



BOARD/COMMISSION RECOMMENDATION

COMMISSION ON IMMIGRANT AFFAIRS

Recommandation : 20170109-005A
Regarding "Austin Police Department's U Visa Certification Policy "

WHEREAS, The City of Austin became a Welcoming City in September 2013

WHEREAS, Mayor Adler reaffirmed his commitment to this, stating on November 13, 2016, "everyone living in Austin deserves to be safe and to feel welcome."

WHEREAS, immigrant victims of crime are a particularly vulnerable community

WHEREAS, the Austin Police Department adopted a new system for U visa certifications, including a new policy of what certification requests would be denied, in 2016

WHEREAS, on January 21, 2016, members of the immigrant advocacy community presented to the Commission on Immigrant Affairs their concerns about the new policy, including concerns about the grounds for denial of U certifications

WHEREAS, under the new policy, one of the grounds for denial of a U visa certification is that the statute of limitations has expired

WHEREAS, on September 12, 2016, representatives of the Austin Police Department presented their interpretation of the U visa certification policy to the Austin Commission on Immigrant Affairs, and at that meeting, commissioners expressed concern about the denial of U visa certifications based on the statute of limitations

WHEREAS, the Commission on Immigrant Affairs expressed concerns that immigrants eligible for a U visa might not know a U visa is available to them until after the statute of limitations expires, because the Austin Police Department does not regularly advise victims of crime about the U visa program

WHEREAS, in cases where the perpetrator is never arrested and therefore never prosecuted, the only law enforcement authority that can sign the certification is the Austin Police Department, and denying a certification leaves immigrant victims of crime unprotected and without relief

WHEREAS, the U visa, under the Immigration and Nationality Act at Section 101(a)(15)(U)(i)(III), encompasses protection of a victim who "has been helpful, is being helpful, or is likely to be helpful," which includes past assistance and not just current assistance, and therefore denying certifications where a victim has been helpful in the past appears to violate the statute

WHEREAS, attorneys representing the immigrant community in Austin have presented multiple case examples to the Commission on Immigrant Affairs of denials of U visa certifications based solely on the fact that at the time of the certification request, the statute of limitations had expired, cases in which the victim cooperated with the Austin Police Department and was harmed because of the crime

WHEREAS, denying certifications to victims of crimes who have been helpful to law enforcement but for whom the statute of limitations has expired, runs counter to the city's status of a Welcoming City, runs counter to the purpose of the U visa program, which is to create trusting relationships between law enforcement and the immigrant community, and cuts off a form of relief from removal to a person otherwise eligible

WHEREAS, the public safety is protected by protecting immigrant victims of crime, because such victims will feel safe about coming forward to report crime and identify perpetrators

WHEREAS, according to Section 2-1-125 of the City Code, the Commission on Immigrant Affairs exists to advise the city council on issues of common concern to immigrants, and to "monitor requirements of federal, state, and local immigration, welfare and other laws that affect immigrants, and recommend to the city council actions to maximize the benefits to local immigrants under existing laws and to minimize the adverse impacts to local immigrants under the laws."

THEREFORE, be it:

RECOMMENDED, that the Austin Police Department reverse the portion of its policy relating to the denial of certifications based on the expiration of the statute of limitations,

RECOMMENDED, that the Austin Police Department clarify that the ground of denial of a U visa certification based on the statute of limitations is that the crime was not reported within the statute of limitations, and not that the certification was requested after its expiration

RECOMMENDED, that the Austin Police Department clarify that U visa certifications should not be denied simply because, at the time of the request for a U visa certification, the statute of limitations has expired

RECOMMENDED, that the Austin Police Department provide a means of review of certifications previously denied under this policy

PASSED by the Commission on Immigrant Affairs on January 9, 2017

Approved by the Commission on Immigrant Affairs on a 7-1 vote with Commissioners Rosalia Austin, Nicole Merritt and Krystal Gomez absent and Commissioner David Vandenberg against.

Attest:

Connie H. Gonzales

Staff Liaison