



HOT TOPICS IN U AND VAWA CASES

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Agenda

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- Strategies for responding to fee waiver denials
- Determining validity period of U nonimmigrant status when I-94 and I-797 conflict
- Responding to requests for police reports
- Troubleshooting administrative issues with USCIS

Goals

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By participating in this session, you will be better able to:

- Identify current challenges in presenting and preserving VAWA and U visa applications
- Fashion strategies for meeting those challenges
- Explore best practices

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Fee Waiver Denials

POLL

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- In the last 3 months, I have noticed _____
in VSC's fee waiver denials:
 - An increase
 - A decrease
 - No change

POLL

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When VSC has denied a client's fee waiver request, I have (select all that apply):

- Resubmitted the packet as-is
- Resubmitted the packet with additional evidence and/or briefing
- Requested supervisory review via email hotline
- Filed I-290B Motion to Reopen/Reconsider/Appeal on the denial of the fee waiver
- Other

Fee Waiver Trends

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- VSC denies fee waiver requests with little or no explanation

- Random adjudications
 - Identical fee waivers have mixed results
 - Resubmission of same packet can sometimes result in approval

- Denials may arrive after I-485 or I-290B filing deadline

If denial does not cut off eligibility...

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- Resubmit with cover letter and additional evidence
 - Address evidence submitted and explain why it is sufficient
- May try resubmitting with same evidence if no additional evidence available
 - Be sure to include explanation for why this is the best evidence available

If denial does cut off eligibility...

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- File I-290B as motion to reconsider the fee waiver denial
 - Appeals prohibited under 8 CFR 103.7(c)(2)
 - Try arguing legal error
 - No prohibition on motions

- Preserve original filing date
 - Motion to reconsider provides better equitable argument for preserving original filing date

- Let us know if you do this!

Following up on denials

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After re-filing case/filing I-290B, advocate:

- VSC Hotline –ask for supervisory review
- USCIS Ombudsman - Online Case Assistance Form
- ASISTA intervention request
- Congressional assistance

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Validity period of U nonimmigrant status

The Problem: I-94 and I-797 conflict

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- Prior practice:
 - VSC previously used I-918/I-918A approval notice validity dates to calculate period of valid U status, continuous physical presence
- Current practice:
 - VSC uses expiration date of most recent I-94 to determine period of valid U nonimmigrant status
- Result:
 - U AOS denials where I-485 filed after expiration of I-94

Regulations

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Current USCIS interpretation: I-94 controls

- 8 CFR 235.1(h): CBP controls period of admission
- 8 CFR 214.14(g)(1): period of admission of U derivative not to exceed that of U principal
- INA 212(a)(7)(B)(i)(I): passport must be valid for 6 months beyond period of admission

When does this matter?

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Anyone who consular processed is affected

- Principals and Derivatives who consular processed to obtain U visa to enter US
- Principals and Derivatives who were in the US at time of grant, but who later travel and consular processed prior to return
- Principals and Derivatives who have traveled more than once on U visa

What should you do?

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Check I-94 expiration date.

- If client will accrue 3 years of continuous physical presence (CPP) before expiration, file I-485 before I-94 expiration date.

- If client will NOT accrue 3 years of CPP before expiration, file I-539 before I-94 expiration date.
 - If client must request total of more than 4 years from nunc pro tunc to filing of U AOS, also show exceptional circumstance.

What if the I-94 has already expired?

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- If would have accrued 3 years CPP but for expiration of I-94, file nunc pro tunc I-539 and concurrent I-485
- If would still be short of 3 years CPP even with valid I-94, file nunc pro tunc I-539
- If client must request more than 4 years from nunc pro tunc to filing of U AOS, also show exceptional circumstance.

What would you do?

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- Jose is U-3 derivative of mother, a DV survivor. Jose consular processed and was admitted to the US on 05/31/2018.
 - I-918A approval notice validity period: 01/01/2017-12/31/2021
 - U-3 visa validity period: 04/23/2018-01/01/2020
 - I-94 expiration date: 11/19/2019

- What does Jose need to file and when, in order to preserve his AOS eligibility?

What if...

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- Jose's sister, Dalia, also consular processed and entered the US on 05/18/2018.
 - I-918A approval notice validity period: 01/01/2016-12/31/2020
 - U-3 visa validity period: 01/01/2017-12/31/2020
 - I-94 expiration date: 1/19/2019

- What does Dalia need to file in order to be able to adjust?

Nunc pro tunc I-539s

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- 8 CFR 214.1(c)(4):
 - Must show delay due to “extraordinary circumstances beyond the control of the applicant” and was “commensurate with circumstances”

- June 22, 2010 USCIS Policy Memo on U extensions (PM 602-0001)
 - Justifies extensions to allow U derivatives to accrue 3 years CPP

- October 4, 2016 USCIS Policy Memo on U & T extensions (PM 602-0032.2)
 - Discretion to approve late-filed I-539 with written statement from applicant

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Police Reports

To submit or not to submit?

POLL

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- When USCIS requests a police report for my client, I:
 - Submit it
 - Withhold it
 - Depends
 - USCIS has not asked for a police report

The Problem

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- USCIS is requesting police reports if client was ever arrested or charged with crime, regardless of whether convicted
- Purpose: affects discretionary analysis
- Darned if you do, darned if you don't

Arguments for Withholding

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- Uncorroborated police reports inherently unreliable
 - If withholding, don't provide corroboration
- Outside Record of Conviction
- Can be very prejudicial
- But, USCIS may consider withholding of police report as negative discretionary factor

Arguments for Submitting

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- Some police reports not that bad, may be consistent with your client's version of events
- Stronger argument for exercise of discretion
 - Client can show 3 Rs: Responsibility, Remorse, Rehabilitation

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Discretionary Issues at Adjustment

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In the last year, VSC has RFE'd a U visa adjustment on discretion where all negative discretionary factors were disclosed and addressed prior to the U visa grant.

- Yes
- No

The Problem

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- VSC issuing RFEs for criminal history docs and positive equities at U AOS even where prior arrest/conviction previously disclosed, addressed, and waived on I-192

- U AOS is discretionary
 - “justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest”
INA 245(m)(1)(B)

Best Practices

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- Argue waiver standard for 212(d)(14) (“public or national interest”) is stricter than 245(m)(1)(B) standard
 - Arbitrary and capricious to grant discretionary waiver under stricter standard and then deny under more generous standard
- Congressional purpose behind U visa was to provide safety and security to cooperating victims
- Provide evidence of rehabilitation, positive contributions to community
 - Long term employment, helpfulness to neighbors, civic engagement

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Troubleshooting Administrative Issues

POLL

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- In the last year, my clients have experienced:
 - USCIS failed to send an RFE or NOID
 - USCIS failed to send a receipt, approval, or denial notice
 - USCIS failed to send an EAD or green card
 - USCIS lost a document that my client submitted
 - Other USCIS administrative problems

Discussion: Solutions?

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- What have you done when faced with administrative mix-up?
 - If case denied due to missing RFE?
 - If USCIS lost document?
 - If missing receipt or approval notices?

Current Trends

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- Failure to send RFEs
 - Results in denial for abandonment

- Failure to send notices, EADs
 - Results in loss of employment for client
 - Time-consuming to resolve

- USCIS losing previously-submitted documents
 - May require additional expense, time for client

Missing RFE

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- Sign up for MyCaseStatus or MyUSCIS at uscis.gov
 - Get update when RFE/NOID issued
 - But may not be able to access VAWA/U case info
- Keep office address updated and make sure staff are handling mail properly
- If client provided their address, remind client to check mailbox and let you know of notices

Missing RFE continued

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- If you discover RFE issued and have not received denial, contact VSC/NSC immediately
 - Request reissuance of RFE with new deadline
 - CIS may reissue but probably with same deadline

- If you receive denial for abandonment, file I-290B Motion to Reopen timely
 - Include the evidence requested in RFE in the I-290B
 - FOIA your client's ECHO, CLAIMS, and CRIS records to see if RFE was actually issued and mailed and when

Missing Notices and EADs

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- If EAD will be sent to client, make sure client understands how to check for USPS missed delivery notice
- For missing notices, email VSC/NSC hotlines
- FOIA client's CLAIMS, EPMS, CRIS records to check for actual issuance and mailing of notice
- Last resort for missing approval notices: I-824
 - \$465 fee
 - Time-consuming

Document Lost by USCIS

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- Reports of USCIS losing forms, evidence
- Probably have to resubmit, so keep copies
- Never submit originals unless required
- Let ASISTA know – we're trying to track these
- FOIA client's ELIS records for scanned copy of submissions
 - Doesn't help if mailroom lost document prior to scanning

POLL

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- In ASISTA's next OVW-sponsored webinar, I would like to learn about:
 - Analyzing and addressing inadmissibility
 - Obtaining relief for DV survivors in removal proceedings (e.g. MTRs, VAWA Cancellation, etc)
 - Obtaining continuances in removal proceedings for clients with pending U visa
 - Other (please specify in chat box or evaluation form!)

Working with us

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- Individual TA until 09/30/2019:
<https://asistahelp.org/ovw-grantees/>
- Private webinars:
https://asistahelp.org/inspire_events_categories/webinars/
- Resources on our website: <https://asistahelp.org/>
- Send us useful arguments, samples, strategies, etc to share with everyone else!



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Thank you!

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