

"U Visa: One Year After the Interim Final Rule" August 26, 2008

Questions Received Before the Call

1. Waiver of Inadmissibility Fee Waivers? - Many individuals applying for the U-visa are undocumented and must file the waiver of inadmissibility. Does USCIS accept fee waivers for the waiver of inadmissibility?

- **USCIS Response:** While there is no fee waiver currently available for the I-192, USCIS intends to publish a regulation in the future that will allow waivers of the I-192 fee for applicants filing for U nonimmigrant status. Meanwhile, applications for U nonimmigrant status filed with Form I-192 without the proper fee will be rejected. Applications filed with the Form I-192 and the proper fee, and those not requiring the Form I-192, will be accepted, processed, and adjudicated.

2. Blanket Waiver of Inadmissibility? - The most common inadmissibility issue affecting individuals applying for the U-visa is entry without inspection and prior unlawful presence. Would USCIS consider providing a blanket waiver of these grounds of inadmissibility without requiring a Form I-192? This would reduce the workload and processing times.

- **USCIS Response:** The statute does not allow for a blanket waiver of these inadmissibility grounds.

3. Law Enforcement Certifications - Some practitioners are having trouble getting the LEA certified by the designated officer because the designated officer has not worked on the case, does not have time, or is reluctant to sign for someone who is undocumented. Is USCIS considering some flexibility in the final regulations by allowing the officer that worked on the case to sign the LEA?

- **USCIS Response:** USCIS is reviewing the comments it received in response to the U Interim Rule regarding who may sign the law enforcement certification.

4. Outreach to Certifying Agencies - We have received both positive and negative feedback regarding the cooperation of the certifying agencies. Has USCIS been conducting any outreach to agencies such as police stations or DA's offices regarding the LEA certification necessary for the U-visa?

- **USCIS Response:** USCIS has been conducting nationwide outreach for local law enforcement about the certification process for the U-visa. There has been outreach to and liaison with individual police officers, victim-witness coordinators at police departments, and management authorities at police

departments and other law enforcement agencies in order to educate and help police plan coordinated strategy for victims, and to facilitate the certification process. These efforts so far have spanned the greater California area, the state of Texas, the Pacific Northwest, the south, the Metropolitan New York City area, and the metropolitan Washington, DC area.

5. Inability to Obtain LEA Certificate - What if an individual applying for a U-visa is currently in removal proceedings and qualifies for the U-visa but is unable to get the LEA certificate? Can he or she contact USCIS for assistance with the relevant law enforcement agency?

- **USCIS Response:** USCIS does not have the necessary resources to reach out to LEAs on specific cases and does not intervene on behalf of individual petitioners. As mentioned above, we have been conducting training in this area. If a law enforcement agency has a question or concern regarding the U-visa in general or the certification specifically, the LEA may reach out to the local USCIS office for more information.

6. Processing Times - Will USCIS begin to post the processing times for Form I-918 on the website?

- **USCIS Response:** USCIS will be posting processing times in the near future.

7. Employment Authorization Documents - Before the interim final rule, applicants placed in deferred action were able to apply for an EAD. They cannot apply for an EAD under the interim final rule. Considering that individuals applying for a U-visa are waiting more than a year for a decision on their cases, is USCIS considering allowing them to obtain EADs while their case is pending?

- **USCIS Response:** Individuals previously granted deferred action through the U Interim Relief program remain eligible to file an I-765 to obtain/extend work authorization based on that deferred action grant. However, there is no legal basis for granting employment authorization to those petitioners with pending I-918s who were not previously granted deferred action.

8. Adjustment of Status - Some of those individuals applying for a U-visa, who were in deferred action status for more than three years, are eligible to adjust for status. Can USCIS clarify procedures for those individuals who are eligible to adjust but have not received a decision on the I-918?

- **USCIS Response:** The petitioner must wait for his/her I-918 to be approved before filing for adjustment of status. There is no legal basis for adjustment of status prior to approval of the I-918. Furthermore, the rule that will allow adjustment of status based upon an approved I-918 is currently pending with the Office of Management and Budget.

9. Evidence Required - Can USCIS provide some guidance on what evidence is required to demonstrate "substantial mental or physical abuse"?

- **USCIS Response:** The supplementary information of Federal Register, Vol. 72, No. 179, published on September 17, 2007 indicates:

Evidence to further establish the nature of the abuse suffered may include such documentation as reports and affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Petitioners who have obtained an order of protection against the perpetrator or taken other legal steps to protect themselves against the perpetrator should submit copies of the relating legal documents. A combination of documents such as a photograph of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity may be relevant as well.

10. Certifying Agencies - Is it possible for USCIS to post a listing of certifying agencies on the USCIS website as a resource?

- **USCIS Response:** The certifying agency must be a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, that has responsibility for the investigation or prosecution, conviction or sentencing of the qualifying criminal activity of which the petitioner was a victim. This includes traditional law enforcement branches within the criminal justice system, and other agencies that have criminal investigative jurisdiction in their respective areas of expertise, such as the child protective services, Equal Employment Opportunity Commission, and Department of Labor. It is not possible to provide a comprehensive list of every agency that qualifies as a certifying agency.

11. Approvals and Denials - Do you have a number of the U-visa approvals/denials since the interim final rule was issued?

- **USCIS Response:** USCIS has begun issuing decisions on U petitions; however, specific statistics are not available at this time.

12. Current Processing Times - What are the current processing times?

- **USCIS Response:** USCIS will post this information in the near future.

Additional Questions Submitted Before the Call

1. Requests for Evidence (RFEs) – Individuals applying for a U-visa have reported that RFEs in U-visa adjudications have a 33-day response time. Practitioners have indicated that 33 days is a very short period of time to gather evidence and respond adequately to such a request. Moreover, it is a short time to raise money for the \$545 fee if an I-192 waiver is required as part of the RFE. Can USCIS explain why there is a 33-day response time for RFEs? Is this the standard time allotted for RFEs issued to U-visa petitioners?

Will USCIS consider that RFEs in the U-visa context be issued the maximum allowable period to respond? 2. Order of Adjudication - It appears that newly filed cases are being processed before those individuals who received interim relief. Is USCIS/the Vermont Service Center prioritizing U-visa petitions?

- **USCIS Response on October 17, 2008** – The Vermont Service Center (VSC) was following Headquarters policy, AFM Appendix 10-9, and local policy in applying 33-day response times for a request for Initial Evidence as required by the form instructions. However, HQ has agreed that 87 days may be given for requests involving the I-192 form and fee.

2. Order of Adjudication - It appears that newly filed cases are being processed before those individuals who received interim relief. Is USCIS/the Vermont Service Center prioritizing U-visa petitions?

USCIS Response **on October 17, 2008** -- Yes, at this time, cases are being adjudicated out of first-in first-out (FIFO) order if the I-192 form and fee are present because these are complete filings. If the I-192 form and fee have not been submitted, we are requesting them. The petition cannot be adjudicated without all required evidence.

In addition, U nonimmigrant status is only valid for four years and the time spent in interim relief counts toward that time. Petitioners for the U visa must be in valid nonimmigrant status in order to apply for adjustment of status. Currently, many of the petitioners have had interim relief for at least four years. This means that when we approve these U visa petitions, these petitioners will immediately fall out of U nonimmigrant status. Unfortunately, these petitioners cannot currently apply for adjustment of status since the adjustment regulation hasn't yet been published (it is currently pending with the Office of Management and Budget). Therefore, we are helping these petitioners remain in a valid status by withholding the adjudication of their petitions until the regulation is published and they will be able to apply for adjustment.

3. Number of Pending Cases - How many U-visa petitions has USCIS received? Is this close to or exceeding the 10,000 limit? If so, how does USCIS plan to address the waiting list? If not, will unused visas be carried over to the next fiscal year? Will USCIS follow first-in first-out (FIFO) processing?

- **USCIS Response on October 17, 2008** -- As of Oct. 1, 2008, a total of 11,687 petitions for U nonimmigrant status were pending for principal petitioners. Petitioners with complete petitions will be added to the wait list as necessary on a first-in basis. If filings are incomplete, a request for evidence will be issued.

4. Terminology – In the regulations, “helpful” defines an individual who did not refuse to comply with a reasonable request. When a victim gives the police a statement concerning the incident, is that sufficiently “helpful” if nothing else was requested of her?

- **USCIS Response on October 17, 2008** -- The regulation states that the victim cannot refuse or fail to provide reasonably requested information/assistance. If the victim complies with any reasonable requests, s/he has met this requirement. To establish helpfulness, the regulation requires the victim to submit a certification from a law enforcement agency that affirms that the victim has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity. USCIS would exclude from eligibility only those victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.

Questions During or After the Call:

1. LEA Certificate - A caller asked whether a petitioner has to supply a new law enforcement agency certificate with Form I-918 if s/he was initially granted deferred action.

- **USCIS Response on October 17, 2008** -- Generally not, as VSC will use the certificate provided in conjunction with the Interim Relief application. If there is a problem with the previous certificate, or if it is insufficient, the petitioner may be asked for a new one.

2. Advance Parole - Another caller asked whether an individual applying for a U-visa can apply for advance parole, a travel document, while his/her case is pending?

- **USCIS Response on October 17, 2008** -- There is no provision for granting an advance parole travel document for petitioners who have pending I-918s.

3. Final Rule - In September, USCIS issued an interim final rule on the U-visa. Does USCIS plan to issue a final rule? If so, when?

- **USCIS Response on October 17, 2008** -- Yes, a final rule has been drafted and is in the internal concurrence process.

4. Indirect Victims - Callers asked whether an indirect victim can apply for U-visa status. For example, if a two-year old U.S. citizen child is a victim of a qualifying crime under the interim final regulation, can the mother, an indirect victim, apply for U-visa status?

- **USCIS Response on October 17, 2008**-- The rule extends the victim definition to include certain family members of incapacitated victims. Direct victims of qualifying crimes, under age 21, are considered to be incapacitated due to their status as a child. Family members who are recognized as indirect victims and, therefore, are eligible to apply for U nonimmigrant status as principal petitioners must meet all of the eligibility requirements that the direct victim would have had to meet in order to be accorded U nonimmigrant status.

5. RFEs for Inadmissibility Waivers - A caller mentioned that USCIS has issued RFEs on inadmissibility waivers for individuals applying for the U-visa, but does not issue similar RFEs for T visas. Please explain.

- **USCIS Response on October 17, 2008** -- If a T or U applicant is inadmissible for a ground that is not automatically waived by the T or U regulations, and an inadmissibility waiver and fee were not submitted, VSC will request that the applicant file such waiver.

6. Refusal to Provide Certification - A caller asked what steps an individual applying for a U-visa can take if the certifying agency refuses to provide the certification. Please explain.

- **USCIS Response on October 17, 2008** -- If a petitioner cannot obtain a certification from a local law enforcement agency, s/he can attempt to obtain a certification from other individuals who would qualify as certifying officials, such as prosecutors, judges, or other authorities, that have responsibility for the investigation or prosecution of the qualifying criminal activities.

7. Statistics - When will USCIS publish statistics on the number of U-visa petitions pending, approved, and denied?

- **USCIS Response on October 17, 2008** -- Statistics will be published shortly.

8. Outreach - How does USCIS decide where to do its outreach to local law enforcement?

- **USCIS Response on October 17, 2008** -- The Office of Community Relations coordinates trainings based on requests from Community Relations Officers who are responsible for USCIS outreach.

9. Waivers of Inadmissibility - An individual wants to file for a U-visa, but the law enforcement certification will soon expire and the petitioner does not have money to file Form I-192 for the waiver of inadmissibility. If the case is denied due to inadmissibility, can the individual re-file a U-visa petition if and when the fee waiver regulations are passed for Form I-192?

- **USCIS Response on October 17, 2008** -- Yes.

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