



May 15, 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 letters submitted on March 24, 2020 and April 7, 2020 regarding our recommendations to USCIS in response to the COVID-19 global pandemic. We appreciate the measures already taken by USCIS; however, we urge the agency to do more to address the most urgent needs of immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes.

We recognize that USCIS has already taken measures, such as the suspension of routine in-person services through at least June 3rd, to help slow the spread of COVID-19. In its most recent May 1st announcement, USCIS expanded the flexibility for responding to USCIS requests and notices that were issued between March 1st and July 1st, 2020.¹ While this increased flexibility is well-intentioned, it does not address the most urgent need for immigrant survivors. For this reason, we renew our request 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.

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

¹ USCIS. "USCIS Extends Flexibility for Responding to Agency Requests" (May 1, 2020), available at: <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests>

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

We renew our request that USCIS 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 provide below an example of why this flexibility is so critical:

An attorney recently reported to ASISTA that she faces substantial difficulties responding to a Request for Evidence (RFE) for her T visa client. Her client, a survivor of human trafficking, received a RFE prior to March 1st which is now due later this month. The survivor has demonstrated COVID-19 symptoms and has been instructed not to leave her home unless she requires hospitalization because she is symptomatic. USCIS’ current flexibility policy does not address situations like this, in which illness prevents the survivor from working with her attorney. The survivor has also developed other complications in addition to COVID-19 symptoms and still is unable to leave her home.

As mentioned in our previous letters, we urge USCIS to suspend filing deadlines 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;**

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>

- **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. We note that USCIS's May 1, 2020 announcement clarifies that *all I-290Bs*, including Motions to Reopen, Motions to Reconsider, as well as appeals are subject to the extension.³ We thank USCIS for this important clarification.

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

We renew our 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

³ See note 1, *supra*. "USCIS will consider a Form I-290B received up to 60 calendar days from the date of the decision before it takes any action."

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/>

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.

Immigrants eligible for humanitarian immigration relief are often unable to timely file due to lack of access to counsel, the inability to collect necessary evidence, and other limitations resulting from the COVID-19 pandemic. These delays, wholly outside of their control, could potentially impact survivors' ability to include derivative applicants should they or their derivatives "age-out" of eligibility for protection. For instance, a VAWA self-petitioner may have a 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 time. For these reasons, 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 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

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>

⁶ <https://www.justice.gov/eoir/page/file/1266411/download>

hearing from you at your earliest convenience. Should you have any questions or concerns regarding this letter, please contact me at cecilia@asistahelp.org.

Cecelia Friedman Levin
Policy Director

cc: Michael T. Dougherty, Ombudsman, Office of Citizenship and Immigration Services Ombudsman
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