



February 6, 2020

Mr. Mark Koumans
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Mr. Michael Dougherty
CIS Ombudsman
Department of Homeland Security
Mail Stop 0180
Washington, D.C. 20528

RE: USCIS Alert Regarding I-918 Petitions for U Nonimmigrant Status

Dear Deputy Director Koumans and Ombudsman Dougherty:

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes. Our agency has assisted advocates and attorneys across the United States in their work on behalf of immigrant survivors, so that survivors may have greater access to protections they need to achieve safety and independence.

We write to you regarding the December 30, 2019 announcement that USCIS may reject Form I-918: Petition for U Nonimmigrant Status or Form I-918 Supplement A: Petition for Qualifying Family Member of U-1 Nonimmigrant if there is a blank field unless the field is optional (hereinafter “I-918 alert”).¹ This significant shift in policy and practice creates enormous hardship for survivors and their families, and strains valuable resources for service providers and U visa certifying agencies.

¹ USCIS, “I-918, Petition for U Nonimmigrant Status” available at: <https://www.uscis.gov/i-918>. The alert reads “Alert: We may reject your Form I-918 or your Form I-918 Supplement A if you leave a field blank, unless the field is optional. Optional fields include the safe mailing address as well as fields you should only complete if you answered yes to a previous question. You must provide a response to all other questions, even if the response is “none,” “unknown” or “n/a.” We will reject a Form I-918 or a Form I-918 Supplement A that has, for example, an empty field for middle name, for current immigration status, or for information pertaining to a spouse or child.”

Like the alert placed on the I-589: Application for Asylum and Withholding of Removal back in October 2019, the I-918 alert is deeply concerning both in content and implementation. USCIS posted the I-918 alert to their website on December 30th, 2019--during the holidays--and without any advance warning or announcement. The agency did not provide any grace period before implementing the provisions of the I-918 alert, as it normally does with form changes, including those for survivor-based forms of relief.² In this case, there has been no accompanying change in the I-918 instructions that indicate an application may be rejected for blank fields. This policy change, which counters over a decade of prior practice, is also not reflected in an official information collection or revision to Form I-918: Petition for U Nonimmigrant Status forms or instructions, which would require notice and comment to stakeholders under the Paperwork Reduction Act of 1995.

We are also deeply concerned that USCIS did not provide *any* information to stakeholders about *when or why* the policy change would go into effect. USCIS only notified stakeholders pursuant to a web page change, but did no further outreach. Later in January 2020, the CIS Ombudsman sent a bulletin to stakeholders about the I-918 alert, but again did not specify when its provisions would be implemented.³ The I-918 alert has resulted in unfair rejections of applications based on overbroad interpretations, putting victims further at risk by delaying their adjudications, and subjecting derivatives to possible age-out and loss of eligibility.

When Congress created the U visa program, it did so with the dual goal of “strengthen[ing] the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes” while “offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”⁴ U visas play a critical role in keeping communities safer and helping immigrant survivors find independence, safety and stability for themselves and their families.⁵ USCIS has not provided any justification or rationale for this drastic and sudden change, which needlessly undermines a survivor’s access to critical immigration benefits designed by a bipartisan majority in Congress for their protection.

² See e.g. USCIS. “Grace Period Extended for Previous Edition of Form I-918” (June 21, 2019) available at <https://www.uscis.gov/news/alerts/grace-period-extended-previous-edition-form-i-918>

³ See CIS Ombudsman Alert (January 23, 2020), available at <https://content.govdelivery.com/accounts/USDHS/bulletins/27795eb> It is worth noting the language of this announcement differs from the USCIS I-918 alert stating “Please follow the instructions above by filling in every field on a USCIS form, *even if the field is optional*, has been answered elsewhere, or does not apply to you, in order to avoid rejection by USCIS.” [Emphasis added].

⁴ Pub. L. No. 106-386, § 1513(a)(1)(A), 114 Stat. 1464 (2000). See also section 1513(a)(2)(A) where Congress found that “providing battered immigrant women and children . . . with protection against deportation . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers.” Pub. L. No. 106-386, § 1502(a)(2), 114 Stat. 1464 (2000) (emphasis added).

⁵ See e.g. Human Rights Watch. “Immigrant Crime Fighters: How the U visa Program Makes U.S. Communities Safer” (July 8, 2019) available at <https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer>

The I-918 alert also strains limited resources of survivors, advocates and service providers who must resubmit applications without any prior knowledge of the policy changes contained in the I-918 alert. A survivor who submitted a U visa application on December 27, 2019 would have no way of knowing that their application would be rejected pursuant to an unannounced and immediate shift in adjudication practice. To compound this problem, USCIS is issuing rejection letters pursuant to the I-918 alert more than a month after initial filing, and in many instances, I-918 Supplement B certifications are now expired. Even more egregious is that derivatives may now be considered to be “aged-out” if the I-918 applications were rejected due to the I-918 alert, effectively cutting off eligibility for these derivatives again, with no advance notice or no justification.

USCIS should permit these applications to be resubmitted with their original certifications and be receipted in *nunc pro tunc* to their initial filing deadline to preserve their place in line. Any other policy would be unjust and would waste critical and limited resources for survivors, advocates and law enforcement officials who have to possibly re-issue new certifications where the survivors’ initial applications were properly filed. We have sent separately case examples illustrating the impact of the I-918 alert on U visa applicants and their families to the CIS Ombudsman. We will continue to update the CIS Ombudsman of these matters.

We call on USCIS to:

- 1) Immediately withdraw the December 30, 2019 I-918 alert and the similar alert for I-589: Applications for Asylum and Withholding of Removal; and
- 2) To accept and receipt in all I-918 applications that were rejected pursuant to the I-918 alert and restore their initial filing date *nunc pro tunc*. This includes accepting as current expired I-918 Supplement B: U Nonimmigrant Status Certification Forms and restoring age of derivatives at the time of initial filings.

Withdrawing the I-918 alert and restoring impacted applications to their initial filing date would further the dual goals articulated by Congress when it created the U visa: to create a useful tool for law enforcement when working with immigrant populations, and to help noncitizen crime victims safely access paths to safety and protection. Thank you for your attention to this critical matter. Should you have any questions or require additional information, please contact me at cecilia@asistahelp.org.

Respectfully submitted



Cecelia Levin
Policy Director
ASISTA