

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department / Oakland City Attorney
Date: January 22, 2008

2008 JAN 10 PM 5: 59

Re: A Report Resolution Declaring Support for (1) The United States U Visa Program, Which Is A Temporary Visa That Authorizes Non-United States Citizen Crime Victims Who Assist Law Enforcement Agencies With Crime Investigations To Remain In This Country Up To Four Years, And (2) Supporting The Federal Policy That Authorizes The U Visa for Applicants Who Have Contributed To The Public Safety Of This City

SUMMARY

Staff has prepared a report and resolution making a policy statement that the City of Oakland is in support of the United States U Visa Program, and supporting the United States government and Secretary of Homeland Security in administering the U Visa program in a way that makes the U Visa available to non-U.S. resident crime victims who have contributed to the public safety of the City of Oakland.

FISCAL IMPACT

Approval of this resolution will have no fiscal impact on the Department. The existing review and issuance of Certifications of Assistance submitted by U Visa applicants is a short process which takes only a few minutes to complete. The Department currently processes a mere 4 to 5 a month.

BACKGROUND

In October 2000, Congress passed the Victims of Trafficking and Violence Protection Act (the Act); as part of this Act, Congress created the U Visa Program to strengthen the ability of law enforcement agencies to detect, investigate and prosecute crimes against non-U.S. residents. Congress recognized that victim cooperation and assistance is often a key component to effective detection, investigation or prosecution of crimes. When victims are non-U.S. residents, their immigration status in the United States can directly affect their ability to cooperate and assist local law enforcement agencies in the investigation or prosecution of these crimes.

Non-U.S. resident crime victims usually need to be present in the United States so they are accessible to provide information and testimony as part of an investigation or prosecution. Non-U.S. resident crime victims may also need a place of refuge so they can avoid returning to an environment abroad where they could be exposed to further serious crimes. Accordingly,

temporary immigration status by amending certain sections of the Immigration and Nationality Act (INA) to create the *U Visa*.

The Oakland City Council previously passed Resolutions No. 63950 (July 8, 1986), 77431 (September 17, 2002), and 80584 (May 15, 2007) C.M.S. declaring Oakland as a City of Refuge from humanitarian abuses abroad, recognizing the positive contributions of immigrants to the culture and economy of Oakland, and urging the Federal Government to adopt fair comprehensive and humane immigration reforms. The City of Oakland's participation in the U Visa Program is consistent with and furthers the humanitarian policies of the City of Oakland.

The U Visa Program

The U Visa is akin to a form of witness protection¹. It is a non-immigrant, temporary visa, which allows a non-U.S. resident crime victim who has suffered substantial physical or mental abuse from certain crimes (specified in federal law), and who provides information that has, is, or will assist law enforcement in the investigation or prosecution of the crimes, to remain in the United States for up to four years. After the third year, the victim may be eligible to adjust his or her status to that of an immigrant, or permanent resident, unless the victim breaches her/his ongoing responsibility to provide assistance in a criminal investigation or prosecution. U Visa recipients may also legally work in the United States.

The U Visa is available to the victim and her/his immediate family, including spouses and children under 21 years old. If the victim is a child, a parent may be granted U Visa status, if (1) it is necessary to avoid extreme hardship to the spouse, child or parent and (2) there is a law enforcement certification that an investigation or prosecution would be harmed without the assistance of the spouse, child or parent.

To qualify for a U Visa, an applicant must demonstrate to the United States Citizenship and Immigration Service ("USCIS", formerly "INS") that she or he meets the requirements set forth at INA Section 101(1) (15) (U); 8 U.S.C. 1101(a) (15) (U). This provision of Federal Law, requires, among other things, that the U Visa applicant include with her/his application a Certification of Assistance from a Federal, State or local qualifying official (such as, but not limited to a law enforcement officer, prosecutor or judge) that affirms:

- the foreign victim has been, is being, or is likely to be "helpful";
- the investigation of qualifying criminal activity is set forth in the applicable federal statute;
- the criminal activity violated U.S. law abroad or occurred in the United States or its territories.

The underlying crime must be a violation of federal, state or local criminal law, or must have occurred while in the United States (including in Indian country² [sic] and military installations) or its territories or possessions. The qualifying crimes for the U Visa Program are:

¹ Quoting the federal Act: it offers "protection to victims of such offenses in keeping with the humanitarian interests of the United States."

² This is the term used in the Federal statute, and presumably means federally recognized "Indian Reservations."

Rape, torture, trafficking, incest, domestic violence, sexual assaults, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, 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 crime could have occurred in the United States upon a victim who is a tourist or student that has some type of limited duration visa. It could have been perpetrated on a person who has entered this country without a visa, as the City has seen in cases of *amigo checking*,³ child abuse, and domestic violence. Also, the crime could have completely occurred abroad, but violates United States law, such as when a United States citizen engages in child prostitution or human trafficking while in a foreign country, in which case the victim would usually need to be brought to the United States to assist in the investigation or prosecution.

By statute, only 10,000 total U Visas can be issued to victims annually. These limits do not include qualified family members. In addition, recipients of the U Visa are eligible for employment authorization, and may (after three years) apply to adjust their status to that of lawful permanent resident in accordance with federal law.

KEY ISSUES AND IMPACTS

The Oakland Immigrants Coalition⁴ has facilitated and continues to facilitate contact between non-U.S. resident crime victims and the Oakland Police Department concerning serious crimes; thereby enhancing the Department's awareness of crimes and providing the opportunity for investigation. The Coalition members' work with the Department has also highlighted the advantage to U Visa applicants if they had a written policy statement of general support of the U Visa program from the City Council to submit with their U Visa applications. As demonstrated by the City's policies and values stated in prior resolutions, the City of Oakland's participation in the U Visa Program is consistent with and furthers the humanitarian policies of the City of Oakland.

The Oakland Police Department has been issuing Certifications of Assistance since 2005. Since first centralizing and tracking these applications in July 2007, the Police Department has reviewed 18 requests, denying only one which did not satisfy "helpful" standards. As of the date of this report, the Alameda County District Attorney's Office had processed one request in 2007.

³ "Amigo Checking" is a street term referring to the practice of committing street robberies targeting persons believed to be undocumented day laborers. Suspects have confessed that this type of victim is chosen because of the assumption that they will not report the crime to the police.

⁴ The Oakland Immigrants Coalition is made up of the following organizations: The International Institute of the East Bay, Centro Legal de La Raza, the Black Alliance for Just Immigration, The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, the Immigrants Legal Resource Center, the Law Center for Families, and the Asian Pacific Islanders Legal Outreach.

The Oakland Police Department has been issuing Certifications of Assistance since 2005. Since first centralizing and tracking these applications in July 2007, the Police Department has reviewed 18 requests, denying only one which did not satisfy "helpful" standards. As of the date of this report, the Alameda County District Attorney's Office had processed one request in 2007.

From its experience over the last three years, the Police Department believes that the policy statement made in this resolution will encourage foreign crime victims to report crimes, and will increase the Department's ability to discover and investigate serious crimes that befall non-U.S. residents, such as human trafficking, child abuse, and domestic violence. The Department's history of working to provide Certifications of Assistance to U Visa applicants has already helped garner trust among the immigrant and non-U.S. resident community by showing that the Department helps crime victims regardless of their immigration status. This improved the relationship between the Department and the community is invaluable in fighting crime, and increases public safety throughout the City.

The cooperation between the Police Department, immigrants, and non-U.S. resident crime victims in the context of U Visa applications has furthered the City's humanitarian policies, which include being a City of Refuge to victims of human rights abuses. It is also expected to strengthen the ties between the immigrant community and the police, overcoming the traditional suspicion and distrust of police that immigrants often bring from abroad.

While only 18 applications have been processed by the Department since July 1, 2007, it is estimated that approximately 10-15% of the total Youth and Family Services Division investigative caseload (or 395-592 actual cases) involves victims that might be eligible for the U Visa. This anticipated increase in applications will, therefore, provide a more realistic gauge of the impact the U Visa program has on and/or how effective it is in the City. Staff expects that as the popularity and accessibility of the U Visa increases, so will the detection and reporting of criminal activity.

The ACLU (American Civil Liberties Union) supports the U Visa Program and views it as an important form of cooperation between local police and the immigrant community and sent a policy statement letter, dated December 20, 2007, directly to the Oakland City Council.

Though no particular group or person opposing the U Visa Program has made its position known to the City, a potential problem could be the risk of abuse of the program by opportunistic applicants who wish to obtain legal status in the United States. This might be done by making a false crime report and seeking a Certification of Assistance from the Police Department to support a U Visa application. The Department will closely review the crime information submitted in support of a U Visa, and identify suspicious crime reports in order to diminish any concern about false reporting. The Oakland Police Department's role in the U Visa process is limited to certifying that it is investigating a qualifying crime, and that the victim has or is providing assistance (evidence or testimony) in the investigation and/or prosecution of the crime. The USCIS will make all other determinations involved in the grant/denial of a U Visa application, as described in the next section of this report.

Item: _____
Public Safety Comte.
January 22, 2008

PROGRAM DESCRIPTION

The U Visa process typically begins with a request⁵ being submitted by the victim's advocate and/or attorney and received by the Police Department representative (designated by the Chief of Police). The Department's role is to certify only two things (1) that the U Visa applicant is the victim of a qualifying crime, and (2) that the applicant is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity.

The Police Department's review will consist of:

- reading the initial incident report and any and all supporting/follow-up documents that pertain to the incident in question; and
- determining if the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution.

In addition, the reviewing supervisor shall determine whether or not the case would be harmed without the assistance / presence of the victim. All applications are logged in a Departmental tracking system that is housed in the Youth and Family Services Division.

Depending on the final assessment of "helpfulness," the Department issues a Law Enforcement Certification, or denies the request. The final action is logged into the Departmental tracking system. It is the U Visa applicant's responsibility to submit his/her U Visa application, including the Certification of Assistance, to the USCIS for processing.

The USCIS reviews the application and makes all assessments concerning eligibility for the U Visa, such as whether the applicant has suffered substantial harm, whether the criminal activity fits the federal statute, and even whether the evidence provided by the victim is "helpful" to the local official's investigation or prosecution of the case. In determining whether granting a U Visa would serve the "public or national interest," the City Council's Resolution may be persuasive to the Secretary of Homeland Security.

In those cases in which a U Visa has been issued or is pending, and the victim unreasonably refuses to cooperate with the police, the Department will report such change in circumstances to the USCIS; which would then consider this fact in denying an application or revoking a U Visa if one has already been granted.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic concerns associated with this report.

⁵ Referred to as a Law Enforcement Certification form (I-918 Supplement B) – copy attached.

Environmental: There are no environmental concerns associated with this report.

Social Equity: Enactment of this program will enhance the Police Department's ability to detect and investigate criminal activity throughout the City and therefore apprehend those who prey upon fellow human beings. Subsequently, the Department will be able to provide more effective police services to those who, in the past, have shied away from law enforcement.

The U Visa Program furthers the City's humanitarian policies of providing refuge to victims of human rights violations and crimes abroad.

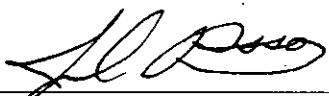
DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen access issues identified in this report.

RECOMMENDATION / ACTION REQUESTED OF COUNCIL

Staff recommends acceptance of this report and approval of the proposed resolution authorizing the City Administrator to, 1) support the United States U Visa Program and 2) support a Federal Policy authorizing the U Visa for applicants who have contributed to the public safety of this City.

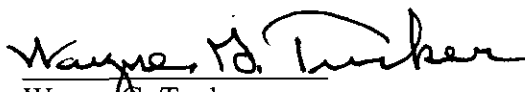
Respectfully submitted,



John Russo,
City Attorney

Reviewed by:
Pelayo Llamas
Deputy City Attorney

Respectfully submitted,



Wayne G. Tucker
Chief of Police

Prepared by:
Kevin N. Wiley
Lieutenant of Police
Youth and Family Services Division

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Item: _____
Public Safety Comte.
January 22, 2008

Department of Homeland Security
U.S. Citizenship and Immigration Services

**I-918 Supplement B,
U Nonimmigrant Status Certification**

START HERE - Please type or print in black ink.

For USCIS Use Only.

Part 1: Victim information

Family Name Given Name Middle Name
 Other Names Used (Include maiden name/nickname)
 Date of Birth (mm/dd/yyyy) Gender Male Female

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

Part 2: Agency information

Name of Certifying Agency
 Name of Certifying Official Title and Division/Office of Certifying Official
 Name of Head of Certifying Agency
 Agency Address - Street Number and Name Suite #
 City State/Province Zip/Postal Code
 Daytime Phone # (with area code and/or extension) Fax # (with area code)
 Agency Type Federal State Local
 Case Status On-going Completed Other _____
 Certifying Agency Category Judge Law Enforcement Prosecutor Other _____
 Case Number FBI # or SID # (if applicable)

Remarks

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"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<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 type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input 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="text"/>

Part 3: Criminal acts. (Continued)

2. Provide the date(s) on which the criminal activity occurred.
Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy) Date (mm/dd/yyyy)

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3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

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4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States? Yes No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? Yes No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

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c. Where did the criminal activity occur?

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5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

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6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

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Part 4: Helpfulness of the victim.

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3. Yes No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided.) Yes No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.) Yes No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.) Yes No

Part 4: Helpfulness of the victim: (Continued)

5. Other, please specify.

Part 5: Family members implicated in criminal activity:

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim? Yes No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement


Part 6: Certification:

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (mm/dd/yyyy)

RECEIVED
OFFICE OF THE CITY CLERK
OAKLAND


Oakland City Attorney's Office

2008 JAN 10 PM 5:59

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION DECLARING SUPPORT FOR (1) THE UNITED STATES U VISA PROGRAM, WHICH IS A TEMPORARY VISA THAT AUTHORIZES NON-UNITED STATES CITIZEN CRIME VICTIMS WHO ASSIST LAW ENFORCEMENT AGENCIES WITH CRIME INVESTIGATIONS TO REMAIN IN THIS COUNTRY UP TO FOUR YEARS, AND (2) SUPPORTING THE FEDERAL POLICY THAT AUTHORIZES THE U VISA FOR APPLICANTS WHO HAVE CONTRIBUTED TO THE PUBLIC SAFETY OF THIS CITY

WHEREAS, in 2000, the United States Congress created the U Visa classification in the Victims of Trafficking and Violence Prevention Act (VTVPA), which allows foreign visitors and other non-U.S. residents who are victims of specified serious criminal activity ("foreign crime victims"), and who are needed to furnish information or evidence regarding that criminal activity to assist government officials in the investigation or prosecution of such activity, to legally remain in the United States for up to four years, with possible extensions, to legally work, and to apply for permanent residence; and

WHEREAS, Congress' intent, in passing the VTVPA and creating the U Visa Program, was to strengthen the ability of local law enforcement agencies to detect, investigate, or prosecute serious crimes committed against non-U.S. residents by providing them with legal status in this country when they assist local law enforcement agencies; and

WHEREAS, it is also Congress' intent, by creating the U Visa Program, to offer "protection to victims of . . . offenses in keeping with the humanitarian interests of the United States"; and

WHEREAS, since July 2007, the Oakland Police Department has received assistance from foreign crime victims in 17 serious criminal cases, for which the Department issued Certifications of Assistance, and expects to continue to receive future reports, evidence, and testimony about serious crimes committed against them; and

WHEREAS, approval of this resolution will have no fiscal impact on the Department, as the existing review and issuance of Certifications of Assistance submitted by U Visa applicants is a short process which takes only a few minutes to complete, and the Department currently processes a mere four to five a month; and

WHEREAS, the information and assistance about serious crimes provided to the Oakland Police Department by foreign crime victims directly improves the safety and overall quality of life of the residents of Oakland because it increases the information available for the investigation and prosecution of serious crimes, which benefits all the residents of Oakland; and

WHEREAS, the Oakland Immigrants Coalition (including the International Institute of the East Bay, Centro Legal de La Raza, the Black Alliance for Just Immigration, The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, the Immigrants Legal Resource Center, the Law Center for Families, and the Asian Pacific Islanders Legal Outreach) has facilitated and continue to facilitate contact between foreign crime victims and the Oakland Police Department about serious crimes; and

WHEREAS, the relationship and cooperation between foreign crime victims, the Oakland Immigrants Coalition, and the Oakland Police Department has built bridges in the community, to the benefit of the City of Oakland's residents; and

WHEREAS, the Oakland City Council has previously passed Resolutions No. 63950 (July 8, 1986), 77431 (September 17, 2002), and 80584 (May 15, 2007) C.M.S. declaring Oakland as a City of Refuge from humanitarian abuses, recognizing the positive contributions of immigrants to the culture and economy of Oakland, and urging the Federal Government to adopt fair comprehensive and humane immigration reforms; and

WHEREAS, Oakland's participation in the U Visa Program may provide protection to victims of serious crimes specified in the VTVPA, namely - *rape, torture, trafficking, incest, domestic violence, sexual assaults, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, 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*; and

WHEREAS, Oakland's participation in the U Visa Program is consistent with the City of Oakland's humanitarian values and policies, as stated in the City Council Resolutions recited above; now, therefore be it

RESOLVED: That the City Council of the City of Oakland declares its support for the U Visa Program as being consistent with the City's humanitarian values; and be it

FURTHER RESOLVED: That it is in the City of Oakland's public interest and benefit that U Visas are made available to foreign crime victims who have assisted or will assist the Oakland Police Department by reporting and/or furnishing evidence of serious crimes; and be it

FURTHER RESOLVED: That by this Resolution, the City of Oakland documents its support of the U Visa Program.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California