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U Update: Cap Queue and DACA Derivatives Practice Pointers

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A. CIS Reaches 10,000 U Visa Cap: What Happens to Cases in the Queue?

In August of 2012, CIS announced that it has reached the 10,000 cap on principal U visas for this fiscal year. ¹

According to Lynn Boudreau, head of CIS' Vermont Service Center VAWA/U/T Unit at the time the U cap was reached (she has transferred to VSC's DACA unit):

- Because the new numbers will be available in October, VSC is currently "pre-processing" U applications so that, come October 1, they will send out approvals and work authorization to those pre-approved.

There should be no noticeable difference, therefore, in how U visas are being handled by CIS except that no approvals will be issued until October 2012. The same systems and rules for cases in proceedings and for derivative family members apply, and applicants will not receive final answers until after October 1. Since there is already a significant backlog in adjudicating U visas, we expect this will not affect the time it takes them to adjudicate U visas, but the actual approvals can't be issued until the new numbers are available this October.

B. DACA and U Derivatives

Many U derivatives may qualify for DACA (Deferred Action for Childhood Arrivals). For more information, please see ASISTA's Practice Advisory, which can be found at:

http://www.asistahelp.org/documents/filelibrary/documents/DACA_U_VAWA_1_DBBA3A0220DF.pdf

The primary categories of U (and VAWA) applicants who may wish to explore DACA

¹USCIS Press Release, "**USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012**" (available at) <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5cd8f03530a49310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

are:

- Those who filed a VAWA self-petition or U visa but have not gotten status yet and therefore lack work authorization and Deferred Action;
- U derivatives whose cases are on hold because CIS hasn't issued age-out guidance yet. Only those who have not received Deferred Action or work authorization through an Extension of Status request would qualify or need it, obviously;
- U derivatives whose U status CIS terminated when they turned 21, so they no longer have work authorization or Deferred Action. A request for Extension of Status *does not extend status by itself*. The key question is whether your client has work authorization. If not, then he or she probably does not have VAWA-based DA or approved U or VAWA self-petitioner legal status.
- VAWA self-petitioners and U applicants, including derivatives, who are at imminent risk of removal or are in removal proceedings. DACA's provisions for those in removal may be faster than existing systems for preventing victim removal.² This will depend on your jurisdiction and your case. Although we expect USCIS to fix the problems with the U visa system eventually, many victims of crimes and their family members are suffering while they wait. DACA may help some of them.

But remember

- Any criminal history may be a problem and is not available
- "Any credible evidence" is NOT the DACA standard, which is generally the "primary evidence" standard (system documents, with some exceptions)
- There is no path to lawful permanent residence through DACA, so it's only a temporary measure for those harmed by the problems with the U visa system.

C. More Resources

For more information on DACA generally, see the IAN website =

<http://www.immigrationadvocates.org>

IAN members with further questions should use the U Forum on the IAN website.

² Existing mechanisms for victims include a special prima facie decision process for VAWA and U applicants in proceedings and case closure under ICE's prosecutorial discretion memoranda. If you are unfamiliar with these options, please check the ASISTA and IAN websites for more information, listed in the resources section above.

ASISTA's website focuses on VAWA and U visas. Please visit us at:
<http://www.asistahelp.org>.

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