



## Practice Pointer: Age-Out Protections in U Nonimmigrant Status<sup>1</sup> August 2024

U Nonimmigrant Status (also known as the “U visa”) is an important form of protection for immigrant survivors of gender-based violence. U visa petitioners and derivatives enjoy statutory age-out protections, but they are limited in scope. Practitioners who are unaware of the limited nature of the age-out protections may inadvertently allow their U visa clients to age out of eligibility. Age-outs harm immigrant survivors and their family members by eliminating avenues for lawful status, deepening or increasing the chance of family separation. Thus, to competently represent immigrant survivors and their family members seeking U visas, it is crucial for practitioners to understand the limited scope of U visa age-out protections. This practice pointer will detail the age-out protections, denote their limits, and provide practice tips for practitioners.

### I. U Visa age-out protections

The age-out protections for U principals and derivatives are found at INA § 214(p)(7).

#### A. Principal U petitioners

Principal U petitioners will continue to be treated as “under 21” only if they turn 21 while their I-918 is *pending*.<sup>2</sup> Thus, as long as the principal turns 21 while their I-918 is pending, the principal may add parents and unmarried siblings under 18 as derivatives.<sup>3</sup> The derivative eligibility of the parents and siblings is determined on the filing date of the *principal’s* I-918.<sup>4</sup> Thus, as long as the principal turns 21 while their I-918 is pending, the principal may file for eligible family members as derivatives even after the principal turns

---

<sup>1</sup> Copyright 2024, ASISTA Immigration Assistance. This practice pointer was authored by Kelly Byrne, Staff Attorney, with input from Cristina Velez, Legal and Policy Director and Rebecca Eissenova, Senior Staff Attorney. This practice pointer is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case. Content is current as of date of writing. It is your responsibility to ensure content is up to date.

<sup>2</sup> INA § 214(p)(7)(B)

<sup>3</sup> *Cf.* INA § 101(a)(15)(U)(ii)(I) (U principals under 21 may include parents and unmarried siblings under 18 as derivatives).

<sup>4</sup> INA § 214(p)(7)(B), INA § 101(a)(15)(U)(ii)(I) (siblings)

21.<sup>5</sup> Unfortunately, if the principal turns 21 *after* their I-918 is *approved*, their parents and unmarried siblings under 18 cannot be added as derivatives after the approval of the principal's I-918.<sup>6</sup>

The below examples demonstrate age-out protections for U principals.

**Example 1:**

Sandra filed her I-918 at age 16, and it was approved when she was 23. She asks you whether she can add her parents as derivatives. She can. Sandra is age-protected because she turned 21 while her I-918 was pending.

**Example 2:**

Imani filed her I-918 at age 14, and it was approved when she was 20. She is now 22 and wants to add her 16-year-old sister Zola as a derivative. Imani cannot add Zola as a derivative because Imani turned 21 after her I-918 was approved.

**B. U derivative children**

U derivative children are not age-protected simply because they were under 21 when their parent filed Form I-918. Rather, they are age-protected *only if* they turned 21 while their parent's I-918 was *pending*.<sup>7</sup> The derivative child is *not* age-protected if they turn 21 after their parent's I-918 is *approved*. In the U context, ASISTA is aware that USCIS has recently interpreted the derivative child age-out provision as written: "An unmarried [noncitizen] who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(U)(i) of this title, and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(U)(ii) of this title, if the [noncitizen] attains 21 years of age after such parent's petition was filed *but while it was pending*."<sup>8</sup> [Emphasis added]. In a non-precedent decision, the Administrative Appeals Office ("AAO") also interpreted the statute to protect only derivative children who turned 21 while the parent's petition was pending.<sup>9</sup>

If the derivative child turned 21 while their parent's I-918 was pending, they remain eligible as a derivative even if their parent does not file Form I-918A until after they turn

---

<sup>5</sup> See INA §§ 101(a)(15)(U)(ii)(I), INA 214(p)(7)(B) (because the U principal's age is "frozen" as under 21 if they turn 21 while the I-918 is pending, and by statute the eligibility for parents and unmarried siblings under 18 as derivatives depends solely on the principal being under 21, parents and unmarried siblings under 18 may become derivatives at any time before the principal's adjustment).

<sup>6</sup> In such cases, the necessary predicate for the principal's parents and unmarried siblings to be derivatives has disappeared because the principal is no longer considered "under 21." See INA § 101(a)(15)(U)(ii)(I) ("in the case of an [noncitizen] described in clause (i) who is under 21 years of age...").

<sup>7</sup> INA § 214(p)(7)(A)

<sup>8</sup> *Id.*

<sup>9</sup> See *Matter of R-A-O-F-*, ID #1310601, at \*2-3 (AAO July 2, 2018)

21.<sup>10</sup> **In all cases, child derivatives must remain unmarried at least until they are approved for U Nonimmigrant Status.**<sup>11</sup> Child derivatives abroad must remain unmarried at least until they are admitted to the United States with their U visa, because an approved I-918A is not a final approval for a noncitizen who is abroad.<sup>12</sup> The below examples demonstrate age-out protections for U derivative children.

**i. A note on U derivative siblings**

The age of a U derivative sibling is locked in on the filing date of the principal's U petition.<sup>13</sup> Although the sibling's age is locked-in, there is no "marry out" protection for derivative siblings. To maintain derivative eligibility, a U derivative sibling **must remain unmarried at least until their I-918A is approved.**

**Example 3:**

Abdul filed Form I-918 when his daughter Miriam was 20 years old. His I-918 was approved when Miriam was 27. Miriam is unmarried. Miriam is still considered a "child" because she is unmarried and turned 21 while Abdul's I-918 was pending. Abdul may file Form I-918A for Miriam even though she is 27. Miriam must remain unmarried at least until her I-918A is approved (and if she is abroad, at least until she is admitted to the United States with her U visa).

**Example 4:**

Liliana filed Form I-918 when her son Jesus was 14 years old. Her I-918 was approved when Jesus was 20. Jesus is now 23. Liliana cannot add Jesus as a derivative because he turned 21 after her I-918 was *approved*.

**Example 5:**

Pierre filed Form I-918 when his son Jean was 12 years old, and he included Jean as a derivative. Pierre and Jean's I-918 and I-918A were approved. Jean is now 20. He resides in Haiti and must consular process. Jean is *not* age-protected because he will

---

<sup>10</sup> INA §§101(a)(15)(U)(ii)(I) (under the statute, the only requirement to be a derivative is that the person is considered a "child" of the parent principal), INA §214(p)(7)(A) (the child's age is measured on the date the *parent* files Form I-918). U derivatives who turn 21 while the parent's I-918 is pending have their ages frozen as "under 21" and are therefore always considered children as long as they remain unmarried. Thus, they remain eligible as derivatives regardless of their age at the time of the I-918A filing.

<sup>11</sup> INA § 101(b)(1) (a child is unmarried and under age twenty-one).

<sup>12</sup> *Cf.* 8 CFR §214.14(f)(4) (requiring the relationship between the U principal and derivative to exist until the derivative's admission to the United States. A noncitizen no longer has a "child" relationship with their parent if they marry, because a married person is no longer a child for immigration purposes. See INA §101(b)(1)).

<sup>13</sup> INA 101(a)(15)(U)(ii)(I) ("In the case of an [noncitizen] described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age *on the date on which such [noncitizen] applied for such status under such clause*, and parents of such [noncitizen]") (emphasis added).

turn 21 after Pierre's I-918 approval. Thus, Jean must be admitted to the United States with his U visa before he turns 21.<sup>14</sup>

## II. Practice tips

Practitioners must pay close attention to the limited age-out protections for U status, and not assume that a U principal or derivative child is age-protected simply because they were under 21 when the principal filed their petition. The limited nature of the age-out protections is especially relevant in two situations: when the derivative child is an older teenager and the principal files Form I-918A *after* the principal's I-918 approval; and when the I-918A has been approved, but the U derivative child is abroad and an older teenager.

Some survivors will approach practitioners about derivative petitions when their children are close to their 21<sup>st</sup> birthdays, and not all such situations can be avoided. That said, practitioners should be proactive by counseling their clients early in the representation about the limited nature of U visa age-out protections and using calendar systems to keep track of derivative children's ages.

### A. Tips for derivative petitions when the child is in the United States

The limited nature of U visa age-out protections is especially relevant when the derivative child is an older teenager and the principal files Form I-918A *after* the principal's approval. In these situations, practitioners should counsel their principal clients about the limited nature of the age-out protections, and ensure they file I-918As for their children well before the children's 21<sup>st</sup> birthdays. Practitioners should also calendar the derivative child's 20<sup>th</sup> birthday. If the I-918A has not been approved by the child's 20<sup>th</sup> birthday, the practitioner should immediately file an expedite request with USCIS.

In the USCIS expedite request, the practitioner should brief the limited nature of U visa age-out protections. To demonstrate that the case meets USCIS's "urgent humanitarian situation"<sup>15</sup> expedite category, the practitioner should include declarations of the parent and child describing the impact of separation if the expedite request is not granted and the child ages-out of eligibility. If USCIS does not respond to the expedite request within

---

<sup>14</sup> See 9 FAM 402.6-6(E)(3)(a) (most recent edit June 4, 2024) ("The Victims of Trafficking and Violence Protection Act (VTVPA) amended the INA at INA 214(p) to provide, that a *beneficiary seeking to accompany or follow to join a U-1 nonimmigrant as a U-3 nonimmigrant child who attains the age of 21 while the principal petitioner's Form I-918 petition is still pending with USCIS, allows the beneficiary to continue to be classified as a child (if also unmarried). "Pending" refers to the adjudicatory status of the Form I-918 (i.e. it has not been approved or denied). However, if the beneficiary turns 21 after the Form I-918 is approved, they will not be classified as a child as they do not receive age-out protection. This includes instances where the beneficiary turns 21 after the Form I-918 is approved, but while the Form I-918A is still pending. Absent this age-out protection carve out for beneficiaries who turn 21 while the I-918 is pending, the beneficiary must be under 21 at the time of Form I-918A filing, Form I-918A adjudication, the issuance of the U-3 nonimmigrant visa, and eventual admission (see 8 CFR 214.14(f)(4))*"). (Italics in original).

<sup>15</sup> 1 USCIS-PM A.5(A).

one month, the practitioner should follow up with USCIS to request a decision on the expedite and adjudication of the I-918A. If USCIS is not responsive to the follow-up, the practitioner should consider escalating the expedite request to the Citizenship and Immigration Services Ombudsman<sup>16</sup>, a [congressional liaison](#), and/or ASISTA.<sup>17</sup> When writing to a congressional liaison, it is important to explain why the child is at imminent risk of aging out. In addition, if the parent and child consent, it is a best practice to submit declarations from the parent and child describing the impact of separation to the congressional liaison.

#### **i. USCIS inconsistency in the interpretation of U visa age-out protections**

ASISTA has seen recent I-918A denials stating that U derivative children who turned 21 after I-918 approval aged out of eligibility. Confusingly, we have *also* seen USCIS recently state that U visa age-out *expedite* requests are not needed because a derivative child will not age-out even if they turn 21 after I-918 approval. USCIS's statements in response to age-out expedite requests are directly contrary to USCIS's interpretation of the age-out statute in recent I-918A denials. This inconsistency is harmful to immigrant survivors and their family members, who are denied an avenue to prevent age-out *and* denied lawful status when USCIS ultimately denies the I-918A. ASISTA plans to seek clarification from USCIS and will update the field with any new developments.

In the meantime, if there is an age-out risk ASISTA still recommends that practitioners make expedite requests and follow the escalation steps detailed in Section II(A) of this Practice Pointer. OVW grantees/subgrantees and ASISTA members who receive expedite denials should reach out to ASISTA for technical assistance.

### **B. Tips for U derivative petitions when the child is abroad**

#### **1. The derivative child's I-918A has not been approved**

The U visa guidance in the U.S. Department of State's Foreign Affairs Manual ("FAM") interprets the age-out statute as written.<sup>18</sup> Thus, if the U derivative child abroad will turn 21 after the principal's I-918 approval, the derivative must be under 21 *both* when their I-918A is approved *and* when they are admitted to the United States with their U visa.<sup>19</sup> If possible, the practitioner should *not* wait until the child is 20 to file an expedite request

---

<sup>16</sup> Cf. *How to Submit a Case Assistance Request*, U.S. DEP'T OF HOMELAND SECURITY (last updated July 9, 2024), <https://www.dhs.gov/case-assistance> (states that the Ombudsman may be able to help with age-out cases).

<sup>17</sup> ASISTA provides free technical assistance ("TA"), including interventions with USCIS when appropriate, to organizations that receive Legal Assistance for Victims ("LAV"), STOP, and/or Expanding Legal Services Initiative ("ELSI") funding from the U.S. Department of Justice Office on Violence Against Women ("OVW"). For OVW TA, the immigration case must be based on, related to, or arising from domestic violence, dating violence, sexual assault, and/or stalking. Grantees and subgrantees should request OVW TA through the portal, using your account. Please use the OVW calendar to schedule an OVW TA appointment, and contact Maria Lazzarino ([manager@asistahelp.org](mailto:manager@asistahelp.org)) with questions.

<sup>18</sup> 9 FAM 402.6-6(E)(3)(a), *supra* note 14.

<sup>19</sup> 9 FAM 402.6-6(E)(3)(a), *supra* note 14

with USCIS. This is because USCIS adjudication of the I-918A before the child turns 21 is insufficient – the child must *also* complete the consular process and be admitted to the United States with their U visa before age 21.<sup>20</sup> If the practitioner waits to expedite with USCIS until the child is 20, there is a significant chance that the child will age-out before admission to the United States. If a U principal plans to file for derivative children abroad who will turn 21 after the principal's I-918 approval, it is critical for the practitioner to counsel the principal and ensure that, if possible, any I-918A is filed *well before* the child's 21<sup>st</sup> birthday – ideally, no later than the child's 17<sup>th</sup> birthday. The practitioner should calendar the child's 18<sup>th</sup> or 19<sup>th</sup> birthday, depending on interview processing times at the child's consulate, and file an expedite request with USCIS around that date.

To demonstrate why an I-918A approval is necessary well before the child's 21<sup>st</sup> birthday, the practitioner should include printouts of the FAM guidance and pertinent information about consular interview processing times with the USCIS expedite request. It is also a best practice to include declarations from the parent and child describing the impact of continued separation if the child ages out.

## **2. The derivative child has an I-918A approval, but has not completed consular processing**

If a U derivative child is close to 21 when their I-918A is approved, the practitioner should request an expedited consular interview based on the imminent age-out. At minimum, the practitioner should make an expedite request when the child turns 20. An earlier expedite request may be necessary if the consulate has particularly long interview wait times. ASISTA encourages practitioners to discuss the consulate's interview wait times with colleagues to determine whether an earlier expedite request is appropriate.

If the consulate does not respond to the expedite request within one month (or sooner, if the child is less than six months from their 21<sup>st</sup> birthday), the practitioner should follow up to express the urgency of the situation. ASISTA also encourages the practitioner to reach out to us and/or a congressional liaison if the consulate does not respond. As always when reaching out to a congressional liaison, it is important to explain why the age-out is imminent. In a consular processing situation, the practitioner must explain to the congressional liaison that a noncitizen abroad does not have a final approval until they are admitted to the United States with their U visa, thus making a consular expedite necessary even though the child has an approved I-918A.

## **III. Conclusion**

U visa age-out protections provide important relief for immigrant survivors and their family members. However, these protections are limited in scope. The limited age-out protections are particularly likely to narrow eligibility for U derivative children when the principal adds a derivative after the principal's approval, or when a U derivative child is

---

<sup>20</sup> *Id.*

abroad. Practitioners should fully understand the U visa age-out protections and follow the practice tips in this resource to prevent age-out in several different case situations.

*This project was supported by Grant No. 15JOVW-23-GK-05161-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.*