

SUPPORTING STATEMENT

Petition for U Nonimmigrant Status;

Petition for Qualifying Family Member of U-1 Recipient; and

U Nonimmigrant Status Certification

Forms I-918; I-918 Supplement A; and I-918 Supplement B

(OMB No. 1615-NEW)

A. Justification.

1. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to permanent resident status, to certain victims of criminal activity who: suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist government officials in investigating and prosecuting such criminal activity.

2. The petition is divided into three parts. The Form I-918, I-918 Supplement A, and I-918 Supplement B. The principal petitioner must complete the Form I-918 to apply for temporary immigration status. The principal petitioner must complete Form I-918 Supplement A, to petition for derivative status for a qualifying immediate family member. A certifying official of a certifying agency (which must be 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) must complete the Form I-918 Supplement B, at the petitioner's request, to attest to the petitioner's claim of being a victim of certain qualifying criminal activity. Section 214(p)(1) of the Immigration and Nationality Act (INA) requires the petitioner to submit such certification to USCIS. The information on all three parts of the form will be used to determine whether petitioners meet the eligibility requirements for benefits under 8 CFR 212.17, and 214.14.

3. The use of this form provides the most efficient means for collecting and processing the required data. In this case, USCIS does not employ the use of information technology in collecting and processing information. However, this form has been included for e-filing under the Business Transformation Project.
4. A review of USCIS Forms Inventory Report revealed no duplication of efforts, and there is no other similar form currently available that can be used for this purpose.
5. This collection of information does not have an impact on small businesses or other small entities.
6. If the form is not approved, there is no other vehicle USCIS may use to determine whether the alien was a victim of certain criminal activity.

7. The special circumstances contained in item seven of the supporting statement are not applicable to this information collection.
8. By notice in the **Federal Register** on December 5, 2005, at 70 FR 72460, USCIS notified the public that it was requesting comments on this information collection. The notice allowed for a 60-day public comment period. USCIS received 55 comments in response to this information collection. Those comments are addressed at the end of this supporting statement.
9. USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. The Privacy Act of 1974 (Public Law 93-589) mandates that personal information solicited from individuals completing Federal records and forms be kept confidential. The respondent is informed that the information provided in the petition package is confidential, and that it will only be used to determine eligibility and to enforce penalties for false statements. Further, the respondent is informed that the information will be released only as necessary to investigate the claim and to determine an applicant's eligibility for the requested benefit.

11. There are questions of a sensitive nature. However, these questions are necessary in order to determine whether the alien has been a victim of trafficking. USCIS will take every step to safeguard this information.

<u>12. Annual Reporting Burden:</u>	<u>I-918</u>	<u>I-918A</u>	<u>I-918B</u>
a. Number of Respondents	12,000	24,000	12,000
b. Number of Responses per Respondent	1	1	1
c. Total Annual Responses	12,000	24,000	12,000
d. Hours per Response	5	1.5	1
e. Annual Reporting Burden	60,000	36,000	12,000

Annual Reporting Burden

The estimated total annual reporting burden hours are 108,000. This figure was derived by multiplying the number of I-918 respondents (12,000) x frequency of response (1) x hours per response (5); multiplying the number of I-918A respondents (24,000) x frequency of response (1) x hours per response (1.5); and multiplying the number of I-918B respondents (12,000) x frequency of response (1) x hours per response (1).

The projected hours per response for these collections were derived by breaking down the process into three components:

	<u>I-918</u>	<u>I-918A</u>	<u>I-918B</u>
Learning about Law and the Form	75 Min.	30 Min.	35 Min.
Completion of the Form	75 Min.	30 Min.	15 Min.

Assembling and Filing the Form	150 Min.	30 Min.	10 Min.
<i>TOTAL Hours per Response</i>	<i>300 Min.</i>	<i>90 Min.</i>	<i>60 Min.</i>

For the first two components, Learning about the Pertinent Law and Completion of the Form, USCIS used tests to determine completion times. People who were not conversant with immigration processes were used to determine average completion time. The third component of the process, “Assembling and Filing the Form,” was broken down into subtasks. For example, the form can be mailed to a USCIS office or filed in person. Thus, the time necessary to actually file the form can vary widely depending on the circumstances of the petitioner.

13. There are no capital or start-up costs associated with this information collection.

Any cost burdens to respondents as a result of this information collection are identified in Item 14. There is no fee charge of for filing Form I-918 or any of its supplements. The cost of obtaining biometrics is \$80 per respondent.

14. Annualized Cost Analysis:

- a. Printing Cost \$ 11,880
- b. Collection and Processing Cost \$ 6,708,120
- c. Total Cost to Program \$ 6,720,000
- d. Charges (Fee) \$ 0
- e. Total Cost to Government \$ 6,720,000

Government Cost

The estimated annual Government cost is \$6,720,000.

This figure was determined by multiplying the total number of respondents 48,000 x 1 hour to process x \$140 (USCIS suggested average hourly rate for clerical, officer, and managerial time with benefits). In addition, the cost includes estimated overhead cost for printing, stocking, distributing and processing of this form.

Public Cost

The estimated annual public cost is \$4,797,000. USCIS estimates the public cost as follows:

- Number of I-918 respondents (12,000), and number of I-918 Supplement A, respondents (24,000) x \$80 Biometric fee (\$2,880,000); plus
- Number of I-918 respondents (12,000) x frequency of response (1) x hours per response (5) x \$17.75 (average hourly wage) (\$1,065,000); plus
- Number of I-918 Supplement A, respondents (24,000) x frequency of response (1) x hours per response (1.5) x \$17.75 (average hourly wage) (\$639,000); plus
- Number of I-918, Supplement B, respondents (12,000) x frequency of response (1) x hours per response (1) x \$17.75 (average hourly wage) (\$213,000).

15. Since this is a new collection there is an increase in the OMB inventory of 108,000 hours.

16. USCIS does not intend to employ the use of statistics or the publication thereof for this information collection.

17. USCIS will display the expiration date of OMB approval for this information collection.

18. USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not Applicable.

C. Certification and Signature.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

Richard A. Sloan
Chief,
Regulatory Management Division,
U.S. Citizenship and Immigration Services.

Date

**Public Comments on Form I-918, Form I-918, Supplement A,
and Form I-918, Supplement B**

By notice in the **Federal Register** on December 5, 2005, at 70 FR 72460, USCIS notified the public that it was requesting comments on this information collection. The notice allowed for a 60-day public comment period and, in response, USCIS received 55 comments.

Since publication of this notice, USCIS has continued its work on the regulation that will require the use of these forms, and the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) which amended some of the statutory provisions necessitating this information collection. As a result, significant changes were made to these forms during and after the comment period, rendering a large number of the comments obsolete.

The comments USCIS received primarily focused on eight general areas: 1) changes required by VAWA 2005; 2) the certification process; 3) instructions for interim relief recipients; 4) the one-year filing deadline; 5) fees; 6) admissibility language and questions; 7) comprehension, readability, and burden estimate; and 8) any credible evidence standard language. Each of these general areas will be addressed below. Changes made in response to the comments regarding typographical errors or inadvertent omissions of language will not be addressed separately.

1. VAWA 2005

On January 5, 2006, the President signed VAWA 2005. This piece of legislation made several changes to the instructions and forms necessary. Specifically, a derivative category for unmarried siblings under the age of 18 was added and the extreme hardship and certification requirements for derivative family members were removed. The instructions and forms have been modified in appropriate places where VAWA 2005 made obsolete those instructions and/or questions.

2. Certification Process

All fifty-five of the comments USCIS received expressed concern about several aspects of the certification process. Comments fell into five sub-categories.

(1) The comments generally suggested that limiting who can sign certifications creates hurdles to law enforcement participation in the U visa process. They all suggested that USCIS change its definition of “certifying official” to include the line officer or other authority with direct contact with the victim, and there should be no chain of command requirement. Further, they all suggested that the definition should allow room to delegate signatory authority to a designee. Additionally, all commenters suggested that the statutory provisions do not require the certifying official be the official conducting the investigation or prosecution. USCIS considered these comments during the rulemaking process and, as part of that process, made changes to the definition of certifying official. The changes made and the reasons behind the changes are discussed in the proposed rule necessitating the use of this

form under the headings, “Helping Law Enforcement in the Investigation or Prosecution of Criminal Activity” and “Initial Evidence.”

(2) Thirty-nine commenters expressed the opinion that there should be no requirement that certifying agencies notify USCIS if the victim unreasonably refuses to assist in the investigation or prosecution of qualifying criminal activity. The commenters believe this requirement is ultra vires and burdensome on law enforcement as it would force them to establish a special reminder system for their files. USCIS considered these comments during the substantive rulemaking process, and has elected to make no change in this area. The explanation behind the decision to make no changes is contained in the proposed rule necessitating the use of this form under the headings, “Helping Law Enforcement in the Investigation or Prosecution of Criminal Activity” and “Initial Evidence.”

(3) Thirty-eight commenters suggested that USCIS consider the Form I-918, Supplement B, U Nonimmigrant Status Certification, as presumptive evidence of the victim’s possession of information and helpfulness to the investigation or prosecution. They suggest that USCIS should not substitute its judgment for the certifying agency’s since they believe the certifying agency is in the best position to make those determinations. USCIS considered these comments during the substantive rulemaking process, and has elected to make no change in this area. The explanation behind the decision to make no changes is contained in the proposed rule necessitating the use of this form under the heading, “Initial Evidence.”

(4) Thirty-five commenters suggested that the certification requirements preclude eligibility for individuals who were a victim of a qualifying criminal activity different from a qualifying criminal activity about which they were helpful. USCIS considered these comments during the substantive rulemaking process, and has elected to make no change in this area. This is because the findings that Congress expressed in sections 1513(a)(1) and (2) of Public Law 106-368 to make it clear that the intent behind the creation of the status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity. USCIS believes that, to give effect to congressional intent, the petitioner must satisfy the helpfulness requirement in relation to the crime of which he or she is a victim. If not, the stated purpose of the statute is thwarted.

(5) Twenty-nine commenters suggested that the language informing the certifying agency/official it is under no legal obligation to complete the certification seems intended to discourage law enforcement from completing the form. USCIS considered this comment during the substantive rulemaking process, and elected to leave the language, but added an additional sentence to clarify that without the certification, the victim will not be eligible for U nonimmigrant status. USCIS is attempting to clarify for the certifying official that he or she does not have to sign the certification, but that a victim will not obtain U nonimmigrant status without certification.

3. Interim Relief Recipients

- (1) Thirty-four commenters suggested adding filing instructions for individuals who received interim relief. USCIS has added filing instructions for these individuals throughout the form.
- (2) Thirty-six commenters suggested that individuals who received interim relief should not have to obtain a new certification, but instead, should be able to proceed with the certification submitted in support of the request for interim relief. USCIS considered this comment during the substantive rulemaking process, and has elected to adopt this suggestion.
- (3) Thirty-six commenters further suggested that individuals who received interim relief should be allowed to proceed with the documentation submitted in connection with the request for interim relief if the statutory standards have been met. USCIS considered this comment during the substantive rulemaking process, and elected to partially adopt this comment. The reasoning behind this decision is discussed in the proposed rule necessitating the use of this form under the heading, “Initial Evidence.”

4. One-Year Filing Deadline

- (1) Thirty-eight commenters remarked that the one-year filing deadline imposed on the form is ultra vires. USCIS has removed this deadline.
- (2) Thirty-five commenters said the test used to determine whether ineffective assistance of counsel was the exceptional circumstance that prevented the victim from meeting the filing deadline was confusing and burdensome. USCIS removed the filing deadline and the exceptional circumstances for failure to meet the filing deadline.

5. Fees

- (1) Three commenters said there should be no fee charged to file Form I-918 and Form I-918, Supplement A. Four commenters felt that the fees charged are too high. In section 209 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989, Public Law 100-459, 102 Stat. 2186, 2203 (1988), Congress mandated that USCIS prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. Congress has not provided appropriated funds to pay for the U nonimmigrant classification program and, as a result, USCIS must charge a fee to cover both its direct and indirect costs. A separate fee justification document will be placed in the docket of this rulemaking for public view, and a justification of the fee will be provided in the implementing regulations when they are published in the **Federal Register**.

(2) Thirty-six commenters suggested that the form should include a section addressing the availability of fee waivers and provide information regarding how to obtain them. USCIS has elected to adopt this suggestion.

(3) Twenty-nine commenters felt it unduly burdensome to require a principal applicant to submit a new Form I-918 with fees, and suggested that submission of a copy of the original Form I-918 with no new fee be deemed sufficient. USCIS has adopted this suggestion.

6. Admissibility questions

(1) Thirty commenters suggested simplifying the language in the form instructions regarding grounds of inadmissibility, and to connect the legal concepts in the language to questions on the form itself. USCIS has adopted this suggestion.

(2) Thirty commenters noted that Form I-918 and Form I-918, Supplement A, were missing questions regarding certain grounds of inadmissibility. USCIS has corrected that oversight and added the appropriate questions.

(3) Thirty commenters also noted that several of the questions regarding grounds of inadmissibility were legally inaccurate. USCIS does not believe the questions are legally inaccurate.

7. Comprehension and Readability of Form; Burden Estimates

Thirty-five commenters felt that the estimate of burden hours was too low because of the amount of documentation required to support the application, and because the form is difficult to comprehend. Forty-one commenters said that the language should be more accessible and easier to read. USCIS used tests to determine completion times. People who were not conversant with immigration processes were used to determine average completion time. USCIS has attempted to make the language more accessible where possible; however, immigration law is complex and it is important that the language on the form be as technically accurate as possible.

8. Any Credible Evidence Standard

Thirty-five commenters thought that the “any credible evidence” standard should be included and explained in the form’s instructions. They also thought that requiring primary evidence is a violation of this standard. USCIS considered this comment during the substantive rulemaking process, and elected not to adopt this suggestion. This standard and the reasoning behind this decision are included in the proposed rule necessitating the use of this form under the heading, “Adjudication and Post-Adjudication – Credible Evidence.”