



**Notes and Practice Pointers
Vermont Service Center Stakeholder Event
October 24, 2014**

This is a summary, compiled by ASISTA Immigration Assistance and the AILA VAWA, Us &Ts Committee (AILA), of the information shared during the Vermont Service Center (VSC) Stakeholder’s meeting in Essex, Vermont on October 24, 2014. Tracey Parsons, Director of the Humanitarian Division at VSC, Lisa LaRoe and Carrie Ryan, VAWA Section Chiefs were present as well as several other subject matter experts and representatives from USCIS Headquarters.

This advisory contains general information shared by VSC staff followed by questions and answers divided into categories. We have added practice pointers and clarification where relevant. Additional materials from the Stakeholder event can be found by clicking [here](#) and [here](#). The discussion was at a high level, so these notes assume experience with VAWA self-petitions, U visa, and T visa relief. If you need more basic background material, visit www.asistahelp.org.

I. VSC Operational & Processing Information (provided by VSC)

VSC focus continues to be on quality and customer service. There are about 145 officers in the VAWA Unit in three different buildings. This given, it can be difficult to make sure that the work done is consistent and that officers have support to do their jobs well. There are 53 officers working on I-360s (VAWA self-petitions) and 93 officers working on I-918s (U visa applicants). In June 2014, new officers were trained on I-914 (T visa applicants). In September 2014, they approved more I-914 applications than they have in the past. VSC has continued training officers, and has sought training from non-profit agencies with experience in issues of victimization and domestic violence. Supervisors receive the same training as their officers, and all new supervisors are trained.

- A. **Customer service** is a core value of VSC. They receive 20,000 inquiries a year. Most of the questions on U visas are related to the wait list process and employment authorization documents. Adjudicating officers are the ones who are doing the research on cases and responding to emails and calls. There are several areas of customer service:
 - 1. **Pre-screening.** Safe address check. Before case is data entered, it is forwarded to the VAWA unit. Officers go through a checklist to verify that it is a VAWA/T/U case. Once it’s determined to be a VAWA Unit case, officers place a bright yellow sheet of paper that states “Subject to Section 384¹” which stays on the application throughout the

¹ This is related to IIRIRA Section 384 which has since been codified, and amended, at 8 USC 1367.

process to make sure VAWA confidentiality provisions apply. Officers then check the address section on the G-28 for the attorney or representative on case. This is the first address that VSC will use for correspondence. If there is no G-28, then VSC will use the preparer's address on the forms. If no preparer's address is listed, then VSC will use the address indicated by the petitioner. Once a safe address is determined, an adjudicator will sign that a "safe address" for the application has been identified.

ASISTA/AILA practice pointer: We recommend that attorneys use their office or another safe address for USCIS correspondence. Be sure that full address information is provided on the G-28 or otherwise note the "safe address" where the applicant can securely receive USCIS correspondence. If your clients use their own address, don't forget to check that your clients have notified USCIS in the event of an address change.

2. **Fee Waiver:** VSC will accept a statement or an I-912. Once VSC approves the fee waiver request, the application will go to a contractor who will enter the data for purposes of adjudication.
3. **Prima Facie Review (For I-360s):** Officers have a checklist for VAWA self-petition requirements and look for evidence of the qualifying relationship, good faith marriage, joint residency, battery or extreme cruelty, and good moral character. VSC stated that it looks for facts that support each evidentiary requirement. When ASISTA pointed out that this is a higher standard than that articulated in the past -- "a statement of facts that, *if supported*, would lead to approval" -- VSC responded that they will take a closer look at this process to make sure that officers are not applying too high a standard in issuing prima facie determinations.
4. **Prepare Case for Adjudication:** Lastly, the case information is entered into USCIS's database, assigned a case number, and then forwarded to an officer for adjudication.

B. Hotline Practice Pointers

1. **When to Use Hotline:** VSC recommends using the Hotlines ONLY when needed and not to inquire about case status if the case is still within the posted processing times. To determine current processing times, they recommended checking the USCIS website at www.uscis.gov. Only contact the VAWA Hotline if the case is outside processing times listed on the USCIS website. Also, the VSC hotline will not answer policy-related questions. They will forward policy questions on to Headquarters, but do not have the ability to respond.
2. **Written Correspondence:** Most attorneys and representatives contact the VAWA Unit by email or by phone. VSC does not recommend writing to them by written mail about cases. VSC receives an abundance of written (U.S. mail) correspondence, and this is not the most efficient method to make case inquiries. There are some circumstances when written correspondence is appropriate, but generally this will cause delays.

- 3. How to Use the Hotline:** VSC recommends choosing one manner of communicating with them (usually by phone or email). Every time VSC receives an inquiry, an officer is assigned to it. Receiving inquiries from different contact methods will result in more than one officer working on the same issue and can cause delays. Keep in mind that VSC only replies to representatives with G- 28s on file, not to applicants themselves.

ASISTA/AILA practice pointer: We recommend attorneys and representatives contact the Hotline via email, when possible, to ensure that a record of response is established. When contacting the Hotline via email, please use the following address:

- VAWA email address: hotlinefollowupi360.vsc@dhs.gov. This email address covers both inquiries on I-360s and Domestic Violence-based I-751s.
- U visa and T visa email address: hotlinefollowupi918i914.vsc@dhs.gov.

VSC has previously suggested that advocates put something specific in the subject line as to the nature of the inquiry, so it can be directed to the appropriate supervisor. Their suggestions include:

- “Outside Normal Processing Time”
- “Correcting Notice”
- “Amending Petition Information”
- “Expedite Request”
- “Change of Address”
- “New Material for Filing, attached to email”

In addition be sure to also include the following information in your Hotline inquiry:

- G-28 scanned
- Client(s) name(s) and Date(s) of Birth
- A#
- Case receipt number(s)
- Brief case summary and then your question or request.

- 4. One case per inquiry:** When contacting the Hotline, please use **one** email/call per case. It is easier for VSC to respond if the attorney or representative does not use one email to discuss multiple cases.
- 5. Be civil in your correspondence with USCIS.** Derogatory comments do not help build relationships. Officers receive extensive training and often experience secondary trauma from processing these cases. While VSC is open to hearing disagreement on a particular decision or issue, they suggest that communicating your criticisms in a constructive and civil manner is more likely to bear fruit than attacks on individual adjudicator knowledge or commitment.

ASISTA/AILA practice pointer: We know many of the RFEs, NOIDs and denials you receive are very frustrating, but we suggest stepping back and modifying your initial reaction, to ensure you receive as helpful a response as possible from VSC.

For example, saying, "We know your adjudicators are dedicated to helping survivors but we respectfully suggest this RFE illustrates an incomplete understanding of the context of domestic violence, in the following ways," is more likely to persuade an adjudicator or supervisor to review your criticism favorably than, "This adjudicator clearly knows nothing about domestic violence." In general, focus on why they are wrong factually rather than attributing attitudes to them or using adjectives to describe their decisions.

- 6. Requests for Supervisory Review:** VSC receives many requests for supervisory review. A supervisor reviews every denial already, but VSC does honor these requests for supervisory review. Very seldom does the decision end up changing. If a customer asks a second time for supervisory review, then a supervisor will review the application again. Rather than ask repeatedly for supervisory review, VSC recommends going through the appeal process. If the decision changes on appeal, then it is a lesson learned for VSC. VSC works closely with the AAO.

ASISTA/AILA Practice Pointer: There are some cases, for example, denials of I-192 waivers, where the AAO does not have jurisdiction. In those cases, a Motion to Reopen and/or Motion to Reconsider should be submitted to VSC for review. In such cases we work with USCIS Headquarters, as well as VSC, to ensure review of possible legal and policy problems.

We also are mounting an AAO appeal campaign because, frankly, we are not satisfied with supervisory review of many adjudicator decisions. Please contact ASISTA² or AILA³ to help evaluate the best next step for your case, (i.e., motion to reconsider/reopen, notifying USCIS HQ and/or an appeal to the AAO.)

- 7. Rote Responses from Hotline:** If you have a long delayed case (outside processing times) and receive a rote response such as, "This case is within processing times," or get a seemingly incorrect response, then write back to the Hotline and/or ask for a supervisor in your Hotline inquiry. You should also follow up with the office of the CIS Ombudsman when appropriate.⁴

C. RFE Practice Pointers

- 1. Attach I-797 to RFE Responses:** Make sure RFE responses have the yellow or blue I-797 Notice attached on the top of the filing. Failing to do this may delay the case processing if the submission is not recognized as an RFE response.

² Please contact Gail Pendleton at gail@asistahelp.org or Cecelia Friedman Levin at cecelia@asistahelp.org if you work for an OVW-funded organization or if you are an ASISTA private member.

³ If you are a member of AILA, then please submit a Case Liaison Assistance Form to AILA through <http://liaison.aila.org/>.

⁴ Submit an [electronic Form DHS-7001](#) through [Ombudsman Case Assistance Online](#) which provides a direct, paperless submission of requests for assistance to the Ombudsman. The Ombudsman automatically assigns a case number once submission has been completed with an acknowledgement email sent to the e-mail address filled in on the form.

ASISTA/AILA practice pointer: If your client is unable to provide the evidence required, explain the extent of what client has done to obtain the evidence and why it is not available. Always answer the RFE even if to say that your client did not abandoned the case but lacks the evidence requested. Click [here](#) for ASISTA’s Practice Pointers on Credibility.

2. **Read RFEs Carefully:** Make sure you respond to every element of the RFE. Oftentimes, RFE responses miss one critical element—like a statement of continuous presence for a U adjustment application. In this case a second RFE may be issued and cause processing delays for the applicant. Be sure to read the RFE in its entirety, both front and back, as some crucial pieces may be at the very top of the backside of the double-sided RFE.

D. Organizational Practice Pointers:

1. Include an index of all documents attached and explain which requirement they fulfill. It is often useful to use subject headers like “Good Faith Marriage” and then list the exhibits that are being used to support that element. ASISTA’s website has sample [cover letters](#) and [indexes](#) for your consideration.
2. **Each family member applicant should have his or her own document index, especially in adjustment of status cases.** It is helpful for VSC to have a separate document index for every family member. This way VSC can keep better track of which documents go with each applicant. Principal and derivative files are often rubber-banded together, but sometimes the rubber bands break and files become separated. If case files get separated, the index for each applicant should avoid VSC issuing RFEs because it cannot find a relevant document.
3. **Group U or T visa cases:** VSC wants attorneys to identify group trafficking situations or other group victim situations for T or U visa cases. The trafficking team meets regularly to bring these cases forward to the team. They also suggest that it is helpful to estimate in the cover letter how many victims’ cases will be filed so VSC can be on the lookout. Although each case is adjudicated individually, it is a good idea to give advance notice to VSC if there will be multiple cases arising out of the same crime/incident.
4. **Double-sided Applications:** Applications should not be printed double-sided. This is too burdensome for adjudicators because their file systems are not designed to handle double-sided paper. All documents, including G-28s, should be printed on single-sided paper.
5. **Clients Unable to Sign Forms:** If a client, due to disability or injury, is unable to sign personal declarations, G-28s or other forms, advocates should explain why the applicant is unable to sign for him or herself and explain what is being done (putting X or otherwise) to ensure endorsement of the documentation.

6. **Fee waivers:** If programs have certain income guidelines (e.g. related to the federal poverty levels) to access their services, then a statement in a cover letter may be sufficient to establish eligibility for the fee waiver. The VAWA Unit at VSC will accept either (1) a statement by the representative or applicant or (2) the Form I-912. Indicate in your cover letter or index that you are requesting a fee waiver for each family member.

ASISTA/AILA practice pointer: This flexible evidentiary standard for fee waivers will only work for VAWA Unit submissions. Do not assume other fee waiver requests (especially to other Service Centers) will work in the same way or have as flexible a standard. For other applications, you should file the required fee waiver form.

ASISTA/AILA practice pointer: We strongly encourage practitioners to apply for a fee waiver for those who cannot afford the fees. Use caution when the client is not clearly eligible for a fee waiver and the deadline is fast approaching. The panel stressed that they are in the humanitarian unit at VSC, a unique place that has the capacity to grant a fee waiver request in almost all cases. In our experience, VSC rarely denies fee waiver requests. You may request this fee waiver with a simple statement from the representative in the cover letter (save yourself the time of filling out Form I-912 and/or getting another signature from your client(s)). This note applies to all Forms related to the I-918 (I-192, I-765, I-539, I-290B, I-485), and I-360 (I-765, I-290B, I-485, I-601) and I-751 (I-765, I-290B, I-485).

7. **Notices concerning multiple cases:** VSC has no method of mailing notices related to multiple cases in one envelope to an agency or firm.

II. U Visas

A. Waitlist

Currently adjudicators are working hard to issue U visas to those on the waitlist. Last year, USCIS issued the allocated 10,000 U visas in the second week of December. This year, VSC is on track to issue the available U visas for FY 2015 within the same time period. When VSC resumes processing U visa applications, they will be working into the FY 2017 U visa numbers. Those applicants already approved conditionally but not granted under the first 10,000 will be allowed to renew their work authorization and deferred action status until the next 10,000 become available.

1. **Determining place on Waitlist:** VSC continues to work applications on a first in, first out basis. This means that an applicant's place on the waitlist will be determined by *receipt date of the initial U visa application* and not the date of the conditional approval.

2. **Time in Deferred Action Status:** VSC indicated that, under the existing regulations, there is no way that time in deferred action status can count towards the accrual of continuous presence necessary for adjustment under INA 245(m).

ASISTA/AILA Practice Pointer: This is a major advocacy point [we have raised with USCIS and DHS](#). Previously, those with U visa interim relief were allowed to count time in deferred action status towards adjustment, so this may be a case where USCIS needs to amend the U visa regulations or issue new guidance so that those with deferred action as a result of conditional approval may be able to count this time towards the accrual of continuous presence necessary for adjustment. Keep your eye out for action alerts on VAWA Updates,⁵ since we may need your help advocating for this change.

3. **Deferred Action with Expiration Dates:** VSC stopped issuing deferred action notices with expiration dates when they realized how complex the process would be. U visa applicants with conditional approvals should now be receiving deferred action and work authorization for the same time period. However, for those with *deferred action* expiration dates of *12/31/2014 or earlier*, please note the following:

- For those with EADs: the expiration date on the EAD controls the deferred action and deferred action will get renewed once the applicant renews EAD (and requests simultaneous DA renewal). We are aware that some applicants with conditional approvals are having problems when the EAD and Deferred Action notice does not match up. In these cases, we recommend contacting the Hotline to request that VSC issue a deferred action extension notice.
- For those without EADs: applicants will need to request a deferred action extension notice prior to the expiration on the notice. You can do this by contacting the Hotline).

For those without a deferred action expiration date, you do not need to take any action. You only need to renew the EAD if the client wishes. When notifying a client of their conditional grant, highlight when they need to file the next I-765 to ensure the application is processed timely (within 90 days) and that they do not lose their job.

4. **Entry to US after being waitlisted:** VSC is aware that the issue of principals and derivatives with conditional approvals being paroled into the US is an important one for conditional grantees and their families. VSC's position is that they lack jurisdiction to grant parole, even though guidance on both VAWA and U visas mentions this as an option for survivors. Normally, VSC states that parole is granted by CBP at the border or by DHS in Washington, DC.

⁵ VAWAUpdates is a free, one-way list serve providing updates, action alerts and practice advisories, run by ASISTA. To join, please contact questions@asistahelp.org (you do not need to be a member to join the list serve).

ASISTA/AILA practice pointer: This is an issue that coalition partners have raised to USCIS in [a letter to Director Leon Rodriguez](#) urging implementation of a parole policy for the U visa program. We are also in the process of developing a practice advisory for requesting humanitarian parole for conditional U visa approvals (NOT through VSC) and will send it out via VAWAexperts/VAWAupdates listserves when it is available. If you have had success or use creative strategies, please send ASISTA or AILA your stories.⁶

5. Updates on I-765s

Expanding the period of work authorization for conditional grantees: USCIS is assessing whether they can issue 2-year deferred action-based employment authorization documents (EADs) for those on the U visa waitlist. They are currently processing one-year EADs, but they are exploring the option for a longer duration from a policy standpoint.

Filing for EADs at same time as the U visa: USCIS welcomes (c)(14) deferred action based I-765 applications at the same time as the initial I-918 application filing. However, no action will be taken on the I-765 until the underlying U visa application is adjudicated and conditionally approved. Thus, the statutory 90-day processing time for EADs does not start until *after* the conditional approval of the U visa. If an online status check at www.uscis.gov does not indicate that a card is being processed within 90 days from the date on the I-765 receipt notice, contact the hotline.

EAD production and distribution problems: EADs are not printed at VSC. Production of cards is based on volume and so processing times do fluctuate.

ASISTA/AILA practice pointer: We are seeing many new problems with EAD processing that we believe may be caused by the I-765 being adjudicated by the VAWA Unit and the card being produced by a contractor. For now, while you may communicate such problems to VSC through the hotline, we suggest you use other avenues for resolving these problems as well, such as the USCIS Ombudsman's office.⁷ Contact ASISTA or the AILA liaison⁸ for advice and help on how best to fix your individual EAD case problems.

General Practice Pointers on I-765s:

- Make sure that you check one of the boxes on the top of the I-765 form to indicate whether the applicant is requesting a new card, a renewal, or a replacement card. If a client has a prior EAD classification (such as a (c)(8) basis), then the applicant will need to check the "new card" box if submitting a (c)(14)-based EAD since they are requesting work authorization under a new category.

⁶ For contact information, see notes 2 and 3 *supra*.

⁷ Submit an [electronic Form DHS-7001](#) through Ombudsman Case Assistance Online . See Note 4 *supra*.

⁸ For contact information, see notes 2 and 3 *supra*.

- Make sure you list an eligibility category for question 16 on the [I-765 form](#). VSC indicated that this is left blank on many applications which can cause processing delays. If you are unsure of which code to use, you can look at the [I-765 instructions](#) to find the different categories of eligibility.

B. Extension of U visas

If family members are filing at different times and for different periods, it's helpful if each family member submits his or her own I-539 (extension of status). As long as derivatives are currently in U status (even if the principal U visa holder has gone through adjustment), derivatives may file the I-539 and receive sufficient continuous presence time in the U.S. to qualify to adjust.

ASISTA/AILA practice pointer: Be sure to read and cite the USCIS [April 2011 U & T visa extension memo](#) as well as the USCIS [June 2010 Extension for Derivatives Memo](#) for further instruction and guidance.

1. **Extensions Due to Travel Abroad:** Warn U visa holders about the risks and problems of traveling outside the country. Although it may be possible to re-accrue continuous presence for purposes of adjustment if your clients break continuous presence with too much time abroad, USCIS has not confirmed this is its policy, and it has stated that for T visas, extensions are different based on the regulations.

ASISTA/AILA practice pointer: We see no legal or policy differences between T and U visa eligibility for re-accruing status to allow for adjustment. If you have cases affected by USCIS' position on this issue, please contact ASISTA or AILA⁹ to discuss advocacy and possible litigation.

2. **Late filed I-539s:** If a U visa expired and an applicant is submitting a late-filed I-539 due to "extraordinary circumstances," VSC says that you can file a stand-alone I-539 or submit an I-539 together with a I-485. *See* extension memos above and 8 CFR 214.1(c)(4)(i). VSC will adjudicate the I-539 and I-485 separately. If the applicant submits an I-485 application for adjustment at a later time, then he or she should include the approval notice of the I-539 so VSC can connect the cases.

AILA/ASISTA practice pointer: Some I-539 applications are delayed significantly. If your applicant has already accrued the three years of continuous presence and you have not been notified as to the results of the I-539, file the I-485 with a copy and notice of receipt of the I-539 and request adjudication.

C. Change of Status

⁹ For contact information, see notes 2 and 3 *supra*.

USCIS states that it may revoke an I-918A petition (derivative U visa) when the applicant's relationship to the principal has broken. It's a "MAY" NOT A "MUST." VSC reviews these on a case by case basis very carefully.

1. **Marriage of U-3 and U-5 Derivatives:** VSC will *not* revoke an I-918A if U-3 and U-5 derivatives marry AFTER getting status.
2. **Death of Principal:** If the U-1 petitioner dies, then as long as derivatives have been granted U status, their adjustment is not affected. Derivatives abroad, however, do not have actual U status unless and until they process into the United States, so they are not protected by either the U statute or under INA 204(l) (which requires residing in the US).
3. **Adjustment:** If a U-1 principal adjusts status in another manner other than INA 245(m)-for example marriage to a US citizen--then the children of the principal may continue with U-3 status and adjust via INA 245(m).

ASISTA/AILA practice pointer: Divorce of U-2 Derivative: Although VSC did not directly address this category, VSC did emphasize that once a derivative applicant is admitted in U status, the derivative is considered separate from the principal applicant for adjustment purposes. Based on the policy to not revoke a petition for married U-3 and U-5 derivatives or in the event of the death of a principal, we will advocate that VSC should no longer revoke an I-918A for a divorced U-2 applicant, so long as the divorce was not based on abuse to the U-1 by the U-2.

ASISTA/AILA practice pointer: We have vociferously pointed out to USCIS that the U statute, unlike the family-based system, does NOT tie ongoing derivative U status to maintaining a relationship with the principal U holder. Although they have informally agreed that this is a correct interpretation of the law, they have yet to put it in writing. In our view, VSC should only deny a U adjustment because of a severed relationship with the principal on discretion, usually a finding that a divorced U derivative was an abuser, for instance. Please contact ASISTA or AILA if you have cases where VSC intends to deny or has denied adjustment solely because the derivative's relationship with the principal is severed.¹⁰

D. U adjustments

1. **U Visa Holders with Final Orders of Removal from Immigration Courts:** VSC very recently received guidance that they may process adjustment-applications for individuals with final orders of removal. They will, however, send a letter with the approval, informing the applicant that s/he must take additional action to "cure" the final order in removal proceedings. VSC officials stated that the BIA and Immigration Courts are aware of these changes as well.

¹⁰ For contact information, please see Note 2 and 3 *supra*.

ASISTA/AILA practice pointer: We will try to obtain a copy of this guidance, since USCIS has changed its mind several times on this issue. We are aware of cases on hold because of outstanding final orders. If you have one of those cases, please contact ASISTA or AILA for help getting the case to those at USCIS who can fix it.¹¹

ASISTA/AILA practice pointer: If your client ever had an ICE encounter, make sure to FOIA EOIR to obtain any potential records, including removal orders, in absentia removal orders, or NTAs. Remember to include all names and AKAs ever used. Warn clients against traveling without reopening and terminating removal orders at any stage of the U visa or AOS case.

2. **U Visa Holders with Administrative Orders of Removal:** The regulations do say that if U visa holder has administrative order of removal, then that removal order is cancelled by operation of law upon approval of the U visa. USCIS will look into how to ensure that removal order is removed from other databases to make sure U approvals won't have problems. This is a complicated process because the agency that put in the data (e.g. information about a removal order) must also be the agency that removes it. USCIS stated they are working with other agencies on this issue.
3. **Travel Once I-485 Has Been Filed.** If a U applicant has an adjustment application pending and needs to travel, he or she may file their I-131 application (advance parole) with the Vermont Service Center, but the VAWA Unit will not be the unit that adjudicates the I-131. Advance parole will be granted for no more than 90 days of travel at a time. Make sure the client was not subject to a final order of removal.
4. **Holding I-485 in Abeyance:** If a principal's I-485 needs to be held in abeyance because the derivative has not entered the United States, then the attorney/advocate should indicate this in big letters on the cover letter and contact the VAWA Hotline to hold the adjustment application in abeyance. For example, when a principal is ready to adjust status, but has a derivative who still needs to consular process, you do not have to file the I-539 for the principal, but can instead file the adjustment of status for the principal and follow the above suggestion for requesting VSC hold the case in abeyance.
5. **Adjustment of Derivatives if Principal Is Abroad:** If the principal is abroad when the U visa was approved, but he or she never entered into U status, and derivatives are within the US when approved and properly admitted, the derivatives' grant still holds and they can later adjust status.
6. **Gang Activity and Adjustment:** Those with serious criminal behavior are not automatically excluded from adjusting; however, VSC will determine on a case-by-case basis whether each applicant should be adjusted. VSC weighs serious criminal activity including violent crimes in its determination of whether it's in the national and public interest to grant an I-192 or to favorably exercise discretion in adjustment.

¹¹ For contact information, please see Notes 2 and 3, *supra*.

ASISTA/AILA practice pointer: "Gang activity" is not by itself a ground of inadmissibility. We should challenge the generic assumptions concerning this category, insisting that USCIS review actual facts, not presumptions, in making inadmissibility and adjustment determinations. Please contact ASISTA or AILA¹² if you have cases where gang activity and assumptions about such activity are a concern.

E. Workplace U visas

VSC is currently looking at workplace U visa applications to determine whether the correct adjudication standards have been met. They will look at the totality of these cases, even those that have been approved. When the field raises issues to USCIS headquarters, they are obligated to pull everything. Therefore, previously approved cases are now being reviewed.

ASISTA/AILA practice pointer: VSC is referring to the [sign-on letter ASISTA and the National Employment Law Center](#) organized challenging its denial of most workplace-based U cases. We are concerned with VSC's current approach to reviewing these workplace U visa cases. If you have workplace-based U cases that were not included in the letter we sent or workplace-based U cases in which you have received any kind of response from VSC, please let ASISTA and the National Immigration Project of the National Lawyers Guild (NIPNLG)¹³ know, so we may continue to track how USCIS is fixing the problems identified in the letter.

F. I-929 Petitions for Qualifying Family Members

1. **I-929 Issues Age-outs:** VSC is no longer holding any cases for age-out issues. Their position is that the VAWA 2013 age-out protections only apply to those filing as U derivatives at the U application phase, not at the I-929 phase. Therefore, if the qualifying family member (QFM) for the I-929 is about to age-out, they suggest practitioners follow up with VSC via the Hotline. If you have an I-929 QFM abroad who is about to age-out, then contact the Hotline to see whether the file may be pulled and expeditiously reviewed so that the QFM can go through the interview and enter the U.S. before turning 21 years old. The I-929 cannot be adjudicated until the principal's I-485 is favorably adjudicated, so that may play a role in timing. Make sure the proper A# of the principal is on I-929 application.

ASISTA/AILA practice pointer: Please let ASISTA and AILA know about these cases.¹⁴ We do not see the legal basis for the distinction VSC is making between U derivatives who accompany or follow-to-join at the U phase versus the adjustment phase, but we need real cases to challenge them. Let us know if you are interested in litigating this issue, if that becomes necessary.

¹² For contact information, see notes 2 and 3 *supra*.

¹³ Contact Ellen Kemp of the NIPNLG at ellen@nipnlg.org.

¹⁴ For contact information, see notes 2 and 3 *supra*.

2. **I-929 application processing times:** The I-929 processing date depends on the status of the principal's adjustment application and, right now, VSC has no standards for U adjustment processing times. Moreover, the backlog is growing. Once VSC is able to establish a stable processing time for U adjustments, VSC will post those times online. VSC recently trained 30 officers on U adjustment applications and so the field may see an influx of RFEs for these applications. If so, please contact the hotline for supervisory review.

ASISTA/AILA practice pointer: Please keep ASISTA and AILA posted on problems arising from (a) the lack of standard processing times and (b) new adjudicators handling these cases.¹⁵

III. VAWA Cases

- A. **I-485s Previously Filed with I-130s:** VSC indicated that I-485 adjustment applications that were filed concurrently with an I-130 family petition (assuming the applicant is immediately eligible to adjust) can be held in abeyance if an I-360 is filed so that it can serve as an I-485 for a VAWA-based adjustment. If there is a pending I-485 in the file, even if they were going to deny the I-130, USCIS can schedule an appointment based on the new Form I-360.

ASISTA/AILA practice pointer: Remember that VAWA applicants who are immediately eligible to adjust (either because their abusers are US citizens or because they have an old priority date that can be transferred to their I-360) may request work authorization based on (c)(9) rather than (c)(14) or (c)(31). The advantage this approach is that VSC can grant the EAD on that basis before reviewing the merits of the I-360.

ASISTA/AILA practice pointer: USCIS policy has been that once local offices are notified that a regular family-based petition is now a VAWA petition, they must hold the adjustment case (and any pending interview) for 30 days to allow the applicant to file the I-360. We highly recommend, therefore, that when you identify such a case, you immediately notify the District Office of the applicant's intent to file (or that they have filed) an I-360 self-petition, highlighting that the protections and sanctions under 8 USC 1367 apply (i.e., they may be fined \$10,000 if they use information from an abuser or his family). Ask the relevant office to hold the underlying I-485 in abeyance pending the adjudication of the I-360 self-petition, at which point you will want a new adjustment interview scheduled. If necessary, file a skeletal application to ensure the local office doesn't deny for failure to prosecute the pending adjustment application or to attend an interview with the abuser.

- B. **Common Law Marriage:** Common law marriage is something that comes up in several contexts --- both in the family division as well as in VAWA self-petitions. Common law marriages do occur, but the applicant should articulate in the cover letter that the marriage is based on the common law, and include the definition in that state. If applicants receive RFEs, then they must submit evidence that common law marriages are recognized in their state and that the client meets the elements. As common law requirements changes from state to state,

¹⁵ For contact information, see notes 2 and 3 *supra*.

the burden is on petitioner or applicant to establish the common law marriage. Officers are trained on this issue, but applicants should submit evidence and legal authority to show that applicants meet the definition.

- C. **Conversion from Conditional Residency to VAWA Self-petition:** Contrary to its prior position on this issue, VSC now says that, under [Matter of Stowers](#), [Matter of Lok](#) and an AAO decision on U visas, it is not possible for someone currently in conditional residence status to file a self-petition without first getting their LPR status revoked. (See note below for our disagreement with their interpretation of these cases.) The reason VSC had entertained such requests in the past was that abusers often refused to file the necessary family petitions for children of spouses. Therefore, the only way victims of domestic violence could help their children get status was to file regular family based petitions for them or file new self-petitions which included the children. VSC's current position is that only those who have successfully terminated their conditional residence status may file self-petitions and include their children.

ASISTA/AILA practice pointer: We disagree with VSC's interpretation of the case law it cites. *Stowers* is a case that allows expired conditional residents to still file waivers; *Lok* concerns the intersection of domicile and permanent residence. The AAO decision on U visas is specific to the statutory language governing U visas. Its decision on VAWA cases assumes that the only benefit from filing for VAWA is adjustment, which is patently incorrect. The ability to include derivatives whom an abuser failed to include, perhaps as part of the abuse, is an obvious benefit not contemplated by the AAO. This may be why, as noted above, VSC's longstanding position was that conditional residents could file self-petitions, thereby protecting children not included in the abuser's family-based petition. If you have cases harmed by VSC's change in position and this AAO position, please contact ASISTA or AILA¹⁶ so we can raise the problematic legal interpretation with USCIS HQ and, if necessary, litigate.

IV. I-751 Cases

VSC has [recently announced](#) that it will be sending I-751s to the California Service Center. However, VSC will continue to adjudicate domestic violence-based and hardship I-751 waivers (that is, those in the [E, F, and G waiver categories](#)). New VSC I-751 officers have been trained in domestic violence, but the field may see an increase in RFEs. It is essential to respond to the RFE, since VSC may adjudicate the waiver without requiring an interview. If they do schedule interviews, they will be at the same district office where they have been scheduled previously. If you do not respond to the RFE, the application will be denied due to abandonment.

You can check all boxes that apply up front. If the domestic violence ground is checked, then the application will receive the same yellow "Subject to 384" (invoking 8 USC 1367) cover sheet as indicated above. VSC suggested that you should mention in your cover letter that you want a finding on the domestic violence waiver if you are filing for more than one waiver but want your client to qualify for accelerated naturalization (i.e. I-751 approvals based on domestic violence may naturalize in 3 years rather than 5 years).

¹⁶ For contact information, see notes 2 and 3 *supra*.

ASISTA/AILA practice pointer: The California Service Center (CSC) will continue to adjudicate the domestic violence and extreme hardship waivers in the states in which they have jurisdiction. This announcement only means that domestic violence based and hardship I-751s (that VSC would have had jurisdiction over initially) will continue to be adjudicated at VSC. Expect procedural and training issues. For over a decade, advocates have been asking that all domestic violence based I-751s be adjudicated at the VSC, given their specialized training and expertise in domestic violence. We need to hear from the field about how domestic violence-based I-751 waivers are being adjudicated at both the CSC and VSC to see whether we need to continue to push for VSC to take jurisdiction over these cases. Please send your experiences good or bad to ASISTA or AILA.¹⁷

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¹⁷ For contact information, see notes 2 and 3 *supra*.