



U.S. Citizenship
and Immigration
Services

June 12, 2024

PA-2024-15

Policy Alert

SUBJECT: Customer Service and Interpretation of 8 U.S.C. 1367 Confidentiality Protections for U.S. Citizens

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the USCIS Policy Manual that interprets the confidentiality protections under 8 U.S.C. 1367 as ending at naturalization. USCIS is making this change as the previous practice of maintaining 8 U.S.C. 1367 protections beyond naturalization created burdens for some naturalized U.S. citizens. This policy will result in naturalized citizens having full access to USCIS electronic benefit processing and critical customer service tools that are available to other U.S. citizens.

Background

Requestors and recipients of survivor-based immigration relief (specifically relief under the Violence Against Women Act (VAWA),¹ and T and U nonimmigrant status)² are entitled to protections under 8 U.S.C. 1367. USCIS also extends the provisions of 8 U.S.C. 1367 to abused spouses of certain persons applying for employment authorization under INA 106.³

8 U.S.C. 1367 was written with the intention to protect noncitizen victims from their abusers' use of the immigration system as a tool to harm and control them. Feedback from stakeholders who work with this population and are experts in confidentiality protections confirmed that after a noncitizen victim becomes a U.S. citizen, they are less vulnerable to the power and control dynamics they previously faced, and their abuser no longer has the same means of using the immigration system against them. A naturalized U.S. citizen cannot be deported and can work and travel freely without authorization from USCIS. As a noncitizen victim transitions to a naturalized U.S. citizen, with all the protections and benefits that citizenship affords, the 8 U.S.C. 1367 protections are less relevant and necessary.

Furthermore, after the victim has naturalized, continuing the safeguards can result in case processing delays and may present more of a hardship than serve as a protection mechanism, due to heightened

¹ See Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (January 5, 2006).

² See Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000), Pub. L. 106-386 (October 28, 2000).

³ See Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants, PM-602-0130, issued March 8, 2016. Abused spouses of certain nonimmigrants may apply for employment authorization by filing an Application for Employment Authorization for Abused Nonimmigrant Spouse (Form I-765V).

identity verification requirements. As a result, USCIS has received many requests from naturalized citizens to remove the 8 U.S.C. 1367 protections so that they can access electronic benefit processing and customer service tools. USCIS also received recommendations by other stakeholders to address this barrier.

This policy update interprets 8 U.S.C. 1367 protections as ending at naturalization and recognizes that this changes our past practice.⁴ By ending the protections at naturalization, this guidance reduces burdens and inefficiencies for naturalized citizens by providing increased access to customer service tools, helping eliminate obstacles to case processing for future benefits filed by these individuals, and improving USCIS response times for certain inquiries. It also expands customer service in a manner that facilitates family reunification and lawful immigration,⁵ while continuing to safeguard confidentiality.

While USCIS has already issued policy updates to meaningfully expand customer service for 8 U.S.C. 1367 protected persons more broadly, clearly articulating the point at which these protections end will save both the agency and customers time by removing barriers to account access, benefit processing, and customer service.

USCIS remains committed to providing the statutory protections under 8 U.S.C. 1367 for victims from both harmful disclosure of confidential information and use of information from a prohibited source, such as a victim's abuser, when making adverse determinations on benefit requests. USCIS maintains the discretion to reapply 8 U.S.C. 1367 protections in certain circumstances to ensure protections are available, should the need arise.

This guidance, contained in Volume 1 of the Policy Manual, is effective July 12, 2024. On that date, USCIS will stop applying the 8 U.S.C. 1367 protections to naturalized citizens. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Explains USCIS' interpretation that 8 U.S.C. 1367 protections terminate when a person becomes a U.S. citizen.
- Clarifies that USCIS maintains the ability to reapply 8 U.S.C. 1367 protections to naturalized citizens in certain circumstances, including if questions arise regarding citizenship eligibility.

Summary of Changes

Affected Section: Volume 1 > Part A > Chapter 7 > Section E > Subsection 2, Scope of Confidentiality

⁴ For more information regarding this change in interpretation, including Administrative Procedure Act considerations, see Appendix: Update on Interpretation of 8 U.S.C. 1367 Duration of Confidentiality Protections [[1 USCIS-PM A.7](#)].

⁵ Consistent with Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, [86 FR 8277](#) (Feb. 2, 2021).

- Revises content under italicized subheading “Duration of Confidentiality Requirement”.
- Adds Appendix: Update on Interpretation of 8 U.S.C. 1367 Duration of Confidentiality Protections.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 1: General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

This policy is effective on July 12, 2024, and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 1: General Policies and Procedures

Part A – Public Services

Chapter 7. Privacy and Confidentiality

E. VAWA, T, and U Cases

1. Confidentiality Provisions

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2. Scope of Confidentiality

Duration of Confidentiality Requirement

By law, the confidentiality provisions apply while a VAWA, T, or U case is pending and after it is approved. The protections end when the request for immigration relief is denied and all opportunities for appeal of the denial have been exhausted.

These protections also terminate once a protected person naturalizes. 8 U.S.C 1367 was drafted with the intention of protecting the “alien.”¹ Naturalized U.S. citizens were not the intended category of persons to be protected.

USCIS maintains the ability to reapply 8 U.S.C 1367 protections to naturalized U.S. citizens in limited circumstances. For example, if a previously protected naturalized citizen's eligibility for citizenship were called into question, the protections would be reinstated. Additionally, the derivative beneficiaries of a protected naturalized U.S. citizen remain protected by statute until the beneficiaries become naturalized U.S. citizens.

Disclosure of Information

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Appendix: Update on Interpretation of 8 U.S.C. 1367 Duration of Confidentiality Protections

A. Background and Interpretation Change

¹ See INA 101(a)(3) (“The term ‘alien’ means any person not a citizen or national of the United States.”).

Applicants for and recipients of immigration relief under the Violence Against Women Act of 1994 (VAWA)² and the Victims of Trafficking and Violence Protection Act of 2000³ are entitled to special protections with regard to privacy and confidentiality and adverse determinations of inadmissibility and deportability.⁴

The governing statute prohibits the unauthorized disclosure of information about requestors and recipients of VAWA, T nonimmigrant, and U nonimmigrant-related benefit requests to anyone other than an officer or employee of DHS, the U.S. Department of Justice, or the U.S. Department of State who has a need to know.⁵ USCIS also extends the provisions of 8 U.S.C. 1367 to abused spouses of certain persons applying for employment authorization under the Immigration and Nationality Act (INA).⁶

Under prior practice, USCIS applied the 8 U.S.C. 1367 protections indefinitely. This has meant that USCIS maintained these protections even after naturalization.

These protections offer important safeguards: an unauthorized disclosure of information that relates to a protected person can have significant consequences. However, the protections under 8 U.S.C. 1367 can pose barriers to accessing USCIS customer service tools and electronic benefit processing after naturalization because of identity verification requirements.⁷

8 U.S.C. 1367 was designed to “ensure that abusers and criminals cannot use the immigration system against their victims,” such as by obtaining information about the existence of immigration benefit requests, “interfering with or undermining their victims’ immigration cases,” or “encouraging immigration enforcement officers to pursue removal actions against their victims.”⁸

After naturalization, the concerns underlying the creation of 8 U.S.C. 1367 become less relevant and necessary as a safety mechanism: naturalized citizens are no longer subject to removal and can travel and work without seeking permission from USCIS. However, because USCIS continued to apply the 8 U.S.C. 1367 protections after naturalization, naturalized citizens who needed to interface with USCIS continued to face limitations in accessing USCIS’ telephonic and electronic customer service tools.

8 U.S.C. 1367 protects “any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)].”⁹ “Alien” is defined at INA 101(a)(3) as “any person not a citizen or national of the United States.”

² See Pub. L. 103-322 (September 13, 1994).

³ See Pub. L. 106-386 (October 28, 2000).

⁴ See 8 U.S.C. 1367.

⁵ See 8 U.S.C. 1367(a)(2).

⁶ See Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants, PM-602-0130, issued March 8, 2016. Abused spouses of certain nonimmigrants may apply for employment authorization by filing an Application for Employment Authorization for Abused Nonimmigrant Spouse (Form I-765V).

⁷ See Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality, Section E, VAWA, T, and U Cases [1 USCIS-PM A.7].

⁸ See H.R. Rep. 109-233, p. 120 (2005).

⁹ See 8 U.S.C. 1367(a)(2).

Upon naturalization, persons protected by 8 U.S.C. 1367 become citizens and are no longer aliens; therefore, the use of the term “alien” at 8 U.S.C. 1367 authorizes USCIS to terminate these protections at naturalization. In addition, the regulations at 8 CFR 214.14(e)(1) (relating to disclosure protections for U nonimmigrants) and 8 CFR 211.1(p)(1) (relating to T nonimmigrants) apply protections to a “beneficiary of a pending or approved petition for U [or T] nonimmigrant status,” which can reasonably be understood to refer to beneficiaries up to, but not including, naturalized citizens.

By interpreting the protections under 8 U.S.C. 1367 to terminate at naturalization, USCIS continues to comply with the statutory confidentiality protections for noncitizens but reduces the burden and inefficiencies for naturalized citizens.

B. Administrative Procedure Act Considerations

The Administrative Procedure Act excepts interpretive rules; general statements of policy; and rules of agency organization, procedure, or practice from notice and comment requirements.¹⁰

On June 12, 2024, USCIS updated the Policy Manual to notify the public of its interpretation of “alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]” at 8 U.S.C. 1367 and explain that it is changing its policy to no longer apply the protections under that section to all previously protected naturalized citizens, including those who naturalized prior to the effective date of this policy, as a result of this interpretation.¹¹

USCIS’ interpretation is reasonable because “alien” is defined at INA 101(a)(3) as “any person not a citizen or national of the United States.” USCIS interprets the protections at 8 U.S.C. 1367 to terminate upon naturalization because the formerly protected persons are no longer aliens, as defined by statute. This interpretation is based on the plain language of 8 U.S.C. 1367 and INA 101(a)(3) and is consistent with the legislative intent of 8 U.S.C. 1367.¹²

The Policy Manual guidance explains and provides clarification to officers but does not add to or subtract from the statutory protections or the substantive regulations, create legally binding rights or obligations, or change the substantive standards by which USCIS evaluates applications for immigration benefit requests.

Unfair Surprise and Reliance Interest

¹⁰ See 5 U.S.C. 553(b)(A).

¹¹ See Customer Service and Interpretation of 8 U.S.C. 1367 Confidentiality Protections for U.S. Citizens, PA-2024-15, issued June 12, 2024.

¹² See H.R. Rep. 109-233, p. 120 (2005). The House Judiciary Committee report accompanying VAWA 2005 characterized 8 U.S.C. 1367 as protecting victims of domestic violence from the disclosure of information to their abusers. The report adds that the VAWA 2000 and VAWA 2005 amendments extend protections to “victims of trafficking, certain crimes and others who qualify for VAWA immigration relief,” with the purpose of “[ensuring] that abusers and criminals cannot use the immigration system against their victims.”

Changes in an agency's interpretation of a statute do not trigger notice and comment rulemaking unless the change amounts to an imposition of new rights, duties, or obligations on the affected public, or the change conflicts with another rule having the force of law.¹³ Likewise, an agency can change its interpretation of a regulation at different times in its history as long as the interpretative changes create no unfair surprise.¹⁴

Here, USCIS is reducing the barriers to the affected public after having received consistent feedback from stakeholders who have been unable to get meaningful customer service assistance because of protections lingering beyond naturalization. This interpretive change promotes equitable and efficient processing for all naturalized citizens, regardless of whether they were previously subject to 8 U.S.C. 1367.

USCIS recognizes that this is a change in long-standing practice and accordingly considered serious reliance interests that may be engendered by the practices of USCIS officers before this interpretation. USCIS also considered the possible unfair surprise for those previously protected naturalized citizens.

USCIS acknowledges that persons protected by 8 U.S.C. 1367 had protections continuing after naturalization that prohibited sharing any information about them unless certain requirements were met. However, USCIS ultimately determined that termination of the additional stringent requirements of protecting confidentiality does not place naturalized citizens at greater risk. The standard protocols the agency has in place to protect all information from unauthorized disclosure, in addition to the relevant privacy laws, remain in effect. USCIS does not release personal identifying information without an authorized purpose and proper verification.

Additionally, USCIS maintains the ability to re-apply the protections, should questions arise regarding citizenship eligibility. Further, a naturalized U.S. citizen's derivative beneficiaries remain protected by statute until the individual beneficiary becomes a naturalized U.S. citizen.

USCIS believes the overall benefits of this interpretive change outweigh any potential adverse impacts and are aligned with the plain language of the statute. Naturalized citizens will be able to utilize USCIS' customer service and electronic benefits processing tools more effectively and will remain protected from unauthorized disclosures of personal identifying information under existing privacy laws.

Implementation

USCIS delayed implementation of this policy until 30 days after publication. Upon implementation, USCIS stopped applying the 8 U.S.C. 1367 protections to all naturalized citizens, including those who previously naturalized and those who naturalize on or after the effective date of this policy. Interested parties may provide feedback on the policy, as is generally provided for Policy Manual publications.

¹³ See *Nat'l Org. of Veterans' Advocates, Inc. v. Sec'y of Veterans Affairs*, 260 F.3d 1365, 1376 (Fed. Cir. 2001). See *Warder v. Shalala*, 149 F.3d 73, 81-82 (1st Cir. 1998). See *White v. Shalala*, 7 F.3d 296, 304 (2nd Cir. 1993).

¹⁴ See *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 170-71 (2007). See *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).