August 8, 2014

Mr. Leon Rodriguez
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington DC, 20529

RE: PM-602-0102--Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions

Dear Mr. Rodriguez:

The undersigned 32 national, regional, state and local organizations respectfully submit the following comments regarding the interim guidance, Policy Memorandum, PM-602-0102, Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions ("Guidance" or "VAWA 2013 Guidance") for your consideration.

As legal service providers, immigration attorneys, and advocates for survivors of violence, we welcome the VAWA 2013 Guidance, which provides much needed security for immigrant crime victims and their families. Through this comment, we will address issues related to the USCIS interpretation of the two new U visa qualifying crimes, stalking and fraud in foreign labor contracting. In addition, we are very concerned that this Guidance does not provide sufficient instruction regarding certain categories of derivatives, and therefore suggest some significant improvements to further protect crime survivors and their families. Since the "conditional grant" system for those eligible for U visas appears to be in effect for the foreseeable future, we incorporate suggestions on how to implement the Guidance in that context.

I. Clarify New U visa Qualifying Crimes

The Guidance states that USCIS will be adjudicating applications based on stalking and fraud in foreign labor contracting on a case-by-case basis to determine whether the essential elements of those crimes have been met. To that end, we wish to expand upon important points of interpretation related to those crimes.

A. Stalking

Under the Violence Against Women Act, stalking is defined as "engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear (A) for his or her safety

or the safety of others, or (B) suffer substantial emotional distress.[1] All fifty states, the District of Columbia, and U.S. territories have laws prohibiting stalking. Nevertheless, it is common practice that stalking may actually be charged, prosecuted, or addressed in civil enforcement actions under other offenses such as trespassing, breaking and entering, harassment, and others.

For example, the EEOC and various state agencies charged with enforcing labor laws have engaged in investigations and civil enforcement actions involving victims who were subjected to ongoing sexual harassment that resulted in both physical injury and emotional trauma for the victims. Immigrant victims are particularly vulnerable to these forms of harassment and abuse as the perpetrators are aware that they are unlikely to seek redress. The facts in these cases may qualify as stalking, though not initially viewed by the investigating agency as such.

We also note that many states have enacted legislation related to cyber stalking and harassment, which may rise to the same level as a stalking offense, depending on the statute.[2] For example, recently, many states have recently enacted "revenge porn" legislation, making it unlawful to post intimate pictures of an individuals on the internet, recognizing the harm inflicted on the individual whose privacy has been violated.

As the Guidance notes, the crimes listed in the statute are "not a list of specific statutory violations but instead a list of categories" of crimes.[3] While the Guidance provides some explanation about "substantially similar" crimes, it is silent on how to show a crime fits a qualifying category. It is our experience with USCIS that it considers both the elements of the cited crime and the facts to determine whether a crime fits in a qualifying category. In the above examples, for instance, whether the crimes investigated were called "stalking" or some other crime, if the facts met the elements of a stalking statute, that crime should fall in the category of stalking. We suggest that the agency provide more detail of this approach, if not in this Guidance, then in the final U regulations, so that law enforcement, practitioners and advocates who work with crime victims do not unnecessarily deter qualifying crime victims whose cases are not, on their face, stalking cases.

Recommendations: Explicitly acknowledge in the guidance that (1) the investigative, prosecutorial, and civil enforcement practices related to stalking may differ based on jurisdiction; (2) whether a crime is a stalking crime depends on the elements of the crime, the facts of the crime, or both; and (3) the agency will consider all credible evidence in determining whether stalking occurred.

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[1] 42 USC sec 13925 (a)(30).
[2] "State Cyberstalking and Cyberharassment Laws" National Conference of State Legislatures, available at: http://www.ncsl.org/research/telecommunications-and-information-technology/cyberstalking-and-cyberharassment-laws.aspx
[3] *Citing* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,018 (September 17, 2007).

B. Fraud in Foreign Labor Contracting

The Guidance specifies that USCIS must use the definition of Fraud in Foreign Labor Contracting as it is defined under 18 USC 1351[4], as this was specifically mandated by VAWA 2013. We urge USCIS to clarify that victims of "fraud in labor contracting" may be eligible for U visa certification in cases where the fraudulent activity took place outside of the United States. Limited experience with this new category teaches that law enforcement is often confused, and assumes only fraud that occurs in the United States qualifies. USCIS explicitly stating that the relevant fraud may occur abroad, in the United States, or both, will help alleviate this confusion. As noted below, only this interpretation will achieve the Congressional goals.

Like human trafficking, fraud in foreign labor contracting is a transnational criminal activity. Labor recruiters often search for and deceptively conscript workers in one nation with the worker's final destination for employment being in another country. The statutory language at 18 USC §1351 recognizes this reality, contemplating criminal activity that occurs abroad, specifically referencing the *employer's recruitment, solicitation or hiring of a person* ***outside the United States.***" [emphasis supplied].[5] As defined by this provision, fraud in foreign labor contracting is a crime that is international in its very nature.

The Supreme Court has found extraterritorial jurisdiction even where the statutory language did not specifically provide for it,[6] and courts nationwide have inferred Congressional intent to

[4] Specifically, the statute at 18 USC 1351 reads: **(a) Work inside the United States.**--Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both. **(b) Work outside the United States.**--Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment performed on a United States Government contract performed outside the United States, or on a United States military installation or mission outside the United States or other property or premises outside the United States owned or controlled by the United States Government, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment, shall be fined under this title or imprisoned for not more than 5 years, or both.

[5] Courts have confirmed Congressional intent to provide for extraterritoriality of criminal statutes with similar language. *See Pasquantino v. United States*, 544 U.S. 349, 371-72 (2005) (noting that the federal criminal wire fraud statute's prohibition of frauds executed "in interstate or foreign commerce" indicates that "this is not a statute that involves only domestic concerns " (internal quotation marks omitted)); 18 USC 1351's plain language, which describes the international scope of the unlawful act as the "hiring of a person outside the United States . . . for employment in the United States by means of materially false or fraudulent pretenses, representations or promises," clearly demonstrates Congress's intent to prohibit acts that are not only of "domestic concerns." *Pasquantino*, 544 U.S. at 371.

[6] *United States v. Bowman*, 260 US 94, 97-98 (1922) (showing that a presumption against extraterritoriality is not appropriate for certain criminal statutes 'which are, as a class, not logically dependent on their locality for the government's jurisdiction, but are enacted because of the right of the government to defend itself against obstruction, or fraud wherever perpetrated").

provide for extraterritorial jurisdiction over foreign offenses that cause domestic harm.[7] We suggest that Congress must have intended this statute to have extraterritorial application because of the harm it sought to address - the practice of recruiting foreign workers, in their home countries, with promises of fair working conditions and wages, only to exploit them after they have arrived in the United States.[8]

Example: Cintia[9] was recruited by Mr. V, a friend of her extended family, in her home country. Mr. V wanted Cintia to work for him as a domestic worker in the United States. Mr. V met with Cintia's family in her home country, gained their trust, and made important promises to Cintia and her mother about the details of her employment, most of which were memorialized in a contract signed by both parties in her home country. Upon arrival in the United States, Cintia quickly learned that Mr. V had no intention of adhering to any of the agreed-upon terms of her employment, and subjected her to extreme labor exploitation.

Mr. V knowingly made those promises "with intent to defraud . . . by means of materially false or fraudulent pretenses, representations or promises." Interpreting this provision narrowly, to exclude this type of fraudulent labor contracting, will harm countless victims of this practice, who will be left without immigration relief and will fear coming forward to report such crimes. Perpetrators will quickly learn that they may avoid sanction if the only promises made are before their victims enter the United States. To ensure these U visas are both helpful to law enforcement and to the crime victims who access justice, we encourage USCIS to clarify that fraud abroad, as well as in this country, qualifies under this category.

Recommendation: Clarify that the fraud in foreign labor contracting statute has extraterritorial application, and that the qualifying fraudulent recruitment, solicitation, or hiring of an employee may occur abroad.

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[7] S*ee, e.g., United States v. Kapordelis*, 569 F.3d 1291 (11th Cir. 2009) (production of child pornography photographs abroad); *United States v. Benitez*, 741 F.2d 1312, 1316-17 (11th Cir. 1984) (conspiracy to murder government agents and assault of government agents abroad); *United States v. Perez-Herrera*, 610 F.2d 289, 290 (5th Cir. 1980) (attempt to import marijuana into the United States); *United States v. Baker*, 609 F.2d 134, 137-39 (5th Cir. 1980) (possession with intent to distribute and conspiracy to import marijuana); *see also United States v. Vasquez-Velasco*, 15 F.3d 833, 839 n.4 (9th Cir. 1994) (murder abroad to further a drug-trafficking enterprise); *United States v. Harvey*, 2 F.3d 1318, 1329 (3d Cir. 1993) (possession of child pornography made abroad); *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1204 (9th Cir. 1991) (accessory after-the-fact to kidnapping and murder of government agent abroad); *Chua Han Mow v. United States*, 730 F.2d 1308, 1311 (9th Cir. 1984) (conspiracy to import drugs into the United States).

[8] Congress passed the fraud in foreign labor contracting criminal statute to address this common and inhumane practice. See 154 Cong. Rec. Pages H10888-H10905, H10904, (Dec. 10, 2008). In an explanatory statement drafted by the Judiciary Committee of the House of Representatives, Representative Berman explained that the primary purpose of the fraud in foreign contracting provision was to create accountability for employers who "lured" people to the United States under false pretenses, particularly under guest visa programs. To limit its reach to only those cases involving a fraudulent act committed within the United States would significantly "undermine the statute's effectiveness," and run counter to the purpose articulated by lawmakers. *Id.*

[9] Names changed to protect client confidentiality.

II. Provide More Detail on Implementation of VAWA 2013 Age-out Provisions

Because the U visa cap has been met for this fiscal year[10], most current U visa "grants" are, in reality, "conditional" grants of deferred action ("DA") with attendant work authorization. As with many derivatives under prior U age-out guidance,[11] crime victims' family members may be spending years in deferred action status. In addition, since USCIS cannot grant DA to derivatives abroad, most derivatives of U conditional grantees cannot consular process into the United States until USCIS implements a parole system for them. We suggest that USCIS must address these two issues arising out of the current "conditional" system to adequately implement the VAWA 2013 legislative fixes. We therefore provide suggestions on these topics below, after addressing how the Guidance could clarify its implementation for various categories of affected family members.

A. Provide illustrative examples to make the Guidance more effective and useful to advocates and adjudicators.

The Guidance addresses the new age-out protections of VAWA 2013, which added a new section at INA 214(p) relating to age determinations. We suggest that the Guidance include examples of how the age-out protections apply in different situations to help address the myriad problems U derivatives currently face. Illustrative examples, as found in other policy memos and Adjudicators Field Manual sections, make guidance more effective and useful for adjudicators and advocates alike. We will include sample examples throughout the discussion that follows.

The examples below demonstrate the basic underlying principles of the VAWA 2013 age-out provisions (which we believe the Guidance explains well) to make the Guidance more helpful for practitioners and adjudicators.

1. **Fundamental Rule A**: The age of the derivative on the date the principal files his or her U visa is the "age" of the derivative regardless of date of adjudication of the principal or the derivative's applications.

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[10] See USCIS. "USCIS Approves 10,000 U Visas for 5th Straight Fiscal Year" (December 11, 2013). Available at: http://www.uscis.gov/news/alerts/uscis-approves-10000-u-visas-5th-straight-fiscal-year. In addition, based on USCIS informal remarks, it appears as if the cap for FY2015 has been met as well.

[11] USCIS. PM-602-0077: Age-Out Protection for Derivative U Nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status (posted December 12, 2012); available at http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback Opportunities/Interim Guidance for Comment/U-Visa-Age-Out-Interim-PM.pdf

- **Example 1:** A U applicant submits an I-918 Supplement A: Petition for Qualifying Family Member of U-1 Recipient ("Supplement A") for her daughter, who is 20 years and 6 months old when the petition is filed. When the Supplement A is adjudicated, the daughter is now over age 21. The daughter still qualifies for derivative status because she was under 21 when her parent filed for U status.

2. **Fundamental Rule B:** When the principal is a child, the date the principal files the U application determines age for purposes of retaining parent and sibling eligibility

- Example 1: A 20-year old U applicant files a Supplement A petition for her parent. At the time the Supplement A petition is adjudicated, the U principal applicant is over age 21. The parent still qualifies for derivative status because the principal was under age 21 at the time her 918 petition was filed.

- Example 2: A 20-year old U applicant files a Supplement A petition for her 17-year old sister. At the time the Supplement A petition is adjudicated, the U principal applicant is over age 21, and her sister is over age 18. The sister still qualifies for derivative status because the principal was under age 21 at the time her I-918 petition was filed and the sibling was then under age 18.

B. Clarify that the fundamental rules apply regardless of whether the U-1 filed a Supplement A for the derivative.

The Guidance is silent on whether a derivative must have filed a Supplement A or not to qualify under the statute. We suggest that, as long as the derivative relationship existed when the principal U visa applicant filed the I-918 application, the age of the principal or of the derivative when the Supplement A is filed is irrelevant. We encourage USCIS to explicitly state that the rule applies regardless of whether the proper forms were ever filed for the otherwise qualifying derivative.

- **Example 1:** A U applicant files a 918 application for herself but does not file a Supplement A application for her daughter, who is 20 years and 6 months old when the 918 application is filed. After the daughter turns 21, the U applicant filed a Supplement A for her daughter. The daughter still qualifies for derivative status because she was under 21 when her parent filed for U status.

- **Example 2:** A 20-year old U applicant filed a 918 petition but does not then file a Supplement A petition for her parent or 17-year old sister. By the time the 918 application is approved, the U principal is over age 21. She then files a Supplement A petition for her mother and for her sister, who is now over age 18. The mother and

sibling qualify for derivative status because the principal continues to be treated as a U applicant under age 21.

C. **Articulate the process for derivatives when the principal U-1 Visa holder has adjusted**

Before the age-out provisions of VAWA 2013, many U visa child derivatives lost their legal status, or their eligibility to consular process to the US, once they turned 21 years old. Many principal U visa holders did not realize that filing for legal permanent resident status would cut off their children's ability to obtain U-3 visas. USCIS recognized the problem in the April 2011 Guidance on the Extension of Status for T and U Nonimmigrants (hereafter "April 2011 Guidance"), where it instructed principal U visa holders whose status was about to expire to seek I-539 extensions of their status, rather than adjust, if derivatives had not yet been issued a U visa by a consulate. Specifically, the April 2011 Guidance provided:

> Once a principal U nonimmigrant is no longer a U nonimmigrant, ***whether through adjustment of status to lawful permanent resident*** or through expiration of the U nonimmigrant status, any derivative U nonimmigrants ***will no longer be eligible for admission into the United States on a U visa.***[12] *(emphasis supplied)*

While U principals who were aware of the new policy followed this advice, the memorandum did not cure the problem for those who had adjusted before their derivatives could enter, often because they had turned 21 after the principal filed and no relief for them was on the horizon. This occurred even when a Supplement A petition was filed and approved for that derivative.

Current family-based remedies, often cited by USCIS personnel as "fixing" this problem, are not effective alternatives for aged-out derivatives. The extensive waitlist for priority dates means many will wait for many years before they can process into the United States. This delay in reuniting with the principal family members causes undue hardship for both crime survivors and their families.

There are two ways USCIS could implement the law in a way that helps this group of denied or stranded family members.

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[12] USCIS. PM-602-0032.1: Extension of Status for T and U Nonimmigrants; Revisions to Adjudicator's Field Manual (AFM) Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11-28). Citation at page 9. Available at: http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/April/exten.status-tandu-nonimmigrants.pdf (Last accessed Aug 5, 2014)

1. Permit those whose principals adjusted to now file derivative U applications

As VAWA 2013 and this Guidance specify, "when a principal petitioner for U nonimmigrant status now properly files his or her principal petition, the age of the qualifying family member is established upon the date on which ***the principal properly filed*** for his or her principal U nonimmigrant status." (emphasis supplied). The age-out protections of VAWA 2013 should extend to derivatives who cannot obtain U-3 status because the principal U visa holder has adjusted. For the reasons noted above, including the confusion caused by late implementation of the law and (welcome) changes in USCIS practice, we suggest recognizing derivatives abroad whether the principal filed a petition for them or not.

Example: A U applicant survivor of domestic violence files an I-918 and lists all of her children on the application. The oldest child, Z, is in the custody of Department of Social Services and is not initially included on a Supplement A petition. Mother and other minor siblings receive U Nonimmigrant Status. Just before Z turns 21, a Supplement A is filed for him, but the child ages-out before the application is adjudicated. Z is granted deferred action. Mother subsequently adjusts status to Lawful Permanent Resident along with other minor children unaware of the consequences to her son's derivative application. USCIS revokes Z's deferred action. Z is left without status while Z's mother and three siblings are all Lawful Permanent Residents.

Recommendation: Allow derivatives who would have qualified had this provision been law on its effective date (2000) to now file U derivative applications even if they aged out after the principal filed and the principals have adjusted. Apply the fundamental rule (above) and, for purposes of this class of aged-out derivatives, assume the principals have not adjusted. Instead, apply a *nunc pro tunc* approach, evaluating the case as if it had been filed before the principal adjusted.

2. **Permit former U-1 holders who are now Legal Permanent Residents (LPR) to file I-929: Petition for Qualifying Family Member of U-1 Nonimmigrant ("I-929 petition") for family members who qualified at time of principal U filing, or would have qualified had VAWA 2013 been the law on its effective date (2000)**

A second option for many in this situation, had the law existed at the time, would have been for the principals to include derivatives at the adjustment phase, if they were still under 21 at time of adjustment. Rather than force long-delayed derivatives to go through the U derivative application process and wait three years before adjusting, USCIS should apply a *nunc pro tunc* approach, and permit U-1 visa holders who are now LPRs to file I-929 petitions for family members who would have been eligible for U derivative status had this been law on its effective date (2000).

Example: In 2008, U principal applicant filed for U Nonimmigrant status when her son was a month from turning 21. USCIS policy at the time was to deny such cases as aged-out, so she did not include the son as a derivative because he had turned 21 by the time the Supplement A was ready to file. Subsequently, the son was deported in 2009 while his mother's U application was pending. In May 2013, the mother filed for adjustment because her U Nonimmigrant status was expiring. Her adjustment application was approved in February 2014. She subsequently filed a Supplement A for her son; however has not yet received a decision on his application. The I-929 petition process should be another option available to this family, as it would allow for swift family reunification for the derivative now protected under VAWA 2013's age-out provisions. Were she to file a regular family-based petition for him, they would not be reunited for many years.

Recommendation: Allow adjusted U principals to now file I-929 petitions for derivatives who would have qualified had this been the law on its effective date, applying the fundamental rule to age-outs, i.e., age frozen on date of principal U filing.

3. **Assign principal's approval date to derivatives with deferred action status**

Under the December 2012 guidance, USCIS granted deferred action status to derivatives (inside the United States) who turned 21 years old while the principal's application was pending.[13] Since this class of derivatives has or had deferred action, we respectfully suggest that USCIS should backdate their U visa approvals to the date the principal was granted status.

USCIS applied a related practice to those who received interim relief (also deferred action status). The regulations state "petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status *as of the date that a request for U interim relief was initially approved.*" (Emphasis supplied).[14] The Aytes Memo applied this rule to derivatives with interim relief.[15] Thus, those derivatives with deferred action under interim relief were granted U-1 status back to their initial interim relief approval date. Such an approach conforms with the ameliorative purpose of the U visa statute and, we suggest, should be applied to those who, like interim relief recipients, received deferred action.

[13] USCIS PM-602-0077, supra. n.11.
[14] 8 CFR § 214(b)(6)
[15] Michael Aytes, Assoc. Director, Domestic Operations, to Field Leadership, File No. HQORPM AD08-12, HQ 70/8, New Classification for Victims of Criminal Activity—Eligibility for "U" Nonimmigrant Status, Revisions to Adjudicator's Field Manual (AFM) Chapter 39 (AFM Update AD08-12), at 1 (Mar. 27, 2008) [hereinafter "Aytes Memo"].

4. Count time in deferred action status as time in U status for adjustment purposes

A corollary to the rule above is to count time in deferred action status, which we suggest be counted as time in U status once a U visa is approved, as time towards adjustment. As noted above, USCIS has applied a similar rule in the interim relief context and has, in the meantime, provided methods to help aged-out derivative extend or maintain their status.[16] We suggest the agency adopt a similar approach for the category of U derivatives who had no control over when USCIS would adjudicate their principals' claims but who may have become ineligible due to no fault of their own.

D. Ensure the Department of State swiftly applies the law correctly

In addition to providing a policy memorandum on the Reauthorization of VAWA 2013, we ask that you also ensure consular posts receive an updated version of the Foreign Affairs Manual (FAM) section on U Nonimmigrants.

1. Fix FAM derivative age measuring date inaccuracies

The FAM guidelines for U-3 age-outs is based on the filing *date of the Form I-918 Supplement A for the derivative*; whereas VAWA 2013 changes the law to create the deadline based instead on the *filing date of the Form I-918 for the principal*. 9 FAM 41.85 N3.3(a) defines the deadline: "[u]nmarried U visa applicants *who filed their petitions* before they turned 21 remain eligible for the visa after they turn 21," (emphasis supplied). The same mistake occurs in 41.85 N3.3(b): "Any beneficiary who filed their petition before they turned 21 . . ." The age should be based on the principal's filing date, not on the derivative's filing date.

Recommendations: Correct the FAM language at *9 FAM 41.85 N3.3* (a) and (b) to read:

- *"*Unmarried U visa applicants **whose parents** filed their petitions before **the beneficiaries** turned 21 remain eligible for the visa after they turn 21." (a)

- *"*Any **principal** who filed their petition before **their beneficiary turned 21** and is now older than 21, . . ." (b)
  (emphasis supplied)

[16] See PM-602-0077, note 7 supra. (providing that as "the failure to maintain U derivative nonimmigrant status [because of aging out] was due to extraordinary circumstances beyond the control of the derivative U nonimmigrant.")

2. **Fix confusing FAM language on derivative age and I-929 lawful permanent residence applications.**

The age-out language that was in the previous version of the FAM guidelines in section 9 FAM 41.85 N9 was completely removed from the current version. The intent of the current language seems to be that the age-out guidance applies to child derivatives at both the Nonimmigrant U visa stage and the Immigrant Visa stage through the Form I-929. The age-out language at 9 FAM 41.85 N10(d) and 9 FAM 41.85 N10(e) states, however, that "[l]ike U-3 cases, there is no age-out protection for SU-3 (child) follow-to-joins." 9 FAM 41.85 N10(e) refers to this same age-out issue in which the officer "should refuse the case." These statements should have been deleted at the time of the prior guidance. They are patently inaccurate under the VAWA 2013 legislative fixes.

Recommendations: USCIS should communicate these problems to the Department of State, suggesting

(a) removing from the FAM these final two sections and replacing them with the following, at 9 FAM 41.85 N10(d):

> "Like U-3 cases, there is age-out protection for SU-3 (child) follow-to-joins. Unmarried SU-3 beneficiaries who were eligible for a I-929 petition before they turned 21 remain eligible for the Immigrant visa after they turn 21."

and (b) adding the following retroactive protection to these qualifying family members at the immigrant visa stage, at 9 FAM 41.85 N10(e):

> "Age-out protection is retroactive. Any beneficiary who was eligible for a I-929 petition before the beneficiary turned 21 is still eligible to file an I-929 petition as if the beneficiary were the age on the date the principal filed the U visa."

III. Implement a Parole System

As noted initially, the Guidance does not address the extra impediments to implementing the law caused by the U visa cap. On December 11, 2013, two months into the fiscal year, USCIS announced that it had approved the statutory maximum 10,000 petitions for U-1 nonimmigrant status (U visas) for 2014.[17] This 10,000 annual U visa allocation has resulted in several-year delays in the availability of U visas.

[17] See note 10, *supra.*

USCIS has asserted the ability to grant parole to U visa applicants since the beginning of the program.[18] The USCIS International Operations Division, the entity responsible for adjudicating humanitarian parole applications pursuant to INA § 212(d)(5)(A) for those outside of the United States, has developed expertise in adjudicating the humanitarian parole requests and understands one of the most common bases for humanitarian parole, family reunification. This branch already adjudicates parole requests for the children of VAWA Cancellation of Removal grantees, authorized for parole under INA § 240A(b)(4)(A).

Unfortunately, despite the existing power and structure to grant parole, USCIS has yet to establish a procedure for U "conditional grant" derivative parole, resulting in lengthy separations of family members. USCIS should immediately implement a clear system for paroling in conditionally granted derivatives, thereby ensuring survivors have the support they need while participating in the prosecution of criminal offenders.

Example: In 2013, Mr. X filed a U visa application and included his spouse and four children as derivatives. He and his two oldest sons are in the United States, while his wife and two youngest children live in Peru. In July 2014, Mr. X was notified that his case was approvable but all visas have been allocated. He and the two sons living in the United States were granted deferred action status and can now apply for work permits. His wife and two younger children in Peru will have to wait for Mr. X to be granted U Nonimmigrant status before they can come to the United States. It is not clear whether Mr. X will receive a visa in the 2015 allocation or if he will have to wait for fiscal year 2016.

Recommendation: The International Operations Divisions should adjudicate U parole requests under the following guidelines:

- Humanitarian parole shall be granted based on family reunification where the applicant provides evidence of a conditional U visa grant, including a deferred action letter for the derivative or principal conditional U visa grantee, and evidence of the derivative family relationship with the conditional U visa principal.
- Waive fees for the Form I-131 where the evidence indicates that the applicant is the derivative of a conditional U visa principal.
- Do not require an affidavit of support on Form I-134 where the evidence indicates that the applicant is the derivative of a conditional U visa principal.
- Do not require DNA testing absent a specific problem with the traditional relationship documentation.

[18] *See, e.g.,* HQINV50/1, Cronin, *Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Policy Memorandum #2 -- "T" and "U" Nonimmigrant Visas* (Aug. 30, 2001) at p. 2.

- Do not require a declaration, detailed statement, or other evidence regarding the need to parole the family member into the United States where the evidence indicates that the applicant is the derivative of a conditional U visa principal.

Conclusion

For the reasons above, we urge you to issue final guidance that provides protection for all aged-out derivatives, both in the U.S. and abroad, so that victims and their families can be united. We appreciate and thank USCIS for the work it has done on this issue, and are committed to working with the agency to ensure policies implement the law as Congress intended.

Thank you for consideration of these comments.

Sincerely,

National Organizations (9)

Asian & Pacific Islander Institute on Domestic Violence
ASISTA Immigration Assistance
Casa de Esperanza: National Latin@ Network
Catholic Legal Immigration Network Inc. (CLINIC)
Mil Mujeres
National Alliance to End Sexual Violence
National Immigration Project of the National Lawyers Guild
National Network to End Domestic Violence
Southern Poverty Law Center

State and Local Organizations (23)

California

Coalition to Abolish Slavery & Trafficking
East Bay Sanctuary Covenant
Immigration Center for Women and Children
La Raza Centro Legal
Los Angeles Center for Law and Justice
Opening Doors, Inc.
Public Counsel

Florida

South Florida Justice for Our Neighbors
UNO Immigration Ministry

Illinois
Justice For Our Neighbors -- Northern Illinois

Massachusetts
Law Offices of Hema Sarang-Sieminski
Lutheran Social Services, Immigration Legal Assistance Program
The Second Step

Mississippi
The Law Offices of Amelia S. McGowan, PLLC

New York
Justices for Our Neighbors-New York
Legal Services NYC
Northern Manhattan Improvement Corporation (NMIC) Legal Services

North Carolina
Helen Tarokic Law PLLC

Ohio
Advocates for Basic Legal Equality

Virginia
Virginia Poverty Law Center

Washington
Washington State Coalition Against Domestic Violence
Tacoma Community House
Washington Defender Association's Immigration Project