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Revision of Stay of Removal Request Reviews for U Visa Petitioners

FACT SHEET

August 2, 2019

QUESTIONS AND ANSWERS

Q: What has changed?

A: Under ICE Directive 11005.1, ICE was required to request a prima facie determination from USCIS. This determination was a simple confirmation that the petition was filed correctly and was not a substantive review of the petition. As the number of U visa petitions submitted increased, this process became burdensome on both agencies and often did not impact ICE's decisions. Now, under the ICE Directive 11005.2, ICE officers and attorneys will review the totality of the circumstances, including any favorable or adverse factors, and any federal interest(s) implicated and decide whether a Stay of Removal or terminating proceedings is appropriate.

Q: Will the changes negatively affect crime victims?

A: There are a number of features of the new Directive that are clarifying and beneficial to crime victims, including:

- It is ICE policy to comply with applicable law governing U visas and to encourage victims of crime to work with law enforcement.
- Assistance provided by a U visa petitioner to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of criminal activity will generally be considered a significant favorable factor but is not necessarily dispositive.
- It is ICE policy to respect USCIS' grant of deferred action to a U visa waitlisted petitioner. Accordingly, ICE will not remove a U visa petitioner or qualifying family member whom USCIS has placed on the waiting list and granted deferred action unless a new basis for removal has arisen since the date of the waiting list placement or USCIS terminates deferred action.
- It is also permissible for ICE to join a motion to terminate proceedings for petitioners who have been waitlisted or approved.
- Convictions for crimes related to a petitioner's victimization will generally not be considered an adverse factor.
- The fact that a petitioner can continue to pursue a U visa adjudication from outside the United States is not alone a reason for ICE to deny a Stay of Removal request.

Q: Will ICE remove crime victims who are still assisting law enforcement with the investigation or prosecution of their cases?

A: ICE recognizes the significant law enforcement interest in active victim-witnesses remaining in the United States. ICE will exercise its discretion when determining whether to grant a Stay of Removal request based on the totality of circumstances, including consideration of the underlying assistance provided by a U visa petitioner to law enforcement. ICE no longer exempts classes or categories of removable aliens from potential enforcement. The revised guidance also allows for Stay of Removal requests to be granted to U visa petitioners who are assisting ICE investigations.

Q: Do immigration judges issue removal orders to pending U visa petitioners, and if so, what recourse do U visa petitioners have?

A: The U visa regulations do not prevent pending U visa petitioners from being removed. If removed, USCIS will continue to adjudicate the U visa petition. U visa petitioners have all recourse available to

them that immigration law permits of anyone else in removal proceedings or with final removal orders.

Q: Why has there been such an exponential increase in U visa petitions from crime victims?

A: The U visa is now better known by immigration attorneys and law enforcement. The U.S. Government made a concerted effort through training and awareness to ensure that law enforcement was aware of this tool to encourage alien victims of crime to come forward.

Q: What happens if ICE removes a U visa petitioner from the United States and that person is then granted a U visa after he/she is already removed?

A: ICE defers to USCIS and the U.S. Department of State.

Q: What is the number of pending applications that end up receiving a U visa?

A: USCIS approves 10,000 principals annually which is the statutory cap.

Q: Will sponsoring law enforcement agencies and prosecuting offices be informed if potential witnesses are subject to removal?

A: ICE will follow routine notification procedures prior to effectuating the removal of a U visa petitioner whose request for a Stay of Removal has been denied. In the event that ICE denies a Stay of Removal request, ICE will reach out to the investigating agency and provide notification that the petitioner is being removed.

Q: If ICE determines that a U visa petitioner's Stay of Removal request will be granted, will that determination extend to qualifying family members who are included with the petition?

A: Yes, ICE Directive 11005.2 includes qualifying family members. Per statute and regulation, certain family members of a U visa petitioner may also apply.

Q: Why doesn't ICE comment on specific cases involving U visas?

A: Government officials, including those at ICE, are prohibited from disclosing any information which relates to an individual who has a pending or approved application for relief under 8 U.S.C. § 1367 (i.e., relief under the Violence Against Women Act, T or U visa). The broad language of this statute prohibits not only the disclosure of information relating to the individual's application or claim, but any other information about the individual. Therefore, no information may be released at all – either proactively or in response to a request. These restrictions extend to family members who are included on the individual's application.

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