



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



July 1, 2019

FIELD ASSISTANCE BULLETIN No. 2011-1 Addendum 2

MEMORANDUM FOR: Regional Administrators
District Directors

FROM: Cheryl M. Stanton
Administrator

SUBJECT: Certification of Supplement B Forms of U Nonimmigrant and T
Nonimmigrant Visa Applications

This is the second addendum to Field Assistance Bulletin No. 2011-1 ([FAB 2011-1](#)) which discussed the guidelines and procedures the Wage and Hour Division (WHD) will follow to determine when and whether to complete and certify Supplement B of an I-918 Petition for U Nonimmigrant Visa Status. This addendum takes effect on July 1, 2019.

I. Background

Criminal prosecution of human trafficking is a priority. Criminal prosecution addresses not only the wrongs in the individual matter but through incarceration also prevents future criminal activity. WHD plays a critical role in this effort by detecting potential criminal violations and referring them to the appropriate law enforcement agency for investigation and prosecution.

Hardworking men, women, and children in this country sometimes experience working conditions that are an affront to human dignity and, in some cases, leave them vulnerable to human trafficking or other qualifying criminal activities (QCA). It is important to make a clear distinction between labor exploitation – the mistreatment of workers in violation of civil labor laws – and labor trafficking or other QCAs, which adds the elements of force, fraud or coercion and becomes a criminal offense. As explained in [FAB 2011-1](#) and [2011-1 Addendum](#), the latter offenses are criminal matters and the Department of Labor (DOL) does not have the authority to investigate and prosecute QCAs such as human and labor trafficking.

The efforts of WHD complement criminal enforcement strategies, and support the broader strategic framework that guides government responses to these issues. Because WHD investigators are in worksites across the country every day, WHD is uniquely positioned to detect potential QCAs in the course of its regular investigations, and make referrals to our law enforcement partners charged with investigating and prosecuting such crimes. In addition, the core work of WHD is critical to the fight against human trafficking because such work addresses labor violations that do not rise to the level of trafficking or other QCAs.

WHD is issuing this addendum to ensure that WHD focuses on actionable complaints within its authority and that the appropriate criminal law enforcement agency is engaged in the process. The referral to criminal law enforcement for investigation and prosecution is critical – not just to protect an individual – but every other individual who is a potential victim.

II. Criminal Agency Referral/Concurrence

WHD's most important support for a QCA or trafficking victim is to detect the QCA or trafficking violation and ensure applicable criminal law enforcement is notified to protect that victim, and every other potential victim of that criminal. To that end, WHD will ensure appropriate criminal law enforcement agencies are aware of any QCAs or trafficking violations that WHD detects.

If a criminal law enforcement agency is not already engaged in the investigation or prosecution of the QCA or trafficking activity, WHD will refer the detected QCA or trafficking crimes to the appropriate enforcement agency in accordance with its referral protocols.

Consistent with [FAB 2011-1](#) and [2011-1 Addendum](#), when a criminal law enforcement agency is engaged in the investigation or prosecution of the QCA, WHD will consider whether that law enforcement agency would be in a better position to certify the Supplement B form based on the facts presented.

If the criminal law enforcement agency is already engaged in an investigation or prosecution, but does not complete the Supplement B form, WHD will request concurrence of WHD's identification of the QCA or trafficking crime before proceeding to file a certification. If the criminal law enforcement agency does not concur, a certification will be declined. If the criminal law enforcement agency does not respond or fails to take a position, a certification is not precluded and WHD will consider whether to complete the Supplement B form based on the facts presented. WHD will note in the file the criminal law enforcement agency's response.

U Visas. Where WHD has referred the detected QCA to a criminal law enforcement agency, WHD will determine (when possible) the status of the investigation before issuing a certification for a U Visa. If a criminal law enforcement agency declines to investigate because it determines that no QCA has occurred, WHD must decline to issue a certification because a QCA is a legal requirement for issuing the certification. Where a criminal law enforcement agency has begun an investigation of a QCA, WHD will complete the Supplement B form for the U Visa and will note the status of the investigation in that form when it is sent to USCIS. If the criminal law enforcement agency concurs that a QCA has occurred (or has not taken a position on the detected QCA), but has advised that it will not conduct an investigation, WHD will note that fact in the certification for the U Visa if one is issued.

T Visas. If a criminal law enforcement agency chooses not to investigate a trafficking violation for any reason other than a determination that no trafficking violation occurred (i.e. because of insufficient resources or other operational or policy reasons), WHD should consider whether to complete a Supplement B form for a T Visa on the facts presented.

III. Actionable Complaints

WHD must have an actionable complaint of a violation of a statute administered by WHD to consider an application for certification of a Supplement B form. Complaints outside the statute of limitations or without verifiable coverage will still be referred to the most applicable criminal law enforcement agency, both for appropriate criminal investigation and prosecution, as well as to ascertain the best path for an appropriate entity to certify the Supplemental B form based on the facts presented. In addition, applicants will be required to file a complaint with WHD to be considered for the certification process if there is not already an open or recently concluded WHD investigation.