

**EEOC PROCEDURES:
REQUESTING EEOC CERTIFICATION FOR
U NONIMMIGRANT CLASSIFICATION (U VISA) PETITIONS
IN EEOC CASES**

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 (DHS/USCIS), 72 Fed. Reg. 53014 (Sept. 17, 2007), 8 C.F.R. § 214.14. The Chair has designated the General Counsel as a certifying official with authority to issue U nonimmigrant status visa certifications on behalf of the EEOC.

I. Procedures for Requesting the General Counsel's Certification for U visa Petitions

- A. Requests for certification will initially be submitted (or referred) to the Regional Attorney (RA). The RA will conduct an inquiry into whether the individual seeking U visa 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 covered by the statutes the EEOC enforces. The factual inquiry must include an interview of the visa candidate. If the requirements for certification do not appear to be met, the RA can decline the request.
- B. 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 authorize certification 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 individual requesting certification 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, the GC will advise the RA to deny the request.
- C. When certification requests are submitted for more than one individual affected by the same employment practices that the district office believes constitute a "qualifying criminal activity," all individuals can be discussed in a single cover memorandum. However, because certifications are submitted to DHS/USCIS on an individual basis, and detailed facts on how each crime victim was affected by the unlawful employment practices will not be included in Part 3 of the I-918 Supplement B form, it is essential that the cover memorandum contain sufficient information to show whether each individual was affected by the employment practices in such a manner as to support the U visa crimes that the district office believes the individual was a victim of. The information should be sufficient to allow the GC to make an independent determination regarding the

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individual's certification, including the appropriateness of the U visa qualifying crimes asserted for each individual. At the district office's option, this can be done in an appendix to the cover memorandum.

- D. If the GC concludes that EEOC should act as the certifying agency, the GC will notify the RA and designate the RA as the certifying official for that particular case. If the GC determines that EEOC should not act as the certifying agency, the GC will inform the RA in writing of this decision.
- E. In each case in which the GC determines that EEOC should act as the certifying agency, OGC will provide the RA a letter stating that the RA is designated as the certifying official for the named individual(s). This letter shall be sent by OGC to the RA. DHS/USCIS requires that each U visa petition include such a letter when the head of the certifying agency has designated someone else to exercise the certifying authority.

II. Information Required by OGC

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

- A. A narrative explaining how the case came to the EEOC's attention and the current status of the matter.
 - 1. An interview with the crime victim by a legal unit attorney should be conducted.
 - 2. Credibility determinations made by those who interviewed the crime victim should also be provided.
- B. A narrative explaining how the facts support the alleged crimes and the status of efforts to coordinate with criminal law enforcement.
 - 1. Field legal staff should independently research the criminal statutes that were allegedly violated and determine if the facts support a violation of those statutes. Field legal staff should also 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).

2. Field legal staff should explain how the qualifying criminal activity is related to the unlawful employment discrimination alleged in the charge or otherwise under investigation by the EEOC.
3. 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 or intends to do with local, state or federal criminal law enforcement agencies.

C. A draft of Form 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:

1. In Part 2, EEOC's "certifying agency category" should be listed as "Other." A statement should be attached explaining EEOC's authority as a certifying agency and that the EEOC came to be involved in the case through our investigation of a violation of the relevant EEO statute. Where the agency has sought, or may seek or will be seeking, monetary and injunctive remedies with respect to the employment discrimination violations that also constitute U visa qualifying crimes, this should be indicated.
2. Part 3 is divided into 6 subparts and includes the following questions:
 - a) Subpart 1 asks that the relevant criminal offenses be named. EEOC should conduct an independent review of the facts to determine which of the listed criminal offenses are involved.

¹ Supplement B is the form DHS/USCIS created for certifying agencies to submit in support of U visa petitions. 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.

- b) Subpart 3 asks for a list of the statutory citations for the criminal activity being investigated or prosecuted. (See §II, B (1) and (2) above).
 - c) 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 visa status in that activity.
 - d) Subpart 6 asks for a description of any known or documented injury to the victim. Provide a brief description of such harm.
3. 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 EEOC's enforcement efforts.