



October 18, 2021

Claire Kelly
Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State
600 19th St. NW
Washington, DC 20006

Submitted via email: VisaRegs@state.gov

Re: Request for Public Input
RIN: 1400-AF30
Docket Number DOS-2021-0017

Dear Ms. Kelly:

On behalf of ASISTA, I submit this comment in response to the Request for Public Input identifying barriers that impede access to immigration benefits, fair and efficient adjudications of these benefits, and recommendations on how to remove these barriers.

ASISTA's mission is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 16 years, ASISTA has been a leader on policy advocacy to strengthen protections created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes.

ASISTA members include direct legal service providers, immigration practitioners and victims advocates across the United States. We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors through technical legal assistance, litigation strategy support, training and continuing legal education programs and advocacy with government agencies. We have developed a profound understanding of the barriers faced by immigrant survivors of gender based violence, intimate partner violence, sexual assault, human trafficking and other serious crimes and submit this comment based on our guiding principles and our extensive experience.

1. Recommendation: Improve uniformity of processing and availability of biometric scheduling for U and T applicants overseas.

After a U Visa petitioner submits the Form I-918 or I-918A (for their derivative family member), United States Citizenship and Immigration Services (USCIS) will request biometrics from applicants and derivatives abroad. USCIS will request fingerprints in the form of a

“Request for Evidence” (RFE), together with two blank fingerprint cards.¹ USCIS gives the applicant ninety days to respond to the RFE. The applicants need to arrange an appointment at a U.S. consulate abroad. A similar process requires T visa derivative applicants abroad to arrange biometric appointments at consulates.

Unfortunately, applicants find great variation between consulates in the ability to schedule biometrics. Delays and uncertainty in the process mean that an eligible applicants cannot obtain the required biometrics, nor can they comply with the time deadlines imposed by USCIS for providing biometrics. Disturbingly, despite efforts by attorneys and advocates representing U petitioners or derivative applicants abroad to obtain extension of time within which to obtain biometrics, USCIS will deny an application for alleged abandonment when the U petitioner or their derivative are unable to secure a biometrics appointment at the U.S. consulate. These denials are despite the seeming unavailability of biometrics appointment, which is entirely outside the U petitioner and derivative applicants control.

Practitioners have noted that many consular offices remain unfamiliar with the fingerprint requirements or process for U nonimmigrant applicants. In February 2010, DOS issued clarifying guidance on the U nonimmigrant visa process to U.S. consulates at 9 FAM 402.6-6(D)(3), but the guidance is not followed uniformly. The pandemic has vastly increased and highlighted the already existing problems with obtaining biometrics appointments as consulates suspended these services in March 2020 and are still only partially operating at many locations.

We urge DOS to make these required biometrics appointments available to U visa petitioners and derivative applicants who are abroad. Additionally, we urge DOS to collaborate with USCIS in developing a streamline process that will provide USCIS with timely notice of any unavailability of biometrics appointments in order to avoid egregious Form I-918 and I-918A denials for failure to comply with biometrics through due to DOS appointment unavailability.

2. Recommendation: Allow VAWA self-petition derivative applicants to process at consulates after a self-petitioner adjusts in the United States without requiring submission of Form I-824, Application for Action on an Approved Application or Petition.

VAWA self-petitioners face long waiting periods for reunification where they adjust in the United States and then want to have their derivative child(ren) join them in the U.S. Form I-824 must be filed at USCIS to notify the NVC and consulate to begin the consular process for that derivative. Three of four USCIS service centers can currently take as long as 20 months to adjudicate a Form I-824, even though it is a ministerial function that does not involve submission of any additional evidence. The process is also expensive with a filing fee of \$465

¹ United States Citizenship and Immigration Services (USCIS), *Consular Processing for Overseas Derivative T and U Nonimmigrant Status Family Members: Questions and Answers*, <https://www.uscis.gov/archive/consular-processing-for-overseas-derivative-t-and-u-nonimmigrant-status-family-members-questions-and-answers>. The fingerprint process for overseas applicants is outlined at DOS, Foreign Affairs Manual (FAM) 9 FAM 403.6-6 (D)(3).

for what is simply a transfer of petition to DOS. Many of these petitions are transferred digitally through ELIS currently and can be received by posts within days. It would speed a self-petitioner's reunification with their children to allow direct communication between USCIS and DOS upon the approval of a principal's adjustment where children abroad are included as derivatives and as requiring consular processing. We urge DOS to coordinate with USCIS to facilitate the transfer of information to process derivative family members of VAWA self-petitioners.

3. Recommendation: Provide transparency and an opportunity to understand and rebut "administrative processing" and allegations of gang associations against U and T visa derivatives abroad.

Our members across the U.S. report numerous examples of U and T Visa derivative visa applicants receiving a "case in administrative processing" notice after attending their visa interview. The visa applicants and their attorneys or representatives receive little or no information as to the reasons for placement in administrative processing. U and T visa status holders in the U.S. are forced to seek the assistance of their congressperson simply to obtain information about why the case requires administrative processing. Even with congressional inquiries, families are left with little guidance about how to proceed with processing of their derivative family member's visa application. In the case of male derivatives between the ages of 12 and 24, particularly those consular processing at posts in Mexico or Central American countries, inquiries result in allegations of gang involvement without explanation as to any basis for the allegations. These unsubstantiated allegations and administrative processing designations result in an inability of the applicant to provide a defense to allegations and ultimately leave U and T immigrant survivors of serious crimes without an avenue of family reunification.

We urge DOS to provide a more transparent process for U and T visa status holders and derivative applicants abroad regarding any derogatory information being weighed against them in the visa application process. A more transparent process should also include a direct line of communication for attorneys and representatives to provide additional information required by the consular post to continue processing of the visa application. U and T visa derivatives are being unnecessarily separated from their family members in the U.S. This separation results in additional harm to U and T visa principals who have already suffered substantial harm as a result of their victimization that was a basis of their U and T visa status.

Thank you for your consideration of our recommendations. Please address any questions you may have about our recommendations to laura@asistahelp.org or amy@asistahelp.org.

Respectfully submitted,



Laura Flores Bachman
Senior Legal Counsel on behalf of ASISTA Immigration Assistance