Questions for CIS re: U visas

A potential U visa client has a prior removal order from an IJ. Will a waiver of INA § 212(a)(9)(A) and/or INA § 212(a)(9)(C) under INA § 212(d)(14) cure the reinstatement problem?

USCIS currently has no position on what effect this has on reinstatement. Those with an IJ or BIA order will need to file a motion to reopen at the time of adjustment. Those with DHS orders will have the order automatically cancelled upon approval of the U visa.

[NOTE: Asista believes that the grant of a waiver of § 212(a)(9)(A) and/or INA § 212(a)(9)(C) will eliminate the predicate requirements for reinstatement (unlawful entry or attempted re-entry after removal).]

There are some people who want to file their I-918 right away because they are now eligible or because they want to file with initial evidence from their interim relief approval, but they cannot afford the filing fee for the I-192. For people with potential inadmissibility issues, must they file an I-192 with the I-918? Can they wait to get an RFE or might they be issued a NOID or a denial? What about if their only potential inadmissibility problem is an EWI? What about if it is only the derivative that has the inadmissibility problem?

A waiver must be filed on an I-192 per the regulations. However, it is possible to file the I-918 and wait for the I-192

Will EWIs need to file an I-192?

Yes, even if it is the only inadmissibility ground triggered.

Is there any possibility that a fee waiver can be granted for the I-192?

Not at this time. The new federal fee rules govern all filing fees. [Note: However, that USCIS management is aware of the issue. Discussions are being held that might change this policy, so stay tuned.]

Is it possible for CIS to interpret the language at INA § 212(d)(14) that says: "the Secretary of Homeland Security shall determine whether a ground of inadmissibility exists…" to perhaps not even charge certain folks – i.e. EWIs – with a ground of inadmissibility such that no I-192 will be needed?

We cannot discuss this at this time because the regulations comment period is still open.

Do applicants with an expedited removal order have to submit the I-192 and accompanying fees? How will the removal order be automatically canceled?

Yes, an I-192 will need to be filed to overcome any inadmissibility grounds that are triggered [Note: In this case, probably INA §§ 212(a)(9)(A) and/or 212(a)(9)(C) are triggered]. If the I-192 and I-918 are approved, the expedited removal order will be cancelled. The exact process for this (i.e. what kind of paperwork you will receive) is currently unclear.

A client granted deferred action has more than 180 days of unlawful presence. Can he travel under the U visa regulations?

This question is too case specific to provide an accurate answer.The attorney should look at the rules on advance parole. [Note: Keep in mind that advance parole does not protect someone from potentially triggering the unlawful presence bars, so make sure to also analyze carefully whether your client has accrued unlawful presence and will trigger bars. Remember that deferred action is considered authorized presence.]

A recipient of deferred action under U interim relief entered as a J-2 and is subject to the foreign residency requirement. Does deferred action (and the granting of a U visa) have any effect on waiving this requirement? Deferred action was granted based on an assault by her husband, the J-1. Does it make a difference if she divorces him?

Deferred action has **no** effect on the waiver of the residency requirement. Divorce has no effect on the U visa eligibility as long as other requirements are met. Even if the U visa is granted, this person will be subject to the foreign residency requirement.

We are now representing a mother and two children in a U visa case where the husband/father was murdered. We would like to file 3 principal I-918s – one for Mom and two for the kids. The children were quite young when the father was murdered. We can get an I-918, Supp. B for Mom saying that she cooperated. As for I-918, Supp. Bs for the kids – we can get the DA's office to sign, but the kids themselves did NOT cooperate. We know that such cooperation is not required as they were under 16, but we just do not know how to fill out the I-918, Supp B. certificates.

It is perhaps a strategy question whether or not the children in this situation should file as principals or derivatives. We leave the issue of eligibility and law enforcement certification to advocates to negotiate with their law enforcement agencies. Advocates should have the law enforcement official simply explain the circumstances when the sign the cert (i.e. that the child was under the age of 16 at the time and therefore could not cooperate).

If the person who is applying for a U visa is the undocumented mother of a 16-year old U.S. citizen sexual assault victim, is it sufficient for the mother to apply as the indirect victim of the crime simply because the direct victim is under 21 years of age, or must the indirect victim be both under 21 years of age AND incompetent or incapacitated?

In this scenario, the mother cannot apply as the principal applicant. She is not eligible because the direct victim is a U.S. citizen. [Note: The regulations do not indicate that the direct victim cannot be a U.S. citizen. Furthermore, there are state and federal statutes that would define mom as a victim in this scenario. Certainly, folks under the interim relief policy were granted in these situations.]

Although no deferred action may be issued as interim relief for U visas now, can past recipients of interim relief and EAD cards renew their deferred action and EAD now, before they have even filed the I-918? For example: The interim relief deferred action and EAD may expire in January, so should be renewed in November. However, the client may not be able to file the I-918 until February or March, especially if waiver of inadmissibility is needed. Can they go ahead and renew deferred action and EAD in November?

Yes. Interim relief continues and can be renewed while the I-918 is pending. Advocates can also file to renew the EAD and DA as soon as it becomes necessary, even before the I-918 is filed (as long as it is before April 14, 2008). {Asista Note: CIS has now eliminated the deadline for interim relief flings.]

Will persons whose U visa applications are denied, and who have admissibility issues be issued NTAs (Notices to Appear)?

There are three agencies that issue NTAs – CBP, ICE and CIS. NTAs can be issued on a case-by-case basis determined by each agency, using prosecutorial discretion.

The I-192 seems to have been written for people outside the U.S. and therefore requests seemingly inapplicable information. Do we need to complete questions 7, 8, 9, 10 and 11 for that matter for U visa applicants living in the U.S.?

You need to fill out all sections on the forms. If necessary, you may write "Not Applicable" or "N/A" in sections of the form and/or explain why the question does not apply. We expect that the I-192 form fill be updated soon which may address some of these discrepancies.

If an applicant submits insufficient evidence with the I-192, will the applicant be RFE'd or denied?

An RFE will be issued.

Question about the Form I-918, Part 2, question 8: What should someone who is currently in removal proceedings indicate?Just check the "Removal Date" box and not fill in the date?

Try to be as complete and correct as possible or it may appear that the applicant is being evasive. So be sure to include all prior removals and voluntary returns. If your client is currently in proceedings and has not yet been removed, write in "ongoing" or "pending."

Should (or can) an applicant explain "yes" answers to Part 3, Question 2 or 3 a-d (questions regarding inadmissibility grounds related to public benefits receipt, prostitution, etc.)?

Yes. You should answer yes to any questions that apply to your client and then explain it in a narrative attached on additional sheets. Again, it's better to acknowledge and explain as much as possible to not appear evasive. It's better to include and explain as much as possible upfront so your client will appear more credible. Err on the side of caution and disclose upfront.

Is bio sheet still needed, since all the information is already on the I-918?

No.

If U visa is approved will it and the EAD be 1 year renewable? Or for 3 or 4 years?

EADs based on approved U nonimmigrant status (or derivative status) will be issued for 4 years.

Would the current immigration status be "deferred action" for those already under interim relief?

Yes. It is helpful to answer "deferred action" in response to the question about immigration status because it tips off CIS to the fact that there was a previous interim relief filing.

Do we need to submit documents to show why a waiver should be granted in public interest?

Yes. This could come in the form of a statement explaining grounds for granting the waiver, reasons and circumstances for needing it. This will be adjudicated on a case-by-case basis and can include details of the victimization.

Will folks who receive an approved U visa need to file an I-601 or I-212 again at adjustment for the same inadmissibility issues for which they had to file the I-192?

We need to wait for the adjustment regulations to know the answer to this question.

Do we need an Affidavit of Need with the principal's I-918 EAD request? What about with the I-765 for the derivatives?

No. The EAD is incident to status for principal applicants and there is no need to show financial need.And I-765 is required for derivatives, but they also do NOT need an affidavit of financial need.

What will happen to folks who don't get a visa within the 10,000 visa cap? Will they get deferred action and an EAD? Same for derivatives?

The answer to this is in the interim rule. Principals and derivatives will be put on a waiting list and will receive deferred action or parole and can apply for an EAD on that basis.

Can folks who received interim relief simply submit a copy their old LEA cert with the new I-918 if they do so before April 14, 2008? Or do we not even need to send a copy of the cert since you already have the file with the original? Will you accept these old certs even if they don't meet the new standards under the regs (i.e. weren't signed by a head of agency)?

We will accept old LEA certs even if they were not signed by the head of the agency as long as the old LEA cert was the basis for an approved U interim relief application.You should include a copy of the old LEA cert otherwise you may receive an RFE. You may also get an RFE if the original LEA cert did not address helpfulness or qualifying criminal act sufficiently.

You do not need to include a copy of the entire previously filed (and subsequently approved) U interim relief application, but it is advisable to do so in case we have any problems locating the old file.

What are police chiefs required to do to demonstrate that they have designated a staff member with supervisory authority to sign I-918 Supplement B? What are applicants required to do to demonstrate that the I-918 Supplement Bs they submit conform to that requirement?

They do not need to do anything specific or obtain anything specific from the head of agency. We will rely on the agency signature as proof of meeting this requirement.

What happens where someone has a final removal order from an IJ and is granted a U visa? Can you please clarify which types of prior removal orders will be cancelled by the approval of a U visa? What will be the proof of this cancellation?

As of now, this process is still unclear.

For the non-citizen applicant outside the US, is the I-192 and I-193 submitted to the Vermont Service Center, the Consulate abroad or to some other location?

They should be submitted to the Vermont Service Center.

The regs confirm that a noncitizen may apply for more than one form of relief, but then go on to state that "USCIS will only grant one nonimmigrant or immigrant status at a time. Where multiple applications or petitions are filed and pending at the same time, USCIS will grant the status for the application or petition that is

approved first. USCIS will deny any remaining petitions or applications for status." Does this mean that if our clients receive the U visa they cannot also subsequently file for VAWA or asylum or be petitioned by a family member? Or what about clients in proceedings who want to pursue all possible options?

An approved VAWA self-petition is not a nonimmigrant or immigrant status so you should be able to apply for VAWA and the U visa at the same time and have both an approved VAWA self-petition and a U visa. However, at the time of the adjustment, the applicant will have to decide which option to pursue.

What is the purpose of Page, 6, Part 3, Question 11? It says: "Have you EVER been present or nearby when any person was: (a.) Intentionally killed, tortured, beaten, or injured; (b) Displaced or moved from his or her residence by force, compulsion or duress; (c.) In any way compelled or forced to engage in any kind of sexual contact or relations." Obviously victims of those crimes were present as well as witnesses of those crimes (for indirect victims or derivatives). So is this question about the victimization or is it a question about admissibility? And should this affect how we answer the question?

This is a question about inadmissibility. You should answer the questions as truthfully as you can and attach a separate explanation.You may simply attach a statement explaining how it was part of the victimization if that is relevant.

Because many of our clients do not have safe, permanent addresses, our organization has traditionally used our office address as the applicant's address. There is a place for a safe address such as ours on the I-918, but the form also requests the applicant's temporary address. Some of our clients have expressed concern that they do not want notices coming to relatives' homes or shelters. Must all applicants include the address where they are living at the time they file the application, or is the safe address sufficient?

Applicants should include a residential address if they have one and know that Vermont will *always* use the safe address for correspondence, even if a residential address is included. If the applicant lives in a shelter or other confidential location, the applicant should explain this. Applicants should know that the fingerprints and biometrics appointments will be made based on the residential zip code given. Also, applicants should be reminded that they must inform DHS of their whereabouts if they move or change addresses.

What is "substantial abuse?" Will the substantial abuse standard be similar to the abuse standard in VAWA? Can you clarify?

Advocates and attorneys should look at the regulations for guidance on this. The regulations include factors such as the severity of the injury and abuse, perpetrator's conduct, and harm suffered. This standard will probably NOT be similar to the abuse standard in VAWA. Substantial abuse does not equal being subjected to battery or

extreme cruelty. [Note: If your client has suffered a history of abuse that has been triggered by the qualifying criminal activity, include that in your showing of substantial abuse.]

Are Stays of Removal needed for folks who are applying for a U visa but have an expedited removal?

Yes, file an I-246 with the EOIR or local head of detention unit or preferably both. ICE warns that mere filing of an I-918 will probably **not** stay a removal and an I-918 approval will be required. The stay should be filed on an I-246 which can be downloaded from www.forms.gov.

If the victim has had interim relief for four years or more, do they need to/can they file an adjustment at the same time as their U-Visa application?

We cannot comment currently because U adjustment regulations are still pending.

What will happen to people who have already had interim relief for four years? Once their U visa application is approved, what is the potential duration of status? Will they be able to apply for adjustment or will they be granted extensions of their U Nonimmigrant Status while regulations regarding adjustment are promulgated?

We cannot comment currently because U adjustment regulations are still pending.

What is the expected processing time for the U-Visa applications?

It is difficult to say at this time since applications are just coming in.It will probably be a similar timeframe to the VAWA applications since this is an in-depth adjudication. We plan on adjudicating the pending interim relief applications concurrently with the I-918s and have made great headway on those. For the I-918 people will also have to wait for biometrics and fingerprints to go through so that will affect the timeframe.

Should the declaration submitted initially be the same as for the waiver, or will a supplemental declaration be permitted?

This is a filing decision for the attorney or representative to make. If both can be addressed in one declaration, that may be sufficient.

Do we need to submit birth certificate and photos with the I-918?

No, if these were filed for an approved U interim relief packet. Otherwise, derivatives will need to file photos. Most principals should not need to file photos because they will be called to a biometrics appointment. However, principals outside of the United States will need to submit photos. The birth certificate and photos are necessary to create a record for first time filers.

Because we don't know how long it will take to process a U visa case (especially with so many being turned in a short time), we believe applicants need to submit I-765s to renew their work permits as they are set to expire even though a work permit is automatic with the I-918. Will it cause a problem for processing either the I-918 or I-765 if someone submits both applications within the same year?

No. The interim rules allow for deferred action extensions and simultaneous U visa filings at the same time.

What is the EAD category code on the I-765 for U derivatives?

The category codes are (a)(19) for principals and (a)(20) for derivatives. Principals won't need to file an I-765 but this is the code that will appear on principals' EADs.

The regs say that a derivative needs to have the qualifying relationship at the time of the I-918 filing. Does this mean that sibling derivatives who received interim relief and are now over 18 years old cannot qualify?

We cannot currently answer this question because we are still researching the answer.

What about if someone receives U non-immigrant relief and then two years later gets married? Can an I-918 Supplement A be filed for the new spouse two years later?

As long as the relationship exists at the time of the I-918 filing, this should be fine. However, an applicant cannot include as a derivative a spouse that was acquired *after* the filing of the I-918.

If client got interim relief but not the employment authorization yet, should she file a separate I-765 based on deferred action now or is filing the I-918 with no filing fee likely to be just as fast?

It would be faster to file an I-765 based on the deferred action than to wait for the I-918 approval because that process requires biometrics.

The I-918 asks for the location and names of the applicant and derivative relatives (spouse and children). Is it possible that listing that information will trigger enforcement or proceedings against these people?

The short answer is no.

The new EAD instructions ask for inclusion of a passport or ID with the application if client doesn't have prior EAD. Will it be a problem if client does not have any of these documents?? (i.e should people get passports if possible - they cost $$)

Photo identification is mandatory and is required as initial evidence. If not available, the applicant should also prepare to file an I-193 waiver.

Should we submit a copy of the previous interim relief application packet with the I-918 or just something to show that interim relief was previously approved?

A copy is not required but you may send a copy (including a copied signature) in case your file is not at Vermont.

Do we need to submit a passport copy with all I-918s and if they don't have one, an I-193? Or is that requirement only for applicants who will want to travel?

If you don't have a passport, you will need to file an I-193. This is regardless of whether or not the applicant wants to travel.

Where we are submitting an I-918 for someone who has previously filed a VAWA self-petition on Form I-360 (but is also submitting an I-918 either because the person is a spouse/child of an LPR, so will have a long time to wait to adjust or because the person is subject to a ground of inadmissibility that is waivable under the U visa statute but not under adjustment on a VAWA), in addition to the required I-918, Supp. B, should we include any of the parts of the VAWA I-360 or supporting documents with the I-918 or provide a Notice of Action indicating either prior approval of the VAWA or the pendency of the VAWA?

No. They are separate applications with separate standards. Some of the information from the VAWA application is useful but applicants must meet the separate criteria for each application.

If the head of the law enforcement agency wants to designate someone else to sign the I-918 Supplement B, can they designate more than one person? Must the U visa applicant include an original letter indicating this designation every time or can an agency receive one such letter from the law enforcement agency and just include a copy every time? Is it okay if the letter authorizing the designation is more than 6 months old at the time of submission?

It is up to the individual law enforcement agency to decide how many designees to appoint. The head of agency need not sign or affirm designees. Getting a letter from the head of agency designating the designees is helpful and recommended but NOT required. Our policy is that Vermont will accept an I-918 Supplement B signed by the designee.

Will everyone be required to submit a declaration/signed statement? Will exceptions be made for those too traumatized by the crime to recount all of the details? How about cases of child abuse, or sexual assault/rape of a child - will the child be exempt from writing a declaration?

The regulations require everyone to submit a signed statement. Children can have a parent, guardian or next friend sign the statement.

Is there a standard turn-around time for U-visa applications at the VSC? Is it different when the person is in detention? Are detainee applicants given expedited handling even without requesting it? If not, is detention a basis for getting the adjudication of the U visa expedited? Other than the VAWA hotline, is there some other avenue we can turn to get a more immediate response?

Case-by-case determination. Present the best information you have to request an expedite, and Vermont will decide. Some possible factors include humanitarian reasons, detention, possibly removal proceedings (but keep in mind that removal proceedings by themselves will not necessarily result in a case being expedited). To request that a case be expedited, flag it for Vermont by calling, faxing or writing to the VAWA Hotline with the case receipt number.

When can we expect U adjustment regs?

We cannot comment except to say that we are currently working on them.

Under what circumstances will VSC expedite a U visa case?

Possibly for humanitarian reasons. Being in removal proceedings or detention may also warrant a case being expedited, but not in all cases.

Will Vermont forward information about perpetrators for removal actions?

No, not at this point.

What is the policy of ICE on visitation of victims of smuggling who are cooperating with ICE, are detained, but private facilities are allowing smuggler's lawyers to visit and intimidate victims. If ICE has an investigation open on a smuggling ring, do they inform victims of the possibility of getting a U visa and their right to not talk to the smugglers' lawyers?

ICE does not advise detainees on whether to talk to an attorney or not. We do not tell them they have the right to NOT talk to a lawyer. We give them the list of free and low-cost legal services, and AILA attorneys have access to those in detention. We also try to reach out to CBOs to ask for assistance in screening detainees.

What is the guidance to judges and trial attorneys on how to handle a victim's claim to a U or T visa while in proceedings. Are they told to terminate or admin close?

If the visa is granted, the removal proceedings will automatically be taken off the docket and terminated. If the case is filed, they will liberally agree to administratively close. ICE recommends against requesting admin closure for a client who is in detention, because an

admin closure alone will not get the client out of detention. If an underlying prior removal order exists, file a motion to reopen.

If I receive an RFE because I did not submit an I-192 with the I-918, how much time can I expect to be given to respond to the RFE?

We expect to be allowing the maximum time to respond to an RFE which is 12 weeks or 87 business days.

Can I ask for an extension to the RFE?

No. The new RFE guidance does not allow us to grant extensions.

Do derivative applicants need to file a separate I-918 Supplement B law enforcement certification form?

No. If they are filing with the principal applicant, they do not need to submit one at all. If they are filing subsequent to the principal's filing but before the approval, they should include a copy of the principal's Supplement B. If they are filing subsequent to the principal's approval, they should include a copy of the principal's Supplement B and a copy of the approval notice.

My client lives at a shelter with a confidential address. How should I fill out the section on the form requesting information about her home address?

You may simply include an explanation here that explains that she lives at a confidential location. Please keep in mind that Vermont will always correspond with her safe mailing address instead of her home address if those two addresses are different. The only possible exception is if the safe mailing address is for an attorney who we know has withdrawn representation. Also, please remember that if your client moves from the shelter, she must notify CIS of her change in address either by letter or filing an AR-11.

Where should we file a stay of removal for a client in proceedings?

If your client was in removal proceedings (including stipulated removal orders), the stay can be filed with the head of detention and EOIR. We recommend filing with both.

If your client has a reinstatement case or an expedited removal and is being detained, the stay can be filed with the detention and removal office Field Operations Director.

If your client is in proceedings but is not detained, try filing the stay with the Office of Chief Counsel.

What form do I use to file a stay and is there a fee waiver available for it?

The stay is filed on a form I-246.(Note: This form is not available on the CIS website. Look for it on the GSA website www.forms.gov.) It's unclear if there is a fee waiver available for it anymore.The EOIR might be able to grant one.

If my client is in criminal custody but will be released to ICE custody, can I file the stay now?

No. You cannot file a stay before your client is in detention because we do not yet have authority over the case to grant it.

My client filed for interim relief but was denied because of a possible aggravated felony. Can she now file a motion to reconsider under the new regulations which do not automatically preclude someone with a possible aggravated felony?

If you filed the interim relief request before October 17, 2007 then it will be accepted under the old interim relief policy guidance and adjudicated under that policy. You cannot file a motion for us to reconsider it now under the new regulations.

Must my client have a passport to file an I-918?

Yes, your client must have a current/unexpired passport [NOTE: Will an expired passport suffice or must it be an unexpired passport?]. However, if your client cannot get one, you may also file an I-193 waiver.