

December 23, 2019

Via Email

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

Re: FOIA Request for U Visa Records

Dear Ms. Eggleston,

This letter constitutes a request by ASISTA Immigration Assistance (“Requestor” or “ASISTA”) under the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.* for copies of records pertaining to the discretionary adjudication of Form I-192, *Application for Advance Permission to Enter as a Nonimmigrant* (“Form I-192”) in connection with petitions for U nonimmigrant status.

I. REQUEST FOR INFORMATION

ASISTA requests any and all records¹ which were prepared, received, transmitted, collected, and/or maintained by the Department of Homeland Security, U.S. Citizenship and Immigration Services (“USCIS”)² and which relate to the discretionary adjudication of Form I-192, *Application for Advance Permission to Enter as a Nonimmigrant* (“Form I-192”) in connection with petitions for U nonimmigrant status.

Such records include, but are not limited to:

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.

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.

1. All training materials, guidelines, standard operating procedures, policies, or instructions to USCIS regarding the adjudication of Form I-192 under 8 U.S.C. § 1182(d)(3), INA § 212(d)(3)(A) (“(d)(3)”) and 8 U.S.C. § 1182(d)(14), INA § 212(d)(14) (“(d)(14)”) from FY 2015-present;
2. All templates or model responses used by USCIS officers in drafting requests for evidence (“RFEs”), notices of intent to deny (“NOIDs”), and written dispositions of Form I-192 applications under (d)(3) or (d)(14) from FY 2015 to present;
3. Communications regarding the drafting of templates or model responses used by the USCIS officers in drafting RFEs, NOIDs, and written dispositions of Form I-192 applications under (d)(3) or (d)(14) from FY 2015 to present;
4. Communications between Vermont Service Center and Nebraska Service Center concerning guidelines, policies, or instructions for responses to Form I-192 applications under (d)(3) or (d)(14);
5. Any and all drafts and final versions of USCIS Policy Manual, Volume 9, Part L: Waivers for Nonimmigrants;
6. Intra-agency communications or statements of policies regarding pending petitions for U nonimmigrant status where USCIS has been notified that Immigration and Customs Enforcement intends to remove the petitioner;
7. Inter-agency policy, directions or guidance concerning circumstances under which to permit the removal of petitioners for U nonimmigrant status before USCIS has decided the merits of their cases;
8. Inter- and intra-agency communications, guidelines, or statements of policies regarding prima facie determinations or expedited review of U petitions, as well as ICE Directive 11005.2; and
9. Monthly, quarterly, and annual quantitative summaries of removals of individuals whose U nonimmigrant status petition was pending at the time of removal from FY2015-present.

II. THE REQUESTOR

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy, and to advocate for the fair and just administration of federal immigration laws, particularly as they relate to immigrant survivors of violence. ASISTA

consults with immigration lawyers, law students, accredited representatives and other advocates to help directly protect the legal rights of noncitizens; advocates for policy on behalf of immigrant survivors of violence; publishes educational materials; and runs training programs that educate the public, legal practitioners, government officials, and law enforcement officers about immigration law and practice.

III. FEE WAIVER REQUEST

ASISTA requests 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 [Requestor]...” 5 U.S.C. § 552 (a)(4)(A)(iii); *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 and waivers as a discretionary matter. This request furthers Requestor’s 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 Form I-192 for U visa applicants 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)(ii)(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, Requestor has the capacity to disseminate widely the requested information to the public. Requestor 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, Requestor regularly conducts national trainings and disseminates 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, Requestor has

frequent contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

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

Requestor is a non-profit organization. Attorneys, noncitizens, and other interested members of the public may obtain information about immigration-related issues through their distribution of records, including their individual website, and through public and educational appearances. Requestor seeks the requested information for the purpose of disseminating it to members of the public who have access to their public website 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 statutory robbery in California). 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 requestor explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

The FOIA provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Please send all non-exempt portions of the requested records and 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. As some of the documents listed above may be more readily available than others, please provide the documents on a rolling basis as they become available. ASISTA reserves the right to appeal your decision to withhold any materials or to deny a waiver of fees.

IV. EXPEDITED PROCESSING REQUEST

ASISTA further requests expedited processing of this request for records. The records sought are urgently needed in order to inform immigrant victims of crime and their advocates regarding USCIS's policies and practices regarding the implementation of the (d)(14) waiver of inadmissibility.

Requestor certifies that the information contained in this request is true and correct to the best of my knowledge. See 6 C.F.R. § 5.5(e)(iv)(3).

V. FORMAT OF PRODUCTION

ASISTA seeks 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.

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.

Thank you for your prompt attention to this matter. Please furnish the applicable records to ASISTA’s counsel:

Vincent Cox, Esq.
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Los Angeles, CA 90067-2909
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424.204.4362

Sincerely,

/s/ Amy Cheung
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On behalf of ASISTA

/s/ Vincent Cox
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On behalf of ASISTA