



AILA VAWA-U-T Committee

VSC Stakeholder Notes and Practice Pointers¹ Vermont Service Center Stakeholder Event Held October 18, 2013

NOTE: This is a summary, compiled by ASISTA Immigration Assistance and the AILA VAWA-U-T Committee (AILA), of the information shared during the Vermont Service Center (VSC) Stakeholder's meeting in St. Albans, VT on October 18, 2013. Tracey Parsons, Director of the Humanitarian Division at VSC, Lisa LaRoe, VAWA Section Chief were present as well as several other subject matter experts. This advisory discusses general information shared by VSC staff followed by questions and answers into categories. We have added practice pointers and clarification where relevant.² In addition, please find additional materials shared at the Stakeholder event by clicking [here](#) and [here](#).³

I. GENERAL VSC OPERATIONAL AND PROCESSING INFORMATION

A. Community Outreach

In the last year, VSC did numerous community service outreach events including 4 National webinars; 4 law enforcement webinars; 4 in-person training session in support of Blue Campaign; and additional meet and greets upon request.

Practice Pointer: To receive updates about USCIS Public Engagement events, you can subscribe [here](#) or go to <http://bit.ly/1gcGWIn>. To request a training from VSC, you can email: t_u_vawatraining@uscis.dhs.gov.

B. Policy Developments

1. **Confidentiality:** DHS is in the process of issuing guidance on confidentiality, and each component (e.g. USCIS, ICE, CBP, etc.) will have to develop its own guidance related to 8 USC 1367, including provisions about disclosure of information related to "legitimate law enforcement purposes."

¹ Cecelia Friedman Levin & Sonia Parras Konrad of ASISTA Immigration Assistance and Jessica Farb of the Immigration Center for Women and Children, and also on behalf of the AILA VAWA Committee, prepared this document, with assistance from Gail Pendleton.

² Please remember that you are still responsible for researching the issues pertaining to your case. This summary has been prepared to provide you with information only and it is not intended to be legal advice. For more information, visit www.asistahelp.org or www.immigrationadvocates.org

³ These documents are also available on ASISTA's website at www.asistahelp.org.

Practice Pointer: If you have experienced problems with any DHS component maintaining VAWA Confidentiality, please contact ASISTA at questions@asistahelp.org.

2. **Age-Out Guidance:** At the Stakeholder event, it was announced that USCIS drafted and put into the clearance process a memo on addressing U visa age out issues in mid-October.

➤ **ASISTA/AILA Practice Pointer:** ASISTA and the AILA VAWA Committee will inform the field when this age-out guidance (presumably implementing the age-out protections under VAWA 2013) is released. For information on age-out issues, please visit www.asistahelp.org or the U visa section of the Immigration Advocacy Network's Library available at www.immigrationadvocate.org.

C. New Adjudicators

Tracey Parsons, Humanitarian Division Director (TPS & T/U/VAWA sections) reported that VSC has undergone many changes in the past year. One of the main concerns VSC hoped to address in the past year is its backlog, in particular on VAWA and U visa cases. With this purpose, the VSC-VAWA Unit has hired and trained about 170 new officers. Also, as of February 25, 2013, VSC increased the working time by adding a second shift: the 1st shift going from 6am until 2pm and the 2nd shift going from 2pm until 11pm.

VSC is currently revamping the training program to incorporate more interaction with trainees, use real cases in the trainings, and allow discussion of these cases with trainers and peers via roundtable discussions. VSC is also holding roundtable discussions for officers (e.g. I-360 officers, supervisors, and customer service staff) to create a forum to bring their questions and discuss issues. VSC hopes to continue these roundtables as a matter of routine.

VSC has trained 52 new officers in I-360 realm, and as a result, the backlog has been reduced in half. In addition, VSC trained about 100 new officers to work on I-918 applications, some of whom are only now just getting certified. VSC is also seeing an improvement in processing of U visa cases, as the U visa cap for FY 2013 was reached in August 2013. VSC realizes that they have fallen behind on timely processing I-765 applications, and they are getting back on track with these now.

Now that VSC has worked on improving the issue of backlogs, it wants to focus on quality initiatives to adjudicate cases and provide customer service more efficiently and effectively. (See Requests for Evidence Section below.)

D. U Visa Cap

As of the date of the meeting, VSC has granted status to 4,200 U-1 Nonimmigrants, **almost half of the allotted visas for FY 2014.** VSC anticipates reaching the 10,000 cap much earlier this year, given the increased number of adjudicators. VSC is currently processing at or around December 2012, for the date of filing a U visa. VSC is bound by the cap; however, they are aware that those U visa applicants with approvable applications will need some sort of relief, the specifics of which is currently in discussion. For example, VSC *may* issue conditional approvals

on the I-918s for those applications processed after the cap is reached. Applicants with these conditional approvals *could apply* for work authorization with a newly filed Form I-765. VSC is contemplating on these cases issuing deferred action until visas become available in the next fiscal year, starting October 2014.

- **ASISTA/AILA Practice Pointer:** Continue to file your U visa applications regardless of whether the FY 2014 cap is reached, as it is possible that “pre-approved” cases may be granted an EAD.

E. Hotline Response

VSC indicated that there are new people being trained on customer service aspect of the VAWA Unit’s work. Traditionally, they have hoped for a 72-hour time frame to respond to inquiries via the Hotline, but they are aware that recently response times have lagged. This delay can be attributed to new individuals being trained to answer responses. In addition, the Hotline has experienced more customer service inquiries, perhaps given the increase in new adjudicators (and thus the processing of more cases).

VSC is working to get back to the 72-hour response time, and as of October 18th, they were working on responding to inquiries that were submitted on October 9th. VSC is in process of training another group to help with emails in particular. VSC indicated it is one of their goals to explore how to make Hotline responses more helpful and comprehensive. VSC leadership indicated they want to see a better response from Hotline staff in their follow up with customers. VSC strives to train Hotline staff to provide more comprehensive and helpful responses. For instance, if the case is being held because of a background check, instead of simply stating that the case is “pending background check,” VSC leadership indicated that they would want the Hotline staff to follow up with the background check department to ensure case is not misplaced or has been overlooked and then communicate that to customers. Hotline staff should strive to get to the root of the problem, working to respond to callers in a timely manner, while at the same time working to provide appropriate follow up.

It is important to remember that Hotline responses typically cannot discuss the merits of individual cases or get into detail about issues. Mainly, Hotline staff can pass information on to the file, the adjudicator, or the supervisor; but the Hotline staff cannot adjudicate on the phone or by email. For additional information regarding RFE and Hotline responses, please see Section II: Discussion on Requests for Evidence, below.

VSC provided some important tips for advocates using both the Hotline’s email and the telephone voicemail systems.

VSC Hotline Practice Pointers

- **General:** When contacting VSC choose only one method (e-mail, phone or fax). ASISTA and AILA recommend you contact the Hotline via email, when possible, to ensure that a record of response 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. Keep in mind that VSC only replies to representatives with G-28s on file, not to individuals.

- **General:** Do not use the hotline to ask basic questions about filing procedures and instructions or to check case status. Go to the USCIS website at www.uscis.gov for those answers. Only contact the VAWA Hotline if after checking the USCIS website either you do not find the information or the case is outside of the processing times listed.
- **General:** Do not overuse the Hotline. If you left a message, give them up to 2 weeks to process your request before contacting them again. If the request is an emergency, say so, and state why.
- **Contacting the Hotline Via Email:**
 - **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 suggests that advocates put something specific in the subject line as to nature of inquiry, so they 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”

Advocates should do this for substantive points too, such as:

- "Incorrect substantial harm standard, supervisory review requested"
- "Adjudicator ignored evidence supplied, supervisory review requested"
- "Improper declaration standard, supervisory review requested"

➤ **Contacting the Hotline Via Phone: VAWA Unit Hotline: (802) 527-4888**

When contacting VSC by phone, leave a brief message with your name, organization or firm, phone number (as it appears on the G-28), client name, client A number and/or receipt (EAC) number of the case, and a clear explanation for your inquiry (e.g. “error on approval notice” or “re-examine priority date”) with any relevant background and specific questions so the officers can efficiently find the answer. If attorneys do not provide all this information, VSC may not respond, so it is important to provide that information up front.

F. General Filing Tips

1. **Signatures:** VSC needs all signatures to be original signatures. VSC prefers signatures in colored (preferably blue) ink for all forms in order to most easily distinguish an original signature from a copy.

➤ **ASISTA/AILA Practice Pointer:** VSC mentioned that the blue-ink preference includes the Form G-28. Even though the new G-28 instructions indicate the ink should be black - the best practice is to use blue ink for all signatures with the VAWA unit.

2. **Statements with Extension of Status Requests:** For I-539 petitions to extend status for U or T Nonimmigrants, VSC reminds practitioners to include the applicant's personal statement of why he or she needs the extension. This statement is a regulatory requirement.

➤ **ASISTA/AILA Practice Pointer on personal statements:** Review your client's declaration to ensure it provides factual details explaining the need for the extension. In *your* cover letter, you may wish to cite the relevant section of the extension memoranda. (Your client should NEVER cite regulations or statutes; this eradicates the statement's credibility since it's obviously coming from you.)

3. **Passport issues:** If applicant does not have passport, mention the reason for not having a valid passport in the cover letter and the applicant's personal statement.

II. DISCUSSION ON REQUESTS FOR EVIDENCE

A. New Adjudicators and Evidentiary Standards

One of the central reasons behind the recent uptick in RFEs is the increased number of new adjudicators in the VAWA Unit. Some of these adjudicators are coming from other USCIS divisions (e.g. processing family or employment petitions) and they are new to working with the any credible evidence standard and the dynamics of domestic violence and/or the effects of victimization on immigrant survivors.

The definition and interpretation of any credible evidence expands over time and different forms of evidence can be presented. As technology advances, applicants are submitting new forms of evidence, such as threads of email messages as well as text messages, to prove good faith marriage or to demonstrate abuse. Review of this evidentiary standard, specific to T-U-VAWA cases, is one of the greatest challenges for officers new to this work. Many of VSC's adjudication officers previously evaluated cases according to a primary evidence standard prior to joining the VAWA Unit (for example, those adjudicators who previously worked on family or employment-based applications). Officers are improving their knowledge of the difference in evidentiary standards by receiving training and supervision.

All new officers are paired with a mentor for a time period and must process a certain number of applications under that mentor before proceeding independently. Even if the new officer is no

longer paired with the mentor, the mentor has the discretion to review the officer's work at any time.

There is no standard review of RFEs before officers issue and send them to applicants. If there is a concern with the quality of work of a new officer, the mentor will look at the officer's RFEs before they go out the door.

The VAWA Unit provides applicants the maximum amount of time, 87 days, to respond to RFEs. A new officer may not receive a response to the RFE she issued until 3 months later, which is a long time to wait before receiving feedback from applicants.

B. Boilerplate RFEs

Officers use RFE templates to start with basic plain language, but officers are expected to discuss in detail the reasons for any deficiency in the evidence submitted by the applicant. Practitioners should not receive a boilerplate RFE, without a detailed explanation of the issues. VSC will continue to use these templates, but practitioners should expect customization for the particular case. There is also a reasonable expectation that officers should not overlook evidence presented.

- **ASISTA/AILA Practice Pointer-** If you receive a boilerplate RFE with no specific information about your case, request supervisory review to the Hotline as soon as you receive the RFE, providing specific language in your subject line about the problem. If VSC does not provide a timely response, make sure you still answer the RFE on time and as best as possible.

C. VSC Tips for Responding to RFEs (see sections below for substantive problems)

1. Advocates must submit **original copy of the blue paper RFE** on top of their response so that the mailroom can properly route the filing once it hits the mailroom.
2. **Signatures:** Just like with regular filings (as mentioned above in Section I.F. General Filing Tips), VSC needs signatures in RFE responses to be original signatures, and preferably in blue ink.

D. VSC Suggestions for Requesting Supervisory Review

VSC indicated that they are currently not tracking the number of RFEs issued but acknowledged feedback from representatives present at the meeting that the field is receiving at least triple the amount of RFEs that they used to receive, often with errors and inconsistencies, including boilerplate language or requests for evidence already submitted. VSC pointed out that they also are receiving vastly more U visa applications than ever before, which contributes to delays in adjudication, more time spent training and supervising new adjudicators, and higher numbers of RFEs (though not necessarily higher ratios of RFEs-to-Approvals) going out to the field.

If an RFE issued was egregious, VSC wants to see the RFE and be notified immediately. VSC treats all supervisory review requests as an expedited request for service. First, customer service

gets the file and then forwards it to the supervisor of the officer who issued the RFE. While VSC will vet a supervisory review request through the Hotline, **the advocate still needs to respond to the RFE before the deadline, if the RFE is not withdrawn beforehand.**

There is no mandated time frame for supervisory review. This is something VSC indicated they could consider for the future, but right now they do not have a timeframe other than getting the request to the supervisors as quickly as possible. If there is a training issue or an unusual circumstance, or if discussion is needed, the response to the supervisory review request will take a little longer.

VSC emphasized two points:

- 1. Don't wait for supervisory review response to respond to the RFE; and**
- 2. The more you request supervisory review through the Hotline, the less capacity the system has to identify and respond to the most urgent requests.**

➤ **ASISTA/AILA Practice Pointers:**

- Before asking for supervisory review, check with your technical assistance provider.⁴ We may know the answer to your questions and concerns, we may have some suggestions for improving your case, and, perhaps most importantly, we have access to the heads of the VAWA unit and USCIS policy making in this area. We can help you decide the best way to present your problem to the hotline and intervene if necessary to get swift attention to serious problems.
- When you request supervisory review, at any point in the process of responding to the RFE, we recommend using the email hotlines because (a) they create an email trail that shows how the hotline responds; (b) you can attach the documents you want the supervisors to review; and (c) by cc'ing us, we can easily raise the case with the VSC and CIS HQ decision makers (if necessary).

The AILA VAWA Committee and ASISTA are continuing with their RFE project and plan on following up with VSC about problems the field is seeing with RFEs. If you believe you have received a particularly egregious RFE, then please contact the RFE Project. Submitting a redacted copy is fine; however if you and your client wish for the VSC to take action on your case, please do submit an unredacted copy. Be sure to inform your client you will be sharing this information with ASISTA and members of the AILA VAWA-U-T Committee for advocacy with USCIS. To contact the RFE Project, please fill out [this form](#) **and** submit the problematic RFE and your cover letter/index by email as instructed on the final page of the form.

⁴ Practitioners can contact ASISTA at questions@asistahelp.org if they working for an OVW grantee, or if they are ASISTA or NIPNLG members. AILA members can request feedback from the National VAWA-U-T committee members at reports@aila.org.

E. Specific Issues with RFEs

ASISTA and AILA highlighted the information gathered in their RFE project, providing examples of problematic RFEs and reasons why they are problematic. See [here](#) for our advocacy on specific RFE issues, outlined in the memo that was submitted to VSC identifying these individual issues.⁵ For example, ASISTA and AILA discussed the problem of adjudicators overlooking evidence submitted with the original filing, boilerplate RFEs, and adjudicators not applying the any credible evidence standard of proof in VAWA, U and T visa cases.

III. QUESTIONS AND ANSWERS

A. Questions on Filing Procedures and Preferences

Question 1: Do you prefer acco-fasteners with double-hole punch or staples or clips?

VSC Answer: VSC has no preference as to how the application is held together, as long as all the documents are kept together. Each officer will look at the documents as they fit with the eligibility requirements and the regulations. VAWA Unit adjudicators generally tear off bottom tabs and acco-fasteners, because they redo the order of the applications in a way that best works for the individual adjudicator. A two-hole punch is helpful but not necessary. Attorneys can use page dividers if they prefer, but the officer often moves these dividers to the bottom of the filing and does not look at them again. Page numbers are helpful.

Try to keep together all evidence that pertains to a derivative with that derivative's application, to avoid materials getting intermixed.

The only agency wide form-order preferences apply to the U visa and are the following:

- 1st - Form I-918,
- 2nd - Form I-918 Supplement B, and
- 3rd - Principal Applicant's Affidavit or Declaration.

➤ **ASISTA/AILA Practice Pointer:** The field has received many RFEs for documentation already submitted. Perhaps during the rearranging of the file, officers misplace documentation. Check that you have presented the information in the most helpful way, using a "road map" cover letter and index to documents, the latter providing details of how each document was submitted. VSC mentioned that some practitioners had provided charts and that those were helpful.

If you are issued an RFE on evidence already submitted in the original filing, just copy that evidence and re-submit. Also, bring your case to the attention of a supervisor by scanning the RFE and the organizing the documents as noted above (e.g. cover letter, index, chart) and emailing the Hotline, as this may be a training issue with a specific adjudicator.

⁵ This document will also be available on ASISTA's website at www.asistahelp.org.

Whatever organizing tool you use, make sure the filing clearly includes what evidence meets each requirement and an explanation of its relevancy. Whenever possible, explain clearly:

- What eligibility requirement the evidence meets;
- How the evidence meets that requirement (provide specifics) and where the adjudicator can find that in the document;
- Why this is the best evidence available; and
- Why the evidence is credible (i.e., foundation for documents, like photos, that may not be credible without that foundation).

➤ **ASISTA/AILA Practice Pointer:** See below for an example from a road map cover letter in a U visa case:

Substantial Harm

- *Exhibit M: Copy of Applicant's Victim Impact Statement, dated July 6, 2010, in the case 2010 CR 123, State v. Abuser, in which she states, "I still suffer from what happened to me that night. I am nervous all the time, and am always vigilant of my surroundings. I never take the same route to work or home because I am afraid he is following me and will try to hurt me again."*

➤ **ASISTA/AILA Practice Pointer:** Remember to explain in the client's declaration (and/or case cover letter) why you are providing the "best evidence available" and why you can't get the "best evidence." For example, provide systems evidence when your client has accessed a system (e.g. police, hospital) or explain why the systems evidence you are supplying is not particularly helpful.

Question 2: On the envelope, do you prefer labeling still? If so, do you want any or all of these: "U visa," "VAWA," "VAWA Unit" "VAWA/U/T Section" "I-929," "RFE," etc.?

VSC Answer: This is not a service policy, but as a preference, do not write anything on the outside envelope. Instead, present the case or cases inside the envelope with a cover letter on top, which states in large letters the type of application. This labeling on the cover letter ensures each filing goes to right place. If the filing is marked as VAWA, U, or T visa application, VSC will carefully review the file to ensure a safe mailing address is correlated to that filing. If any I-765 arrives at VSC without the correct eligibility category and/or whenever there is doubt as to the type of the I-765 request, that filing is sent to the VAWA Unit at VSC.

If you are submitting a response to an RFE, the blue sheet on top is sufficient for matching with the response to the original filing. Make sure to return **the original blue RFE copy**, and VSC will prioritize that this response immediately gets matched to the original filing and the adjudicating officer for review.

➤ **ASISTA/AILA Practice Pointer:** Note this is a change from what VSC has told the field for many years, which had previously been to mark the outside envelope in big red letters with "VAWA/U." If you want to be confident that the mailroom will not send your application off

to another part of VSC, we suggest you continue to mark the outside envelope, as well as mark the cover letter on the inside.

Question 3: *If an applicant obtains supplemental documents after her initial filing and wants to include them in her application (which we agree should be rare, and should not, in the case of those seeking adjustment of status, include I-693 medical exam results), how would you prefer that applicants alert the mail room and the VAWA/U/T Section that the documents are supplemental to an existing filing? We are reluctant to wait for an RFE because while some cases are adjudicated immediately upon receiving the RFE response, others seem to get delayed for several months at this stage.*

VSC Answer: In your written response, include a copy of your receipt notice with your cover letter explaining what it is you are submitting and why. You may also email the Hotline (with an electronic copy of your new submission attached) to notify them that you are submitting new information that should be put with the original file.

- **ASISTA/AILA Practice Pointer:** Based on experience, supplemental evidence submitted after the original filing may not make it into the file. For original documents (i.e. medical exams) it is best to wait until an RFE is issued and then respond timely. For documents that are only copies, you may email those documents as attachments to the Hotline in addition to submitting by regular mail, with the receipt notice in blue as your cover page. Submitting both an electronic and physical copy avoids the potential for printing or other errors by Hotline staff, when uniting an electronic-turned-physical document to the original paper filing.

Question 4: *What are the best practices for notification for change of address?*

VSC answer: Letting USCIS know where the individual currently lives is the correct procedure at all times. For pending cases, notify the VAWA Unit by sending the change of address Form AR-11 via the email Hotline. For cases that have already been adjudicated, you should file an AR-11 to USCIS as you normally would and that will update their systems. Otherwise, VSC will be using the “safe address” of most providers for any further communication - not the applicant’s address of residency.

- **ASISTA/AILA Practice Pointer:** Even if the file is closed, remember to advise your client that he or she is required to notify USCIS of any change of address. You may want to provide your client, as you are closing the file, with an AR-11 and/or information of how to file an AR-11 with USCIS so they always have the client’s current address on file.

B. Processing Questions

Question 5: *Some advocates have reported a delay in processing of employment authorization documents. Advocates report that in cases where a I-918 A has been approved and a I-765 is being filed after the approval, there is a delay of up to 6 months, well beyond the 90 day normal processing time. Has there been a change in how EADs are processed? How should advocates bring these delays to VSCs attention?*

VSC Answer: USCIS is aware of the delay in EAD processing times and is working to correct it. As noted above, VSC realizes this is also an issue for the U cap.

- **ASISTA/AILA Practice Pointer:** Finding a way to provide EADs to pending applications is a Headquarters issue, which ASISTA has been working on for over a year with DHS and others. The solution is not as easy as it may seem to practitioners, and we may need your help with additional examples and advocacy. Please keep your eyes open for alerts and updates on the VAWA Updates list serve.⁶

Question 6: *Would it be possible to file I-765s concurrently with I-360 VAWA self-petitions? Survivors are often faced with dire economic situations and for those applicants not able to apply for work authorization under (c)(9) adjustment pending eligibility, waiting an additional 90 days for work authorization after the approval of the I-360 can cause hardship and in some instances further jeopardize a survivor's safety and stability. We suggest that VSC accepts an I-765 concurrently with an I-360 petition so that an EAD could be issued concurrently with the I-360 approval notice.*

VSC Answer: USCIS used to accept I-765s submitted with I-360 self-petitions; however, because of regulatory requirements, VSC must take action on I-765 applications within 90 days or start afresh. This is why VSC is asking VAWA applicants to wait to file their EADs, because they realize they cannot meet the regulatory requirement within 90 days.

- **ASISTA/AILA Practice Pointer:** VSC is aware that there is a different practice for employment authorization applications submitted with Supplement As in U visa cases and is looking into this, presumably with the goal of returning to their original practice – allowing applicants to file I-765s along with the I-360s. We will keep you posted on developments in this area.

Question 7: *What advice does VSC have on Motions To Reopen and Motions To Reconsider? Why is VSC taking so long to adjudicate these cases?*

VSC response: It all depends on where the file is. If an officer has to retrieve a file that has been forwarded to another CIS office, the adjudication will take more time. Don't, however, wait a year to inquire; in that case VSC may have overlooked the motion in the file. Use the Hotline to check on a motion status that is outside normal processing times.

Denial and motions process:

When an adjudicator denies a case, his/her supervisor will review the denial. The Motion to Reopen and/or Reconsider is adjudicated by another officer or supervisor (not the original adjudicating officer). If the new adjudicator plans to deny motion, a supervisor will review the denial before it is issued. If the new adjudicator approves the Motion, the file won't necessarily go to a supervisor.

⁶ To join this free list serve send an email to questions@asistahelp.org or visit www.asistahelp.org.

Question 8: How can advocates get duplicate copies of receipts, especially for applicants who never received the initial receipt and need these documents before requesting public benefits?

VSC answer: Some of our computer systems won't allow duplicates to print, so such receipts must be prepared manually.

- **ASISTA/AILA Practice Pointer:** You may request through the Hotline, with an explanation of why you need a duplicate notice (e.g. it was never received, applicant needs it for benefits, etc.), that VSC create a "manual receipt" (a plain white paper receipt).

C. One Applicant with Multiple Types of Filings Submitted to USCIS

Question 9: What happens when an applicant files for both DACA and the U visa (or an alternative remedy), and one of the filings must go to VSC?

VSC answer: VSC will work applications in a first in first out order. If the VAWA-U-T application is not in its "cycle time" (normal processing time), then it will get re-filed on the shelf until its cycle time is current. In that case, VSC would process the DACA case first. However, if for example, a DACA and an I-360 are filed concurrently and I-360s are being adjudicated faster, then the I-360 application will get looked at first. Where the VAWA-U-T case is in its cycle time and therefore processed first, if favorably adjudicated, then the DACA case will be denied.

Since mid-February 2013, VSC stopped taking new regular DACA cases and issuing receipts.

DACA cases filed at a USCIS office other than VSC cannot be processed until the original DACA file arrives at VSC. VSC is not allowed to work from copies of DACA cases. If your DACA case was filed separately from another filing, the DACA file will not reach Vermont until the Lockbox realizes the applicant filed another case that is already pending at VSC. Then the DACA case will be reunited with filing already at VSC.

➤ **ASISTA/AILA Practice Pointers:**

- If VAWA self-petitions and U visas are seriously delayed, then USCIS should be adjudicating DACAs before those applications.
- **For concurrent DACA with VAWA-U-T cases already filed:** You should email the Hotline so VSC can match up the cases.
- **For concurrent DACA with VAWA-U-T cases not yet filed:** If you are filing a DACA application concurrently with or subsequent to filing a VAWA-U-T application, the DACA application should be filed at the Lockbox (as VSC no longer accepts or receipts DACA cases at the initial filing). Then separately file the VAWA-U-T application, as you normally would, at VSC. On both cover letters, indicate in big letters on the cover letter that the applicant is filing for both DACA and VAWA-U-T relief, so that the application is forwarded to VSC. Once you have a receipt for both filings, email the Hotline with the receipts electronically attached so VSC can match up the multiple cases at VSC.

D. U Visa Questions

Question 10: What should practitioners do if they believe the I-192 has been denied in error?

VSC answer: If you have case specific questions about I-192 denials, bring them up to the Hotline. If an I-192 is not needed, VSC will deny the I-192 as unnecessary, i.e., applicants who ask for a waiver of unlawful presence, but have not triggered that ground of inadmissibility because they have not left the US.

➤ **ASISTA/AILA Practice Pointers:**

- The regulations preclude Administrative Appeals Office (AAO) review of waiver denials because they are a “discretionary” decision, but the AAO has asserted jurisdiction over inaccurate determinations by VSC on whether an inadmissibility ground applies. If your problem is only with the waiver determination, you may do a Motion to Reopen with VSC (submitting a new I-192 with additional evidence) and/or a Motion to Reconsider (if there were legal errors). *See* 8 CFR 103.5(a)(2) and (a)(3).
- ASISTA disagrees with USCIS’s regulations denying review of U inadmissibility; the AAO reviews other waivers involving discretion and, given the importance of the U visa, ASISTA has repeatedly and strenuously objected to the lack of independent review. Please continue to share with ASISTA inadmissibility waiver denials that you believe constitute an abuse of discretion, to demonstrate to DHS decision-makers why they must change this regulation to allow for review.

Question 11: The field is seeing requests by VSC for law enforcement certifications to support U derivative adjustment applications.

VSC answer: VSC’s practice has not changed; there is no requirement that derivatives supply certifications at adjustment, but they must address any possible ongoing helpfulness they could have provided.⁷ The supervisor in charge of these cases spoke to his staff 1-2 weeks ago about this misapplication of the helpfulness standard at adjustment, so these RFEs should not be issued in the future.

➤ **ASISTA/AILA Practice Pointers:**

- You do *not* need to request a new I-918 Supplement B at adjustment time for U Nonimmigrant derivatives. The form is only required at the U visa stage for principal applicants. Although the regulations suggest U principals seeking adjustment supply certifications again at the adjustment phase, they allow for alternative ways to demonstrate helpfulness.⁸ U-1 applicants for adjustment should include information

⁷ *See* Preamble at Federal Register, Vol. 73, No. 240 p. 75547 (Dec. 12, 2008)

⁸ *See* 8 CFR 245.24(e)

- about helpfulness in their personal statement and you should provide a short description of helpfulness in the cover letter.
- Applicants who hold status as a derivative, who are less likely to have been involved in helping law enforcement, should still include in their personal statements whether they had information about the crime and explain whether they were asked to provide assistance to law enforcement.
 - If you already received an RFE on this point, explain the helpfulness requirement in your response through both a description in the cover letter and personal statements from the applicants, if those were not initially filed. If you received an unwarranted RFE for a new I-918B that was issued after this meeting, you should also bring this RFE to the attention of the Hotline by requesting supervisory review. Remember to state in your subject line that you are asking for supervisory review because of improper Supplement B request.

E. VAWA Question

Question 12: What is the best advice when dealing with foreign country lack of or existence of marriages?

VSC answer: USCIS relies on the Foreign Affairs Manual (FAM) to determine what evidence is necessary to demonstrate valid marriages in other countries. If you are seeing denials that are wrong, bring it up to the attention of the Hotline.

F. Criminal Record Requests for VAWA-U-T Filings

Question 13: Why is VSC asking for criminal records such as charging documents when the applicant has submitted any and all relevant records such as the certified final disposition for the criminal charge?

VSC answer: VSC met with adjudicators recently on this issue. If the certified final disposition has been submitted, VSC does not think charges should be relevant to whether an inadmissibility ground applies. Criminal acts not reviewed for inadmissibility may still be considered for discretionary purposes, however.

- **ASISTA/AILA Practice Pointer:** If you receive a request from VSC for information the goes beyond the record of conviction (ROC), in the context of determining whether a conviction triggers inadmissibility or a good moral character bar, contact the hotline and ASISTA. For more information on ROC and evidence on crimes, please see [this Practice Guide](#) for Representing U visa Applicants with Criminal Convictions or Criminal History by Ann Benson and Jonathan Moore and the 2012 VSC Stakeholder Notes, from the September 2012 VAWA teleconference, available [here](#).

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