



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Zoey Jones - Immigration Attorney

BROOKLYN DEFENDER SERVICES

Presented before

The New York Police Department (NYPD)

Public Hearing on

Police Department U Visa Certification Proposed Rule

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My name is Zoey Jones. I am a practicing immigration attorney at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as other civil legal services, social work support and advocacy, for 40,000 clients in Brooklyn every year. I thank the NYPD for the opportunity to testify about the proposed rule on NYPD U visa certification.

Since 2009, BDS has counseled, advised or represented more than 6,500 immigrant clients. In 2015 alone, we handled more than 1500 immigration matters across a full spectrum of services. We defend detained clients facing deportation, clients identified through our criminal and family defense dockets, and clients referred from our community partners or who connected with us through community outreach clinics.

We commend the NYPD and Commissioner Bratton for proposing rules on the U visa certification request process. We look forward to collaborating with the Department to ensure that New York's immigrant residents feel empowered to work with the NYPD to protect themselves and their communities from victimization.

We believe a streamlined process like the one articulated in the proposed rules will help to ensure that a greater number of deserving applicants are able to obtain the immigration relief that they are entitled to under the law.

We hope that any adopted rules will serve to expedite NYPD responses to requests for certification and increase transparency about the decision making process. However, we believe that there is room for clarification in the rules. This testimony identifies additional considerations for the rulemaking committee, including creating an expedited response process for detained immigrants, ensuring that decision makers clearly articulate a reason for denials, and fostering greater transparency throughout the process.

Expediting NYPD Responses for Detained Immigrants

A 45-day decision rule like that articulated in §22-03 would be a vast improvement over the current processing timeline. Our office submitted certification requests nearly a year ago in a number of cases for which, as of the date of this testimony, we have yet to receive a response. Delay in the issuance of U visa certifications creates great uncertainty for many parties involved in the immigration system, including courts, judges, attorneys and immigrants.

This uncertainty is most prejudicial to individuals who are detained by Immigration and Customs Enforcement (ICE). For detained immigrants, prompt receipt of a U visa certification can mean the difference between continued residence in New York City and deportation.

Immigration judges are under no obligation to grant indefinite adjournments to individuals awaiting U visa certifications, regardless of the extent or importance of his or her cooperation with law enforcement. To the contrary, immigration judges are under constant pressure—created by both immigration prosecutors and severe immigration court backlogs—to resolve cases quickly. The law enforcement certification is the first step in the lengthy U visa application process – a U visa application cannot be filed without a certification. If a detained immigrant cannot obtain a decision on a U visa certification promptly enough to satisfy the immigration court, this delay could result in that individual's deportation.

The Department can play an important role in limiting unnecessary and harmful detention and deportation by responding promptly to requests for certification from detained immigrants, in particular.

We believe that the Department should create a streamlined process for immigration detainees that would allow their cases to take priority over other persons requesting certification. Individuals requesting certifications from the Department should specify in their letter requesting certification whether they are a detained immigrant, and requests submitted by detained immigrants should be given priority. This would allow the NYPD to allocate resources in the most efficient manner possible.

We hope to collaborate with the Department to ensure the NYPD U visa certification team has the necessary resources to process requests efficiently. We are cognizant of the high volume of cases that our criminal and immigration courts process on a daily basis. *We would welcome the opportunity to sit down with your staff to determine how legal*

service providers can help to facilitate prompt responses to certification requests, particularly in the case of detained immigrants facing deportation.

Reasons for Denials

We applaud the proposed rules for mandating that “[i]f the request is denied, the Department will also notify the applicant of the basis for the denial and the process for appealing the denial (“Department denial letter”).” Proposed NYPD Rule §22-03. The creation of an appeals process is also promising.

The following cases illustrate the need for a more thorough explanation of the denials of certification:

- Denise was a victim of domestic violence in 2003. Denise reported the crime and her partner was arrested but he failed to appear in court. Our office initially made a request to the NYPD for certification but Denise’s request was denied because there was an arrest. We were instructed to make the request to the District Attorney’s Office. BDS made a request to the District Attorney, who rejected Denise’s request for certification because they could not find the file. The D.A. referred our office back to the NYPD. Our office then made a second request to the NYPD. The Department’s denial letter merely stated “statute of limitations.”

An appeals process will be useful in challenging a denial such as the one in Denise’s case. However, the initial denial letter should be sufficiently clear so as to allow the applicant or her attorney to challenge the denial, where appropriate, or accept the denial without pursuing a fruitless appeal.

In other cases, we believe that our clients’ certification requests have been denied because of their criminal records. It is our position that it is more appropriate and more efficient to allow the Department of Homeland Security to determine when denial of a U visa is appropriate based on the applicant’s criminal record, rather than refusing to issue law enforcement certifications due to criminal convictions.

The instructions for the law enforcement certification (Form I-918, Supplement B) state: “You should use Form I-918, Supplement B, to certify that an individual submitting a Form I-918, Petition for U Nonimmigrant Status, is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity.” The law enforcement certification form does not request information concerning the applicant’s criminal record, and the instructions do not request that the certifying agency consider the applicant’s criminal record when determining whether to issue a certification.

This is likely because a U visa applicant’s criminal record, if one exists, will always be carefully scrutinized by the Department of Homeland Security, U.S. Citizenship and Immigration Services, before a decision is made about whether to grant a U visa. As part of the U visa application, the applicant is required to disclose all arrests and submit documentation proving the outcome of each arrest. U visa applications are routinely

denied due to the applicants' failure to submit all required criminal documentation, or due to the nature and/or extent of the applicant's criminal record.

For these reasons, we encourage the Department not to deny certification requests based on the applicant's criminal record.

Increased Transparency

The current U visa certification process lacks transparency. The proposed rule takes steps towards making this process more transparent, but we believe the Department can go further.

The Department should publish its internal policies and procedures related to the Department's decision whether or not to certify a crime victim's cooperation with law enforcement. For example, if the policy is that applicants must first seek certification from the prosecutor if the case proceeded beyond an arrest, then that information should be publicly available. Then legal service providers will not waste the Department's time and resources making a request without first seeking certification from the District Attorney. In cases such as that of Denise, where the District Attorney advised the victim to seek certification from the NYPD, the applicant may they make the request from the NYPD at the request of the D.A.

Most important, legal service providers who are well versed on the complex nuances of the law should be invited to speak with the NYPD to help the Department to craft internal policies and procedures that would ensure the most efficient and just outcomes in every case.

Further, it would be enormously helpful to all parties involved if the NYPD would *provide on its website a contact phone number and email address for a point person at the Department on this issue*. The current guidelines list only the address for the Domestic Violence Unit. This lack of information makes it nearly impossible for attorneys and immigration court personnel to inquire about the status of an immigrant's request for certification. As noted above, this would be enormously helpful to backlogged immigration courts (who could schedule court dates for after the date when the NYPD expects to respond to the request) and immigrants themselves who are making difficult decisions about whether or not to continue fighting deportation.

Conclusion

BDS is grateful to the Department for seeking to clarify the U visa certification process.

We make the following recommendations that we think would help to facilitate the process:

1. Create an expedited processing timeline for certification applicants in immigration detention.

- a. Allow applicants to designate in their letter whether they are a detained immigrant.
 - b. Work with legal service providers to ensure that immigration detainee requests for law enforcement certifications are processed efficiently.
2. Provide more thorough explanations for denials that would allow immigrant applicants to better understand if they should appeal, and not deny certification requests due to the applicant's criminal record, as this record will already be thoroughly scrutinized by the Department of Homeland Security before a decision is made about whether to grant a U visa.
3. Increase transparency in the certification request and decision making processes:
 - a. Publish the Department's internal policies and procedures that guide decisions as to whether or not to deny an applicant's request for certification after input from legal service providers about whether said policies comport with state and federal law.
 - b. Invite legal services providers to collaborate with the Department to inform the NYPD's internal policies and procedures.
 - c. List a phone number and e-mail contact information for the U visa coordinator on the Guidelines for Requesting Law Enforcement Certification for "U" Visas document available on the Department website.

Thank you for your time and consideration of these important issues. BDS looks forward to working with the NYPD to ensure that immigrant communities feel empowered to assist the Department in making New York City safer for everyone.