

U Update: Cap Queue and DACA Derivatives Practice Pointers

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A. CIS Reaches 10,000 U Visa Cap: What Happens to Cases in the Queue?

CIS recently announced that it has reached the 10,000 cap on principal U visas for this fiscal year.

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5cd8f03530a49310VgnVCM100000082ca60aRCRD&vgnnextchnel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

Scott Whelan, CIS' U policy person, confirms that the process for those in the queue is the same as that announced in 2010

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=749a58a734cd9210VgnVCM100000082ca60aRCRD&vgnnextchnel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

Here are the most important points for those with cases pending until the new numbers are available:

Q: Will USCIS continue to accept new petitions for U nonimmigrant status for the remainder of fiscal year 2010?

A: Yes. USCIS will continue to accept and process new petitions for U nonimmigrant status and will issue a Notice of Conditional Approval to petitioners who are found eligible but who are unable to receive a U visa in fiscal year 2010 because the statutory cap has been reached. Conditionally approved petitioners will be placed on a waiting list for the next available U visa.

Q. Will petitioners who receive conditional approval be able to apply for work authorization? What about qualifying family members?

A: Yes. Conditional approval will allow the petitioner and qualifying family members to remain in the United States under deferred action. The conditional approval will also allow the petitioner and qualifying family members to request work authorization by filing Form I-765, Application for Employment Authorization.

Q. Does this apply to petitioners and qualifying family members who are in removal proceedings or who have a final order of removal?

A. Yes. If the petitioner or a qualifying family member is in removal proceedings or has a final order of removal, USCIS will issue a Notice of Conditional Approval of U nonimmigrant status and will also issue deferred action.

Q. Does the annual cap for U visas also apply to family members of petitioners?

A. No. The annual cap for U visas applies only to principal petitioners. Qualifying family members will also be placed on the waiting list since their petitions are dependent on the principal's petition. Qualifying family members on the waiting list will receive U visas when the principal petitioner receives a U visa.

B. DACA and U Derivatives

Many U derivatives may qualify for DACA (Deferred Action for Childhood Arrivals). For a more complete practice advisory on this see [**link to ASISTA practice advisory on VAWA & DACA and to IAN resources***](#)

The primary categories of U (and VAWA) applicants who may wish to explore DACA are:

- Those who filed a VAWA self-petition or U visa but have not gotten status yet and therefore lack work authorization and Deferred Action;
- U derivatives whose cases are on hold because CIS hasn't issued age-out guidance yet. Only those who have not received Deferred Action or work authorization through an Extension of Status request would qualify or need it, obviously;
- U derivatives whose U status CIS terminated when they turned 21, so they no longer have work authorization or Deferred Action. A request for Extension of Status *does not extend status by itself*. The key question is whether your client has work authorization. If not, then he or she probably does not have VAWA-based DA or approved U or VAWA self-petitioner legal status.
- VAWA self-petitioners and U applicants, including derivatives, who are at imminent risk of removal or are in removal proceedings. DACA's provisions for those in removal may be faster than existing systems for preventing victim removal.¹ This will depend on your jurisdiction and your case. Although we expect USCIS to fix the problems with the U visa system eventually, many victims of crimes and their family members are suffering while they wait. DACA may help some of them.

But remember

- Any criminal history may be a problem and is not waivable
- "Any credible evidence" is NOT the DACA standard, which is generally the "primary evidence" standard

¹ Existing mechanisms for victims include a special prima facie decision process for VAWA and U applicants in proceedings and case closure under ICE's prosecutorial discretion memoranda. If you are unfamiliar with these options, please check our website for more information = www.asistahelp.org

- There is no path to lawful permanent residence through DACA, so it's only a temporary measure for those harmed by the problems with the U visa system.