



Advanced Practice Update on VAWA and U Visas

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Overview

Identify case law, policy and practice updates in VAWA and U visa cases including:

- Rejections of U visa filings for blank spaces
- Obtaining continuances in removal proceedings for pending U visa petitioners
- Common Requests for Evidence (RFEs)
- Government Agency Support
- Missing USCIS notices

Blank Space Rejections for U visas

Blank spaces: What's going on?

December 30, 2019 alert on U visa Form Page

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.

Hypo

On December 27th, you file a U visa application for your client Christine. She has no middle name and doesn't live in an apartment, and so you left those spaces blank on the I-918.

You receive a rejection notice on February 6, 2020, addressing these issues and alleging you left a space blank on the question regarding current immigration status, which was filled out. Now the law enforcement certification has expired.

POLL: Options for re-filing

Write “None” in middle name and apartment fields

Write “N/A” in middle name and apartment fields

Continue to leave the spaces blank, write in the margins

Unsure

Other

I-918 instructions

If a question does not apply to you (for example, if you have never been married and the question asks “Provide the name of your current spouse”), type or print “N/A,” unless otherwise directed.

If your answer to a question which requires a numeric response is zero or none (for example, “How many children do you have” or “How many times have you departed the United States”), type or print “None,” unless otherwise directed.”

General Practice Pointers

Check for errors on rejection notice.

Maintain copy of initial filing for your records.

Check ancillary forms are current in their edition date

If errors in rejections, include cover page “For Records Supervisor Review”

Request Nunc Pro Tunc Receipt

Dealing with Expired Certifications

I-918 Supplement Bs are valid for six months from date of signature

Contact LEA to seek a new one

In the interim, you may seek to re-file and request the application be processed nunc pro tunc to the initial date of receipt.

Unknown result

Contact ASISTA if you do this to shepherd case

Consider if pressing against other deadlines.

Other issues

Derivative Age-Outs

Expired Forms

What are you seeing?

Us In Removal Proceedings:
Continuances for U Visa
Adjudication

POLL: Motion for Continuance

In the last 6 months, have you filed a Motion for Continuance because of a pending U visa petition?

Yes

No

POLL: Motion for Continuance

In the last 6 months, have you received a prima facie determination for a U petitioner in removal proceedings?

Yes

No

Prima Facie Determination

Created as protection against removal

Process created through regulations and policy

If U is pending, ICE asks VSC to make prima facie decision

Process for U stays, detained Us, and Us in removal proceedings

Dovetailed, informally, with EOIR prima facie system in Matter of Sanchez Sosa

Current State of Prima Facie Determinations

Since Sanchez Sosa

Matter of L-A-B-R-

Matter of Mayen

ICE August 2019 FAQ

Eliminates prima facie system for U stays

ICE will not remove waitlisted U petitioners unless there is new basis for removability

EOIR suggestions

Ask to be placed on status docket if available in your jurisdiction

Motion to Continue under Matter of Mayen

What should you include?

Resources = samples & amicus arguments

RFE Issues

U Visa & VAWA

POLL: Police Reports, To Submit or Not?

When USCIS requests a police report for your client, do you:

Submit it

Withhold it

Depends

USCIS has not asked for a police report

RFE for Police Reports

USCIS is requesting police reports if client was ever arrested or charged with crime, regardless of whether convicted

Purpose: affects discretionary analysis

USCIS will likely accept allegation in police report as true regardless of conviction. But USCIS may consider withholding of police report as negative discretionary factor.

Arguments for Withholding Police Report

Uncorroborated police reports inherently unreliable

If withholding, don't provide corroboration

Outside Record of Conviction

Can be very prejudicial

But, USCIS may consider withholding of police report as negative discretionary factor

Arguments for Submitting

Some police reports not that bad, may be consistent with your client's version of events

Stronger argument for exercise of discretion

Client can show 3 Rs: Responsibility, Remorse, Rehabilitation

HYPOTHESIS: Is there a qualifying crime?

Your client was the victim of contempt of court that arose from her abuser's violation of a protection order and filed for a U visa. The Supplement B lists domestic violence as the crime but the police report and charging documents list the state contempt of court statute. You receive an RFE stating that contempt of court is not a qualifying crime.

How do you argue this is a DV crime?

Framing your crime category arguments

USCIS itself says crimes are categories

Look to state and federal statutes and even Model Penal Code to define “category”

See and use our amicus to AAO and their approval of that case

Elements PLUS facts show crime falls within the category

Do a chart comparing elements of chosen category with your crime’s elements and facts

“Substantially Similar” is much narrower and more likely to result in denial because elements of qualifying crime are often not completely matched by elements of your crime

Only use **after** argue your crime fits a category

Applying this to other categories

Robbery as felonious assault: what do you need to show?

What other crimes might fit this framework?

Discretionary Issues at Adjustment

POLL

In the last year, VSC has RFE'd a U visa adjustment on discretion where all negative discretionary factors were disclosed and addressed prior to the U visa grant.

Yes

No

The Problem

VSC issuing RFEs for criminal history docs and positive equities at U AOS even where prior arrest/conviction previously disclosed, addressed, and waived on I-192

U AOS is discretionary

“justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest” INA 245(m)(1)(B)

Best Practices

Argue waiver standard for 212(d)(14) (“public or national interest”) is stricter than 245(m)(1)(B) standard

Arbitrary and capricious to grant discretionary waiver under stricter standard and then deny under more generous standard

Congressional purpose behind U visa was to provide safety and security to cooperating victims

Provide evidence of rehabilitation, positive contributions to community

Long term employment, helpfulness to neighbors, civic engagement

Troubleshooting Administrative Issues

Liaison assistance: What to
do when you're stuck

ASISTA interventions (VSC, NSC, USCIS HQ, ICE)

USCIS Ombudsman

- Case is stuck with USCIS;
- service center rejected filing in error;
- can't get response from USCIS;
- other issues with USCIS

Congressperson

- All agencies
- Case is stuck;
- Can't get response from federal agency;
- Client in detention/at risk of removal

Office for Civil Rights and Civil Liberties (CRCL)

- Any DHS component not following own policy
- 8 USC 1367 violations

Screenshare

Ombudsman: <https://www.dhs.gov/topic/cis-ombudsman>

CRCL: <https://www.dhs.gov/compliance-branch>

POLL

Your client, Claire, filed her I-485 , I-601, and I-212 concurrently with her I-360 self-petition. The self-petition was approved in May 2018, but you still have not received a notice for her adjustment interview. What do you do? (select all that apply):

Keep waiting

File a USCIS Ombudsman case assistance request

Get an Infopass appointment at your local office

Contact your client's Congressperson

Request Technical Assistance from ASISTA

POLL

Claire finally has her adjustment interview, but the field office denies her I-212 on the basis that she did not remain outside the US for 10 years after her removal before filing the I-212. As a result of the I-212 denial, they also deny the I-601 and I-485. What do you do? (select all that apply):

Do nothing; USCIS's decision is correct

File I-290B

Contact USCIS Ombudsman for case assistance

Contact ASISTA for technical assistance

Contact the media

POLL

When you receive the denial notices for Claire's adjustment, you notice that her address on the denial notices is listed as her abuser's address even though you had provided a safe mailing address for her. You believe that USCIS sent a copy of the denial notices to her abuser's address. What do you do?

Write a complaint to the USCIS office that sent the notices

Call the USCIS Contact Center

Request case assistance from the USCIS Ombudsman

File a complaint with the DHS Office for Civil Rights and Civil Liberties

Ask ASISTA for technical assistance

POLL

Claire is inadmissible under INA 212(a)(9)(C)(i) because she re-entered the US after being removed. After Claire's adjustment application was denied, ICE officers showed up at her home and arrested her. ICE wishes to reinstate her removal order and remove her. What do you do?

Contact Claire's Congressperson

Request case assistance from the USCIS Ombudsman

Request technical assistance from ASISTA

Beg ICE not to reinstate the order

Other

When USCIS Notices Go Missing

POLL

In the last year, my clients have experienced (select all that apply):

Did not receive RFE or NOID that USCIS says was sent

Did not receive a receipt, approval, or denial notice that USCIS says was sent

Did not receive EAD or green card that USCIS says was sent

USCIS says they did not receive a document that my client submitted

Other USCIS administrative problems

Discussion: Solutions?

What have you done when faced with administrative mix-ups?

If case denied due to missing RFE?

If USCIS lost document?

If missing receipt or approval notices?

Current Trends

Non-delivery of RFEs

Results in denial for abandonment

Non-delivery of notices, EADs

Results in loss of employment for client

Time-consuming to resolve

USCIS losing previously-submitted documents

May require additional expense, time for client

Missing RFE

Sign up for MyCaseStatus or MyUSCIS at uscis.gov

Get update when RFE/NOID issued

But may not be able to access VAWA/U case info

Keep office address updated and make sure staff are handling mail properly

If client provided their address, remind client to check mailbox and let you know of notices

Missing RFE continued

If you discover RFE issued and have not received denial, contact VSC/NSC immediately

- Request reissuance of RFE with new deadline

- CIS may reissue but probably with same deadline

If you receive denial for abandonment, file I-290B Motion to Reopen timely

- Include the evidence requested in RFE in the I-290B

- FOIA your client's ECHO, CLAIMS, and CRIS records to see if RFE was actually issued and mailed and when

Missing Notices and EADs

If EAD will be sent to client, make sure client understands how to check for USPS missed delivery notice

For missing notices, email VSC/NSC hotlines

FOIA client's CLAIMS, EPMS, CRIS records to check for actual issuance and mailing of notice

Last resort for missing approval notices: I-824

\$465 fee

Time-consuming

Document Lost by USCIS

Reports of USCIS losing forms, evidence

Probably have to resubmit, so keep copies

Never submit originals unless required

Let ASISTA know – we're trying to track these

FOIA client's ELIS records for scanned copy of submissions

Doesn't help if mailroom lost document prior to scanning

Thank you!

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For Individual Technical Assistance:

http://www.asistahelp.org/en/technical_assistance/



www.asistahelp.org