



**COVID-19 Practice Pointer:  
Initial Filings of U/T visa petitions and VAWA self-petitions with U.S.  
Citizenship and Immigration Service (USCIS)**

*Current as of May 12, 2020*

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Subsequently, on March 13, 2020, President Trump declared a national state of emergency over the coronavirus outbreak. States and municipalities have since declared their own states of emergencies and implemented public health protocols that promote social distancing. As a result of the many difficulties caused by COVID-19, USCIS has issued several policy updates regarding the processing and adjudication of immigration benefit applications during this time. They include:

- [USCIS Response to Coronavirus 2019 \(COVID-19\)](#) (last updated 5/1/20)
- [Special Situations](#) (last updated 10/25/19)
- [USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency](#) (last updated 5/1/20)
- [USCIS Announces Flexibility for Requests for Evidence, Notices of Intent to Deny](#) (last updated 3/27/20)
- [USCIS Expands Flexibility for Responding to USCIS Requests](#) (last updated 3/30/20)
- [COVID Delays in Extension/Change of Status Filings](#) (last updated 5/1/20)
- [USCIS Extends Flexibility for Responding to Agency Requests](#) (last updated 5/1/20)

We have [expressed](#) a number of [additional concerns](#) to USCIS regarding accommodations for immigrant survivors and will continue to follow up and share any new developments with you. In the meantime, we summarize below some of the measures announced by USCIS to address issues resulting from COVID-19 relating to initial filings. To the extent that USCIS's guidance does not address problems raised by practitioners, we have provided some guidance based on ASISTA's experience.

We encourage you to also visit [ASISTA's COVID-19 Resource Page](#) and that of our partners, [CLINIC](#) and [CAST](#).

## A. Deadlines for Initial Filings

At the moment, all statutory and most regulatory deadlines remain in place.<sup>1</sup> This means that practitioners should plan to comply with these deadlines when submitting initial filings and should not expect deadlines to be waived or tolled. This includes:

- VAWA self-petitions
  - 2 year filing deadline for spousal self-petitions post-divorce or death of abuser
- U visas
  - Adjustment of status under 245(m) prior to expiration of U nonimmigrant status
  - Submission of I-918 within 6 months of signing of LEA certification
- T visas
  - Adjustment of status under 245(l) prior to expiration of T nonimmigrant status

**Practice Tip:** To the extent that practitioners or petitioners are unable to obtain evidence or other documentation for their filings due to COVID-19 restrictions, they should document the specific reasons why in the filing and should plan to supplement the petition as soon as possible. When documenting the reason for the unavailability of evidence, practitioners should consider providing, as appropriate:

- Copy of city or state’s shelter-in-place order
- Copy of city or state’s definitions of essential businesses
- Evidence of quarantine order
- Evidence of COVID-19 diagnosis or medical vulnerability
- Affidavit from attorney and/or client explaining specific circumstances preventing client from obtaining evidence and any attempts to do so

If the missing evidence or documentation is on the list of required initial evidence, be sure to document why that specific evidence is missing and address that in the cover letter as well. Practitioners should not wait for an RFE before supplementing the initial filing with the missing required initial evidence in case USCIS denies the case without issuing an RFE under the [2018 RFE memo](#). When supplementing their initial filing, practitioners should include a copy of the receipt notice to aid USCIS in uniting the supplement with the file.

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<sup>1</sup> See [COVID-19 Practice Pointer: Filing Deadlines for RFEs, NOIDs, NOIRs and I-290Bs](#) for additional information regarding filing deadlines.

## B. Age-outs

Likewise, USCIS has not indicated that it will make any accommodations to protect against age-out for principals or derivatives who are unable to file because of the COVID-19 pandemic. Therefore, practitioners should plan to file any affected petitions before the principal or derivative will age-out. These petitions include:

- U visa:
  - I-918: Where the principal is turning 21 and wishes to include their parents or unmarried siblings under 18, or the derivative children are turning 21, or the derivative siblings will turn 18.
  - I-929: Where the child beneficiary will turn 21 in the next 2 years, practitioners should file as soon as possible because the beneficiary must remain under 21 at the time of adjustment.
- T visa:
  - I-914: Where the principal is turning 21 and wishes to include their parents or unmarried siblings under 18, or the derivative children are turning 21, or the derivative siblings will turn 18.
- VAWA self-petition:
  - I-360: Where the dependent children are turning 21, or where the child self-petitioner is turning 21, or is turning 25 if arguing that the battery or extreme cruelty was at least one central reason for the delay in filing.

**Practice Tip:** For any applications where the derivative or beneficiary's age will not be frozen at the time of filing (such as I-929s), practitioners should continue to request expedited processing and follow up with the [service center hotlines](#) as necessary to ensure that the application is processed before the client ages out. While Vermont Service Center's phone hotline is not operational at this time due to COVID-19, the email hotlines are still working.

## C. Extensions of Status

USCIS has not automatically extended the stay of U or T nonimmigrants. Any U or T holders who are otherwise required to file Form I-539 to extend their stay must continue to do so and should file the I-539 prior to the expiration of the nonimmigrant status. USCIS has indicated that [they can take COVID-19 related delays into consideration](#) where the I-539 has been untimely

filed, but “[t]he length of delay must be commensurate with the circumstances.”<sup>2</sup> U and T nonimmigrants are arguably not subject to that requirement which likely stems from 8 C.F.R. 214.1(c)(4)(i) because USCIS has [previously issued separate guidance](#) specific to U and T holders requiring only a written explanation for the untimely filing and no demonstration that the delay be commensurate with the circumstances. However, as I-539s are discretionary, practitioners are encouraged to file any untimely requests as soon as possible.

#### **D. Signatures**

USCIS has stated that [it will accept electronic reproductions of “wet” signatures for benefit forms and documents dated March 21, 2020 and beyond](#). **This means that they will accept photocopies, scans, and faxes of original signed documents.** At the moment, they will not accept electronically *produced* signatures, such as those created on a computer or tablet device.<sup>3</sup> However, USCIS has not indicated whether they will accept a scanned signature that is not part of an original document, such as if the client signs a blank piece of paper and sends a photograph or scan of that standalone signature to be pasted onto a form. Because USCIS has not yet indicated whether such a standalone signature would be acceptable under the present conditions, we do not recommend doing so.

**Practice Tip:** While statements such as those required for U and T principal petitioners must be signed, there is no requirement that the signature on a statement be “wet”. Petitioners should be able to submit electronic reproductions of signed statements as well as forms.

#### **E. Photographs**

USCIS has not indicated that it will waive the requirement for passport photographs if they are required initial evidence, so practitioners should plan to include passport photographs in initial filings where required. Passport photographs are required initial evidence for Form I-485 and Form I-765, among others. Typically, passport photos must be 2”x2” and be printed in color on glossy paper with a white background.

**Practice Tip:** Some practitioners report that they have or have acquired a color photo printer so that they can print photographs at home, and their clients have downloaded apps on their phones (e.g. Passport Booth) to take passport-sized photographs that they can electronically send to their representatives. Similarly, some stores [like Walmart](#) will allow individuals to upload pictures and have options for home delivery.

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<sup>2</sup> <https://www.uscis.gov/news/alerts/covid-19-delays-extensionchange-status-filings>

<sup>3</sup> In contrast, EOIR has stated that it will accept electronically produced signatures. See <https://www.justice.gov/eoir/page/file/1266411/download>

## **F. Fee waivers**

USCIS has not indicated that it will adopt more flexible evidentiary requirements for fee waiver requests during the national emergency even though many institutions that issue evidence of inability to pay (such as public benefits offices) may have limited capacity to provide documentation to applicants at this time. Therefore, practitioners should plan to submit the same documentation for fee waivers as before the pandemic.

**Practice Tip:** In the event that practitioners are not able to obtain evidence that they believe USCIS will expect (such as letters from social service agencies confirming that the client is receiving services and that their agency imposes income restrictions; letters from public benefit agencies confirming the current receipt of a means-tested benefit; bank statements; tax records), they should still provide as much evidence as they can. In addition, the client should write a short statement explaining (1) the reason(s) why they are unable to pay the filing fee; and (2) why they are unable to obtain additional evidence due to COVID-19 restrictions. The representative should also explain in the cover letter why the evidence already provided demonstrates the client's eligibility for a fee waiver and why it would be improper to deny the fee waiver based on lack of evidence where the evidence is not obtainable. For more tips on filing fee waiver requests, see ASISTA's [fee waiver advisory](#) and [sample language for fee waiver cover letters](#).

## **G. Biometrics and Local Offices**

USCIS's Application Support Centers and local field offices closed on March 18 and will remain closed through at least June 4, 2020. USCIS has stated that it will automatically reschedule the biometrics appointment for anyone whose appointment was canceled due to the office closure once the ASCs reopen. Likewise, local field offices will send instructions and a new appointment notice to all applicants whose interview was canceled due to the closure after their offices reopen to the public.

[USCIS has stated](#) that it will continue to process I-765 renewal applications for anyone whose biometrics appointment was canceled during the closure. USCIS will run background checks using prior biometrics records. Several practitioners have reported that USCIS has also run background checks using previously submitted biometrics for other form types as well (e.g., prints taken at the U visa stage being used for U adjustment applications).

**Practice Tip:** If a practitioner or applicant has an urgent need to speak to an officer during the office closure, they should contact the [USCIS Contact Center](#) ((800) 375-5283) to request an appointment. ASISTA has heard that VAWA, U, and T petitioners may have difficulty obtaining

an appointment through this method due to VAWA confidentiality requirements; we recommend trying anyway and asking to speak to a supervisor or Tier 2 representative if needed.

## **H. Certified Copies**

USCIS has not indicated that it will make any accommodations for applicants who are unable to obtain certified copies of records when required. For example, the I-485 requires applicants to submit certified copies of police and court records related to any arrests, charges, or convictions. However, many state and local courthouses are closed due to the pandemic, and many law enforcement offices are prioritizing pandemic-response over routine records requests, so it may not be possible to obtain certified records at the moment.

**Practice Tip:** Where it is not possible to obtain certified copies due to the COVID-19 restrictions, practitioners should provide evidence in the filing of why certified copies are not available. For example, if the records are contained in the courthouse, practitioners could provide a print-out of the court's website showing that it is closed, along with a copy of the court's webpage or local statute showing that the required records are kept by the court. In addition, if it is possible to submit a records request even if the holder of the records is closed or otherwise unavailable, practitioners should include confirmation that they have submitted the records request to the appropriate office. If it is possible to obtain non-certified records, such as print-outs of court records from a public database, practitioners can provide those to demonstrate a good faith effort to comply with the form instructions.

Where there is no external documentation available to show that the record-holder is closed or that the attorney or petitioner has submitted a records request, practitioners should include an affidavit explaining the circumstances. Keep in mind that statements made in a cover letter are not evidence, so any explanation in the cover letter must be supported by the record.

## **Conclusion**

The COVID-19 pandemic has impacted many survivors' ability to obtain required documentation for their cases. Unless and until USCIS addresses all of the pandemic-related barriers affecting immigrant survivors, attorneys and accredited representatives must continue to advise their clients about filing requirements, deadlines, and age-out risks. We hope that this advisory is useful to you in representing survivors during this time.

For questions about this advisory, please contact ASISTA at [questions@asistahelp.org](mailto:questions@asistahelp.org).

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