

## **Department of Labor U Visa Process and Protocols Question – Answer**

### ***What are U Visas?***

U Nonimmigrant Visas (“U Visas”) were created by the Victims of Trafficking and Violence Prevention Act of 2000 (Public Law 106-386). Victims of qualifying criminal activities who have suffered substantial physical or mental abuse may apply for a U Visa if they are willing to assist law enforcement or other government officials in the investigation or prosecution of those crimes. Individuals who receive U visas may remain in the United States for up to four years, and may eventually apply for permanent residency. Among other requirements, a U Visa petitioner must ask a federal law enforcement agency or official to complete a certification form asserting that the U Visa petitioner “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the criminal activity. The Department of Homeland Security, U.S. Citizenship and Immigration Services, administers this program and grants or denies U Visa petitions.

### ***What authority does the Department of Labor have to complete U Visa Certifications?***

Department of Homeland Security regulations (8 C.F.R. § 214.14(a)(2)) expressly list certain federal law enforcement agencies that may certify U Visa applications, including the Department of Labor. In doing so, the Department of Homeland Security recognized that Department of Labor investigators may detect evidence of qualifying criminal activity during the course of investigating violations of workplace laws. The Department of Labor’s authority to complete U Visa Certifications (Form I-918, Supplement B) is based on its role as a law enforcement agency that has detected the crimes.

### ***What is Form I-918, Supplement B, U Visa Certification?***

Form I-918, Supplement B, U Visa Certification, is the specific form that a petitioner asks the Department of Labor to complete and sign as part of his or her petition for a U Visa. The U Visa Certification does not provide individuals with a U Visa; rather, certification of the form is a required element in a U Visa petitioner’s petition to U.S. Citizenship and Immigration Services. In completing the U Visa Certification, the agency must certify that the individual submitting the Form I-918 is a victim of a certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity. The Department of Labor has developed protocols to ensure the U Visa Certification process – the completion of the U Visa Certification – is efficient and an effective enforcement tool.

### ***What agency within the Department of Labor has authority to complete U Visa Certification requests?***

The authority to complete U Visa certifications has been delegated to the Wage and Hour Division. The Wage and Hour Division is responsible for enforcing some of the nation’s most comprehensive federal labor laws, including the minimum wage, overtime pay, child labor, the employment of persons with disabilities, family and medical leave, the employment of temporary or seasonal migrant workers, the use of lie detector tests, and prevailing wages for government service and construction contracts. While the Wage and Hour Division does not investigate violations of qualifying criminal activities, it does conduct investigations for minimum wage and overtime

violations. Because many wage and hour investigations take place in industries marked by vulnerable workers, the Wage and Hour Division is often the first federal agency to make contact with these workers and detect criminal activity in the workplace, which it may then refer to the appropriate authorities. Additional agencies may be delegated authority where appropriate.

***Where will the authority to certify rest within the Wage and Hour Division?***

The certification process has been delegated to the Wage and Hour Division's Regional Administrators located in five cities around the country. These senior agency officials will have the resources and training needed to make ultimate decisions about certification. Each official will be assisted by a regional coordinator, who will have additional training to ensure that requests for certification will be handled efficiently and effectively. Wage and Hour Division officials will work closely with the regional offices of the Solicitor of Labor in the consideration of certification. The final authority to complete U Visa Certifications will be delegated to the Regional Administrator.

***What factors will the Wage and Hour Division consider in response to a request for completion of a U Visa Certification?***

The primary factors that will be considered include: 1.) whether the qualifying criminal activity arises in the context of an employment relationship or work environment and there is a related, credible allegation of a violation of a law the Department of Labor enforces; 2.) if the petitioner alleges a qualifying criminal activity of involuntary servitude, peonage, trafficking, obstruction of justice or witness tampering; 3.) the petitioner has demonstrated that he or she has been, is being, or is likely to be helpful to law enforcement officials in any investigation or prosecution of the qualifying criminal activity; 4.) if another law enforcement agency is already engaged in the investigation of the qualifying criminal activity or would be in a better position to certify based on the facts presented; and, 5.) whether completion of the U Visa Certification would assist the Department's investigation of a violation of a law that it enforces.

***Will the Department of Labor certify U Visa petitions based upon qualifying criminal activities that are unrelated to an investigation of a civil law under Wage and Hour Division jurisdiction?***

No. The Wage and Hour Division will only certify for the five qualifying criminal activities identified above when they are detected in the process of investigating an allegation of a civil law under its jurisdiction, for example, the right to a minimum wage and overtime. The alleged qualifying criminal activity must arise in the context of a work environment or an employment relationship and there must be a related, credible allegation of a violation of a law that the Department of Labor enforces.

***Why has the Department identified five specific qualifying criminal activities for certification?***

The Department of Labor has determined it will consider completing U Visa Certifications where it has detected violations of any one of the following five qualifying criminal activities: involuntary servitude, peonage, trafficking, obstruction of justice, or witness tampering. It is most efficient and effective to train staff on the detection of these qualifying criminal activities, which are most likely to be found in connection with the agency's workplace investigations.

***What should a petitioner and/or his or her representative expect when requesting certification of a Supplement B form for a U Visa?***

All requests for completion of a U Visa Certification will be directed to the regional coordinator. In most cases the coordinator will interview the petitioner regarding their allegations to determine whether or not the request meets the requisite factors identified to consider certification. The petitioner's underlying minimum wage or overtime complaint will be addressed according to the Wage and Hour Division's standard complaint policy. Should the coordinator determine that the request is related to an ongoing Wage and Hour investigation, the coordinator will notify the appropriate Wage and Hour Division investigator. The coordinator will work as appropriate with colleagues in the Regional Solicitor of Labor's office in consideration of the request. The Department of Labor recognizes the importance of expeditious processing and timely responses and intends to notify the petitioner and/or his or her representative of its decision in writing as soon as possible.

The petitioner and/or his or her representative will be responsible for completing the remainder of the U Visa petition and submitting needed information to the Department of Homeland Security's U.S. Citizenship and Immigration Services. Should the Department of Labor determine a certification is appropriate, it will only complete one portion of the application, the Supplement B certification. Once the U Visa Certification is complete, it must be returned to the petitioner, who will then send it to U.S. Citizenship and Immigration Services as part of the entire U Visa petition package.

In some instances, it is possible that a Wage and Hour Division investigator will detect a qualifying criminal activity during the course of an investigation. Should this occur, the Wage and Hour Division investigator will provide information about the detection to the appropriate coordinator; the coordinator and the Regional Administrator will decide how best to proceed given the facts and circumstances of the case.

***What should a petitioner expect if their request is denied?***

If a decision is made not to certify the Supplement B form, the petitioner or their representative will be informed of the decision in writing as soon as possible, along with information as to which other law enforcement agencies may be able to certify the petition.

***Is the Department obligated to complete every request for a U Visa Certification?***

The U Visa Certification requires the Department of Labor to attest that the petitioner is a victim of certain qualifying criminal activity, and is, has been, or is likely to be helpful in the investigation or prosecution of that activity. The Department of Labor has established protocols that it will follow when considering a request to complete a U Visa Certification. Completion of a U Visa Certification is entirely discretionary.

***Will the Department of Labor refer underlying qualifying criminal activities for prosecution?***

The Wage and Hour Division will refer the underlying qualifying criminal activity to appropriate law enforcement agencies in accordance with its normal referral procedure. The Wage and Hour Division places paramount importance on the safety of a petitioner, his or her family, and other

individuals who have been harmed or who may be at risk. The timing and proper recipient of each referral will be made on a case-by-case basis. Proper confidentiality procedures will be followed in any referral.

***How long does the Department of Labor expect the certification process to take?***

The Department of Labor recognizes the importance of expeditious processing and timely responses. The Department anticipates that it will take it three months to review a single U Visa Certification request and make a determination as to whether or not to complete the Certification. This timeframe will vary, however, depending upon the complexity of the case and the overall volume of U Visa Certification requests the Department's regional representatives are handling at any one time. This estimated timeline may be adjusted based on the Department's experience reviewing certification requests under the procedures outlined. The Department intends to notify the petitioner and/or his or her representative of its decision in writing as soon as possible.

***Does the Department of Labor's completion of a U Visa Certification result in the issuance of a U Visa?***

The Department of Labor, like other federal and state law enforcement agencies and the Equal Employment Opportunities Commission, has authority to complete the portion of a petitioner's U-Visa petition known as Supplement B, U Visa Certification. The Department of Labor does not have the authority to issue a U Visa. The decision whether to approve or deny a U Visa petition rests solely with the Department of Homeland Security's U.S. Citizenship and Immigration Services. There is a single, statutory, annual cap on the number of principal applicants who may be admitted in U nonimmigrant status in any fiscal year, regardless of the origin of the certification. The Department of Labor does not have a separate allotment of U Visas at its discretion.

***What training will Wage and Hour Division employees be provided on U Visas?***

Guidance and initial training concerning investigation protocols and the handling of Supplement B form certifications has already been provided to certain key Wage and Hour Division and Regional Solicitor of Labor staff. Further training is planned for the future. Guidance will be shared with other Department of Labor worker protection agencies that may also encounter U Visa issues as appropriate.

***Will the Department of Labor review these processes and procedures?***

The Wage and Hour Division will regularly evaluate protocols for effectiveness and efficiency. Revisions may be made as deemed necessary.

Current: April 28, 2011