



Representing Immigrant Survivors during COVID-19

Presented by:

Cecelia Friedman Levin, Senior Policy Counsel

Amy Cheung, Senior Legal Counsel

Laura Flores Bachman, Senior Legal Counsel

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Agenda

1. Troubleshoot issues arising from COVID-19 in your survivor-based cases
2. Identify available options to address these issues



Deadlines

USCIS Policy: Response Deadlines during National Emergency

For applicants and petitioners who receive an RFE/NOID/NOIR issued and dated between March 1 and May 1, 2020:

Any responses submitted within 60 calendar days after the response date set forth in the request or notice will be considered by USCIS before any action is taken.

Who is left out?

RFE/NOID/NOIR issued before March 1, 2020 even if response deadline is before May 1, 2020

POLL: RFE Response Deadlines

Between March 1 and May 1, 2020 my clients have had difficulty obtaining evidence needed to respond to an RFE/NOID/NOIR:

Yes

No

Hypothetical - RFE

- RFE issued before March 1 for:
 - a. New I-918B LEA certification - original LEA cert does not include statutory citation for qualifying criminal activity
 - b. Copies of all pages of petitioner's passport or I-192 waiver
- Deadline for response: May 8
- Practitioner requested new I-918B several weeks ago, but LEA may not respond before RFE response is due
- Copy of passport was previously submitted. Hard copy of submission in office paper file. Client has since lost her passport.

Implications of COVID-19 for Responses

- Practitioner can't go to the office
- Clients can't go into practitioner's office
- Consular office from client's home country open for emergencies only
- No one can obtain documents/evidence to respond to RFE/NOID
 - LEA is probably not prioritizing requests for re-certification
- DHS Affected by COVID-19
 - VSC phone hotline temporarily unstaffed
 - NSC/VSC email hotlines slower to respond

Practice Pointers

- Respond to RFE/NOID/NOIR timely if your notice is not covered by USCIS COVID extension guidance with what you have
- If the client was not able to obtain requested evidence, document attempts to obtain evidence and why evidence was not available
 - Statements in cover letter are not evidence
 - Need affidavits/declarations, other documentation
- Include client-specific hardships created by COVID emergency

Practice Pointers, cont.

- Explain how previously submitted evidence meets eligibility requirements
- In cover letter, ask USCIS for an extension/advise that you will supplement RFE response
 - Show addl. time needed = client's specific circumstances
 - Want adjudicated on merits and not denied for abandonment
- *If you did not...submit evidence or respond to a notice or request in a timely manner for reasons **directly tied to the special situation**, you may show how the disrupting event affected your ability to appear for interview or submit documents as required. <https://www.uscis.gov/humanitarian/special-situations>*
 - Requires showing of nexus

USCIS Policy: I-290B Deadlines during National Emergency

USCIS 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.

What about I-290Bs due now?

What about Motions on unappealable cases?

- ▣ Any Form I-290B received up to 60 calendar days from the date of the decision will be considered by USCIS before it takes any action.

Initial Applications & Initial Evidence

Initial Filings

Statutory/regulatory filing deadlines

- ASISTA requested suspension of all filing deadlines; Awaiting USCIS response
- Until USCIS says otherwise, assume all filing deadlines apply (except I-290B)

Initial Filings

Signatures

- Electronic reproduction of wet signature OK
- Keep original signature page (e.g., I-918B)
- What about electronically-produced/digital signature?

What happens after the initial filing?

Biometrics

- ASCs currently closed through May 3, but check <https://www.uscis.gov/about-us/uscis-office-closings>
 - All biometrics appointments canceled
- ASC will automatically reschedule cancelled appointments
- If ASC reopened, but your client cannot attend appointment, you must request reschedule

What happens after the initial filing?

Local Office Appointments

- Field offices closed until May 3, but check <https://www.uscis.gov/about-us/uscis-office-closings>
- If USCIS cancelled interview, USCIS will reschedule automatically
- If InfoPass appointment was canceled, **you** reschedule
- Emergency: USCIS Contact Center 800-375-5283

Initial Evidence

Passport Photos

- Still required
- Cell phone apps + photo printers?

Medical Exams

- Still required for AOS, though not at time of initial filing

Is an Inadmissibility Waiver considered Initial Evidence?

Initial Evidence

- Can you Wait for RFE?
 - USCIS policy memos on RFEs and NTAs are still in effect.
- Money orders
 - Can your office cut check on behalf of client?
- What else are you seeing?

Consular Processing & Executive Orders

Hypothetical

U visa holder adjusts status and derivative child's I-929 is approved.

Derivative beneficiary is turning 21 on *May 5*.

Derivative beneficiary had NIV interview, but consular officer required medical exam

Derivative cannot get medical exam because office closed

What additional information do you need to help the derivative?

Department of State (DOS) on COVID

- As of March 20, 2020 DOS temporarily suspended routine visa services at all U.S. Embassies and Consulates.
- Embassies and consulates cancelled all routine immigrant and nonimmigrant visa appointments.
- No specific date for resuming services.
- Visa fee may be used for a visa appointment in the country where it was purchased within one year of payment.

DOS on COVID, cont.

- Embassies and consulates continue to provide “emergency and mission critical visa services” *as resources allow*
 - ▣ Is age-out of the derivative child considered an emergency?
- Services to U.S. citizens continue to be available.

Consular Processing of Immigrant Visas

- ❑ USCIS still sending petition approvals to NVC

- ❑ During National Emergency, NVC is still
 - ❑ Creating DOS cases/Case ID number
 - ❑ Issuing fee invoices
 - ❑ Collecting documents for consular processing

- ❑ Potential Pitfalls:
 - ❑ INA §203(g) - must apply within one year of notice of visa availability
 - ❑ Age-outs

CDC Temporary Border Entry Suspension

- DHS is Implementing CDC at POE on North and South Borders
- CDC ordered suspension of introduction of persons traveling from Canada and Mexico through land ports of entry who would otherwise be introduced into a congregate setting in a land port of entry or Border Patrol station, subject to certain exceptions. (85 FR 17060, 3/26/20)
- Initial agreement between US/Mexico/Canada in effect from March 20th to April 20th; extended to May 20, 2020

Exceptions & Extent of CDC Temp Border Entry Suspension

- Does not apply to:
 - ▣ United States citizens, lawful permanent residents, and their spouses and children
 - ▣ US Military & associated personnel, and their spouses & children
 - ▣ Persons with valid travel documents who arrive at a port of entry
 - ▣ Persons in the Visa Waiver Program not otherwise subject to travel restrictions
 - ▣ Persons whom CBP officers determine should be excepted
 - Totality of the circumstances
 - Significant law enforcement, public safety, humanitarian, or public health interests
- DHS shall consult with CDC on manner of determining individualized exceptions.
- Suspension may be extended if necessary to protect the public health.

Executive Order Issued 4/22/20

Restricts *entry* for 60 days of certain immigrants who

- are outside the United States; and
- do not have an immigrant visa that is valid as of 11:59 pm ET on April 23, 2020; and
- do not have an official travel document other than a visa (transportation letter, boarding foil, or advance parole document)
 - valid as of 11:59 pm ET on April 23, 2020 or
 - issued on any date thereafter

Who is Exempt from the 4/22 Executive Order?

- Legal Permanent Residents
- Spouses & children under 21 of U.S. citizens, including prospective adoptees;
- Members of the U.S. military & their spouses and children
- Certain medical health professionals seeking to assist with or perform certain essential work relating to COVID-19 response & their spouses and unmarried children under 21
- Employment Based immigrant investors
- Afghani or Iraqi interpreters or others who have worked for US government

General Exemption from 4/22 EO

Others designated by DOS & DHS:

- whose entry is in the national interest; or
- whose entry would further important law enforcement objectives in the United States.

Detention and Stays

Poll: Detention and Stays

Have you successfully obtained release from detention for your client during the COVID emergency?

1. Yes, my client received humanitarian parole
2. Yes, my client was released on bond
3. Yes, my client was released on their own recognizance
4. Yes, my client was released on an Alternative to Detention (ATD) Program
5. No

Hypothetical: Detention

Lauren was arrested at a work by ICE who went to her work to arrest a different employee.

Lauren has been detained for four weeks pending removal proceedings. She has not had her first hearing.

Lauren has a U visa petition and asylum application pending.

She has 2 young USC children and found out in detention that she is pregnant.

Fraihat v. ICE, 5:19-cv-01546-JGB-SHK (C.D. Cal April 20, 2020)

- Granted preliminary class certification for:
 - ▣ All ICE detainees with Risk Factors “placing them at heightened risk of severe illness and death upon contracting the COVID-19 virus”
 - ▣ All ICE detainees “whose disabilities place them at heightened risk of severe illness and death upon contacting the COVID-19 virus”

- Granted preliminary injunction requiring:
 - ▣ Defendants shall make timely custody determinations for detainees with Risk Factors
 - ▣ The above relief shall extend to detainees with Risk Factors regardless of whether they have submitted requests for bond or parole, have petitioned for habeas relief, have requested other relief, or have had such requests denied;

ICE Guidance: COVID-19 Detained Docket Review

- Email from Peter Berg, Assistant Director, Field Operations on April 4, 2020
- Required ERO to review custody for high risk groups, including:
 - ▣ Pregnant or delivered within last 2 weeks
 - ▣ Over 60
 - ▣ Chronic illnesses, including: Heart disease, Lung disease, chronic kidney disease, blood disorders, metabolic disorders, endocrine disorders, compromised immune system, neurological conditions
- Risk factor = “significant discretionary factor”

Humanitarian Parole

Case-by-case review by ICE for parole under INA §212(d)(5)

- Not a flight risk
- Not a security risk
- Urgent Humanitarian Reasons or Significant Public Benefit
 - Serious medical conditions
 - Pregnancy
 - Minors in DHS custody
 - Witnesses in a proceeding in the US
 - Continued detention not in the public interest

Stay of Removal

Applies to clients with unexecuted final order of removal
Filed with ICE Enforcement and Removal Operations (ERO)

Include:

- Form I-246
- G-28
- Filing Fee
- Letter brief and Evidence for favorable exercise of discretion
- Any additional COVID hardships?

If Pending U visa: Review 2009 ICE Memo & August 2019 ICE U visa
policy

Evidence for Favorable Exercise of Discretion

May be very similar to evidence for waiver:

- Victimization
- If U or T visa pending, where appropriate, cooperation with LEA
- Mental health/medical needs of client and family members
- Ties to community, length of residence
- Need for access to justice system
- Clean criminal record
- Long-term employment
- Other?

If U Visa Survivor is Facing Imminent Removal

1. Has U visa been filed already? If not, file immediately and making sure filing is complete.
 - RFE = negative Prima Facie Determination (PFD)
2. Ask ICE to request PFD from VSC.
3. File Stay with ICE and MTR with EOIR. If MTR does not come with automatic stay, file Motion to Stay, too.
4. Contact ASISTA, USCIS Ombudsman, and client's Congressperson for assistance immediately.

Step by step, day by day

Expect emerging COVID-19 updates:

USCIS: https://www.uscis.gov/news/all-news?ftopic_tid=0&page=1

ICE: <https://www.ice.gov/coronavirus>

ASISTA's updates: <https://asistahelp.org/resource-library/covid-19/>

THANK YOU!

Cecelia Friedman Levin: cecelia@asistahelp.org

Amy Cheung: amy@asistahelp.org

Laura Flores Bachman: laura@asistahelp.org

For Individual Technical Assistance:

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

ASISTA Practice Advisories:

<https://asistahelp.org/resource-library/practice-advisories/#1>



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