

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1371 Session of 2023

INTRODUCED BY HOHENSTEIN, MIHALEK, BURGOS, MADDEN, RABB, SANCHEZ, HILL-EVANS, KINSEY, GUENST, KHAN, CERRATO, GREEN, PROBST, WAXMAN, ISAACSON AND KENYATTA, JUNE 12, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 25, 2024

AN ACT

1 Providing for duties of certifying officials and certifying
2 agencies regarding the processing of certification form
3 petitions.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the U
8 Nonimmigrant Visa Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Certification form." The United States Citizenship and
14 Immigration Services Federal form I-918, Supplement B, U
15 Nonimmigrant Status Certification, including any successor form,
16 which:

17 (1) is required under 8 U.S.C. § 1184(p) (1) (relating to

1 admission of nonimmigrants) and 8 CFR 214.14(c)(2)(i)
2 (relating to alien victims of certain qualifying criminal
3 activity); and

4 (2) confirms that a qualifying criminal activity has
5 occurred and the victim was helpful, is helpful or is likely
6 to be helpful to a certifying agency in the detection,
7 investigation or prosecution of the qualifying criminal
8 activity.

9 "Certifying agency." Any of the following:

10 (1) The Pennsylvania State Police.

11 (2) A local law enforcement agency with jurisdiction.

12 (3) A judicial office.

13 (4) A prosecutor's office.

14 (5) An agency that has criminal investigative
15 jurisdiction in the agency's respective areas of expertise.

16 "Certifying official." The head of a certifying agency or an
17 individual who has been specifically designated by the head of a
18 certifying agency to provide certification forms on behalf of
19 the certifying agency.

20 "Immigration representative accredited by the United States
21 Department of Justice." An individual who meets all of the
22 following criteria:

23 (1) Is accredited by the United States Department of
24 Justice to represent individuals before the Board of
25 Immigration Appeals, a Federal immigration proceeding or the
26 United States Department of Homeland Security.

27 (2) Works for a specific nonprofit, religious,
28 charitable, social service or similar organization that has
29 been recognized by the United States Department of Justice to
30 represent the individuals specified under paragraph (1).

1 (3) Has accreditation under paragraph (1) in good
2 standing.

3 "Judicial office." An office of any of the following:

4 (1) A judge of the court of common pleas.

5 (2) A judge of the Commonwealth Court.

6 (3) A judge of the Superior Court.

7 (4) A justice of the Supreme Court.

8 (5) A magisterial district judge.

9 (6) A judge of the Pittsburgh Magistrate's Court.

10 (7) A judge of the Philadelphia Municipal Court.

11 (8) A master appointed by a judge of a court of common
12 pleas.

13 "Legal representative." Any of the following who represents
14 the interests of a petitioner:

15 (1) An immigration representative accredited by the
16 United States Department of Justice.

17 (2) A licensed attorney.

18 (3) A parent or legal guardian in the case of a child or
19 an incapacitated or incompetent individual.

20 (4) A domestic violence counselor/advocate as defined in
21 23 Pa.C.S. § 6102 (relating to definitions).

22 (5) A sexual assault counselor as defined in 42 Pa.C.S.
23 § 5945.1 (relating to confidential communications with sexual
24 assault counselors).

25 (6) Any other third party appointed by the petitioner.

26 "Petitioner." An individual who submits a certification form
27 petition under this act.

28 "Prosecutor's office." An office of any of the following:

29 (1) The Attorney General.

30 (2) A deputy attorney general.

1 (3) A district attorney.

2 (4) An assistant district attorney.

3 "Qualifying criminal activity." As defined in 8 CFR
4 214.14(a)(9).

5 "U visa." The ~~U~~ nonimmigrant visa available to an individual <--
6 who meets ~~all of the following criteria:~~ <--

7 ~~(1) Is a victim of a qualifying criminal activity that~~
8 ~~occurred in the United States or was otherwise in violation~~
9 ~~of Federal or State law.~~

10 ~~(2) Suffered substantial physical or mental abuse as a~~
11 ~~result of the qualifying criminal activity.~~

12 ~~(3) Was helpful, is helpful or is likely to be helpful~~
13 ~~to a certifying agency in the detection, investigation or~~
14 ~~prosecution of the qualifying criminal activity.~~ THE CRITERIA <--
15 IN 8 U.S.C. § 1101(A)(15)(U) (RELATING TO DEFINITIONS).

16 "Victim of a qualifying criminal activity." As defined in 8
17 CFR 214.14(a)(14).

18 Section 3. Duties of certifying officials.

19 (a) Duties.--A certifying official shall have the following
20 duties:

21 (1) Respond to a certification form petition that is
22 received by the certifying agency.

23 (2) In collaboration with a subject matter expert on
24 certification forms and violence against immigrants, develop
25 a protocol for a certification form petition and make the
26 protocol publicly accessible to a victim of a qualifying
27 criminal activity, the victim's legal representative or other
28 person upon request. The certifying official shall post the
29 protocol developed under this paragraph on a publicly
30 accessible Internet website.

1 (3) Maintain a written record or an electronic record of
2 a certification form petition and the response to the
3 petition by the certifying agency.

4 (4) Develop ~~or~~ AND implement the certifying agency's <--
5 language access protocol for a non-English-speaking victim of
6 a qualifying criminal activity.

7 (5) Upon receipt of the certification form by a
8 petitioner or the petitioner's legal representative,
9 authorize the certification form when the certifying official
10 determines that the petitioner:

11 (i) was a victim of a qualifying criminal activity;

12 (ii) possesses information about the qualifying
13 criminal activity; and

14 (iii) was helpful, is helpful or is likely to be
15 helpful to the certifying agency in the detection,
16 investigation or prosecution of the qualifying criminal
17 activity.

18 (b) Consideration.--For the purpose of determining whether a
19 petitioner meets the requirements for a certification form under
20 subsection (a)(5), the following shall apply:

21 (1) A certifying official shall not consider any of the
22 following:

23 (i) The period of time between when the petitioner
24 was victimized by the qualifying criminal activity and
25 when the petitioner submitted the petition for a
26 certification form.

27 (ii) Whether there is an active investigation of the
28 qualifying criminal activity.

29 (iii) Whether a formal statement of charges has been
30 filed regarding the qualifying criminal activity.

1 (iv) Whether there was a prosecution or conviction
2 of the qualifying criminal activity.

3 (2) There shall be a rebuttable presumption that a
4 petitioner meets the requirement under subsection ~~(a)(5)(i)~~ <--
5 (A)(5)(III) if the petitioner has not refused or failed to <--
6 provide information or other assistance reasonably requested
7 by a certifying agency. During the initial outreach with a
8 petitioner to seek information or other assistance under this
9 paragraph, the certifying agency shall make a reasonable
10 effort to communicate with the petitioner in the petitioner's
11 native language. The inability of the certifying agency to
12 communicate with a petitioner due to the petitioner's native
13 language, or the petitioner's lack of response during the
14 initial outreach due to the communication being conducted
15 solely in English, shall not be considered a refusal or
16 failure to provide information or other assistance under this
17 paragraph.

18 (c) Authorization.--Upon determining that a petitioner meets
19 the requirements under subsection (a)(5), a certifying official
20 shall authorize the certification form by completing and signing
21 the certification form. If applicable, the certifying official
22 shall include all of the following information in the
23 certification form:

24 (1) The details regarding the nature of the qualifying
25 criminal activity being investigated or prosecuted.

26 (2) A description of the helpfulness or likely
27 helpfulness of the victim of the qualifying criminal activity
28 to the detection, investigation or prosecution of the
29 qualifying criminal activity.

30 (d) Withdrawal.--A certifying agency may only withdraw the

1 certification form if the victim of the qualifying criminal
2 activity refuses to provide information or other assistance
3 reasonably requested by a certifying agency.

4 Section 4. Processing of certification form petitions.

5 (a) Process.--

6 (1) Except as provided under paragraph (2), no later
7 than 30 days after receipt of a certification form petition,
8 a certifying agency shall process the petition. A petitioner
9 may request an expedited time period for the certifying
10 agency to process a certification form petition, which shall
11 be processed no later than 14 days after receipt of the
12 petition, if the petitioner or the legal representative of
13 the petitioner under subsection (b) affirmatively establishes
14 ~~all~~ ANY of the following: <--

15 (i) The petitioner is in a Federal removal
16 proceeding or has a final order of removal.

17 (ii) The petitioner provides documentation that the
18 petitioner or the petitioner's child or sibling would
19 become ineligible for benefits under 8 U.S.C. § 1184(p)
20 and (o) (relating to admission of nonimmigrants) by
21 virtue of the petitioner or the petitioner's child
22 becoming 21 years of age or the petitioner's sibling
23 becoming 18 years of age.

24 (iii) The petitioner has a deadline to respond to a
25 request for additional evidence from the United States
26 Citizenship and Immigration Services.

27 (2) A certifying official may extend the time period by
28 which a certification form petition must be processed under
29 paragraph (1) only upon written agreement with the petitioner
30 or the legal representative of the petitioner under

1 subsection (b).

2 (b) Legal representatives.--A legal representative of a
3 petitioner may submit a certification form petition to a
4 certifying agency if the petitioner:

5 (1) was under 16 years of age on the date that a
6 qualifying criminal activity first occurred and the legal
7 representative has been helpful to the certifying agency in
8 the detection, investigation or prosecution of the qualifying
9 criminal activity; or

10 (2) is incapacitated or incompetent and the legal
11 representative has been helpful to the certifying agency in
12 the detection, investigation or prosecution of the qualifying
13 criminal activity.

14 (c) Reports.--

15 (1) Upon a certifying official completing and signing
16 the certification form under section 3(c), the certifying
17 agency shall return, without a fee or charge, the signed
18 certification form to the victim of the qualifying criminal
19 activity and release each relevant page of a report relating
20 to the qualifying criminal activity, unless already provided
21 by a law enforcement agency under paragraph (2). The
22 certifying agency shall have the discretion on when to
23 release each relevant page of a report relating to the
24 qualifying criminal activity.

25 (2) Upon request by a victim of a qualifying criminal
26 activity or a legal representative of the victim, a law
27 enforcement agency with whom the victim filed a report
28 relating to the qualifying criminal activity shall provide a
29 copy of the report within 14 days of the request to the
30 victim or the legal representative of the victim.

1 Section 5. Confidentiality of immigration status.

2 A certifying official or certifying agency may not disclose
3 the immigration status of a victim of a qualifying criminal
4 activity or a petitioner, except to comply with Federal law or
5 as authorized by the victim or petitioner.

6 Section 6. Denial of certification forms.

7 (a) Notice of denial.--If a certifying official denies the
8 authorization of a certification form under section 3(c), the
9 certifying official shall provide a written notice to the
10 petitioner explaining how the available evidence does not
11 support a finding that the petitioner meets the requirements for
12 a certification form under section 3(a)(5). Except in the case
13 of an expedited time period to process a certification form
14 petition under section 4(a)(1), the certifying official shall
15 provide the written notice under this subsection to the
16 petitioner within 30 days of receipt of the petition. The
17 certifying official shall state the reasons for the denial in
18 the written notice under this subsection, including any of the
19 following reasons:

20 (1) Lack of jurisdiction over the certification form
21 request due to the certifying agency not having been involved
22 in the detection, investigation or prosecution of the
23 qualifying criminal activity. If the denial is for the reason
24 specified under this paragraph, the certifying official shall
25 refer the petitioner to the appropriate certifying official
26 within 30 days of providing the written notice under this
27 subsection. If the certifying official fails to refer the
28 petitioner to the appropriate certifying official within the
29 30-day period specified under this paragraph, the certifying
30 official shall authorize the certification form in accordance

1 with section 3(c) or provide a subsequent written notice to
2 the petitioner stating another reason for the denial.

3 (2) The petitioner was not a victim of a qualifying
4 criminal activity.

5 (3) ~~Lack of helpfulness, including documented instances~~ <--
6 ~~of failure or refusal to comply with reasonable requests for~~
7 ~~information or other assistance.~~ THE PETITIONER HAS REFUSED <--
8 OR FAILED TO PROVIDE INFORMATION OR OTHER ASSISTANCE
9 REASONABLY REQUESTED BY A CERTIFYING AGENCY UNDER SECTION
10 4(A) (1) (II). IF THE DENIAL IS FOR THIS REASON, THE NOTICE OF
11 DENIAL SHALL INCLUDE INFORMATION ABOUT THE SPECIFIC
12 DOCUMENTED INSTANCES OF THE PETITIONER'S REFUSAL OR FAILURE.

13 (b) Review.--Upon receiving written notice under subsection
14 (a), the petitioner or the legal representative of the
15 petitioner may provide supplemental information to the
16 certifying agency and request that the petition be reviewed by
17 the certifying agency.

18 (c) Consideration.--In reviewing a petition under subsection
19 (b), a certifying agency may not consider any other factors not
20 specified under subsection (a) when deciding whether to
21 authorize a certification form.

22 (d) Notice.--If, after authorizing a certification form, a
23 certifying official or certifying agency determines that the
24 recipient of the certification form was not the victim of a
25 qualifying criminal activity or the recipient unreasonably
26 refuses to assist in the detection, investigation or prosecution
27 of the qualifying criminal activity, the certifying official or
28 certifying agency may provide written notice of the
29 determination to the United States Citizenship and Immigration
30 Services.

1 Section 7. Training program for certifying agencies and
2 certifying officials.

3 In collaboration with subject matter experts on certification
4 forms and violence against immigrants, a certifying agency shall
5 provide an annual training program to certifying officials for
6 the purposes of effectuating this act. The training program
7 shall be compulsory and include all of the following subjects:

8 (1) The impacts of qualifying criminal activities on
9 victims and their safety.

10 (2) Compliance with certification form protocols.

11 (3) The roles of certifying officials.

12 (4) Collaborations with victim service and immigrant
13 advocacy providers.

14 Section 8. Construction.

15 (a) U visas.--The authorization of a certification form
16 under this act shall not be construed as sufficient evidence
17 that an applicant for a U visa has met all eligibility
18 requirements for a U visa or guarantee the applicant will
19 receive Federal immigration relief.

20 (b) Limitation.--Nothing in this act shall be construed to
21 limit the manner in which a certifying officer or certifying
22 agency describes whether a victim of a qualifying criminal
23 activity has cooperated or has been helpful to the certifying
24 official or the certifying agency during a Federal immigration
25 proceeding regarding a U visa.

26 Section 9. Effective date.

27 This act shall take effect in 60 days.