dated 8 months earlier. The U.S. Attorney was unable to confirm that he completed the Supplement B form submitted to USCIS. As shown in the example in Figure 2, another Supplement B form was altered under the criminal acts section on the form. The law enforcement's certified copy only indicated "other," while the USCIS copy checked both "other" and "felonious assault," indicating it was altered after the law enforcement official certified it.

Figure 2. Altered Supplement B Form

Part 3. Criminal acts.

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Perjury	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Rape	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input checked="" type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<input type="checkbox"/> Armed robbery

-918 Supplement B (08/31/07)

Part 4. Criminal acts.

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Perjury	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Rape	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input checked="" type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input checked="" type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<input type="checkbox"/> Armed robbery

Form I-918 Supplement B (08/31/07)

Source: Law enforcement agency provided certified copy; USCIS file contained altered copy.
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We referred all 10 of the potential forged, unauthorized, and altered supplement B forms to DHS OIG Office of Investigations.

USCIS Did Not Track Fraud Referrals

USCIS did not track outcomes of fraud referrals. USCIS' Fraud Detection and National Security Directorate (FDNS) issued the *Fraud Detection Standard Operating Procedure* (Fraud Detection SOP), March 2018, to ensure consistent detection, documentation, and prevention of immigration benefit fraud. According to the Fraud Detection SOP, "it is imperative that all Leads and Cases are entered into the [FDNS] system and all activities and findings are fully documented with updates, as appropriate."

However, FDNS officials stated they can only provide the number of fraud cases with a U visa related form attached, and whether the case was referred to another law enforcement agency. USCIS does not know the number of U visa-related fraud referrals that resulted in prosecution because it does not track the outcome of fraud referrals related to the U visa program. Without the ability to obtain status updates on referred cases, ISOs and law enforcement agencies may be discouraged from reporting suspected fraud. Further, without tracking fraud referral outcomes, USCIS may miss opportunities to address fraud risks in the program.

USCIS Did Not Establish Performance Metrics or Track Critical Program Data

USCIS did not implement performance metrics to measure or track program effectiveness — critical elements of quality oversight. *Standards for Internal Control in the Federal Government*⁵ calls for agencies to continually monitor programs during normal operations to help evaluate performance over time. However, USCIS did not establish quantifiable and measurable performance goals to ensure the U visa program achieves its intended purpose.

Additionally, USCIS did not properly track the number of U visas granted to ensure it complied with Federal laws and regulations. Under 8 U.S.C. § 1184(p)(2), USCIS is prohibited from granting U visas to more than 10,000 principal petitions in a fiscal year. However, as shown in Figure 3, we found the reported number of U visas granted exceeded the statutory cap by different amounts from fiscal years 2010 to 2020. According to USCIS officials, CLAIMS3 has an internal tracker that prevents it from granting more than 10,000 visas, despite the higher reported number of granted visas. Although USCIS is aware of the data variances, it has not improved its data reporting

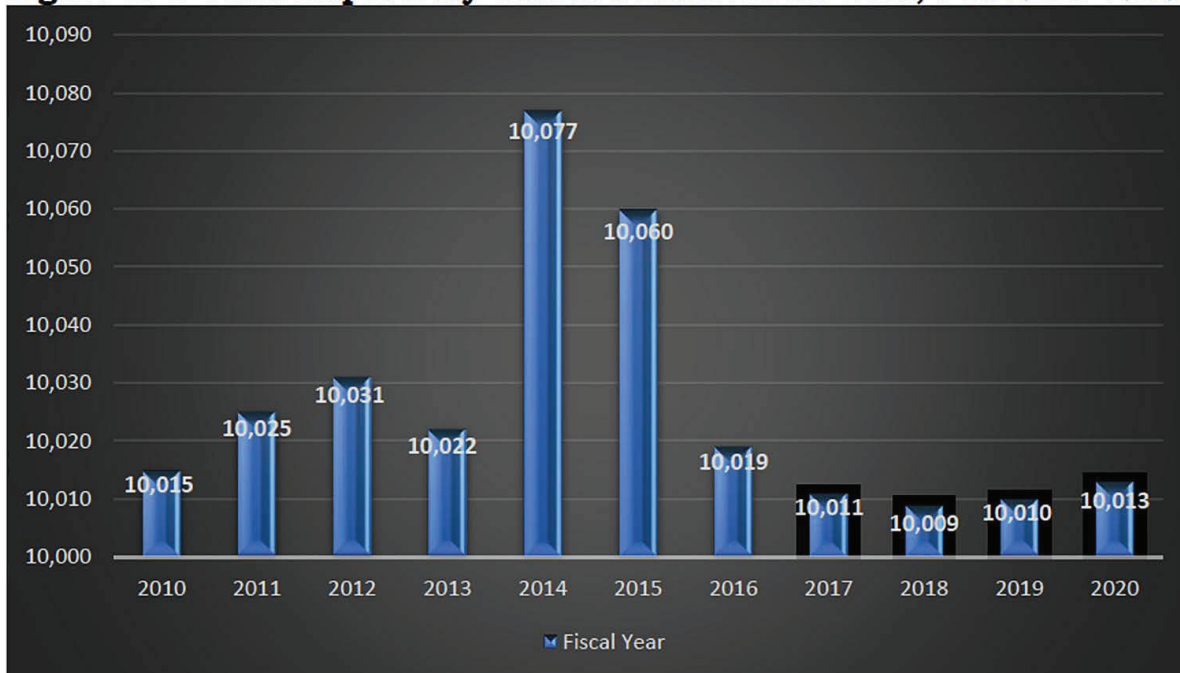
⁵ *Standards for Internal Control in the Federal Government*, GAO-14-704G, Sept. 2014.
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systems to ensure it reports the actual number of U visas granted. Without better tracking and accurate data, USCIS cannot properly monitor the program.

Figure 3. U Visas Reportedly Granted Each Fiscal Year, FYs 2010–2020



Source: DHS OIG-generated from USCIS CLAIMS3 Consolidated and Performance Reporting Tool

USCIS Did Not Manage Its Significant Backlog

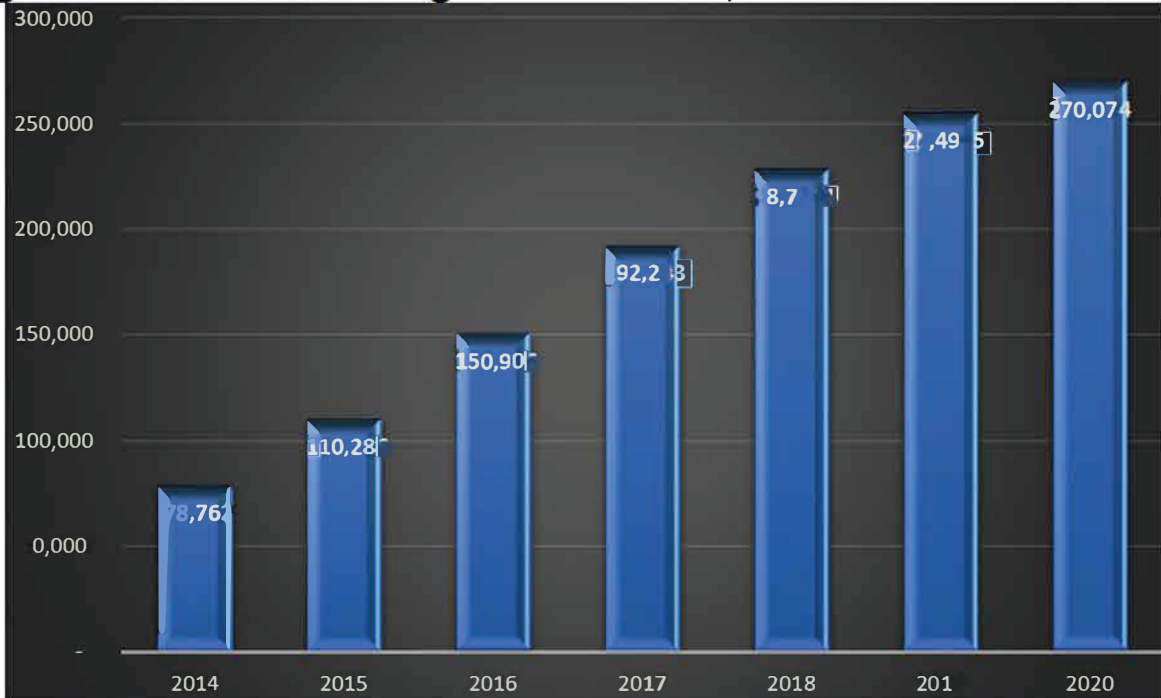
USCIS implemented a waitlist due to the growing number of petitioners and the 10,000 statutory cap. However, a significant backlog accumulates before an ISO is available to perform the initial adjudication. After initial adjudication, if a petitioner has been approved but the statutory cap has been met, the ISO places the petitioner on the waitlist until a U visa becomes available. At the time of this audit, the backlog awaiting initial adjudication was years. While waiting for the initial adjudication, eligible petitioners are not receiving protections such as deferred action and employment authorization. USCIS has not effectively managed this backlog. At the end of FY 2020, more than 270,000 U visa principal and derivatives petitions were pending final adjudication. In fact, a victim petitioning in 2021 will likely wait 10 years or longer to receive a U visa.

USCIS’ *Report for CIS Leadership, Increasing Visa Integrity and Improving Program Management*, June 1, 2018, recommended improved adjudication processing to reduce the backlog. [REDACTED]



Effective management of the backlog of eligible petitioners awaiting initial adjudication is critical to offer timely protection. Figure 4 shows the increase in the number of pending⁶ U visa petitions from FYs 2014 through 2020.

Figure 4. Increase in Pending U Visa Petitions, FY 2014–2020



Source: DHS OIG-generated from USCIS data

USCIS Identified but Did Not Address Longstanding Issues

The issues identified occurred because USCIS has not taken steps to address and implement recommendations from previous internal and external U visa program reviews. USCIS performed one external and four internal reviews between 2012 and 2020. Among others, these reports made recommendations to implement an electronic certification system, define ambiguous terminology, and better coordinate with certifying agencies. Although USCIS identified program deficiencies and recommended corrective actions, it has not implemented corrective actions.

An independent contractor released its *Study of the U Visa Program to USCIS*, December 2012, which assessed the U visa program and proposed

⁶ “Pending” includes petitions on the waitlist and awaiting final adjudication.



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improvements for the adjudication process and educational outreach programs. The study highlighted certifying agencies' concerns regarding the significant burden to administer the program and the inconsistent certification policies. In the same study, law enforcement agencies noted that certifying old or closed cases did not help solve the cases and contradicted the intended purpose of the program — to assist with their investigations.

Additionally, USCIS performed four internal reviews of the U visa program that identified areas for improvement. In September 2017 the USCIS Service Center Operations issued its draft *Options for U Nonimmigrant Program* review. This review was a pre-decisional draft for internal DHS and USCIS discussion only. However, the draft presented issues similar to those USCIS presented in its next three internal reviews cited below.

USCIS CFDO's *Assessment of the Form I-918 U Non-Immigrant (Victims of Crime) Petition*, May 2018, cited concerns and needed improvements for the U visa program. According to the assessment, CFDO became aware of integrity concerns through discussions with law enforcement and USCIS adjudicators, as well as ongoing fraud cases. CFDO reviewed 250 randomly selected U visa petitions filed between September 2016 and January 2017. In addition, CFDO reviewed 128 survey responses from law enforcement agencies represented in their sample. In the 2018 assessment, CFDO officials reported the following:

- An electronic system available only to law enforcement would greatly enhance the integrity of the Supplement B form and greatly reduce ISOs' work to verify this evidence.
- CFDO officials expressed, "We have grave concerns about the reliability of the certification from 2016 on as the threat of lawsuits has forced many law enforcement agencies to just sign and not question the certification."
- Many fraud cases concerning the I-918 involve bad Supplement B certifications. Instances include police officials selling fraudulent supplement Bs with false police reports, unauthorized certifying officials, and fraudulent practitioners substituting pages from legitimate Supplement Bs to steal money from clients or fraudulently obtain benefits from USCIS.
- USCIS was nearing a point in which it may not grant U visa benefits for decades due to the high volume of petitions filed. Based on 2017 filing rates, USCIS would receive at least 4 years' worth of visas every fiscal year. USCIS was close to a 10-year wait for 2017 filers. Officials estimated that in 2023 the wait would be an additional 20-30 years.



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The USCIS *Report for USCIS Leadership, Increasing U Visa Integrity and Improving Program Management*, June 2018, cited concerns and needed improvements for the U visa program. According to the report, 30 USCIS leadership-level officials and program managers held a May 2018 summit to formulate methods to improve program effectiveness and integrity. According to USCIS officials, USCIS should update the U visa regulations, including adjusting the status regulation to:

- further define credible and reliable evidence that suggests a petitioner meets the helpfulness requirement;
- clarify victim definitions and eligibility; and
- clarify language related to the waitlist.

The report recommended the following actions for USCIS.

- Clarify vague eligibility requirements.
- Strategically improve how it updates processing U visas and related petitions to improve program integrity and reduce the backlog.
- Implement an electronic certification system, including a secure communication portal, to significantly improve the Form I-918 Supplement B certification integrity and encourage ongoing information sharing between DHS and law enforcement agencies.
- Use electronic systems to better disseminate fraud-related alerts.

The USCIS *U Visa Fraud and Benefit Integrity Research Study*, February 2020, also cited concerns and needed improvements for the U visa program. According to the study, USCIS reviewed 591 U visa petitions and interviewed more than 20 subject matter experts within the U visa program and CFDO. The study found that 66 percent of cases were marked as completed by the certifying official. Therefore, the law enforcement officials did not need the majority of victims for active assistance with a case by the time the victim filed the petition with USCIS. At times ISOs questioned whether a crime occurred despite a signed Form I-918 Supplement B. For example, ISOs found it challenging to adjudicate cases when the petitioner reported a crime long after it purportedly took place. In such cases, no investigation is possible or likely, or no corroborating evidence exists to establish that the crime took place. The study also revealed that the U visa program needed data-driven regulatory and policy changes to improve its integrity, ensure it follows congressional intent, and increase efficiency in processing petitions.

The study recommended the following actions for USCIS:

- Prioritize development of an electronic Form I-918 Supplement B system for use by certifying agencies, as well as ongoing



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communication between DHS and law enforcement agencies, to deter altered or fraudulent submissions.

- Consider policy and regulatory changes to define “helpfulness” including length of time between when the crime occurred and the petition filing, allowing for officer discretion in extenuating circumstances.
- Devote USCIS resources to investigate and correct the under- and over-reporting of the annual cap for U visas. (Public reports indicate that USCIS may be violating the Federal statute limiting the number of U visas to 1 , per year.)
- Improve public reporting of U visa petition information so Congress and the public can understand program trends. Improved communication of U visa data could reduce staff time responding to *Freedom of Information Act* requests, media questions, and stakeholder inquiries.
- Devote USCIS resources to improve the CFDO database used to identify fraud trends and deploy this system to each center.
- Improve outreach and coordination with law enforcement agencies (Increasing certifying officials’ knowledge of the program and the specific roles and responsibilities of certifying officials may significantly reduce fraud and integrity concerns.)
- Analyze data in this study, including when petitioners filed versus when crimes occurred, statutes of limitations, and locations of agencies certifying I-918 Supplement B forms. Initiate follow-on research to understand filing trends and fraud and integrity concerns.

[REDACTED]

[REDACTED]

Nearly 4 years have passed since USCIS began reporting on its U visa program deficiencies and recommending improvements. Nearly 9 years have passed since an independent contractor identified program deficiencies and



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recommended improvements. Yet, USCIS has not updated its U visa policies and procedures or resolved issues identified in these prior reviews.

The audit team identified concerns in addition to those expressed in USCIS reviews. The I-918 SOP does not offer clear guidance to prevent adjudicators from approving fraudulent forms. The SOP requires ISOs to compare the certifying official's signature to Casebook during adjudication, but Casebook does not include all certifying officials' signatures. According to the SOP, if a signature is not in Casebook, ISOs should continue with the adjudication process, unless they find a reason to question the certifier's validity. However, the SOP does not specify or offer examples for why an ISO might question a certifier's validity.

Lastly, in 2016 the U.S. House and Senate Judiciary Committees expressed concerns with the U visa program. The committees wrote a letter to DHS Secretary Jeh Johnson regarding alleged fraudulent activity associated with the U visa program. In response to the committees, USCIS stated it could not:

- track the number of Supplement B forms each law enforcement agency certified annually;
- distinguish the number of principal petitioners approved based on "likely to be helpful" versus those who actually aided investigators or prosecutors;
- identify the number of U visa-related fraud cases or case resolutions; or
- determine the number of arrests or prosecutions resulting from U visa petitioners assisting law enforcement agencies.

Without addressing these issues, USCIS cannot ensure the U visa program is operating as intended, providing protection to victims of serious crimes, and strengthening law enforcement's ability to detect, investigate, and prosecute serious crimes, such as torture, rape, and domestic violence.

To supplement our other audit work, we surveyed law enforcement officials to gain their perspective on the U visa program. Our survey of 57 certifying law enforcement agencies across the United States also indicated the program is not helpful for solving crimes. Of those surveyed, 61 percent stated the program does not significantly improve their ability to investigate and solve crimes and 54 percent believe petitioners abuse the program. From the 47 of 57 we surveyed during our fieldwork phase, 43 percent said the administrative burden of participating in the program outweighs benefits gained. Some respondents explained that, in their opinion, the U visa program is not helpful because the requests are often for old or closed cases, and in some cases, "staged" crimes, or "exaggerated injuries."



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Aside from such opinions, 10 law enforcement agencies indicated the program was helpful. One law enforcement agency noted that the U visa program enabled domestic violence victims to reach out for help without fear of being deported. Another agency said that the U visa program is another way to bridge the gap and continue its good relationship with its community.

Conclusion

USCIS' mismanagement of the U visa program led to questionable petitioners gaining U visa benefits and legitimate victims waiting more than 10 years to receive U visas. Although USCIS acknowledged program issues years ago, it has not taken necessary corrective actions. Until USCIS addresses vulnerabilities it identified in its four internal reviews, the potential for forged, unauthorized, and altered petitions, unreliable data, and excessive backlog of petitioners will continue. Also, without establishing performance metrics and addressing longstanding issues, USCIS cannot effectively oversee and monitor the program or ensure it operates as Congress intended.

Recommendations

Recommendation 1: We recommend the Chief, Office of Policy and Strategy implement additional controls that mitigate risks of fraudulent Supplement B forms, such as requiring certifying officials to submit forms directly to USCIS.

Recommendation 2: We recommend the Associate Director, Service Center Operations Directorate, improve USCIS data systems to ensure accurate reporting of U visas granted.

Recommendation 3: We recommend the Associate Director, Service Center Operations Directorate, develop a plan to track the outcome of U visa-related fraud referrals and take steps to further mitigate fraud risks.

Recommendation 4: We recommend the Associate Director, Service Center Operations Directorate, take steps to timely protect eligible petitioners awaiting initial adjudication due to the backlog.

Recommendation 5: We recommend the Associate Director, Service Center Operations Directorate, enhance performance metrics to ensure the program achieves its purpose.



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USCIS Comments and OIG Analysis

We included a copy of USCIS' management response in its entirety in Appendix D. We also received technical comments from USCIS and revised the report where appropriate. Our draft report offered three recommendations which included six specific actions. We agreed with USCIS technical comments to break out the specific actions into their own six recommendations. We removed the draft report's recommendation 1 and renumbered the remaining recommendations following our analysis of USCIS' management response. USCIS concurred with three and did not concur with two of the five remaining recommendations. A summary of DHS' responses to our recommendations and our analysis follows.

USCIS Comments to Recommendation 1: USCIS did not concur with this recommendation. In USCIS' response, officials said they had already implemented robust controls to mitigate fraud risk. Also, according to USCIS, it cannot require a law enforcement official to submit form I-918-B, Supplement B, directly to USCIS because the wording in 8 C.F.R. § 214.14(c)(2)(i) requires petitioners to submit forms.

OIG Analysis: We disagree with USCIS' response. USCIS internal reviews from May 2018, June 2018, and February 2020, which we presented in our draft report and above, cited similar concerns. In February 2020, USCIS officials wrote:

Officers noted that the vast majority of fraud and program vulnerabilities within the U program can be traced to the Form I-918, Supplement B ... it is clear in many filings that attorneys or representatives are completing the forms and requesting that the certifying agency simply sign them. This can, and does, lead to inaccurate and misleading information included on the form. In these cases, the information listed on Form I-918, Supplement B may not match what is found in the accompanying documents, such as the police or arrest reports. Concerns were raised that even if a certifying official completes Form I-918, Supplement B, lawyers or petitioners can alter the form before submitting it with the U visa petition (by removing or adding information or substituting entirely new or different pages).

USCIS officials recommended additional controls to prevent fraudulent submissions in addition to detection controls already in place. We described 10 potentially fraudulent certified Supplement B forms found during our audit. USCIS' internal reports plus our potentially fraudulent findings show that USCIS controls to mitigate fraud risk should be improved. Three prior USCIS



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reviews described how USCIS should develop an electronic system for law enforcement Supplement B form submissions to greatly enhance the form's integrity. Executive departments and agencies within the Federal Government can propose public rulemaking to add, delete, or edit C.F.R. regulations. Further, USCIS can issue updated policies and guidance for its programs, such as in its *U Visa Law Enforcement Resource Guide*. We consider this recommendation unresolved and open.

USCIS Comments to Recommendation 2: USCIS concurred with this recommendation. Since 2015, USCIS has used an electronic visa counter to track the number of statutory cap approvals. This system control does not allow an officer to approve a principal U visa petition once the statutory cap is met. Additionally, USCIS is updating the technology and system so that the tracking system is more robust for reporting and detailed tracking, including accounting for complex case-level adjudicative actions. Estimated Completion Date: September 30, 2022.

OIG Analysis: USCIS' proposed actions are responsive to the intent of the recommendation. This recommendation will remain open and resolved pending submission of documents showing completion of the proposed corrective action plan.

USCIS Comments to Recommendation 3: USCIS did not concur with this recommendation. In USCIS' response, officials said the outcome of investigations, prosecutions, and fraud referrals is outside of USCIS' role in providing immigration benefits. According to USCIS, 8 C.F.R. § 214.14(e)(1)(ii) limits disclosure of case outcomes to law enforcement officials.

OIG Analysis: We disagree with USCIS' response. The cited C.F.R. regulation allows disclosure to law enforcement officials for legitimate law enforcement purposes. Outcomes from fraud investigations constitute legitimate law enforcement purposes. Further, we did not recommend disclosure of case outcomes to law enforcement officials. We recommended USCIS track outcomes of fraud referrals internally and further mitigate fraud risk. The U.S. Government Accountability Office's *A Framework for Managing Fraud Risks in Federal Programs* (July 2015) provides leading practices to effectively manage fraud risk. According to the framework, effectively managing Government programs includes designing and implementing control activities to mitigate assessed fraud risks and collaborating to effectively implement these control activities. This includes outlining how the program will respond to identified instances of fraud and ensuring the response is prompt and consistently applied. In addition, managers should monitor and evaluate fraud risk management activities with a focus on measuring outcomes (in addition to outputs). USCIS should use results of investigations or prosecutions to



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enhance fraud prevention and detection. Further, as presented in our draft report and above, the Fraud Detection SOP states “it is imperative that all Leads and Cases are entered into the FDNS system and all activities and findings are fully documented with updates, as appropriate.” We consider this recommendation unresolved and open.

USCIS Comments to Recommendation 4: USCIS concurred with this recommendation. In their response, officials said USCIS implemented a new U visa Bona Fide Determination (BFD) process in June 2021 to decrease initial review processing times. USCIS’ BFD process should reduce the time a qualified petitioner must wait for employment authorization and deferred action from deportation. Officials said they have the discretionary authority to issue employment authorization to petitioners with pending BFD under 8 U.S.C. § 1184(p)(6) and grants deferred action to such petitioners after determining their merit. USCIS began training officers on the U visa BFD process upon its announcement in the USCIS Policy Manual and began issuing Employment Authorization Documents and grants of deferred action to petitioners meeting the established requirements. USCIS determines whether a petition is bona fide based on the petitioner’s compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS considers national security and public safety risks, as well as other relevant considerations, as part of the discretionary adjudication. USCIS requests that OIG consider this recommendation resolved and closed.

OIG Analysis: USCIS’ proposed actions are responsive to the intent of the recommendation. This recommendation will remain open and resolved pending submission of documents showing USCIS BFD policies and completion of the proposed corrective action plan.

USCIS Comments to Recommendation 5: USCIS concurred with this recommendation. In USCIS’ response, officials said they created internal codes used in adjudications to enhance operational efficiency and data integrity and is developing a specific code for Employment Authorization Documents issued under the new U visa BFD program. Estimated Completion Date: September 30, 2022.

OIG Analysis: USCIS’ proposed actions are responsive to the intent of the recommendation. This recommendation will remain open and resolved pending submission of documents showing completion of the proposed corrective action plan.

USCIS Overall Comments to the OIG Audit: In its response, USCIS officials said that, with respect to the U visa program, the OIG:



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- (1) misinterpreted the statutory and regulatory scheme;
- (2) did not recognize its dual role or USCIS' role administering the program;
- (3) asserted USCIS did not assist law enforcement;
- (4) did not recognize USCIS improvement actions;
- (5) did not acknowledge the purpose of internal deliberative documents;
- (6) did not account for the statutory cap in the backlog;
- (7) stated USCIS did not implement procedures to address forged, unauthorized, and/or altered Supplement B forms;
- (8) applied problematic and misleading statistics; and
- (9) carried out problematic audit processes.

OIG Analysis: We revisited our draft report position regarding USCIS' concerns with our interpretation of the U visa statutory and regulatory scheme, and associated analysis (items 1, 2, 3, and 8 above). We subsequently removed this information from the report. We disagree with USCIS' remaining comments.

- (4) In our draft report and above, we credited USCIS for its internal reviews which we consider efforts to improve the program. However, because USCIS did not implement its internal reviews recommendations, we could not credit it with implementing these improvements.
- (5) DHS OIG Office of Counsel met with USCIS legal counsel and assured the DHS OIG audit team that a claim of deliberative process privilege is not a basis for removing a statement from our report. After receiving USCIS' redaction request, we redacted deliberative excerpts from our publicly released report as USCIS requested.
- (6) In our draft report and above, we explain that the statute limits USCIS from granting more than 10,000 U visas per year. After USCIS reached the cap, it placed petitioners on a waiting list, authorized them to work, and protected them from deportation. Before placing petitioners on a waiting list, USCIS kept petitioners in a backlog status without work authorization or protection from deportation. We do not consider the cap the sole reason for the backlog. Rather, USCIS did not implement recommendations from previous internal U visa program reviews. These internal reviews recommended USCIS could reduce the backlog with actions to: clarify waitlist and adjudication processes; clarify eligibility requirements; mitigate fraud risks; and strategically improve how it updates processing U visas and related petitions to improve program integrity and reduce the backlog.
- (7) In our draft report and above, we described how CFDO developed its database Casebook and USCIS' FDNS Fraud Detection SOP to ensure consistent detection, documentation, and prevention of immigration benefit fraud. Despite these procedures, USCIS granted U visas for forged, unauthorized, and altered Supplement B forms. USCIS did not prevent



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fraudulent Supplement B forms or track fraud referrals. For example, USCIS did not concur with Recommendation 1 to mitigate risks of fraudulent Supplement B forms or with Recommendation 3 to track fraud referrals.

- (9) In the initial stage of our audit, various Federal employees, including some from USCIS, voiced their U visa program concerns to us, prompting us to begin the audit. Concerns of others included possible rubber-stamping with limited verification of the alleged crime. Also, USCIS CFDO officials said, “We have grave concerns ... as the threat of lawsuits has forced many law enforcement agencies to just sign and not question the certification.” At all times, the DHS OIG audit team followed GAGAS. We performed substantial observations, site visits, file analysis, and follow-up to confirm our facts and supporting evidence for our draft and final audit reports.



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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We initiated this audit to determine whether USCIS effectively managed the U visa program. Specifically, we sought to determine whether USCIS' adjudication process is adequate and if the program assists law enforcement with investigating and prosecuting serious crimes, as intended.

During our audit, we reviewed applicable laws, regulations, and USCIS policies and procedures related to the U visa program and the adjudication process. We assessed internal controls significant within the context of our audit objective. Additionally, we reviewed USCIS internal reviews relevant to our audit objective to identify prior findings and recommendations.

We visited the Vermont Service Center, interviewed USCIS staff, and directly observed the adjudication process. We met with USCIS officials at headquarters to gain a high-level understanding of the process. Specifically, we met with representatives from the Service Center Operations Directorate, as well as the Offices of Information Technology, Chief Counsel, and Office of Policy and Strategy. We interviewed U.S. Immigration and Customs Enforcement officials in Atlanta, Georgia, as well as state and local law enforcement officials across the country.

We obtained a universe of 56,576 U visa petitions granted, waitlisted, or denied between June 1, 2017 and June 1, 2019. We used a 90 percent confidence level, 5 percent sampling error, and 50 percent population proportion to select a statistical sample of 271 U visa petitions from the universe. We analyzed the sample to determine whether USCIS adjudicated petitions according to USCIS policies and procedures.

We manually scanned 381⁷ paper-based files to determine whether petitioners submitted all required documents. We contacted the 172 law enforcement agencies associated with the statistical sample and obtained copies of 83 Supplement B forms for comparison to USCIS records. If the law enforcement agency did not maintain a copy of the Supplement B form, we asked the agency to validate whether the signature was that of an authorized signer. Further, we sent surveys to the 137 responsive law enforcement agencies to ascertain their

⁷ Because the statistical sample of 271 files included 110 granted U visas or waitlisted derivative petitioners, we also obtained and reviewed the 110 associated principal files.
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perspectives regarding the U visa program. We received responses from 57 of the agencies. We asked each agency seven questions:

1. How many Supplement B forms did your agency certify in the last 12 months?
2. How many Supplement B forms did your agency deny in the last 12 months?
3. Does your agency have a written process to certify U visa petitioners?
4. Does the U visa program significantly improve the agency's ability to investigate and solve crimes, and prosecute criminals?
5. Do the benefits of the U visa program outweigh the cost of administering it?
6. Are you aware of how to contact USCIS should a victim stop cooperating?
7. Do you believe the U visa program is misused?

We assessed USCIS' CLAIMS3 data reliability related to our sample universe completeness and U visa status accuracy. We verified the CLAIMS3 visa status matched the supporting documents in the paper-based files. We assessed the data according to U.S. Government Accountability Office, *Assessing Data Reliability* (GAO-20-283G, December 2019). Except for issues we noted with inaccurate reporting or over-granting U visas, we determined the CLAIMS3 data sufficiently reliable for the purpose of our audit.

We conducted this performance audit between March 2019 and August 2020 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B Law Enforcement Survey Responses by State and Agency

State	Survey responses	Law Enforcement Agency		
		Police	Attorney	Sheriff
Alabama	1	1	0	0
Arizona	1	0	1	0
California	20	10	8	2
Colorado	1	1	0	0
Delaware	1	1	0	0
Florida	2	1	1	0
Georgia	2	0	0	2
Illinois	3	3	0	0
Indiana	1	1	0	0
Maryland	1	1	0	0
Minnesota	1	1	0	0
Missouri	1	0	1	0
North Carolina	2	2	0	0
Nebraska	1	0	0	1
New Mexico	1	0	0	1
Nevada	1	1	0	0
New York	2	1	1	0
Oregon	1	0	1	0
Texas	8	5	3	0
Utah	2	2	0	0
Virginia	1	1	0	0
Washington	2	1	1	0
Total	57	34	17	6



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Appendix C
U Visa Laws and Regulations Verbatim Excerpts

October 28, 2000
Victims of Trafficking and Violence Protection Act of 2000,
Public Law 106-386, 114 STAT. 1533-1535

SEC. 1513. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping [sic], trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(2) PURPOSE.—

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.



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(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest....

....

(c) CONDITIONS FOR ADMISSION AND DUTIES OF THE ATTORNEY GENERAL...

(o) REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS—

(1) PETITIONING PROCEDURES FOR SECTION 101(a)(15)(U) VISAS.—The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

June 19, 2019
Immigration and Nationality Act
8 U.S.C. §1101. Definitions

(a) As used in this chapter-...

....



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(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--...

....

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and



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(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: 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;....

8 U.S.C. § 1184. Admission of nonimmigrants

....

(p) Requirements applicable to section 1101(a)(15)(U) visas

(1) Petitioning procedures for section 1101(a)(15)(U) visas

The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(2) Numerical limitations

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 1101(a)(15)(U)(i) of this title, and not to spouses, children, or, in the case of alien children, the alien parents of such children.



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(3) Duties of the Attorney General with respect to "U" visa nonimmigrants

With respect to nonimmigrant aliens described in subsection (a)(15)(U) of section 1101 of this title-

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) Credible evidence considered

In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) Nonexclusive relief

Nothing in this subsection limits the ability of aliens who qualify for status under section 1101(a)(15)(U) of this title to seek any other immigration benefit or status for which the alien may be eligible.

(6) Duration of status

The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional



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circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.

(7) Age determinations

(A) Children

An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a) (15)(U)(i) of this title, and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(U)(ii) of this title, if the alien attains 21 years of age after such parent's petition was filed but while it was pending.

(B) Principal aliens

An alien described in clause (i) of section 1101(a)(15)(U) of this title shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

January 1, 2019

08 C.F.R. § 214.14, *Alien victims of certain qualifying criminal activity.*

(a) Definitions. As used in this section, the term:

....

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not



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limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

....

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

....

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

....

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.



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....

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and,



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therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U nonimmigrant status—*

(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, by mail, Form I-918, “Petition for U Nonimmigrant Status,” applicable biometric fee (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE’s authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of



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detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United



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States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

....

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

....

(d) *Annual cap on U-1 nonimmigrant status—*

(1) General. In accordance with section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) Waiting list. All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions



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receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

....

(g) *Duration of U nonimmigrant status—*

(1) *In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status*

(i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

(ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539



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and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.



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Appendix D
USCIS Comments to the Draft Report

U.S. Department of Homeland Security
 U.S. Citizenship and Immigration Services
 Office of the Director
 Camp Springs, MD 20588-0009



**U.S. Citizenship
 and Immigration
 Services**

September 14, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
 Inspector General

FROM: Ur M. Jaddou UR M
 Director JADDOU
 U.S. Citizenship and Immigration Services

Digitally signed by UR M
 JADDOU
 Date: 2021.09.14
 12:17:38 -04'00'

SUBJECT: Management Response to Draft Report: “USCIS’ U Visa Program is Not Managed Effectively and is Susceptible to Fraud” (Project No. 19-025-AUD-USCIS)

The United States (U.S.) Citizenship and Immigration Services (USCIS) appreciates the opportunity to comment on this draft Office of Inspector General (OIG) report.

I have been thoroughly briefed by USCIS U visa legal, policy, and operational experts who interacted with your staff on multiple occasions – in person, in writing, and through virtual meetings – and I am concerned about the process employed and conclusions reached in this audit. Despite significant effort and multiple attempts on the part of USCIS and other DHS attorneys, policy experts, subject matter experts, and program leadership to work with the audit team to ensure that the team understands U visa law and policy and its administration, there continues to be a fundamental misinterpretation by OIG of U visa statutes, regulations, and policies, which is reflected in the report’s findings and recommendations.

The U nonimmigrant (“U visa”) classification was designed with the dual purpose of: (1) protecting victims of serious crimes; and (2) promoting cooperation between law enforcement and such victims. By allowing victims to remain and work in the U.S., generally for 4 years, and providing a pathway to lawful permanent residence, the U visa program encourages victims to report their victimization to law enforcement, and also enables those victims to participate in the detection, investigation, and prosecution of the crimes committed against them. Since 2011, USCIS has received more U visa petitions each year than the annual statutory cap of 10,000 U visas. USCIS continuously monitors its activities in the administration of this program and considers ways to further improve the efficiency and transparency of the program.

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However, OIG’s findings and recommendations in the draft report suggest otherwise due to a fundamental misinterpretation of both the statutes and the regulations that govern the U visa program. Further, despite significant effort to work with the audit team to enable the auditors to understand this complex program, the draft report does not accurately describe or recognize actions taken by USCIS to improve the administration of the U visa program. Additionally, the draft report fails to accurately identify that the root cause of the growing U visa backlog is in fact the statutory cap imposed by Congress. Further, OIG’s misleading projections related to USCIS’s adjudication of U visa petitions resulted in incorrect estimates being included in the draft report. Finally, the audit process itself was atypical, including a one-year gap between the issuance of the initial preliminary Notice of Findings and Recommendations and the issuance of the draft report, during which time OIG did not inform USCIS that the findings and recommendations changed significantly.

Contrary to the Plain Reading of the Law, OIG Misinterprets the U Visa Statutory and Regulatory Scheme by Imposing a Temporal Limitation on the Underlying Criminal Matters.

Congress created the U visa program in 2000 through the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act (BIWPA)), Public Law 106-386. On September 17, 2007, the Department of Homeland Security (DHS or the Department) published an interim final rule (IFR) implementing the U nonimmigrant status provisions of BIWPA at 8 C.F.R. § 214.14, “Alien victims of certain qualifying criminal activity,” and 8 C.F.R. § 212.17, “Applications for the exercise of discretion relating to U nonimmigrant status.” The 2007 IFR formally created the Form I-918, Petition for U Nonimmigrant Status, and addressed eligibility criteria, filing requirements, evidentiary standards, and benefits associated with the U visa classification.

The draft report reflects a fundamental misstatement of the statute and its “helpfulness” requirement as it applies to the U visa program. As USCIS legal experts explained to OIG on multiple occasions, the plain reading of the statute governing the U visa program is not temporally constrained, i.e., it is not conditioned on the timing of the underlying criminal prosecution. USCIS policy and operational subject matter experts likewise explained that OIG’s view is contrary to the purposes and objectives of the U visa program. In technical comments provided to OIG on August 2, 2021, numerous other legal experts in the Department of Homeland Security noted OIG’s erroneous interpretation of the helpfulness requirement. This included lawyers in the DHS Office of General Counsel (DHS OGC), lawyers within U.S. Immigration and Customs Enforcement’s (ICE) Office of the Principal Legal Advisor and subject matter experts who assist ICE Homeland Security Investigations (HSI) Special Agents who complete U visa certifications, experts in the DHS Office for Civil Rights and Civil Liberties



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(CRCL), and legal experts in the DHS Citizenship and Immigration Services Ombudsman (CISOMB). OIG has nevertheless insisted on publishing its final report with this inaccurate interpretation of the law. This disregard for the correct legal standard could do irreparable damage to the U visa program. Contrary to OIG’s view—which depends on language not present in the statute to require that the criminal investigation be open, active, and within the statute of limitations—8 U.S.C. § 1101(a)(15)(U)(i)(III) states simply that a victim may be eligible for a U visa if the victim “has been, is being, or is likely to be helpful” in the investigation or prosecution of the qualifying criminal activity (emphasis added). The inclusion of past, present, and future tenses demonstrates Congress’s intent to provide for eligibility based on any period of assistance in an investigation or prosecution, including closed cases. Proof of helpfulness at any stage is therefore sufficient to demonstrate eligibility.¹

The statutory provision describing the law enforcement certification, 8 U.S.C. § 1184(p)(1), reinforces this reading. Section 1184(p)(1) requires the certification to state that the petitioner “has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution” of qualifying criminal activity. Like section 1101(a)(15)(U), then, section 1184(p)(1) imposes no requirement that the investigation or prosecution be ongoing.

USCIS’s implementing regulations are in accord. Pursuant to 8 C.F.R. § 214.14(b)(3), a noncitizen is eligible for a U visa if he or she “has been, is being, or is likely to be helpful to a certifying agency in the investigation or prosecution.” Consistent with the governing statute, the regulatory framework thus makes clear that petitioners who have been helpful in an investigation that has since been closed are eligible for U nonimmigrant status.

Longstanding agency practice also reflects this commonsense conclusion. USCIS’s 2003 memorandum, “Centralization of Interim Relief for U Nonimmigrant Status Applicants,” stated:

The fact that the criminal activity occurred a number of years prior to the current request or that the case in which the applicant is the victim is closed is not a determinative factor at this stage. The statute contemplates that a person may be eligible for U nonimmigrant status as a result of having been a victim of a crime that occurred at some point in the past.²

¹ The pathway to lawful permanent residence that Congress provided for U-visa recipients also does not require that the individual have provided assistance in an active criminal investigation or prosecution—only that the individual did not refuse to cooperate with reasonable requests from the certifying official while in U nonimmigrant status. See 8 U.S.C. § 1255(m)(1).

² See U.S. Citizenship and Immigration Services, *Centralization of Interim Relief for U Nonimmigrant Status Applicants*, 8 October 2003. Available at: <http://www.lexisnexis.com/practiceareas/immigration/pdfs/web443.pdf> (last accessed 27 August 2020).



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In addition, for more than a decade, USCIS has operated the U visa program in accordance with this view—just as the plain text of the statute instructs.

Against all this, OIG seizes on a single regulatory provision taken out of context to reach its preferred interpretation. OIG notes in its report that the verbs “investigating” and “prosecuting” in 8 C.F.R. § 214.14(c)(2)(i) are in the present tense. But that clause simply defines who is authorized to certify helpfulness. Section 214.14(c)(2)(i) requires the petitioner to have provided (or be providing, or be likely to provide) assistance to a law enforcement official who had the responsibility for—i.e., jurisdiction over³--the investigation or prosecution of the qualifying criminal activity. This is supported by the different phrasing used by Congress in 8 U.S.C. § 1184(p)(1) when describing what the certification must include: “This certification shall state that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity. . . .” Moreover, the regulatory definition of “investigation or prosecution” includes detection, conviction, or sentencing,⁴ reflecting the full scope of phases, in line with the aforementioned statutory language, during which a victim can provide helpfulness to establish eligibility for the U visa. In short, nothing in section 214.14(c)(2)(i) precludes certification for a closed case. Indeed, it acknowledges that a petitioner is eligible if he or she “has been, is being, or is likely to be helpful to an investigation or prosecution.”⁵

In short, if USCIS were to apply the law as misinterpreted by OIG, it would be contrary to the plain reading of the statute and regulations, and would therefore subject the agency to significant litigation risk.

Beyond these basic legal errors, OIG’s focus on a single clause in 8 C.F.R. § 214.14(c)(2)(i)—to the exclusion of the remainder of that provision, the rest of the regulatory framework, the statutory scheme, and longstanding agency practice—resulted in several other errors that undermine the validity of the audit’s findings. Put simply, if one’s reading would disqualify the vast majority of the currently eligible petitioners, it naturally follows that the audit will “discover” irregularities or indicia of abuse in the program.

OIG’s interpretation of the helpfulness requirement would place USCIS in violation of its statutory and regulatory obligations to consider petitions submitted at all stages of the

³ See 8 CFR § 214.14(a)(2) (“Certifying agency means a Federal, State, or local enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.”)

⁴ See 8 CFR § 214.14(a)(5).

⁵ See 8 C.F.R. § 214.14(c)(2)(i).



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criminal justice process: from detection of the criminal activity, to prosecution of that activity, to the sentencing of the perpetrator (if this stage is applicable to the case). This runs contrary to congressional intent. Indeed, statutory and regulatory amendments would be necessary to adopt any recommendation of OIG to approve only U nonimmigrant petitions for “open or active” cases. Any such restriction of eligibility, short of statutory and regulatory amendment, would likely create significant processing delays and may lead to inadvertent adjudicative errors as USCIS would need to determine the status of each case at the time of filing *and* adjudication. Further, it would impose a significant burden on both law enforcement and petitioners, who may be compelled to continuously update USCIS on their case status while the filing was pending for many years. Finally, it would create substantial litigation vulnerability due to the reliance interests of pending petitioners on the eligibility requirements being applied as they have been interpreted since the inception of the program.

OIG Does Not Adequately Recognize the Dual Purpose of the U Visa Program or USCIS’s Role in Administering the Program

OIG also bases its findings on a fundamental misunderstanding of Congress’s dual purposes in establishing the U visa program. This misunderstanding is reflected in OIG’s decision to limit the scope of the audit to only one of the program’s purposes, assistance to law enforcement, without consideration of the other, assistance to victims of crime. Congress found that “providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children.”⁶

The U visa program serves the dual purposes of providing temporary immigration benefits to noncitizen victims and providing law enforcement with a tool to encourage noncitizens to report serious crimes and assist in the investigation or prosecution of those crimes. USCIS and DHS disagree with OIG’s view that the adjudication process and USCIS’s administration of the program are meant to directly impact how the criminal justice system functions in individual cases. Specifically, OIG’s draft report states that USCIS is administering the U visa program in a manner that does not “meet the intent of the program to assist law enforcement” and that “certifying old or closed cases did not help solve the cases and contradicted the intended purpose of the program to assist with their investigations.” OIG’s assertion that Congress did not intend for U visas to be made available to victims in connection with closed investigations or past convictions is incorrect. The existence of the U visa program and the promise that it could offer

⁶ See Violence Against Women Act of 2000, Section 1513(a)(2), Pub. L. No. 106-386, 114 Stat. 1464 (2000).



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protection to non-citizen victims would be severely diminished if a U visa were to suddenly become unavailable because the investigation was dropped or otherwise came to a quick conclusion. Through this assertion, OIG conflates the distinct roles and responsibilities of the noncitizen victim, law enforcement officials, and USCIS in the U visa process.

Consequently, OIG misinterprets USCIS’s role in the U visa program, as the adjudication process is not meant to play a direct role in the investigation or prosecution of crimes. USCIS’s role in administering the U visa program is to determine a noncitizen victim’s eligibility for U nonimmigrant status and available interim benefits based on statutory and regulatory requirements. This includes assessing the validity and credibility of the information provided to the agency as a safeguard against fraud. After a noncitizen has submitted their petition for U nonimmigrant status, which must include the properly completed Form I-918, Supplement B, U Nonimmigrant Certification (Form I-918B), USCIS is responsible for examining whether all eligibility requirements have been met, conducting background checks, requesting additional evidence from the petitioner, and coordinating with law enforcement officials to verify the accuracy of information provided in the Form I-918B. Certifying officials generally have discretion to determine whether it is appropriate to complete and sign a noncitizen’s Form I-918B, including at what stage of the investigation or prosecution this should occur. Certifying officials are also able to withdraw their certification and inform USCIS if a U visa petitioner fails to comply with reasonable requests for assistance. USCIS does not have a role in a certifying official’s case-specific decision regarding when to, or whether to, sign a certification. Additionally, while USCIS provides best practices for certifying agencies to consider as they develop or revise their certification policies, USCIS cannot have a role in setting such policies.

ICE legal and subject matter experts assisting HSI Special Agents who complete U visa certifications concur with the USCIS interpretation of congressional intent. ICE internal policies governing signing U visa certifications on behalf of qualifying victims in HSI investigations are consistent with this interpretation. As a criminal investigatory agency, ICE relies on the availability of the U visa beyond active investigations and prosecutions because this availability fosters reporting to law enforcement, continued cooperation, and valuable intelligence that may be helpful at a later date in a connected crime. The potential value of the program, therefore, is not limited to specific results of an individual case—which are outside the control of the victim—but also the source of leads the program generates. Without U visas, law enforcement would have far fewer leads, investigations, and prosecutions.



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OIG Erroneously Asserts that the Program Does Not Assist Law Enforcement

OIG’s conclusion in the draft report that the U visa program did not help law enforcement is based on evidence from a small sample, from one point in time, that runs counter to extensive evidence USCIS provided OIG. Inexplicably, OIG did not critically examine why its finding were significantly different from the law enforcement evidence provided by USCIS.

OIG determined that the U visa program does not routinely help law enforcement, as Congress intended, based on an OIG survey of 56 individual law enforcement officials, which resulted in the finding that 70 percent of the respondents (approximately 39 individuals) indicated that they found the program unhelpful. Despite the fact that CRCL asked for more information on the 56 individuals queried in order to assess whether this small sample is reflective of the whole country, OIG has not provided such information. More pointedly, this OIG determination is also in contrast to the tens of thousands of U visa petitions received annually. As each petition requires a completed and signed law enforcement certification, and the certification must—under penalty of perjury—attest to the petitioner’s helpfulness,⁷ this clearly demonstrates that in the eyes of law enforcement personnel themselves the program does assist law enforcement.

USCIS receives direct feedback from numerous law enforcement agencies recognizing the benefits the U visa program provides to their agencies, which USCIS provided to OIG. In October 2019, for example, USCIS hosted a listening session for law enforcement. During that session, 80 certifying officials described how the program better enables law enforcement to detect, investigate, or prosecute serious crimes. As an example of the benefits certifying officials described in that call, a prosecutor noted that the U visa program allows “more and more victims [to] then come forward... [a]nd more and more real predators are held to task and that it becomes the tool that we all envision it to be.” More recently, DHS and USCIS received a letter of support for the U visa program in May 2021 from a group of 17 certifying officials from jurisdictions across the country. The letter noted, “We are experienced in working with immigrant victims of domestic violence, sexual assault, stalking, human trafficking, and child and elder abuse. In our work we have seen how the U visa program improves our agencies’ ability to detect, investigate, prosecute, convict, and sentence perpetrators which enhances victim and community safety and also is improving law enforcement officer safety.” This letter included recommendations that USCIS has taken into consideration, as it has in the past when receiving direct feedback from law enforcement officials.

⁷ See 8 U.S.C. § 1184(p)(1).



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Further, as noted in the “Trends in U Visa Law Enforcement Certifications, Qualifying Crimes, and Evidence of Helpfulness”⁸ (July 2020), almost 60 percent of cases resulted in the arrest, indictment, or prosecution of the perpetrator of the qualifying crime(s). This report, which USCIS provided to OIG, demonstrates that the program is serving its intended purpose of assisting law enforcement. OIG’s refusal to acknowledge clear evidence of support for the program undermines the integrity of the draft report.

USCIS is committed to the proper administration of the U nonimmigrant program and to supporting the law enforcement community. In 2019, the agency introduced a dedicated certifying official hotline, which provides U visa certifying officials direct access to technical assistance from agency subject matter experts within the USCIS Office of Policy and Strategy.

Further, USCIS notes that there is detailed, publicly available information that addresses some of OIG’s concerns. For example, the June-August 2017 Police Executive Research Forum’s newsletter, “U Visas and the Role of Local Police,” focused on the U visa program and the role of law enforcement officials in the certification process. In addition to providing law enforcement officials with information on the U visa program, the newsletter also included a case study of the U visa program’s impact on community policing. The case study noted that the U visa program helped law enforcement officials build trust: “Everyone in policing wants to find innovative ways to build trust, particularly with community members who are historically not inclined to come to us. U visas are just that.”⁹ The newsletter also noted “tangible results,” indicating that “one of the benefits...noticed after implementing the...U visa program was that the applications were a source of information about previously unknown criminal activity. Using information contained in the U visa [petitions], police and prosecutors have been able to strengthen investigations and charges.”¹⁰

Lastly, ICE legal and subject matter experts assisting HSI Special Agents who complete U visa certifications concur with USCIS that the U visa program is a valuable tool that does, indeed, support law enforcement. HSI personnel conduct a tremendous amount of outreach within communities to encourage noncitizen crime victims to come forward and report crimes committed against them. Part of this outreach includes describing victim-

⁸ *Trends in U Visa Law Enforcement Certifications, Qualifying Crimes, and Evidence of Helpfulness*, available at: https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report-Law_Enforcement_Certs_OCAs_Helpfulness.pdf (last accessed 27 August 2020).

⁹ Police Executive Research Forum, *U Visas and the Role of Local Police*

In Preventing and Investigating Crimes Against Immigrants, June-August 2017. Available at: https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_junaug.pdf (last accessed 27 August 2020).

¹⁰ *Id.*



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based immigration benefits, including the U visa. Discussing the U visa creates bridges between HSI and the community organizations that serve crime victims. This trust built within communities encourages victims to work with HSI.

OIG Does Not Accurately Describe or Recognize Actions Taken by USCIS to Improve Its Administration of the U Visa Program

OIG’s draft report also did not accurately describe or recognize USCIS’s consistent efforts to properly monitor and improve the administration of the U visa program. The report asserts that USCIS did not implement corrective actions for longstanding issues. However, in reaching certain conclusions, OIG disregarded USCIS information that clearly described the agency’s efforts to ensure that the public and certifying officials are aware of the program’s eligibility requirements. In addition, the agency’s extensive efforts to provide interim benefits to the growing number of pending petitioners waiting for visas to become available were equally disregarded. Most notably, OIG did not correctly describe USCIS’ thorough consideration of the program’s opportunities for improvement, challenges, and limitations.

The OIG report does not properly reflect the actions that the agency took to implement many of the recommendations within the 2012 U Visa Study, and the 2020 U Visa Fraud and Benefit Integrity Study.¹¹ In fact, USCIS accepted and completed five of the six recommendations from the 2012 U Visa Study, including: increasing USCIS’ training to certifying officials and other stakeholders; clarifying the intent of the program and the key roles that victims, USCIS, and certifying officials have; and developing best practices for certifying agencies to consider. By failing to discuss the 2012 study report in its entirety, OIG’s description and assessment of the agency’s efforts is incomplete.

For the 2020 U Visa Fraud and Benefit Integrity Study, OIG referenced only seven of the 19 recommendations contained in this internal study. The recommendations focused on:

- Improving the agency’s information collection by clarifying the U nonimmigrant petition, law enforcement certification, and related form instructions;
- Enhancing relevant data systems to support adjudication and reporting;
- Further clarifying policies and regulations;
- Supporting further engagement with law enforcement agencies; and
- Suggestions for continued internal research.

USCIS thoroughly considered all of the recommendations from the 2020 U Visa Fraud and Benefit Integrity Study, and implemented most of them. USCIS also elected not to

¹¹ The 2012 U Visa Study was commissioned by USCIS and was conducted by an outside research firm; the 2020 U Visa Fraud and Benefit Integrity Study was internally conducted by USCIS.



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adopt four recommendations from the 2020 study due to competing priorities, as well as the complex nature of these recommendations, which would require longer-term efforts, including significant system updates. USCIS’ efforts to analyze and, where appropriate, implement recommendations to improve the administration of the U visa program directly contradict OIG’s finding that USCIS did not update policies/procedures or resolve identified issues in response to internal staff-level recommendations. Similarly, when referencing two internal 2018 staff-level deliberative documents, OIG failed to fully describe the agency’s efforts pertaining to these recommendations.

Overall, while OIG’s draft report briefly notes that USCIS was working on complex regulatory revisions in this program, it did not provide a balanced description that sufficiently described the agency’s significant achievements. USCIS has made great strides in response to the recommendations in the reports referenced by OIG, from increasing efficacy and availability of stakeholder outreach and clarifying eligibility requirements to enhancing internal processes. OIG’s draft report neglected to adequately consider the numerous updates that USCIS provided regarding these recommendations throughout the audit process. Further, OIG did not appear to fully understand why USCIS determined it should not, or could not, take certain actions based on the recommendations during the audit period. Although USCIS had agency subject matter experts readily available, OIG did not request additional information from USCIS or provide an opportunity for critical engagement on this topic.

OIG Failed to Recognize the Purpose of Internal Deliberative Documents and Pre-Decisional Drafts

In addition to selectively considering the recommendations from internal studies, OIG relied heavily on internal documents that were prepared by USCIS staff for agency discussions regarding ways to improve the program despite statutory limitations. The draft report contains entire sections of internal documents, quoted verbatim, with minimal to no relevant accompanying OIG analysis. Many of these documents were prepared by agency staff to support deliberative, pre-decisional, and internal discussion within USCIS. While USCIS explained to OIG on multiple occasions that these documents were subject to change and did not represent the agency’s final positions or the views of leadership, OIG declined to further clarify the nature and purpose of these documents within the draft report.

USCIS staff continues to seek solutions to shifting and complex challenges. As they engage in this process, it is critical for agency staff to be able to brainstorm and collaborate with each other without fear of misrepresentation or misinterpretation, as this may lead to increased public confusion and other adverse impacts to the program. Staff-level drafts created during informal working group meetings and briefings drafted for leadership must be recognized as what they are, and not taken as formal decisions or



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prioritization by agency leadership or a *required* path forward for the agency. By relying on draft documents and working group level papers, OIG fails to properly weigh and contextualize this information as support for the findings in the draft report.

Further, OIG’s determination that USCIS has mismanaged the program because the agency shifted its approach to rulemaking or policymaking is misguided. By failing to acknowledge that rulemaking and policymaking are dynamic processes, and that changes to approaches are a critical part of the process, OIG reaches inappropriate conclusions regarding USCIS’ actions.

OIG Does Not Account for the Statutory Cap in Its Assessment of the Backlog

As noted to OIG throughout the audit and commented on by multiple DHS Components in the technical comments, USCIS is subject to a statutory cap and can only grant U nonimmigrant status to 10,000 principal petitioners every fiscal year (FY).¹² USCIS first met the statutory cap FY 2010, and U visa petitions received by USCIS have greatly outpaced available visas each year since FY 2011. For example, in FY 2011, USCIS received 14,647 principal petitions.¹³ This number increased to 26,089 in FY 2014, and further increased to over 37,000 in FY 2017.¹⁴ While principal petitions decreased slightly in the past three FYs, USCIS is still currently on pace to receive over 20,000 principal petitions in FY 2021.¹⁵

Contrary to OIG’s assertions in the draft report, USCIS has taken multiple steps to address increases in processing times due to the growing backlog. While it was noted to OIG on several occasions that USCIS cannot take any actions that reduce the overall backlog of U visa petitions due to the statutory cap, USCIS representatives also explained that the agency was considering other mechanisms that would address the impact of the backlog on processing times. While USCIS continued to issue the maximum number of visas available each fiscal year, the continued receipt of incoming U petitions over this statutory cap led to a backlog of pending petitions, increasing processing times. To address these increases, USCIS implemented a waiting list process as set forth in regulation.¹⁶ With the waiting list process, USCIS maintained the ability to conduct U visa adjudications and provide employment authorization and deferred action to petitioners who were eligible for a U visa at the time of review, but could not be issued

¹² See 8 U.S.C. § 1184(p)(2).

¹³ See “Number of Form I-918, Petition for U Nonimmigrant Status,” https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2021_qtr1.pdf.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See 8 C.F.R. § 214.14(d)(2).



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the visa due to the statutory cap being met. USCIS was able to provide employment authorization and deferred action to thousands of eligible petitioners despite the statutory cap being met through this process.

Despite the implementation of the waiting list process, the backlog, and, relatedly, U visa processing times continued to increase due to the level of incoming receipts. In its effort to promote efficiency in U visa adjudications, USCIS announced in 2016 that it would be adjudicating U visa petitions at both the Vermont Service Center (VSC) and Nebraska Service Center (NSC). This sharing of adjudications allowed USCIS to balance the workload between the VSC and NSC, promoting flexibility and maintaining dedicated resources to the U visa program. Even with these efforts, processing times and backlogs increased with incoming U visa petitions continuing to outpace available visas. With an increasing workload, USCIS explored additional mechanisms to help improve processing time and provide employment authorization and deferred action to eligible U visa petitioners.

In its latest effort to reduce processing times and the time waiting for an initial review of petitions, USCIS implemented a new U Visa Bona Fide Determination (U BFD) process on June 14, 2021. USCIS has the discretionary authority to issue employment authorization to petitioners with pending, bona fide determinations under 8 U.S.C. § 1184(p)(6) and grants deferred action to such petitioners after determining, on a case-by-case basis, that they merit a favorable exercise of discretion. Although this process was announced after OIG’s audit fieldwork was completed, USCIS developed it based on the expertise gained by administering the program for over a decade, including exploring options to address the pending backlog. USCIS anticipates the U BFD process will significantly reduce the time a petitioner will wait to receive an initial review of their U petition and, if that review is favorable, the issuance of employment authorization and deferred action.

OIG Incorrectly Stated that USCIS Did Not Properly Implement Procedures to Identify and Address Forged, Unauthorized, and/or Altered Form I-918Bs

In preliminary findings provided to USCIS in August 2020, and again in this draft report, OIG noted that USCIS approved U petitions based on “forged, unauthorized and altered” documents and did not properly utilize its internal database, Casebook.¹⁷ Out of hundreds of U visa petitions OIG reviewed over a two-year period, OIG identified 10 petitions that it asserted had “unauthorized” or “forged” signatures or an altered form or date. USCIS takes this assertion seriously and, on numerous occasions, requested that

¹⁷ USCIS maintains an internal database of certifying officials assigned to certifying the Form I-918B. The database is continually updated as certifying agencies and officials provide their information to USCIS. USCIS may contact certifying agencies and officials with any questions or issues regarding the Form I-918B if necessary.



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OIG provide USCIS with these petitions and supporting evidence to allow the agency to review and take any necessary corrective action. OIG did not respond to these repeated requests and provide information related to these petitions for USCIS to review. USCIS also notes that OIG’s draft report does not provide clear definitions of the terms “forged” and “unauthorized” as pertaining to Form I-918B.

Further, OIG did not provide most of the information or evidence requested by USCIS concerning these cases, despite USCIS making these requests as early as Fall 2020 during a meeting on the Preliminary Notice of Findings and Recommendations, through emails, and via USCIS technical comments on both the Preliminary Notice of Findings and Recommendations and OIG’s draft report. OIG provided four A-numbers on August 25, 2020, but did not release any additional A-numbers until August 13, 2021 in its final responses to USCIS’ technical comments, a year after the original requests. Additionally, OIG staff provided little to no information regarding how they reached these conclusions.

To date, the only evidence provided by OIG is a screenshot¹⁸ in the draft report of an altered Form I-918B. In the screenshot, the version of the Form I-918B obtained from the certifying agency shows it had marked the “Other” checkbox and had typed “Armed Robbery” as the qualifying crime in the space provided. In the “altered” copy contained in the USCIS A-file, the previous “Other” checkbox and typed “Armed Robbery” are present, but the additional checkbox of “Felonious Assault” had been marked. USCIS continues to request that OIG produce the Form I-918B which OIG determined was altered, so that USCIS may review and take any necessary corrective action. At this time, OIG still has not provided this information or explained how it reached its conclusion.

OIG’s failure to share this information with USCIS is extremely concerning, as it hinders USCIS’ ability to review these petitions and take any necessary corrective action. Had OIG immediately provided USCIS with the details of these individual petitions, USCIS could have reviewed these petitions immediately. If OIG’s findings are accurate, then its refusal to cooperate with USCIS actively harmed program integrity.

OIG also asserts USCIS did not properly utilize its Casebook internal database when reviewing Form I-918Bs. Specifically, the draft report states that OIG discovered four signatures on Form I-918Bs that did not match the certifying official’s signature in Casebook and were “denied” by the certifying official. However, OIG did not elaborate or provide any additional information. Further, the report states USCIS did not question the validity of three other signatures not in Casebook. As previously stated to OIG, the Casebook database is continually updated as certifying agencies and officials provide their information to USCIS. USCIS may, and does, contact certifying agencies and

¹⁸ Figure 2, page 8 of OIG July 2021 Draft Report.



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officials with any questions or issues regarding the Form I-918B, if necessary. Again, despite multiple USCIS requests, to date OIG has not provided the requested information of the identified cases and the evidence supporting how they reached these conclusions.

OIG Incorrectly Projected that USCIS Granted 21,742 Petitions Based on a Problematic and Misleading Statistical Modeling Exercise

As noted by USCIS and multiple DHS Components in the technical comments on OIG’s draft report, the estimates and conclusions drawn from OIG’s statistical estimation are based on fundamentally flawed categorizations, resulting in misleading statements that USCIS improperly granted over 100 percent of cases in the two-year period. The draft report’s statistical modeling exercise is based on OIG’s inaccurate interpretation of relevant statutory and regulatory requirements.

OIG assumes in the draft report that only cases with an underlying active criminal matter at the time of adjudication qualify as meeting the “helpfulness” requirement. As explained in this management response memo, USCIS, ICE, CRCL, CISOMB, and DHS OGC strongly disagree with the foundational premise used to construct this model (a misinterpretation of the law), as well as the resulting conclusion that USCIS may have inappropriately granted petitions in a way that exceeds the statutory cap of 10,000 principal petitions that USCIS may grant every FY. Specifically, OIG stated, “As a result of USCIS granting visas to petitioners with no evidence the case was ongoing, we project from the statistical sample that ISOs may have inappropriately granted U visa benefits to 21,742 petitioners during a 2-year period.” This assertion is extremely confusing, and USCIS is concerned that this projection will engender unnecessary and unfounded concern from the public, members of Congress and their staff, law enforcement agencies who benefit from this program, and victims with approved and pending U visas.

Based on this assertion, OIG projected the number of cases USCIS may have inappropriately granted in the past, despite the fact that OIG’s understanding of the law was incorrect. Thus, this projection is based on OIG’s recommendations for how cases *should* be adjudicated based on its interpretation of a singular regulation and only one of the two governing statutes, but does not reflect how cases are *actually* adjudicated under well-established statutory and regulatory eligibility requirements. OIG’s draft report did not provide this important context in the explanation of this projection. Instead, OIG appears to be penalizing USCIS for not following OIG’s incorrect legal interpretation. It is concerning that OIG has created a U visa requirement that does not exist within DHS’ interpretation of the law, regulations, policies, and then reported a high estimate of how many cases OIG believes should not have been granted under this fabricated requirement.

Further, OIG’s decision to project in 2-year increments based on their file sample dates and the use of “may” in such a provocative sentence are confusing. If OIG has evidence



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that USCIS has inappropriately granted U nonimmigrant status to petitioners under relevant and current statutes, regulations, and policies, USCIS asked, and continues to ask, that OIG state this directly and provide USCIS with the opportunity to consider the cases OIG identified. As of the date of this management response letter, however, OIG has not produced any cases it has identified as inappropriately granted based on insufficient evidence of helpfulness.

Lastly, the approximately 21,000 petitions “inappropriately granted” is only mathematically valid if the way OIG categorized them is valid; and OIG should have included the caveat that this 21,742 is an “estimate” subject to sampling error in the draft report. However, that information is not presented in the body or in the “Objectives, Scope, and Methodology” (OS&M) section of the draft report. USCIS requested that OIG provide more clarity and context within the body of the report and the OS&M regarding the methodology and sample sizes, including whether OIG reasonably believes this projection is representative of the referenced population as a whole, so that a reader could understand any limitations in this analysis. Further, government auditing standards state that when reporting audit methodology,

Auditors should identify significant assumptions made in conducting the audit, describe comparative techniques applied; describe the criteria used; and, when the results of sample testing significantly support the auditors’ findings, conclusions or recommendations, describe the sample design and state why the design was chosen, including whether the results can be projected to the intended population.¹⁹

However, OIG declined to include this and the aforementioned critical information in their report.

In summary, without properly explaining what this projection is based on or discussion of actual cases that OIG has identified as inappropriately granted based on insufficient evidence of helpfulness, the public should critically consider the reliability of OIG’s findings. Furthermore, the inclusion of this misleading estimation, and the broader statements made about mismanagement of the U visa program based on this estimation, result in speculative and opinion-driven findings of the U visa program in OIG’s draft report, rather than an audit built upon a strong factual foundation.

¹⁹ See “Government Auditing Standards,” GAO-21-368G, April 2021, Section 9.14.



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OIG’s Audit Process Was Problematic on Multiple Levels

OIG states in its draft report that it audited the U nonimmigrant program to determine whether USCIS’ adjudication process is adequate, and if the program assists law enforcement with investigating and prosecuting crimes, as intended. OIG auditors traveled to the VSC and requested to observe day-to-day operations and the adjudication process of U visa petitions. Accordingly, VSC representatives prepared a detailed three-day agenda providing OIG access to VSC leadership, management, and officers for discussions, along with the opportunity to shadow VSC officers while adjudicating U petitions. The OIG team did not participate in all scheduled meetings and petition reviews offered by VSC. Instead, OIG informed VSC leadership and management that OIG was reviewing the “rubber stamping” of U visa approvals. OIG did not schedule time to meet with the NSC, which also conducts U visa adjudications. Such a visit would have provided the OIG team with a greater opportunity to understand the U visa program and consider additional evidence in developing its findings and recommendations.

Additionally, during the initial stages of the audit, OIG requested to review over 30 previously adjudicated U visa petitions it specifically chose because OIG questioned the adjudicative decision or believed the petition was decided in error. OIG based these claims on a review of selective documents that represent only a small portion of the entire adjudicative record. VSC and NSC conducted reviews of the full A-files of the OIG-selected petitions and provided OIG with written summaries in September 2020 explaining why each of the adjudication decisions—and underlying analysis—was correct based on the contents of the entire file. Despite this, the report still maintains that USCIS approved petitions based on altered documents, and further states petitions were wrongly approved where the qualifying criminal activity was no longer being investigated or prosecuted.²⁰

Finally, despite numerous offers from USCIS, the OIG team refused to participate in any follow-up discussions aside from the formal Exit Conference. Nor does the OIG report address or respond to information provided by USCIS that would have provided context or a counterpoint to the audit team’s findings.

²⁰ USCIS had previously explained to OIG on numerous occasions that neither statute nor regulation require the qualifying criminal activity be part of an “open” investigation or prosecution. USCIS specifically referenced 8 U.S.C. § 1101(a)(15)(U) and the language regarding helpfulness where a petitioner either “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution. If USCIS denied petitions based on an investigation or prosecution being closed, it would likely be in violation of governing statute and subject to litigation.



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Conclusion

The U visa program is a critical tool that both provides stability to noncitizen victims of crime and helps law enforcement detect, investigate, and prosecute serious crimes in their jurisdictions. OIG’s draft report on the U visa program contains fundamentally incorrect legal interpretations, flawed findings, critically deficient analysis, and, ultimately, infeasible recommendations, as addressed in the attachment to this memorandum. Contrary to OIG’s assessment, USCIS has been, and remains, committed to the proper administration of the U visa program. In the spirit of this ongoing commitment, USCIS is concerned that OIG’s findings and recommendations could promote misunderstanding that undermines the administration and efficacy of the program.

The draft report contained six recommendations for USCIS, three with which USCIS concurs (Recommendations 3, 5, and 6) and three with which USCIS non-concurs (Recommendations 1, 2, and 4). Attached find our detailed response to each recommendation. USCIS previously submitted two sets of substantial technical comments addressing numerous accuracy, contextual, and other issues under separate cover for OIG’s consideration.

USCIS will continue to work to improve the U visa program. Further, USCIS remains committed to transparency and cooperation during all audits. Please feel free to contact me if you have any questions.

Attachment



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**Attachment: Management Response to Recommendations
 contained in Project No. 19-025-AUD-USCIS**

OIG Recommended that the Chief, Office of Policy and Strategy: n

Recommendation 1: Update and establish guidance to improve the adjudication n process, including: n

- n Distribute additional, consistent guidance for ISOs [USCIS Immigration Services Officers] to apply 8 C.F.R. § 214.14 which requires that the certifying officials' agency "is investigating or prosecuting" the alleged criminal activity and grant benefits only after they confirm the case "is" open and active.n

Response: Non-concur. nThis recommendation would effectively limit U visa petitions to only petitioners who are currently being helpful, exclude those who have been, or are n likely to be, helpful, and is fundamentally incongruent with the plain language of the n statute and regulations, specifically 8 CFR § 214.14(c)(1), and DHS's longstanding and n accepted interpretations of the statute for the U visa program. n

As written, 8 U.S.C. § 1101(a)(15)(U)(i)(III) states a victim may be eligible if the victim n "has been, is being, or is likely to be helpful" in the investigation or prosecution of the n qualifying criminal activity (emphasis added). nThe inclusion of past, present, and future n tenses demonstrates Congress's intent to allow eligibility in all periods of an investigation n or prosecution, including closed cases. nProof of helpfulness during any stage of the n process is sufficient to demonstrate eligibility. nTherefore, to limit the approval of U visa n petitions to only those with "open or active" cases would first require Congress to enact n statutory amendments. USCIS cannot amend the regulation to implement OIG's n interpretation as it contradicts the plain language of the statute. nFurther, even if OIG had n found the statute to be ambiguous, courts defer to an agency's reasonable interpretation n of an ambiguous statute, thus supporting USCIS's and DHS's interpretation of the law. n

USCIS requests that the OIG consider this recommendation resolved and closed. n

Recommendation 2: Implement additional controls that mitigate risks of fraudulent n Supplement B forms, such as requiring certifying officials to submit forms directly to n USCIS. n

Response: Non-concur. nUSCIS already has a robust set of controls in place to mitigate n risks of fraudulent documents in the U visa program, information that was previously n provided to OIG yet not examined as part of this audit or addressed in its findings. n Additionally, USCIS cannot require law enforcement officials to submit the Form I-918B n

¹ See *Chevron, U.S.A., Inc. v. Nat. Res. of Council, Inc.*, 467 U.S. 837, 844 (1984).

note: Our draft report recommended six actions. We removed the draft report's recommendation 1 and renumbered the remaining recommendations. USCIS' response to final report recommendations 1 through 5 begins with their response to recommendation 2.



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directly to USCIS, because such actions do not comport with the existing regulatory filing requirements. 8 C.F.R. § 214.14(c)(2)(i) requires that the principal petitioner submit Form I-918B with their U visa petition as a piece of initial evidence. Therefore, per regulation, Form I-918B cannot be submitted separately. Finally, USCIS does not believe it would be an efficient and responsible use of agency resources to embark on a multi-year effort to proceed with the rulemaking process to change the requirements, and develop a system that permits certifying officials to submit the Form I-918B directly to USCIS, only so that it may address an audit finding that was not itself sufficiently substantiated.

USCIS requests that OIG consider this recommendation resolved and closed.

OIG Recommended that the Associate Director, Service Center Operations Directorate:

Recommendation 3: Improve USCIS data systems to ensure accurate reporting of U visas granted.

Response: Concur. Since 2015, USCIS has utilized an electronic system visa counter to track the number of statutory cap approvals. This system control does not allow an officer to approve a principal U visa petition once the statutory cap has been met. Additionally, USCIS is currently updating the technology and system, making the tracking system more robust for reporting and detailed tracking, including accounting for complex case-level adjudicative actions. Estimated Completion Date (ECD): September 30, 2022.

Recommendation 4: Develop a plan to track the outcome of U visa-related fraud referrals and take steps to further mitigate fraud risks.

Response: Non-concur. USCIS previously expressed significant concerns with this recommendation. As USCIS explained in the December 2020 and August 2021 technical comments, the outcome of investigations and prosecutions is completely outside of USCIS' role in providing an immigration benefit. USCIS also noted that any disclosure of case outcomes to law enforcement officials based on fraud referrals is limited by current statute and policy.² Finally, USCIS does not control whether U.S. Immigration and Customs Enforcement accepts fraud referrals from USCIS, nor does USCIS control how the Department of Justice determines when or whether to prosecute fraud.

USCIS does, however, provide its immigration service officers with significant fraud identification and referral training in addition to guidance outlined in the Form I-918 Standard Operating Procedure (SOP) and the USCIS Immigration Services Officer BASIC training program (BASIC) that officers receive. During the audit, USCIS provided OIG information regarding USCIS officer trainings. The Form I-918 SOP

² See 8 C.F.R. § 214.14(e)(1)(ii).



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provides guidance to protect against the possible approval of fraudulent filings. U visa officers also routinely meet with their assigned teams, supervisors, and Section Chiefs to discuss adjudications, including trends and any discovered fraud indicators. Information is shared freely to promote awareness of any discovered fraud indicators.

If an officer believes they have discovered fraud indicators, the officer will discuss this information with their supervisor. Upon review, if the supervisor believes actionable fraud may exist, the case will be sent to the Service Center Operations Directorate's (SCOPS) Center Fraud Detection Operations (CFDO) for additional investigation. CFDO and the Service Center U visa adjudication units work together to ensure the petition is fully investigated and all necessary evidence is obtained before any decision is made.

Additionally, the CFDO-Vermont (VT) regularly participates in Adjudication's U visa all hands meetings sharing fraud trend information and answering questions. MS Teams collaboration pages were created between the CFDO-VT, CFDO-Nebraska, and the VSC Form I-918 adjudicators to provide context and broadly share individual discussions with all parties. Casebook, an ECN database, is also utilized to not only provide Adjudicators with Certifying Agency information, but to alert them to potential fraud as well.

USCIS requests that OIG consider this recommendation resolved and closed, as implemented.

Recommendation 5: Take steps to timely protect eligible petitioners awaiting initial adjudication due to the backlog.

Response: Concur. USCIS announced and implemented a new U BFD process³ on June 14, 2021, in an effort to address the timeframe for initial review processing times. This process will reduce the time a petitioner waits to receive an initial review of their U petition and receive employment authorization and deferred action, if a favorable determination is made. USCIS has the discretionary authority to issue employment authorization to petitioners with pending, bona fide determinations under 8 U.S.C. § 1184(p)(6) and grants deferred action to such petitioners after determining they merit a favorable exercise of discretion.

USCIS began training officers on the U BFD process upon its announcement in the USCIS Policy Manual and began issuing Employment Authorization Documents (EADs) and grants of deferred action to petitioners meeting the established requirements the week of June 28, 2021. USCIS determines whether a petition is bona fide based on the petitioner's compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS then considers

³Available at: <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.



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any national security and public safety risks, as well as any other relevant considerations, as part of the discretionary adjudication.

USCIS requests that OIG consider this recommendation resolved and closed, as implemented.

Recommendation 6: Develop enhanced performance metrics to ensure the program achieves its mission.

Response: Concur. USCIS has created specific internal codes used in adjudications to enhance operational efficiency and data integrity, and is currently developing a specific code for EADs issued under the new U BFD program. ECD: September 30, 2022.



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