SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No:	AB 917	**Hearing Date:**	June 25, 2019
Author:	Reyes		
Version:	June 14, 2019		
Urgency:	No	**Fiscal:**	Yes
Consultant:	MK		

Subject: ***Victims of Crime: Nonimmigrant Status***

HISTORY

Source: Coalition for Human Immigrant Rights

Prior Legislation: None

Support: American Civil Liberties Union; Asian Americans Advancing Justice- California; California Immigrant Policy Center; California Partnership to End Domestic Violence; California Public Defenders Association

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to reduce the timeline for a certifying entity to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas.

Existing federal law allows an immigrant who has been a victim of a crime to receive a U-visa if the Secretary of Homeland Security determines the following:

1) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;

2) The petitioner, of if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;

3) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity as described;

4) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,

5) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8 U.S.C. § 1011(a)(15)(U).)

Existing federal law allows an immigrant to receive a T-visa if the Secretary of Homeland Security determines the following:

1) The person is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;

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

3) The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,

4) The person would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

Existing law requires certifying agencies, upon the request of an immigrant victim of crime or his or her family member, to certify victim helpfulness on the applicable form so that he or she may apply for a U-visa. (Penal Code § 679.10 (e).)

Existing law creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code § 679.10 (f).)

Existing law mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Penal Code § 679.10 (h).)

Existing law requires certifying agencies, upon the request of an immigrant human-trafficking victim or his or her family member, to certify victim helpfulness on the applicable form so that he or she may apply for a T-visa. (Penal Code § 679.11 (e).)

Existing law creates a rebuttable presumption that an immigrant human-trafficking victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code § 679.11 (f).)

Existing law mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Penal Code § 679.11 (h).)

This bill requires a certifying entity to process victim certification for purposes of obtaining a U-Visa or T-Visa within 30 days of the request rather than 90, unless the non-citizen is in removal proceedings, in which case the certification must be processed in 7 days of the first business following the day the request received, rather than the current 14 days.

This bill requires the local law enforcement agency with whom the U-visa or T-visa applicant has filed a police report to provide a copy of the report to the victim, victim's family member, or the victim's immigration attorney within seven days of the first business following the day of the request.

This bill allows a victim's immigration attorney to request the necessary certification of victim helpfulness for purposes of obtaining a U-Visa or a T-Visa.

COMMENTS

1. Need for This Bill

According to the author:

> Under the Trump Administration immigration courts have significantly shifted away from due process and instead have become increasingly politicized to carry out the administration's anti-immigrant policies. Several policies that have been implemented do such include the following:
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> **reclassification of priorities which cases are docketed in immigration court (implemented January 2017)**
> https://www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocessingpriorities.pdf
>
> This policy was established in January of 2017 which states that immigrants who are currently in detained in ICE's custody shall be considered priority to have their case heard first over all other cases. Individuals who are in detention are in removal proceedings as ICE has considered them a priority for removal. Under the Trump Administration ICE's priorities are very broad and the majority of undocumented immigrants are considered a priority for removal. Prior to this policy immigration courts prioritized cases of compassion such as unaccompanied minors.
>
> **new performance measures for immigration judges (implemented January 2018)**
> https://www.justice.gov/eoir/page/file/1026721/download
>
> This policy was established in January of 2018 and builds upon the January 2017 memo by keeping the detention cases a priority and creating performance measures for immigration judges. The benchmarks that were given at numbers that are almost impossible to meet. The USDOJ did this to expedite the court proceedings, whose priorities are those that are detained, for the immigration court to be "efficient". This memo tied the hands of immigration judges, who are direct employees of the USDOJ not like their counterparts presiding over other federal courts, which does not allow for the court to review all matters presented to them. Additionally,

thousands of new immigration judges were appointed by the Trump Administration to the bench and may not be as experienced to ask the appropriate questions in a proceeding not allowing the judge to truly understand the law before them.

creation of quotas to increase the amount of cases that are adjudicated (implemented October 2018)
https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics

This memo was established in October of 2018 placed quotas for immigration judges to meet that includes complete at least 700 cases in a year, complete 85% of cases for detained individuals within three days and 10 for non-detained individuals, hear cases 95% of the time on its initial hearing date unless ICE has requested to delay the case, and other non-realistic quotas.

These new policies and others related to the increase enforcement have created a culture of vulnerability for all immigrants including those that may qualify for affirmative relief such as a U-Visa. In recent years California has enacted legislation to ensure U-Visa applicants have received certification from local law enforcement in a timely manner and for those in removal proceedings in an expedited manner. However, many immigration practitioners in deportation defense have expressed the need to create a certification process that is parallel to that of the current immigration court systems.

Mandates that have been tied to the employment of immigration judges has increasingly made all undocumented individuals a priority for removal and for cases, regardless of how difficult or delicate their particular case may be, to be adjudicated in a manner that does not truly consider due process that allows for potential U-Visa applicants to be caught in deportation.

By not mirroring a timeline that matches the current immigration court system the general public safety of California communities may be at-risk as individuals who can provide critical testimony to criminal prosecutions may be removed from the country prior to their testimony.

2. U Visas

In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U-Visa to provide immigrant crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by undocumented victims of crime. In order to qualify for a U-Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

In order to apply for a U-Visa, the qualified immigrant victim must obtain a certification of a helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U-Visa statute. This certification form is called a Form I-918.

3. T Visas

"The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status ("T-visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See *U and T Visa Law Enforcement Resource Guide,* Department of Homeland Security, p. 9, < https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf >.)

"The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (*Id*. at pp. 9-10.)

To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form or trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (*Id*. at p. 9.)

Although declaration is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (*Id*. at pp. 10-11.)

4. Changes to timelines and who can request the certification

Under existing law, an agency making the certification that is necessary for a U-Visa must do so within 90 days. This bill changes that timeline to 30 days. If the citizen is in removal proceedings then the request certification must be made within 14 days of the request and this bill changes that to 7 days after the first business day following the day the request was received. This bill also clarifies that the victim's family member, attorney or immigration representative may also request a copy of the police report and may make the request that the victim's cooperation be certified.

5. Argument in Support

The American Civil Liberties Union supports this bill stating:

> In 2000, Congress created the created the U visa and T visa to strengthen the ability of law enforcement agencies to investigate and prosecute human trafficking and to provide protections to the survivors of human trafficking and certain crimes. Under this federal administration, several policies have been implemented through executive orders and memos from the U.S. Department of Justice that have fast tracked deportation proceedings while trying the hands of immigration judges. These policies include: prioritizing all undocumented individuals for removal; creating benchmarks for immigration judges that included hearing 95% of their cases on the first scheduled date; denying continuance for those with pending applications at U.S. Citizenship and Immigration Services (USCIS) and having USCIS turn over denied applications to ICE.
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> With ICE and immigration courts operating under these policies and procedures, it is imperative that California ensure timely certification for these visas. AB 917 updates the timeline for law enforcement agencies and certification entities to provide the proper documentation to the victim or their representative.

6. Argument in Opposition

The California State Sheriffs' Association:

> Victim cooperation can be extremely valuable when investigating criminal offenses. That said, existing law on this matter requires specified officials to sign these requests and contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement discretion. The determination of whether a victim is being helpful should be the sole province of the law enforcement entity being asked to sign the certification at issue here and only with regard to the nature of the victim's cooperation.
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> Allowing more parties to "request" the certification and decreasing the time available to do such further takes the decision out of the hands of the appropriate public official and creates time and resource pressures to meet the accelerated timelines of the bill.

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