

HOUSE COMMITTEE OF REFERENCE REPORT

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Chair of Committee

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Date

February 6, 2020

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB20-1088 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **add** part 4 to article  
4 4.1 of title 24 as follows:

5 PART 4  
6 CERTIFICATION OF CERTAIN FEDERAL  
7 IMMIGRATION FORMS

8 **24-4.1-401. Definitions.** AS USED IN THIS PART 4, UNLESS THE  
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "CERTIFICATION FORM" OR "CERTIFICATION" MEANS THE  
11 FEDERAL FORM I-918 SUPPLEMENT B, "U NONIMMIGRANT STATUS  
12 CERTIFICATION", OR ANY SUCCESSOR FORM, REQUIRED UNDER 8 U.S.C.  
13 SEC. 1184 (p)(1) AND 8 CFR 214.14 (c)(2)(i) AND AS DEFINED UNDER 8  
14 CFR 214.14 (a)(12), WHICH CONFIRMS THAT THE PETITIONER IS A VICTIM  
15 OF QUALIFYING CRIMINAL ACTIVITY AND HAS BEEN HELPFUL, IS BEING  
16 HELPFUL, OR IS LIKELY TO BE HELPFUL IN THE INVESTIGATION OR  
17 PROSECUTION OF THE QUALIFYING CRIMINAL ACTIVITY OF WHICH HE OR  
18 SHE IS A VICTIM.

19 (2) "CERTIFYING AGENCY" OR "AGENCY" HAS THE SAME MEANING  
20 AS DEFINED IN 8 CFR 214.14 (a)(2) AND INCLUDES BUT IS NOT LIMITED TO:

- 21 (a) A STATE OR LOCAL LAW ENFORCEMENT AGENCY;  
22 (b) THE OFFICE OF A DISTRICT, COUNTY, OR CITY ATTORNEY;  
23 (c) A COURT;  
24 (d) THE OFFICE OF THE ATTORNEY GENERAL;

1 (e) ANY OTHER AGENCY THAT HAS RESPONSIBILITY FOR THE  
2 DETECTION, INVESTIGATION, OR PROSECUTION OF A QUALIFYING CRIME OR  
3 CRIMINAL ACTIVITY; OR

4 (f) ENTITIES THAT HAVE CRIMINAL DETECTION OR INVESTIGATIVE  
5 JURISDICTION IN THEIR RESPECTIVE AREAS OF EXPERTISE, INCLUDING BUT  
6 NOT LIMITED TO A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES,  
7 THE COLORADO CIVIL RIGHTS COMMISSION, AND THE DEPARTMENT OF  
8 LABOR AND EMPLOYMENT.

9 (3) "CERTIFYING OFFICIAL" HAS THE SAME MEANING AS DEFINED  
10 IN 8 CFR 214.14 (a)(3) AND INCLUDES BUT IS NOT LIMITED TO:

11 (a) THE HEAD OF THE CERTIFYING AGENCY;

12 (b) A PERSON IN A SUPERVISORY ROLE WHO HAS BEEN  
13 SPECIFICALLY DESIGNATED BY THE HEAD OF A CERTIFYING AGENCY TO  
14 ISSUE CERTIFICATIONS ON BEHALF OF THAT AGENCY; OR

15 (c) A JUDGE OR MAGISTRATE.

16 (4) "QUALIFYING CRIMINAL ACTIVITY" HAS THE SAME MEANING AS  
17 DEFINED IN 8 CFR 214.14 (a)(9), INCLUDING ANY ACTIVITY THAT  
18 CONSTITUTES A CRIME AS DEFINED PURSUANT TO COLORADO LAW,  
19 REGARDLESS OF THE STATUTORY LANGUAGE OR TITLE USED PURSUANT TO  
20 COLORADO LAW, FOR WHICH THE NATURE AND ELEMENTS OF THE  
21 OFFENSES ARE SUBSTANTIALLY SIMILAR TO THE GENERAL CATEGORIES OF  
22 OFFENSES ENUMERATED IN 8 U.S.C. SEC. 1101 (a)(15)(U), OR ANY OTHER  
23 SIMILAR CRIMINAL ACTIVITIES, AND THE ATTEMPT, CONSPIRACY, OR  
24 SOLICITATION TO COMMIT ANY OF THOSE OFFENSES.

25 (5) "VICTIM OF QUALIFYING CRIMINAL ACTIVITY" OR "VICTIM" HAS  
26 THE SAME MEANING AS DEFINED IN 8 CFR 214.14 (a)(14) AND INCLUDES  
27 AN INDIVIDUAL WHO HAS SUFFERED DIRECT AND PROXIMATE HARM AS A  
28 RESULT OF THE COMMISSION OF QUALIFYING CRIMINAL ACTIVITY,  
29 INCLUDING DIRECT VICTIMS; INDIRECT VICTIMS, AS DEFINED UNDER 8 CFR  
30 214.14 (a)(14)(i), REGARDLESS OF THE DIRECT VICTIM'S IMMIGRATION OR  
31 CITIZENSHIP STATUS; AND BYSTANDER VICTIMS, AS RECOGNIZED UNDER  
32 FEDERAL REGISTER AT 72 FR 53016.

33 **24-4.1-402. Immigration certification forms - completion**  
34 **deadlines.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,  
35 A CERTIFYING AGENCY SHALL PROCESS AND EITHER SIGN OR DECLINE TO  
36 SIGN A CERTIFICATION FORM WITHIN NINETY DAYS AFTER RECEIPT OF A  
37 REQUEST.

38 (2) A CERTIFYING AGENCY SHALL PROCESS AND EITHER SIGN OR  
39 DECLINE TO SIGN A CERTIFICATION FORM WITHIN THIRTY DAYS AFTER  
40 RECEIPT OF A REQUEST IF:

41 (a) THE REQUESTOR PROVIDES DOCUMENTATION THAT HE OR SHE

1 IS IN FEDERAL IMMIGRATION REMOVAL PROCEEDINGS; OR  
2 (b) THE REQUESTOR PROVIDES DOCUMENTATION THAT THE  
3 CHILDREN, PARENTS, OR SIBLINGS OF THE REQUESTOR WOULD BECOME  
4 INELIGIBLE FOR U NONIMMIGRANT STATUS BY VIRTUE OF AGE WITHIN  
5 SIXTY BUSINESS DAYS AFTER THE DATE THAT THE CERTIFYING OFFICIAL  
6 RECEIVES THE CERTIFICATION FORM REQUEST.

7 **24-4.1-403. Certification forms - signature requirement -**  
8 **limitation on factors for consideration.** (1) UPON REQUEST, A  
9 CERTIFYING OFFICIAL FROM A CERTIFYING AGENCY SHALL EXECUTE AND  
10 SIGN THE CERTIFICATION FORM WHEN IT IS DETERMINED THAT THE VICTIM:

11 (a) WAS A VICTIM OF QUALIFYING CRIMINAL ACTIVITY; AND  
12 (b) HAS BEEN HELPFUL, IS BEING HELPFUL, OR IS LIKELY TO BE  
13 HELPFUL TO THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT  
14 QUALIFYING CRIMINAL ACTIVITY.

15 (2) (a) FOR PURPOSES OF DETERMINING HELPFULNESS PURSUANT  
16 TO SUBSECTION (1)(b) OF THIS SECTION, A VICTIM IS HELPFUL, HAS BEEN  
17 HELPFUL, OR IS LIKELY TO BE HELPFUL TO THE DETECTION, INVESTIGATION,  
18 OR PROSECUTION OF THAT QUALIFYING CRIMINAL ACTIVITY IF THERE IS NO  
19 DOCUMENTATION THAT THE VICTIM REFUSED OR FAILED TO PROVIDE  
20 ASSISTANCE REASONABLY REQUESTED BY LAW ENFORCEMENT.

21 (b) A CERTIFYING AGENCY'S INABILITY TO COMMUNICATE WITH A  
22 VICTIM DUE TO THE VICTIM'S LANGUAGE SHALL NOT BE CONSIDERED A  
23 REFUSAL OR FAILURE TO PROVIDE ASSISTANCE.

24 (3) THE CERTIFYING AGENCY SHALL NOT CONSIDER ANY OTHER  
25 FACTORS IN DECIDING WHETHER TO SIGN THE CERTIFICATION FORM,  
26 EXCEPT THE FACTORS LISTED IN SUBSECTION (1) OF THIS SECTION.

27 (4) IF A CERTIFYING OFFICIAL OR AGENCY SIGNS THE  
28 CERTIFICATION FORM, THE OFFICIAL OR AGENCY SHALL RETURN THE  
29 SIGNED CERTIFICATION FORM TO THE REQUESTOR, ALONG WITH, FREE OF  
30 CHARGE, OFFENSE REPORTS RELATED TO THE CRIMINAL ACTIVITY SUBJECT  
31 TO RELEASE BY LAW. THE TIMING OF RELEASE OF SUCH REPORTS FOR OPEN  
32 CASES IS SUBJECT TO THE CERTIFYING AGENCY'S DISCRETION.

33 (5) THE CERTIFYING AGENCY IS NEITHER A SPONSOR NOR A  
34 DECISION-MAKER OF THE U VISA . A CERTIFYING OFFICIAL'S COMPLETION  
35 OF A CERTIFICATION FORM IS NOT SUFFICIENT EVIDENCE THAT AN  
36 APPLICANT FOR A U VISA HAS MET ALL ELIGIBILITY REQUIREMENTS AND  
37 DOES NOT GUARANTEE THAT THE VICTIM WILL RECEIVE A U VISA. IT IS THE  
38 EXCLUSIVE RESPONSIBILITY OF FEDERAL IMMIGRATION OFFICIALS TO  
39 DETERMINE WHETHER A PERSON IS ELIGIBLE FOR A U VISA. COMPLETION  
40 OF A CERTIFICATION FORM BY A CERTIFYING OFFICIAL MERELY VERIFIES  
41 FACTUAL INFORMATION RELEVANT FOR FEDERAL IMMIGRATION OFFICIALS

1 TO DETERMINE ELIGIBILITY FOR A U VISA. BY COMPLETING A  
2 CERTIFICATION FORM, THE CERTIFYING OFFICIAL ATTESTS THAT THE  
3 INFORMATION IS TRUE AND CORRECT TO THE BEST OF THE CERTIFYING  
4 OFFICIAL'S KNOWLEDGE.

5 (6) MORE THAN ONE VICTIM MAY BE IDENTIFIED AND PROVIDED  
6 WITH CERTIFICATION, DEPENDING UPON THE CIRCUMSTANCES.

7 (7) IF A CERTIFYING OFFICIAL OR AGENCY DECLINES TO SIGN THE  
8 CERTIFICATION FORM, THE OFFICIAL OR AGENCY SHALL, IN WRITING,  
9 NOTIFY THE REQUESTOR OF THE REASON FOR THE DENIAL. THE DENIAL  
10 NOTIFICATION MUST CONTAIN A DETAILED EXPLANATION OF THE REASON  
11 FOR THE DENIAL, CONSISTING OF ONE OF THE FOLLOWING:

12 (a) THE REQUESTOR WAS NOT A VICTIM OF A QUALIFYING  
13 CRIMINAL ACTIVITY;

14 (b) LACK OF HELPFULNESS, INCLUDING DOCUMENTED INSTANCES  
15 OF FAILURE OR REFUSAL TO COMPLY WITH REASONABLE REQUESTS FOR  
16 ASSISTANCE; OR

17 (c) LACK OF JURISDICTION OVER THE CERTIFICATION FORM  
18 REQUEST DUE TO THE CERTIFYING AGENCY NOT HAVING BEEN INVOLVED  
19 IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THE QUALIFYING  
20 CRIMINAL ACTIVITY.

21 (8) UPON RECEIVING NOTICE THAT A REQUEST FOR A  
22 CERTIFICATION FORM PURSUANT TO THIS SECTION IS DENIED, A REQUESTOR  
23 MAY PROVIDE SUPPLEMENTAL INFORMATION TO THE CERTIFYING AGENCY  
24 AND REQUEST THAT THE CERTIFICATION FORM DENIAL BE REVIEWED BY  
25 THE CERTIFYING AGENCY. A REQUESTOR MAY ALSO SEEK A CERTIFICATION  
26 FORM FROM MULTIPLE CERTIFYING AGENCIES.

27 **24-4.1-404. Prohibition on disclosure of victim's immigration**  
28 **status.** A CERTIFYING AGENCY IS PROHIBITED FROM DISCLOSING THE  
29 PERSONAL IDENTIFYING INFORMATION OR IMMIGRATION STATUS OF A  
30 VICTIM OR PERSON REQUESTING THE CERTIFICATION, EXCEPT TO COMPLY  
31 WITH FEDERAL LAW OR PROCESS.

32 **24-4.1-405. Duty to inform victims.** CERTIFYING AGENCIES  
33 SHALL PROVIDE INFORMATION REGARDING THE U VISA AND THE AGENCY'S  
34 PROCEDURES FOR CERTIFICATION TO VICTIMS.

35 **24-4.1-406. Reports.** ON OR BEFORE SEPTEMBER 1, 2021, AND ON  
36 OR BEFORE EACH MARCH 1 THEREAFTER, A CERTIFYING AGENCY THAT  
37 RECEIVES A REQUEST FOR A CERTIFICATION SHALL REPORT TO THE  
38 DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY ON  
39 AN ANNUAL BASIS THE NUMBER OF REQUESTS FOR CERTIFICATION  
40 RECEIVED, THE NUMBER OF CERTIFICATIONS THAT WERE SIGNED, THE  
41 TOTAL NUMBER THAT WERE DENIED, THE NUMBER DENIED FOR EACH

1 REASON SUPPORTING THE DENIAL, AND THE NUMBER OF DECISIONS THAT  
2 FELL OUTSIDE THE PRESCRIBED COMPLETION DEADLINES. THE DIVISION  
3 SHALL MAKE THE REPORTS AVAILABLE TO THE PUBLIC UPON REQUEST.

4 **SECTION 2. Act subject to petition - effective date -**  
5 **applicability.** (1) This act takes effect September 1, 2020; except that,  
6 if a referendum petition is filed pursuant to section 1 (3) of article V of  
7 the state constitution against this act or an item, section, or part of this act  
8 within the ninety-day period after final adjournment of the general  
9 assembly, then the act, item, section, or part will not take effect unless  
10 approved by the people at the general election to be held in November  
11 2020 and, in such case, will take effect on the date of the official  
12 declaration of the vote thereon by the governor.

13 (2) This act applies to requests and resubmitted requests for  
14 certifications made on or after the applicable effective date of this act."

15 Page 1, strike line 101 and substitute "**CONCERNING THE CERTIFICATION**  
16 **PROCESS FOR THE PURPOSE OF APPLICATION FOR U NONIMMIGRANT**  
17 **STATUS.**".

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