



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair

JUL 03 2008

MEMORANDUM

To: District Directors
Regional Attorneys

Thru: Ronald S. Cooper *Ronald S. Cooper*
General Counsel
Nicholas M. Inzeo *Nicholas M. Inzeo*
Director, Office of Field Programs

From: Naomi C. Earp *Naomi C. Earp*
Chair

Re: EEOC Procedures for U Nonimmigrant Classification Certification

Background Information

The Statute

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA).¹ The stated purpose of the U visa was “to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act [(INA)] committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.” See BIWPA, Sec. 1513(a)(2)(A), 114 Stat. 1464, 1533. An individual who qualifies for a U visa can remain in the United States for up to four years and will receive authorization to work.

The statute provides in relevant part that for an alien to qualify for U nonimmigrant classification, the Secretary of the Department of Homeland Security (DHS) must determine the following:

- The alien suffered substantial physical or mental abuse as a result of having been a victim of [qualifying criminal activity];

¹ See Victims of Trafficking and Violation Protection Act of 2000, div. B., Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106-386, sec. 1513, 114 Stat. 1464, 1533-37 (2000) amended by Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), tit. VIII, Pub. L. 109-164, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act – Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).

- The alien . . . possesses information concerning [qualifying criminal activity];²
- The alien . . . 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 [qualifying criminal activity]; and
- The [qualifying criminal activity] violated the laws of the United States or occurred in the United States (including Indian country or military installations) or territories and possessions of the United States.

BIWPA, Sec. 1513(b)(3), 114 Stat 1464, 1534; 8 U.S.C. § 1101(a)(15)(U)(i).

The statute also outlines the procedures for applying for a U visa. In addition to information provided by the victim to address the factors listed above, the victim must include with his petition a certification form from the law enforcement agency he is assisting. The statute does not provide a list of agencies that may provide such certification, nor does it provide any further explanation of which agencies may or may not provide such certification.

The Regulation

In September 2007, the Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) issued an interim final rule to establish requirements and procedures for aliens seeking U nonimmigrant status. 72 Fed. Reg. 53,014 (September 17, 2007). This rule named the EEOC as a “certifying agency” permitted to provide a certification in support of a petition to DHS/USCIS for a U visa. *See id* at 53,019; 8 C.F.R. § 214.14(a)(2). The rule also established a process for law enforcement agencies, such as EEOC, to certify that an alien victim who is petitioning for a U visa meets the statutory requirement of supporting the investigation or prosecution of “qualifying criminal activity.” *See id*.

EEOC’s Procedures

Attached are EEOC’s procedures for processing requests to certify U visa petitions. Under these procedures, the Chair (1) retains certification authority, and (2) designates the Regional Attorney to sign the certification only upon approving a recommendation by the General Counsel that a specific case warrants certification.

The attached procedures set forth the information that must be provided by the field to OGC and OCH to support a request for EEOC to act as a certifying agency for a U visa petition. This information includes a completed DHS/USCIS-created form, Form I-918, Supplement B, along with certain additional information that will permit OGC and OCH to make an independent determination that the petitioner has been, is being, or is likely to be helpful in an investigation of “qualifying criminal activity” within the meaning of the U visa statute and regulation. As indicated in the procedures, the form should clearly state that EEOC came to be involved in the case through investigation of an alleged violation of an EEO statute. The same facts typically will underlie investigation of the EEO violation and the qualifying crime. The additional

² The statute’s protections extend to individuals under 16, by allowing them to provide information through a parent, guardian, or next friend. 8 U.S.C. § 1101(a)(15)(U)(i).

information should include affidavits from the CPs describing the events that underlie their allegations of discrimination and the qualifying criminal activity, along with credibility assessments.

Please review the attached procedures carefully. If you have any questions, contact Reed L. Russell, Legal Counsel, at 202-663-4610, Peggy Mastroianni, Associate Legal Counsel, at 202-663-4609, or Carol Miaskoff, Assistant Legal Counsel for Coordination, at 202-663-4645.

Attachment

cc: Leslie E. Silverman
Vice Chair

Stuart J. Ishimaru
Commissioner

Christine M. Griffin
Commissioner

James L. Lee
Deputy General Counsel



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

**EEOC PROCEDURES:
REQUESTING EEOC CERTIFICATION FOR
U NONIMMIGRANT CLASSIFICATION PETITIONS (U VISA)
FOR CHARGING PARTIES**

These procedures apply to requests for EEOC to certify petitions for U Nonimmigrant Status (“U visa”) pursuant to the Victims of Trafficking and Violence Prevention Act of 2000, 8 U.S.C. §§ 1101(a)(15)(U) & 1184(p), and the interim final rule of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), 72 Fed. Reg. 53014 (Sept. 17, 2007), 8 C.F.R. § 214.14.

I. Procedures for Requesting the Chair’s Certification for U Visa Petition

- Requests for certification will initially be submitted (or referred) to the Regional Attorney (RA), who will coordinate with enforcement unit staff to assess whether the charge appears to merit further investigation. The RA will conduct an initial inquiry into whether the individual seeking U nonimmigrant status has been a victim of “qualifying criminal activity” and is being, has been, or is likely to be helpful to the investigation of that activity. “Qualifying criminal activity” is defined at 8 U.S.C. § 1101(a)(15)(U)(iii). The qualifying criminal activity must be related to the unlawful employment discrimination alleged in the charge or otherwise properly under investigation by the EEOC. The factual inquiry must include an in-person interview of the visa candidate. If the requirements for certification do not appear to be met, the RA can decline the request.
- If the RA determines that the certification requirements are satisfied as a factual and legal matter, the RA will present the recommendation to headquarters OGC for review. The information presented to OGC should include all materials described in Section II below (hereinafter “the package”). The General Counsel (GC) will review the package and recommend certification only when, based on the investigation by the field and a review of the applicable criminal law, the GC determines that conduct constituting employment discrimination is related to “criminal activity” within the meaning of the U visa statute and that the petitioner for a U visa “has been, is being, or is likely to be helpful to an investigation” of that conduct. If the GC determines that certification is not appropriate, he will advise the RA to deny the request.
- If the GC recommends certification, he must forward the complete package to OCH for review. The Chair will review the package and determine, on a case-by-case basis, whether EEOC should act as the certifying agency. If the Chair concludes that EEOC should act as the certifying agency, the Chair will notify the GC and designate the RA as the certifying official for that particular case. If the Chair determines that EEOC should not act as the certifying agency, the GC and RA will be informed of this decision.

- In each case in which the Chair determines that EEOC should act as the certifying agency, OCH will provide the RA a letter stating that the RA is designated as the certifying official in the named case. This letter shall be sent by OCH, through the GC, to the RA. Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) requires that each U visa petition include such a letter when the certifying official has designated someone else to exercise the certifying authority.

II. Information Required by OCH

For purposes of OCH's review of a request for EEOC to act as the certifying agency for a U visa petition, the requesting office should supply OCH with the following items:

- *A narrative explaining how the case came to the EEOC's attention and the current status of the matter.*
 - An in-person interview with the charging party should be conducted and his or her affidavit should be attached to this narrative. If the allegations have not yet been reduced to an affidavit, field legal staff should explain why this step has not yet taken place and should obtain an affidavit as soon as possible.
 - Credibility determinations made by those who interviewed the charging party should also be provided.
- *A draft of I-918 Supplement B, U Nonimmigrant Status Certification.¹ Supplement B includes 6 parts. All parts, except for Part 6 (the certification itself), should be completed in accordance with the instructions provided by DHS/USCIS. Particular attention should be paid to the following issues raised in Supplement B:*
 - In Part 2, EEOC's "certifying agency category" should be listed as "Other." A statement should be attached making clear that EEOC seeks monetary and injunctive remedies with respect to the offenses listed as qualifying criminal offenses when they also are related to employment discrimination under federal law. This explanation should be provided before listing the qualifying criminal acts.
 - Part 3 is divided into 6 subparts and includes the following questions:
 - Subpart 1 asks that the relevant criminal offenses be named. EEOC should do an independent review of the facts to determine which of the listed criminal offenses are involved. The "Other" box should also be

¹ Supplement B is the form DHS/USCIS created for certifying agencies to submit in support of U visa petitions. If EEOC has access to a copy of the entire I-918 form for the charging parties, it should also be provided to OCH.

Form I-918, Supplement B can be found at <http://www.uscis.gov/portal/site/uscis>, along with instructions and fact sheets explaining the requirements for certification, which should be consulted in preparing the package.

checked and a statement attached making clear that the EEOC came to be involved in the case through our investigation of a violation of the relevant EEO statute.

- Subpart 3 asks for a list of the statutory citations for the criminal activity being investigated or prosecuted. As discussed in the first bullet under *Additional Supporting Documentation*, below, EEOC should independently research the statutes that were allegedly violated and determine if the facts support a violation of those statutes.
- Subpart 5 asks the certifying agency briefly to describe the criminal activity being investigated and/or prosecuted and the involvement of the victim seeking U nonimmigrant status in that activity. As much factual detail as possible should be provided.
- Subpart 6 asks for a description of any known or documented injury to the victim. Again, as much information as possible is needed, to determine if the victim suffered substantial physical or mental abuse as required by the statute.
- Part 4 asks for a description of the helpfulness of the victim. This description should explain how the facts known to the victim would assist in the detection, investigation, or prosecution of the criminal activity.

- *Additional Supporting Documentation*

- Field legal staff should list the elements of each crime and any relevant case law or other legal authority that assisted in the determination that the laws in question were violated, in addition to the information provided in Supplement B concerning the specific criminal laws at issue (Part 3, Subpart 3),
- Field legal staff should explain how the qualifying criminal activity is related to the unlawful employment discrimination alleged in the charge or otherwise properly under investigation by the EEOC.
- Field legal staff should describe what has been or will be done to refer the case to an appropriate criminal law enforcement agency, including any collaborative efforts or information-sharing that EEOC has done with local, state or federal criminal law enforcement agencies. In general, any case in which EEOC is acting as a certifying agency under the U visa process should contemplate involvement of a criminal law enforcement agency. If no referral, collaboration, or information sharing has taken place and is not planned, field legal staff should explain why this has not occurred.
- Finally, field legal staff should indicate whether the victim is suspected of being culpable for the qualifying criminal activity.