

U Visa Consular Processing: How to Get Qualifying Family Members to the U.S. and How to Effectively Use Humanitarian Parole to Reunify Families

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Workshop IV, Session C

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Introductions

- Edna Yang
 - Legal Director, American Gateways
- Rocio Molina
 - Associate Director, National Immigrant Women's Advocacy Project
- Mercedes Lorduy
 - Co-Director, VIDA Legal Assistance Inc.

Learning Objectives

By the end of this training, you will be better able to:

- Explain to clients consular processing for individuals entering the U.S. based on U visa grants/ Deferred Action Status (DAS)
- Understand and use the U visa and DAS waitlist and process for protection of clients
- Utilize the parole process to reunify families on the U visa waitlist
- Use the I-929 process to reunify families

When do you have to do consular processing for a U Visa?

How many of you have completed consular processing applications for U visa qualifying family members/ derivatives?

What countries were your clients
from?

Qualifying Family Members/Derivatives

Certain family members of U visa applicant will be able to obtain U nonimmigrant status as derivative family members.

If you, the U Visa applicant (referred to as the) “principal”, are...	Then...
Under 21 years of age	You may petition on behalf of your spouse, child(ren), parents, and unmarried siblings under age 18
21 years of age or older	You may petition on behalf of your spouse and child(ren).

INA §§101(a)(15)(U)(ii)

Consular Processing

- Approved I-918A – giving nonimmigrant U status
- Complete DS-160 online
 - <https://ceac.state.gov/genniv/>
- Complete Visa Application Machine Readable Visa (MRV) Payment
 - <http://mexico.usvisa-info.com> (Mexico)
 - <http://ustraveldocs.com> (Central America)
 - Go to U.S. Consulate website in specific countries and see process for visa payment for U visa
 - Zoho document through Immigration Center for Women and Children (ICWC) website

Consular Processing

- Schedule appointment for visa interview
 - <http://mexcio.usvisa-info.com> - for Mexico, you need to schedule a biometrics and interview appointments
 - Consult the consulate's webpage or Zoho document for specific processing requirements because it varies for each consulate

Consular Interview

- Derivative will receive instructions on what they need to bring to the interview
- Generally:
 - Appointment confirmation/notice
 - DS-160 and MRV fee payment confirmation
 - Original I-918A approval
 - Copy of I-918 and principal I-192 approval
 - Original Passport
 - Original Birth Certificate of principal and derivative
 - Marriage certificate (if applicable)
 - One passport style if not uploaded with DS-160 or no Applicant Service Center (ASC) appointment
 - Additional proof of relationship

From Vermont to Kentucky

- Vermont Service Center (VSC) approves the I-918
- U.S. Dept. of State's Kentucky Consular Center (KCC) is responsible for creating an electronic record of approved nonimmigrant visa petitions to allow tracking of nonimmigrant visas by consulates
- The consulate must verify the approved petition through the KCC's system, known as "PIMS"

Consular Process



U.S. Citizenship &
Immigration
Services

VSC approves I-918 and sends notice to KCC and representative



KCC gets notice, and creates record on PIMS to be accessed by consulates



Ready to pay and schedule consular interview; approval notice sent to assigned consulate

Consular Interview

- Make sure the I-918A approval is in PIMS
 - If not email KCCTUVisa@state.gov
- At interview, officer will check PIMS and evidence of relationship
- If visa approved, will receive email notification with waybill number for document pick up at selected DHL location
- Visa expiration will be same as I-918A expiration. Will usually be a multiple entry visa
 - Will be marked category “M”
 - Give warning about travel for more than 90 days at one time, or in aggregate of 180 days
- Derivative must travel to U.S. before the visa expires
- Derivative can apply for employment authorization document (EAD) once in the US

Case Scenario #1

You are helping Sara apply for a U visa. Sara is the victim of a sexual assault, which occurred at her work place. She is including her spouse, Victor, and her 4 children in her U visa application as derivatives. Her oldest, Veronica, is in Honduras and is 19 years old. Her youngest, Hector, is also in Honduras and is 5 years old. Her two other children are in the U.S. The U visa application has already been pending for 11 months.

U Visa Cap

- Only 10,000 visas per fiscal year- INA 214(p)(2)(A)
 - Derivative approvals do not count towards the 10,000 cap, INA 214(p)(2)(B)
- If cap is not met, a waitlist will be created- 8 CFR 214.14(d)(2)
 - Does not accrue unlawful presence (ULP)
 - Can be removed from waitlist and have DAS/parole terminated at discretion of US CIS, 8 CFR 214.14(d)(3)

Deferred Action Status

- U.S. Citizenship and Naturalization Services (USCIS) mails DAS letter to principals and derivatives
- DAS is not “lawful status”
- DAS has no expiration date – valid until U visa awarded or DAS revoked
- DAS gives Employment Authorization eligibility – Category (c)(14)
 - EAD only available to applicants inside the U.S.

If Sara's U visa applications are approved, who can apply for DAS?

What about her two children
abroad?

Parole for U Visas on Waitlist

- Parole is in the regulations
 - “USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.” 8 CFR 214.14(d)(2)
- Process now is similar to requesting humanitarian/public interest parole

Parole Requirements

- What is the humanitarian or public benefit reason for parole?
- Evidence of any immigration petition filed
- Form I-131
 - 2 passport style photos
 - \$360 filing form or fee waiver
- Form I-134 Affidavit of Support

What happens if a derivative doesn't enter the U.S. on the U Visa before it expires?

Case Scenario #2

Sara received her U visa and is now eligible to apply for lawful permanent residency. She comes to you for assistance. She tells you that she and Victor had some problems and so she divorced him. She is now re-married to Edwin. She also tells you that her son, Hector (whose father is not Victor), was unable to obtain a passport and could not enter the U.S., even though his U nonimmigrant status was approved. She wants to apply for her lawful permanent residency. She also wants to help Edwin attain some sort of lawful status and see if there is a way to bring Hector to the U.S. Sara was able to get legal custody of Hector, and he now has a Honduran passport.

“Qualifying family member”: defined at 8 C.F.R. 245.24(a)(2)

- Only available to family members of principal U nonimmigrants
- Only family members who have never been granted U nonimmigrant status are eligible for I-929 petition
- If the principal U nonimmigrant is a child under 21 years of age:
 - Spouse, parents, and children
- If the principal U nonimmigrant is over 21 years of age:
 - Spouses and children

Derivatives Not Included in U Visa Application Stage

- For qualifying family members not previously included as derivatives at the U visa application stage (I-918, Supplement A) :
 - Qualifying family members can also obtain immigration status by submitting Form I-929
- This process takes place at the time the principal U visa holder is ready to apply for lawful permanent residency and will allow some family members to enter the U.S. and adjust status, too

Eligibility to File I-929 Petition for Qualifying Family Member

- Qualifying family member never held U nonimmigrant status
- Family relationship exists at the time of U visa holder's adjustment and adjudication of family member's adjustment or issuance of visa
- Qualifying family member or principal U nonimmigrant would suffer "extreme hardship" if not allowed to enter or remain in USA
- Principal U nonimmigrant has adjusted, has a pending adjustment application, or is concurrently filing
- If they possessed information about the crime and are asked to assist, they did not unreasonably refuse to provide assistance

Two Step Process

Petitioning for the Family Member using Form I-929

Once Form I-929 is approved, derivative may apply for AOS/ go to consulate for immigrant visa

Eligibility to File I-929 Petition for Qualifying Family Member

- Principal U nonimmigrant files I-929 with VSC
 - May be filed concurrently with the principal's I-485, but cannot be approved until the I-485 is approved
- Once I-929 is approved qualifying family member may adjust status in the U.S. or go to a U.S. embassy or consulate for an immigrant visa (IV)
 - Can obtain work permit based on pending adjustment application

Evidence for I-929

- Form I-929
- Filing fee of \$215 or fee waiver request
- Proof of petitioner's I-485 filing or approval
- Evidence of family relationship
- Evidence of extreme hardship to family member or principal U nonimmigrant if denied
 - Evidence may relate to extent of abuse suffered, impact of loss of access to U.S. social justice system, social practices, and likelihood of harm in home country, applicant's need for services in the U.S., & age of applicant

I-929 – No Age Out Provisions

- Siblings do not qualify for I-929
- There are no age out protections for I-929
 - In U.S. – I-929 **AND** I-485 must be approved before the beneficiary turn 21
 - If consular processing, IV must be issued **AND** beneficiary must enter the U.S. before turning 21

Case Scenario #3

You meet with Edwin, and he tells you that he has been arrested in the past. He says he has been arrested for assault in 1999, two times for DWI in 2000 and 2001, and for shoplifting in 2002.

Admissibility Requirements for Adjustment for Beneficiary of I-929 Pursuant 8 C.F.R. 245.24(h)(1)(v)

- Beneficiary is not required to establish that he/she is admissible under any of the grounds set forth in INA 212(a) with the exception of INA 212(a)(3)(E)

Inadmissibility and I-929

- There is no waiver application because the only ground of inadmissibility for adjustment of status (AOS) based on an approved I-929 is terrorism grounds, INA 245(m)
- Discretion is at issue, 8 CFR 245.24(h)(1)(v)–
 - Mitigating equities for adverse factors
 - Serious adverse factors may require demonstrating exceptional and extremely unusual hardship
 - Hardship may be insufficient depending on the gravity and nature of the adverse factor

Approved I-929

- Can use the approval to apply to adjust status to legal permanent residency (LPR)
- Can use the approval to consular process for a family member as an LPR

Jurisdiction for Adjudication of I-929 & Adjustment of Status for Beneficiary

- USCIS has sole jurisdiction over all I-929, Petitions for Qualifying Family Members of Principal U nonimmigrants, pursuant to 8 C.F.R. 245.24(h)(2)
- USCIS has sole jurisdiction over all I-485, applications for AOS filed under INA section 245(m), pursuant to C.F.R. 245.24(f)

Adjustment of Status based on Approved I-929

- Form I-485
- Filing fees (\$985, \$85) or fee waiver
- Form G-325A
- Medical exam completed by a civil surgeon
- Two passport style photos
- I-929 approval and I-485 approval for petitioner
- Applicant's birth certificate
- Copy of all of the pages of the applicant's passport

Consular Processing based on approved I-929

- Process is through national visa center (NVC) like IV Process
 - Pay IV visa fees (\$379 for DS-260)
 - Complete DS-260 online
- No affidavit of support needed- 9 FAM 41.85 N. 10
- All other IV requirements (medical, police certificate, etc.) must be met
- Medical exam

Case Scenario #4

Sarah tells you that her son, Hector, has had some problems in Honduras. He has been arrested for shoplifting twice. She is not sure what happened in the cases, but her mother, who is taking care of Hector, said that he was not sent to jail.

Inadmissibility and I-929: When Family Member Abroad

- The FAM and DOS regulations are silent regarding inadmissibility issues and whether INA 245(m) control
- *FAM* refers to fact that derivatives must be *admissible* and says that I-929 applicants are *follow to join derivatives* and otherwise treated as IV applicants, 9 FAM 41.85 N.9 and N.10

Consular Interview Process

- **The logistics and steps involved in the consular interview process varies country to country!!**
 - You must carefully review guidance posted on the individual consulate's website to prepare your client for the consular IV interview
 - See link on NVC website to all consulates at:
http://travel.state.gov/visa/immigrants/info/info_3830.html

General Process for IV Consular Interview

- **The process differs country to country!**
- General steps to process:
 - Applicant completes medical exam at consulate's medical clinic (usually near the consulate & usually a few days prior to consular interview)
 - **Tip: Applicant should bring complete vaccination record**
 - Applicant attends consular interview:
 - Applicant(s) present medical examination reports from consular clinic, two additional passport-style photos, and additional documentation proving family relationship
 - Officer interviews applicant re: family relationship, admissibility, and complete documentation, and approves or denies Immigrant Visa/s to Applicant(s) or issues request for evidence (RFE)

What Happens after IV is Approved?

- Consulate hands the IV printed into applicant's passport, along with a sealed packet for Customs and Border Patrol (CBP), and applicant's original civil documents to the applicant or sends it via courier (see consulate website for process)
- The IV usually is valid for 6 months, but applicant should double check the expiration date printed on the visa
- The IV applicant must present himself at CBP inspection point (e.g., border bridge or airport) before IV expires-
 - **This process may take a few hours, especially at a bridge on the Mexican border**
- Once inspected and admitted to U.S. by CBP, the applicant automatically converts to LPR status
- **USCIS now requires on-line payment of \$165 for a card production fee before mailing the LPR card** to the applicant's U.S. address listed on the DS-230/260 (English-only option on USCIS website at www.uscis.gov/uscis-elis -requires card or check)

How to Respond to an Adverse Consular Decision

- Applicant & petitioner should be prepared to ask to speak to supervisor if consular officer is doing something improper and should be instructed to immediately write down what happened
- You can later seek an advisory opinion from the State Department in case of legal error by consulate if a legal interpretation is in dispute
 - Representative should e-mail request to legalnet@state.gov
 - Expect several months delay for response
- Can seek assistance from Congress person for inquiry or letter of support

IV Denials by Consulate

- No judicial review
- Applicant must be given written notice regarding grounds of ineligibility for legal basis of denial- 22 CFR 42.81(b)
- Applicant is usually given the opportunity to overcome ineligibility and denial shall be reconsidered if, within 1 year, applicant presents evidence to overcome- 22 CFR 42.81(b) & (c)
- Applicant may request review of legal issue from Visa Office Advisory Opinions Division (Legal net)- 22 CFR 41.121(d)

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

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NIWAP

National Immigrant Women's
Advocacy Project, American
University Washington ⁴⁷
College of Law