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August 24, 2021

As usual, there have been several important policy and practice updates over the last few weeks. From new ICE directives on victim-centered approaches, to litigation updates, new calls for examples and stakeholder engagements. Read more about some of these updates below.

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I. USCIS Updates

A. USCIS Presents at ASISTA-ILRC Webinar

On August 18, 2021, ASISTA and ILRC hosted a conversation with USCIS representatives to learn more about bona fide determination (BFD) work authorization policy and procedures and what it means for U visa petitioners, including those with pending matters. USCIS described the process utilized in BFDs and answered pre-submitted questions. They confirmed that USCIS will be adjudicating petitions for BFD work permits based on receipt date for those that have NOT already done through the waitlist process. If a U visa petitioner

receives a positive BFD determination, they will be issued deferred action, a (c)(14) based work permit, and be placed in queue for full adjudication. They will NOT have to go through the waitlist process. If a petitioner does not receive a bona fide determination, they will get a RFE and will be considered for the waitlist. ASISTA and ILRC will be sharing notes from the event in the near future.

B. Listening Session on VAWA Self-Petitions

On Thursday August, 26, 2021, from 2-3:30 pm ET, USCIS will be hosting a listening session on VAWA self-petitions this Thursday. Join to share your experiences and concerns, which may include adjudication trends, the impact of not having updated regulations, response times from the VAWA Hotline, or other issues. To register, visit the [USCIS Registration page](#). Enter your email address and select “Submit”. Select Subscriber Preferences, select the event registration tab, and complete the questions and select submit again.

C. Update and Call for Examples: Biometric appointment Rescheduling.

On July 28, 2021, USCIS [announced](#) that stakeholders must now contact the USCIS Contact Center to request rescheduling of biometrics appointments. ASISTA reached out to USCIS to inquire about how this would impact survivor-based matters, given 8 USC 1367 protections. We are collecting examples of your experiences trying to reschedule a biometrics appointment for your VAWA, U, T, SIJS cases. Please send case examples directly to laura@asistahelp.org and amy@asistahelp.org. Please include the following:

1. Type of survivor-based case (VAWA, U, T, SIJ, etc.) and whether your G-28 is on file with USCIS for the case.
2. Process followed to attempt to reschedule the biometrics appointment
3. USCIS Offices you contacted to reschedule and responses received from each office (or if no response, so state).

D. New USCIS Forms! Check the Dates! USCIS issued new form editions for several forms used to request survivor-based immigration benefits. Please take note of each form’s edition dates (bottom left corner of form) and implementation date noted on the [USCIS Forms Updates page](#).

1. On August 6, 2021 USCIS updated [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#). **Starting Oct. 5, 2021**, USCIS will only accept this new edition dated 07/20/21. Until then, you can use the 12/02/19 edition. You can find the edition date at the bottom of the

page on the form and instructions.

2. On August 9, 2021, USCIS updated [Form I-485 Application to Register Permanent Residence or Adjust Status](#) with an edition date of 03/29/21. **Starting Oct. 13, 2021**, USCIS will only accept this edition. Until then, you can use the 03/10/21 edition. Relatedly, back in June 2020, USCIS established a pilot program to accept credit card payments using Form G-1450, for U nonimmigrants filing for adjustment of status at the Nebraska Service Center. This pilot program is limited just to this location. USCIS will evaluate this program and the possibility of extending it to other service center locations. For more information, see USCIS's website on [Direct Filing Addresses for Form I-485](#).
3. On August 23, 2021, USCIS updated [Form I-601, Application for Waiver of Grounds of Inadmissibility](#) with an edition date of 07/20/21. **Starting Oct. 26, 2021**, USCIS will only accept this edition. Until then, you can use the 01/27/20 edition.

E. **Medical Exam Form Validity Extension & COVID Vaccination**

Requirements:

Medical Exam Form: On Aug. 12, 2021 USCIS issued guidance in the [Policy Manual](#) temporarily extending the validity period of Form I-693, Report of Medical Examination and Vaccination Record. This extension is due to the processing delays exacerbated by COVID-19, and the hardships faced by applicants completing the medical examination. USCIS recommends that if applicants were issued an RFE because the I-693 expired after two years, but it is valid under the temporary extension to four years, then they should respond to the RFE by citing, printing out or otherwise mentioning the new [policy alert](#).

COVID-19 Vaccination Requirement beginning October 1, 2021: CDC's Advisory Committee on Immunization Practices [issued the following notice](#) to Panel and Civil Surgeons: *All applicants who receive their medical examination from a Civil Surgeon or Panel Physician on or after October 1, 2021 will be subject to this requirement and are encouraged to complete a COVID-19 vaccine series as soon as possible. These Technical Instructions will be in place until the CDC determines they are no longer needed to prevent the importation and spread of COVID-19. Visit the Technical Instructions for Panel Physicians for more information about the medical examination for applicants for refugee or immigrant status. Visit Technical Instructions for Civil Surgeons for more information about the medical examination for status adjusters.*

II. ICE Updates

A. ICE Policy Directive on Immigrant Crime Victims

On August 10, 2021, [ICE issued a new agency directive](#) superseding guidance from [2019 regarding stay of removal requests and removal proceedings involving U visa petitioners \(hereinafter “Directive”\)](#). The Directive outlines new policies and procedures regarding exercising prosecutorial discretion for victims of crime, including those eligible for victim-based immigration relief (including VAWA self-petitions, U and T visas, and SIJS) as well as victims and witnesses who are assisting in investigations or prosecutions. It also outlines definitions of terms, the responsibilities of different components of ICE with regard to the implementation of these new policies, training requirements, and obligations regarding record keeping. ICE also issued an FAQ on this policy available [here](#).

ASISTA has prepared [a new Policy Alert](#) providing an overview of the new directive and identifying areas in which additional clarification or further advocacy may be required.

B. Status of May 27, 2021 OPLA memo

[ICE announced](#) on August 20, 2021, “Due to an August 19, 2021 preliminary injunction issued in *Texas v. United States*, 6:21-cv-16 (S.D. Tex. Aug. 19, 2021), OPLA has suspended reliance on the May 27, 2021 memorandum from the Principal Legal Advisor, *Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities*. Questions from noncitizens and their legal representatives about OPLA’s exercise of prosecutorial discretion in individual cases should be referred to your [local OPLA office](#).”

While this preliminary injunction has been [stayed through August 30, 2021](#), practitioners are encouraged to use both the [ICE Policy Directive on Immigrant Crime Victims](#) and [the stay of litigation agreement](#) in ASISTA’s pending litigation against ICE when advocating for survivors at risk of removal.

C. ICE Center for Countering Human Trafficking Issues a New Continued Presence Resource Guide

On July 31, 2021 DHS released a [Continued Presence Resource Guide](#) to assist law enforcement agencies in supporting victims of human trafficking and advancing trafficking investigations and prosecutions. Continued Presence is a temporary immigration designation provided by law enforcement to noncitizens who may be victims of human trafficking, who may be witnesses in investigations, or who have filed federal civil actions against their traffickers. ICE may grant Continued Presence with work authorization in two-year increments. Continued Presence is renewable and recipients are also eligible for certain federal benefits and services.

D. Victim Engagement and Services Line

ICE recently launched the Victim Engagement and Services Line (VESL) --formally the VOICE Office--to provide resources for victim engagement and support. This includes a way to report physical or sexual assault that occurs in ICE detention, Victim Notification System Access (e.g. VINE systems) to provide information about an individual's custody status and case outcome to victims as well as other forms of victim assistance support. These services may be accessed by contacting 1-833-383-1465 or by visiting <https://www.ice.gov/vesl>.

III. Litigation Updates

A. Vangala v. USCIS Settlement

On July 20, 2021, the U.S. District Court, Northern District of California granted final approval of a [settlement agreement](#) in the case [Vangala v. USCIS](#), challenging [USCIS "No Blank Space" policy](#). This settlement agreement outlines the procedures that asylum applicants and U visa petitioners may take to recapture the original filing dates if their filings were rejected under this policy. For more information, NILA, NWIRP, and Van Der Hout LLC prepared a practice advisory on steps applicants and their representatives may take [HERE](#).

B. ASISTA v. Johnson Litigation Update

The stay of litigation in ASISTA v. Johnson (formerly known as ASISTA v. Albence) has been **extended until August 27, 2021**. The same conditions continue to apply. Take a look at [our Practice Advisory](#) regarding this litigation for additional details.

C. 8th Circuit case - Congratulations ASISTA member David Wilson!

On August 12, 2021, U.S. Court of Appeals in the 8th Circuit issued a decision in case, [Quecheluno. et al v. Garland](#), holding that the BIA "departed from established policy when it failed either to apply the Sanchez Sosa factors or to remand to allow the IJ do so, and it failed to provide a rational explanation for its decision..." The court also concluded a new U visa after the IJ's order is a new fact that satisfies the motion to reopen requirements.

ASISTA was proud to support ASISTA member David Wilson to challenge these harmful rollbacks to procedural protections for survivors and their families.