



Practice Alert Regarding Certain U Visa ‘After-Acquired Spouse’ Cases (February 11, 2021)¹

On December 3, 2020, the 9th Circuit held that after-acquired spouses of U visa petitioners are eligible to "accompany or follow to join" the U-1 through the I-918A petitioning process. Below is some information to help as you evaluate cases where the U-1 petitioner marries after filing, but before final adjudication of the U-1 petition.

9th Circuit Decision of *Medina Tovar v. Zuchowski*

In [*Medina Tovar v. Zuchowski*](#), the en banc Court found that USCIS's requirement that the spousal relationship exist at the time of filing the I-918 was arbitrary and capricious. Previously, this USCIS interpretation meant that the U-1 had to wait until they were eligible for adjustment of status in order to file an I-929 to accord U visa benefits to a spouse whom they married after filing the I-918, even if the marriage took place prior to the adjudication of the U visa.

[ASISTA submitted an amicus brief](#) in support of the plaintiffs and was represented *pro bono* by David Priebe and Monica De Lazzari from DLA Piper.

Is the decision in *Medina Tovar* final?

The government has not yet filed an appeal, but the appeal window is still open. The normal deadline for filing a petition for cert is [90 days](#) from the entry of the lower court order. Due to COVID, the Supreme Court has extended the filing deadline to [150 days](#) until further notice. *Medina Tovar* was decided on Dec 3, 2020, making the 150-day filing deadline May 2, 2021.

Where does the *Medina Tovar* holding apply?

While the government may still appeal this decision, the December judgment is in effect in the 9th circuit as of January 25, 2021, the date of the Court’s mandate (attached below).

USCIS has not yet taken any public action since the decision was published and we still do not know what their position may be. Even if USCIS does not appeal, it could choose to either apply the holding from *Medina Tovar* nationwide or restrict it to petitioners in the 9th circuit. Some practitioners are deciding to file the I-918A now, particularly in the 9th circuit. It is our understanding that, up to this point, USCIS has been accepting the filings (and must accept the filings for those in the 9th circuit). USCIS has not yet adjudicated I-918As for after-acquired spouses post-*Medina Tovar*.

¹ ASISTA thanks Jessica Farb with [ICWC](#) and Alison Kamhi with [ILRC](#) for their generous feedback on this practice alert.

What does this mean for your case right now?

Those in the 9th circuit may file an I-918A for an after-acquired spouse. That said, for all U petitioners in this situation, the risk of filing an I-918A for an after-acquired spouse before USCIS confirms its implementation of *Medina Tovar* is that the I-918A could be denied down the line if the 9th circuit decision is overturned or if USCIS does not implement the decision nationwide. On the other hand, if the applicant is already in removal proceedings, there may not be much to lose. Additionally, with the [rescission of the NTA Memo](#), a denial of the I-918A should not result in a referral to Immigration Court if the derivative is not otherwise a removal priority under the January 20, 2021 DHS guidance.²

Practitioners will need to make case-by-case determinations with their clients as to the individualized value and risks in filing prior to having additional USCIS guidance. If you decide to submit an I-918A for an after-acquired spouse, take a look at our [amicus brief](#) as you shape your arguments that DHS regulations prohibiting U visas for after-acquired spouses of crime victims violate the statute and its Congressional purpose.

As soon as we have additional information, we will share it with all of our members in a practice update. For questions about this practice alert, please contact ASISTA at questions@asistahelp.org.

The information provided in this practice alert is for informational purposes only and does not constitute legal advice. Copyright © 2021 by ASISTA Immigration Assistance. All rights reserved. This product or any portion thereof may not be reproduced or used without express written permission from ASISTA Immigration Assistance.

² Remember that a U petition may be pending well beyond the Biden administration and the enforcement priorities in effect when the I-918A is adjudicated may be different.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 25 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARIA DEL CARMEN MEDINA
TOVAR and ADRIAN JOVAN
ALONSO MARTINEZ,

Plaintiffs - Appellants,

v.

LAURA B. ZUCHOWSKI, Director,
Vermont Service Center, United States
Citizenship and Immigration Services; et
al.,

Defendants - Appellees.

No. 18-35072

D.C. No. 3:17-cv-00719-BR
U.S. District Court for Oregon,
Portland

MANDATE

The judgment of this Court, entered December 03, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7