



## Teleconference Recap: U Visas: A Conversation with the Department of State and USCIS

On June 20, 2011, the Citizenship and Immigration Services Ombudsman's Office (Ombudsman's Office) hosted a public teleconference regarding U nonimmigrant visas and interviewed U.S. Citizenship and Immigration Services (USCIS) and U.S. Department of State (DOS) officials.

Representing USCIS was Bryan Christian, Branch Chief, Service Center Operations, Scott Whelan, Adjudications Officer with Office of Policy and Strategy, and Colleen Renk Zengotitabengoa, Associate Counsel, Office of Chief Counsel. Representing DOS was Kevin Tierney, Post Liaison Officer for Latin America and the Caribbean of the Visa Office in the Bureau of Consular Affairs, and Rebecca Pasini, Deputy Visa Chief in Mexico City.

They explained and provided updates on the U visa process, as summarized below.

### What is the difference between U nonimmigrant status and a U nonimmigrant visa?

Mr. Tierney explained that USCIS approves U nonimmigrant petitions for people who are in the United States and for those abroad. Individuals in the United States who have an approved petition are immediately granted U nonimmigrant status by USCIS because they do not need to process through the State Department to obtain a visa to enter the U.S. DOS, through its consular offices located in U.S. consulates and embassies abroad, will interview those overseas applicants with U nonimmigrant petitions approved by USCIS. If DOS finds the applicant admissible, DOS will issue a U nonimmigrant visa to authorize travel and entry into the U.S. Upon entry to the U.S., an overseas approved applicant has U nonimmigrant status. DOS and USCIS coordinate to timely process U nonimmigrant visa applicants and derivative family members.

### How do I apply for U nonimmigrant status?

Mr. Whelan explained that an individual may petition for U nonimmigrant status by filing [Form I-918, Petition for U Nonimmigrant Status](#), with USCIS. A petition for U nonimmigrant status requires an applicant to qualify as a victim of a criminal activity designated in INA section 101(a)(15)(U). The petition must also include a [Form I-918, Supplement B, U Nonimmigrant Status Certification](#), signed by a Federal, State, or local law enforcement agency investigating or prosecuting the qualifying criminal activity.

### How do I apply for a U nonimmigrant visa?

Mr. Tierney explained that individuals outside the United States must first file a petition for U nonimmigrant status with USCIS at the Vermont Service Center (VSC). Once USCIS approves a U nonimmigrant petition, applicants can seek a U visa through DOS. Mr. Tierney explained that DOS cannot issue a U nonimmigrant visa without an approved U nonimmigrant petition from USCIS.

When a U nonimmigrant visa applicant has an approved petition, s/he should contact the relevant U.S. embassy or consulate. All U.S. embassies and consulates have email addresses at which applicants may request information, as available on the [DOS website](#). DOS emphasized that applicants should always be clear that they are seeking a U nonimmigrant visa when they contact U.S. embassies or consulates, because the U nonimmigrant visa is unique, with qualification requirements that are different compared with other nonimmigrant or immigrant visas.

Mr. Tierney noted that DOS has updated the [DS-160 online application form](#) to include a U nonimmigrant visa category. U visa applicants must follow normal appointment procedures.

### Who can certify a U nonimmigrant petition?

Mr. Whelan summarized who can certify a U nonimmigrant petition including Federal, state, and local law enforcement agencies; judges and prosecutors; state and local Departments of Children and Families; and other Federal agencies, including most recently, the U.S. Department of Labor. However, each agency has the discretion to determine whether they will certify a U nonimmigrant petition, so certifications may vary.

### **Do local law enforcement agencies know they can sign U visa certifications? How do they get this information?**

Mr. Whelan noted that there are a number of trainings on certifications available through USCIS and different non-governmental organizations. In addition, USCIS' Office of Policy and Strategy and VSC offer training on U nonimmigrant petition certifications for law enforcement personnel. Any questions on training or requests for training can be sent to [T-U-VAWATraining@uscis.dhs.gov](mailto:T-U-VAWATraining@uscis.dhs.gov).

Mr. Whelan also noted that if law enforcement agencies have questions regarding the U visa certification process, they can reach out to him directly at (202) 272-8137 or via email, [Scott.Whelan@dhs.gov](mailto:Scott.Whelan@dhs.gov).

### **How are U visas processed by USCIS and DOS?**

Mr. Tierney explained that USCIS and DOS' Visa Office develop processing procedures in coordination with USCIS International Operations and the USCIS VAWA Unit at the VSC. The Visa Office then shares these procedures to USCIS adjudicators and all visa processing posts. The Visa Office, USCIS, and posts resolve issues with individual visa cases through email, phone calls, and constant communication.

Any approved U nonimmigrant applicant experiencing issues with DOS may contact [Mr. Whelan](#).

### **If USCIS has already approved my U nonimmigrant petition, how can a consular officer deny my visa application?**

Mr. Tierney explained that when USCIS approves the U nonimmigrant petition, it is confirming that the applicant meets the criteria to obtain U nonimmigrant status as a victim of crime. However, the petition process does not address eligibility for a visa, which a consular officer determines during the visa interview. When applying for a U visa to enter the United States, all grounds of inadmissibility still apply, except the foreign residency requirement. If an individual is inadmissible, the consular officer must refuse the visa application, and the applicant must seek a waiver from USCIS at the VSC.

Mr. Whelan explained that if a U nonimmigrant petition is approved while someone is already in the United States, USCIS may grant U nonimmigrant status, which permits the person to remain legally in the country. If the person leaves, however, s/he will have to qualify for a U visa to return. To obtain a visa, the person must apply online and schedule an appointment with the appropriate U.S. Embassy or Consulate.

### **Where do I apply for a waiver of inadmissibility for my U visa application?**

Mr. Tierney noted that USCIS adjudicates all waivers for U visas at the VSC. DOS does not accept waiver applications. Mr. Whelan explained that an applicant must file [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#), with the VSC to waive each ground of inadmissibility. Each and every ground of inadmissibility must be waived before a consular officer may authorize issuance of a U nonimmigrant visa.

### **Are there any tips to provide applicants who are seeking to use the appointment-scheduling service with Mexico City?**

Ms. Pasini noted that the U.S. Embassy in Mexico City is the largest U nonimmigrant visa processing center in the world. An appointment may be scheduled [online](#). All applicants are required to fill out the [DS-160](#).

On the day of interview, applicants must self-identify as a U nonimmigrant visa applicant when they arrive at the Visa Unit for their appointment. An advocate may contact the Embassy in advance to identify a U nonimmigrant visa applicant with an appointment via email. If a U nonimmigrant visa applicant is having difficulty with scheduling an appointment, is seeking tracking/status information, or has other questions for the U.S. Embassy in Mexico City, please contact [mexico\\_visas@state.gov](mailto:mexico_visas@state.gov).

Ms. Pasini asked that visa applicants understand that even if an applicant intends to request an emergency appointment, the applicant must make a regular appointment first. Please find more information on the website of the [U.S. Embassy in Mexico City](#).

### **Is there a method for an applicant or an applicant's advocate to speak with a live person at an embassy?**

Ms. Pasini explained that the U.S. Embassy in Mexico City generally does not have the capacity to speak to individuals about specific visa cases; however the Embassy encourages U nonimmigrant visa applicants or their advocates to send questions and concerns to [mexico\\_visas@state.gov](mailto:mexico_visas@state.gov). She emphasized that the subject line should highlight the message as a U nonimmigrant visa inquiry and should include all contact information with relevant phone numbers and email

addresses to ensure a response via email or telephone within 48 hours. If no response is received in this timeframe, Ms. Pasini suggested emailing again with a note in the subject line that this is a second request.

**If an applicant is unable to obtain digital photos for the DS-160, are there any other ways to file photos?**

The U.S. Embassy in Mexico City does live photo capture for all applicants between the ages of 7 and 79. Applicants younger than 7 and older than 79 do not need to provide digital photos. However, she explained they must provide a photograph that follows DOS photograph guidelines along with the DS-160. Visa applicants may submit hard-copy photographs with DS-160 visa applications at other overseas posts.

**Is there any advice to provide applicants on how to ensure they are able to receive proper fingerprints in consulates?**

Ms. Pasini emphasized that the U.S. Embassy in Mexico City does not take fingerprints if the applicant has a cut or scraped finger. In these cases, the Embassy will proceed with the visa interview, but will ask the applicant to return to have his/her fingerprints retaken. If this is likely to be a burden for the applicant and the applicant knows that s/he has a cut, the person should consider rescheduling the appointment.

Individuals must submit ink card fingerprints to USCIS before their U nonimmigrant petition is approved, or risk delaying the processing of their U nonimmigrant visa.

In Mexico City, applicants who need to submit their fingerprints can do so at the Embassy's USCIS office on Mondays and Thursdays, from 9 a.m. to 1 p.m., without an appointment. Applicants who cannot visit during these hours can call the Embassy at 55-5080-2000 to request an appointment at the USCIS office. Even when ink card fingerprints have been submitted, it can still take time for USCIS to approve the U nonimmigrant petition and register it in the DOS-USCIS shared petition information system. The Visa Unit, however, cannot approve a U visa until the U nonimmigrant petition is approved.

**What training is provided on the U visa to both consular and USCIS officers?**

VSC adjudicators receive training on domestic violence issues and also participate in an annual training about victims of criminal activity. Consular officers cover the U nonimmigrant visa process during general training at DOS' Foreign Service Institute. However, Mr. Tierney also explained that local embassies and consulates may provide more in-depth training to their officers and staff, depending on local conditions at a given post.

**USCIS has a process of waiving the requirement for a passport in the context of the U visa. However, when someone abroad seeks to use that waiver to obtain a visa, DOS does not accept it. Could you please explain why? Are there fee waivers available for DS-232?**

Mr. Tierney explained that DOS does accept passport waivers. Normally an applicant must have a legitimate reason for not obtaining a passport. If they simply did not apply for a passport, the U.S. embassy or consulate will direct the applicant to obtain a passport. On a case by case basis, DOS may use Form DS-232, Unrecognized Passport or Waiver Cases, to issue a U visa in the absence of a passport for U visa. Passport waivers must be approved through the Visa Office at DOS in Washington, DC. Mr. Tierney noted that DOS does not waive fees.

Ms. Pasini noted that in Mexico all children may obtain a passport, either with parental consent or by court order.

Callers also had an opportunity to ask questions, many of which are included below:

**When should applicants file their U visa adjustment of status application?**

An applicant with U visa status may file for adjustment of status after three years of continuous physical presence in the United States in U nonimmigrant status. Mr. Whelan explained that if U nonimmigrant status has expired, an applicant can file an adjustment of status application late based on the U nonimmigrant status as long as a Form I-539, Application to Extend/Change Nonimmigrant Status, is filed first and approved by the VSC. If an extension request is approved, the U nonimmigrant status has been extended and the applicant is eligible to file for adjustment. The VSC adjudicates both applications on a case-by-case basis.

**What do I do if my derivative family member erroneously received a U visa with a Form I-929 approval?**

Mr. Whelan answered that Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant, is used to request an immigrant visa for a family member who never held U nonimmigrant status. If any errors occur during the

processing of this petition including erroneous receipt of a U visa, an applicant may contact the VSC at 802-527-4888 or at [hotlinefollowup19181914.vsc@dhs.gov](mailto:hotlinefollowup19181914.vsc@dhs.gov).

### **Can a consular officer re-adjudicate a Form I-192 waiver?**

Mr. Tierney reiterated that consular officers do not adjudicate Form I-192 waivers. However, he explained that consular officers make determinations about whether an applicant has a ground of inadmissibility. Applicants must have each and every inadmissibility ground waived in order to be issued a visa by a consular officer. While an applicant may have received a waiver for one ground of inadmissibility, another separate ground may be found during a subsequent interview with a consular officer. The applicant then would be required to seek a new waiver for this ground of inadmissibility by filing another Form I-192 waiver with USCIS.

### **How does a mother with U nonimmigrant status in the United States apply for her child outside the United States?**

Mr. Whelan explained that a child outside the United States must request consular processing after filing Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient, as the derivative of a principal U nonimmigrant. After the child receives an approval notice from USCIS, s/he must schedule an appointment with the local U.S. embassy or consulate to begin consular processing for the U nonimmigrant visa. Ms. Pasini noted the importance of identifying the child as a U nonimmigrant visa derivative when scheduling the appointment.

### **What is the best way for derivatives abroad to provide their fingerprints?**

Derivatives abroad can access fingerprinting services at USCIS offices co-located within U.S. embassies and consulates. In general, derivatives, or their advocates or guardians, may call or email the embassy for an appointment. Mr. Tierney and Ms. Pasini emphasized the importance of clearly noting in the call or email the purpose of the appointment and that the services are required for a U nonimmigrant visa derivative.

### **Is an I-918 Supplement B certification required for an application for U status? What if law enforcement refuses to certify it?**

All petitions for U nonimmigrant status require certification by a qualifying law enforcement entity. Ms. Zengotibengoa noted that this is a requirement in the law, which is implemented by submitting the certification form. Mr. Whelan said that if petitioners have issues with law enforcement agencies certifying petitions for U nonimmigrant status, they can provide the law enforcement agency with [his contact information](#).

### **Is parental presence required for consular processing interviews? What if no parents are present in the country to attend?**

Each consulate should be contacted directly to determine the policy on parental presence for consular processing interviews. This information also should be available on each consulate's website. If no parents are present in the country to attend an interview, Mr. Tierney suggested that applicants make an appointment with the consulate, explain the situation, and request further guidance at that point.

### **If a U-1 minor principal turns 21 before adjusting, are his or her derivative parents still eligible to maintain derivative status and adjust three years later?**

Ms. Zengotibengoa explained that as long as the parent maintained a valid U nonimmigrant status for the continuous physical presence requirement, s/he is eligible to apply for adjustment after three years, and the child's age will not have an impact.

### **What must a foreign national parent show when applying for U nonimmigrant status as an indirect victim based upon the sexual assault of their U.S. citizen child?**

A petitioning parent must independently meet all of the eligibility requirements based on the harm to their child. There must be a showing of substantial harm to the parent themselves to qualify for U nonimmigrant status.

The following are selected questions that were received after the teleconference:

### **May an applicant apply for a Form I-192 waiver for unlawful presence prior to triggering the bar? Specifically, if someone is planning to travel and knows his or her departure will trigger the unlawful presence bar, is s/he able to file Form I-192, wait for approval, and then travel?**

At this time, USCIS cannot pre-adjudicate an I-192 waiver of the unlawful presence inadmissibility ground prior to departure from the U.S. An individual may file Form I-192 after departing from the U.S. or may mail the application on the day of departure. Submitting the application on the day of departure would allow the VSC to adjudicate the waiver following the individual's departure and, therefore, after the new inadmissibility ground has been triggered.

**Before departing from the U.S., a service provider advised its client that s/he could file Form I-192 to waive an unlawful presence inadmissibility ground triggered by the departure. Was this advice correct?**

Travel outside the U.S. while in U nonimmigrant status may have serious consequences if an individual has accumulated unlawful presence while present in the U.S because a departure can trigger the unlawful presence inadmissibility grounds. Service providers should be aware of these consequences prior to advising their clients about travel. Information regarding unlawful presence and inadmissibility may be found on [www.uscis.gov](http://www.uscis.gov).

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### On This Page:

- [Upcoming Teleconferences](#)
- [Recaps from Recent Teleconferences](#)

The Ombudsman's Office hosts public teleconferences to share information on specific topics and to hear your comments and suggestions regarding your interactions with the [U.S. Citizenship and Immigration Services \(USCIS\)](#).

### Upcoming Teleconferences

#### U Visas: A Conversation with the Department of State and the USCIS

June 20, 2011, 2:00 – 3:00 EDT

The Ombudsman's Office invites you to participate in a public teleconference on "U Visas: A Conversation with the Department of State and the USCIS." The Ombudsman's Office will interview guest speakers from the Department of State and USCIS on the ins and outs of the U visa process and will reserve time for your questions, comments, and suggestions.

To participate, please RSVP to [cisombudsman.publicaffairs@dhs.gov](mailto:cisombudsman.publicaffairs@dhs.gov).

Participation in these teleconferences is anonymous for callers.

### Recaps from Recent Teleconferences

- [Export Controls Requirements on Form I-129: A Conversation with the Commerce Department](#)
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