OPEN CASE ROUNDS: U AND VAWA
Q&A

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Goals

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
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?
Fee Waiver Denials
Fee Waiver Policy

- 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

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

- Yes
- No
Poll

If VSC has approved one of 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

- 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
Strategies for Fee Waiver Denials
Discussion: What would you do?

- Your U visa client who is a DV survivor files a fee waiver for an 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?

- 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

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

- 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

After re-filing case, advocate:

- VSC Hotline – ask for supervisory review

- Contact USCIS Ombudsman - Online Case Assistance Form

- ASISTA intervention request
Best Practices for Fee Waivers

- 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

- 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

- 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
Notice to Appear Memo
2018 Notice to Appear Memo

- 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

- 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

- 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
Discretionary Issues for U visas
Inadmissibility for Us

- 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

- 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

- 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

- 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
Admission for U visas
What date controls?

- 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?
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)(l): passport must be valid for 6 mo beyond period of admission
Practice Pointer

- 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?
Your Questions
POLL

☐ Do you have at least one survivor client who is already in removal proceedings?
   ☐ Yes
   ☐ No
Do you have at least one survivor client who has an outstanding order of removal?

- Yes
- No
Working with us

- **Individual TA:**

- **Resources on our website:**

- Send US useful arguments, strategies, etc to share with everyone else!
Thank you!

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