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This document contains ASISTA's notes from the USCIS panel that took place during our virtual conference on June 8, 2022. These notes have not been reviewed by USCIS, and all content is paraphrased.

USCIS and Ombudsman questions and answers

Speakers from the Office of the Citizenship and Immigration Services Ombudsman:

Fatimah Mateen, Senior Policy Advisor
Jenny Penado, Policy Analyst

Speakers from the USCIS Office of Policy & Strategy, Humanitarian Affairs Division, Victim Protection Branch:

Anjum Sikka, Policy Analyst
Cynthia Vega, Policy Analyst
Cecelia F. Levin, Policy Analyst
Roxanna Garcia, Policy Analyst

Summary of USCIS Ombudsman presentation:

- The CIS Ombudsman is part of DHS, not USCIS, which is important to preserve the Ombudsman's impartiality and independence
- For FY2021, the Ombudsman received 710 total case assistance requests for victims (U visa: 274; T visa: 35; VAWA self-petition: 160; I-751 waiver: 57; I-485: 184)
 - Does not include cases where the form type may not reflect that the applicant was previously approved for victim-based benefit
- Types of case assistance provided: case outside normal processing times, misapplication of law or clear error of fact by USCIS, transferring file from one office to another, issues with multiple agencies (e.g., EOIR + USCIS; ICE + USCIS)
- Process for requesting assistance:
 - Contact USCIS first (via e-request, contact center, etc) (pick one). If no response is received in the allotted timeframe, then contact the Ombudsman
 - Submit case assistance request (DHS 7001)
 - Process is the same for any issue

- For a survivor case, provide the actual signature on the DHS 7001 and submit a hardcopy. If the DHS 7001 is submitted by the attorney of record, the survivor’s signature on the G-28 will suffice. If no response is received after 90 days, email cisombudsman@hq.dhs.gov. If the issue resolved with USCIS before you receive a response from the Ombudsman, also email them to let them know
- Practitioners can request small meetings with the public engagement division to address issues
- Ombudsman also has a Policy Division that makes recommendations to USCIS based on stakeholder feedback and case work
 - Recommendations may be formal or informal. Formal ones are posted on website and in annual report
 - Informal ones are made during meetings or sent over email
 - Most recent: USCIS should notify nonimmigrant workers about actions taken on I-129 on their behalf
 - Made informal recommendations on renewing EADs. As a result, USCIS increased validity periods for EADs, 540 day extension for certain renewals
- Ombudsman also meets with other federal agencies (nonimmigration), like SSA, USPS
- This year’s report: studying impact of backlogs and mitigation options

Summary of USCIS Office of Policy and Strategy presentation:

OP&S provided a brief overview of some of the changes to the VAWA self-petition section of the USCIS Policy Manual, including the requirements for shared residence, good moral character, the ability of abused stepchildren to file the I-360 after their parent and the abusive stepparent have divorced, the 2 year filing deadline after divorce or the death of the abuser, and the policy on holding I-485s in abeyance.

Questions for USCIS Office of Policy and Strategy and the Office of the Citizenship and Immigration Services Ombudsman

EAD Application Adjudication

What is the policy of the Vermont and Nebraska Service Centers' VAWA Units regarding the adjudication of EAD applications? Is the policy "first in first out" (older cases adjudicated first), or "last in first out" (newer cases adjudicated first)?

The policy is “first in, first out,” but requests for expedited action will be considered.

Receipt Notices

1. We have heard from practitioners that there have been significant delays in obtaining receipt notices for victim-based cases, particularly when the applicant or petitioner requested a fee waiver. What are USCIS and/or the Ombudsman doing to correct this issue?

OPS: The service centers are experiencing staffing shortages, which contributes to backlogs. Service Centers have noticed an increased number of fee waiver requests received, which is causing delays in adjudications. We acknowledge the impact of delays on the victim population, and service centers are continuing to explore ways to find efficiencies. We are aware and exploring possible solutions.

Ombudsman: We are also aware of the Lockbox and service center delays, and sometimes there can be a sudden influx that can delay printing receipt notices, and sometimes there are USPS delays, too. If you have proof of filing and reach out to USCIS, and more than 90 days have passed since filing, submit the DHS 7001 and provide information that will help us reach out to USCIS. For example, if payment has been made by check, include a copy of the canceled check which shows that USCIS cashed the check. You must try to resolve the issue with USCIS first. Wait 60 days after filing, then contact USCIS. After 30 more days, file the DHS 7001. There is no particular processing time for fee waivers, so that might be something our office wants to discuss with USCIS. When we notice a trend like this that signifies a systemic issue, then the policy division will determine how to raise the issue with USCIS. Having examples informs our recommendations.

VAWA Self-Petitions

2. Can you please explain why USCIS takes the position that a person who does not submit a VAWA Self-Petition after notifying USCIS of the intent to file the petition “do[es] not want to be treated as a VAWA Self-Petitioner”?

OPS: The VAWA Policy Manual provides that if a person intends to file a self-petition, they may notify USCIS of their intention to file and request to hold the I-485 in abeyance. The applicant has 30 days to file the self-petition. If not, USCIS will generally continue adjudication of the I-485 based on the I-130. However, as part of the victim-centered approach, USCIS has provided guidance to officers that they should be aware of the dynamics of abuse and that they should consider the victimization before taking any action on the I-485.

- When will USCIS take the position that the person “do[es] not want to be treated as a VAWA Self-Petitioner”? Will this occur if the person does not file a VAWA Self-Petition within 30 days of notifying USCIS of the intent to file, or will there be a longer time period?

OPS: They have 30 days to file the self-petition. In general, officers have been provided guidance to be aware of the dynamics of abuse, and the determination is made on a case-by-case basis. Based on longstanding policy and procedures, the self-petitioner has 30 days to provide evidence of filing.

3. The Policy Manual stated that VAWA self-petitioners who committed “unlawful acts that adversely reflect on their good moral character,” “willfully failed or refused to support dependents,” or were “convicted or imprisoned for such acts” will be found to lack good

moral character unless there are “extenuating circumstances.” Can you please define “extenuating circumstances” in this context?

OPS: In determining whether other reasons exist in the record, USCIS officers will look at 8 CFR § 204.2(c)(1)(vii) and evaluate on a case-by-case basis. Officers should take into consideration INA § 101(f) and the standards of the average citizen in the community. This is a discretionary determination. A self-petitioner who willfully failed to support dependents may be found to lack good moral character unless there are extenuating circumstances. Examples of extenuating circumstances may include: the self-petitioner’s unemployment and inability to provide child support, showing a connection between abuse and lack of support. A self-petitioner may be found to lack good moral character if the preponderance of the evidence shows that their conduct falls below the standards of the average citizen in the community.

4. What will USCIS do to ensure that Field Offices understand the procedures outlined in Chapter 5 of the Policy Manual for self-petitioners with pending family-based I-485s?
 - Do self-petitioners have any remedy if the Field Office refuses to hold a pending family-based I-485 in abeyance?

OPS: Chapter 5 of the VAWA Policy Manual discusses procedures for holding pending family-based I-485s in abeyance pending adjudication of an I-360. Based on longstanding procedures that field offices have been following since before the publication of the Policy Manual, officers are aware of the procedures and will continue to follow them. If the field office does not follow the policy, the noncitizen can address the concern through case inquiries, such as Infopass.

5. Practitioners have reported that VSC frequently does not issue Deferred Action to approved self-petitioners who are in removal proceedings or who have an outstanding removal order. What is USCIS’s policy regarding the issuance of Deferred Action to these individuals, and why?

OPS: The recent ICE directive on using a victim-centered approach to crime victims says that self-petitioners with approved I-360s are among those who receive consideration for prosecutorial discretion. Absent exceptional circumstances, ICE will refrain from taking civil enforcement action against this population. In consideration of this directive, USCIS is currently reviewing its policies and procedures about issuing deferred action to approved self-petitioners with outstanding removal orders or who are in proceedings.

6. Can you please clarify how USCIS will handle a VAWA self-petition when the evidence in the self-petition contradicts “external information” in DHS databases that is influenced by the abuser? For example, how will USCIS handle a case where the abuser filed an I-130 for the self-petitioner which raised “red flags,” such as the abuser having a secret second home or engaging in extramarital relations and the self-petitioner had no knowledge of these “red flag” circumstances?

OPS: USCIS officers must first comply with the provisions of 8 USC § 1367(a)(1), which provide that employees of DHS must not make adverse determination of inadmissibility or deportability based on information furnished solely by a prohibited party. Officers must carefully review

evidence before making a credibility determination. If testimony is inconsistent internally or with other evidence, an officer could determine that the evidentiary value of the testimony is diminished. But 8 CFR § 103.2(b)(16) requires the issuance of an RFE if USCIS uncovers derogatory info and intends to deny based on that derogatory info. Officers can also determine that minor inconsistencies would not diminish the evidentiary value of an affidavit, which is done on a case-by-case basis. Officers will review any inconsistent information looking at the totality of the facts and circumstances and considering allegations of abuse.

7. For VAWA Self-Petition purposes, can you please discuss when USCIS may consider an act or conviction that occurred **outside** the qualifying relationship to be “connected” to the abuse?

OPS: The Policy Manual implements Third Circuit’s decision in Da Silva [Da Silva v. Attorney General, 948 F.3d 629 (3rd Cir. 2020)], which interprets “connect to” to require a causal or logical relationship. When making this determination, USCIS will consider the full history of abuse in the case. If a self-petitioner establishes that abuse occurred prior to relationship, an act or conviction that violates INA 101(f) may be considered to be “connected to” the battery or extreme cruelty even if the act/conviction occurred prior to the qualifying relationship.

Biometrics

8. How do USCIS and the Ombudsman plan to resolve biometrics rescheduling issues for noncitizens with cases that are subject to 8 U.S.C. §1367? Noncitizens and their representatives often cannot reschedule through the USCIS Contact Center if the case is subject to 8 U.S.C. §1367, and the service center email hotlines are unresponsive or take weeks to respond.

OPS: The USCIS Contact Center generally is not able to assist on VAWA/U/T cases due to 8 USC § 1367. If a protected person calls the Contact Center, the Center would direct them to the appropriate mechanism. For unrepresented individuals, they must send a signed, written inquiry for a biometrics appointment. In some cases, the Contact Center will instruct the person to appear in person at a field office to get a new appointment. If represented, USCIS recently changed some info on its website to update the information for contacting USCIS about a VAWA/U/T case. Representatives can request via email hotline to request a new date/location for appointment. USCIS is aware of challenges that Section 1367-protected folks face when rescheduling biometrics and is actively exploring options to improve processes so that people can more easily and efficiently reschedule biometrics.

Actual response times for customer service inquiries are as follows:

VSC hotline: approximately 14 days

NSC: 14-21 days

1. *If the hotline does not respond in this timeframe, USCIS recommends following up around the 3 week mark. Put “Second request/Follow up inquiry” in the subject line, to alert the service center that it is a follow-up inquiry and didn’t receive response the first time*

1. *Links (in chat):*

1. USCIS, Victims of Human Trafficking and Other Crimes
<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes>
2. USCIS, Abused Spouses, Children and Parents:
<https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents>
3. CIS Ombudsman T, U, and VAWA Cases:
<https://www.dhs.gov/cisombudsman-frequentlyaskedquestions>

Ombudsman: Our office has heard the same concerns. If you have reached out to USCIS via the hotline and have waited the required time (14 days for VSC or 14-21 days for NSC) and send a follow up to USCIS and there is still no word, then reach out to Ombudsman through the DHS 7001. Include any supporting documentation so that when the Ombudsman contacts USCIS, they have all that information.

BFD Process

9. Previously, USCIS routinely denied DACA applications and renewals for individuals who already had Deferred Action through the U visa waitlist or the BFD policy. Recently, several practitioners have reported receiving approvals of DACA renewals even where the client already had Deferred Action through the U visa process. Could USCIS confirm that individuals who already have Deferred Action through the U visa process may still renew their DACA EADs?

OPS: Yes. Individuals who already have deferred action through the U visa waitlist or BFD or current DACA, may request renewal of DACA and their EAD if they meet renewal guidelines.

- For individuals whose DACA renewals were denied under the prior policy, will USCIS consider reopening their DACA renewal applications *sua sponte*? For many of these individuals, more than one year has passed since the expiration of their DACA, so if they were to refile, they would need to file an initial DACA application, and under USCIS's current guidance, the agency will not adjudicate initial DACA applications.

OPS: USCIS appreciates this question. We want to confirm that we are discussing this currently, internally.

10. Can you please clarify when USCIS will decline to issue a BFD if a person is arrested but not convicted? Will the "decline to issue" only apply to arrests for the crimes listed in the Policy Manual, or other crimes as well?

OPS: USCIS may choose to not exercise discretion when national security or public safety concerns are present. Issues noted in the Policy Manual may be the basis for a more comprehensive review that is not part of BFD process, which is a streamlined process. Also, patterns of behavior showing disregard of the law may lead to a full waiting list adjudication.

11. Upon a request from ICE, will USCIS conduct an expedited BFD process for a pending U petitioner who is in removal proceedings?

OPS: Yes, USCIS considers expedited requests based on existing guidance in the Policy Manual. If the request is based solely on the fact that the petitioner is in removal proceedings, it will only be considered if requested by ICE.

12. Will USCIS issue an RFE or NOID before denial if a BFD was issued but USCIS later decides to deny the I-918? If not, why not?

OPS: Yes. If a petitioner does not meet the eligibility criteria for U nonimmigrant status, an RFE or NOID will be issued prior to the issuance of a final decision.

U Visa

13. The M-274 states that T-1s who timely file for adjustment of status can demonstrate their work authorization for two years from the expiration of their T-1 status by showing their I-94 and I-485 receipt notice. However, U nonimmigrants can only use their I-94 and I-485 receipt notice to show work authorization for 1 year from the expiration of their U nonimmigrant status. Due to USCIS's backlogs in adjudicating (c)(9) EADs, many U nonimmigrants do not receive their (c)(9) EAD within one year of filing the I-485, and according to USCIS's case processing times, a U I-485 can take over two years to adjudicate. Why is there a discrepancy in the period of time that T and U AOS applicants can demonstrate their work authorization?

OPS: We are aware of this and we are exploring all of the options around this, given the case processing times. This is on our radar screen.

14. From approximately October through December 2021, USCIS issued EADs under the categories "U1" and "T1" instead of "(a)(19)" and "(a)(16)", respectively. Would USCIS consider issuing guidance that these EADs are valid to avoid confusion from employers, DMVs, and other agencies and individuals who may encounter them?

OPS: We are working on measures to address erroneous EADs issued during this period. These EADs are valid. We will take this suggestion under consideration.

15. We have heard that some USCIS field offices are holding I-485s under INA §245(a) in abeyance where the applicant's admission was based on the grant of U nonimmigrant status while in the US. However, these reports have not been consistent across the country. What is USCIS's interpretation with respect to whether the approval of a U visa petition for an individual already in the US is an admission for purposes of §245(a)?

OPS: USCIS's interpretation is that a grant of U or T nonimmigrant status to someone in the US is an admission for purposes of 245(a). If cases are being held in abeyance, we encourage you to reach out through existing customer service channels.

16. In what situations does USCIS transfer U petitions (I-918 and Forms I-192 & I-765 for a (c)(14) EAD) to the NBC? Is NBC adjudicating U Visa petitions and related forms?

OPS: No. NBC is not adjudicating I-918s, but a file may be transferred if the form handled by NBC would be adjudicated before the I-918. This could allow the petitioner earlier access to the immigration benefit, such as with self-petitions, where the NBC adjudicates the I-485.

Contacting USCIS: special situations

17. Can you please clarify what process noncitizens with pending cases subject to 8 U.S.C. §1367 should use to request expedited EADs for healthcare and childcare workers?

- **If the service center hotlines are the preferred mechanism for requesting these expedited EADs**, to avoid the possibility of the service center hotlines telling noncitizens' representatives to call the USCIS Contact Center, will Headquarters make the service centers aware that the hotlines are to be used for this purpose?

OPS: We are aware that there are challenges that Section 1367-protected individuals have in reaching out to the Contact Center. When there are challenges, use the channels noted on USCIS's website and in the chat.

ASISTA note: The USCIS website contains contact information for VAWA/U/T cases here: <https://www.uscis.gov/about-us/contact-us>.

18. Can you please explain how noncitizens who previously had or currently have applications/petitions subject to 8 U.S.C. §1367 can request case updates from USCIS on their **non-**§1367 cases (such as DACA, TPS, or naturalization applications)?

OPS: There are challenges about reaching out to the Contact Center given 8 USC 1367. Affected individuals should use the customer service channels on our website.

Ombudsman: We have also heard that stakeholders are experiencing challenges with getting case status updates and getting USCIS to update attorney information. Based on our training, it seems that individuals remain protected under Section 1367 throughout their immigration process, including at naturalization. We would require a copy of a wet signature for all form types, even where an attorney is submitting the DHS 7001.

ASISTA note: As noted in the Ombudsman's initial presentation, a copy of the G-28 should satisfy the requirement for a copy of the applicant/petitioner's wet signature.

Consular processing

19. If a derivative outside the U.S. is unable to consular process before the 4-year approval period of their U-3 classification expires, will USCIS issue an amended approval notice with new dates for the derivative upon request?

OPS: If a derivative is not able to consular process before the expiration of their U-3 classification, the principal can file an I-539 to request an extension of their U-1 status based on exceptional circumstances. The principal must request that the extension be applied to the derivative and should include a statement that there is a family member outside the US who has not consular processed. If the principal's I-539 is approved, then USCIS will issue an amended approval for the derivative to facilitate consular processing.