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Notes and Practice Pointers
Vermont Service Center Stakeholder Event
September 18, 2015

This is a summary, compiled by ASISTA Immigration Assistance, AILA VAWA, Us & Ts Committee (AILA), and the Immigration Center for Women and Children (ICWC) of the information shared during the Vermont Service Center (VSC) Stakeholder's meeting in Essex, Vermont on September 18, 2015.¹ Lisa LaRoe, Acting Associate Director of the Humanitarian Division at VSC, Dustin Stubbs and Carrie Ryan, VAWA Unit Section Chiefs were present as well as several other subject matter experts.

This advisory contains general information shared by VSC staff and includes information that was discussed during the question and answer section of the VSC Stakeholder Engagement. We have added practice pointers and clarification where relevant. *The information contained in this advisory is not intended to be legal authority or advice, but is presented for informational purposes only.* The notes are provided for those experienced with VAWA self- petitions, U visa, and T visa relief. Basic background material and previous VSC stakeholder notes and practice pointers are available at www.asistahelp.org.

I. VSC Operational and Processing Information

VSC noted that many of the questions submitted were the same questions asked in previous years and attributed that to: 1) some issues that are tied up in policy-development, 2) some questions are related to on-going adjudication issues, and 3) the need to provide more clarifying answers or expanding previous answers this year. According to VSC representatives, stakeholder engagement is beneficial on both sides, helping both VSC and stakeholders achieve a common goal of better customer service for applicants.

Adjudicators in VSC's VAWA Unit receive vigorous training. The training begins with adjudicators learning various form types, but then the VSC brings in outside experts to train the adjudicators on domestic violence (from a social work background). The cases VAWA Unit officers work with are traumatic, and as a result the attrition rate is higher than other divisions. Officers in VSC's VAWA Unit may need to rotate out because they need a mental break. To respond to this need, the VAWA Unit will start to implement a vicarious trauma/self-care component for adjudicators.

While VSC did not specifically report on the total number of cases or confirm processing times, data on U visa filing and approvals are available on the [USCIS website](http://uscis.gov). For example,

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from April to June 2015, there were 12,898 U visa applications filed (principals and derivatives), 1,140 applications denied, and 278 applications approved.

A. **Customer Service Efforts:** VAWA Unit Customer Services is a bit different from other divisions at VSC because of the particular vetting, intake, and screening that needs to be done for confidentiality purposes.

1. **Events:** In this fiscal year (FY2015), VSC hosted 6 webinars and as as many as 600 callers participated on those webinars. VAWA Unit staff participated in in-person law enforcement engagements (including Boston, MA and Charlotte, NC). VSC recognizes that it can be a challenge for people to visit the VSC, and it will look into adding more opportunities for Q&A in its strategic plan.
 - a. **Email list:** If stakeholders would like advance notice of VSC events, they may request to be added to the mailing list to by sending an email to VSCcommunityengagement@uscis.dhs.gov, with the subject line, "Please add to stakeholder list."
 - b. VSC recognized that while stakeholders value the introductory webinars on VAWA, U and T visas, there is often very little time for questions. A Q&A session--perhaps where questions are submitted to the VAWA Unit in advance and like was regularly done in the past -- would be extremely valuable. VAWA Unit leadership will raise this issue with USCIS's Office of Policy and Strategy.
2. **VAWA Unit Hotline:** Currently, the Hotline receives about 20,000 inquiries a year. Questions related to waitlisted U visa cases have increased dramatically, leading to a delayed response time.
 - a. The VAWA Unit's average response time for phone messages is currently 5 business days, and its average response time for email messages is currently 14 business days. The same officers that adjudicate VAWA cases also staff the customer service line. Due to the unpredictable amount of case filings and inquiries, resources are constantly adjusted accordingly. VSC's preferred method of inquiry to the Hotline is via email as it is the most efficient response time. In addition, the VSC voicemail messaging system can only accommodate 100 messages a day, which is another reason that contacting the VAWA Unit by email may be a better option.
 - b. **Written Correspondence:** The VAWA Unit still receives an abundance of written (U.S. mail) correspondence, as it is the only way *pro se* applicants can reach out to VSC. The VAWA Unit prioritizes the processing of change of attorney forms and change of address forms. The VSC responds to all other written correspondence in 4-6 months. VSC plans on adding additional officers to help increase response time.

c. **VAWA Unit Hotline Practice Pointers:** VSC recommends that attorneys and representatives contact the Hotline via email, when possible, to ensure that a record of communication is established. Every time VSC receives an inquiry, an officer is assigned to it. Receiving inquiries from different contact methods will result in more than one officer working on the same issue and can cause delays. Keep in mind that VSC only replies to representatives with G-28s on file, not to applicants themselves. When contacting the Hotline via email, please use the following addresses:

- VAWA email address: hotlinefollowupi360.vsc@dhs.gov. This email address covers both inquiries on I-360s and Domestic Violence-based I-751s.
- U visa and T visa email address: hotlinefollowupi918i914.vsc@dhs.gov.

VSC has previously suggested that advocates put something specific in the subject line as to the nature of the inquiry, so it can be directed to the appropriate supervisor. Their suggestions include:

- “Outside Normal Processing Time”
- “Correcting Notice”
- “Amending Petition Information”
- “Expedite Request”
- “Change of Address”
- “New Material for Filing, attached to email”

In addition be sure to also include the following information in your Hotline inquiry:

- G-28 scanned
- Client(s) name(s) and Date(s) of Birth
- A#
- Case receipt number(s)
- Brief case summary and then your question or request.

When contacting the VAWA Unit Hotline via phone, leave a detailed message including the client’s name, A# and receipt number and a brief description of the issue. This phone number is for attorneys or accredited representatives only and an individual must have a G-28 on file to receive a call back. The voicemail may be full at times, but you can send an email when possible, as recommended by VSC

Here is the VAWA Unit Hotline phone number:

- 802-527-4888

One case per inquiry: When contacting the Hotline, please use one email/call per case. It is easier for VSC to respond if the attorney or representative does not use one email to discuss multiple cases.

Duplicate card issue: There was an issue this year in which VSC had mistakenly sent out duplicate Legal Permanent Resident (LPR) cards or Employment Authorization Documents (EAD), and a certain percentage of victim-based cases were impacted (mainly those cards produced in June-July 2015). The cases in which this occurred have been identified by VSC. For affected cases, VSC will send out a letter indicating which card the client should keep and which card should be sent back to VSC. VAWA Unit cases have to be handled differently because of the safe address and protection concerns.

- d. **Practice Pointer: Do not take any action or return a duplicate EAD or LPR card to VSC unless you hear from VSC which card to keep and which one to return.** Each card has a serial number on the back, and VSC will send a letter indicating which card remains valid and which one is a duplicate, have specific instructions for the duplicate's return. If you have any questions or have not received a letter from VSC regarding a duplicate card, contact the Hotline.

B. General Filing Tips

1. **Cover letters:** Cover letters are helpful to adjudicators, and attorneys and representatives should highlight (literally and figuratively) information that is important for the adjudicator to be aware of.
 - a. **Practice Pointer: The cover letter is not evidence;** that is, statements made by attorneys or representatives in the cover letter are not considered testimony for purposes of adjudicating the case. Cover letters are valuable if they contain legal research and argument related to the case.
2. **Change of address requests: VSC Priority**
 - a. **Practice Pointer:** Please note that the form AR-11 is under review and may change shortly. For the most recent information, go to the [AR-11 page](#) of the USCIS website.
3. **Order of documents:** The order of documents should be:
 - a. G-28: Notice of Appearance;
 - b. Application or Petition;
 - c. If U visa, Supplement B;
 - d. Other supporting documentation includes the following:
 - i. I-192 documents: Keep I-192 and related evidence together. The I-192 ends up being at the bottom but it doesn't matter where it goes in the filing.
 - ii. It is helpful to include a separate derivative index. Keep documents related to the derivative together.

4. **RFE Responses:** When submitting an RFE response, be sure to place the RFE notice on top of the filing. If the filing is not recognized as an RFE response, then it could be routed to regular correspondence and adjudication could be delayed.
 - a. When stakeholders inquired about the increase in RFEs asking for documents already submitted, VSC indicated they will follow up with contractors to identify any problems in processing and intake. Sometimes, these RFEs are issued when a document goes missing after it is filed or the applicant mentions a document in the cover letter but fails to include the document in the filing.
 - b. **Practice Pointer:** If you receive an RFE for a missing document that was already sent, attorneys or representatives may scan the document and email it to the Hotline. **If VSC does not rescind the RFE, attorneys must respond to the RFE prior to the deadline.**

5. **Filing an Appeal:** If an appeal is submitted, the regulations prescribe a two-step administrative appeals process. *See* 8 CFR §103.3(a)(2). Initially, the VSC will review the appeal and determine whether to take favorable action to grant the benefit requested. This “initial field review” should be completed within 45 days. If VSC fails to take favorable action during the initial field review, the VSC will transfer the case to the Administrative Appeals Office (AAO) at which time the entire file is sent to AAO. Stakeholders should contact the USCIS National Customer Service Center at 1-800-375-5283 or VSC if USCIS has not issued any of the following within 75 days of filing the I-290B appeal: approval; RFE, Notice of Transfer to AAO; or any other correspondence or action from the field office.
 - a. **Appellate Briefs:** Appellate briefs should be submitted directly to AAO if they are being filed separately from the underlying I-290B. When briefs are submitted separate from the I-290B to VSC, the mailroom often does not recognize them as such and there is a delay getting the brief to the AAO. If the brief and the I-290B are submitted together, they will stay together; however, if the brief is submitted subsequent to the filing of the Appeal, it should go to the AAO directly.
 - b. **Practice Pointer:** The instructions for mailing AAO briefs can be found on the [I-290B instructions](#). The recent [AAO Practice Manual](#) also has useful information regarding supplemental briefs and evidence. Keep in mind that VSC’s email account is not equipped to handle large files and submitting briefs via the Hotline is not advisable. Briefs should be filed with the I-290B or directly to the AAO.

6. Receipt Date Processing.

- a. All filings should be sent certified or with registered mail (or another mail service that provides a tracking number) in advance of any deadlines. The VSC Mailroom is closed on Friday afternoons, and the Friday afternoon drop-off isn't received until the following Monday. Filings that are due on a Friday should indicate a morning drop off time with the mail carrier. Please note that this does not always guarantee that VSC will stamp it received that day.
- b. **Practice Pointer:** Advocates should familiarize themselves with the receipt date regulations (including 8 CFR §103.2 and 8 CFR §1.1). The July 7, 2011 USCIS Memoranda, [Change in Standard Timeframes for Applicants or Petitioners to Respond to Requests for Evidence](#), provides additional guidance on responding to RFEs.

II. U Visas

- A. **U visa Cap Processing and Waitlist:** VSC stated that there are more applicants than visas available and the waitlist is into cap year FY 2018. VSC indicated there are now 95,000 pending cases, of which 45,000 have been reviewed and placed on the waitlist. Starting October 1, 2015, VSC will start updating the applications to issue visas for FY 2016 cases. Progress adjudicating pending cases will subside because it is an all-hands-on-deck effort to get those visas out to those on the waitlist.
 1. **Practice Pointer:** We have asked for a breakdown of this 95,000 number (e.g. how many of those are principal vs. derivative applicants) and will share this information as soon as it becomes available.
 2. **Practice Pointer:** VSC stated that waitlisted cases are not “pre-approved” nor “conditional approvals” and practitioners should be prepared to receive requests for additional evidence or notices terminating the case’s placement on the waitlist when appropriate. A case may be removed from the waitlist (a) under new conditions (i.e. the applicant has a new arrest) or (b) under secondary review (i.e. VSC occasionally selects cases to review again to confirm a consistent practice of adjudications). If the applicant is charged or convicted of any crimes, update your application as soon as possible and provide as much rehabilitation or humanitarian reasons to render an approval as possible, including amending the I-192 when appropriate.²
- B. **Multiple U visa statuses:** U derivatives could become a U-1 principal if they are victims of a different qualifying crime. This is a rare occurrence but sometimes happens in situations where a U-3 derivative wants to include other family members (children, spouse). In these cases, VSC is able to add the time the applicant spent in derivative U status to the time he or she spends in U principal status in order to establish continuous physical presence for adjustment of status. If the U-3 derivative was the victim of a

² See also RFEs for Waitlisted Cases, page 11-12 *infra*.

different crime, the U-3 can apply to be a U-1 principal; however, this must be as a new crime, and in these cases, U-3 applicants may not base their new case as a U-1 upon the same old crime on which their family member based the original U visa case.

1. **Practice Pointer:** If the U-3 derivative may qualify separately as a principal applicant, it may be better to get a separate Supplement B and have the person apply as a principal to include his/her other family members. Derivatives who already have U-3 status may not use the old crime as a qualifying crime to gain independent U status, rather, they must show they are the victim of a new crime.

C. U Waitlist Policy Issues

1. Currently under consideration by USCIS headquarters is the creation of a U visa bulletin (akin to the Department of State Visa bulletin for immigrant visas). This would allow stakeholders to know which fiscal year waitlisted applicants will obtain their U visa. Time that applicants spend on the U visa waitlist will not count towards accruing continuous physical presence for purposes of adjustment.
 - a. **Practice Pointer:** This problem requires, minimally, a regulatory fix, in much the same way that this problem was handled during interim relief.

C. Employment Authorization Issues

1. **Receipt Notices for (a)(19) Work Authorization:** VSC recently underwent computer enhancements and will no longer be issuing (a)(19) I-765 receipt notices. Stakeholders should not expect those receipt notices at the time of U approval, rather the (a)(19)-based work permit will automatically be generated, simply through the applicant's request on the I-918.
2. **Two-year Deferred Action Work Authorization:** Starting on March 17, 2015, VSC started issuing 2-year deferred action (c)(14) work permits to those eligible on the U visa waitlist.
3. **I-765 filing tips for U visa Applicants**
 - a. **Principal U visa Applicants**
 - i. **If Principal is in the United States:** If a principal U visa applicant is in the US at the time of filing, only include an I-765 based upon (c)(14) designation in the initial filing. Upon approval, an (a)(19) based EAD will be created. The purpose of (c)(14) is for the deferred action work authorization once the case is placed on the waitlist.
 - ii. **If Principal is outside the United States:** If principal U visa applicants are outside the U.S, then they will not need to file *any* I-765 as they are not eligible

for (c)(14) work authorization. Once the applicant has an I-94 evidencing lawful admission in U status, based upon that, VSC will produce an (a)(19)-based work permit without need to file I-765.

b. **Derivative U visa Applicants**

- i. **If Derivatives are in the United States:** If derivative U visa applicants are in the U.S. at the time of filing, then they should submit two I-765s: one pursuant to (a)(20) and the other under (c)(14). For derivatives, the approval of I-918A does not automatically generate an (a)(20) work permit. As above, the (c)(14) work permit is generated once derivatives are placed on the waitlist. In these cases, the (a)(20) I-765 is placed with I-918 and I-918A and it will not be looked at until the application is adjudicated and taken off the waitlist.
- ii. **If Derivatives are outside the United States:** If derivative U visa applicants are outside the U.S, then they will not need to file *any* I-765 as they are not eligible for (c)(14) work authorization. Once the applicant has an I-94 evidencing lawful admission in U status, then they may submit an (a)(20)-based I-765 to Vermont Service Center (with a copy of the I-94 card and approval notices).
- c. **Fees:** The I-765 requires a fee or fee waiver. If the applicant does not submit an I-912 or letter asking to waive the fee, the I-765 will be rejected. If stakeholders are experiencing inconsistent treatment on this issue, contact the Hotline and the VAWA Unit will follow up.

D. **I-192 Practice Pointers**

1. The VAWA Unit indicated that applicants should identify every inadmissibility ground that may apply in an individual's case, and include the statutory citations on Form I-192.
 - a. **Practice Pointer:** Including the inadmissibility grounds on the I-192 is important so that all government agencies are on the same page as to which grounds of inadmissibility have been waived. While U visa applicants cannot see which grounds of inadmissibility have been waived, this information is available to the Department of State. Statutory citations should be included on Form I-192, to help clarify any discrepancies or errors in the government's computer system. Our organizations continue to ask USCIS to notify applicants when a U visa is granted and specify which grounds have been waived.
2. **Travel:** Applicants are not able to pre-waive grounds that have not been triggered (i.e. unlawful presence under INA §212(a)(9)(B)). If you discover a ground of inadmissibility that you are not sure VSC is aware of, contact VSC via the Hotline to let them know, and submit an amended I-192 if a new ground of inadmissibility is

triggered. Traveling on a U visa can be a risky process which U visa holders should be ready for. If traveling abroad is going to trigger unlawful presence, file the waiver once the U visa holder has left (make sure you get the applicant's signature on a new I-192 before he or she leaves the US). Once you have a receipt, email VSC via the Hotline requesting that the VAWA Unit expedite review of the new I-192 that has been filed. This expedite request prevents the I-192 from getting stuck in the backlog and lessens the risk of a break in the applicant's continuous presence.

3. **Legal Standards:** VSC denies having shifting legal standards when adjudicating I-192s; they look under INA §212(d)(3) [the *Hranka* factors] and INA §212(d)(14) basis for the waivers. If applicants believe there is an error in the adjudication, they should file a Motion to Reopen/Reconsider.
 - a. **Practice Pointer:** When VSC issues RFEs, these RFEs do not articulate any (d)(14) factors but rather, the language in the RFEs appears to conflate the (d)(3) *Hranka* standards with (d)(14). This is an issue that ASISTA is working with counsel to brief, appeal to the AAO and, perhaps litigate in federal court. If you have cases like this and would like to be part of this effort, please contact Cecelia Friedman Levin at cecelia@asistahelp.org.
4. **Reopening of I-192:** If a T or U visa application is denied for failure to meet the requirements, then the I-192 is also denied. However, if an applicant is successful on a Motion to Reopen/Reconsider or appeal, then all ancillary applications are reopened (i.e. the I-290B filed for the underlying application, should cover other forms as well). The exception to this would be the I-765 as they typically do not stay with the file. It may be more advantageous to file a new I-765 (if applicable) if an I- 290B is approved.
 - a. **Practice Pointer:** Per VSC instructions, file one I-290B for the principal and include derivatives' Names and A Numbers on the form. It is not necessary to file an I-290B for each family member. In order to expedite the issuance of work permits, submit new Form I-765s for each derivative along with the filing.

E. DACA and U visa Issues

1. In the spring of 2015, stakeholders were informed that it was not USCIS's policy to terminate a DACA approval if U visa status is later gained, as an individual cannot hold two deferred action status grants at the same time. USCIS will deny a *DACA renewal* for an applicant who had already been granted deferred action as a U waitlisted case. However, applicants can have DACA-based deferred action until they are on the U waitlist. VSC, however, refuses to grant a U waitlist without deferred action.
 - a. **Practice Pointer:** Since it appears VSC is unwilling to consider granting U waitlist status without granting deferred action, and that subsequent U-based

deferred action supplants DACA deferred action, applicants may wish to wait to file for the U until we resolve this problem with USCIS HQ.

- b. **Practice Pointer:** It is unclear as to why CIS insists on granting deferred action to waitlisted Us who request that they not receive deferred action on this basis. Please share with ASISTA examples of why this policy harms victims of crimes who have more options with DACA-based deferred action but also wish to seek U status. ASISTA will continue advocating with USCIS, DHS, and the White House for a policy that comports with the ameliorative intent of the law.
2. **Automatic Conversion of I-765s for Derivatives:** Starting in the spring of 2015, VSC issued clarifying guidance to adjudicators stating that if there is an I-765 application based on (a)(20) submitted with the U visa application, then VSC may change that basis to a grant under (c)(14) to issue a work permit without delay for the applicant. In these cases, a new I-765 under (a)(20) authorization will need to be submitted once U visas become available.
 - a. Stakeholders shared the fact that there may be some applicants who do not want to have the (a)(20)-based I-765 auto-converted to (c)(14) [for example, a U derivative with TPS]. Attorneys and representatives should flag in the cover letter if they do not want the (a)(20)-based I-765 to convert to a (c)(14).
 - b. **Practice Pointer:** Highlight in the cover letter and write on the side of the I-765 that your client is requesting that the (a)(20) I-765 *not* be auto-converted to (c)(14) designation when the case is placed on the waitlist.

F. RFE Response Times

1. RFE response time is based on a first in first out basis, but it depends on officer priorities (e.g. you may see delay in looking at I-918 or U-based I-485s once the U visas are available). In general, reviewing RFE responses would be a priority for officers. While it is normally correct that the RFE review would take 60 days, right now it is outside of that posted processing time on USCIS's website. VSC does reach out periodically to update the website, but the processing times are not updated directly from VSC. Advocates suggested responding in a recorded message or auto-response from a Hotline request with updated processing times. The VAWA Unit leadership will bring that suggestion back to get better information on RFE response time.

G. Certifiers List

1. VAWA Unit leadership stated that they keep an informal list of certifiers and that they cannot share it with stakeholders. There are people in certifying agencies with whom VSC has regular contact, but it is a working list that is not exhaustive.

2. **Practice Pointer:** ICWC runs the Certifier/Travel Zoho Databases which is an invaluable tool for advocates. To learn more about these resources, click [here](#).

H. Police Reports (Evidence Extrinsic to the Record of Conviction)

1. The VAWA Unit stated that it is asking for police reports not to determine whether inadmissibility grounds apply, but in order to assess whether there has been prior bad behavior or prior bad acts committed by the applicant (presumably to determine whether to exercise discretion favorably). VSC should not be requesting police reports in order to determine inadmissibility grounds. Practitioners should be advised that in cases of drug trafficking, VSC does not need an admission but will potentially charge inadmissibility under “reason to believe” grounds.
2. VSC stated that it is incorrect to assume they are asking for police report for antagonistic reasons, rather that they may be trying to resolve discrepancies or culpability or look for facts that may hurt the victim because the rest of the application does not reference significant details in the police report that may support the case. Adjudicators use police reports to look at the case from another perspective other than the applicant’s. For that reason, VSC has to give the contents of the police report some weight. Where there are contradictions, adjudicators will look at the totality of the evidence in order to determine the merits of the waiver determination. When the contents or the veracity of the police report is an issue, then the applicant can address the discrepancies in his or her statement or other supporting evidence.
 - a. **Practice Pointer:** VSC may be violating the law in using evidence extrinsic to the record of conviction against U applicants, both in the exercise of discretion and in determining inadmissibility (we have seen RFEs that state the person is inadmissible based on such evidence). If you wish to join efforts to challenge the legality of this practice, please contact ASISTA at questions@asistahelp.org

I. RFEs- Waitlisted Cases

1. In the summer of 2015, advocates from 11 national, state, and local organizations reported to VSC that the VAWA Unit was taking adverse action against waitlisted U applicants. VSC was issuing RFEs and simultaneously terminating deferred action without waiting to receive and consider any response to the RFE. VSC mentioned that they would issue a form written response. VSC also explained the following:
 - a. Cases are occasionally removed from the waitlist if new information arises that could potentially make the petitioner or derivative ineligible for a U visa. Sometimes, the quality review process reveals that an error was made by a previous officer. In these situations, USCIS may issue an RFE. When an RFE is issued, an individual is removed from the waitlist to determine

his/her eligibility. Once VSC receives the RFE response, VSC will determine whether to deny the case or return the case to the waitlist. If the case is returned to the waitlist, the EAD in the alien's possession will remain valid. The case will be placed back in line, *in the same place it was previously, on the waitlist*. If the case is denied, then the EAD will no longer be valid.

2. VSC staff explained that placement on the waitlist is not a “conditional approval.” Thus, taking a case off the waitlist is not akin to a “revocation” under 8 CFR §214.14(h)(2) as that section refers to titled “Revocation of *approved* petitions for U nonimmigrant status.” (emphasis added). The regulations clearly contemplated these petitions being placed on the waitlist under 8 CFR §§214.14(d)(2) and (3). The regulation clearly states that “a petitioner may be removed from the waiting list, and the deferred action...may be terminated at the discretion of USCIS.”
3. VSC is changing the language within RFEs after removing a case from the waitlist to clarify this for stakeholders. In summary, the deferred action granted for someone on the waitlist entirely depends upon the individual *remaining* on the waitlist.
 - a. **Practice Pointer:** If USCIS improperly issues an RFE (i.e. requests evidence already supplied or violates the law) please contact ASISTA. We can help you challenge this as we would other improperly issued RFEs.

J. Qualifying Criminal Activity- Felonious Assault/Robbery

1. [California Penal Code Section 211](#) (felony robbery) may or may not be considered felonious assault. On March 17, the AAO published a non-precedent decision related to this statute. VSC stated that it only interpreted the law for that particular case. Whether or not robbery will be considered a U qualifying crime of felonious assault depends upon the facts of the case, and the information contained in the Supplement B.
2. Robbery itself is not a qualifying criminal activity. If the statute incorporates felonious assault elements, the statute may qualify a person for U visa relief, but it may not. If a perpetrator is charged under a robbery statute, and the Supplement B states that the qualifying crime is “Other: Robbery” and is not certified as felonious assault, then adjudicators will go through the facts on the Supplement B to see whether it meets the felonious assault definition.
3. Stakeholders expressed concern that some felonious assault cases with the same facts have disparate results in adjudication. VSC stated that it needs the law enforcement agency to certify the qualifying crime and to provide information that shows the crime falls within the parameters of the qualifying crime definition. For example, in the description of the events, the certifying agency could provide information that shows the crime falls within the realm of felonious assault. They are looking for the elements of the qualifying crime if the statute is vague or divisible.

4. **Practice Pointer:**

- a. VSC stated their position that robberies where no weapon is involved are not felonious assaults. They gave the example of someone whose necklace is snatched from off of their neck as a robbery that is not a felonious assault. Despite these statements, many such cases have been approved so best practice would be to fully advise clients of the risk of denial and continue filing if they wish to proceed.
- b. Remember the regulations and introduction to the regulations frame the U crimes as "categories" of crimes. We suggest that you frame your robbery (and other possible felonious assault crimes) this way, as opposed to arguing they are "similar" because the regulations on what crimes are "similar" are very stringent, focusing solely on elements of the crimes. Crimes may fit a category, however, based both on elements and facts. An example of this which VSC seems to understand is the domestic violence category where, for instance, crimes such as "terroristic acts" may be DV crimes based on the relationship of the victim and perpetrator, which are facts. Similarly, a robbery may fit in the category of felonious assault based both on elements and facts.
- c. Despite what VSC said at the stakeholder meeting, ASISTA is helping practitioners challenge denials that clearly show adjudicators do not understand this category analysis. In addition, pro bono counsel is helping us write an amicus brief on this issue generally, which we will share with the field, VSC, USCIS HQ and the AAO. If you have cases that you think would benefit from the analysis we are developing, please let us know by sending an email to questions@asistahelp.org.

K. **Break in Family Relationship**

1. If applicants and derivatives are on the U visa waitlist, then divorce will break eligibility of the derivative spouse as the family relationship will not exist at the time of the U adjudication.
2. While there is not necessarily a statutorily-mandated affirmative responsibility to notify VSC of any changes in family relationships, VSC will assume that all information contained in the application is correct and that if certain information is withheld, then there is potential for fraud and misrepresentation, which could cause problems for the applicants (not to mention attorneys and representatives). Bottom line: Do not go forward to pursue a benefit that one is not eligible for.
3. If there is a change in the relationship after the U visa is granted, then derivative status will not usually be revoked. Under the regulations, derivative status may be revoked if the relationship does not continue, which VSC typically will do if the

relationship does not continue due to the derivative committing domestic violence against the principal. Otherwise, VSC will not, as matter of routine, deny derivatives' adjustments for a break in the relationship.

- a. **Practice Pointer:** The U statute makes clear that, once granted U status, derivatives are their own U visa holders. USCIS HQ has confirmed that it agrees with this statutory construction. If VSC is applying discretion, based on the regulations, that violates this statutory construction, let ASISTA know at questions@asistahelp.org.

L. U Adjustment: Continuous Physical Presence

1. **Evidence for Proving Continuous Physical Presence:** VAWA Unit staff stated that applicants for U-based adjustment of status need not have proof of continuous physical presence for every single month. However, if evidence is just from one single source, it may not be enough to show continuous physical presence. Stakeholders inquired whether paystubs would be sufficient evidence. VAWA Unit staff said that paystubs can be a good piece of evidence, but cannot say that one piece of evidence is better than another. If applicants cannot get other evidence, then they should explain in a personal statement why no other proof is available.
2. **Break in Continuous Physical Presence:** Stakeholders inquired whether if there was a break in physical presence for 90 days or more, whether they may still acquire 3 years of continuous physical presence for purposes of adjustment. 8 CFR §245.24(a)(1) indicates that any single period in excess of 90 days will break continuous presence, with the exception of when there is a certification from law enforcement. VSC stated that an individual with a break of 90+ days or an aggregate of 180 days without a certification for the break, will be ineligible for adjustment.
 - a. **Practice Pointers:** VSC will entertain legal arguments as to whether the clock can re-start when there is a break of continuous presence in excess of 90 days and there is reentry on valid U visa status and an extension of status granted. VSC encourages stakeholders to make the argument. Our experience is that VSC is ignoring the legal arguments concerning re accrual of continuous presence, which is based on BIA case law in other continuous presence statutes. We disagree that the break "exception" to the general rule about three years continuous presence trumps the general rule, which appears to be VSC's interpretation of the statute. If you would like to see the arguments for re accrual based on BIA case law, please contact ASISTA at questions@asistahelp.org.
 - b. We have also seen VSC ask for proof of continuous presence for the full time in U status (i.e., 5 years without an absence). This appears to be an *ultra vires* requirement. Please contact ASISTA if you receive such a request.

- c. VSC reminds stakeholders to send all passport pages with an adjustment application or they will likely receive an RFE.

M. **Prima Facie Determinations in Detained U visa Cases**

1. If U visa applicant is detained at the government's expense, ICE has to reach out to VSC and send them a note via a dedicated email address to initiate review. When ICE makes request, VSC will try to make prima facie determination (PFD) in 3-5 days. If VSC determines the applicant is eligible for PFD, then they will reach out to ICE; however the applicant will not be notified. There is no deferred action or other benefit attached to PFD determinations. Once a case has established prima facie eligibility, then the case will be placed with an officer at VSC. If an applicant receives a decision directly, it would only be an RFE or waitlist letter (not the PFD). PFD Review will always give the opportunity to respond to insufficiencies with an RFE, before a denial is issued, unless no I-918 Supp. B was included in the filing. These PFD cases will not be removed from the waitlist until a visa becomes available, which is still based on the date the case is filed.
 - a. **Practice Pointer:** For any detained U or T case, remember to ask for an expedite request and for a stay of removal.
2. There is no PFD process for T visas. If T visa holder is detained, then stakeholders can make an expedite request.

N. **Expediting Cases**

1. All expedite requests are reviewed on a case-by-case basis, and are granted at the discretion of the Director. These requests are commonly made via the Hotline and the target turn-around time on these requests is 72 hours, though may be more or less. The burden is on the applicant or petitioner to demonstrate that one or more of the expedite criteria have been met. USCIS may expedite a petition or application if it meets one or more of the following criteria:
 - Severe financial loss to company or individual;
 - Extreme emergent situation;
 - Humanitarian situation;
 - Department of Defense or National Interest Situation (Note: Requests must come from official United States Government entity and state that delay will be detrimental to our Government);
 - USCIS error; or
 - Compelling interest of USCIS.

O. I-929 Issues

1. VSC clarified that there is no work authorization eligibility based on a pending I-929, and that the I-929 must be approved before the qualifying family member's I-485 is filed (at which point a (c)(9)-based I-765 may be filed).
2. If principal's I-485 application is approved, then stakeholders may follow up with the Hotline if there is still no word on the I-929 application 60 days after the principal's I-485 approval.

III. VAWA and I-751 Cases

- A. **I-751 Waiver Approval Notices:** VSC shared that a new I-751 waiver approval notice is being vetted to indicate the ground(s) on which the waiver is granted. The idea is that knowing an I-751 is approved on domestic violence grounds will affect the timing of naturalization.
- B. **Recapture of I-130 Priority Date:** It is possible for an I-360 self-petition to recapture the priority date of the I-130. It is important to note in cover letter and/or submit proof that there is a previously filed I-130 as VSC may not know there is a previously filed I-130 family petition.