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POLICY FOR U & T VISA CERTIFICATION REQUESTS

A. Purpose

The purpose of this policy is to comply with Virginia Code § 9.1-1500, *et seq.* regarding certifications for victims of qualifying criminal activity.

B. Policy

It is the policy of the Clarke County Commonwealth's Attorneys Office to comply with Virginia law and respond to requests for certification when immigrant victims of crime come forward to report dangerous offenders within the community.

C. Procedure

1. Certifying Official – The Commonwealth's Attorney shall be the certifying official for all U and T Visa Certification requests. The certifying official shall (1) respond to requests for certification forms received by the Commonwealth's Attorneys Office, and (2) make information regarding the Commonwealth's Attorneys Office's procedures for certification requests publically available for victims of qualifying criminal activity and their representatives.
2. Certification Request – Any person seeking completion of a certification request shall first submit a request for completion of the certification form to the certifying official. Requests for completion may be submitted by the victim of qualifying criminal activity or a representative. A representative may include an attorney, a licensed clinical social worker, a guardian *ad litem*, or an employee of a crime victim and witness assistance program or a domestic violence or sexual assault services provider.
3. Response Deadlines – Upon receiving a request for completion of a certification form, the certifying official shall provide a response to the request within 120 days. Within that time, the certifying official shall complete the certification except:
 - a. If the person making the request for completion of the certification form is in federal immigration removal proceedings or detained, the certifying official shall complete and provide the certification form to the person no later than 21 business days after the request is received by the certifying agency;

- b. If the twenty-first birthdate of the applicant's children or the eighteenth birthdate of the applicant's sibling is within 120 days of the date of the request, the certifying official shall respond within 30 days;
 - c. If the person's children, parents or siblings would become eligible for benefits under 8 U.S.C. § 1184(p) and 1184(o) in less than 21 business days of receipt of the certification request, the certifying official shall complete and provide a certification form to the person within seven days; or
 - d. A certifying official may extend the time period upon written agreement with the person or the person's representative.
4. Expedited Requests – Requests for expedited completion as set forth in paragraph 3 (a) through (c) above shall be affirmatively raised by the person or the person's representative in writing to the Commonwealth's Attorneys Office and shall establish that the person is eligible for expedited review.
5. Denial of Requests for Completion – If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation to the person or the person's representative setting forth the reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.
6. Recertification – A certifying official who issued an initial certification form shall complete and reissue a certification form within 90 business days of receiving a request from a victim to reissue the certification form, except:
 - a. If the victim seeking recertification has a deadline to respond to a request for evidence from United States Citizenship and Immigration Services, the certifying official shall complete and issue the form no later than 21 business days after the request is received by the certifying official.
 - b. A certifying official may extend the deadline by which he will complete and reissue the certification form only upon written agreement with the victim or the victim's representative.
7. Expedited Requests for Recertification – Requests for expedited recertification shall be affirmatively raised by the victim or the victim's representative in writing and shall establish that the victim is eligible for expedited review.
8. Determination of Eligibility – A certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa. Completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa. Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration relief sought, including information relevant for federal immigration

officials to determine eligibility of a U or T visa. By completing the certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge.

9. Cooperation – Virginia law does not limit the manner in which a certifying official or certifying agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information to the certifying official or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application.
10. Post-Certification Information – If, after completion of a certification form, the certifying official later determines that the person was not the victim of qualifying criminal activity or the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he is a victim, the certifying official may notify United States Citizenship and Immigration Services in writing.
11. Disclosure – A certifying official or agency receiving requests for completion of certification forms shall not disclose the immigration status of a victim or person requesting the certification form, except to comply with federal or state law or a legal process or if authorized by the victim or person requesting the certification form.
 - a. **PLEASE NOTE** that if a person requesting certification is called as a witness for the Commonwealth, the Office of the Commonwealth's Attorney will disclose requests for certification to defense counsel in order to comply with ethical and legal obligations pursuant to *Brady* and *Giglio*.
12. Virginia Law – The procedures outlined in this policy are codified in Virginia Code § 9.1-1500, *et seq.* There may be other aspects of Virginia law as it relates to U and T visas that are not addressed in this policy. All persons who are considering submitting certification requests should consult with legal counsel and/or review the pertinent state and federal laws regarding U and T visas.

Effective Date: 1 July 2021

Anne M. Williams, Commonwealth's Attorney for Clarke County, Virginia

