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To: USCIS FR Comment

Cc: Karolyn Talbert; Megan Helbling; Trisha Teofilo

Subject: OMB Control Number: 1615-0104, USCIS-2010-0004

Via Email Submission at USCISFRComment@uscis.dhs.gov

OMB Control Number 1615-0104

November 10, 2014

Laura Dawkins
Chief, Regulatory Coordination Division
Office of Policy and Strategy
United States Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW.
Washington, DC 20529-2140

RE: OMB Control Number: 1615-0104, E-Docket ID Number: USCIS-2010-0004

**Comments by Heartland Alliance's National Immigrant Justice Center
Regarding Agency Information Collection Activities: Petition for U
Nonimmigrant Status, Form I-918, and Supplements A and B of Form I-
918**

Dear OMB USCIS Desk Officer:

Heartland Alliance's National Immigrant Justice Center serves approximately 10,000 noncitizen clients per year through direct immigration legal services, advocacy, and impact litigation. With a staff of 40 attorneys and paralegals and more than 1,500 active pro bono attorneys, the National Immigrant Justice Center (NIJC) is one of the largest legal service providers for low-income immigrants and refugees in the country. Our comprehensive program provides immigration legal services to immigrants including "childhood arrivals," asylum seekers, unaccompanied immigrant minors, survivors of human trafficking, and immigrant crime victims.

NIJC has provided legal representation for U visa petitioners since the invention of the U visa and implementation of regulations. NIJC has trained hundreds of *pro bono* attorneys to complete U visa applications, and has represented hundreds more in their U visa applications in-house. NIJC has provided information about U visas through presentations to shelters, domestic violence agencies, churches, schools and various community groups.

Based upon its vast experience in direct legal representation of victims of crime, NIJC provides the following recommendations to ensure that the U visa application process is as efficient and uniform as possible. We appreciate your consideration of our comments.

NIJC acknowledges improvements to Form I-918 Supplement B

NIJC extends its gratitude to U.S. Citizenship and Immigration Services (USCIS) for simplifying Form I-918 Supplement B and specifically, for the rewording of question number 3 found on Page 3, Part 4. The changes clarify and streamline the form which will result in a more efficient process for law enforcement agencies.

Recommendations for Form I-918 Supplement B and Instructions

I. Law enforcement agencies should not be mandated to type, print or sign Form I-918 Supplement B in a specific ink color

The Form I-918, Supplement B states, “Type or print in black ink” and, “Please sign in blue ink.” The form instructions state, “Each petition *must* be properly signed in blue ink and filed” (emphasis added). This language is confusing as it instructs a certifying official to type or print information on the form in black ink and to sign in blue ink. We understand that it may be difficult to decipher a certifying official’s original signature from a copy of the signature. However, neither the applicant nor the legal representative has control over how a law enforcement agency chooses to fill out or sign a Form I-918, Supplement B. Requiring law enforcement agencies to sign the Form I-918, Supplement B in blue ink will cause an undue hardship to already overburdened agencies. In addition, if the certifying official were to incorrectly sign in black ink, the form could be rejected by USCIS and then expire by the time the applicant receives the rejection notice. The certifying official may not be willing to resign an updated form due to their own limited resources.

Recommendation: The Form I-918 Supplement B and its instructions should consistently state, “Each petition must be properly signed. We suggest the certifying official sign in blue ink, but signatures in black ink will also be accepted.”

II. USCIS should use consistent language on Form I-918, Supplement B

USCIS requests the signature of the “Certifying Official” on page 4, part 6, “Certification” and of the “Agency Official” on page 5, part 7, “Additional Information”. The distinct language is confusing and implies that the Service is requesting signatures from two separate designees at a law enforcement agency.

Recommendation: USCIS should use “Certifying Official” consistently on all U Visa forms as defined under 8 C.F.R. §214.14(a)(3).

III. USCIS must amend Form I-918, Supplement B Instructions to properly reflect the helpfulness requirements found at 8 CFR § 214.14(b)(3)

The Form I-918, Supplement B instructions found on Page 3, Part 4, Item Number 2 “Possess Information/Helpfulness of the Victim,” fail to properly reflect the regulations found at 8 CFR § 214.14(b)(3) and provide law enforcement agencies with a misleading explanation of the regulations. The instructions state, “Victims who, after initiating cooperation, refuse to provide continuing assistance when needed will not meet the helpfulness requirement.” The instructions are misleading and infer that a victim must be cooperative regardless of extenuating circumstances. The regulations state, “Since the initiation of cooperation (the victim) has not refused or failed to provide information and assistance **reasonably** requested.” The form instructions provide law enforcement agencies with a narrow scope of analysis to use when determining a victim’s helpfulness, which is inconsistent with the U Visa regulations.

Recommendation: USCIS must ensure that the regulations are properly reflected in the Form I-918, Supplement B instructions. The instructions should state, “Victims who, after initiating cooperation, refuse or fail to provide information and assistance **reasonably** requested, may not meet the helpfulness requirement.”

USCIS must ensure U Visa forms reflect changes effectuated through the Reauthorization of the Violence Against Women Act (VAWA) of 2013

I. The reauthorization of VAWA in 2013 added qualifying crimes to the statutory list and USCIS must add the new crimes to the Form I-918, Supplement B and Form I-918 Instructions

The reauthorization of VAWA in 2013 added two qualifying crimes to the statutory list found at INA §101(a)(15)(U)(iii): Stalking and Fraud in Foreign Labor Contracting.

Recommendation: USCIS must add Stalking and Fraud in Foreign Labor Contracting to the list of qualifying crimes on Form I-918, Supplement B and the instructions for Form I-918, Petition for U Nonimmigrant Status.

II. The reauthorization of VAWA eliminated the public charge inadmissibility ground and USCIS should remove questions related to public assistance on the Form I-918

Prior to March 2013, a nonimmigrant could be found to be inadmissible if they were likely to become a public charge. The reauthorization of VAWA eliminated this inadmissibility ground for U nonimmigrant visa applicants. In a policy memorandum dated June 15, 2014 USCIS stated that it would remove this question from Form I-918.^[1]

Recommendation: USCIS should remove Question 4 found on Form I-918, Page 4, Part 3.

USCIS should clarify questions regarding removal proceedings on Form I-918 and Form I-918, Supplement A

Form I-918, Petition for U nonimmigrant status, page 2, part 1, question 8 a states, “I was in immigration proceedings” but does not give the applicant an option if they are currently in immigration proceedings.

^[1] See PM-602-0102, “Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions,” available at: http://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/PM-602-0102_TVPR_A_2013.pdf.

Form I-918, Supplement A Petition for Qualifying Family Member of U-1 Recipient, page 3, part 4, question 8 asks, “Has your family member ever been in immigration proceedings?” However, it does not give the derivative applicant an option if they are currently in proceedings.

Recommendation for Form I-918: The form should state, “I am or was in removal proceedings” with the option to write or check, “Currently in Removal/Exclusion/Deportation/Rescission/Judicial Proceedings” instead of an exact date. If applicants are currently in proceedings, the form should refer them to page 5, part 3, question 17.

Recommendation for Form I-918, Supplement A: USCIS should ask, “Has your family member ever been, or is your family member currently in removal proceedings?” The applicant should be given the option to write or check, “Currently in Removal/Exclusion/Deportation/Rescission/Judicial Proceedings” instead of an exact date. If applicants are currently in proceedings, the form should refer them to page 7, part 4, question 29.

Applicants should not be required to bring a copy of their completed petition to their biometrics appointment

Form I-918 and Form I-918, Supplement A states, “If you are required to appear for a biometric services appointment at a USCIS ASC, you should bring a copy of your completed petition with you.” A U Visa petitioner’s completed petition contains confidential information. The applicant should not travel with their completed applications which would put them at risk of losing or misplacing sensitive information or supporting documents.

Recommendation: USCIS should not recommend that applicants bring copies of their petitions. Instead, USCIS should continue to require an applicant bring their original biometrics notice. In addition, USCIS may recommend an applicant also bring their receipt notices.

USCIS should eliminate requirements for disclosure and evidence of juvenile court proceedings and delinquency adjudications

Applicants should not be required to disclose juvenile delinquency incidents or provide evidence thereof, as the requirement places an undue burden on both the government and applicants and is inconsistent with immigration case law. Form I-918 and Form I-918 Supplement A requires that an applicant disclose information related to any arrest, citation or detention by any law enforcement officer for any reason. Dispositions of juvenile delinquency are not considered convictions for the purpose of immigration law. *See Matter of Devision*, 22 I&N Dec. 1362 (BIA 2000) (en banc). Therefore, an applicant should not be required to disclose a juvenile adjudication on their petition. In addition, laws regarding disclosure of juvenile delinquency dispositions vary from state to state. Some states prohibit the disclosure of some juvenile court records, thus placing an undue burden on an applicant if USCIS requests this evidence.

Recommendation for Form I-918 and Form I-918, Supplement A: USCIS should amend all questions related to arrests (citations or detentions), charges and alternative sentencing programs so that applicants with juvenile court proceedings or adjudications do not need to disclose this information. For example, the questions on both Form I-918 and Form I-918, Supplement A should read:

- Have you EVER been arrested, cited, or detained by any law enforcement officer (*excluding* arrests as a juvenile)?
- Have you EVER been charged with committing any crime or offense (*NOT* including incidents handled in juvenile court)?
- Have you EVER been placed in an alternative sentencing or a rehabilitative program (*excluding* those related to a juvenile adjudication)?

In the alternative, USCIS must not issue requests for evidence for juvenile records from states in which such disclosure of records is prohibited.

Thank you for considering the above-mentioned comments. Should you have any questions or concerns, please do not hesitate to contact us at ktalbert@heartlandalliance.org (312.660.1611), tteofilo@heartlandalliance.org (312.660.1304) or mhelbling@heartlandalliance.org (312.660.1318).

Sincerely,

[signature attached]

Karolyn Talbert

Associate Director of Legal Services

[signature attached]

Trisha Teofilo Olave

Legal Supervisor

[signature attached]

Megan Helbling

VAWA and U Visa *Pro Bono* Project Paralegal

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