



Practice Advisory July 1, 2021

Using Virginia's Law Enforcement Agency Certification Law To Obtain LEA Certification for U and T Visa Applicants¹

This practice advisory analyzes the recent Virginia bill SB 1468 signed into law by Governor Ralph Northam on March 31, 2021, and effective beginning July 1, 2021. This bill will be codified under Section 9.1-1500 through 1502 of the Virginia Code and will provide immigrant crime victims with clarity regarding the process for requesting a U visa certification form from local and Virginia state law enforcement agencies.² It will also apply much needed time restraints on law enforcement responses to certification requests and provide certification seekers with a remedy in state court for a wrongfully denied request. This advisory seeks to provide advocates with general practice strategies to effectively obtain signed certification forms from Virginia local and state certifying agencies. It also provides a guide for advocates who are wrongfully denied a certification form and wish to appeal to circuit court as a result. Finally, it will discuss the process for requesting statutory attorney's fees after a successful circuit court appeal.

I. Background

The U nonimmigrant visa (U visa) and the T nonimmigrant visa (T visa), two forms of immigration relief for noncitizen victims of violent crimes or human trafficking,³ afford temporary nonimmigrant status to victims of qualifying criminal activity when they cooperate with law enforcement agencies investigating or prosecuting the related crime.⁴ U visa applicants are required to submit an original, signed Form I-918, Supplement B, U

¹ The authors of this practice advisory are Becky Wolozin and Simon Sandoval-Moshenberg, Legal Aid Justice Center; Laurie Ball Cooper, Ayuda; and Cindy Larios, Murray Osorio, PLLC. This practice advisory explains and analyses Va. Code §§ 9.01-1500 *et seq.* This analysis is based on legal research and may contain potential arguments and opinions of the authors. Practice Advisories do not replace independent legal advice provided by an attorney or representative familiar with a client's case. This practice advisory is accurate as of July 1, 2021; subsequent judicial opinions or other events may materially change the legal analysis contained herein.

² This law does not apply to federal law enforcement agencies, such as Homeland Security Investigations or the U.S. Attorney's Office.

³ Victims of Trafficking and Violence Act ("VTVPA"), Pub. L. No. 106-386, 114 Stat 1464, (October 28, 2000), reauthorized by the Trafficking Victims Protection Reauthorization Act of 2017, 22 USC § 7101.

⁴ 8 U.S.C. §§ 1101(a)(15)(U)(i), 1101(a)(15)(T)(i).

Nonimmigrant Status Certification (“LEA certification”) as evidence of their cooperation.⁵ T visa applicants are not required to submit a signed endorsement, but an endorsement from a law enforcement agency on the analogous Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (“LEA declaration”) is considered primary evidence of this compliance requirement.⁶ In most cases the T visa applicant must at least *seek* an LEA declaration in order to comply with the minimum requirements under the regulations.

The federal statutes and regulations are silent as to the responsibilities of LEAs when presented with a request from a qualifying victim. This leaves a situation where LEAs act with broad discretion in determining protocols for signing LEA certifications and declarations, and some even refuse to sign these forms despite a victim’s complete cooperation with law enforcement. This has led to disproportionate access to these valuable protections for victims based on the particular LEA with which they interact. While some certifying agencies readily engage with the immigrant crime victims they serve and swiftly sign LEA certifications and declarations, others have created unnecessary obstacles, arbitrary rules, or have simply refused to engage in the process altogether.

Sen. Scott Surovell introduced SB 1468 to establish a uniform process for state and local LEAs to follow when they receive a request for a certification or endorsement from a qualifying victim. The bill is set to become effective on July 1, 2021.⁷ In passing SB 1468, Virginia joins the ranks of 20 other states that have decided to pick up where the federal law left off and provide these necessary boundaries on LEAs in order to better serve the most vulnerable among us.⁸

Definitions

Certifying Agency: A state or local law enforcement agency, a Commonwealth’s Attorney office, the state Attorney General, or any other agency or department employing law enforcement officers as defined in Va. Code § 9.1-101 that has responsibility for the investigation or prosecution of a qualifying criminal activity.⁹

Certifying Official: The head of the certifying agency, a law enforcement officer as defined in § 9.1-101, or any person employed by a certifying agency in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency. A certifying

⁵ 8 C.F.R. § 214.14(c)(2)(i).

⁶ 8 C.F.R. § 214.11(d)(3)(i).

⁷ Va. Code § 9.1-1500-1502.

⁸ ILRC has a helpful practice advisory with a list of states with similar laws in effect as of March 2020 for practitioners who also practice in states other than Virginia: https://www.ilrc.org/sites/default/files/resources/u_visas_and_t_visas_pa-04.2020.pdf.

⁹ Va. Code § 9.1-101 contains a non-exhaustive list of Virginia agencies employing law enforcement officers. Neither the U visa authorizing statute, nor the relevant regulations require that a certifying agency have criminal prosecutorial authority over the qualifying criminal activity, only that the agency have criminal *investigative* authority. This means that even an agency that “detects” qualifying criminal activity, such as involuntary servitude or witness tampering, in the course of their exercise of their standard investigatory authority, is authorized to issue a U visa certification pursuant to DHS regulations – even when that agency has no authority to prosecute that criminal activity. 8 C.F.R. § § 214.14(a)(2), (5); *New Classification for Victims of Criminal Activity*, 72 Fed. Reg. at 53,018.

official may act on behalf of his employing certifying agency or on behalf of another certifying agency through an agreement with the other certifying agency. Pursuant to § 9.1-1500, each certifying agency in Virginia must designate at least one certifying official for its agency. Under § 9.1-1501(A), each certifying agency must publish procedures for requesting certification, including to whom to direct the certification request if applicable.

Qualifying Criminal Activity: For a U visa, this means any activity, regardless of the stage of detection, investigation, or prosecution, designated in 8 U.S.C. § 1101(a)(15)(U)(iii), or in any implementing federal regulations, supplementary information, guidance, and instructions.¹⁰ This includes attempted crimes in addition to completed crimes.¹¹ For a T visa, this means activity that rises to the level of a severe form of trafficking in persons.¹²

Victim of a Qualifying Criminal Activity: A person described in 8 U.S.C. § 1101(a)(15)(U)(i)(III)¹³ and in the definition of “victim of a severe form of trafficking” in 22 U.S.C. § 7102(11),¹⁴ or in any implementing federal regulations, supplementary information, guidance, and instructions.

Certification Form: Certification forms include both current LEA certifications and LEA declarations alike in their current form, as well as any successors thereof as defined by 8 U.S.C. §§ 1184(o), (p).

¹⁰ 8 U.S.C. § 1101(a)(15)(U)(iii) includes, “one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.” Any similar activity refers to criminal offenses in which the nature and elements of the offenses are substantially similar to this statutorily enumerated list of criminal activities. 8 C.F.R. § 214.14(a)(9). When a certified offense is not a qualifying criminal activity enumerated in 8 U.S.C. § 1101(a)(15)(U)(iii), the U petitioner must establish that the certified offense involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity.

¹¹ 8 C.F.R. § 214.14(a)(9). [ASISTA](#) is an organization that aids advocates serving immigrant crime victims by providing technical assistance and access to webinars, practice advisories, and an interactive listserv for those with specific questions about what is considered a qualifying crime.

¹² 22 U.S.C. § 7102(11)(a)-(b). Similar to ASISTA, [CAST LA](#) also provides technical assistance to those working with survivors of human trafficking, including a weekly working group call where advocates can seek free advice from legal professionals across the country.

¹³ 8 U.S.C. § 1101(a)(15)(U)(i)(III) describes an “alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) [that] has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii)”.

¹⁴ 22 U.S.C. § 7102(11) defines a severe form of trafficking as: (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

II. Statutory Protections

This bill establishes uniformity and transparency across Virginia to make the LEA certification process more accessible to victims of crimes. This includes publicizing certification request procedures, imposing statutory timelines for LEAs to respond to requests, and establishing an enforcement mechanism by providing for review by a Virginia circuit court if LEAs do not respond to requests by the statutory deadline or improperly decline to certify. The law also incorporates privacy protections for U and T visa applicants at both the certification and circuit court stages.

Clear public procedures and mandated written responses

Certifying agencies must publish their procedures for receiving certification requests.¹⁵ This should take the guesswork out of submitting requests for certification by making clear how and to whom to submit requests for all certifying agencies.

Following an agency's published procedures, certification requests may be submitted directly by a U/T visa applicant or on their behalf by individuals including an attorney, a licensed clinical social worker, a guardian ad litem, an employee of a crime victim and witness assistance program, or a sexual assault services provider.¹⁶ Although this list includes non-attorneys, the precise information provided on the certification form can affect an individual's application for immigration relief. Non-attorneys intending to request certifications on behalf of U/T visa applicants are strongly encouraged to consult an immigration attorney prior to submitting a certification request to the agency.

Certifying agencies are required to respond in writing to all requests for certification that they receive, either by providing the signed certification form or an explanation of why the request was denied.¹⁷ The written explanation must set forth reasons why the available evidence does not support a finding that the person is a victim of a qualifying criminal activity.¹⁸

Privacy

A certifying official or agency may only disclose a U/T visa applicant's immigration status to any third parties in order to comply with federal or state law, or a legal process. The applicant may, however, authorize the official or agency to share this information.¹⁹ If petitioning for review by a Virginia circuit court, the proceedings and all pleadings will be kept under seal unless otherwise ordered by the judge.²⁰

Statutory Deadlines for LEA Responses

Under the Act, certifying officials must respond to the request within 120 days. However, the following situations require *faster* response times from the certifying agency if the requestor has affirmatively established eligibility for expedited review:

U/T visa applicant in removal proceedings – 21 business days: If the applicant requesting certification is in removal proceedings or detained, then the certifier must complete the certification within 21 business days.²¹

¹⁵ Va. Code § 9.1-1501(A).

¹⁶ Va. Code § 9.1-1501(C).

¹⁷ Va. Code § 9.1-1501(A).

¹⁸ Va. Code § 9.1-1501(D).

¹⁹ Va. Code § 9.1-1501(G).

²⁰ Va. Code § 9.1-1502(C).

²¹ Va. Code § 9.1-1501(D).

Derivatives Aging Out – 30 days: If the applicant’s children will turn 21, or siblings will turn 18, within 120 days of the request, the certifier must complete the certification within 30 days.²²

Imminent Derivative Age-Out – 7 days: If relatives who would otherwise qualify as derivative beneficiaries for relief will age-out of such protections in less than 21 business days of the certifier’s receipt of the request, then the certifier must complete the certification within seven days.²³

Reissuance of certification – 90 days: If a U/T visa applicant who previously obtained a certification must request a reissued certification (for example, because the first certification form expired before the U visa application could be submitted to USCIS), the certifier must reissue a certification form within 90 business days of receipt.²⁴

Reissuance of certification for RFE – 21 business days: Where a USCIS Request For Evidence deadline requires a response on a certain timeframe (as they all do), the certifier must complete the form within 21 business days after receipt.²⁵

For all circumstances described above, the U/T visa applicant or their representative may agree to an extension of time by written agreement with the certifier. Additionally, for all circumstances described above, the burden is on the requestor to affirmatively request and establish through evidence that they qualify for a faster response time under the provisions above.

III. Submitting Effective Certification Requests

Certification requests should include the following elements (unless specific agency guidance published pursuant to the Act requires otherwise):

A cover letter (signed by the letter-writer) including a description of the crime committed, relevant facts regarding the investigation or prosecution and its outcome, and, where salient, a brief description of the effects of both the crime and the subsequent cooperation with law enforcement on the U/T visa applicant. See Appendix A, Sample Request for Certification, for a model cover letter.

Evidence of circumstances triggering expedited response. The cover letter should highlight any facts (and attach any evidence of them) that would trigger a faster statutory timeline. As detailed above, the Act’s timeframe for mandatory response varies depending on the circumstances of the applicant and their derivatives. To benefit from the faster required response time, your cover letter must state facts establishing eligibility for a faster timeline and should request the expedited processing time. The certifier may not know anything about immigration, so clearly explain, in layperson’s terms, why your client qualifies for an expedited timeframe. Evidence of the circumstances triggering expedited response might include a Notice to Appear in Immigration Court (depending on the grounds of removability alleged) or an EOIR printout showing the next hearing date, a qualifying relative’s birth certificate or proof of age, etc.

²² Va. Code § 9.1-1501(D)

²³ Va. Code § 9.1-1501(D)

²⁴ Va. Code § 9.1-1501(E).

²⁵ Va. Code § 9.1-1501(E).

The investigation report, case docket, final judgment and/or any other pertinent documents from the investigation and/or prosecution of the crime, wherever possible, to establish your client’s eligibility.

Current version of USCIS Form I-918, Supplement B (or I-914, Supplement B in the T Visa context) completed to the best of the representative’s knowledge, including:

- Checking the box(es) for the qualifying criminal activity.
 - The box(es) checked do not have to match the final charges in a case, if any were brought, as the form asks for crimes *investigated*, which may include crimes beyond those listed in the charging document or even in an incident report.
 - You may check more than one box in applicable circumstances.
- Listing the relevant statutory sections under Virginia Code for all boxes checked.
- Completing the narrative description of the criminal activity investigated.
 - It is especially important to include relevant details here where the charging document or incident report do not include the crime listed on the certification form. Having more detail in your draft certification form can help support arguments to USCIS with your client’s submission that the crime certified is substantially similar to one of the crimes specifically listed in the U visa statute.
- Providing a description of known injury to the survivor, including any injuries that were known to the certifying agency at the time of initial investigation. This might include any visible injuries at the time of the police call, reported injuries, and effects of the investigation and/or prosecution on the U/T visa applicant that may have or should have been known by the certifier.

As a general rule, certification requests should not include medical records, declarations signed by the applicant, or letters from therapists. Such deeply personal information should not typically be required by law enforcement to consider the limited decision of whether to sign the certification.

IV. Enforcement Mechanism: VA Circuit Court Review

Va. Code § 9.1-1502(B) states, “If a certifying agency fails to respond within the statutory timeframes or refuses to certify that an applicant was a victim of qualifying criminal activity, the applicant may petition a circuit court to review the determination of the certifying agency within 30 days of such determination or within 30 days of the expiration of the statutory timeframe in subsection 9.1-1501(D)(E).”

To appeal to the circuit court, attorneys should file a detailed petition for review that includes all facts and legal arguments. (See Appendix B). Attach the complete underlying record as exhibits to the petition. A hearing will be held 30 days after filing,²⁶ so any supplemental briefing is unlikely.

Legal Standard

The legal standard on Circuit Court review is whether the LEA’s decision was reasonable, so the petition for review will depend entirely on the underlying record rather than any new evidence submitted to the court. There will likely be no opportunity to submit new evidence to the court to show unreasonableness. If there is new evidence that is important in the certification request, it may make sense to submit a new certification

²⁶ Va. Code § 19-1502(B).

request to the LEA with the new information. If the new request is denied, proceed with the petition for review of that denial by the Circuit Court.

At the hearing, the attorney should be prepared to argue why the petitioner qualifies for a U visa based on being the victim of a qualifying crime by a preponderance of the evidence. The attorney should also be prepared to argue why the refusal to certify or the failure to respond to a certification request was unreasonable, as defined in the statute.

In determining reasonableness under the statute, the court considers whether the certifying agency has provided sufficient legal and factual reasoning for its denial or failure to respond.²⁷ When evaluating reasonableness, the Court may also consider whether the petitioner complied with requirements for requesting certification from the certifying agency, and whether circumstances exist justifying delay to avoid jeopardizing ongoing criminal investigations, prosecutions, or safety.²⁸ A reasonable action is one that is “fairly debatable” based on evidence offered in support of opposing views.²⁹

The statute requires a written denial stating “why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.”³⁰ If an LEA has denied for any reason other than finding that the person is not a victim of a qualifying criminal activity, the denial is unreasonable because it is outside the statutory standard and criteria.³¹ This would apply if the LEA denies on grounds based on local policy like refusing to certify for crimes that occurred more than 10 years ago, refusing to certify if the crime victim was also arrested, or any other reason apart from whether the individual was in fact the victim of a qualifying crime.

Privacy

Under the statute, the record in a petition for review pursuant to Va. Code § 9.1-1502(B) will be sealed, including all pleadings and papers filed, record of hearings, and court orders, unless otherwise ordered by the court.³² Nonetheless, best practice is to limit the information about the client’s immigration status and posture in your pleadings to include only what is necessary under the statute to show any specific expedited timelines. There is no need to provide information about any underlying immigration relief, the basis of any immigration claims, or when an individual entered the United States, was placed in proceedings, etc.

Remedies

If the court finds that the U visa applicant is eligible, and that the refusal to certify or failure to certify was unreasonable, the Circuit Court may serve as the law enforcement agency providing certification.

Furthermore, if the court finds failure to certify was unreasonable, “the circuit court *shall* make an award of reasonable costs and attorney fees to a prevailing applicant.” (Emphasis added.)

Filing in Va. Circuit Courts

Practicing in Virginia Circuit Courts requires being well-versed in Virginia circuit court procedure. The procedures are not the same as practicing in General District Court or in Juvenile and Domestic Relations Court in Virginia. It is essential that the attorney review the rules of procedure for Virginia Circuit Courts and for the specific jurisdiction in which they plan to file a Petition for Review prior to filing. Each jurisdiction’s circuit court has a

²⁷ Va. Code § 9.1-1502(B).

²⁸ *Id.*

²⁹ *Board of Sup’rs of Fairfax County v. Jackson*, 269 S.E.2d 381 (Va. 1980).

³⁰ Va. Code § 9.1-1502(B).

³¹ *See, e.g., Jackson*, 269 S.E.2d at 381.

³² Va. Code § 9.1-1502(C).

website with specific instructions. Some jurisdictions have their own practice manuals, which you can find through bar associations or by searching online. The link to the Fairfax Circuit Court Practice Manual is provided below under “Resources.”

Venue

Venue for a petition for review under this law will be the county where the defendant LEA is located.³³

Evidence

Evidence will be essential to success in this type of claim. Be sure to include as exhibits:

- All documents submitted to the LEA establishing the underlying qualifying crime
- All documents submitted to the LEA establishing eligibility for an expedited timeline for certification, if applicable
- All information that you sent in your initial certification request to the LEA
- The LEA’s response, if any
- All subsequent correspondence with the LEA, if any

If necessary to contest or explain facts in the record, you may want to include a declaration from the U visa applicant describing the crime against them, their reporting to law enforcement, etc. However, documentary evidence is preferred, more effective, and more likely to comply with the Virginia Rules of Evidence. If submitting a declaration, the declarant must be prepared to testify. The Virginia Rules of Evidence govern all evidence submitted in Virginia Circuit Courts.³⁴

Service of Process³⁵

Initial filings must be served on the Respondent. Initial service of process can be completed by Sherriff or private process server. You must select the type of service you are requesting on the Civil Cover Sheet submitted with your filing.

At the bottom of the Civil Cover Sheet, you can select service of process by sheriff or private process server. If you select service by sheriff, the cost is \$12 and the Circuit court prepares the services and brings it to the sheriff’s office for service. If you select private process server, the court prepares the service and notifies you when it is ready to be collected by you or the private process server to complete service.

Whom to Serve

Sheriff’s Department

Respondent: Sheriff

Whom to Serve: Sheriff

County/City Police Department

Respondent: Police Department

Whom to Serve: County Attorney for the County (or City)

Commonwealth’s Attorney

Respondent: Commonwealth’s Attorney

³³ Va. Code §§ 8.01-261(15)(c).

³⁴ R. of S.C. of Va., Part 2, available at <http://www.courts.state.va.us/courts/scv/rulesofcourt.pdf>.

³⁵ Va. Code §§ 8.01, *et seq.*

Whom to Serve: Commonwealth's Attorney

How to Serve the Respondent

Always check Virginia Rules of Civil Procedure and Local Rules of the Court. When in doubt, call the clerk to verify that you are doing things correctly. Specific information about issuance of court process is also described in the Virginia Circuit Court Clerk's Manual, Chapter 2:

http://www.courts.state.va.us/courts/circuit/resources/manuals/cc_manual_civil/chapter_02.pdf

Initial service of process (like the Petition for Review) must be served according to the Rules of the Supreme Court of Virginia. You must indicate on the civil cover sheet whether you would like to complete service by sheriff or by private process server. Service by sheriff costs \$12 so be prepared to pay the fee upon filing with the court.

Rules that apply to initial process include:

Rule 1:4(l) – list a fax number, email address, and Virginia Bar number of counsel in all pleadings

Rule 1:7 – computation of time following service, except for personal delivery

Rule 1:17 – rules for e-filing

Rules that apply to subsequent filings include:

Rule 1:12 – methods of service permitted

Rule 5:15 – timing of receipt of motions papers

Practice Tips

General

- Study the Circuit Court Handbook: Circuit Court is very stringent about procedures and rules. There's no wiggle room. This includes knowing what must be in writing and what can be done orally at a hearing. Several resources are included below. Some are available online and some must be purchased/borrowed
- Always check the filing procedures and rules of procedure for the specific jurisdiction on the Court's home page.
- Filing in person v. filing electronically
 - Call the clerk before filing to ask any lingering questions
 - Filing in person is recommended – clerks can help ensure you have prepared and filed everything correctly
 - Only certain jurisdictions permit e-filing (e.g. Arlington), but for practitioners who do not normally practice in Virginia Circuit Courts, we recommend filing in person at the clerk's office so that any paperwork errors can be quickly corrected

What to File

- Cover Sheet (<http://www.courts.state.va.us/forms/circuit/cc1416.pdf>)
- Notice of Appearance
- Filing Fee (card or business check) (http://webdev.courts.state.va.us/cgi-bin/DJIT/ef_djs_ccfees_calc.cgi)
- Notice of Hearing
- Petition for Review
 - Include request for attorney's fees

- Include Proposed Order
- Include Form I-918B to be certified by the court
- Motion for interpreter (if required)

Resources

Free

- VA Circuit Court Civil Procedures Manual
http://www.courts.state.va.us/courts/circuit/resources/manuals/cc_manual_civil/table.pdf
- VA Practice and Procedure Washington & Lee University
<https://law2.wlu.edu/faculty/facultydocuments/woodr/vappreadings1.pdf>
- Arlington Local Rules and Preferred Practices <https://courts.arlingtonva.us/wp-content/uploads/sites/9/2014/06/Local-Rules-and-Preferred-Practices.pdf>
- Richmond, Chesterfield, Colonial Heights, Henrico Circuit Courts Suggested Practice and Procedures
<http://www.courts.state.va.us/courts/circuit/Richmond/practices.pdf>

For Purchase/Borrowing/Pick-Up

- 9th Edition Fairfax Circuit Court Practice Manual 2018© - Pick Up Only - Fairfax Bar Association
<https://www.fairfaxbar.org/store/ViewProduct.aspx?id=11801589>
- Virginia Model Jury Instructions - Civil | LexisNexis Store
<https://store.lexisnexis.com/products/virginia-model-jury-instructions-civil-skuusSku7357>

Attorney's Fees

Va. Code § 9.1-1502(B) provides for mandatory attorney's fees and court costs to be awarded to the U visa applicant if they prevail in their petition. The fee petition will be a motion handed up to the judge at the conclusion of the hearing on the Petition for Review, if the U visa applicant prevails. (See Appendix C). Bring 3 copies of the Motion for Attorneys' costs and fees, including all evidence submitted with the motion, so that you may serve the defendant as you hand the motion up to the judge.

The Fees and Costs Motion and Memorandum must be supported by proper affidavits. Such a fee petition in state court will first need to explain to the court the standard you want the court to use.

To have the best chance of prevailing on your Motion for Attorney's Fees, the most important evidence is detailed contemporaneous timekeeping. Expert testimony is not required to prove the reasonable fees when the fee request is supported by supporting evidence. As held by the Virginia Supreme Court, "expert testimony was not necessary because of the affidavits and detailed time records, which were wholly unrefuted by any evidence offered by [defendant]. Accordingly, we hold that the amount fixed by the trial court was amply supported by the evidence and we find no error in the trial court's allowance."³⁶

Once the plaintiff presents evidence of the time and effort expended on a case, "[t]he finder of fact would be required to consider all the relevant evidence and determine whether the fees charged were reasonable."³⁷

³⁶ *Tazewell Oil Company v. United Virginia Bank*, 243 Va. 94, 112, 413 S.E. 2d 611, 621 (1992).

³⁷ *Seyfarth, Shaw v. Lake Fairfax Seven Limited Partnership*, 253 Va. 93, 97, 480 S.E. 2d 471 (1997).

Under Virginia law, the seven factors are looked at to determine the reasonable attorneys' fees:

1. The time and effort expended by the attorney;
2. The nature of the services rendered;
3. The complexity of the services;
4. The value of the services to the client;
5. The result obtained;
6. Whether the fees were consistent with those charged for similar services; and
7. Whether the services were necessary and appropriate.

Additionally, fees incurred in preparing a fee petition are properly recoverable.³⁸

Calculating Your Rate

You must include your rate in your request for attorneys' fees. Under the lodestar rule, reasonable fees are determined by "the time consumed, the efforts expended, the nature of the services and the results thereof."³⁹ Note that in Virginia, the Laffey matrix used in D.C. does not apply.

If you have an hourly rate, we recommend adjusting it to be in alignment with rates in the particular Virginia court in which you are filing. You may need an affidavit from an attorney who routinely practices in the court in which you are filing who can attest to the rates in that court.

If you usually charge flat fees, you should calculate your hourly rate by determining how many hours of work your flat fee typically covers.

You should include evidence of reasonable fees with your request. This should include your own affidavit with detailed table of time and effort expended on the petition for circuit court review of the denied certification request (see Appendix D).

Record Keeping Practice Tips

- A Virginia-barred attorney should do all the Circuit Court-related work. A judge may be disinclined to award fees to a non-Virginia barred attorney, even if admitted *pro hac vice*.
- Keep very detailed records of your time
 - Record enough details to remember specifically what you did months or years later.
 - Keep separate time records for trial, waiting for trial, and travel to trial separate.
 - Avoid block billing (e.g. "drafted PFR and attorney's fee motion, and prepared service of process"). Each individual task must be its own time entry.
- Don't provide attorney-client privileged notes in your fee petition.
- If you edit your time records, make a clear statement in the petition about why you edited it the way you did. Include language "in the exercise of billing discretion" in your petition for fees.

³⁸ *Sun Publishing Co. v. Mecklenburg News, Inc.*, 596 F. Supp. 1512 (E.D. Va. 1984).

³⁹ *Beale v. King*, 204 Va. 443, 446 132 S.E.2d 476, 478-79 (1963).

- All communications with opposing counsel and/or the LEA could be evidence in a fee petition.
 - When opposing counsel makes you waste time on the case by being difficult (such as making you view records in a specific office rather than sending a PDF of the file), write a letter/email in response to the opposing counsel documenting this matter.
 - When you receive an initial call from opposing counsel, request that they note an appearance before discussing the case with them.
- You *can* bill for time spent on the Circuit Court Petition for Review and Motion for fees. You *cannot* bill for time spent preparing the underlying U visa certification request.

V. Appendix

- A. *Sample Request for Certification*
- B. *Model VA Circuit Court Petition for Review*
- C. *Model Motion and Memorandum of Support for Attorneys' Fees*
- D. *Model Attorney's Fee Declaration*

APPENDIX A

Sample Request for Certification



*Transforming Lives.
Strengthening Communities.*

ATTORNEY CONTACT
INFORMATION

July 1, 2021

**REQUEST FOR EXPEDITED
PROCESSING**

Records Division, Fairfax County Police Department
Attention: Mark Blackington, Director
12099 Government Center Parkway
Fairfax, VA 22035

RE: U Nonimmigrant Status Certification Request on behalf of NAME aka OTHER NAME (DOB MM/DD/YYYY)

Dear Mr. Blackington,

I am writing to respectfully request that the Fairfax County Police Department sign a U Visa Certification (Form I-918B) for my client, Ms. NAME, AKA OTHER NAME. Ms. NAME qualifies for U Nonimmigrant Status as she was the victim of domestic violence and malicious wounding at the hands of OFFENDER, who is the father of her young children. This incident occurred on DATE, and the result was OFFENDER's arrest, indictment, and conviction in Fairfax Circuit Court for unlawful wounding, with a sentence of 4 years in prison.

Ms. CLIENT is in removal proceedings (meaning she is facing a risk of deportation in immigration court), and you are therefore required to respond to this request within 21 business days of your receipt of this request. I have sent this request via overnight mail, and I therefore expect your response no later than August 2, 2021. *See* Va. Code § 9.1-1501(D). The Code of Virginia provides for review by a Virginia circuit court and attorney's fees where a certification is not timely provided. *See* Va. Code § 9.1-1502. As proof that Ms. CLIENT is in removal proceedings, I have included with this letter a printout of the Executive Office of Immigration Review's online portal for her case showing her next hearing date is MM/DD/YYYY.

Attached is a completed I-918 Supplement B, U Nonimmigrant Status Certification for Ms. NAME.

Below is some identifying information that may assist you in issuing the Certification in my client's case:

Victim's Name: FULL NAME
AKA: ANY OTHER NAMES USED

Victim's DOB: MM/DD/YYYY
Perpetrator's name: OFFENDER NAME
Perpetrator's DOB: MM/DD/YYYY
Fairfax County Police Case Number: XXXJMXXXXXXXX
Fairfax County Circuit Court Case Number: FE-20XX-XXXX
Incident Date: MM/DD/YYYY

I am also including a copy of the Warrant of Arrest for Mr. OFFENDER issued by the Fairfax County Juvenile and Domestic Relations District Court, as well as Mr. OFFENDER's indictment, sentencing order, and other supporting documents from the Fairfax County Circuit Court. Because Ms. NAME was the victim of domestic violence by a family or household member and assisted police in the investigation of malicious wounding under Virginia Code Section § 18.2-51, Ms. NAME qualifies for U Nonimmigrant Status under federal immigration law.

Therefore, I am requesting the issuance of the attached U Nonimmigrant Status Certification by the Fairfax County Police Department. Please return the original form to me at the address listed below.

Please note that although this certification form is an integral part to Ms. NAME's U Visa petition for temporary status, by signing this certification as a law enforcement official you are not conferring any immigration benefit upon Ms. NAME. Instead, you are only confirming that Ms. NAME is a victim of a qualifying crime and that he cooperated with the investigation of the crime committed against him. United States Citizenship and Immigration Services has an extensive application process which allows Ms. NAME's case to be fully examined for its worthiness when reviewed by a trained immigration official and they then will make the final determination regarding the approval of his application.

Please feel free to call me at my direct number at PHONE or email me at EMAIL with any questions or concerns regarding this request.

Thank you for your time.

Respectfully,

ATTORNEY NAME
Counsel for NAME
2701 Prosperity Avenue, Suite 300
ATTORNEY CONTACT INFORMATION

APPENDIX B

Model VA Circuit Court Petition for Review

VIRGINIA :

[COUNTY] COUNTY CIRCUIT COURT

[CRIME/TRAFFICKING VICTIM],)	
)	
<i>Petitioner,</i>)	
)	
v.)	Case No.:
)	
LAW ENFORCEMENT AGENCY,)	
<i>Serve:</i> [See Practice Advisory])	
Address)	
)	
<i>Respondent.</i>)	

**PETITION FOR REVIEW OF [REFUSAL/FAILURE] TO CERTIFY THAT
 PETITIONER IS A VICTIM OF A QUALIFYING CRIME
PURSUANT TO CODE OF VA. § 9.1-1502**

1. Petitioner [NAME], by counsel, pursuant to *Code of Va.* § 9.1-1502(B), hereby petitions this honorable court for review of the final administrative decision of respondent [LEA] in denying her request for certification as a victim of a qualifying crime for the purposes of applying for a U-nonimmigrant Visa. In support of this petition for review, Ms. [NAME] respectfully represents as follows:

Parties

2. Petitioner [NAME] is an [AGE]-year-old resident of [DOMICILE]. [BRIEF DESCRIPTION, e.g.: On November 15, 2020, Ms. [NAME] was the victim of a physical assault by her domestic partner, which she reported to the local police department. After working with the police department in their investigation of the crime, she requested that the department certify form I-918, Supplement B, stating that she is a victim of a qualifying crime for applying for a U-nonimmigrant visa. [RESPONDENT] refused to certify her form.]

3. Respondent [RESPONDENT] is a [County police department] with its principal place of business in [County/City], Virginia. [RESPONDENT] is responsible for promptly responding to certification requests by crime victims, pursuant to *Code of Va.* §§ 9.1-1500-1502.

Venue and Jurisdiction

4. Venue and jurisdiction are proper before this court pursuant to *Code of Va.* § 9.1-1502(B), as [RESPONDENT] is located in [CITY/COUNTY], Virginia.

Standard of Review

5. A certifying agency's failure or refusal to certify the form is unreasonable if the agency failed to provide sufficient factual or legal justification for its failure or refusal to sign the certification. *Code of Va.* § 9.1-1502(B). When evaluating reasonableness, the Court may also consider whether the Petitioner complied with requirements for requesting certification from the certifying agency, and whether circumstances exist justifying delay so as to avoid jeopardizing ongoing criminal investigations, prosecutions, or safety. *Id.* An action is only "reasonable if the matter in issue is fairly debatable . . . when, measured by both quantitative and qualitative tests, the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." *Board of Sup'rs of Fairfax County v. Jackson*, 269 S.E.2d 381 (S. Ct. Va. 1980) (articulating the standard for determining whether a county's refusal to rezone was unreasonable); *see also, e.g., County of Lancaster v. Cowardin*, 239 Va. 522 (S.Ct. Va. 1990) (articulating the "fairly debatable" standard of reasonableness in the context of conditional use permits). Thus, if an agency does not produce evidence sufficient to make eligibility for certification fairly debatable, its refusal or failure to certify is unreasonable. *Id.*

6. The Petitioner must prove their eligibility for completion of a certification form by a preponderance of the evidence. *Id.*

Statement of the Case

Background

7. In October 2000, Congress created a nonimmigrant visa (U-visa) for qualifying crime victims as a new form of immigration relief for noncitizen victims of violent crimes in the Victims of Trafficking and Violence Act (“VTVPA”), understanding that undocumented immigrant crime and trafficking victims were reluctant to come forward to assist law enforcement for fear of adverse immigration consequences. *See* Pub. L. No. 106-386, Sec. 1513; 8 U.S.C. § 1101(a)(15)(U).

8. The U-visa affords temporary nonimmigrant status to victims of qualifying criminal activity who have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. 8 U.S.C. § 1101(a)(15)(U).

9. The applicant is required to submit an original, signed Form I-918, Supplement B, U Nonimmigrant Status Certification (“LEA certification”) as evidence of their cooperation. *See* 8 U.S.C. § 1184(p).

10. Law Enforcement Agencies have broad discretion as to whether and when to issue a certification to a crime victim. In Virginia, *Code of Va.* § 9.1-1500-1502 went into effect on July 1, 2021. The statute was created to establish a uniform process for state and local Law Enforcement Agencies to follow when in receipt of a request for a certification or endorsement from a qualifying victim.

Code of Va. § 9.1-1500-1502 Requires LEAs to [Promptly Respond to Certification Requests]

11. A certifying agency is a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers as defined in Va. Code § 9.1-101 that has responsibility for the investigation or prosecution of a qualifying criminal activity. Each certifying agency shall designate at least one certifying official for its agency. *Code of Va.* § 9.1-101.

12. Under *Code of Va.* § 9.1-1500 *et seq.*, certifying agencies must respond to all requests for certification that they receive. § 9.1-1501(A). Certification requests may be submitted directly by the survivor of crime or on the survivor's behalf by individuals including an attorney, a licensed clinical social worker, a guardian ad litem, an employee of a crime victim and witness assistance program, or a sexual assault services provider. *Id.* § 9.1-1501(C).

13. Certifying officials must respond to the request within 120 days. *Id.* at § 1501(D). However, if the survivor requesting certification is in removal proceedings or detained, then the certifier must complete the certification within 21 business days. *Id.* If the survivor's children will turn 21, or siblings will turn 18, within 120 days of the request, the certifier must complete the certification within 30 days. *Id.* Finally, if relatives who would otherwise qualify as derivative beneficiaries for relief will age-out of such protections in less than 21 business days of the certifier's receipt of the request, then the certifier must complete the certification within seven days. *Id.*

14. Upon receiving a request, the certifier is required to complete the certification form consistent with the timeframes detailed above, or, if the certifier declines to complete the form, provide a written explanation "setting forth the reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity." *Id.* § 9.1-1501(D).

15. An applicant may petition the Circuit Court for review if the certifying agency fails to respond within statutory time-frames or unreasonably refuses to certify that an applicant was a victim of qualifying criminal activity. *Code of Va. §9.1-1502(B)*. The circuit court must conduct a hearing within 30 days of such a petition being filed. *Id.*

16. The Petitioner must prove their eligibility for completion of a certification form by a preponderance of the evidence. *Id.* In addition, the Court must find that the certifying agency's failure or refusal to certify the form was unreasonable. *Id.* Courts may consider whether the agency provided sufficient factual or legal justification for its failure or refusal to sign the certification, whether the Petitioner complied with requirements for requesting certification from the certifying agency, and whether circumstances exist justifying delay so as to avoid jeopardizing ongoing criminal investigations, prosecutions, or safety. *Id.*

17. If the Petitioner prevails and the court finds that the failure or refusal to certify was unreasonable, "the circuit court shall make an award of reasonable costs and attorney fees" to the Petitioner. *Id.*

Petitioner [Name]'s request for certification of Form I-918 Supplement B

1. [Background information about Petitioner – age, residence, basic procedural posture of immigration case.] *NOTE: **Only include procedural posture, in layman's terms, if it relates to a request for expedited review. If not, include as little immigration-status-related information as possible.**

18. [Description of crime establishing eligibility for U-Visa] [*Attach as exhibits, e.g. police reports/photos, etc. – must prove eligibility by a preponderance of the evidence.*]

19. [Description of Petitioner’s reporting to police, police response, and cooperation with police in any investigation following crime.]. [*Attach as exhibits, e.g.: police reports, appointments with LEA, emails providing assistance to LEA, judicial order, etc.*]

20. [Apply U-Visa statute – description of why crime was a qualifying crime under 8 U.S.C. § 1101(a)(15)(U)(i)(III)/8 C.F.R. §214.14(c)(2)(i).]

21. [Description of Petitioner’s request to LEA for certification, including date of request and date of any follow-up, and include any details in the request that would trigger a shorter statutory time-line. Include request and any correspondence as an exhibit] [*Attach as exhibits: everything sent to LEA and any/all responses from LEA, including any proof of immigration status triggering a faster response time-line*]

22. [Description of specific statutory violation by LEA: No response within statutory time-frame; Denial without any written justification; Written explanation for denial that is unreasonable, incorrect, incomplete, or inaccurate explanation for denial, etc.]

23. Ms. [NAME] requests oral argument prior to the court issuing its ruling on this matter.

Prayer for Relief

24. WHEREFORE, petitioner [NAME] respectfully requests that this court issue the following relief:

a. Declare that [RESPONDENT]’s failure/refusal to provide certification to Plaintiff was unreasonable;

b. Execute the certification form [I-918 Supplement B] certifying that the Petitioner is the victim of a qualifying crime;

c. Declare that [RESPONDENT] [denied Petitioner’s certification request without factual or legal justification/failed to respond to Petitioner’s request within the statutory timeframe];

d. Award fees and costs to Petitioner pursuant to Va. Code § 9.1-1502(B).

e. Grant all other relief that this court deems just and proper.

Respectfully submitted,

[Organization/Firm]

By: _____

Date:

Name (VSB#)

Address

Phone

Email

Counsel for petitioner [NAME]

Certificate of Service

I certify that on this ____ day of _____, 20__, a true and correct copy of the foregoing was sent to counsel for the Respondent at the following address:

NAME

Counsel for Respondent

LEA

Address

Name

Date: _____

APPENDIX C

Model Motion and Memorandum of Support for Attorney's Fees

VIRGINIA :

IN THE CIRCUIT COURT OF [COUNTY] COUNTY

[PETITIONER])	
)	
)	<i>Petitioner,</i>
v.)	Case No.:
)	
[LEA])	
)	
_____)	<i>Respondent.</i>

**MEMORANDUM IN SUPPORT OF PETITIONER’S
MOTION FOR COSTS ATTORNEY’S FEES**

The time records of Petitioner’s counsel submitted with Petitioner’s Motion for Costs and Attorney’s Fees identify all the time recorded by Petitioner’s counsel in this matter. Ms. [COUNSEL’S] time records show a total of [#] hours spent on this case. Ex. #. [Optional: Ms. [COUNSEL] reduced that time by [#] hours to account for court travel time and _____.] At the hourly rate of \$RATE¹, her fees to date are \$TOTAL. In addition, Petitioner respectfully requests that the court award court costs and fees, totaling \$TOTAL, to Petitioner. Ex. #. The total current request is therefore \$TOTAL.

A. ATTORNEYS’ FEES PURSUANT TO THE LODESTAR FORMULA AND COSTS SHOULD BE AWARDED

Code of Va. § 9.1-1502(B) provides for “reasonable costs and attorney fees” to be awarded to the U-Visa applicant if they prevail in their petition. The Virginia Supreme Court has established how to determine reasonableness of attorneys’ fees.

¹ [If providing pro bono representation: The Virginia Court of Appeals has held that unless the statute authorizing the award of costs and fees expressly limits awards to costs and fees “incurred” by the party, the Court must make an award based on the costs and fees expended by counsel regardless of the amount actually paid by the party. See *Bahta v. Mohammed*, No. 1625-18-4, 2019 WL 2589806 (Va. Ct. App. June 25, 2019).]

In the absence of an express agreement as to the amount of compensation, there is an implied agreement that an attorney is entitled to reasonable remuneration for services rendered.

At the further request of the plaintiff the jury were instructed that in arriving at the reasonable or fair compensation, if any, due to the plaintiff for the services rendered they should take 'into consideration the time consumed, the efforts expended, the nature of the services and the results thereof as shown by the evidence.' . . . The jury, or the court, in cases tried without a jury, must weigh the testimony of attorneys as to the value of the services, by reference to their nature, the time occupied in their performance, and other attending circumstances, and by applying to it their own experience and knowledge of the character of such services.

Beale v. King, 204 Va. 443, 446 132 S.E.2d 476, 478-79 (1963).

Since 1963, these Virginia requirements have been repeatedly listed and expanded upon. "In determining a reasonable fee, the fact finder should consider such circumstances as the time consumed, the effort expended, the nature of the services rendered, and other attending circumstances." Mullins v. Richlands National Bank, 241 Va. 447, 449, 403 S.E. 2d 334, 335 (1991). The Virginia Supreme Court has defined the factors that make up those attending circumstances. "In determining whether a party has established a prima facie case of reasonableness, a fact finder may consider, inter alia, the time and effort expended by the attorney, the nature of the services rendered, the complexity of the services, the value of the services to the client, the results obtained, whether the fees incurred were consistent with those generally charged for similar services, and whether the services were necessary and appropriate." Chawla v. Burgerbusters, 255 Va. 616, 623, 499 S.E. 2d 829, 833 (1998).

Expert testimony is not required to prove the reasonable fees when the fee request is supported by supporting evidence. As held by the Virginia Supreme Court, "expert testimony was not necessary because of the affidavits and detailed time records, which were wholly unrefuted by any evidence offered by [defendant]. Accordingly, we hold that the amount fixed by the trial court was amply supported by the evidence and we find no error in the trial court's

allowance.” Tazewell Oil Company v. United Virginia Bank, 243 Va. 94, 112, 413 S.E. 2d 611, 621 (1992).

Once the plaintiff presents evidence of the time and effort expended on a case, “[t]he finder of fact would be required to consider all the relevant evidence and determine whether the fees charged were reasonable. Seyforth, Shaw v. Lake Fairfax Seven Limited Partnership, 253 Va. 93, 97, 480 S.E. 2d 471 (1997). Id.

Consequently, under Virginia law, the seven factors are looked at to determine the reasonable attorneys’ fees:

1. The time and effort expended by the attorney;
2. The nature of the services rendered;
3. The complexity of the services;
4. The value of the services to the client;
5. The result obtained;
6. Whether the fees were consistent with those charged for similar services; and
7. Whether the services were necessary and appropriate.

Additionally, fees incurred in preparing a fee petition are properly recoverable. Sun Publishing Co. v .Mecklenburg News, Inc. , 596 F. Supp 1512 (E.D Va. 1984). Plaintiff is not seeking an enhancement beyond the lodestar calculation, and therefore the lodestar formula should be used.

B. The Full Attorney’s Fees of \$TOTAL should be awarded

The Court has found that [RESPONDENT’S] failed to provide factual and/or legal justification for its failure/refusal to certify Petitioner’s request for certification. Respondent’s unreasonable [failure to respond/denial of Petitioner’s request] necessitated bringing this action in this Court. Had Respondents complied with the statute, this litigation would not have been necessary.

[*If providing pro bono representation*: The court should award attorneys’ costs and fees regardless of whether representation was provided on a *pro bono* basis. Va. Code §9.1-1502(B) states that the court shall award “reasonable costs and fees to a prevailing client.” It does not limit this award to costs and fees actually incurred by the party. Therefore the actual costs and fees incurred by the prevailing party are not relevant to whether the court awards costs and fees. *See, e.g., Bahta v. Mohammed*, 2019 WL 2589806 (June 25, 2019) (“The phrase [attorneys’ fees and costs] contemplates that an award may be appropriate when attorneys’ fees have been *expended* in the course of legal representation.”)(emphasis added). *See also, Blum v. Stenson*, 465 U.S. 886 (1984) (holding that an award of market-rate attorneys’ fees were appropriate when the party was represented by a non-profit legal aid society).]

Petitioner has demonstrated that she spent #HOURS litigating this case in the court. [Cite to attorney affidavit]. Petitioner’s counsel has properly demonstrated that her requested hourly rate reflect the prevailing market rate for her services. Ms. [COUNSEL] has been practicing immigration law for [#] years. [If favorable, include # of U-Visa cases, time practicing defensive asylum, expertise, etc.] [Cite to attorney affidavit]. Given that the time recorded does not capture the time spent submitting the initial certification request or efforts to obtain certification prior to bringing this petition, the amount requested is reasonable. [*Optional*: Further, the rate of \$RATE is consistent with rates in [Jurisdiction]. *See* [Cite to reasonable attorney rate affidavit from local practitioner].]

CONCLUSION

The lodestar amount of \$TOTAL for attorney’s fees should be awarded, in addition to costs. This current amount will be supplemented as further work is required.

Respectfully submitted,

[PLAINTIFF]

By Counsel

NAME (VSB#)
Firm
Address
Phone
Email
Counsel for the Petitioner

Date:

Certificate of Service

I certify that on this ____ day of _____, 20__, a true and correct copy of the foregoing was sent to counsel for the Respondent at the following address:

NAME
Counsel for Respondent
LEA
Address

Name

Date: _____

APPENDIX D

Model Attorney's Fee Declaration

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

[PETITIONER])	
)	
)	<i>Petitioner,</i>
v.)	Case No.:
)	
[LEA])	
)	
_____)	<i>Respondent.</i>

ATTORNEY’S FEE AFFIDAVIT OF [ATTORNEY]

I, [NAME OF COUNSEL], attorney for Petitioner [NAME], request costs and attorney’s fees pursuant to *Code of Va.* § 9.1-1502(B) as follows:

1. My name is [NAME]. I am at least 18 years old. I have personal knowledge of the facts set forth herein and would testify to them if asked to do so.
2. I am an attorney at [Firm/Organization], [City], Virginia. I graduated from [Law School], and was admitted to the Virginia bar in [Month Year].
3. *[If filing as a legal aid attorney: As a legal aid attorney, I am prohibited by law from billing my clients for legal services. Nonetheless, I incur expenses when providing representation. The Virginia Court of Appeals has held that legal aid attorneys can be awarded attorney’s fees. See Bahta v. Mohammed, No. 1625-18-4, 2019 WL 2589806 (Va. Ct. App. June 25, 2019).]*
4. *[If providing pro bono representation]* I am providing *pro bono* representation for this client [through my non-profit organization/as part of my firm’s *pro bono* program]. I incur expenses when providing *pro bono* representation, but do not charge my *pro bono* clients for representation. The Virginia Court of Appeals has held that unless the statute authorizing the

award of costs and fees expressly limits awards to costs and fees “incurred” by the party, the Court must make an award based on the costs and fees expended by counsel regardless of the amount actually paid by the party. *See Bahta v. Mohammed*, No. 1625-18-4, 2019 WL 2589806 (Va. Ct. App. June 25, 2019).]

5. *Code of Va.* § 9.1-1502(B) provides “If a certifying agency fails to respond within the statutory timeframes or refuses to certify that an applicant was a victim of qualifying criminal activity, the applicant may petition a circuit court to review the determination of the certifying agency within 30 days of such determination or within 30 days of the expiration of the statutory timeframe in subsection 10.” [Firm/Organization] considers a rate of \$RATE/hour a reasonable rate for its [#-year] attorneys. Therefore, I am seeking a rate of \$RATE/hour in this action.

4. I kept track of time spent working on this case by contemporaneously entering time records [into an automated database.] [NOTE: Describe your/your firm’s specific record-keeping practice, whether database, notebook, etc.]. I prepared this affidavit by reviewing all time slips in this case, and then, in the exercise of billing discretion, rounding down some (in some cases substantially) and eliminating some others. I am not seeking any fees for travel time (to and from court) in this case.

5. I seek attorney’s fees for the following work performed, at a rate of \$RATE/hr.:

[Sample time entry chart:

Date:	Time expended:	Time entry:
10/24/2019	0.8	Legal research on U-visa certification appeals in Virginia
10/24/2019	2.0	Draft Petition for Review
10/29/2019	0.9	Review Respondent’s responses
11/03/2019	1.8	Draft Motion for Attorney’s fees, Memorandum in support, Affidavit
11/04/2019	1.3	Prepare for hearing
11/06/2019	0.5	Meeting with Client to prepare for hearing
11/08/2019	0.5	Presented for hearing on Petition for Review & Attorney’s fees (estimated)

Total: 7.8 hours x \$RATE/hr. = **\$TOTAL**

5. I expended \$\$ in costs of service in this matter, as evidenced in the attached receipts. [Include evidence of costs of service – e.g. Private process server, certified mail postage, etc.]. I expended \$\$ on filing costs.

6. For the foregoing reasons, I am seeking a total fee award of 7.8 hours x \$RATE/hr. and costs of \$\$ = \$TOTAL.

7. I swear under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true.

Date:

NAME (VSB#)

Firm

Address

Phone

Email

Counsel for the Petitioner

Subscribed and sworn to before me this ____ day of _____ 20__ in [COUNTY] County, Virginia.

Notary Public

My commission expires: _____