



Urban Justice Center

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Friday October 16, 2007

Director, Regulatory Management Division  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
111 Massachusetts Avenue, NW, 3<sup>rd</sup> Floor  
Washington, DC 20529

RE: DHS Docket No. USCIS-2006-0069

Dear Director,

We write to share our comments on the interim regulations governing U visa applications and to support the comments submitted by the National Network to End Violence Against Immigrant Women.

The Sex Workers Project of the Urban Justice Center is a legal services organization for sex workers and victims of trafficking. Using a harm reduction and human rights model, we protect the rights and safety of these vulnerable and marginalized populations through legal representation and policy advocacy. We also provide critical information to policymakers, activists, and the media on the human rights abuses faced by victims of trafficking. Through our work and membership in local and national networks we have become recognized source of information for how best to combat human trafficking into prostitution and other sectors while safeguarding the rights of the victims of this horrendous crime. Some of our ongoing clients have interim relief based on their potential eligibility for a U-Visa and we will be filing full applications for these clients in the coming months. Many more are eligible and we anticipate filing many new U-Visa applications over the years, now that the regulations are written. We are uniquely situated to provide a first-hand perspective on how the regulations as written will affect victims of trafficking and other forms of violence as well as their legal service providers.

We thank you for the obvious consideration you put into the content of the interim regulations and the accompanying explanation (“the Preamble”). We are particularly grateful that you considered the suggestions submitted concerning the earlier, proposed form, made by the National Network to End Violence Against Immigrant Women and others who work with immigrant survivors of domestic violence, sexual assault, trafficking and other crimes.

We applaud your construction of many aspects of the U interim regulations. In particular, we appreciate the clarity and understanding provided in regard to immigrant victims of domestic violence, and the many forms this can take. For instance, we support the broad definition of

domestic violence encompassed in the phrase “battery and extreme cruelty”<sup>1</sup> which includes both physical and mental abuse. In addition, we support an interpretation of the phrase “substantial harm”<sup>2</sup> to enable victims who suffer from longer patterns of abuse comprised of individual incidents that do not at first glance seem substantial but over time equal substantial harm, to apply for U nonimmigrant status. Also, we were pleased to see that there was a differentiation between the crime prosecuted and the crimes experienced by immigrant victims of violence.<sup>3</sup> Finally, we support the recognition about the ways in which criminals try to use the legal system and law enforcement to control immigrant victims, barring their access to our help.<sup>4</sup>

However, we do believe there are several problems that will undermine victim access to the process and local law enforcement efforts to encourage victims of crimes to access justice. We are particularly concerned about the imposition of limits on who can sign certifications and the inaccessibility of waivers of inadmissibility.

### I. Law Enforcement Certification Processes Must be Flexible

Law enforcement certification is a necessary element of a U-Visa application, both by statute and by regulation.<sup>5</sup> The INA provides that a U-Visa petition “shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigation criminal activity.”<sup>6</sup> The proposed regulations state that the certification must be signed by “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency.”<sup>7</sup> Thus, the regulations dramatically narrow the range of which law enforcement personnel can sign certifications. This provision in the regulations violates both the statute and the policy concerns originally supporting U non-immigrant status:

#### Requiring That Signing Officials Be Vested with Specific Titles Violates the Statute

- Congress specifically designated a comprehensive list of law enforcement officials designated to sign certificates. If Congress had wished to limit valid certifications only to those provided by “supervisors” or “heads of agencies,” it would have done so in INA § 214(p).
- It is a principle of administrative law that regulations should not narrow the rights granted by the statute on which the regulations are based. These regulations narrow the accessibility of law enforcement certifications from the broad grant in the statute.
- Imposing the particular signatory requirements in the regulations is not a reasonable interpretation of this law, given that it will not work for many law enforcement agencies.

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<sup>1</sup> “New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule,” 72 Fed. Reg. 53014, 53018 (2007) (to be codified at 8 CFR pts. 103, 212, 214, 248, 274a, and 299) (proposed Sept. 17, 2007).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> INA § 214(p)(1); 72 Fed. Reg. 53014, 53023 (2007).

<sup>6</sup> INA § 214(p)(1).

<sup>7</sup> 72 Fed. Reg. 53014, 53023 (2007).

## Requiring That Signing Officials Be Vested with Specific Titles is a Radical Departure from Past Policy

- A sensible policy on law enforcement certifications was issued by William Yates, Associate Director of Operations of USCIS, and has been relied upon by U-Visa petitioners since 2003. His memo stated that the certification “must in all cases be signed by the law enforcement official investigating or prosecuting the criminal activity.”<sup>8</sup>
- This policy encouraged U-Visa petitioners to seek certifications from the law enforcement officers *they knew and had been helpful to*, ensuring that these certifications were completed correctly and promptly by someone with actual knowledge of the case.
- This policy is also followed in the regulations regarding the law enforcement attestation (LEA) that is submitted with T visa applications.<sup>9</sup>
- Requiring certifications to now be signed by “supervisors” or “heads of agencies” is a radical departure from this past policy with no basis or rationale offered in the regulations.

## Requiring That Signing Officials Be Vested with Specific Titles Makes The Process Inaccessible to Victims

- The U visa was created to “strengthen the ability of law enforcement to detect, investigate and prosecute cases... while offering protection to victims.”<sup>10</sup> When the process for gaining certification is overly burdensome, both of these goals are thwarted.
- The regulations imply that only one person at each agency will have the authority to sign certifications. Under the current policy, it is still often difficult to get a certification signed by a law enforcement officer, even one with direct contact with the victim, because of the many responsibilities they have. If there is only one certifying official in a relatively high position, it is even more likely that this person will not have the time to deal with the many requests, and that some victims will slip through the cracks.
- The new regulation imposes a heavy burden on victims to get certifications from the right official, but nowhere requires law enforcement agencies to establish a system to make these officials available to victims. There is a distinct possibility that many victims would not be able to obtain certifications merely because the law enforcement agency they are helping lacks the structure they are “encouraged” to develop by the regulations.
- There is a great diversity in local law enforcement structures and in many cases it may be more appropriate for people who lack the “supervisor” title to be evaluate and sign certifications. In many prosecutors’ offices, for example, only the head District Attorney or County Attorney is a “supervisor.” This person may not be the best person to evaluate and sign certifications, however, and may wish other attorneys and victim advocates in their offices to be responsible for signing U certifications.
- If the immigrant community is aware that U-Visas are difficult to obtain, fewer victims will come forward. This new requirement will hamper law enforcement’s efficacy, and deny those victims protection.

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<sup>8</sup> William R. Yates, Assoc. Dir. Oper., U.S.CIS, re: Centralization of Interim Relief for U Nonimmigrant Status Applicants (October 8, 2003)

<sup>9</sup> 8 CFR section 214.11(f)(1)

<sup>10</sup> Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pul L. No. 106-386 (Oct. 28, 2000)

## Our Recommendation

We suggest that the regulations remove the requirement that “supervisors” sign certifications. Instead, the form should only require that the signer attest that he or she is a person assigned to evaluate and sign certifications for the agency (regardless of title).

## II. Fee Waivers Must Be Available for Inadmissibility

Nearly all of our U visa petitioning clients must overcome inadmissibility. The vast majority are inadmissible because they are presently out of status or entered without inspection. Additionally, many of our clients have been victims of trafficking or similar situations and have arrests and convictions for prostitution on their records, making them inadmissible under criminal and related grounds.<sup>11</sup> Currently, all of these clients would have to apply for a waiver of inadmissibility under INA §212(d)(14) using form I-192, which includes a fee of \$545. There is no waiver for this fee. For these clients, the lack of a fee waiver for the waiver of inadmissibility will prohibit them from even applying for a U-Visa.

### The Majority of Immigrants Applying for a U Visa Need a Waiver of Inadmissibility

- The U-Visa was created with the pragmatic understanding that undocumented victims of crime are reluctant to expose themselves to law enforcement, even to report a crime, and thus offers them the U-Visa protection to encourage that cooperation. Many of these victims entered without inspection and are present unlawfully for that reason.
- The new regulations acknowledge this intent: “Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States.”<sup>12</sup>
- It is established immigration law that aliens present without being admitted or paroled are inadmissible,<sup>13</sup> thus the majority of U Visa applicants will need a waiver of inadmissibility.

### The Financial Burden Imposed is in Contradiction to the Policy behind the U-Visa

- The I-192 includes a fee of \$545, an insurmountable burden for most applicants.
- The USCIS acknowledges the importance of limiting fees for the U-Visa when it decided that no fee would be charged for the U-Visa application or for derivative status.<sup>14</sup> The USCIS states that this decision “reflects the humanitarian purposes of the authorizing statutes.”<sup>15</sup> The new regulations even provide a fee waiver option for the biometric services fee, as the USCIS “recognizes that many petitioners of U nonimmigrant status may be unable to pay the biometric services fee,” a fee of \$70.<sup>16</sup>

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<sup>11</sup> INA §212(a)(2)(A); INA §212(a)(2)(D)

<sup>12</sup> 72 Fed. Reg. 53014, 53014 (2007).

<sup>13</sup> INA §212(a)(6)(A).

<sup>14</sup> 72 Fed. Reg. 53014, 53031(2007).

<sup>15</sup> Id.

<sup>16</sup> Id.

- It is therefore difficult to understand why the much larger fee of \$545 for the inadmissibility waiver, which affects virtually all applicants, is not also waivable. The regulations do not even acknowledge it as a likely cost in their calculation of costs for filing.<sup>17</sup>

### Our Recommendation

Correct this oversight and include a fee waiver option for U-Visa petitioners applying for a waiver of inadmissibility. Ensure that no U-Visa petitioners are denied status merely because they lack financial resources. In addition, we would like to take this opportunity to encourage policies that promote liberal granting of INA §212(d)(14) waivers of inadmissibility, even for criminal grounds, as this is likely to be an issue for many U-Visa petitioners.

### Conclusion

Thank you for your attention to our concerns. We hope you will respond to them by fixing these problems with U implementation and bring them into line with the rest of the regulations, which otherwise do a good job of furthering the goals of the law.

Sincerely,

Juhu Thukral, Esq.  
Sex Workers Project  
Urban Justice Center

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<sup>17</sup> See page 72 Fed. Reg. 53014, 53055 (2007).