



Legislation Text

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File #: Res 1097-2016, Version: A

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Proposed Res. No. 1097-A

Resolution calling upon the United States Congress to pass and the President to sign legislation that would raise the number of U-visas available annually and establish a uniform protocol for law enforcement review of victim certification requests

By The Speaker (Council Member Mark-Viverito) and Council Members Chin, Menchaca, Rosenthal and Salamanca

Whereas, In 2000, the United States Congress passed the Battered Immigrant Women Protection Act (BIWPA) as a part of the Victims of Trafficking and Violence Protection Act (VTVPA); and

Whereas, The BIWPA established U Nonimmigrant Status, commonly referred to as “U-visas,” as a form of temporary immigration relief for victims of serious crimes; and

Whereas, In order to qualify for a U-visa, an individual must be the victim of a particularly serious crime, possess information about the crime, cooperate with law enforcement in the investigation or prosecution of the crime, and suffer a lasting harm caused by that crime; and

Whereas, In order to apply for a U-visa, an individual must obtain a certification from law enforcement affirming that they were the victim of a qualifying crime who has cooperated, is cooperating, or is likely to cooperate with the investigation or prosecution of that crime; and

Whereas, A valid U-visa grants the victim and certain immediate family members temporary permission to remain in the United States in order to assist law enforcement and allows for work authorization; and

Whereas, An individual with a U-visa and certain immediate family members may apply for Lawful Permanent Resident status three years after the approval of the U-visa; and

Whereas, Congress has allocated only 10,000 U-visas per year; and

Whereas, The United States Citizenship and Immigration Services (USCIS) should increase resources

given that, as of March 2017, it was adjudicating applications filed two years prior and there were 168,811 U-visa applications pending; and

Whereas, Despite the high number of pending applications, countless immigrants are wrongfully denied the ability to apply for a U-visa when law enforcement does not issue the required certification based on a mistaken understanding of the law. Whereas, Congress created expansive inadmissibility waivers to allow for broad U-visa eligibility for victims; and

Whereas, Prior criminal arrests, working without authorization, and unlawful presence in the United States are waivable offenses for the purpose of U-visa eligibility; and

Whereas, In light of the available waivers, law enforcement should not refuse to certify victims based on factors not listed as disqualifiers in the U-visa statute and regulations; and

Whereas, Congress intended for victims to be certified as early on in the process as possible, as evidenced by allowing certification for victims deemed “likely to be helpful;” and

Whereas, Congress does not require that victims comply with all law enforcement requests for assistance and permits victims to refuse assistance if the request is “unreasonable” in light of the victim’s particular situation; and

Whereas, In keeping with Congressional intent, law enforcement should not refuse to certify a victim for failing to comply with all requests for assistance nor withhold certification until the investigation or prosecution of the crime has concluded; and

Whereas, The lack of a uniform protocol and standards for law enforcement review of U-visa certification requests has led to disparate access to this form of immigration relief for victims across the country, including New York City; and

Whereas, The inconsistency in law enforcement policies and standards regarding U-visa certifications results in the failure of the uniform application of federal law; and

Whereas, Such failure of the application of federal law may be deemed constructive violation of federal

law by state and local authorities; and

Whereas, The VTVPA states that the U-visa “strengthens the ability of law enforcement to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes;” and

Whereas, The U-visa contributes to the safety of all New Yorkers by encouraging the reporting of serious crimes and ensuring that key witnesses are available throughout the investigation and prosecution of a crime; and

Whereas, In New York City, the U-visa has been an invaluable tool for fostering trust between immigrant communities and law enforcement, as well as for helping victims obtain justice and rebuild their lives; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Congress to pass and the President to sign legislation that would raise the number of U-visas available annually and establish a uniform protocol for law enforcement review of victim certification requests.

LS #7778  
MA/ IP/JA  
9/8/2017