



March 18, 2020

Mr. Robert Law
Chief, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529-2140

**RE: Comment: USCIS Policy Manual: Volume 1 - General Policies and Procedures,
Part B - Submission of Benefit Requests, Chapter 6 - Submitting Requests.**

Dear Mr. Law:

On behalf of ASISTA, I submit this comment in response to USCIS' Policy Alert published on the USCIS website on March 5, 2020 making revisions to the USCIS Policy Manual, specifically the submission of benefit requests (hereinafter policy alert).¹ These comments relate specifically to Volume 1, Part B, Chapter 6 - Submitting Requests.

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors, and submit this comment based on our guiding principles and our extensive experience.

I. USCIS should provide additional time to provide comment

USCIS issued this policy alert on March 5, 2020, and provided only two weeks for the public to provide comment which is insufficient, especially given the national health emergency facing

¹ U.S. Citizenship and Immigration Service. "Submission of Benefit Requests" PA-2020-07 (March 5, 2020) (hereinafter "policy alert") 84 FR 62280 (November 14, 2019), available at <https://www.uscis.gov/sites/default/files/policymanual/updates/20200305-SubmissionOfBenefitRequests.pdf>

our country, in which schools, businesses, and federal agencies, including some USCIS offices have closed to slow the spread of the COVID-19 virus.² USCIS should extend the time for comment to the policy given that the policy alert was not widely known and given the unusual and extreme circumstances facing our nation. Extending the comment period would be important so that interested stakeholders have an opportunity to comment on these significant policy provisions.

- **Recommendation:** Extend and/or Re-open Comment Period for Policy Alert: Submission of Benefit Requests

II. USCIS' Changes to the Policy Manual Create Needless Confusion and Hardship

A. Policy Manual Should Comply with Existing Authority

Prior versions of the Adjudicator's Field Manual did not contain guidance regarding screening for rejections, reserving that section in Chapter 10.1. USCIS recent policy alert indicates that applications may be rejected, for reasons that *"include, but are not limited to"* five listed grounds.³ However, the regulations at 8 CFR 103.2(a)(7)(ii) contain limited reasons that USCIS should reject an application; thus this phrase is vague and confusing.

- **Recommendation:** USCIS should clarify that there are only limited reasons for which an application may be rejected, all of which are contained in the regulations, and provide stakeholders with clear instruction and information, so that stakeholders are not vulnerable to rejections for unknown reasons, and that USCIS staff and contractors have clear guidance to processing of applications and petitions.

B. "Corrected" Applications

The policy alert also indicates that *"if the benefit requestor later resubmits a previously rejected, corrected benefit request, USCIS processes the case anew, without prejudice."*⁴ The policy alert does not address cases where the rejection was erroneous or overbroad to begin with. For example, ASISTA remains concerned that USCIS is using existing regulations and this policy manual as a pretext to implement harsh and unnecessarily restrictive measures like rejecting applications for blank spaces on forms. In October 2019, USCIS began to implement new processing policies for asylum applications, rejecting applications that contain blank

² As of March 18, U.S. Citizenship and Immigration Services has suspended routine in-person services until at least April 1 to help slow the spread of Coronavirus Disease 2019 (COVID-19). See USCIS website: www.uscis.gov (March 18, 2020).

³ See Policy Alert, B. Intake Processing [Emphasis added].

⁴ *Id.* The footnote to this statement indicates *"USCIS treats the benefit request as if the requestor had not previously submitted it,"* but does not provide the citation for this position.

spaces, even when those fields are optional or not applicable to the applicant.⁵ This practice was later extended to U visa petitioners on December 30, 2019 and to T visa applications on March 16, 2020.

USCIS issued this new processing guidance without any advance notice or grace period before these changes went into effect. In all of these cases, the public was only notified via an alert posted on the form page of the USCIS website, and was not provided with any guidance or information about why these processing policies were necessary or when they would go into effect. For example, there are several cases in which U visa petitioners filed their applications before December 30, 2019 and their petitions were rejected according to a policy that did not exist at the time of the original filing. It was not until later in January 2020, that the CIS Ombudsman sent a bulletin to stakeholders about the I-918 form alert, but again they did not specify when or why its provisions would be implemented.

USCIS incorrectly states that “benefit requesters can determine which fields are required based on the form type and form instructions.”⁶ This is simply not true; asylum seekers and U visa petitioners have seen their applications rejected for overbroad reasons *as determined by USCIS staff, not the benefit requester*. Under USCIS’ new processing policy, an application may be rejected for a blank space on a form, even fields that simply do not apply or are optional, which contradicts USCIS stated language.⁷ In our capacity as a national technical assistance provider on survivor-based immigration protections, ASISTA has seen U visa cases rejected simply because there was a blank space listed next to the apartment, or floor number, because it did not apply; or cases that were rejected for blank spaces for middle names because petitioners just did not have one. Rejections pursuant to this new processing policy have also been erroneous, alleging blank spaces when fields were actually filled out. Stakeholders have also received rejections for asinine reasons like writing “None” instead of “N/A” in a field.

These cases did not warrant “correction” but rather were rejected as a result of a harsh and drastic policy that counters a decade of prior practice and procedure. Prior reiterations of the Adjudicator’s Field Manual state that “if an application or petition lacks the required initial evidence, USCIS may deny the incomplete application or petition, ***though adjudicators are urged to exercise this option judiciously, or issue a request for evidence (RFE)***. USCIS may

⁵ Charles Davis. “Bureaucracy as a Weapon: how the Trump Administration is Slowing Asylum Cases” The Guardian (December 23, 2019), available at:

<https://www.theguardian.com/us-news/2019/dec/23/us-immigration-trump-asylum-seekers>

⁶ See Policy Alert, Footnote 9.

⁷ See <https://www.uscis.gov/i-918>. The alert reads “Alert: We may reject your Form I-918 or your Form I-918 Supplement A if you leave a field blank, unless the field is optional.”

assign flexible times for applicants or petitioners to submit a response to an RFE.”⁸ Though this provision concerns denials rather than rejections, it highlights the fact that adjudicators were instructed to be mindful and deliberate about when to issue a denial. USCIS’ arbitrary and overbroad policy on blank spaces has been implemented in bad faith, and is a far cry from deliberate and judicious consideration of applications previously encouraged. Indeed, USCIS’ new processing policy regarding blank spaces is tremendously flawed as a matter of principle and a matter of practice.

The ramifications of this new processing policy cannot be overstated, causing hardship and delay for vulnerable applicants, including victims of crime. In the U visa context, USCIS is issuing rejection letters more than a month after initial filing. This delay causes immense hardship for survivors, as their filing dates determine when their cases are adjudicated. A delay of a few months can make the difference between whether a survivor receives a U visa in one fiscal year or the next. In many instances, U visa petitioners receive these rejection notices and their I-918 Supplement B certifications have now expired. There have been multiple examples of this occurring, which causes additional burdens on certifying agencies. Even more egregious is that derivatives may now be considered to be “aged-out” if the I-918 applications were rejected due to this new policy. For example, USCIS rejected a petition of a rape survivor for blank spaces on the I-918 form, mailed *before* December 30, 2019, and now her child has “aged-out” of protection.⁹ In this way, USCIS new processing policy has greatly prejudiced survivors and their families.

- **Recommendation:** USCIS should immediately rescind the new processing policy on blank spaces for asylum applications, T visa applications, and U visa petitions and terminate any plans to expand the policy to other form types.
- **Recommendation:** The Policy Manual should contain provisions or procedures to honor the original filing date where the rejection was erroneous and/or overbroad.
- **Recommendation:** The Policy Manual should encourage adjudicators to issue a request for evidence (RFE) should they need additional information instead of rejecting an entire submission.

⁸ USCIS. Adjudicator’s Field Manual Chapter 10.1 Receipting and Acceptance Processing, available at <https://web.archive.org/web/20190823200412/https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/0-0-0-1095.html#0-0-0-272>

⁹ Catherine Rampell. “This latest trick from the Trump administration is one of the most despicable yet” Washington Post (Feb. 13, 2020), available at: https://www.washingtonpost.com/opinions/the-trump-administrations-kafkaesque-new-way-to-thwart-visa-applications/2020/02/13/190a3862-4ea3-11ea-bf44-f5043eb3918a_story.html.

C. Receipt Dates

USCIS states that the rejected cases do not retain their original receipt date when resubmitted, without providing a legal citation. USCIS also indicates that it does not assign a date of receipt or filing date to benefit requests that are rejected. The policy alert does not address any circumstances in which it would consider backdating a receipt date, for instance, for humanitarian circumstances, in cases of USCIS error, and/or in cases where drastic unpublicized shifts in policy and practice unjustly impede access to immigration relief for which applicants are otherwise entitled. USCIS has the authority to grant *nunc pro tunc* relief, and has exercised for many years in humanitarian cases when warranted.

- **Recommendation:** USCIS should restore impacted filings rejected as a result of this blank spaces policy so that they retain their initial filing dates *nunc pro tunc*. This includes but is not limited to:
 - Accepting as current any expired I-918 Supplement B: U Nonimmigrant Status Certification Forms on impacted cases.
 - Restoring the age of derivatives or principals at the time of the original submission;
 - Accepting as current any forms that were valid at the time of the original submission but now have a new edition date.

- **Recommendation:** The policy alert should indicate that USCIS will backdate a receipt date for humanitarian reasons, in cases of USCIS error, and in all cases impacted by the blank spaces processing policy.

Respectfully submitted,



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Policy Director
ASISTA