



## **ASISTA Q&A with USCIS Humanitarian Division**

March 17, 2023

In January, ASISTA presented a number of questions raised by practitioners to the USCIS Humanitarian Division. Here are their responses. We are reprinting this Q&A verbatim with permission from USCIS, which plans to also publish this information on their website in the near future. The first portion of the Q&A relates to issues in I-751 and VAWA processing, and the second relates to U and T visa processing. Please reach out to ASISTA if you have any questions or concerns about the below information, or have experiences that differ from the policies outlined by USCIS.<sup>1</sup>

### **I-751 and VAWA Policies and Processing:**

#### **VAWA-Based I-485s:**

- We have heard that USCIS refused to adjudicate a VAWA-based I-485 when an I-918 was also pending. Is this agency policy? If yes, why? If not, why has this occurred? What should a practitioner do if this occurs?

**USCIS Response:** It is not agency policy to hold a VAWA Form I-485 in abeyance pending the adjudication of a Form I-918, Petition for U Nonimmigrant Status, or a Form I-914, Application for T Nonimmigrant Status. USCIS recommends sending a signed written inquiry to the field office where the Form I-485 is located explaining the situation and requesting adjudication. USCIS

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<sup>1</sup> This material has been prepared to provide you with information only and it is not intended to be legal advice. Please remember that you are still responsible for researching the issues pertaining to your case. ASISTA members can make an appointment for technical assistance on case-related matters at [http://www.asistahelp.org/en/technical\\_assistance/](http://www.asistahelp.org/en/technical_assistance/).

requests that a copy of the Form G-28 is included with the written inquiry, when applicable.

**I-751s:**

- Is it USCIS policy to only approve an I-751 waiver if the petitioner has sufficiently proven all claimed grounds? If yes, why?

**USCIS Response:** While USCIS considers eligibility for all waiver grounds claimed by the applicant on the Form I-751, applicants only need to establish eligibility for one of these grounds. If an applicant claims that waiver grounds 1.e. or 1.f. (as a CPR who was subjected to battery or extreme cruelty during a marriage entered in good faith) applies to their case, USCIS may request additional evidence and/or schedule an interview to provide an opportunity to establish eligibility under 1.e. or 1.f. because these grounds permit more expeditious naturalization than other grounds. This is the process even if USCIS determines that the CPR is eligible for a waiver on a basis other than 1.e. or 1.f. (e.g., CPR's marriage has terminated but was entered in good faith).

- Is there a reason why some I-751 approval notices do not specify the approval basis when the noncitizen requested a waiver under multiple grounds? What should practitioners do/who should they contact if this occurs?

**USCIS Response:** USCIS specifies the basis of waiver approval if the CPR is determined to be eligible under 1.e. or 1.f. (i.e., the waiver is based on being subject to battery or extreme cruelty), USCIS will list the basis of waiver approval on the notice if USCIS determines the CPR is eligible under one of these two grounds, even if USCIS also determines eligibility under an additional basis, such as 1.d. If the case is approved on any basis *other than* 1.e. or 1.f., USCIS will send the CPR a notice that does not specify the basis for approval.

If an amended approval notice is needed by a CPR whose waiver was approved under 1.e. or 1.f. and the case was decided by a **service center**, the CPR can send a signed written inquiry to the center that made the final decision on the case. Please include a copy of the G-28 with the inquiry.

If an amended approval notice is needed by a petitioner protected under 8 U.S.C. 1367 and the case was decided by a **field office**, the CPR can send a

signed written inquiry to the office that made the final decision on the case. Please include a copy of the G-28 with the inquiry.

- What is the protocol at USCIS field offices when a petitioner requests a 751 waiver based on abuse and at least one other ground? We have heard that the Seattle Field Office almost never approves based on abuse. Do offices grant the waiver based on good faith marriage if there is sufficient evidence of that, obviating the need to analyze whether abuse occurred? Or is there a practice of always refusing to evaluate whether there is abuse, and granting based on good faith marriage as a default?

**USCIS Response:** USCIS considers eligibility for all waiver grounds claimed by the applicant on the Form I-751. Where the petitioner is eligible for one or more of the waiver grounds but also selects the abuse waiver, the petitioner will be afforded, through an RFE and/or an interview, the opportunity to also establish eligibility for the abuse waiver. Where the petitioner is eligible for the abuse waiver and at least one other waiver, the petition will be granted as an abuse waiver.

- Our understanding is that USCIS field offices used to have VAWA units, with specially trained officers to adjudicate VAWA cases, but this practice was discontinued under the prior administration. How are field offices staffing cases that fell under the former VAWA units?

**USCIS Response:** USCIS Field Offices have historically not had specific VAWA units. Instead, USCIS Field Offices have officers who are trained to adjudicate VAWA-based forms, to help ensure compliance with 8 U.S.C. 1367. All officers receive training on section 1367, VAWA, T visas, and U visas. Officers who adjudicate Form I-751 receive training consisting of five VAWA-specific modules, which include in part, interview sensitivity training, section 1367 training, and abuse waivers. All officers must complete this training prior to adjudicating the Form I-751.

- What type of training do field office staff receive on domestic violence? The following comments were reportedly made by Seattle Field Office staff:
  - "What did you try to do to address the problems in your marriage?"
  - "That sounds cruel. But is it extremely cruel?"

**USCIS Response:** Thank you for raising this to our attention. Generally, USCIS expects officers to conduct interviews with tact and sensitivity.

They receive training on interviewing techniques, including interviews with domestic violence survivors. We will share these comments with the Seattle Field Office Director so that they can determine whether additional training is needed. If this occurs in the future, you may wish to request to speak to a supervisor at the local field office.

### **T and U visa policies and processing:**

- Applicants and petitioners continue to have difficulty scheduling biometrics with U.S. embassies and consulates. It is often impossible to secure an appointment using the online system. Are there any updates on USCIS's response to the biometrics challenges?

**USCIS Response:** As a clarification, it is USCIS and not the Department of State who issues the requests to capture biometrics for overseas T and U nonimmigrant visa applicants. USCIS sends a Form I-797 or equivalent advising applicants to appear at a U.S. embassy or consulate for biometrics collection. The T and U nonimmigrant visa applicants are responsible for scheduling an appointment at a U.S. embassy or consulate. The Department of State collects the biometrics and shares the results with USCIS.

USCIS has communicated with Department of State the urgent need to prioritize biometrics appointments for T and U nonimmigrant visa applicants. Additionally, USCIS continually liaises with Department of State on a case-by-case basis. Applicants, petitioners, and derivatives who have received an RFE for biometrics submission and are unable to schedule an appointment due to lack of appointments must respond to the RFE by the requested date. The RFE response should include evidence of their efforts to schedule the biometrics appointment. These cases will be placed on hold and will not be denied for abandonment. If a denial is received for lack of biometrics, please contact the VSC or NSC via their hotline accounts to request review of the case.

- We have heard the Vermont Service Center continues to reject hard-copy filings of AR-11s, substitutions of counsel, and supplemental filings. How is USCIS responding to these rejections? What should practitioners do in these circumstances, particularly if the rejection causes them to miss a deadline? If

the email hotlines are not responsive, who can practitioners escalate their inquiries with?

**USCIS Response:** USCIS is aware of this issue and has taken steps to remedy the rejection of the listed documents. Stakeholders should see a significant reduction in the number of documents rejected in the immediate future. If documents continue to be rejected by either Vermont Service Center or Nebraska Service Center, please notify their customer service teams via the hotline accounts. You can contact USCIS by visiting <https://www.uscis.gov/about-us/contact-us> / under “Inquiries for VAWA, T, and U filings”.

- We have heard that receipt notice delays are still occurring at the humanitarian units. This appears to especially be a problem for filings with fee waivers or no fee but has also occurred even when a fee is submitted. How is USCIS responding to these receipt notice delays? What resolution should practitioners seek in the meantime? If the email hotlines are not responsive, who can practitioners escalate their inquiries with? U and T-based I-485 applicants need the receipt notice to show they are authorized to work incident to their status.

**USCIS Response:** USCIS acknowledges the impact delayed receipt notices and fee waiver decisions have on the victim populations. Service Centers continue to experience staffing shortages, contributing to the backlog. Additionally, the Centers have noted an increase in the number of fee waiver requests received, further causing delays in fee waiver determinations. Though recent adjustments in staffing that conduct fee waiver determinations and data entry of filings will assist in reducing any backlogs further, USCIS has implemented other measures to assist with timely issuance of receipt notices. USCIS has recently transferred filings to the Nebraska Service Center for fee waiver review and data entry. Any filings not adjudicated by NSC will be returned to the appropriate Service Center for adjudication.

- We have heard of multiple instances of T adjustment receipts being issued by the Nebraska Service Center. Is the Nebraska Service Center now adjudicating T adjustments? If yes, why? When did this policy begin and will it be

announced publicly? If not, why did NSC issue receipts in those cases? If this was incorrect, what should practitioners do when this occurs?

**USCIS Response:** USCIS is aware that T-based I-485s may have been receipted at the Nebraska Service Center for a short period of time. However, filings will revert to being receipted by the Vermont Service Center. They will also continue to be adjudicated by the Vermont Service Center.

- What is the processing time for late-filed I-918As (Medina Tovar and non-Medina Tovar cases)? Are these cases adjudicated on a first in, first out basis? Or is there a reduced processing time? Are there different processing times for Medina-Tovar and non-Medina Tovar cases? Does the processing time change depending on whether the I-918 is still pending or already approved? A first-in, first-out processing time is difficult for principals in Medina-Tovar cases, because it requires them to continuously file I-539s in order to ensure their family member can be approved for U nonimmigrant status. The previous impediment to filing the I-918A concurrently was through no fault of these petitioners.

**USCIS Response:** Generally, USCIS Service Centers conduct data pulls to find stand-alone I-918As that have not yet been adjudicated. If the I-918 principal filing remains pending, the I-918A will be matched with the principal's case to ensure they are adjudicated together. In instances where the I-918 principal filing has been approved, I-918As are worked in date order according to the principal's filing date.

If there is an emergent need for adjudication of an I-918A, the principal petitioner or their representative may ask USCIS to expedite adjudication by submitting a written request, with supporting documentation, to the customer service hotline accounts.

- How can we escalate a request to the Vermont Service Center to issue an NTA, where VSC has not been responsive (intervention already done with VSC)?

**USCIS Response:** Currently, USCIS is issuing Notices to Appear (NTAs) in limited circumstances. However, USCIS may exercise discretion to issue an NTA upon written request by the applicant/petitioner or representative if

the applicant/petitioner is removable from the United States and has previously filed a benefit request with USCIS. Applicants/petitioners or their representatives must submit their request directly to the Vermont Service Center (VSC), following the instructions on the Contact Us page on the USCIS website. USCIS reviews all incoming written NTA requests on a case-by-case basis.

- How can pro se applicants in humanitarian cases escalate issues with USCIS?

**USCIS Response:** Unrepresented applicants should use the customer service options provided under “Inquiries for VAWA, T, and U Filings” on the Contact Us page on the USCIS website. Applicants may also call the USCIS Contact Center to request an expedited appointment at a USCIS Field Office near them.

We will update the field when USCIS publishes this Q&A on its website.

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Established in 2008, ASISTA is a national leader in the movement for safety and justice for immigrant survivors of gender-based violence. ASISTA's founders helped write the immigration provisions of the federal Violence Against Women Act (VAWA) and Victims of Trafficking and Violence Prevention Act (TVPA), affording legal status to hundreds of thousands of survivors and their children since 1994. With over 2500 members nationwide, ASISTA's work is focused on 1) providing expert case consultation, training, and resources to attorneys and advocates navigating the complex immigration system on behalf of survivors of gender-based violence, including intervening in specific cases as needed; 2) pushing for federal, state and local policies that ensure safety and justice for immigrant survivors; and 3) coordinating lawsuits to prevent the government from unfairly deporting survivors of violence. To learn more about ASISTA's work, [click here](#).