HOT TOPICS IN U AND VAWA CASES

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Agenda

- 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

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
Fee Waiver Denials
In the last 3 months, I have noticed ________ in VSC’s fee waiver denials:

- An increase
- A decrease
- No change
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

- 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...

- 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…

- 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

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
Validity period of U nonimmigrant status
The Problem: I-94 and I-797 conflict

- 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
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?

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
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?

- 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.
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…

- 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

- 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
To submit or not to submit?
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

- 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

- 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

- 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
Discretionary Issues at Adjustment
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

- 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

- 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
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?

- 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

- 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

- 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

- 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

- 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

- 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
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

- 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!
Thank you!

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