



April 7, 2020

Ms. Maureen A. Dunn
Chief, Humanitarian Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services

Delivered via email

Ms. Tracy Renaud
Associate Director
Service Center Operations Directorate
U.S. Citizenship and Immigration Services

RE: USCIS Response to Coronavirus Disease 2019 (COVID-19)

Dear Ms. Dunn and Ms. Renaud:

We write to supplement our initial letter submitted on March 24, 2020 regarding our recommendations in light of the Coronavirus Disease 2019 (COVID-19) global pandemic. We appreciate the measures already taken by USCIS, and urge the agency to take additional steps to address the special barriers facing immigrant survivors of domestic violence, sexual assault, human trafficking and other serious crimes during this unprecedented emergency. ASISTA is deeply concerned about the impact of the COVID-19 on USCIS' survivor-based benefits operations.

Immigrant survivors already face myriad barriers accessing services and assistance, and these barriers have been exacerbated during this unprecedented emergency. Abusers and perpetrators of crime often threaten survivors that reaching out for help will result in separation from their children or in deportation. At this moment of crisis, such threats take on new force and survivors face increased uncertainty and confusion.¹ Many agencies that assist survivors are either at capacity or closed for in-person meetings. In addition, many other agencies that survivors often

¹ See e.g. Alisha Haridasani Gupta and Aviva Stahl, "For Abused Women, a Pandemic Lockdown Holds Dangers of Its Own," *The New York Times* (March 24, 2020), at <https://www.nytimes.com/2020/03/24/us/coronavirus-lockdown-domestic-violence.html> (citing shelter director's fears that immigration-related threats by abusers "will escalate during the coronavirus crisis, and with information about the government's response changing nearly by the hour, survivors may not know who or what to believe.")

rely on for supplemental documentation (e.g. a medical exam, or police report) may also be closed or operating at limited capacity due to the COVID-19.

For example, an attorney recently reported to ASISTA that she faced substantial difficulties responding to a Request for Evidence (RFE) for her U Visa adjustment of status clients. USCIS requested a medical examination and other documentation due this month. Her clients are putting their health at risk to go out to obtain court and medical records that are unavailable due to the shut down of non-essential operations in their metropolitan area. The attorney has contacted USCIS for an extension, but has not received a response. The barriers to responding to RFEs in this time are also compounded by the fact that many applicants have lost their jobs and are prioritizing spending money on their basic needs rather than on fees for USCIS medical exams, certified copies of court documents, and other documents that USCIS may request. Another service provider reports that they are experiencing delays regarding their I-918 Supplement B certification requests in light of the fact that their local certifier now needs to develop protocols to address the current state of emergency.

We recognize that USCIS has already taken measures, such as the suspension of routine in-person services until at least May 3 to help slow the spread of COVID-19. In its March 30th announcement, USCIS announced that the agency would expand the flexibility for responding to USCIS requests and notices. This announcement stated, *inter alia*,

A response received within 60 calendar days after the response due date set forth in a Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate will be considered before taking any action if such request or notice is issued and dated by USCIS between March 1 and May 1, 2020, inclusive.

While this flexibility is well-intentioned, it does not address the most urgent need for immigrant survivors who received notices and requests dated prior to March 1 with a deadline after the national emergency went into effect. Given the growing pandemic and how easily this virus spreads, we renew our requests that USCIS adopt and implement the following measures while COVID-19 remains a public health emergency:

A. Uniform and Automatic Extension of Deadlines to 90 days after the COVID-19 national emergency has ended.

As mentioned above, survivors who have deadlines after March 1st are facing increased barriers accessing documents to respond to USCIS requests as well as connecting with service providers assisting in their cases. We ask USCIS to, in all cases, assume an applicant or petitioner's inability to timely respond is "directly tied" to the national emergency. As with other federal government blanket extensions, such as tax filing, during this national crisis it is reasonable to assume that any delays are inherently related to the COVID-19 pandemic. Governors in states such as Maryland have also extended permits, licenses, registrations, and other government

authorizations until after the national emergency to “reduce the threat to human health caused by the transmission of COVID-19..., and to protect and save lives.”²

In a similar vein, we join our partners and call on USCIS to issue **uniform and automatic extensions of deadlines until 90 days after the national emergency is declared over.** We ask that this apply not only to requests and notices issued and dated between March 1 and May 1, 2020, but to all requests and notices with deadlines that fall after March 1, 2020. This includes, but is not limited to:

- **Requests for Evidence (RFE)**
- **Notices of Intent to Deny (NOID)**
- **Notices of Intent to Revoke (NOIR)**
- **All Notices of Intent to Terminate (NOIT)** (and not just NOITs to terminate regional investment centers)

We also ask USCIS to suspend filing deadline until 90 days after the declaration that the national emergency has passed, as immigrant survivors are most likely to be prevented from timely filing applications due to lack of access to counsel, inability to collect necessary evidence and other limitations resulting from COVID-19. This includes, but is not limited to:

- **The two-year deadlines for VAWA self-petitioners whose abusers die or from whom they divorce;**
- **Deadlines for Form I-290B Appeals and Motions to Reopen or Reconsider;**
- **Deadlines for Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings**

Given the impact of the global pandemic, USCIS should not only suspend the I-290B filing deadlines until 90 days after the declaration that the national emergency has passed, but ensure that Notices to Appear will not be issued until the expiration of these extended I-290B deadlines. Furthermore, USCIS’s current policy on I-290B filing is confusing and insufficient.³ USCIS should clarify that all I-290Bs, including Motions to Reopen, Motions to Reconsider, as well as appeals are subject to the extension, regardless of whether the AAO has appealable jurisdiction.

B. Automatically extend status and employment authorization documents (EAD) during the national emergency

² Order of the Governor of the State of Maryland “Extending Certain Licenses, Permits, Registrations, and other Governmental Authorizations, and Authorizing Suspension of Legal Time Requirements” (March 12, 2020), available at: <https://governor.maryland.gov/wp-content/uploads/2020/03/Licenses-Permits-Registration.pdf>

³ “USCIS’ website states that the agency “will consider certain Forms I-290B (from an appealable decision with AAO jurisdiction issued and dated between March 1 and May 1, 2020, inclusive) it receives up to 60 calendar days from the decision date of before it takes any action.”

<https://www.uscis.gov/about-us/uscis-response-coronavirus-2019-covid-19>

We appreciate USCIS' announcement that applicants who had an appointment scheduled with an Application Support Center after their closure on March 18 or who have filed a Form I-765, Application for Employment Authorization, extension will have their application processed using previously submitted biometrics. However, we now call on USCIS to toll for at least one year *all* expiration dates related to any individual's lawful status and employment authorization that expire after March 1, 2020. This includes, but is not limited to:

- **U visa status, T visa status, VAWA and U visa based deferred action, conditional residence status with a pending I-751 waiver; and**
- **Extending EADs for at least one year, including but not limited to those under the following categories:**
 - **(c)(31) (VAWA self-petition approvals),**
 - **(c)(9) (VAWA self-petitioners, and those with a pending application for adjustment of status),**
 - **(c)(14) (deferred action)**
 - **(a)(19) (U-1 nonimmigrant status)**
 - **(a)(20) (U visa derivative status e.g. U-2, U-3, U-4, or U-5)**
 - **(a)(16) (T-1 nonimmigrant)**
 - **(c)(25) (T visa derivative status T-2, T-3, T-4, T-5, or T-6 nonimmigrant), and**
 - **(c)(27-30) (certain abused nonimmigrant spouses)**

Automatic extensions will help ensure survivors maintain status and employment authorization until the crisis is over. Many survivors are on the front-lines of combating the COVID-19. Other survivors have been furloughed or otherwise lost their jobs due to this pandemic. Survivors must have valid status and work authorization during the “base period” specified by their state, at the time they apply for unemployment insurance, and throughout the period they are receiving it.⁴ As workers must be ready, willing and able to work to qualify for unemployment, an extension of status and work authorization is vital to ensure that vulnerable families do not endure further hardship.

C. Freeze ages of applicants as of the date of the declaration of the national emergency.

Survivors will be unable to timely file due to lack of access to counsel, inability to collect necessary evidence, and other limitations resulting from the national emergency. These delays may impact their ability to include derivative applicants should they or their derivatives “age-out” of eligibility for protection. This includes a VAWA self-petitioner whose derivative child turns 21 during the crisis, or a minor crime victim applying for a U visa who will not be able to include their parents or siblings should they turn 21 during this crisis. For these reasons,

⁴ National Employment Law Center. “Immigrant Workers’ Eligibility for Unemployment Insurance” (March 31, 2020), available at <https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/>

we ask that USCIS toll “age-out” issues for all impacted cases, including but not limited to the following matters:

- **I-360 VAWA self-petition derivatives**
- **I-360 VAWA child self-petitioner** (21 year old to 24 year old filing category)
- **I-918 U visa petitioners with eligible parents and sibling derivatives**
- **I-918A derivative beneficiaries of U applicants**
- **I-929 beneficiaries of U adjustment applicants**
- **I-914 T visa petitioners with eligible parents and sibling derivatives**
- **I-914A derivative beneficiaries of T visa applicants**

D. Provide Greater Latitude with Forms and Submission of Evidence

We renew our requests that USCIS maintain additional flexibility with regard to what should be considered “initial evidence” so that applications are not unjustly denied for failure to submit items like passport pictures, which are very difficult to obtain given the numerous state and local shut down orders. We call on USCIS to:

1. **Allow Initial Evidence to be Submitted After Filing:** USCIS should exercise its discretion under 8 CFR 103.2(b)(8)(ii) to allow initial evidence that was not available at the time of filing due to the national emergency to be submitted in response to a request for additional evidence. Additionally, if applications are rejected for failure to submit initial evidence, once cured, these applications and petitions should reflect their original “receipt date” to avoid loss of place in the processing queue.

Relatedly, USCIS should rescind its processing policy of rejecting applications for blank spaces given the particular hardship of remediating at this time.⁵ ASISTA has previously presented numerous erroneously rejected petitions and applications based on the “blank space” policy. Given the COVID-19 pandemic and the many erroneous and problematic rejections, continued implementation of this policy will result in additional undue hardships to survivors.

2. **Suspend expiration of signed LEA Certifications.** USCIS should allow for the filing of U visa applications with I-918 Supplement B certifications that are now expired but were duly signed within 3 months prior to the President’s declaration of a national emergency on March 13, 2020, understanding that during the period of emergency, it may be difficult to communicate with survivors as well as with law enforcement to obtain new certifications. We note that the statute does not place any time limitations on the

⁵ For additional information on why this policy should be rescinded see ASISTA’s February 6, 2020 letter to USCIS available here: <https://asistahelp.org/wp-content/uploads/2020/02/ASISTA-Letter-on-I-918-Alert-2.6.2020-7.pdf>

submission of the Supplement B.

3. **Ensure acceptance of any credible evidence in support of fee waiver applications**, especially since evidence from government agencies such as the IRS may be impossible to obtain in the national emergency.
4. **Expedite all survivor-based petitions and applications for survivors who are detained**. Given the health emergency, release from detention for all survivors with viable applications for immigration benefits is critical.
5. **Allow for the Submission of Digital Signatures**. ASISTA thanks USCIS for taking the first, important step, of allowing the submission of reproduced signatures. While this alleviates some of the burden on stakeholders, it is important to note that due to ‘stay at home’ orders and social distancing, individuals may not have the appropriate equipment at home that allows them to print, copy or scan signed documents. The Executive Office for Immigration Review recently issued guidance that they will accept both digital and electronic signatures.⁶ ASISTA asks that USCIS clarify in its guidance that the agency will accept both digital and electronic signatures, including through means such as DocuSign, Adobe Fill & Sign or CamScanner. We also seek confirmation that USCIS will accept I-918B Law Enforcement Certifications with electronic or digital signatures.

ASISTA, during this uncertain time, is eager to work with USCIS to develop and implement policies that will ensure immigrant survivors are protected and continue to have access to important immigration benefits. We thank you for your consideration and look forward to hearing from you at your earliest convenience. Should you have any questions or concerns regarding this letter, please contact me at gail@asistahelp.org.

Gail Pendleton

Executive Director

cc: Michael T. Dougherty, Ombudsman, Office of Citizenship and Immigration Services Ombudsman
Stacy Shore, Acting Dep. Ombudsman, Office of Citizenship and Immigration Services Ombudsman
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Carrie A. Grismore, Section Chief, Vermont Service Center, USCIS
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⁶ <https://www.justice.gov/eoir/page/file/1266411/download>