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Wage and Hour Division (WHD)

U.S. Department of LaborWage & Hour Division
Washington D.C. 20210

April 28, 2011

FIELD ASSISTANCE BULLETIN NO. 2011-1

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
DISTRICT DIRECTORSFROM: NANCY J. LEPPINK
Acting AdministratorSUBJECT: CERTIFICATION OF SUPPLEMENT B FORMS OF U NONIMMIGRANT VISA
APPLICATIONS

This memorandum discusses the guidelines and procedures the Wage and Hour Division (WHD) will follow to determine when and whether to complete and certify Supplement B of a I-918 petition for U Visa Nonimmigrant Visa Status. The Secretary of Labor has the authority to complete and certify Supplement B forms for U Nonimmigrant Visas (U Visas) under Section 1513(b) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. § 1101(a)(15)(U) and related Department of Homeland Security regulations, 8 C.F.R. § 214.14. The Secretary's Order 05-2010 delegated this authority to the WHD Administrator. This authority is being further delegated to the WHD Regional Administrators. WHD Regional and District Office representatives will work closely with Solicitor of Labor Regional Office (RSOL) attorneys to gather, document and review the facts and information to determine whether to complete and certify Supplement B form of a I-918 U-Visa petition.

WHD will regularly evaluate these protocols for effectiveness and efficiency and may revise as it deems necessary.

I. Background**A. Statute**

Under Section 1513(b) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(U), victims of qualifying criminal activities (QCAs) who have suffered substantial physical or mental abuse may apply for a U Visa if they are willing to assist law enforcement or other officials in the investigation or prosecution of those crimes. The U.S. Citizenship and Immigration Service (USCIS) has sole jurisdiction over all petitions for U nonimmigrant status. *See* 8 C.F.R. § 214.14(c).¹ Individuals who receive U Visas from USCIS may be authorized to stay in the United States for up to 4 years. *See* 8 C.F.R. § 214.14(g). USCIS will issue an Employment Authorization Document (EAD) to individuals who are granted a U Visa. *See* 8 C.F.R. § 214.14(c)(7) and (f)(7).

B. Form I-918

Nonimmigrants seeking U Visas must submit a completed Form I-918, Petition for U Nonimmigrant Status to USCIS for consideration. Supplement B of Form I-918 is to be completed by an agency such as the Department of Labor (DOL) that is authorized to complete and certify Supplement B forms as a result of its "responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity." *See* 8 C.F.R. § 214.14(c)(2)(i); Instructions for I-918, Supplement B at 2. In completing Supplement B, the agency must certify that the individual submitting the Form I-918 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. *See* 8 C.F.R. § 214.14(c)(2).² An agency's decision to complete and certify a Supplement B form is entirely discretionary. *See* Form I-918, Supplement B at 1. The applicant is responsible for submitting the entire Form I-918, including Supplement B, to USCIS for review and approval. *See* 8 C.F.R. § 214.14(c). The decision whether to approve or deny the Form I-918 Petition rests solely with USCIS.

C. Applicable Regulations

Department of Homeland Security (DHS) regulations specify that Federal or local law enforcement agencies, or other authorities that have "responsibility for the investigation or prosecution of a qualifying crime or criminal activity" may complete and certify Supplement B of Form I-918. *See* 8 C.F.R. § 214.14(a)(2). The regulations explicitly state that this includes the DOL, as well as other agencies such as the Equal Employment Opportunity Commission (EEOC). *Id.* Further, the regulations define "investigation or prosecution" to include "the detection or investigation of a qualifying crime or criminal activity." *See* 8 C.F.R. § 214.14(a)(5) (emphasis added). WHD will consider exercising its authority to certify Supplement B forms in cases in which it has detected a QCA and each of the following conditions are met: (1) the detected QCA is involuntary servitude, peonage, trafficking, obstruction of justice or witness tampering; (2) the alleged QCA arises in the context of a work environment or an employment relationship; and (3) there is a related, credible allegation of a violation of a law that WHD enforces. The procedures WHD and SOL will follow to determine whether to complete and certify a Supplement B form are outlined below.

II. WHD's Procedures

Each WHD Regional Administrator will designate a representative to serve as the coordinator for U Visa petitions for that region. Likewise, each Regional Solicitor will designate one attorney to coordinate U Visa petition issues for that SOL region. This will enable DOL to develop the necessary expertise to effectively and efficiently handle requests to certify Supplement B forms for U Visa applications. Although WHD intends to hire individuals to serve as regional U Visa coordinators, on an interim basis the regional Director of Enforcement (DOE) will serve in this capacity, unless a Regional Administrator determines otherwise. The regional WHD U Visa coordinator will work closely with the regional RSOL attorney designated to handle U Visa issues.

Generally speaking, the regional WHD U Visa coordinator will be responsible for overseeing incoming Supplement B form certification requests, providing guidance and assistance with related WHD investigations, and coordinating efforts with appropriate law enforcement agencies, social service organizations or outside entities representing U Visa applicants, as well as other DOL agencies and the designated RSOL attorney. The designated RSOL attorney will conduct any necessary legal research and analysis and provide legal guidance regarding the QCA. The RSOL attorney will prepare the Supplement B form I-918 and required supporting documentation, as described below.

The WHD U Visa coordinator will make a recommendation to the WHD Regional Administrator as to whether or not to certify Supplement B of Form I-918. In most cases, the WHD Regional Administrator will be the certifying official, pursuant to a delegation of authority from the WHD Acting Administrator.

The key steps in WHD's process for completing and certifying Supplement B forms are outlined below.

A. Investigation of a violation of a law that WHD enforces and detection of a related QCA

As mentioned above, WHD will consider requests for certification of Supplement B forms in cases in which the alleged QCA arises in the context of a work environment or an employment relationship and there is a related, credible allegation of a violation of a law that WHD enforces. There are a number of QCAs identified in the DHS regulations and the Form I-918. Of these, WHD has determined that it will consider requests to certify Supplement B forms predicated on the following QCAs: involuntary servitude, peonage, trafficking, obstruction of justice, and witness tampering.³ WHD believes that these QCAs are most likely to be found in connection with its workplace investigations and that it can effectively train its staff in the detection of these QCAs. WHD will document basic information and evidence concerning these QCAs when they are detected during a WHD investigation, but it does not have jurisdiction to investigate or prosecute these crimes. Thus, DOL's authority to complete and certify Supplement B forms will be based on its role as a law enforcement agency that has "detected" the crimes.

Because DOL does not have the authority to investigate and prosecute QCAs, WHD will refer the underlying QCA to appropriate law enforcement agencies in accordance with its normal protocols for referral of criminal laws not enforced by WHD. WHD's role would be to provide, where appropriate, detected information to the appropriate law enforcement agency charged with investigating and prosecuting the crime, and to pursue in coordination with that law enforcement agency the wage and hour or other workplace claims on behalf of the workers. Whether such a referral is made before or after a decision to complete and certify a Supplement B form will depend on the circumstances of a case. In all cases, the safety of the petitioner and his or her family should be a primary consideration, as well as the safety of other individuals who have been harmed or may be at risk of harm from the detected criminal activity. The regional U Visa coordinator will provide guidance as necessary to the local District Office (DO) as to how to manage the referral and will, as appropriate, work with social service organizations or representatives for the petitioner.

WHD anticipates that Supplement B form certification requests will arise in two primary contexts: (1) during a WHD workplace investigation, or after the investigation is completed, an individual connected with the investigation requests that WHD complete and certify a Supplement B form based on a detected or alleged QCA; (2) a U Visa petitioner contacts WHD with an allegation of both a violation of a law that WHD enforces and a related QCA and requests that WHD complete and certify a Supplement B form. In all cases, the regional U Visa coordinator will be the point of contact for the individual seeking Supplement B form certification.

(1) Requests for certification connected to current or completed WHD investigations If a U Visa petitioner contacts WHD to request certification connected to a current or completed WHD investigation, the U Visa coordinator will determine whether one of the five QCAs for which WHD will consider requests for certification was detected during the course of the WHD investigation. If the investigation is ongoing, the DO will proceed with normal investigation protocols, taking care to document separately any detected information related to the QCA, as discussed further below.

In any investigation, regardless whether there has been a U Visa request, upon detection of information related to a QCA the DO will alert the regional WHD U Visa coordinator. Although Wage and Hour Investigators (WHIs) will only receive training on detecting the five QCAs listed above (involuntary servitude, peonage, trafficking, obstruction of justice, and witness tampering), the DO will notify the U Visa coordinator of any QCA it has detected. If, during the course of a WHD investigation, the WHI has detected a QCA other than the five enumerated above, the U Visa coordinator and the Regional Administrator will determine how best to proceed based on the facts and circumstances of the case. In all cases, the WHD Regional U Visa coordinator will maintain information about the detected QCA for use in the event WHD receives a certification request connected with the wage and hour investigation. In any case where WHD has detected a QCA during the course of its investigation, when appropriate and feasible WHD will notify the victim of, or otherwise utilize the services of, community resources that may be able to assist the victim.

(2) Requests for certification concurrent with a WHD complaint If a U Visa petitioner contacts WHD claiming a workplace violation of a law that WHD enforces and a related QCA, along with requesting certification of a Supplement B form, the DO will proceed with normal intake of the underlying wage and hour complaint and forward the information related to the QCA and Supplement B form request to the regional WHD U Visa coordinator. The DO should assign the WH complaint for investigation consistent with its normal protocols. The petitioner should provide the U Visa coordinator with information that supports his or her allegation of a QCA and related violations of a law that WHD enforces and make him or herself available to be interviewed by a representative from WHD.

Regardless of how a request to certify a Supplement B form originates, the regional WHD U Visa coordinator will review the information detected during the WHD investigation, if any, and any information provided by the petitioner related to the QCA and in support of the Supplement B certification request, and make a preliminary determination as to whether WHD would potentially certify the Supplement B form. The primary factors the WHD U Visa coordinator should consider include whether:

- The QCA arises in the context of an employment relationship or work environment and there is a related, credible allegation of a violation of a law that WHD enforces;

- Petitioner alleges a QCA of either involuntary servitude, peonage, trafficking, obstruction of justice, or witness tampering;
- The Petitioner has demonstrated that he or she has been, is being, or is likely to be cooperative with law enforcement officials in any investigation or prosecution of the QCA;
- Another law enforcement agency is already engaged in the investigation or prosecution of the QCA or would be in a better position to certify the Supplement B form based on the facts presented; and
- Certification of the Supplement B form would assist WHD’s investigation of a violation of a law that it enforces.

The first three elements listed above are required in order to certify the Supplement B form and the remainder will be weighed in prioritizing requests. Although WHD’s detection of a QCA should be considered in the petitioner’s favor, in cases where there is an ongoing or completed WHD investigation the fact that WHD did not detect a QCA should not be the basis for denying a certification request.

If the regional WHD U Visa coordinator makes a preliminary determination that this is a case where WHD would potentially complete and certify a Supplement B form, the regional WHD U Visa coordinator should alert the DO that received the wage and hour complaint and also provide the designated RSOL attorney with basic information about the case. The RSOL attorney should advise the WHD U Visa coordinator regarding the necessary legal elements of the particular QCA and provide advice to WHD U Visa coordinator about the kind of information and evidence that will be needed to inform the certification decision. If necessary, as will be the case when there has not yet been a WHD investigation, the regional U Visa coordinator will interview the U Visa petitioner to gather and confirm any information needed for the Supplement B form certification decision.

If the WHD U Visa coordinator makes the preliminary determination that it is unlikely that WHD would certify the Supplement B form based on the above factors, the U Visa coordinator should inform the petitioner of that assessment in writing as soon as possible, along with information as to which other law enforcement agencies may be able to certify the petition so that the petitioner can explore other avenues for certification.

B. Investigator Action

For requests associated with ongoing WHD investigations, the regional WHD U Visa coordinator will work with the appropriate DO to make sure that evidence is gathered and documented consistent with the direction set out below to assist with determining whether to certify Supplement B of Form I-918. For requests received simultaneously with a complaint alleging a violation of a law WHD enforces, the WHD complaint will be directed to the appropriate DO for a determination whether to investigate in accordance with WHD’s Complaint Policy. WHD investigators will not initiate an investigation or return to a workplace for the sole purpose of detecting information about a QCA.

If necessary, such as when a request for certification is received simultaneously with the complaint, the regional U Visa coordinator will interview the U Visa petitioner to gather and confirm any information needed for the Supplement B form certification decision. For requests associated with an active investigation of a WH violation, the U Visa coordinator will alert the DO and Wage Hour Investigator (WHI) of the request and alleged QCA so that the DO knows to keep the U Visa coordinator informed of any relevant evidence detected during the course of the investigation.

As discussed, WHD does not have jurisdiction to conduct investigations of the QCAs. Consequently, WHD investigators should follow WHD training and guidance on detecting crimes that are enforced by other law enforcement agencies.

C. U Visa Coordinator Action

The detected facts related to the QCA will be recorded as part of a narrative statement prepared by the U-Visa coordinator. This statement should be a separate document and will not be incorporated into the WHD case file. Rather, a separate file folder should be created for the case information that is relevant to a particular U Visa petitioner. The narrative statement should:

- Address how the case came to WHD’s attention, and the current status of the WH complaint. For example, it should be noted whether WHD is pursuing injunctive and/or monetary remedies to address the WH claims.
- Provide a summary of the information provided by the petitioner to the U Visa coordinator or written information provided by the petitioner, which should be attached to the narrative statement, together with a credibility determination by the U Visa coordinator or, if the individual was interviewed during the course of a WHD investigation, the WHI.
- Include an assessment of the petitioner’s helpfulness in detecting the QCA and investigating the workplace violation claim, as well as an assessment as to whether the individual is likely to be helpful in any future investigation or prosecution of the QCA. This assessment can be made based on the helpfulness of the individual to the WHD investigation, the individual’s personal knowledge of the circumstances surrounding the QCA, and other observations made by the WHI and the U Visa coordinator concerning the individual’s general disposition and willingness to assist government officials.
- Address what, if anything, has been done or will be done to refer the case to the appropriate law enforcement agency that has jurisdiction to investigate and/or prosecute the QCA.
- Document any known injury to the petitioner, if available, and whether any of the petitioner’s family members are believed to have been involved in the criminal activity of which he or she is a victim. This information will be needed in order to complete Supplement B of Form I-918.

D. Legal analysis and review of documentation, and recommendation whether to certify

Upon completion of the narrative statement, the U Visa coordinator will consult with the designated RSOL attorney regarding whether the information set out in the narrative statement and any attachments is sufficient to recommend completion and certification of the Supplement B form. After receiving the RSOL attorney’s advice, the U Visa coordinator will make a recommendation to the Regional Administrator as to whether the application should be certified. If the U Visa Coordinator, after consultation with the Regional Administrator and the RSOL attorney, concludes that a recommendation to certify should be made, the RSOL will proceed to complete the Supplement B, Form I-918. If the conclusion is not to recommend certification, the U Visa coordinator will state in writing to the Regional Administrator the reasons for not recommending certification and submit the reasons and narrative statement to the Regional Administrator.

III. Certification Decision

A. Completion of Supplement B, Form I-918

The designated RSOL attorney will use the narrative statement provided by WHD and the completed legal research and analysis to complete the Supplement B of Form I-918. To complete Supplement B, the RSOL attorney will draft an attachment that includes information such as:

- A statement that WHD is involved because it is or was investigating or has received a complaint related to an alleged violation of a law that WHD enforces, and that the agency is seeking monetary and injunctive remedies for those violations (if applicable).
- A statement explaining the facts detected and/or alleged that support a finding that the individual has been a victim of a QCA.
- A statement regarding any known injury to the victim, if available, and the individual's helpfulness in investigating the matter.
- A summary of what has been done (or will be done), if anything, to refer the case to or share information with the appropriate criminal law enforcement agency.

B. Review and certification of Supplement B, Form I-918

Once RSOL has completed the Supplement B form, it will be sent to the Regional Administrator. In most instances, the final authority to certify will be delegated to the Regional Administrator. If the Regional Administrator certifies a Supplement B form, he or she should attach to the form a copy of the memoranda delegating the certification authority to the Administrator and further to the Regional Administrator. If the Regional Administrator decides not to certify the Supplement B form, the U Visa coordinator should inform the petitioner's representative 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 so that the petitioner can explore other avenues for certification.

C. Timeliness and notification of WHD's certification decision

It is very important that all requests for U Visa certification be processed expeditiously and that WHD notify the petitioner and/or his or her representative of its decision in writing as soon as possible. The timely review of the petitioner's allegations and, where appropriate, the certification of a U Visa petition could help to protect the individual victims of QCAs who may be at risk of future harm, and whose cooperation with law enforcement officials will be helpful to investigating or prosecuting the alleged perpetrator(s) of the QCAs. In those cases where WHD determines it will be unable to certify a Supplement B form, the petitioner should be provided with information as to which other law enforcement agencies may be able to certify the petition.

WHD 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 certify. This timeframe will vary, however, depending upon the complexity of the case and the overall volume of U Visa certification requests WHD's regional representatives are handling at any one time. This estimated timeline may be adjusted based on WHD's experience reviewing certification requests under the procedures outlined here.

D. Confidentiality

DOL officials are prohibited from using or disclosing information relating to the beneficiary of a pending or approved petition for U nonimmigrant status unless the disclosure is made to a sworn officer or employee of DHS, the Department of Justice, or the Department of State for legitimate agency purposes, or in certain other limited circumstances. *See* 8 C.F.R. §214.14(e) and 8 U.S.C. § 1367. If a WHD official is uncertain as to whether it is permissible to disclose information to a particular party, SOL should be consulted for advice.

IV. Conclusion

Additional guidance and training concerning investigation protocols and the handling of Supplement B form certifications will be provided to WHD and RSOL staff, and shared with other DOL worker protection agencies that may also encounter U Visa issues.

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1. The certifying agency does not have to certify as to whether the petitioner suffered "substantial physical or mental abuse" as a result of the QCA. *See* 8 C.F.R. § 214.14(c)(2)(i). This is a determination that will be made by USCIS based on information submitted by the petitioner. *See* 8 C.F.R. § 214.14(b)(1) and (c)(2)(ii).
 2. The certifying agency does not have to certify as to whether the petitioner suffered "substantial physical or mental abuse" as a result of the QCA. This is a determination that will be made by USCIS based on information submitted by the petitioner. *See* 8 C.F.R. §214.14(b)(1) and (c)(2)(ii).
 3. If WHD receives a request to certify for any other QCA, the U Visa coordinator will work with the requestor to identify other federal and state agencies that may be willing to consider certifying the request.

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