Practice Advisory on Parole for Derivatives of Waitlisted U Principals December 2015[1]

This practice advisory contains tips for requesting humanitarian parole for derivatives where the principal U visa applicant has been awarded a conditional U visa grant.

Background

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 current 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.[2] The regulations at 8 CFR 214.14(d)(2) say: "USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.

Humanitarian Parole is granted on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit."[3] Most applications currently filed are argued and denied on the "urgent humanitarian reasons" basis. We believe that the "significant public benefit" basis is more relevant to U conditional grantees and, in fact, applies to U grantees as a class.

The Humanitarian Parole Program is operated by the Humanitarian Affairs Branch Office of Internal Operations. By statute and regulations, DHS has the authority to "parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, *any alien applicant for admission, under such terms and conditions... as he or she may deem appropriate*."

While parole is not intended to circumvent normal visa processing, there is precedent for parolees eventually receiving a more permanent status (e.g. Cubans through Cuban Adjustment Act, the Haitian Family Reunification Parole Program). Keep in mind, however, that USCIS uses humanitarian parole sparingly. Over the years, it has approved approximately 25% of the received applications and it receives approximately 1200 applications per year.[4]

So far, however, few U conditional grantees have filed to parole in their family members abroad and, of those, even fewer have succeeded. The two primary problems seem to be an individualized examination of each application based on only the "urgent humanitarian reasons"

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[2] *See, e.g.,* 8 CFR §214.14(d)(2)

[3] 8 CFR §212(d)(5)

[4] USCIS."Humanitarian Parole Presentation" Available at: http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources for Congress/Humanitarian Parole Program.pdf

prong of the rationale for parole, and a requirement that applicants supply affidavits of support. ASISTA and its allies are advocating with USCIS that this approach is inappropriate for U holders or conditional grantees and we encourage you to adopt our arguments.

We argue that all U conditional grantees and their derivatives are automatically eligible for parole as provided in 8 CFR 214.14(d)(2). This provision relating to U status and U visa processing has specific and clear language relating to the steps USCIS must take when adjudicating U applications after the annual cap has been met. These steps *require* USCIS to place all eligible petitioners on a waitlist and to grant deferred action *or parole* to U-1 petitioners and qualifying family members while they are on the waiting list.

We believe that this regulatory directive means that U waitlist applicants are persons who have urgent humanitarian and/or significant public interest circumstances justifying parole. Pursuant to INA § 212(d)(5), parole may only be granted in circumstances involving humanitarian or significant public interest concerns. We believe that by incorporating a parole mandate in the regulations, the assessment that one or both of these circumstances exist for all waitlist applicants has already been made. For this reason, we believe it should not be necessary for those on the U visa waitlist to individually justify their eligibility for parole status.

We argue that all U holders, those on the U visa waitlist and their derivatives should be *per se* eligible for parole under the "significant public benefit" rationale and that USCIS should not require an affidavit of support because Congress has exempted U applicants from the public charge ground of inadmissibility. Since public charge is not a Congressional concern, USCIS should not impose it via an affidavit requirement.

B. Who can apply for humanitarian parole?

The general rules for parole under INA sec. 212(d)(5) are:

- Anyone can make an application on behalf of someone who is outside of the United States and has an urgent need to enter the country.[5]
- Individuals may also self-petition for humanitarian parole if they are outside the United States.

C. Legal Argument for Parole in U visa Program

The arguments below reflect our advocacy position to justify the use of parole for family reunification for those on the U visa waitlist. These are novel arguments, however, so please

[5] USCIS. "Humanitarian Parole" Available at: http://www.uscis.gov/humanitarian/humanitarian-parole

contact us if they need clarification. We believe they fully comport with the law, so please also let us know whether you succeed or fail, so we can include your experiences in our advocacy with USCIS.

1. Prong 1-Reuniting U Family Members Serves a Significant Public Interest

We attach a template cover letter that includes the significant public interest arguments for the class as a whole.[6] In your cover letter, you should provide details about the specifics of your client's case and illustrate the significant public benefit of family reunification for your crime victim, as well as argue that family reunification for all U principals and derivatives serves a "significant public interest." When Congress created the U visa program as part of the Victims of Trafficking and Victim Protection Act of 2000, it recognized that:

> Creating [the U visa] will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports ***with the humanitarian interests*** of the United States.[7]

It is critical in humanitarian parole applications to show the connection between the goals of the U visas and the "significant public benefit" that the U visa program provides. Over the last six years, more than 116,471 victims and their family members have received U visas since the program was implemented in 2008.[8] Of those, at least 60,000 were principal visa holders who were helpful to the investigation or prosecution of criminal activity, ultimately making their communities safer places. Then-Director of USCIS Director Alejandro Mayorkas (now Deputy Secretary of DHS) has stated,

> *The U-visa is an important tool aiding law enforcement to bring criminals to justice . . . .At the same time, we are able to provide immigration protection to victims of crime and their families.* ***Both benefits are in the interest of the public we serve.***[9]

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[6] See Appendix II.
[7] *See* section 1513(a)(2)(B), Public Law No: 106-386, 114 Stat. 1464
[8] USCIS. Press release, "USCIS Approves 10,000 U Visas for 6th Straight Fiscal Year" Available at: http://www.uscis.gov/news/uscis-approves-10000-u-visas-6th-straight-fiscal-year
[9] Press release, USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012" (emphasis added) (available at: http://www.uscis.gov/news/uscis-reaches-milestone-third-straight-year-10000-u-visas-approved-fiscal-year-2012)

2. PRONG 2-Congress has exempted U applicants from the public charge ground of inadmissibility so requiring U holders and conditional grantees to supply affidavits of support is ultra vires and undermines the Congressional goals of the U program

The I-134 Affidavit of Support is required under INA §213 for those who may be inadmissible *on the public charge grounds* of INA §212(a)(4).[10] INA §213 states,

> An alien inadmissible under paragraph (4) of section 212(a) may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A) upon the giving of a suitable and proper bond ***or undertaking*** approved by the Attorney General.

"Form I-134, is the 'undertaking' prescribed in INA §213."[11] VAWA 2013, codified in INA §212(a)(4)(E)(ii), however, makes the public charge ground of inadmissibility at INA§212(a)(4) inapplicable to persons with U visa status. Therefore, USCIS should consider this application *without* an I-134 Affidavit of Support as the public charge grounds of inadmissibility should not apply to conditional U visa holders nor to their derivatives abroad.

The affidavit of support requirement has been similarly waived in other contexts, most notably in VAWA self-petitions. Congress also exempted VAWA self-petitioners from the public charge ground of inadmissibility.[12] For several years now, USCIS has recognized and accommodated this exemption for VAWA self-petitioners, especially in its creation of the I-864W: Intending Immigrant's Affidavit of Support Exemption. This recognition is important for survivors of domestic violence, especially those who have recently escaped violent relationships and who are struggling--financially, emotionally, socially- to rebuild their lives. In the same vein, and for the same reasons, the I-I34 affidavits support requirement for parole of derivatives abroad is unduly burdensome and creates hardship for victims of crime.

Practice Pointer: ***Form I-134 is required under current parole procedure,*** but it is often a main barrier for U visa applicants qualifying for parole.[13] Nonetheless, we believe there is legal authority to support consideration of a parole application *without* an I-134 Affidavit of Support. Given the exemption to U visa holders provided by VAWA 2013, requiring U holders and conditional grantees to supply affidavits of support to waive the public charge ground of inadmissibility is *ultra vires* and undermines the Congressional goals of the U program as well as

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[10] USCIS. Form I-134: Affidavit of Support. Available at: http://www.uscis.gov/sites/default/files/files/form/i-134.pdf

[11] USCIS." Instructions for Form I-134 Affidavit of Support" Available at: http://www.uscis.gov/sites/default/files/files/form/i-134instr.pdf

[12] See §INA 212(a)(4)(C). See also, Section **6(a)** and **(b)** of "Technical Corrections to the Violence Against Women Act" Public Law 109-271, dated August 12, 2006, amended sections (a)(4)(C)(1).

[13] The Humanitarian Parole office may insist on Affidavit of Support, though we are advocating with USCIS to eliminate this requirement for U conditional grantees and their derivatives. Until the government agrees, however, it may be prudent to find someone willing to act as a financial sponsor for the I-134.

the Congressional intent in providing U visa holders an exemption under INA §212(a)(4)(E)(ii).[14]

D. Application Requirements

Outlined below is the current process for applying for humanitarian parole. In our limited experience with parole applications for those on the U visa waitlist, including derivatives and principals abroad, these applications have not been widely successful. We suggest, therefore, that you discuss pursuing parole under the arguments proffered above, since the more worthy grantees that apply, the more the system must explain its refusal to grant parole. These suggestions below **do not constitute legal advice** and may not be successful options without continued advocacy. Filing such requests will, however, help illustrate and reinforce our policy recommendations to USCIS on the issue.

Humanitarian parole applications require the following forms:

- Form G-28 for Petitioner of Form I-131 parole request
- Form I-131 and filing fee, currently $360 (or fee waiver)[15]
    - Identity document of Petitioner (passport, EAD, valid driver's license)
    - "Concise, to the point, but comprehensive statement of facts supporting the parole request."[16] Under the general "public interest" arguments, we suggest that an extensive declaration, detailed statement, or other evidence regarding the need to parole the family member into the United States is not needed where the evidence indicates that the beneficiary is the derivative of a conditional U visa principal. It is, however, helpful to briefly articulate how your client fits the general argument.
    - Petitioner's conditional grant/deferred action notice,
    - Copy of documents for qualifying relationship (e.g. copy of marriage certificate, birth certificate). We recommend filing the application with both primary and secondary proof of the relationship, if available. This may avoid a request for DNA evidence. Include original documentation rather than copies, such as original, long-form birth certificates and hospital records of birth.
    - Beneficiary's passport
    - Beneficiary's conditional grant notice (if applicable)

- If your client can get an affidavit of support, here are the normal requirements:
    - Form I-134 and supporting documents
    - Income tax returns for the previous two years
    - Proof of current employment

[14] To contact ASISTA with questions or the outcome of using these arguments in these cases, please contact us at questions@asistahelp.org

[15] If the client cannot pay, you may submit a fee waiver request using form I-912 with supporting documentation if possible.

[16] See Note 11, *supra.*

- Proof of immigration status (if Sponsor is different from Petitioner)

- Public Charge argument regarding Form I-134
  - If your client **cannot** get an affidavit of support and still wants to try to file for parole, you may include arguments about how the Affidavit of Support requirements unnecessarily burdensome for conditional U approvals since Congress has exempted U applicants from public charge inadmissibility.

We realize that many agencies will not have the resources to do complex parole cases, so we have attached a sample cover letter articulating the general approaches to U conditional grant parole that we are advocating USCIS adopt.

The filing address for humanitarian parole applications can be found here, and depends upon the circumstances of the case, in particular whether the beneficiary of the application is in removal proceedings or has previously been removed from the country. USCIS' Humanitarian Parole FAQ is available here.

IV. In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States.

Another option for child derivatives of conditional approvals abroad may be the Central American Minors (CAM) program.[17] This is an in-country program for children in El Salvador, Guatemala, and Honduras to apply for refugee/parole status in their country in order to facilitate a safe and legal entry into the United States if they qualify. Those with deferred action[18] (including those on the U visa waitlist) may request a refugee interview for any unmarried children under 21 in El Salvador, Guatemala or Honduras if they fit the necessary criteria. If the child is denied refugee status, s/he may be considered for parole. Applications are filed by submitting a DS- 7699 to a designated support centers which can be found here. If children are granted parole into the U.S, then they must cover the costs of medical exams and travel into the country. This website has more information regarding the new CAM program including fact sheets in English and Spanish as well as FAQs and process handouts.

[17] U.S. Department of State. "Fact Sheet: In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States." Available at: http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm

[18] And certain other statuses, including Legal Permanent Residents, Temporary Protective Status holders, Parolees, DACA recipients, and non-DACA Deferred Action holders. For more information, visit: http://www.wrapsnet.org/LinkClick.aspx?fileticket=Zk0VDAfKFMQ%3d&tabid=420&portalid=1&mid=1664

APPENDIX I:
DECLARATION OF [CLIENT] IN SUPPORT OF FEE WAIVER REQUEST AND TO SHOW ECONOMIC NECESSITY FOR EMPLOYMENT AUTHORIZATION

I, [CLIENT], declare under penalty of perjury that the following is true and correct, to the best of my knowledge, recollection, and belief. I am making this statement in support of my application for employment authorization and in support of my request for a fee waiver.

I have economic necessity for employment authorization and I need a fee waiver because I am currently a single mother and supporting my child. I have to be able to work to support my family and I do not have any extra money for the filing fee. I am not working right now. I am receiving public benefits for my US citizen child instead of child support because my husband was not good about paying me, so now the county gets the money from him. I need a work permit because I would like to get a job, but I can't because they all want me to have a work permit.

INCOME: **$**

EXPENSES:
- **RENT:** **$**
- **FOOD:** **$**
- **UTILITIES:** **$**
- **TRANSPORTATION:** **$**
- **CHILDCARE:** **$**
- **LAUNDRY:** **$**

TOTAL EXPENSES: **$**

Thank you very much for your consideration of this statement. I swear that the forgoing is true and correct.

Signed this _____ day of _____,20__ in CITY, STATE

_____
CLIENT NAME

**********CERTIFICATE OF TRANSLATION**********

I, [NAME], certify that I am a competent translator of Spanish to English and English to Spanish, and that I read the attached declaration to CLIENT in Spanish and that she understood and agreed to its contents before signing.

Signed this ___ day of _____, 20___ in CITY, STATE

_____
NAME

APPENDIX II: SAMPLE PAROLE COVER LETTER

DATE
USCIS
P.O. Box 660865
Dallas, TX 75266

RE: Client Name
A#
Form I-131, Request for Humanitarian Parole

Dear Officer:

This serves as a request for Humanitarian Parole pursuant to INA § 212(d)(5) for [DERIVATIVE] who is currently in [Country], by Petitioner, [CLIENT] who was granted Deferred Action based on a conditional grant of [his/her] U visa status.

I. All U grantees and conditional grantees, as well as their derivatives, are per se eligible for humanitarian parole because a blanket approach to these cases significantly serves the public interest

Humanitarian Parole is granted on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit."[19] There is a significant public benefit of those who are victims of crimes and who have helped in the investigation or prosecution of those crimes to be reunited with their family members. To meet that public benefit, USCIS should grant parole to approved derivatives of U grantees and conditional grantees. Those who have conditional approval for U visas are victims of crimes who bravely reported these crimes to law enforcement, often overcoming significant social and personal difficulties to do so.

A. Congress has explicitly stated this is a humanitarian program

When Congress created the U visa program as part of the Victims of Trafficking and Victim Protection Act of 2000, it recognized that "providing temporary legal status to aliens who have been severely victimized by criminal activity also comports ***with the humanitarian interests*** of the United States."[20]

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[19] 8 CFR §212(d)(5)
[20] *See* section 1513(a)(2)(B), Public Law No: 106-386, 114 Stat. 1464

B. USCIS acknowledges the significant public interest of the U visa program

USCIS itself has recognized the significant public interest and the availability of parole for victims of crimes and their families. 8 CFR § 214.14(d)(2), for instance, states that USCIS "**will grant** deferred action **or parole** to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list" Moreover, former-Director of USCIS Director Alejandro Mayorkas (now Deputy Secretary of DHS) has stated,

> *The U-visa is an important tool aiding law enforcement to bring criminals to justice . . . .At the same time, we are able to provide immigration protection to victims of crime and their families.* ***Both benefits are in the interest of the public we serve.***[21]

II. Granting parole to [CLIENT's] derivative (insert derivative's name) fulfills this objective

By conditionally approving CLIENT's U visa application, USCIS has recognized that [CLIENT] was a victim of a qualifying crime, suffered harm as result, and cooperated in the investigation and prosecution of that crime, thus making [his/her] community a safer place. CLIENT's derivatives are in [Country] and Client is desperate to be reunited with them in order to begin to heal from this event. Parole is necessary in this case in order to support victims coming forward to report the crimes committed against them.

[IF relevant] CIS already decided it was in the public interest to grant conditional status to [CLIENT's] despite inadmissibility based on [insert public interest arguments from waiver request]

CLIENT was helpful to law enforcement in the following ways (insert facts)

CLIENT needs family support in the following ways as [he/she] describes in the attached statement:

III. IF NOT SUBMITTING I-134[22]--Congress has exempted U applicants from the public charge ground of inadmissibility so requiring U holders and conditional grantees to supply affidavits of support is ultra vires and undermines the Congressional goals of the U program

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[21] Press release, USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012" (emphasis added) (available at: http://www.uscis.gov/news/uscis-reaches-milestone-third-straight-year-10000-u-visas-approved-fiscal-year-2012)

[22] The Humanitarian Parole office may insist on Affidavit of Support, though we are advocating with USCIS to eliminate this requirement for U conditional grantees and their derivatives. Until the government agrees, however, it may be prudent to find someone willing to act as a financial sponsor for the I-134. If you are an OVW grantee, NIPNLG or ASISTA private member, please contact questions@asistahelp.org if you run into problems.

VAWA 2013, codified in INA §212(a)(4)(E)(ii) makes the public charge ground of inadmissibility inapplicable to persons with U visa status. Therefore, we ask USCIS to consider this application *without* an I-134 Affidavit of Support as the public charge grounds of inadmissibility would not apply to CLIENT nor [his/her] derivatives abroad. The I-134 requirement in this case is ultra vires and does not take into account the Congressional intent of the U visa program as well as the Congressional intent in providing U visa holders an exemption under INA §212(a)(4)(E)(ii).

Please see attached for the following:

- Form G-28 for CLIENT (and/or Derivatives]
- Form I-134 and supporting documents
- Form I-131 and filing fee;
- Statement of CLIENT;
- Document showing relationship between CLIENT and DERIVATIVE (marriage certificate, birth certificate, etc)
- Copy of CLIENT's conditional grant/deferred action notice
- Copy of CLIENT's passport
- Statement of CLIENT
- Statement of DERIVATIVE
- Other supporting Statements/Declarations to show need for family reunification
- Medical documentation, if applicable, to show hardship to client

Please feel free to contact me at [number] or [email] should you have any questions or require further information.

Sincerely,

ATTORNEY
Enclosures