

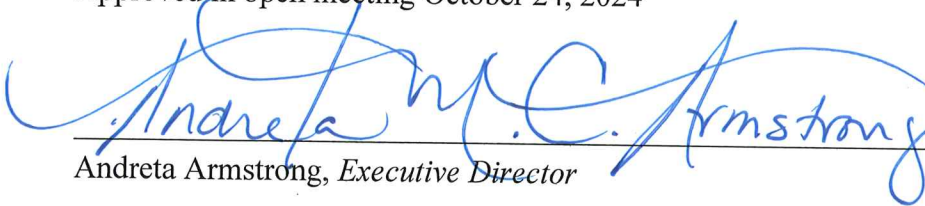


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POLICY: STATEMENT OF INTEREST UVISAS

Approved in open meeting October 24, 2024



Andreta Armstrong, *Executive Director*

I. POLICY STATEMENT:

The Commission accepts requests to certify U or T Nonimmigrant Visa applications as well as requests for Statements of Interest for deferred action where the Commission participated directly in the underlying investigation. This policy sets forth the process by which the Commission handles such requests.

A. Overview of U & T Visas:

A noncitizen crime victim who has been, or is likely to be, helpful in the investigation or prosecution of the criminal activity may be eligible for U Nonimmigrant Status (U Visa) under the federal Victims of Trafficking and Violence Prevention Act of 2000. *See* 8 U.S.C. § 1101(a)(15)(U). The purpose of the U Visa is to recognize that undocumented crime victims may be targeted for crime due to their vulnerable status in society and may fear that assisting law enforcement could lead to detention or deportation. The U Visa encourages victims to report crime and assist in the investigation or prosecution of unlawful conduct.

Under the same federal statute, noncitizens who are, or have been, victims of human trafficking may be eligible for T Nonimmigrant Status (T Visa). *See* 8 U.S.C. § 1101(a)(15)(T). The purpose of the T Visa is to protect trafficking victims and strengthen the ability of law enforcement agencies to investigate and prosecute human trafficking.

The Commission is a qualified law enforcement agency for the purpose of certifying U and T Visas.

Certification is one piece of a larger U or T Visa application adjudicated by U.S. Citizenship and Immigration Services. The Commission does not have any authority to grant or deny a U or T Visa. Accordingly, employees of the Commission should never make any promises to a potential applicant as to whether a U or T Visa will be granted. This policy describes the Commission's process used to determine whether to complete federal Form I-918, Supplement B, the law enforcement certification that is a required component of a U Visa application, or federal Form I-914, Supplement B, the law enforcement certification for a T Visa.

B. Initiating U or T Visa Certification Requests:

U and T Visa certification requests will be accepted if the Commission, has the lead responsibility for the investigation or litigation of a matter giving rise to a certification request.

A person requesting a U or T Visa should submit the request to the Commission's Designated Agency Reviewer. An advocate, service provider, or other representative may assist a noncitizen in making the request. Though not required, a request for certification may be accompanied by a draft of Form I-918, Supplement B or Form I-914, Supplement B. More information about U and T Visas, including these forms, is available on the U.S. Citizenship and Immigration Services' webpage.

Provided that the Commission has sufficient information to evaluate the request, U and T Visa certifications may be processed at any procedural stage, including during an investigation, litigation, appeal, or post-disposition. When a potential U or T Visa matter comes to the attention of an employee of the Commission, whether through a witness or other contact, that employee of the Commission shall immediately contact the Designated Agency Reviewer. In cases where the Commission is not the appropriate certifying agency, the Commission will provide the requestor with information about any other law enforcement agency that may be the appropriate certifying agency.

C. Commission Evaluation:

Certification requests should be forwarded to the Designated Agency Reviewer who will open a matter.

The U or T Visa determination is separate from the investigation, conciliation, or litigation of the matter giving rise to the request. Pursuant to the Alien Victims of Crime Act, RCW 7.98.020(9), "A certifying agency shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a [U or T Visa] certification unless required to do so by applicable federal law or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian." As such, U or T Visa certification requests are protected from public disclosure requests and shall be maintained separate from the underlying case file. Any disclosures will be done in consultation with assigned Assistant Attorney General.

The Designated Agency Reviewer will review factual materials to determine whether the requirements for certification are met. To recommend certification for a U Visa, the Designated Agency Reviewer must determine:

1. The applicant has been a victim of "qualifying criminal activity" as defined by 8 U.S.C. § 1101(a)(15)(U)(iii);
2. The applicant possesses information about the qualifying criminal activity; and
3. The applicant has been, is being, or is likely to be helpful to the investigation and/or prosecution of the qualifying criminal activity.

To recommend certification for a T Visa, the Designated Agency Reviewer must determine:

1. The applicant has been a victim of human trafficking, as defined by 8 U.S.C. § 1101(a)(15)(T)(i)(I);

2. The applicant is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking; and

3. The applicant has complied with any reasonable request from the Commission for assistance in the investigation or prosecution of human trafficking.

As part of the factual inquiry, the Designated Agency Reviewer may choose to conduct an in-person interview with the applicant. The Designated Agency Reviewer may work with agency staff to gather facts relevant to the certification recommendation or the provision of client advice.

Where the Commission is the appropriate certifying agency, the Designated Agency Reviewer will prepare a written factual summary and recommendation concerning the certification request. If the Designated Agency Reviewer recommends certification, the Designated Agency Reviewer will also prepare a draft Form I-918, Supplement B or draft Form I-914, Supplement B, as appropriate. The package will be forwarded for agency approval. If the agency determines that certification is appropriate, the Designated Agency Reviewer will be authorized to certify Form I-918, Supplement B or Form I-914, Supplement B.

The Commission may reach out to the Designated Agency Reviewer for the Attorney General's Office on procedural and legal questions related to U or T Visas (e.g., eligibility and/or possible impacts on a case). However, the ultimate U or T Visa certification decision remains with the Commission.

D. Statements of Interest for Deferred Action:

Deferred action is a form of prosecutorial discretion to defer removal (deportation) against a noncitizen for a certain period of time. Although deferred action does not confer lawful status, a noncitizen granted deferred action is considered lawfully present in the United States for certain limited purposes while the deferred action is in effect. If granted deferred action, a noncitizen may be eligible for employment authorization.

The Department of Homeland Security (DHS) accepts applications for deferred action to noncitizen workers who fall within the scope of a labor agency investigation. *DHS Support of the Enforcement of Labor and Employment Laws*, DHS, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/dhs-support-of-the-enforcement-of-labor-and-employment-laws>. The purpose of which is to ensure that our nation's workplaces comply with our laws by supporting federal, state, and local labor and employment agencies to accomplish their important work enforcing wage protections, workplace safety, labor rights, and other workplace laws and standards. Memorandum from Alejandro N. Mayorkas on Worksite Enforcement: The Strategy to Protect the Am. Lab. Mkt., the Conditions of the Am. Worksite, and the Dignity of the Individual (Oct. 12, 2021) (on file with DHS).

The Commission is a state labor and employment agency that enforces workplace rights and can issue Statements of Interest under this DHS guidance.

Workers are sometimes afraid to report violations of law by exploitative employers or to cooperate in employment and labor standards investigations because they fear removal or other immigration-related retaliation due to reports by an abusive employer. *DHS Support of the Enforcement of Labor and Employment Laws*, DHS, <https://www.dhs.gov/enforcement-labor-and-employment-laws> (last visited 5/7/2024). DHS' practice of offering discretionary protection on a case-by-case basis to victims who lack employment authorization directly increases the ability of the Commission to more fully investigate worksite violations and supports the Commission to carry out its legislative mandate of eliminating and preventing discrimination in employment. RCW 49.60.010.

A Statement of Interest is one piece of a larger application for deferred action adjudicated by the U.S. Citizenship and Immigration Services. The Commission does not have any authority to grant or deny deferred action. Accordingly, employees of the Commission should never make any promises to a potential applicant as to whether deferred action will be granted. Statement of Interest may be issued when there is an ongoing investigation or enforcement action. Such statement must:

1. Be addressed to the Department of Homeland Security;
2. Detail the nature of the labor or employment agency's investigation or enforcement action and the need for DHS support;
3. Describe the agency's enforcement interests that provide the basis for their request;
4. Describe the worksite and the workers who may be helpful with the agency investigation or enforcement action; and
5. Provide an agency point of contact who can address follow-up questions from DHS.

The Statement of Interest is a required component for deferred action.

What should not be included in a Statement of Interest:

- Any identifying information of the Charging Party, requesting workers, or any other individual, including Charge Numbers.
- Any facts of the investigation that would be specific enough to allow for identification of any worker, as the Statement of Interest can be used by any worker who falls within the scope of having been employed at the workplace during the defined time period.

The Commission must submit a courtesy copy of any Statement of Interest as instructed by DHS. Once DHS has confirmed acceptance of the courtesy copy of the Statement of Interest, the Commission can then provide workers with a copy of the approved Statement of Interest, which must be included with the worker's prospective request to DHS for deferred action.

Requests for deferred action Statements of Interest shall be submitted to the Designated Agency Reviewer. Requests for Statements of Interest should not include any information that would personally identify a Charging Party or other workers, but instead only identify the nature of the investigation or enforcement interest against a particular employer and identify the appropriate scope of the Statement of Interest.

E. Decision Notification:

The Designated Agency Reviewer will notify a U or T Visa applicant/requestor for a Statement of Interest and/or representative in writing of the certification decision, or Statement of Interest request, including a determination that the Designated Agency Reviewer does not have sufficient information to evaluate the request. If the Commission certifies Form I-918, Supplement B or Form I-914, Supplement B, the original will be given to the requestor or the requestor's legal representative or advocate so that it may be included in the application packet submitted to immigration authorities. Likewise, if granted, a Statement of Interest shall be given to the requestor or the requestor's legal representative or advocate via email, fax, or by mail.

II. RESPONSIBILITIES:

Employees who become aware of a potential U or T Visa or deferred action matter through a witness, client agency, or other contact shall immediately contact the Designated Agency Reviewer to discuss the matter. Employees who have questions about the applicability of this policy to the Commission should contact the Designated Agency Reviewer.

An investigator or other staff member who receives a U or T Visa certification request shall forward the request, or the requestor's contact information if the request is not made in writing, to the Designated Agency Reviewer.

The Designated Agency Reviewer shall open the matter, review the factual and legal background, recommend whether certification is appropriate, complete an authorized certification, and monitor any post-certification responsibilities pursuant to the U.S. Department of Homeland Security's U and T Visa Law Enforcement Resource Guides. The Designated Agency Reviewer will consult with the Assigned Assistant Attorney General to determine the applicable public disclosure requirements and retention schedule for documents related to each certification request.

The agency shall review U and T Visa certification recommendations and, where appropriate, authorize the Designated Agency Reviewer to complete certifications on behalf of the Commission.