



OPEN CASE ROUNDS: U AND VAWA Q&A

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This project was supported by Grant No. 2017-TA-AX-K061 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence

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Goals

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

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

POLL

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What are your most common problems?

- Fee waiver denials
- Discretion on Us and U AOS
- Inability to get continuances in immigration court
- Unsure how to advise clients given 2018 NTA and RFE/NOID memos
- Other?

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Fee Waiver Denials

Fee Waiver Policy

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- USCIS response to inquiry regarding increase in fee waiver denials:
 - VAWA, T, and U programs have implemented the USCIS-wide policy regarding fee waivers.
 - The VSC is conducting fee waiver adjudication using USCIS regulation and policy as written to be consistent across the agency.

Poll

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Have you submitted a successful fee waiver request in the last 4 months?

- Yes
- No

Poll

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If VSC has approved one your fee waivers in the last 4 months, what was the basis for your request? Choose all that apply:

- Means tested benefit
- Income under 150% of FPG
- Financial hardship

Impact

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- Economic hardship for survivors
- Delayed filings
 - Especially problematic for time-sensitive applications, e.g., I-539, I-485, and I-290B
- Inconsistent fee waiver adjudication
 - e.g. Different results with same fee waiver for family members in same household
 - Denials lack explanations

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Strategies for Fee Waiver Denials

Discussion: What would you do?

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- Your U visa client who is a DV survivor files a fee waiver for a I-192 and an I-765.
- She submitted a sworn statement of income showing a household income under 150% of FPG and expenses as well as copies of her children's SSI and food stamp award letters.
- The U visa was receipted in, but the fee waiver request for the I-765 and I-192 was denied citing insufficient evidence.

Discussion: What would you do?

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- You filed an appeal of a U visa denial on Sept. 14th with a fee waiver request on I-912 with pay statements, showing < 150% of FPG.
- Fee waiver was denied on September 20th.
- You receive fee waiver denial on September 25th, a week after the 33 day period for filing the appeal of the U visa denial expired.

Dealing with Missed Deadlines: I-290B

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Late-filed I-290B

- Argue fundamental fairness and due process
 - Outside of control of survivor
 - Fee waiver decision delayed
 - Request *sua sponte* AAO/USCIS reopening/reissuance of denial w/ new appeal/MTR period
 - Prohibition on late-filed appeals is purely regulatory and as applied, violates due process

I-290B, continued

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- If not accepted as appeal, 8 CFR 103.3(a)(2)(v)(B)(2) - untimely appeal considered as a MTRreopen &/or Reconsider
- If not accepted as MTR/R, file Motion to Accept Late Filed MTR w/I-290B & new fee waiver or fee – 8 CFR 103.5(a)(1)(i)

Dealing with Missed Deadlines: I-485

Late filed U AOS

- File late-filed I-539 to extend U
 - *Nunc pro tunc* U extension request – 8 CFR 214.1(c)(4)
 - Show extension beyond 4 years warranted due to exceptional circumstances - INA § 214(p)(6)
 - Extension after U expired & beyond 4 years discretionary
- File late-filed I-485 with request to accept late filing
 - Proof I-485 w/fee waiver timely filed
 - Proof fee waiver denial sent and/or rec'd after I-485 deadline
 - Does not cure lapse in status - risk of denial b/c not in U status when filed

Dealing with Missed Deadlines

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After re-filing case, advocate:

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

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Best Practices for Fee Waivers

Best Practices for Fee Waivers

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- Use I-912 and follow the form instructions
- Submit supporting documentation when at all available
 - Focus on systems evidence – tax returns, paystubs, benefit award letters
 - Explain why evidence is not available and efforts to obtain it
- If using means-tested benefit: Ensure applicant (or applicant's spouse or head of household) eligible for benefit sought
 - Enforcement priority for benefit fraud

Best Practices, continued

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- Ensure any SSN appearing on supporting documentation is legitimate
- Recommend that clients file taxes, with ITIN if necessary
 - Ensure information reported on tax returns is accurate
- If your agency has income requirements, submit letter on agency letterhead stating what income policy is and how applicant meets it
 - Agency letter alone not sufficient

Best Practices, continued

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- File applications w/fee waiver requests as early as possible
- If fee waiver denied, do risk assessment on re-filing w/additional evidence
- Pay the filing fee if applicant can afford to do so
- Preserve client relief first then advocate - even if based on clear USCIS error

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Notice to Appear Memo

2018 Notice to Appear Memo

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- Fraud, misrep, abuse of benefits:
 - If in the record,
 - And removable, then
 - NTA upon denial (or withdrawal, abandonment, etc).

- Criminal history: Egregious Public Safety/Non-egregious Public Safety

- Catch all = NTA when
unfavorable decision AND
individual is not lawfully present in the U.S.

Current policy

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- NTA memo will apply if VAWA, U visa, or T visa denied
 - presumably after 8 USC 1367(a)(2) protections end
 - all opportunities for appeal have been exhausted.
- But NTA memo not in effect for “humanitarian applications”
 - Unclear exactly what this means or when policy will be implemented

Best Practices

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- In light of 2018 NTA and RFE/NOID memos:
 - Prepare to appeal to AAO, defend client in removal, or go to federal court
 - Assess client at the outset for other relief
 - Periodically reassess – long delays in adjudication, circumstances change
 - Advise client in writing about risk of enforcement

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Discretionary Issues for U visas

Inadmissibility for Us

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- Prior practice:
 - Admit negative facts even if do not render inadmissible, expect generous waivers
 - include catch-all language in I-192 waivers (“any other other grounds that USCIS finds apply...”)

Best Practices for Inadmissibility

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- Waivers much more strict on discretion
 - Answer truthfully but no need to reveal immaterial facts

- Cite all inadmissibility grounds on I-192
 - If not listed, not waived

- Provide evidence and arguments for discretion
 - Address “national or public interest”

Strategies to Address Inadmissibility Waivers

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- Make individualized arguments for favorable exercise of discretion
 - What does your client do for community?
 - Why does US benefit from client's presence?

- Practice Pointer:
 - Interview witnesses to draft supporting declarations just like you do for your client

Creating a Record for Higher Review

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- Make the record for AAO; federal court
 - No appeal of waiver denial to AAO or federal court

 - In MTR, include legal arguments for review:
 - Failure to implement (d)(14) waiver
 - Asking for non-record of conviction evidence violates due process
 - Abuse of discretion?
 - Lack of AAO waiver review violates APA/due process

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Admission for U visas

What date controls?

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- I-94 duration of admission may differ from I-918/I-918A approval notices dates

- Example:
 - VSC granted I-918A from 09/12/2016-09/11/2020
 - At entry, CBP admitted client in U-3 status from 11/14/2017-01/31/2019
 - What controls?

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
 - Reg out of date
- INA 212(a)(7)(B)(i)(I): passport must be valid for 6 mo beyond period of admission

Practice Pointer

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- When U status holder consular processes, compare I-94 to I-797

- File I485 prior to expiration of I-94

- If I-94 expires before I-797 date:
 - May need I-539 to accrue 3 years of U status to adjust
 - Other options?

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Your Questions

POLL

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- Do you have at least one survivor client who is already in removal proceedings?
- Yes
- No

POLL

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- Do you have at least one survivor client who has an outstanding order of removal?
- Yes
- No

Working with us

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- Individual TA:
http://www.asistahelp.org/en/technical_assistance/
- Resources on our website:
http://www.asistahelp.org/en/access_the_clearinghouse/
- Send US useful arguments, strategies, etc to share with everyone else!



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Thank you!

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