



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



April 2, 2015

FIELD ASSISTANCE BULLETIN NO. 2011-1 - **Addendum**

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
DISTRICT DIRECTORS

FROM:

for Laura A. Jarma
DR. DAVID WEIL
ADMINISTRATOR

SUBJECT: CERTIFICATION OF SUPPLEMENT B FORMS OF U
NONIMMIGRANT AND T NONIMMIGRANT VISA
APPLICATIONS

This is an 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 April 2, 2015.

I. *Additional U Visa Qualifying Criminal Activities (QCAs)*

In addition to the five qualifying criminal activities (QCAs) listed in FAB 2011-1 (involuntary servitude, peonage, trafficking, obstruction of justice and witness tampering), WHD will consider requests to complete U visa certifications, Form I-918, Supplement B, predicated on the following three additional crimes: fraud in foreign labor contracting, extortion and forced labor.¹ WHD will follow the same protocols as described in FAB 2011-1 for certifying these three additional crimes.

II. *T Visa Law Enforcement Certifications*

WHD will also consider requests for certification of Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B), for T Nonimmigrant Visas (T visas) (this certification may also be referred to as an endorsement or a declaration). The Secretary of Labor has the authority to complete and certify Form I-914, Supplement B pursuant to section 107(e) of the Victims of Trafficking and Violence Prevention Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(T), and the applicable regulations, 8 C.F.R. 214.11. Secretary's Order 01-2014 delegated this

¹ Forced labor is generally recognized as a crime that is "similar" to the crimes of trafficking, involuntary servitude and peonage, and as such, it may also be the basis of a U visa certification. See 8 C.F.R. 214.14(a)(9) ("any similar activity" – meaning "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities" – also constitutes qualifying criminal activity for U visa purposes).

authority to the WHD Administrator who further delegated this authority to the WHD Regional Administrators. WHD will follow the same protocols for T visa certification as described in FAB 2011-1, except as provided below.

a. Background: Statute and Regulations

Under Section 107(e) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(T), individuals who have been victims of a severe form of trafficking in persons, are physically present in the United States on account of such trafficking, comply with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking, and demonstrate that he or she would suffer extreme hardship involving unusual and severe harm upon removal, may qualify for a T visa. 8 U.S.C. 1101(a)(15)(T); 8 C.F.R. 214.11(b).² “Severe forms of trafficking in persons” is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery” or “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.” 22 U.S.C. 7102(9); 8 C.F.R. 214.11(a). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction to decide whether a T visa applicant meets these requirements and whether to grant or deny a T visa application. *See* 8 C.F.R. 214.11(l). T visas last for a period of four years, and the T visa recipient may apply to adjust status before the visa expires. *See* 8 U.S.C. 1184(o)(7); 8 C.F.R. 214.11(p). USCIS will issue an Employment Authorization Document (EAD) to individuals who are granted a T visa. *See* 8 C.F.R. 214.11(l)(4).

b. Form I-914, Supplement B

As part of a T visa application sent to USCIS, an applicant may submit a law enforcement certification, Form I-914, Supplement B. This form is completed by any law enforcement agency, such as the Department of Labor, with the “responsibility and authority for the *detection*, investigation, or prosecution of severe forms of trafficking in persons.” 8 C.F.R. 214.11(a) (emphasis added). In completing Form I-914, Supplement B, the agency provides a certification that the individual is or has been a victim of a severe form of human trafficking, as well as whether the individual “[h]as complied with any reasonable requests for assistance in the investigation/ prosecution of the crime of trafficking.” Form I-914 Supplement B, Part D. An agency’s decision to complete and certify a Supplement B form is entirely discretionary. *See* 8 C.F.R. 214.11(f)(1).

Although submission of a law enforcement certification is not required by regulation as part of a T visa application as it is for a U visa application, *see* 8 C.F.R. 214.14(c)(2)(i), USCIS gives such certifications significant weight as evidence that the applicant complied with reasonable requests from a law enforcement agency for assistance. The presence of a completed T law enforcement certification from a certifying agency does not guarantee the victim will be granted a T visa. The petitioner must demonstrate that he or she meets all

² The certifying agency does not have to certify as to whether the petitioner is physically present on account of trafficking in persons, *see* 8 C.F.R. 214.11(g), or would suffer extreme hardship involving unusual and severe harm upon removal, *see* 8 C.F.R. 214.11(i).

eligibility requirements for the T visa, including whether he or she is a victim of a severe form of trafficking in persons and whether he or she has complied with reasonable requests for assistance from a law enforcement agency in the detection, investigation or prosecution of acts of trafficking. The victim will include supporting evidence, other than the certification, to meet this burden. If the T visa applicant does not submit a law enforcement certification to USCIS as part of the T visa application, he or she must submit a statement to USCIS indicating “the reason the [law enforcement agency] certification does not exist or is unavailable” and “demonstrate that good faith attempts were made to obtain the [law enforcement agency] endorsement.” 8 C.F.R. 214.11(h)(2).

c. WHD’s Procedures: T Visa Certifications

WHD will consider exercising its authority to certify a Form I-914, Supplement B in cases where the following conditions are met: (1) WHD has detected a severe form of trafficking in persons; (2) the trafficking activity arises in the context of a work environment or an employment relationship; and (3) there is a credible allegation of a violation of a law that WHD enforces related to the work environment or employment relationship. Consistent with FAB 2011-1, U Visa Coordinators should also consider whether another law enforcement agency is already engaged in the investigation or prosecution of the trafficking activity or would be in a better position to certify the Supplement B form based on the facts presented; and whether certification of the Supplement B form would assist WHD’s investigation of a violation of a law that it enforces. If another criminal law enforcement agency is not already engaged in the investigation or prosecution of the trafficking activity, WHD will refer detected trafficking crimes to the appropriate enforcement agency in accordance with its trafficking referral protocols. Some victims may be eligible for T and U visas, depending on their circumstances. Victims and their representatives have the discretion to request the preferred certification(s) from WHD.

The procedures that WHD will follow to determine whether to complete and certify a Form I-914, Supplement B, are the same as those outlined in the existing FAB No. 2011-1, Section II, “WHD Procedures” with the following alterations to the narrative statement prepared by the U Visa Coordinator:

- Instead of including an assessment of the petitioner’s helpfulness, state whether the petitioner has complied with reasonable requests for assistance in the detection/investigation/prosecution of the trafficking crime. If the individual has not been requested to assist in the investigation/prosecution of any trafficking crime, an assessment of whether the individual is likely to cooperate in any future investigation or prosecution of the severe form of trafficking in persons is not required, but may be included. This assessment may be based on the petitioner’s cooperation/helpfulness in detecting the severe form of trafficking in persons and investigating the workplace violation claim.
- Instead of documenting any known injury to the petitioner and whether any of the petitioner’s family members were involved in the criminal activity, document whether the applicant expressed any fear of retaliation or revenge if

removed from the United States, if available, and whether any of the petitioner's family members are believed to have been involved in petitioner's trafficking to the United States.

d. *Certification Decision: T Visa Certifications*

The procedures that WHD will follow to determine whether to complete and certify a Form I-914, Supplement B, are the same as those outlined in the existing FAB 2011-1, Section III, "Certification Decision," except as specified below. To complete Form I-914, Supplement B, the designated attorney from the Regional Solicitor of Labor office (RSOL) will draft an attachment that includes information relevant to the T visa certification, such as:

- A statement explaining the facts detected and/or alleged that support a finding that the individual has been a victim of a severe form of trafficking in persons.
- A statement regarding whether the applicant expressed any fear of retaliation or revenge if removed from the United States, if available.
- A statement regarding whether the petitioner has complied with reasonable requests for assistance in the detection/investigation/prosecution of the trafficking crime. If the individual has not been requested to assist in the investigation/prosecution of any trafficking crime, an assessment of whether the individual is likely to cooperate in any future investigation or prosecution of the severe form of trafficking in persons is not required, but may be included.