



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

December 6, 2023

Avideh Moussavian
Chief
Office of Policy and Strategy (OP&S)
U.S. Citizenship and Immigration Services

Connie Nolan
Associate Director
Service Center Operations (SCOPS)
U.S. Citizenship and Immigration Services

RE: Denials of Form I-539, Application to Extend/Change Nonimmigrant Status for U and T Nonimmigrants

Dear Chief Moussavian and Associate Director Nolan:

We are writing to follow up on a topic discussed at the May 8, 2023 USCIS stakeholder engagement with AILA's VAWAs, Us, and Ts (VAWA/U/T) Committee. ASISTA and the AILA VAWA/U/T Committee had received reports that USCIS had denied I-539 requests for extension of U/T nonimmigrant status where the I-539 was filed more than 90 days prior to the expiration of the underlying U/T status. At the May 2023 stakeholder engagement, USCIS stated that it would not reject or deny a Form I-539 seeking extension of U/T nonimmigrant status simply because it was filed more than 90 days prior to the expiration of the validity period.¹ USCIS also requested examples of NOIDs or denials issued for filings submitted more than 90 days before status expiration.

In response to that request, we write to provide examples of I-539s denied for being filed more than 90 days prior to the expiration of the validity period of the nonimmigrant's U or T nonimmigrant status. We also ask that USCIS issue updated guidance clarifying that U and T

¹ USCIS also [stated](#) during an April 2023 Freedom Network Conference panel specific to T visas that an I-539 filed to request extension of T nonimmigrant status would not be denied or rejected solely for being filed more than 90 days prior to the expiration of T status. The Committee is aware of some I-539s that were not denied for being filed more than 90 days prior to expiration of status.

nonimmigrants may file Form I-539 more than 90 days before the expiration of their U/T nonimmigrant status.

I. Inconsistent Interpretation of I-539 Filing Requirements Cause Undue Burden to Nonimmigrants Seeking to Extend Their U/T Status

Many U nonimmigrants must extend their status to accrue three years of continuous physical presence due to COVID-related delays in consular processing. T-1 nonimmigrants often extend their status to allow T derivative applicants abroad to complete the consular process. Unlike in the U visa context, there is no I-929 process for T nonimmigrants, so T derivatives must be admitted into T nonimmigrant status while the principal applicant continues to hold T nonimmigrant status.

[PM-602-0032.2](#) indicates that Form I-539 for U/T nonimmigrants should be filed no more than 90 days prior to expiration of U/T status. However, the [I-539 instructions](#) recommend that the form be filed “at least 45 days before your stay expires or as soon as you determine your need to change or extend status,” a statement not specific to any visa category.

Current posted processing times for I-539s for extensions of U nonimmigrant status are 17.5 months and 9.5 months for extensions of T nonimmigrant status. Given these long processing times, the 90-day rule leaves U/T nonimmigrants without work authorization for extended periods of time.

ASISTA and the AILA VAWA/U/T Committee received the following examples² of I-539 requests for extension of U status issued NOIDs or denied solely due to having been filed more than 90 days in advance of the expiration of the U status:

- 1) Legal representative filed Form I-539 on August 16, 2022 for a U-3 nonimmigrant whose 918A was approved with an expiration date of February 10, 2023. CBP admitted the U-3 until December 10, 2023. USCIS issued a [NOID on December 16, 2022](#) and a [denial on February 21, 2023](#). Both the NOID and denial were based solely on the I-539 being filed more than 90 days before the U-3 status expired. The NOID and denial cited to PM-602-0032.2, stating that the Form I-539 was filed “too early.”
- 2) Legal representative filed Form I-539 on August 11, 2022 for a U-3 nonimmigrant whose status expired on March 9, 2023. USCIS issued a NOID on August 23, 2022 and a denial on January 5, 2023. Both the NOID and denial were based solely on the I-539 being filed more than 90 days before the U status expired.
- 3) Legal representative filed Form I-539 on July 27, 2022 for a U-3 nonimmigrant whose status was set to expire on September 24, 2023. USCIS issued a [NOID on November 29, 2022](#). The sole basis for the NOID was that the I-539 was filed more than 90 days before status expiration. The I-539 was ultimately denied because the legal representative

² Copies of the NOID or decision are hyperlinked where available.

withdrew it after the issuance of the NOID. The legal representative filed a new I-539 once the U nonimmigrant was within 90 days of expiration of status.

These NOIDs and denials based solely on filing more than 90 days before status expiration have caused stress and delays for U nonimmigrants trying to extend their status, especially given the lengthy processing times for the I-539, and have added to the workload of both USCIS and legal representatives who often work with non-profit organizations. Given the length of time between initial filing and the issuance of a NOID or denial, some U/T nonimmigrants are not only forced to refile the I-539, but they then risk denial for being refiled *too late*, requiring the U/T nonimmigrant to demonstrate extraordinary circumstances for USCIS to then grant the extension.

To avoid additional burden on USCIS, legal representatives, and this vulnerable population, we ask USCIS to abide by its stated policy of not denying I-539 requests solely for being filed more than 90 days prior to the expiration of U/T nonimmigrant status.

II. USCIS Should Update Its Policy Guidance to Reflect that USCIS Will Not Reject or Deny a Form I-539 Filed By U/T Nonimmigrants More than 90 Days Before the Expiration of Their U/T Nonimmigrant Status

As stated above, PM-602-0032.2 indicates that Form I-539 for U/T nonimmigrants should be filed no more than 90 days prior to expiration of U/T status. This Policy Memo was cited in NOIDs and denials as the basis for denying the I-539 for being filed “too early.”

In particular due to lengthy I-539 processing times and the lack of access to employment authorization after expiration of U/T status and before extension of status, we ask that USCIS update its policy guidance to reflect its stated policy of not rejecting or denying an I-539 filed by U/T nonimmigrants more than 90 days prior to the expiration of their nonimmigrant status. Updating PM-602-0032.2 or the Policy Manual would be in alignment with the victim protection provisions intended by creation of U and T nonimmigrant status. Updating the policy guidance would also help minimize inconsistent adjudications, as some U and T nonimmigrants have been able to obtain an extension of status by filing outside of the 90-day window, and would reflect current consular processing delays and lengthy USCIS adjudication times.

Thank you for your consideration. Please do not hesitate to contact Sharvari (Shev) Dalal-Dheini, AILA Director of Government Relations by email at sdalal-dheini@aila.org or Kirsten Rambo, ASISTA Executive Director by email at kirsten@asistahelp.org We would welcome the opportunity to meet or otherwise be of assistance.

Sincerely,

American Immigration Lawyers Association

ASISTA Immigration Assistance

cc:

Cecelia Friedman Levin, USCIS Office of Policy & Strategy, Humanitarian Affairs Division,
Victim Protection Branch

Sarah Krieger, USCIS Office of Policy & Strategy, Humanitarian Affairs Division, Victim
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