



CALIFORNIA'S AB1261 AND IMMIGRATION RELIEF FOR SURVIVORS OF CRIME AND TRAFFICKING

How state law can help you obtain a U, T, or S visa

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If you are undocumented and have been a victim of a crime, served as a witness for law enforcement, or have been subject to human trafficking, you may be eligible to apply for certain forms of immigration status. These are known as U, T, and S visas. In most cases, the application process for these visas will require help from a law enforcement agency.

A new law in California, known as **AB1261** aims to better protect immigrants who are applying for these forms of relief and ensure that California law enforcement agencies help them when needed.

WHAT ARE U, T AND S VISAS?

The U, T, and S visas are all types of relief for people who have been harmed by, or helped law enforcement investigate, certain crimes. All three of these forms of relief allow someone to obtain immigration status, get a work permit, and apply for a lawful permanent residence (a green card) if they meet certain criteria.

- **U visas** are for people who have been the victim (or whose family members have been a victim) of certain types of crime and helped law enforcement in their investigation.
- **T visas** are for survivors of human trafficking. The definition of trafficking is complicated, but it generally involves actions that aim to force someone to work against their will.

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- **S visas** are for immigrants who help law enforcement agencies by serving as a witness or informant.

WHAT IS THE CERTIFICATION PROCESS FOR LAW ENFORCEMENT?

All three visas usually require the participation of federal, state, or local law enforcement officials. An S visa application must be filed directly by a law enforcement agency. Law enforcement agencies support U and T visa applications by submitting a document called a certification. A certification is a document completed by a law enforcement official or government official in charge of investigating crimes. The certification says that the person was the victim of a crime (U visa) or human trafficking (T visa) and was helpful to law enforcement in investigating it.

The U visa requires a certification before the person can apply. The T visa does not require a law enforcement certification, but a certification is helpful in showing that the person cooperated with law enforcement in investigating the trafficking, which is required in most T visa cases.

The requirements for these visas and the process for applying impacts how many people can access these protections. U visas are the most common of the three, and people who apply must wait for several years before they receive the final approval of the visa. T visas come up less frequently, and S visas are rare.

HOW DOES THIS PROCESS WORK IN CALIFORNIA?

Because of these requirements, certain people who are eligible for these visas are not able to access them if the law enforcement agency they are working with will not help them. To ensure that people can receive these protections, **California has passed several state laws that require law enforcement agencies in the state to cooperate in the certification process.** The requirements in these laws include providing police reports when they are requested, recognizing when a victim or witness has been helpful to law enforcement, and processing requests for certification within a certain

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timeframe. State law requires law enforcement to provide certification even when there were no charges filed for a reported crime or the investigation has already ended. **It also limits when law enforcement can disclose the requester's immigration status.**

WHAT IS AB 1261 AND HOW DOES IT AFFECT LAW ENFORCEMENT?

AB 1261 is the most recent law extending protections to immigrants who are applying for a U, T, or S visa. It creates a process under state law where law enforcement agencies can file an S visa application. For U and T visas, it adds requirements for how agencies must respond to an immigrant's request for a certification.

AB1261 limits the reasons a certifying agency can deny a request for certification. Law enforcement agencies cannot deny a certification because of:

- ▶ The requester's criminal history,
- ▶ The requester's immigration history,
- ▶ Allegations of gang membership or gang affiliation,
- ▶ An open case with another certifying entity,
- ▶ The extent of the harm the victim suffered, or
- ▶ The victim's inability to produce a crime report from a law enforcement agency.

For U visas, AB1261 also specifies that certifications can be signed not only for direct victims of crime, but also for **indirect victims, and bystander or witness victims.**

Indirect victims are certain family members of a direct victim who is "incompetent, incapacitated, or deceased." Here, "incompetent" or "incapacitated" refers to people who are unable to testify because of their age or because they have a disability that prevents them from doing so. **Bystander or witness victims** are people who were not the direct target of the crime but suffered an unusually direct injury because of it.



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AB1261 adds new requirements for when an agency must find that the person was helpful to their investigation. If someone was not aware that law enforcement requested their cooperation, they cannot be found to be unhelpful just because they did not respond to the request. Indirect crime victims who are parents can show cooperation if they make their children available to communicate with the certifying agency.

AB1261 also creates new deadlines for how quickly law enforcement must provide a certification where the requester or a family member is at risk of losing eligibility. It specifies that a requester is not required to be in the United States to receive a certification. Additionally, the requester does not have to show up in person or provide government-issued identification to receive the certification. Finally, if an agency refuses to provide a certification, AB1261 requires that they provide a written reason why they denied the request.

HOW DO I KNOW IF I AM ELIGIBLE?

The law surrounding U, T, and S visas is very complicated and each type of visa has different requirements in addition to those listed here. Finding out if you are eligible will depend on your individual circumstances and usually requires expert legal analysis. **If you have been a victim of a crime, had a family member who was a victim of crime, witnessed a crime, had someone force you or attempt to force you to work against your will, or served as a witness or informant, you should seek out a trusted legal service provider to find out if you might be eligible.** Free or low-cost immigration legal services in your area can be found by visiting <https://ilrc.me/gethelp>.

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Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for FREE immigration legal services!		Discover more community explainers, toolkits, & alerts about immigration law.	
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