U.S. Citizenship and Immigration Services

Questions and Answers

March 2011

USCIS Stakeholder Meeting on VAWA, T and U Visas
Vermont Service Center

Introduction

On March 23, 2011, the USCIS Vermont Service Center hosted a stakeholder teleconference on Violence Against Women Act (VAWA), T and U visa cases. The information below summarizes the questions submitted by stakeholders and the responses provided by USCIS. Questions have been categorized within four areas; staffing questions, numbers and processing times, policy issues, and process clarifications.

Questions and Answers

I. Staffing Questions

Q. Can the Vermont Service Center provide a staffing update?

A. Please see below for staffing updates
- Karen Fitzgerald is currently the VSC Acting Deputy Director
- Lynn Boudreau is the new Division 6 Assistant Center Director
- Assistant Center Director Tom Pearl is on detail with the Office of Transformation

Q. Does the AAO have staff dedicated to adjudicating VAWA, U & T appeals? If so, what training do they receive?

A. Yes, there is a special unit within AAO dedicated to adjudicating VAWA, T & U appeals. Periodically, HQ provides training to this unit on guidance HQ puts out, however, requests for more information on the unit and information on refresher or advanced trainings would need to be made to the AAO.

II. Numbers and Processing Times

Q. What are your current numbers on granted, denied, pending and processing times for the VAWA I-360, I-914, and I-918?

A. Please note VSC processing times for VAWA I-360s, I-914s and I-918s are now located on the USCIS.GOV website.

III. Policy Issues

U Derivatives

Q. Is there new guidance on U derivatives? If so, can you provide details on the guidance?

A. HQ is working on a direct final rule to lock in age at time of filing and will be issuing interim guidance on this issue shortly. The VSC is unable to answer the following question until the interim guidance is published and unfortunately, we do not have a timeframe in which this guidance will be finalized.

Q. Assuming it's a positive fix, what should attorneys or representatives do if their clients were affected by the prior age-out policies?

If there's any distinction, please address

(a) derivative applicants and approvals abroad;

(b) derivative applicants here;

(c) approved U derivatives whose status was revoked or granted only until 21;

(d) any other categories of age-out Us not mentioned?

(3) Any ETA for official release?

A. VSC has no estimate for when new guidance will be issued.

Extending DA/EAD through Appeal

Q. We understand you have now agreed to grant deferred action and attendant EADs to T visa applicants with pending motions to reopen or appeals to the AAO. Could you please provide details?

A. Per 8 CFR 214.11(r), if an applicant was previously issued a Bona Fide Determination (BFD) notice with Deferred Action (DA), and the I914 is ultimately denied, the termination of DA will not become final until the end of the allowed appeal period. If an appeal is properly filed and forwarded to the AAO, the DA will remain in place until a decision is rendered by the AAO. If necessary, an applicant may file for an extension of his or her (c)(14) Employment Authorization Document (EAD) while the appeal is pending.

Q. Does the same apply for U visa applicants?

A. The process for BFD for U visa petitioners is still being established.

Elder Abuse

Q. One concern raised was that prima facie (PF) decisions should be made in elder abuse cases. Is this possible?

A. The guidance on the elder abuse cases is in draft form and has not yet become finalized policy.

Q. Can you comment on the likelihood of changing the guidance to allow granting PF to elders?

A. The PRWORA definition has not been updated to include battered parents of USCs (VAWA 2005 added clause (vii) to 204(a)(1)(A); this clause extends eligibility to battered parents of USCs). The PRWORA was last amended by VAWA 2000.

Q. Have you seen an increase in elder applications since the guidance was issued?

A. The VSC has not seen an increase in filings of elder abuse petitions.

Q. If a public benefit agency needs assurance that an elder applying for VAWA is eligible for benefits, is there someone at CIS who is willing to explain this to them in the absence of the PF decision?

A. USCIS will withhold issuance of prima facie determinations for self-petitioning parents, until such time as they are recognized by the PRWORA as a "qualified alien."

VAWA 21 - 25 Victims of Abuse

Q. Is there a timeframe for final guidance on VAWA 21 - 25 categories?

A. Unfortunately we do not have a timeframe in regards to when this guidance may be finalized.

LPRs and U visas

Q. What is the process for legal permanent residents in removal proceedings to petition for T or U visas?

A. Lawful permanent residents requesting T or U nonimmigrant status follow the standard process for submitting a T or U visa petition, and VSC will not reject a petition simply because it is filed by an LPR. USCIS has been considering the criteria for adjudicating a T or U petition filed by or on behalf of an LPR in removal proceedings. The Office of Chief Counsel is currently reviewing the legal aspects of this issue and will be drafting applicable guidance in the near future.

Q. If they succeed in doing this, will VSC entertain their U visa applications?

A. If the individual remains in LPR status at the time of adjudication of the I914 or I918, the application or petition will be denied, regardless of whether the applicant or petitioner is in removal proceedings. The Office of Chief Counsel is currently reviewing the legal aspects of this issue.

Bona Fides for Ts and Us

Q. Is it true that VSC is only making bona fide determinations for T visas in detention but not for other T applicants or for any U applicants? If this is true, what is the rationale for this distinction?

A. VSC currently reviews all I914 petitions for BFD during initial adjudication in accordance with the

established regulatory procedure. The T regulation is very detailed in regards to the issuance of a bona fide determination (BFD) for a T applicant. Specifically, the application must present prima facie evidence of each eligibility criteria and the fingerprinting and background check must be complete before a BFD can be issued. Additionally, if inadmissibility grounds have been identified that must be waived under 212(d)(3) and (13); a waiver must be approved first. VSC makes no distinction between T applicants who are in detention and T applicants who are not in detention. In most instances, by the time VSC is in a position to make a bona fide determination the case is ripe for a complete adjudication. Please note we have recently added additional resources to the I-914 team and we expect to be back within normal processing times soon.

Q. Any ETA on implementation of bona fide determinations for all Us and Ts?

A. VSC is not doing BFDs for U visa petitions as the process is not in place at this time. Guidance to implement the BFD process for U petitioners is in the clearance process. VSC is, however, doing PFDs on U petitioners who are in detention.

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H-4s (Derivatives Who are Abused)

Q. Is there any update that the VSC can provide on this guidance?

A. Guidance on this issue is in the clearance process.

Q. Are you receiving applications?

A. VSC has received requests for work authorization for such cases.

Other Guidance Updates?

Q. In general, is there any additional guidance that will be released?

A. Yes. HQ is working on guidance on the following issues: work authorization for abused nonimmigrant spouses of As, E3s, Gs, Hs; derivative U age outs; extension of status for U-3 derivatives. There is no ETA at this time for implementation of this guidance.

USCIS has implemented guidance on the provisions in TVPRA 2008 allowing A3/G5 visa holders to remain in the US and receive work authorization when they are pursuing a civil action against their employer for labor violations. This population can request deferred action by filing Form I-765 along a cover letter and copy of the civil complaint directly to the VSC. For more information, please see the news update on uscis.gov.

USCIS has published an interim memo implementing the provision on extension of status for T and U nonimmigrants. The comment period has ended and a final version will be posted shortly. The interim memo is already in effect upon posting on the web.

IV. Process Clarifications

I-360 & Extreme Hardship

Q. USCIS has already explained that the new 360's instructions' mention of extreme hardship for VAWA self-petitioners is a mistake and will be fixed, but please confirm that this is definitely not a requirement for self-petitioners and that they should ignore this part of the instructions.

A. The I-360 instructions are currently being revised to remove the language pertaining to extreme hardship.

VAWA and Common Law Marriages

Q. Not sure if this is just one case, but we've seen VSC reject a common law marriage from Texas because it was not recorded with state or local authorities, though this is NOT a requirement for demonstrating common law marriage under Texas law.[1] Please confirm that this is an aberration and that the general approach continues to be to look at the state (or relevant jurisdictional) definition, not impose an additional "registration with authorities" requirement if none such exists under state law.

A. General practice has not changed. Current guidance to officers is to review the requirements of the individual state when determining the existence of a qualifying common law marriage. If you feel VSC has made a mistake in the adjudication of this case, please utilize or Customer Service avenues to have the case reviewed.

What to File When (specifically 765s with 360s)

Q. At one point, VSC was willing to accept 765s along with 360s, even when they could not adjudicate the 765 under (c)(9), holding the 765 until determination of the underlying 360. Is this no longer the case?

A. A VAWA self-petitioner should only concurrently file the I-765 and I-360 if the person is an immediate relative, or has a visa currently available, and has filed an I-485.VAWA self-petitioners filing an I-765 under the (c)(14) or (c)(31) categories should withhold filing of the I-765 until the I-360 is approved.

Q. Are there any other "what to file when" best practices you'd like to share?

A. Separate I765 (a)(16)s and (a)(19)s should NOT be filed with the principal's I914 and I918. Our system will automatically generate an EAD upon approval and grant of T or U principal status. The only time that a stand-alone application is required for a principal is to request a replacement for a lost or incorrect card. Derivatives must file an I-765 to request an EAD.

Processing and Biometrics on I-751 Waivers Based on DV

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[1] Common Law Marriage in Texas, Tex. Fam. C. § 2.401

Common law marriage as defined in Texas law requires that the parties

1) agreed to be married;

2) that they lived together in Texas as husband and wife; and,

3) they publicly represented themselves as married.

Q. Since you cannot check status with I-751 receipt now, what is the best protocol emailing, or following up through the hotline? (this is when no biometrics appt has been sent).

A. Yes, email our hotline if you have not received an appointment notice.

Q. I believe I-751 waivers still have biometric appointments sent. What is protocol when nothing has been sent, as I have made 2 inquiries and it has been 7 months since submission?

A. The biometrics appointment notice is issued and sent to the safe address. If you have not received an appointment notice, please email our hotline.

Q. Is it a different procedure when an I-751 waiver is sent after a joint petition has been denied?

A. The procedure is the same. The I-751 should be filed with the VSC indicating that it is being filed as an e, f, or g waiver.

Prima facie determinations

Q. We received a response from the VAWA Unit, which stated that there will no longer be prima facie (PF) determinations issued until after adjudication of I-360 self-petition. Please confirm that this is incorrect and you are doing PFs as usual for 360s?

A. The process has not changed and we are still reviewing all I-360s upon initial receipt for issuance of a Prima Facie Determination (PFD) notice.

Q. Has the field received any request on PF practice?

A. We have none at this time.

Prima Facie Extensions Where Additional Delays are noted?

Q. What does it mean when a letter is received by the applicant, petitioner and/or representative regarding processing delays associated with files being needed from other offices?

A. This is a notice that is issued when the individual's A-file is located at another office and may delay the processing time. In this case, if the individual is in removal proceedings, his or her A-file is presumably at the local office. In most instances the VSC is able to communicate directly with the office to retrieve the A-file in order to complete adjudication.

Q. How long does one need to apply in advance to extend her prima facie to avoid gaps? The notice indicates 15 days.

A. It would probably be prudent to submit the request prior to the 15 days. Please note these requests may also be made through email and by doing so would expedite the process.

Counting U Time: When Does It Start?

Q. When does the three years start? From the date of the validity period of the U, listed on the 797 or the "notice date" listed on the 797?

A. In regards to establishing continuous physical presence in U nonimmigrant status for adjustment purposes, the three years starts on the date that the status was granted, which is the first date of the validity period. For those petitioners with previous time spent in Interim Relief, the validity period should take into account that time, and so the validity period may be several years prior to the date of the approval of the I918 petition.

Unlinking U Derivatives from U Principals

Q. The last Q & A was helpful in explaining that, once approved; a U derivative's eligibility for adjustment becomes unlinked from the U principal's. In what situations, if any, would a U derivative lose the ability to adjust based on an action by the principal or loss of relationship with the principal?

A. A derivative's U status may be revoked if the principal petitioner's U-1 status has been revoked under 8 CFR 214.14(h). USCIS may also revoke derivative U status if the relationship to the principal is terminated. In both cases USCIS would issue a notice of intent to revoke and the individual would be provided with 30 days to submit rebuttal evidence.

Q. Can a U derivative enter the U.S. before the principal adjusts or loses status and, if so, why?

A. Yes. In order for the derivative to obtain derivative U status, the principal must currently be in U-1 status. However, if the principal has adjusted status and the derivative has not entered the U.S., the principal may file the I-929 for the derivative.

Q. When, if at all, does a change in the principal's status affect the derivative's eligibility to adjust, assuming such changes occur after the U derivative is approved (and has entered the US, if relevant)?

A. As long as the derivative has entered the U.S. in U status, the principal U-1 can adjust status and become an LPR, and the derivative will not lose the ability to file for adjustment of status once they are eligible. Please note, however, that this is NOT true in the T context. A T derivative will no longer be able to adjust status if the T-1 has adjusted status and is an LPR.

Q. Are there other situations the field should flag in their cases?

A. We have none at this time.

Q. To confirm: assuming age-out is not an issue, the way to fix a short time period assigned to a U derivative is to file for an extension, and this can be done after the principal has adjusted?

A. Yes, a derivative that was not granted validity sufficient to accrue the 3 years of continuous physical presence required for adjustment of status may request an extension of status via an I539. This may be done after the adjustment of the principal applicant, but the I539 application should be submitted prior to the expiration of the U derivative status and the derivative must be physically in the U.S. Formal guidance on this issue is being drafted.