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VIA EMAIL

November 22, 2019

U.S. Citizenship & Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
uscis.foia@uscis.dhs.gov

RE: Freedom of Information Act Request

Dear FOIA Officer:

ASISTA Immigration Assistance ("ASISTA") and the Immigration Center for Women and Children ("ICWC") (collectively, "Requestors"), submit the following request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et. seq.* In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect that you will respond to this request within twenty working days, unless otherwise permitted by statute.

This request seeks information relating to the discretionary adjudication of Adjustment of Status for U Nonimmigrants under Immigration and Nationality Act ("INA") § 245(m).

1. REQUEST FOR INFORMATION

Requestors request any and all records¹ which were prepared, received, transmitted, collected, and/or maintained by the Department of Homeland Security, U.S. Citizenship and

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproductions, such as copies containing marginal notations.

Immigration Services (“USCIS”)² and which relate to the discretionary adjudication of adjustment of status for U Nonimmigrants under INA § 245(m).

Such records include, but are not limited to:

- a) Records, including communications, and guidelines, that describe the factors and criteria employed in the exercise of discretion in the adjudication of adjustment of status for U Nonimmigrants under INA § 245(m), including, but not limited to, the entirety of Part K, Volume 7 of the USCIS Policy Manual relating to Crime Victim-Based Adjustment;
- b) Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015-current;
- c) Records, including communications, that describe the factors and criteria applied in issuing the Requests for Evidence (“RFE”) or Notices of Intent to Deny (“NOID”) for applications for adjustment of status under INA § 245(m);
- d) Records, including communications, that describe and/or explain USCIS’s implementation of Policy Memorandum PM-602-0163, entitled “Issuance of Certain RFEs and NOIDs; Revisions to *Adjudicator’s Field Manual* (AFM), Chapter 10.5(a), Chapter 10.5(b),” dated July 13, 2018, as applied to applications for adjustment of status under INA § 245(m);
- e) Records that describe and/or explain the implementation of President Trump’s Executive Order 13768 – Enhancing Public Safety in the Interior of the United States as applied to the review, processing, and adjudication of applications for adjustment of status under INA § 245(m);
- f) Records demonstrating the number of applications for adjustment of status under INA § 245(m) in which the USCIS has issued a RFE and/or NOID from 2009-present (separated by year);
- g) Records, including communications, that describe and/or explain the consideration of inadmissibility grounds, criminal history, and negative discretionary factors previously disclosed on the Form I-918 or Form I-192 in the adjudication of applications for adjustment of status under INA § 245(m);
- h) All policies, whether contained in email, memoranda, or other category of document, issued between fiscal year 2015 and currently, concerning the consideration of criminal history and inadmissibility grounds in the adjudication of applications for adjustment of status under INA § 245(m);

² “U.S. Citizenship and Immigration Services” as used herein includes offices, components, divisions, subdivisions or sections therein including but not limited to the Vermont Service Center, Nebraska Service Center, and the Administrative Appeals Office.

- i) Records demonstrating the number of applications for adjustment of status under INA § 245(m), in which the USCIS denied the application solely as a matter of discretion, from 2009-present (separated by year); and
- j) Records demonstrating the number of applications for adjustment of status under INA § 245(m) in which the USCIS denied the application based solely on inadmissibility grounds, criminal history, or negative discretionary factors previously disclosed on the Form I-918 or Form I-192, from 2009 to present (separated by year).

2. THE REQUESTORS

ASISTA is a national non-profit organization that works to advance and protect the rights and routes to status of immigrant survivors of violence, especially those who have suffered gender-based violence inside the United States. ASISTA has worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes in VAWA and its subsequent reauthorizations. ASISTA also serves as liaison between those who represent these survivors and the DHS personnel charged with implementing the laws at issue in this appeal, including USCIS, Immigration and Customs Enforcement (“ICE”), and DHS’s Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors.

ICWC is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including victims of serious crimes, domestic violence, and sexual assault. ICWC represents thousands of clients before USCIS each year with a specialization in U Nonimmigrant status. ICWC assists clients to gain legal status and obtain work authorization to improve their lives and create security and stability for their families. ICWC does this by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings, and publishing practice manuals in its area of expertise. Since its foundation in 2004, ICWC has provided legal assistance to more than thirty thousand individuals, including many who are eligible for, and have received, U nonimmigrant status.

3. FEE WAIVER REQUEST

ASISTA and ICWC request a fee waiver because the information they seek is “likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interests of the [requestors]...” 5 U.S.C. § 552 (a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced charge when disclosure is in the public interest and is not primarily in the commercial interest of requestors).

a. Disclosure of the Information is in the Public Interest

Disclosure of the information is in the public interest because it will contribute significantly to the public understanding of how USCIS reviews, processes, and adjudicates humanitarian applications as a discretionary matter. This request furthers Requestors' work to increase the public understanding of immigration law and policy, specifically as relevant to noncitizen victims of crimes, such as domestic and intimate partner violence. Access to this information ensures fairness and transparency in the adjudication of humanitarian applications such as adjustment of status under INA § 245(m) before the USCIS. Moreover, such information is in the public interest as it affects a large population of individuals: tens of thousands of noncitizens with pending, approved, denied, or to be filed humanitarian applications, noncitizen and citizen victims of crime, immigration attorneys, and immigration advocates. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a "reasonably broad audience of persons interested in the subject").

Lastly, as detailed in the subsection above, Requestors have the capacity to disseminate widely the requested information to the public. Requestors will review and analyze the information obtained through this Request, and publish practice advisories or related written materials to be shared with the public and organizational members. In addition, Requestors regularly conduct national trainings and disseminate information to the public on the legal rights and remedies available to immigrant survivors of violence, especially those who have suffered domestic and intimate partner violence. ASISTA intends to post records received in response to this FOIA request on its publicly accessible website. Also, Requestors have frequent contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media.

b. Disclosure of the Information is Not in the Commercial Interest of the Requestors

Requestors are non-profit organizations. Attorneys, noncitizens, and other interested members of the public may obtain information about immigration-related issues through their distribution of records, including their individual websites, and through public and educational appearances. Requestors seek the requested information for the purpose of disseminating it to members of the public who have access to their public websites and other free publications, and not for the purposes of commercial gain. Requestor ASISTA has demonstrated the capacity to disseminate information to the public in the past, including information obtained through FOIA requests. *See* <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA related to petitions for U visas where the underlying crime was California robbery). Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

4. EXEMPTIONS

If USCIS concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

5. FORMAT OF PRODUCTION

ASISTA and ICWC seek the documents in a workable format, such as searchable portable document format ("PDF") and Microsoft Excel. Please also provide a glossary or other descriptive factors containing definitions of acronyms, numerical codes or terms contained documents responsive to this request, if those terms are not publicly defined.

Please email responsive documents to Kelsey Morales at kmor@vblaw.com or send via U.S. mail at the following address:

Kelsey Morales
Van Der Hout LLP
180 Sutter Street, Suite 500
San Francisco, CA 94104

I certify that the information contained in this request is true and correct to the best of my knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call me at the contact information below.

Sincerely,



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