AILA UNOFFICIAL NOTES AND PRACTICE TIPS

Fall Stakeholder Call with USCIS on VAWA, U, and T Issues

Practice Tips by Alison Kamhi, Sonia Parras Konrad, and Carson Osberg

The American Immigration Lawyers Association (AILA) VAWA, U, and T National Committee coordinated a stakeholder meeting with USCIS on November 16, 2023. USCIS was represented by officials from the Office of Policy & Strategy, Service Center Operations, the Vermont Service Center, and the Public Engagement Division. These notes were compiled by VAWA, U, and T National Committee members and reflect USCIS responses to questions posed by the committee and partners. USCIS's official responses to the questions submitted can be found in the Electronic Reading Room. For AILA notes from USCIS's May 2023 stakeholder meeting with AILA and partners, please see AILA Doc. No. 23050300.

This advisory provides unofficial minutes from the questions asked and answered by USCIS, along with practice tips provided by the AILA VAWA/U/T Committee.[1]

To report a trend to the AILA VAWA/U/T Committee, please do so here.[2]

Attendance

AILA: Amy Grenier, Cynthia Lucas, Carson Osberg, Alison Kamhi, Sonia Parras, Kristen Shepherd, Andrea Montavan-McKillip, Catherine Seitz, Erika Gonzalez, Evangeline Chan, Joy Ziegeweid, Lia Ocasio, Nico Ratkowski, Nicole Avila, Patty Hindo, Robin Dalton

USCIS: Elizabeth Bokan, Tiffany Britt, Meghan Catalano, Rena Cutlip-Mason, Margot Danker, Sarah Dvorak, Roxanna Garcia, Norine Han, Katerina Herodotou, Mary Herrmann, Celia Hicks, Yuri Jimenez, Sarah Krieger, Jennifer LaForce, Cecelia Levin, Ariella Paintsil, Stephanie Reither, Angelique Saltikalp, Andria Strano, Kate Syfert

[1] These notes were compiled by Kristen Shepherd, University of Georgia School of Law; Carson Osberg, Coalition to Abolish Slavery & Trafficking (CAST); Alison Kamhi, Immigrant Legal Resource Center (ILRC); Andrea Montavon-McKilllip, Montavon McKillip Law; Cynthia Lucas, Lucas & Barba LLP; and Sonia Parras Konrad, Sonia Parras Law. Practice tips were written by Alison Kamhi, Sonia Parras Konrad, and Carson Osberg.

[2] AILA Report A Trend: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.

Communication and Administrative Matters

1 Legal representatives continue to report significant delays in hotline response times, with many inquiries taking longer than the 14- to 21-day response time reported by USCIS at our engagement in May 2023. What are the current response times for the 918/914 and360 hotlines? Are response times calculated in calendar or business days? How long should practitioners wait to follow up on an inquiry that has not been addressed?

USCIS answer: The response times are 14-21 days for VAWA I-360s. The current response times for I-918 and I-914 inquiries range from 14-30 days. We have seen an increase in inquiries since the HART Service Center came into operation because more work leads to more inquiries. We calculate our response time using calendar days and the date of the earliest inquiry on our customer service platform. It's helpful to allow 45 days for a response to your inquiry. When you do submit a subsequent inquiry follow up, it is helpful to put "second request" in your subject line, which flags that you have an earlier, related inquiry.

PRACTICE TIPS:

- Since hotline inquiries are addressed on a first-come, first-serve basis, avoid multiple inquiries unless more than 45 days have elapsed or there is an emergent situation.
- If it is an emergency, indicate as much in the subject line of your email.
- If necessary, supervisory attention may be requested by indicating as much in the subject line of your email.

2 Are there any special survivor-related considerations we can cite in making expedite requests for delayed EAD applications or other humanitarian benefits? Anecdotally, it appears that applicants for non-humanitarian remedies may be able to obtain expedite requests more regularly than survivor-based requests. We fear that other benefits applicants (e.g. family- or employment-based) may have more access to documentation relating to potential job loss and hardship relating to delayed work permit applications and would like to know how USCIS factors in survivor status when adjudicating expedite requests.

USCIS answer: We appreciate this feedback from AILA. It is helpful to hear messages like this from the public so we can make sure we are providing the best customer service possible. We evaluate each expedite request individually—whether it is for humanitarian, family, or employment cases—using the criteria listed on the USCIS website: https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request. We recognize that survivors may not have access to all of the documentation that other requestors might have. If a survivor does have that documentation, they should submit it and any other information that they can provide, because that makes it easier for our personnel to make a determination on the expedite. However, if they do not have documentation, a very detailed personal statement is ideal. The statement should contain the reasons they are not able to

access those documents but does not need to detail their victimization, and it should contain any other information that would help USCIS make an expedite determination. We cannot have "too much" information.

PRACTICE TIPS:

- USCIS requested more information about possible challenges survivors may be facing with respect to expedite requests. Please report any trends to the AILA VAWA/U/T Committee here: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.
- Applicants may be able to substantiate their expedite request with a detailed personal statement and documentation of hardship/need such as significant medical issues or need for medical treatment; documentation of special circumstances relating to children or family separation; evidence of threatened or actual job loss due to no employment authorization or driver's license; debts or financial hardship from not working, from hospital bills, or from being the sole provider; etc.
- Practitioners should review any documentation submitted in connection with an expedite request to ensure it does not draw scrutiny regarding the applicant's credibility or admissibility and that it does not contain adverse information.

3 What are the options to change an attorney or accredited representative's mailing address with the humanitarian unit? Members report moving and sending in new G-28s or spreadsheets for pending cases and addresses are inconsistently updated, resulting in cards (LPR and EADs) being sent to the old address, returned, and only sometimes forwarded to the new address. Failure to update the legal representative's address—or delays in doing so—are particularly concerning when RFEs, NOIDs, or denials are sent to the incorrect address. Is the legal representative change of address method indicated on USCIS's website the preferred method for change of address for humanitarian cases? How can legal representatives confirm that the address has indeed been updated, and how long should we expect this to take?

USCIS answer: We appreciate the feedback. The best way for attorneys or accredited representatives to request a change of address is through the hotline (see "Inquiries for VAWA, T, U Filings" here: uscis.gov/about-us/contact-us). Again, the processing time for a response is 14-30 days. Please fill out all applicable fields in the G-28, including which forms you represent the individual on so customer service representatives can ensure they update the address for each form. If you send a spreadsheet for multiple petitions/applicants at once, then it is helpful to also list client names, dates of birth, A numbers, and receipt numbers, if you have them. After USCIS completes the address change, you should receive an updated receipt notice, which confirms that the address has been changed. We share jurisdiction on I-918s with NSC and the HART Service Center. If we receive a spreadsheet, the

receiving center will complete address changes for their own center and then transfer the spreadsheet to the next service center, so they can complete the ones they have jurisdiction over. It does take longer to do it that way, but we have found it is the most efficient process so we can mark the spreadsheet as address changes are completed.

PRACTICE TIPS: Follow up with the hotline if more than 45 days have elapsed without receiving an updated receipt notice. If using a spreadsheet to update multiple cases, provide a copy to all centers involved stating that you have requested change of address from the Service Center with jurisdiction over your cases.

4 On a related note, how can legal representatives verify an applicant's address has been changed following the proper submission of an AR-11 to the designated Service Center? If there is currently no way to verify this, we respectfully request that USCIS consider methods of confirming that an AR-11 submitted by a protected individual has been processed.

USCIS answer: Currently, representatives can use the hotline account to confirm whether an address change is completed. We are considering more options to make customer service channels available, including address changes for 1367-protected individuals. If we change the address change options in the future, we will notify stakeholders via the alerts system and update our USCIS website. You can register for alerts and updates here: https://www.uscis.gov/news/alerts.

PRACTICE TIPS:

- USCIS advised at an engagement with AILA in March 2022 that the best way to submit an AR-11 for a VAWA/U/T-related case is by emailing the appropriate hotline.
- If filing the AR-11 via the hotline, request a delivery confirmation through your email server and save that along with a copy of the email and the AR-11 in the client's file. If filing by mail, track the delivery of the AR-11 and save the delivery confirmation along with a copy of the AR-11. This proactive measure may be handy if you do not receive notifications in the future.

5 Are VAWA/U/T cases being considered for online filing? If so, what is the anticipated timeline for this transition?

USCIS answer: Yes, we are working on offering online filing to these customers, but only once enhanced ID protocols are developed in order to protect security. Right now, we don't have specific details on timelines, but we will share those once available.

Follow-up question: Will it be possible to file online with fee waivers? If fee waivers aren't possible, a lot will be forced to file by paper anyway.

USCIS answer: Digital services personnel are exploring this issue. They understand this is a limitation.

6 Members are reporting varying responses from USCIS when attempting to amend or supplement a pending VAWA, U, or T-related filing. Some have reported that USCIS has responded to attempts to amend or supplement via the hotline by saying that such requests should be submitted in writing to the appropriate service center. Other members have reported receiving written correspondence from the service center advising that the amendment or supplement should be submitted via the hotline. What mechanism does USCIS prefer legal representatives use when amending or supplementing a pending filing? What type of confirmation will legal representatives receive that the supplement or amendment request has made it to the file?

USCIS answer: We recommend submitting your RFE responses and supplemental documentation through the postal service. When you submit the RFE response, it is important to have cover sheets on it that lists the receipt number and the instructions for the RFE. This makes it easier for our staff to identify that it is an RFE response and route information accordingly. If submitting supplemental documents, it is helpful for the cover letter to explain that is what you are submitting to ensure we can route it to the file so it is available at the time of adjudication. Also include the applicant or petitioner's name, date of birth, A number, receipt number if you have it, and even the form type that was filed for that person. We don't generally send a confirmation letter saying we got an RFE response or supplemental documentation, but of course when the case is adjudicated that will be part of your notification.

PRACTICE TIPS:

- USCIS requested examples of contradictory guidance regarding amending or supplementing a pending filing to help the agency pinpoint the issue. Please submit any examples to the AILA VAWA/U/T Committee here: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.
- When filing your RFE response, track the delivery and save the delivery confirmation along with a copy of the response for your file. This will serve as proof that your case was delivered timely and to the right address.
- When amending or supplementing a case, place the receipt notice on top of your package and write in big red letters "supplemental evidence -please file with main case" or include a cover sheet with the same information so the mailroom can easily associate the amendment or supplement with the main file.

Survivors in Removal/With Removal Orders

7 What does USCIS do when approving an I-918 or I-914 to effectuate provisions that DHS-issued Orders of Removal are canceled by operation of law per 8 CFR §§ 214.14(c)(5)(i) and 214.11(d)(9)(i)? Is there a memorandum or other annotation made in the applicant's A-file or DHS systems?

USCIS answer: When USCIS approves an I-918 or I-914, an outstanding order of removal/deportation/exclusion issued by DHS is deemed canceled as of the date of

the approval of that benefit. Any notations we make on a Form I-918 or I-914 in our case management systems would only be about the approval, classification, and validity dates. Notifications about an approved I-918 or I-914 would be viewable in case management systems available to ICE for DHS orders. For EOIR-issued orders, once petitioners and applicants receive an I-918 or I-914 approval, they can seek cancellation of an order issued by EOIR by filing the relevant motion with the IJ or BIA. We defer to ICE regarding their procedures for joining those motions. We have no jurisdiction in removal and any updates regarding ICE's processes should come from ICE. If you are noticing issues with DHS-issued orders being canceled upon U or T approval, reach out to public.engagement@uscis.dhs.gov, Attn: Jennifer LaForce.

PRACTICE TIPS:

- Please report any post-approval trends or issues relating to DHS-issued removal orders to the AILA VAWA/U/T Committee here: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.
- File a FOIA for clients with USCS, ICE, CBP, OBIM, and EOIR, as necessary, to ensure you are aware of any prior or outstanding removal orders.
- If your client has an outstanding removal order, you may have to prepare an I-246 while the U or T petition is adjudicated if they are at risk of removal. To prepare for this possibility, gather persuasive evidence and leave it in the file in case your client is apprehended by ICE.
- For DHS-issued removal orders: although not legally necessary because the order is canceled as a matter of law, some practitioners may want to send the approval notice to CBP with a request to update their records, out of an abundance of caution. Then, if the client is traveling, practitioners may give the client a copy of the letter to CBP along with the approval notice to try to avoid lengthy secondary inspections. Inform your client that they should allow extra time to make any connecting flights after inspection by CBP.
- For EOIR-issued removal orders: file a motion to reopen and terminate either after U/T nonimmigrant status is granted or after U/T adjustment is granted. Consult with local removal practitioners regarding OPLA's willingness to join and IJ receptiveness to terminating at the nonimmigrant stage.

Extensions of Status

8 Has USCIS considered reverting back to the process of issuing a separate extension notice when a U or T nonimmigrant has timely filed for adjustment of status? Doing so would give all U nonimmigrants and T-1 nonimmigrants clear documentation of their extension of status and, consequently, their automatically extended employment authorization, which is especially critical given long (c)(9) EAD processing times.

USCIS answer: Currently, information about a U petitioner or T applicant's extension of status is contained in the I-485 application receipt notice. This information is explained in the "T, U Filings" and "Employment Authorization" sections of the receipt notice. We have considered this suggestion but ultimately have decided it is more efficient to maintain the current receipt notice format.

PRACTICE TIP: Highlight information in the I-485 receipt notice explaining that your client's status has been extended. Write a letter to the client's employer or the Department of Transportation/DMV including a copy of the receipt with this information highlighted if needed to clarify your client's continued status to preserve employment, driver's license access, etc.

T Visas

9 Can USCIS explain why, in at least some cases, T-based I-485s are being receipted by NSC and then transferred to VSC, despite the filing location continuing to be VSC? Is this to help with the fee waiver/receipt backlog at VSC?

USCIS answer: We make every effort to get receipt notices out as quickly as possible. Occasionally, we have to transfer work between centers to balance workloads, particularly if there is an attrition in staffing or an increase in filings. If we do transfer a file, it does not affect adjudicative jurisdiction. Once receipted in, it is transferred back to Vermont for adjudication. No other centers are adjudicating these.

10 In past engagements, USCIS has stated that supervisors review every I-914 denial and some RFEs. Do supervisors still review every I-914 denial? If not, can you explain what is reviewed by a supervisor and how?

USCIS answer: Yes, both I-914 and I-914A denials are reviewed by supervisors. This helps ensure that cases are adjudicated consistently—it is a quality review process. We want to make sure that decisions going out are consistent and accurate. When a supervisor reviews a denial, they review the entire file, including the application and any other documentation submitted. They review the RFE to ensure it was constructed properly and that it was sufficient, and they review the response to the RFE. This is the same for NOIDs. Once that is complete, they also review the denial letter to ensure it is complete and legally sufficient.

11 Some legal representatives are reporting I-131 applications being erroneously and solely denied for T nonimmigrants who do not have a pending application for adjustment of status. Can USCIS provide any explanation for why this might be happening, given USCIS Policy Manual guidance explicitly stating that T nonimmigrants may obtain Advance Parole and travel abroad prior to applying for adjustment of status? 3 USCIS-PM B.12.B.

USCIS answer: We looked into this and did not find denials that fall into this category. If you have case examples, please follow up with the public engagement

division. We will research the issue more once we receive examples and get back to you.

PRACTICE TIP: Please report any such denials to the AILA VAWA/U/T Committee for elevation to USCIS here: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.

U Visas

12 If a U visa applicant or U visa holder also holds another status that allows them to obtain advance parole (such as DACA, TPS, or pending affirmative asylum), would that travel on advance parole negatively impact their pending U visa petition? We understand that *Matter of Arabally and Yerrabelly* would protect the applicant from triggering any new inadmissibility grounds by traveling on advance parole, but can you confirm that their entry as a parolee would not impact their pending U visa petition in any way? Is the answer the same regardless of whether they have a U petition pending or are currently in deferred action due to a BFD or wait list adjudication?

USCIS answer: If a U visa petitioner or a U nonimmigrant, or someone holding U nonimmigrant status, departs the U.S. with a valid advance parole document on another basis, such as with DACA or TPS, the travel document does not impact the U-based grant of deferred action pursuant to a bona fide determination or placement on the U waiting list or the individual's U nonimmigrant status. However, departing the U.S. may impact an individual's eligibility for U nonimmigrant status, if their petition is pending, or may impact their eligibility for adjustment of status. This is the general risk of departing the U.S. with an advance parole document. If a person ordered removed departs, they may be subject to a bar of admission if they depart, even if they travel with advance parole. Any departure from the U.S., even with an advance parole document, is considered a departure for the purposes of the continuous physical presence requirement at INA § 245(m). Accordingly, departures from the US with an advance parole document still count towards the 180-day aggregate limit on time outside the U.S. during the requisite period for continued physical presence for adjustment of status.

PRACTICE TIPS:

- Travel abroad can always be risky. If petitioners with pending U visas travel, they may have to stay the remainder of the time to adjudication abroad and then consular process back in. If folks are able to obtain advance parole through a different means (such as being a DACA or TPS holder), that parole departure and re-entry will not affect their U deferred action or U nonimmigrant status. But prepare the client for potential issues and secondary inspection.
- USCIS does not consider departures on advance parole as "departures" for purposes of the three- or ten-year bars under INA § 212(a)(9)(B). However, departures pursuant to advance parole do count towards the 90-day single

absence/180-day aggregate absence limits for U adjustment eligibility. Departures on advance parole also do execute outstanding removal orders and thus can trigger additional inadmissibility grounds, e.g., INA § 212(a)(9)(A). Screen clients thoroughly for prior removal orders or other issues that could be affected by leaving the U.S.

- For T-1 nonimmigrant status applicants: Departure from the U.S. before or while an applicant's I-914 is pending will generally prevent a T-1 applicant from demonstrating the requisite physical presence as outlined in 8 CFR § 214.11(g). Clients should be advised early of the impact of travel abroad on their eligibility for T nonimmigrant status.
- For U or T nonimmigrant status holders who are able to obtain advance parole and wish to travel: Advise clients who are planning to travel to buy a roundtrip ticket to ensure timely return. Ensure that the client has a passport valid at least six months beyond the validity date on the U or T approval notice. Have the client check with you once back in the U.S. to provide documentation of return within the required timeframe for continuous presence, and so you can check their I-94 for the proper class and duration of admission. These steps will help document adjustment of status eligibility and will allow you to identify any issues with the client's I-94.

VAWA

13 Does VSC/NSC or HART make any kind of notation in DHS systems or an individual's A-file to suggest that a VAWA AOS interview can be waived? Does any kind of communication take place between the service centers and NBC and the local field offices regarding potential interview waiver? Additionally, are field offices encouraged to waive interviews when possible? Will there be any forthcoming guidance on VAWA adjustment interview waivers?

USCIS answer: HART Service Center officers do not determine or recommend whether an AOS interview can be waived. Field offices determine whether to hold an interview. Service Center officers can add adverse finding memos to a file if they want to flag derogatory information for the field office. Field offices may waive the interview requirement on a case-by-case basis if they determine an interview is not necessary to establish eligibility. Whether we will be issuing guidance on this topic is currently under discussion. If we have more information, we will let you know.

Motions to Reopen

14 Is there any data you can provide about processing times for Motions to Reopen/Motions to Reconsider before VSC/NSC? Additionally, how long should representatives expect to wait for a new decision or RFE to be issued after receiving notification that the service center has reopened an I-914/I-918/I-360?

USCIS answer: We don't have specific data that we can provide right now, but generally, VSC, NSC, and HART process motions to reopen and motions to

reconsider within 45-180 days after filing. That timeframe does include time to issue a decision or RFE.

Follow-Up On Previous Questions & Requests for Update

Processing Times

15 Please provide an update on the processing times for the following:

a. Issuance of VAWA/U/T-related filing Receipt Notices from time of receipt, both fee and fee waiver cases, if the timeline varies depending on whether the fee was included.

USCIS answer: For I-914s and associated forms, VSC is "current" in issuing receipt notices. For I-918s and associated forms, processing times vary between 7-14 days for the receipt notice to be issued. For VAWA I-360s and associated forms, processing times could be up to 120 days. When the HART Service Center opened, NSC began receipting the VAWA I-360s. This is a new workload for NSC so there are bugs to work out. Hopefully processing times will continue to decrease over time. We are always adjusting and seeking more efficient ways to make sure that applicants and petitioners are getting receipt notices in a timely manner.

PRACTICE TIPS: Practitioners report that it is taking two to eight months (or more) to get receipt notices in many VAWA/U/T-related filings. Given receipt delays and lost filings, it is important that practitioners obtain proof of delivery from the postal office or private carrier and track the packet to ensure delivery to the proper service center. AILA currently recommends that practitioners follow up via the appropriate hotline after approximately five months without receipt, unless there is an earlier deadline to meet. Note that refiling the application may result in assignment of multiple receipt numbers or other processing issues.

Follow-up question: We are hearing of delays on receipt notice issuance for T-based I-485s and ancillary applications, and are wondering if you have information on those receipt processing times.

USCIS answer: VSC assured me that they are up to date. If you are seeing gaps, please let us know through public engagement division: public.engagement@uscis.dhs.gov.

PRACTICE TIP: Please report any such T adjustment-related delays to the AILA VAWA/U/T Committee for elevation to USCIS here: https://www.aila.org/committees-groups/aila-national-committees/report-a-trend-to-ailas-vawa-us-and-ts-committee.

Follow-up question: The I-360 receipt processing delays are concerning, both because those are used for public benefits and because it wreaks havoc with the abeyance of I-485s at local field offices, who often ask for proof of filing within 30-90 days.

USCIS answer: This is something we will make a note of. We might be able to explore if there is an abeyance request by checking our database, which would indicate receipt by the service center and avoid having to ask applicants for this evidence.

b. Issuance of Biometrics Appointment Notices

USCIS answer: Biometrics notices are issued as part of our data entry process, but they are issued after the receipt notices. So, as you can imagine, biometrics notices take longer because we have to wait for that intake process to be complete. When receipt notices are issued, the case is then sent for biometrics scheduling. For each Service Center, you can use the receipt notice processing times as an estimate for biometrics as well.

c. Current status of U visa BFD processing times: which petitions are currently being reviewed? Are some cases being expedited for review or adjudicated out of order for training purposes instead of first in, first out processing?

USCIS answer: We are currently conducting BFDs for cases filed in January of 2019. Under previous policy guidance, we could not consider a derivative family member for a BFD until the principal had an EAD. This meant that the I-918A filings were held until we adjudicated the principal's I-765. If the I-765 was not filed as part of the application, we had to wait to get the I-765, adjudicate, and then proceed to the derivative's I-918A. On August 11, we updated guidance to allow for review of 918As to determine if a qualifying family member is eligible for BFD as soon as the principal receives their BFD, even if the principal has not yet filed an I-765. We are working to adjudicate the I-918As that were held based upon that prior policy.

PRACTICE TIPS: When filing your application, include Form I-765 with no fee. USCIS's current policy is to process the I-765s filed with the original application for BFD deferred action and including an I-765 with the initial application will speed up the issuance of the BFD EAD. Mark your cover letter with a "request for bona fide determination" and clearly state the request and the documentation submitted in support of that request.

16 On June 28, 2023, USCIS announced that biometrics can now be rescheduled via a myUSCIS online account. Will this option be available to 1367-protected individuals and if not, are any alternatives being considered aside from contacting the relevant humanitarian hotline or mailing a written request?

USCIS answer: Yes, 1367-protected individuals have access to this tool. If you have problems, contact public engagement: public.engagement@uscis.dhs.gov.

17 USCIS announced updated policy guidance on mobile biometrics services on March 7, 2023. How can a protected individual request biometrics accommodations due to a disability or medical accommodation, as indicated in Vol. 1, Part C of the Policy Manual?

USCIS answer: They can request mobile biometrics services or another accommodation online through the e-Request tool. There's a tile there you can click

on, or you can call the contact center, or email publicdisabilityaccommodations@uscis.dhs.gov. We do recommend that anyone needing an accommodation request it as soon as possible after receiving the relevant appointment notice. Anyone using a mobile biometric service will be automatically screened for a biometrics waiver or biometrics reuse. Communication for 1367-protected individuals who are not represented will be done by mail using the safe address on file.

Communication

18 Are there any updates on how inquiries that would normally be made to the USCIS Contact Center will be handled for 8 USC § 1367-protected individuals?

USCIS answer: This is something we are actively working on. We want to expand customer service channels for these individuals that protects their confidentiality, but also expands access to case information. We are hoping to have a positive update on this soon.

PRACTICE TIP: In the meantime, practitioners should continue to use the existing hotline emails as indicated on USCIS's *Contact Us* webpage under *Inquiries for VAWA, T, and U filings*.

Survivors in Removal/With Removal Orders

19 At our engagement in May 2023, SCOPS indicated that USCIS is working with ICE to implement some changes to the ICE expedite process for individuals in removal, with final orders of removal, or currently detained who have victim-based applications pending before USCIS. Do you have any updates or new guidance you're able to share with us?

USCIS answer: No, no updates right now. But we are continuing to meet with ICE and hope to provide updated guidance in the future.

PRACTICE TIP: File FOIA requests to ensure you are aware of any prior removal orders your client has. If your client has a prior removal order, prepare a file with equities to support a potential future stay of removal filing, including rehabilitation evidence as needed. If your client is still in removal proceedings, use the ICE victim-centered memo to argue for prosecutorial discretion.

20 Related to the previous question, at our engagement in May 2023, SCOPS indicated that when an ICE expedite request is received, VSC reviews the request and makes a determination of whether the file should be routed for review based on whether the individual is in custody or has a final order of removal. Does this mean that USCIS *does not* expedite review of applications and petitions for individuals who are not detained and do not have a removal order, but are currently in removal proceedings?

USCIS answer: We do review expedite requests from ICE when an individual has a final order of removal or is in custody.[3] We will review expedite requests for individuals who are in removal proceedings but are not in custody, however those have to be submitted to the hotline account by a person who is represented or by mail for unrepresented individuals. We would make the determination for those expedite requests based on our usual expedite criteria, available at https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request as discussed earlier. Submitting any documentation possible to support the expedite request is ideal.

PRACTICE TIPS:

- If your client is in ICE detention, you should immediately inform ICE that your client is a crime survivor and has a pending VAWA/U/T petition or intends to file a VAWA/U/T petition based on the crime victimization. Under ICE's victim-centered approach memo, ICE should consider the person's status as a crime victim as a positive discretionary factor in the custody determination, regardless of whether they have filed a U petition or other application for a survivor-based immigration benefit.
- If a U petition has already been filed, the ICE officer should contact USCIS to request expedited adjudication. You can ask the OPLA attorney or your client's assigned deportation officer with ERO to request a prima facie determination from USCIS. This is a process where USCIS does a cursory review of the application and confirms that it looks complete and potentially approvable. It does not mean that it will eventually be approved, nor is it the same thing as a BFD grant or placement on the waitlist. As part of the prima facie determination request, OPLA or ICE ERO can also request that USCIS expedite processing of the Form I-918 application packet. While technically this request should come from OPLA or ICE ERO, you can email the USCIS Vermont Service Center (hotlinefollowupI918I914.vsc@uscis.dhs.gov) or the Nebraska Service Center (nsc.i-918inquiries@uscis.dhs.gov), depending on where the petition is pending, to follow up on the request and remind them of the urgency of the situation. Once USCIS has issued deferred action based on a BFD grant or waitlist placement in the case, ICE should generally release the U petitioner from custody, absent exceptional circumstances.
- For T visa applicants, OPLA or ERO may also request a prima facie determination and expedite. Practitioners should make OPLA and/or ERO aware that a T visa applicant who is removed from the U.S. will no longer be eligible for T nonimmigrant status as per 8 CFR § 214.11(g)(2).

[3] As of publication of these notes, USCIS's written answers to the pre-submitted questions as posted in the Electronic Reading Room contradict the oral response to this question provided at this engagement and the previous engagement. The Committee believes the Electronic Reading Room response is a mistake and that USCIS currently entertains expedite requests from ICE for detained individuals or those with a final order of removal, but not for those currently in proceedings.

- Practitioners may request that their local OPLA attorney or ERO officer consult with the ICE Area of Responsibility (AOR) Point of Contact (POC) for victim-based immigration benefits. The AOR POC may be able to provide them with information relating to victim-based immigration benefits and can liaise with USCIS.

Extensions of Status

21 At our last engagement, USCIS indicated that it would not reject or deny an I-539 seeking extension of U or T nonimmigrant status solely for being filed before 90 days prior to the date of expiration of the validity period. USCIS also requested any examples of I-539s issued NOIDs or denials for being filed before the 90-day window, and examples were submitted in conjunction with this list of questions. Is USCIS considering or has it considered amending PM-602-0032.2 or otherwise updating the Policy Manual to specify that I-539s do not need to be filed within the 90 days preceding expiration of T or U status, especially in light of lengthy I-539 processing times and the resulting destabilizing impact on survivors and their families?

USCIS answer: We are so grateful for, and welcome, your suggestions. We are going to take this suggestion under advisement and we will keep you updated.

22 At our last engagement, USCIS indicated that it was considering our suggestion of issuing extensions of status for longer than a year given continued consular processing delays necessitating extensions of status for U/T nonimmigrants. Is there any update you can provide on this?

USCIS answer: We don't have updates on this. But I hope you understand that we continue to explore ways to eliminate hurdles in the immigration process and increase access to benefits.

VAWA

23 At our last engagement, we shared member experience that the National Benefits Center and district offices are not uniformly responsive to I-485 abeyance requests. USCIS indicated that it was looking into additional accessibility options for VAWA self-petitioners. Do you have any updates to share? Has there been any messaging to NBC and district offices about handling abeyance requests for VAWA self-petitioners?

USCIS answer: When an applicant for adjustment of status notifies us that they intend to file a self-petition and transfer the underlying basis for adjustment, the Field Operations Directorate follows established guidance to keep the Form I-485 pending and take no action for up to 30 days. During this time, the applicant must submit evidence they have filed Form I-360.

U Visas

24 At our stakeholder engagements in March 2022 and May 2023, USCIS mentioned it was considering all options for creating a mechanism for waitlisted U petitioners and those with approved U petitions to apply for Advance Parole. Is there a plan in place or update for this?

USCIS answer: We do not have any updates on this, but we are continuing to try to address hurdles to these processes for U petitioners and their qualifying family members.

25 At our stakeholder engagement in March 2022 and May 2023, USCIS mentioned it was considering all options for humanitarian parole for all petitioners/derivatives abroad who have been placed on the waitlist or for derivatives abroad where petitioners in the U.S. have been granted BFD. Is there a plan in place or update for this?

USCIS answer: We do not have any updates on this, but we are continuing to try to address hurdles to these processes for U petitioners and their qualifying family members.

Adjustment of Status

26 Will there be an option for a 1367-protected individual to receive a mailed ADIT (I-551) stamp via the process available to non-protected individuals discussed in USCIS's March 16, 2023 alert?

USCIS answer: At this time, 1367-protected individuals still need to appear in person at USCIS to receive temporary evidence of their status. The Contact Center will help schedule appointments at field offices.

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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.