Questions and Answers

July 8, 2009

Filing T, U, and VAWA Petitions with USCIS

Background

These Questions & Answers concern filing requirements for T, U, and VAWA petitions with USCIS. They also address requests for expedited processing, confidentiality issues, adjudicator training, petition processing for applicants in removal proceedings, and travel authorizations, among other issues.

Questions and Answers

Q. USCIS may grant no more than 10,000 principal aliens U nonimmigrant status in any given fiscal year. How does USCIS intend to ensure that all 10,000 nonimmigrant visas are issued this fiscal year, i.e. by September 30, 2009?

A. The Vermont Service Center (VSC) has developed a production plan aimed at reducing the backlog of U applications by 10,000 cases by the end of the current fiscal year. In order to achieve this goal, VSC is significantly increasing the size of the T/U visa adjudication team. In addition to the twelve level two (senior) Immigration Service Officers (ISOs) already assigned to the I-918 workload, VSC has reassigned 31 additional trained ISO resources. This group consists of experienced officers who make determinations of eligibility and a group of lesser experienced ISOs who are responsible for background identity and security checks. After vetting a case through the background check process, a less senior ISO routes the case to a more senior ISO, who approves, requests evidence, or recommends denial. Recommended denials are routed to a smaller group of the most senior ISOs for completion. By triaging cases under an expanded adjudications team, learning curves should be much shorter, enabling greater level of production sooner in the process.

Q. How has the Request for Evidence (RFE) process been modified to ensure that applicants are not asked for information submitted with their original filing?

A. There have been no changes to the RFE process. We advise that when an applicant receives an RFE requesting information that was already submitted with the original filing, he or she should resubmit the requested documents along with the RFE. This is because there is always the possibility the requested document may have been lost or misfiled. The applicant may also indicate in the response that the requested document has already been submitted. If the attorney believes the RFE makes an unreasonable request for information previously submitted, he or she may call the VAWA Hotline to make a complaint.

Q. Is USCIS aware of any violations in the field of VAWA confidentiality provisions such as notices or other correspondences from the unit being sent to attorneys who are not the attorney of record? If so, how is this issue being addressed?

A. USCIS is aware of one incident in the T visa context where an RFE was sent to an attorney other than the attorney of record. Once it came to our attention, this matter was thoroughly investigated, and corrective measures were taken. USCIS takes VAWA confidentiality provisions very seriously and

works to ensure that there are no systematic problems that may lead to this problem being repeated again. We are currently developing a training module for all USCIS officers regarding confidentiality issues related to T, U, and VAWA applications. Please let us know if you are aware of other incidents where violations of confidentiality provisions have occurred.

Q. What is the process for expediting cases for T, U and VAWA applicants? What criteria are used to determine if a case will be expedited? How long are adjudications taking for expedited cases for T, U and VAWA applicants?

A. Customers should call the VSC VAWA Hotline (1-802-527-4888). It is clear that many VAWA, T, and U visa cases involve compelling humanitarian issues. Thus, established USCIS expedite criteria regarding humanitarian issues may be invoked, but customers and their representatives should be aware that any request for expeditious processing on humanitarian grounds must involve extraordinary circumstances. The VAWA unit will entertain and answer every request it receives based on a full review of the unique facts presented. Recently, USCIS and ICE have identified U visa petitions involving petitioners detained at government expense, and VSC has been expediting prima facie determinations or full adjudications of these petitions, as appropriate.

Once a decision is made on whether to expedite processing, the attorney of record will be notified of the decision. When a case is approved for expeditious processing, an expedite cover sheet is placed on the A-file, clearly designating the case as an expedite, and the case is immediately assigned to an adjudicator The adjudicator takes action on the case within one to two days, and the action may be a decision, RFE, or hold. If the case requires an RFE, the applicant has up to 87 days to respond to the RFE. Cases requiring RFE processing are tracked as expedites throughout the RFE process, and when a response is received, VSC endeavors to complete the decision as quickly as possible. If the case must be held in abeyance, we are unable to provide a time frame for adjudication.

Q. If a case is going to be expedited, when is the process initiated?

A. If the VSC decides to expedite a case, the process generally begins on the same day the request for an expedite is made and the case is accepted for expeditious processing.

Q. What is the process for legal permanent residents in removal proceedings to petition for T or U visas?

A. Lawful permanent residents requesting T or U nonimmigrant status follow the standard process for submitting a T or U visa petition, and VSC will not reject a petition simply because it is filed by an LPR. USCIS has been considering the criteria for adjudicating a T or U petition filed by or on behalf of an LPR in removal proceedings. The Office of Chief Counsel is currently reviewing the legal aspects of this issue and will be drafting applicable guidance in the near future.

Q. The Vermont Service Center has developed a new "Request for Supplemental Information" that will be mailed out to all T and U applicants. When will the Service Center begin sending these new requests?

A. The Service Center sent approximately 6,000 Requests for Supplemental Information (RSI) in May to U visa petitioners who had not filed an I-192. No RSIs were sent to T visa petitioners. VSC is currently in the process of determining whether additional RSIs need to be sent.

Q. When an applicant receives the new Request for Supplemental Information, how long will they have to respond?

A. There is no timeframe for a response, and no adverse action will result from non-response. However, applicants are encouraged to respond to the RSI as soon as possible, particularly if a visa is currently available, because USCIS has established a first in- first out (FIFO) process that determines the order in which cases are pulled for adjudication based on the date a response to the RSI was received. Petitioners who do not require an I-192 waiver are encouraged to respond accordingly as soon as possible so that those cases can be adjudicated.

Q. **What training do supervisors in the Unit receive with regard to adjudicating VAWAs/T/Us and the specific issues that come up in these cases?**
A. Supervisors receive the same training as adjudicators. VAWA Unit adjudicators initially receive four days of classroom-type training regarding basic eligibility requirements for special immigrant status under VAWA, protections and prohibitions under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (which prohibits an adverse determination of removability based solely on information provided by the abuser and requires strict confidentiality in VAWA, T, and U cases) and processes for adjudicating Form I-360 special immigrant petitions under VAWA. This training is conducted by a veteran officer of the VAWA Unit who has a Master's degree in Social Work and has extensive experience teaching the subject at the collegiate level. The initial training includes eight to ten hours specifically dedicated to understanding family violence. Officers are taught to identify the main characteristics and theories of family violence, debunk commonly held myths about family violence, and recognize the impact family violence has on individuals, families, and society. Officers also learn the ways in which immigration status, or lack thereof, and culture or cultural differences may contribute to domestic violence. Each trainee is assigned a series of hypothetical test cases which he or she completes under the mentorship of a veteran VAWA adjudicator. Trainees continue to work with a mentor and attend follow-up trainings for the next several months. VAWA officers also participate in bi-monthly team meetings during which all team members are encouraged to raise pertinent adjudication-related issues for discussion and resolution.

In addition to initial VAWA training, officers assigned to adjudication of T and U nonimmigrant status requests undergo an additional two-day training program, conducted by Senior Adjudications Officers who have detailed knowledge of the subject matter and experience in adjudicating these types of petitions and applications. The additional training consists of in-depth discussions on the eligibility requirements and various forms of evidence that might be submitted to address those requirements as well as how to assess that evidence. Officers are also given additional training in recognizing the dynamics of victimization and understanding how those influence the evidence provided to support the applicant/petitioner's claims. These officers participate in mentoring, follow-up training, and bi-monthly staff meetings in the same manner as officers assigned to adjudicate VAWA special immigrant petitions.

Q. Will the Vermont Service Center be capturing information on the types of victims?
A. In relation to U nonimmigrant petitioners, VSC does track which crimes form the basis of U nonimmigrant petitions in its case management system based on which crimes are indicated on Form I-918 or I-918A. In cases involving more than one crime, VSC notes any and all crimes that apply.

Q. Will the processing times for T/U visas be posted on the USCIS website?
A. The processing times for Forms I-914 and I-914A are not currently posted on the USCIS website. We are evaluating the best way to make this information available on the website in the future.

At present, we see little value to posting processing times for Forms I-918, I-918A, and I-929, given that, for the remainder of the fiscal year, VSC is operating outside of a pure first-in-first- out (FIFO) model and

therefore not adjudicating all cases in the order in which they were filed. Once the backlog is eliminated and the processing of these petitions becomes standard, USCIS will post processing times for U nonimmigrant petitions on the agency's website.

Q. Is there an overall triage system currently in place at the Vermont Service Center for all U visa applications? What are the processing steps after a U visa application arrives at the VSC mailroom? Are the applications adjudicated in any particular order?

Michael Aytes' response letter of 5/22/2009 to the USCIS Ombudsman's recommendations states: *"Cases will be adjudicated in chronological order as they become "adjudication ready" (i.e. when all responses to Requests for Evidence have been received.)"* But it does not discuss the order in which VSC will review cases to determine if an RFE is necessary, nor does it discuss what will happen if a determination is made that an RFE is necessary. In this scenario, will the RFE be issued immediately? Or will the case be set aside as "not adjudication ready" and VSC will hold off on issuing an RFE until it has finished final adjudication on all of those cases considered "adjudication ready"?

A. VSC has developed a production plan with the goal of utilizing the entire annual numerical visa allotment by the end of the current fiscal year. In so doing, we hope to reduce the backlog by approximately 10,000 cases by September 30. Our ability to accomplish this depends on the number of responses to Requests for Supplemental Information (RSI) and Request for Further Evidence (RFE) that USCIS receives. Therefore, we encourage applicants to submit responses as quickly as possible.

One piece of this production plan is the implementation of a triage system. Under the triage system, VSC focuses first on adjudicating cases with an I-192 waiver request on file and has sent RSIs for approximately 6,000 cases in which an I-192 was not filed. VSC has completed initial action (approval, denial, RFE) on all cases with an I-192 on file and has begun queuing for adjudication cases with a response to the RSI. After completing initial action on cases with a response to the RSI, VSC works cases with no response to the RSI. Applicants who have received an RSI are encouraged to submit a response, and those for whom an I-192 waiver request is not required are encouraged to respond accordingly.

Q. What is the status of implementing the Congressionally mandated "bona fide" standard for EADs prior to U grants? What meets the "bona fide" standard?

A. Our priority for FY 2009 is to adjudicate as many cases as possible, with an emphasis on the most vulnerable populations. For FY 2010, we are engaged in internal discussions concerning how to best leverage available resources to make bona fide determinations and balance resources needed to fully adjudicate cases. U petitioners who filed post-TVPRA 2008 may file an I-765 in the meantime, and the contractor has been instructed not to reject these applications unless the code field is blank or contains an improper EAD code. Given that we have not yet conducted a bona fide determination, we are unable to provide a description of what meets the bona fide standard. Nonetheless, we are engaged in internal discussions, particularly with respect to how the bona fide standard may differ from the standard currently used in prima facie determinations, and intend to have guidance in place by the end of August to give the VSC time before the end of the fiscal year to prepare to implement the standard after October 1.

Q. Is VSC running background checks for purposes of extending or granting EADs, as opposed to when considering the full U visa application? If so, why do this at the EAD phase instead of the U decision phase? Are others eligible for immediate EADs (e.g., self-petitioners married to USCs) subject to similar background checks? If not, why are Us targeted for checks at the EAD phase?

The FBI elimination of its backlog does not seem to have completely cured the problem of general adjudication delays due to background checks. The field reports being told that some EAD extensions are delayed due to background checks. U interim relief applicants are losing their jobs due to such delays. Moreover, delaying EADs undermines the reason Congress mandated a bona fide standard, which was to help victims of crimes gain security and safety as swiftly as possible.

We respectfully suggest that VSC refrain from running background checks until the U adjudication phase.

A. Since the implementation of interim relief provisions, there has been no change in the background check process for EAD requests by U nonimmigrant petitioners. USCIS conducts the same background checks on all EAD requests, which entails a check of the Interagency Border Inspection System (IBIS).

Q. There have been ongoing conversations between the field and USCIS about whether and how undocumented parents of USC child victims qualify for U visas, based on the theory that such children lack the capacity to participate effectively in the criminal system. What is the current policy? Any ETA on getting the policy in writing?

A. We intend to develop specific guidance in the near future. In the interim, VSC has been adjudicating cases involving this issue and we have found that, in certain circumstances, parents of child victims may qualify for U nonimmigrant status. Until we issue guidance on this issue, VSC will not deny any cases involving U petitioners who are the parents of USC child victims.

Q. Do children, either under 18 or under 14, need to meet the passport requirement or alternative to possessing a passport?

A. USCIS requires all applicants for admission as a nonimmigrant to present a valid passport unless that document has been waived. 8 CFR 214.1(a)(3). All petitioners for U nonimmigrant status, including children, are therefore subject to this requirement. USCIS may, however, waive this document requirement if the U petitioner submits a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. USCIS notes that U petitioners may request a waiver of the fee for Form I-192.

Q. Will VSC entertain and grant, where appropriate, waivers of future unlawful presence (212(a)(9)(B)) triggered when an approved U applicant leaves the US?

A typical example of this: A parent who has accrued unlawful presence before the U grant, then travels to the home country once she receives the U to help children process abroad. By leaving, she triggers a new inadmissibility ground.

To ensure uniform application of the law and quality control generally, we respectfully suggest that VSC should determine whether applicants merit waivers for future unlawful presence, if requested by applicants at time of the U decision. This would not, of course, preclude DOS from entertaining "after-acquired" inadmissibility at time of re-entry to the US.

A. Yes. We have entertained and granted inadmissibility waivers for U nonimmigrant petitioners who have departed the U.S. and were subject to INA Section 212(a)(9)(B).

Q. What do those granted U visas need to travel abroad and re-enter legally? What do those granted T visas need?

A. U nonimmigrants are not required to file a Form I-131, Application for Travel Document. However, when a U nonimmigrant departs the U.S., he or she must undergo consular processing prior to return. In

contrast, T nonimmigrants seeking to travel abroad must file Form I-131 with VSC and obtain advance parole prior to departing the U.S. Both T and U nonimmigrants who have a pending I-485 filed with VSC may file a Form I-131 with VSC to obtain an advance parole document. USCIS will continue to work with the Department of State (DOS) to address travel issues for T and U nonimmigrants.

Q. What is the statutory basis for treating U, T and V visa holders differently for travel purposes? If there is no statutory basis, why are they treated differently?
A. Regarding travel documents issued by USCIS, we are unaware that U and T nonimmigrants are treated differently for travel purposes. Both T and U nonimmigrants have the ability to depart and return to the U.S. multiple times if a Form I-131 is filed concurrently with a Form I-485 or subsequent to a pending Form I-485 filed with the VSC. U nonimmigrants who wish to travel abroad prior to filing a Form I-485 must undergo consular processing each time they depart. We understand that DOS will issue a U visa for a single entry with one month validity upon verification of approval of the visa petition. USCIS will continue to work with the Department of State (DOS) to address this issue. T nonimmigrants who request a travel document Form I-131, filed with VSC, are generally given multiple-entry advance parole. If T nonimmigrants have received single-entry advance parole, it would be helpful to have specific examples that we could research. Questions regarding the number of entries allowed under a visa issued by DOS should be addressed with DOS.

Q. Of most significance, is there a statutory basis for limiting U and T visa holders to single re-entries, as opposed to multiple re-entries? If there is no statutory basis, why are they treated differently?
A. We are unaware of a statutory basis for limiting U and T nonimmigrants to single reentries. In fact, as explained above, both U and T nonimmigrants who have filed Form I-485 or have a pending I-485 with VSC have the ability to reenter multiple times with an advance parole document. T nonimmigrants who are filing an I-131 prior to filing a Form I-485 are issued multiple entries on an advance parole document. U nonimmigrants who wish to travel abroad prior to filing a Form I-485 must undergo consular processing each time they depart. We understand that DOS will issue a U visa for a single entry with one month validity upon verification of approval of the visa petition. USCIS will continue to work with the Department of State (DOS) to address this issue.

Q. What would be needed (statute/regulation/other) to allow Us and Ts multiple exits and re-entries (acknowledging possible effects on continuous presence)?
A. As explained above, USCIS will continue to work with the Department of State (DOS) to resolve this issue.

Q. We understand a process is almost in place with DOS for processing U visas abroad. Any ETA for that guidance? Will the DOS guidance include information on biometrics?
A. USCIS is working with DOS. However, USCIS is unable to speak to issues relating to overseas consular processing. Please refer this question to DOS.

Q. What should those seeking Us abroad do to obtain entry, once approved by VSC? Is the process the same for derivatives?
A. USCIS is working with DOS. However, USCIS is unable to speak to issues relating to overseas consular processing. Please refer this question to DOS.

Q. Does/will DOS understand that VSC has adjudicated inadmissibility and that consulates should only consider "after acquired" inadmissibility grounds?

A. USCIS is working with DOS.. However, USCIS is unable to speak to issues relating to overseas consular processing. Please refer this question to DOS.

Q. Any ETA on DOS guidance on issuing immigrant visas to those who are eligible to adjust based on a granted U visa, either principal or derivative?
A. USCIS is working with DOS. However, USCIS is unable to speak to issues relating to overseas consular processing. Please refer this question to DOS.

Q. The field has reported some comments by VSC that people should wait to file for adjustment until they have their medical exam. We assume this is confusion about the inadmissibility grounds not applying at adjustment, not a grafting of inadmissibility into the general adjustment discretion standard.
A. A valid medical exam documented on Form I-693, Report of Medical Examination and Vaccination Record, is required as part of the initial evidence for all adjustment of status applications. Documentation of a medical exam is part of the required initial evidence for an adjustment of status application. Therefore, if an applicant applies for adjustment without including Form I-693, USCIS will send an RFE requesting the document.

Q. How should derivatives of self-petitioners process abroad at the principal's adjustment phase? To whom should the 824 packet go?
A. We assume this question refers to VAWA self-petitioners. In the case of a derivative of a VAWA self-petitioner, who will undergo consular processing abroad, the Form I-824 packet should be filed with VSC, which will forward the packet to the National Visa Center.

Q. What is the status of implementing EADs for H-4s and other qualified derivatives?
A. This section is included in the forthcoming interim VAWA rule currently being drafted by USCIS.

Q. What is the status of implementing the elder abuse (for parents of USC abusers) section?
A. This section is included in the forthcoming interim VAWA rule currently being drafted by USCIS.

Q. What is the status of implementing Congress' statement encouraging USCIS to consider I-212s, especially for VAWA self-petitioners?[1] Could VSC exercise this authority? If not, what would be required to grant them such authority?
A. Service Centers have the legal authority to adjudicate I-212s in other form types. We are currently assessing the operational and policy implications of extending this authority for VAWA self-petitioners.

Q. For those who qualify based on the AG's determination that the investigation/prosecution is complete, who are AG designees? What "form" should they submit? Is a letter sufficient?
A. Please refer this question to DOJ. USCIS would ideally like to receive a written letter from DOJ confirming an applicant's qualification as an AG designee.

Q. To whom at DHS should practitioners direct requests for updates on continued presence for T nonimmigrants?
A. ICE should be contacted for updates on continued presence.

[1] Section 813(b) of the Violence Against Women and Department of Justice Reauthorization Act, Pub. L. 109-162 (Jan. 5, 2006).

Q. Can they receive copies of grants from DHS personnel other than local ICE officers, if they are having trouble getting them from local ICE?
A. We are unaware of any such process. We believe this is an internal ICE issue and should be directed to ICE through their stakeholder liaison process.

Q. Does USCIS do training for law enforcement on U visas?
A. Yes. The USCIS Office of Policy and Strategy held training sessions last summer and invited federal, state, and local law enforcement agencies to attend. OP&S is always open to inquiries from law enforcement, and VSC maintains an inquiry hotline, which is open to all levels of law enforcement.

Q. What training does the AAO get on Us, Ts, and self-petitions? On domestic violence? Does it assign specific officers to these cases?
A. The AAO assigns specific officers to adjudicate appeals of VAWA self-petitions, U and T cases. These officers receive training at the AAO and one supervisor for the AAO VAWA Unit has also attended and participated in trainings organized by the Office of Policy and Strategy. The AAO recently created a new branch for VAWA self-petitions, U, T, orphan, fiancé petitions and other related case types.

Q. When will regulations implementing TVPRA 2008 be issued?
A. At some point in the future, we will issue regulations on TVPRA 2008. In the meantime, USCIS is currently drafting interim policy guidance.

Q. How does USCIS handle those pending U applications where the applicant is currently in detention or is in removal proceedings? Is there any mechanism in place to alert USCIS of this scenario so that this caseload can be properly addressed?
A. USCIS and ICE are developing a process for ongoing data-sharing that compares applicants who have filed Form I-918, Petition for Nonimmigrant Status, against those who are in custody, subject to a final removal order, or otherwise in removal proceedings. For those petitioners who are detained, ICE may request that USCIS conduct a review of prima facie eligibility. Please note that a determination of prima facie eligibility does not guarantee that an applicant will not be removed or released, but is instead a factor that will be considered when making discretionary decisions on stays of removal or when reviewing custody conditions.

Applicants who have not yet been identified by ICE can submit an inquiry to USCIS by contacting the Vermont Service Center at 802-527-4888 or Ellen Gallagher, Office of Chief Counsel, at (202) 550-4608 or ellen.gallagher@dhs.gov.

How will I know if USCIS has made a prima facie determination in my case?
A. USCIS is currently working to complete prima facie determinations or complete adjudications where appropriate for U nonimmigrant petitioners in detention. As part of the process that is being developed by USCIS and ICE, USCIS would provide notification to ICE about these determinations or adjudications so that ICE may consider an alien's request for an administrative stay of a final order of removal under section 237(d) of the Immigration and Nationality Act. USCIS is willing to work with petitioners and their representatives on a case-by-case basis if they believe that a prima facie determination was not issued by USCIS or not received by ICE.