



ASISTA NEWSLETTER

January 31, 2010

This edition of the ASISTA Newsletter includes several new features, plus an update on conversations with Citizenship and Immigration Services on U visas. Gretchen Hunt, a long-time member of the National Network to End Violence Against Immigrant Women who lives and works in Kentucky, shares an innovative approach to encouraging law enforcement certifications in your state. Our new FAQ column extracts and shares answers to interesting or persistent questions from our technical assistance archive. The new Update column features news on system memoranda, regulations and decisions that may affect immigrant survivors of domestic violence, sexual assault and trafficking.

We hope you find these new features helpful. If you would like to contribute to our newsletter yourself, please let us know. We also would like to hear your suggestions for topics you'd like us to cover.

We wish to welcome all of you who are new grantees of the Department of Justice's Office on Violence Against Women. Please check our website for materials, samples and other resources for you: www.asistahelp.org. If you are not yet plugged into our VAWA Updates and VAWA Experts list serves, send an email to Joanne Picray, joanne@asistahelp.org, to ensure you receive the latest information (VAWA Updates) and can discuss your cases with the most experienced practitioners in the country (VAWA Experts).

From the Co-Directors
Gail Pendleton & Sonia Perras-Konrad

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Thinking Outside the Box: Collaborating With State Agencies to Improve U Visa Practice

*Gretchen Hunt, Staff Attorney, Kentucky
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Advocates nationwide have complained of the challenges in getting law enforcement and other agencies to sign U Visa certifications on behalf of victims. Kentucky, where I work, is no different. Major police departments and other certifying agencies have, for the past two years, raised a number of concerns and questions about the U Visa. While a few certifications have been signed, many more hang in the balance or have been denied outright. Advocates statewide have met, trained, had conversations with allies in law enforcement, sent letters and otherwise exhausted typical means of advocacy. Training helped, as when one Lieutenant with a major police force shared that he had not realized that U Visas were intended by Congress as humanitarian relief. He had thought they were simply tools of law enforcement, so if law enforcement did not still need the witness, there was no reason to sign the certification. Still, even with training and meetings, for several years we did not see much progress in getting U Visa policies or actual signing of certifications.

It was in this moment of frustration that a fellow attorney suggested getting funders to send a letter to grantees explaining the importance—and legitimacy—of U visas. I realized that we could begin with our state agency that distributes federal VAWA money to many law enforcement and victim service agencies across the state. The Kentucky Justice and Public Safety Cabinet distributes VAWA and VOCA (Victims of Crime Act) money as well as Justice Administration Grants to police departments, prosecutors' offices, state agencies, domestic violence and rape crisis programs and other non-profits to serve victims of domestic violence, rape and human trafficking. Years ago, we had worked with them to raise awareness of the importance of providing meaningful access to victims with limited English proficiency in compliance with Title VI of the Civil Rights Act. As a result, they included information about language access in their yearly presentation to grantees at our annual domestic violence and rape conference. Sample policies were available for agencies to take, and the grants office offered technical assistance on finding interpreters and creating a policy. Even more importantly, the VAWA and VOCA applications for the state of Kentucky require applicants to certify that they have a plan for language access and to attach their plan to the application.

Why, then, couldn't we do the same for a U Visa policy? While certifying agencies are under no legal requirement to sign

certifications, it would still be a powerful message to have the grantor asking for proof of a commitment to implementing all aspects of VAWA, including the U Visa. I met with our state grant funders and explained the challenges facing advocates and victims in getting U visa certifications. The grant officers were open and willing to plan on incorporating U Visa information into their site visits, annual training, and their website. We also discussed changing grant applications and quarterly reports to ask for a U Visa policy and the number of U Visa certifications signed by grantees. The grant officials stated that they could incorporate this change just as they had with the requirement of a language access policy.

It will take time to implement these ideas and we cannot be certain that this will dramatically increase the number of U Visa certifications. But having government agencies speaking about U Visas may normalize and legitimize the process for law enforcement so that they are able to assist victims seek the benefits they so desperately need.

For updates of our progress in Kentucky, and for advice about how to collaborate with government agencies, feel free to contact me at 502-564-9433 or by email at Gretchen.hunt@ky.gov.

OVW Grantees:

Join us for Free Webinars

Each Month on the 3rd Wednesday

2:00 PM - 3:30 PM EST

Each month, Asista will be holding a free webinar for OVW grantees, sponsored by the US Department of Justice Office on Violence Against Women.

For more information or to ensure that you are on the invitation list, please contact us at questions@asistahelp.org.

Update on U Visas: Reports on CIS Discussions¹

by Gail Pendleton, Ellen Kemp, and Stephanie Kolmar

Overview

In the past six months CIS has become significantly more responsive to advocacy from the field concerning problems with the U visa system. They have sponsored two in-person meetings with national organizations working on these cases and held a conference call for the field generally. As a result, we have made significant progress in identifying and finding solutions to problems U visa seekers experience.

Processing Update: Numbers & Categories

In FY 2009, CIS approved 6,055 U visa principals and 4,659 derivatives.² They did not, obviously, use up the 10,000 visas for FY 2009 and are now applying the visa numbers for 2010 to U approvals.

They have triaged the cases into three categories:

- **Group One: Pre-TVPRA 08 filers with Interim Relief.** These petitioners are eligible for continued employment authorization through Interim Relief.
- **Group Two: Pre-TVPRA 08 filers without Interim Relief.** These petitioners are not eligible for employment authorization based on a pending request for U nonimmigrant status and may only be granted employment authorization if and when the U petition is approved.
- **Group Three: Post-TVPRA 08 filers.** These petitioners may be granted employment authorization after a bona fide review of the pending U petition.³

The TVPRA 08 reference is to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,⁴ which created a “bona fide” work authorization standard for U applicants.⁵ CIS reads the statute as applying only to U cases filed after the effective date of the law, Dec. 23, 2008, so Group Two contains those who filed for U visas before 12/23/08 and had never filed for interim relief. Group 3 are those who filed on or after 12/23/08 and had never filed for interim relief.

CIS stated that they were using a first-in-first-out (FIFO) system,⁶ and when asked if they could prioritize Group Two, they orally stated that they anticipated all U visa applications to be initially evaluated by the end of the summer.⁷ Their official answers (in writing) did not address this question, however.⁸

Given the number of outstanding U visa applications, we believe a significant number of Group Two applications remain unprocessed. Since Group One applicants should continue to be able to receive work authorization extensions based on their interim relief and Group Three applicants were both filed later than Group Two applicants and are eligible for bona fide work authorization decisions, Group Two is the most vulnerable group. CIS won't grant work authorization to them until it makes a final determination in their cases.

Group Two Practice Pointer

If you have clients who do not have interim relief and filed their U applications before 12/23/08, contact VSC now to ask that their cases be put at the top of the pile. Contact ASISTA for help if the reply is less than satisfactory.

Framing Your Claim: CIS Suggestions

CIS responded to several questions about best practices in framing claims. With regard to things that might trigger credibility concerns with victim statements, they emphasized that applications clearly prepared by someone else and then given to the applicant to sign would be unhelpful.⁹ They want to hear your client's voice in her statement, even if it's confusing. Be aware that using language that evidences advanced education or special training in domestic violence or immigration law will severely undermine the credibility of the statement.¹⁰ They acknowledged that some victims may have learned the terminology.¹¹ Nevertheless, your client is best served if she articulates her story using her own words. They stated that they would welcome additional explanatory statements from the client's representative or a victim counsellor that clarified anything confusing in the applicant's declaration.¹²

CIS especially encouraged explaining the history of the applicant's statement: Who did the interviewing, how many times, what were any barriers to getting a full statement?¹³ This is where you can explain why your client may not be able to talk about her experience articulately or at all. In such cases, however, we recommend you also supply a corroborating declaration by a counsellor who can verify that what the client says she experienced is credible and explain any areas where her statement is vague or confusing due to her victimization. Think of the counsellor as a "translator" for CIS on how certain facts demonstrate being a victim of a qualifying crime and/or suffering substantial abuse as a result of that crime.

Declaration and Supplemental Explanation Practice Pointers

Your client should use her own words, but you don't need to include everything your client says. You may organize her statement, but do not use your words to describe her experience. Ask her counsellor (your partner in preparing the application, if you are following our best practice suggestions) to write a statement that explains what your client is saying in her declaration. How is what she's describing "substantial abuse" for instance? You (legal representative) may also

Did you know

ASISTA provides free technical assistance to Department of Justice Office on Violence Against Women Grantees and their partners? Please send your questions to questions@asistahelp.org and let us know that you are an OVW Grantee or partner.

supply separate explanations for how the facts your client describes in her statement meet the eligibility requirements.

Road Map and Documentation Index

CIS also reiterated that the best practice format suggested by ASISTA is helpful to them. To review:

You should provide a cover letter that gives them a road map to your client's eligibility and documentation supporting it. This is NOT a list of the eligibility requirements and a statement that your client meets them. It IS a specific list of HOW your client meets them. Following is an example (not necessarily covering all issues):

My client, Gail Pendleton, is eligible for a U visa because

- She is a victim of stalking, which is a crime of domestic violence because her stalker fits the Massachusetts definition of a domestic violence perpetrator. See certification and her statement at page 3, paragraphs 4 - 5.
- She possesses the following information about the crime: a picture of the stalker; the dates on which he stalked her; a phone message left on her answering machine from the stalker. See certification and attached pictures and police reports.
- She was helpful to the investigation by calling the Plymouth police department and providing to them the information noted above. See certification and applicant's declaration.
- She suffered substantial abuse because of the stalking: she can no longer leave her house without fear; she has lost weight because of anxiety; she cries and experiences depression on a daily basis. See her declaration and declarations from her counsellor, friends and family.
- She is inadmissible for entering without inspection, for a simple drug possession offense, and for making a false claim to citizenship. It is, nevertheless, in the national/public interest for her to remain in the US because her inadmissibility flows from being a crime victim and she is working to help others in her community. See separate form and documentation on inadmissibility and the (d)(14) waiver.

For the documentation, supply an index with each document briefly described. You may even highlight the specific sections you want them to read. For example, on the first two road map bullet points, the Index might look like:

Pendleton U Visa Documentation

- I. Victim of Qualifying Crime: Stalking in Domestic Violence Context
 - A. Certification that Pendleton is a victim of stalking with facts making it a domestic violence crime
 - B. Pendleton declaration, page 3, paragraphs 4-5, see highlighted portions
- II. Information Possession
 - A. Certification
 - B. Pictures
 - C. Written report to police on dates stalker observed, see highlighted portions
 - D. Answering machine message transcript, see highlighted section

Think Like an Adjudicator

The goal of this is to make it as easy as possible for a U adjudicator to see you have supplied all the documentation she needs, on all the eligibility requirements. Put yourself in the shoes of an adjudicator facing a huge pile of U visa applications; some have a clear road map and index; some are inches of documentation without clear explanation. Which will you do first?

Bona Fide Work Authorization

As of this writing CIS is still working on the guidance for the bona fide work authorization mandated by Congress in TVPRA 08. Currently the issue holding up implementation is the lack of an existing section of the work authorization regulations that will suffice.¹⁴

Do you have an article or idea for a future ASISTA newsletter?

Contact us at questions@asistahelp.org

Many Unresolved Issues

We continue to work with CIS on many unresolved issues concerning U visas. Keep your eyes peeled for updates on the VAWA Updates list serve and in this publication. In the mean time, please contact us with questions about individual cases and policy resolution.

Endnotes:

¹This article is based on an updates for the field by Ellen Kemp, Stephanie Kolmar and Gail Pendleton, and on notes for ASISTA's webinar with the same title. Stephanie Kolmar was a 2009 National Lawyers Guild Haywood Burns Memorial Fellow with the National Immigration Project of the National Lawyers Guild (NIPNLG) and Ellen Kemp is Director of Legal Advocacy for NIPNLG. Future newsletters will contain additional notes for that webinar, as well as updates on the authors' conversations with CIS VAWA/U supervisors.

² Email communication from Thomas Pearl, Assistant Center Director, Victims and Trafficking Unit, Vermont Service Center to Gail Pendleton (Oct. 9, 2009)

³ Email communication from Barbara Q. Velarde, Chief, Service Center Operations, U.S. Citizenship and Immigration Services to Gail Pendleton (July 1, 2009) (hereinafter "Velarde")

⁴ P.L. 110-457, 122 Stat. 5044-5091, Dec. 23, 2008 (TVPR 08).

⁵ TVPRA 08 at § 201(c): Conditions on Nonimmigrant Status for Certain Crime Victims-The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).

⁶ Velarde, *supra* note 3.

⁷ Pendleton notes from VSC Stakeholder Meeting, August 20, 2009 (hereinafter "Pendleton notes")

⁸ See Advance Questions/Discussion Topics for VSC Meeting, August 20, 2009, U Visas, Q 1: Expediting Group Two Cases, posted at www.asistahelp.org.

⁹ *Id.* at paragraph 2 of Answer to VAWA Self-Petitioning Q3: Credibility Rehabilitation Pointers?

¹⁰ *Id.*

¹¹ Pendleton notes, *supra* note 7.

¹² *Id.*

¹³ *Id.*

¹⁴ See generally 8 C.F.R. § 274a.12.

ASISTA'S FAQ'S

Each edition of the ASISTA Newsletter will publish answers to a question or questions chosen from the technical assistance requests we receive.. We will select FAQs based on a number of criteria, including the frequency of similar questions, complexity of the case, likelihood others will have the same question, and relationship to other topics in that newsletter. If you use our technical assistance and

think your question may be helpful to others, let us know.

In Absentia Orders; Newly Discovered Inadmissibility

Q: My client's I-918 (U visa application) & I-192 (Inadmissibility Waiver) were approved. She has an in absentia removal order, for which she explicitly requested a waiver on the I-192. She was arrested and detained while the I-918 was pending, but she was released after ICE approved our I-246 stay of removal application.

She is currently on Intense Supervision Appearance Program (ISAP).

The problem is: after the I-918 & I-192 approvals, I received client's A file through a FOIA (Freedom of Information Request) request, and it contains records of voting once, prior to filing the I-192. She didn't know that it was unlawful to vote, and it didn't get included on the I-192. The I-192 does have a "catch-all" request to waive any other grounds not listed.

What do you recommend doing, to remedy this additional ground of inadmissibility, where the conduct occurred before the I-192 was filed, and the I-192 has already been approved, but the I-192 didn't explicitly request waiver of that particular conduct? I want to resolve the problem, before asking DHS to join our motion to reopen the in absentia order.

A: CIS does NOT have jurisdiction over an order entered by an immigration judge. Therefore, as you are planning, the order of in absentia removal must be reopened by the IJ at the EOIR. If ICE counsel doesn't join you in a joint motion to reopen, you can request the immigration judge to reopen sua sponte based on the U visa approval (see 8 C.F.R. § 1000.23(b)(1)). Be prepared to request a stay, as you did before, in your motion to reopen. I know you already filed the 246 but that is with ICE and they can do whatever they want with it.

As per your voting problem, I would inform VSC, by amending your claim with a declaration from the client very briefly stating the facts, explaining that she was unaware of her wrongdoing,

and describing the circumstances surrounding the "vote" and whether she knew she had to be a citizen to vote (assuming she didn't; if she did, you will need to marshal more facts to show it is in the public interest for her to remain in the US) You should attach your own explanation, as the representative, explaining that you discovered this

prepare significant public interest arguments to meet the waiver standard, you should supplement with more evidence on this issue (see article on Overcoming Inadmissibility on our website for suggestions).

Please make sure, whatever you decide to do, that you and your client come across as very credible and honest.

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As this newsletter goes to press, the field is reporting that some jurisdictions are telling practitioners that termination of the U in immigration proceedings is not necessary because EOIR (the Executive Office for Immigration Review) lacks jurisdiction over U adjustments. While this certainly is an easier solution than moving to reopen cases only to terminate, it is only a satisfactory solution if a U holder's prior final order is cured and eliminated from all DHS records, and any ancillary records, such as NCIC, where the final order may have been noted. Unless and until we resolve this question with CIS, we believe the advice herein remains the best practice.
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inadmissibility problem AFTER filing the I-192. Also mention that you requested "any other grounds" to be waived, like this one but that your client wanted to specifically bring it to their attention, so you are now asking for both 212(a)(6)(C) (ii) (false claim to citizenship) and 212(a)(10) (D) (unlawful voters) to be waived. If you didn't already

Conditional Residence Waiver Interviews

Q: I would like to consult with you about the case of two clients (mother and son) who have interviews for I-751 (conditional residence) waiver petitions next week. I have never encountered an interview for an I-751 joint petition waiver applicant.

A: Expect questions on good faith marriage, since the waivers of the joint petition requirement require a good faith marriage showing and are discretionary, *see* INA§ 216(c)(4) generally (discretion) and (c)(4)(C) specifically (battery & extreme cruelty waiver requires good faith marriage showing). The adjudicator should not ask any questions of the derivative since the principal is the person seeking the waiver. Some adjudicators feel very uncomfortable about going over the specifics of the abuse and concentrate on the dissolution of the marriage only. Your client should, however, be prepared to discuss the abuse documented for the “battery/extreme cruelty” waiver she is seeking. Prepare for this as you would for a VAWA self-petition, except that your client must address it in person, if the adjudicator is unwilling to rely solely on the written documentation you supplied. Since most 751 adjudicators are not

trained in domestic violence, you may wish to prepare your client for ignorant or antagonistic questions, as you would prepare a client for cross-examination from an ICE attorney in immigration court.

If you feel the adjudicator is asking insensitive questions, you may ask to speak to a supervisor, and continue up the chain of command as necessary. Remember that what you do to fix your client’s case will also help the next domestic violence survivor who must be interviewed in this office; this is why we encourage you to raise problems up the chain of command. Please let us know about such problems, as well, so we can flag them for national CIS officers.

To show good faith marriage, get her to put together a photo-album of their “love story” with pictures, e-mails, wedding plans, wedding pictures after marriage etc. People get into marriages for many reasons. Some because

they fall in love; others, because of companionship, to ensure there’s a dad for their kid, etc, so your client should feel free to discuss the many reasons for entering into the marriage. Whatever she chooses to share should show she didn’t get married solely for immigration purposes. One of you should mention that no one should be asked to stay in an abusive marriage just to prove that they entered the marriage in good faith.

Immigration Law & the Family by Sarah B Ignatius, Elisabeth S Stickney, National Immigration Project of the National Lawyers Guild, is an excellent reference tool for all family-based immigration cases, including conditional residence waivers.

Please visit the Asista website at www.asistahelp.org for more information about these or other topics, or email us at questions@asistahelp.org