



Memorandum

TO: Richard Flowers
Acting Citizenship and Immigration Services Ombudsman

FROM: Michael Aytes /S/ on May 22, 2009
Acting Deputy Director

SUBJECT: Response to Recommendation 39: "Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas"

Thank you for this recommendation and the continuing opportunity to work collegially with you to identify opportunities for increased efficiencies and improved service. As you know, we welcome and seriously consider your office's recommendations. We trust you will find our response to this recommendation, presented below, both substantive and constructive.

Recommendation

The CIS Ombudsman recommends that USCIS:

1. Expeditiously provide more detailed public guidance on new filing procedures outlined in the December 2008 adjustment regulations as well as the trafficking reauthorization legislation for T and U visa applicants;
2. Find alternatives for T visa nonimmigrants to obtain work authorization while their applications are pending;
3. Expeditiously implement procedures and provide public guidance for U visa non-immigrant applicants to apply for work authorization as outlined in the December 2008 reauthorization legislation;
4. Provide adequate staff at the T and U visa unit to promptly adjudicate existing and anticipated T and U visa applications; and,
5. Post processing times for Form I-914, Application for T Nonimmigrant Status, and Form I-918, Petitions for U Nonimmigrant Status.

USCIS Response to Recommendation

USCIS recognizes the importance of the T and U nonimmigrant visas and their roles in supporting both victims of trafficking and investigations of certain criminal activity. These visa categories are designed to help strengthen the ability of law enforcement agencies to investigate

and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while, at the same time, offering protection to victims of such crimes. These visa categories were created initially under the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386, October 28, 2000), and have been reauthorized several times, most recently in December 2008 when the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) was enacted.¹

USCIS has published regulations implementing procedures for T and U nonimmigrant adjudications, including applications for adjustment of status. See, e.g. 67 FR 4784 (January 31, 2002); 72 FR 53014 (Sept. 17, 2007); 73 FR 75540 (Dec. 12, 2008). USCIS recognizes that T and U applicants are a vulnerable population and will continue to ensure that our policies and procedures are legally sound and reflect the humanitarian nature of, and law enforcement purposes for, the classifications.

1. Expediently provide more detailed public guidance on new filing procedures outlined in the December 2008 adjustment regulations as well as the trafficking reauthorization legislation for T and U visa applicants.

USCIS concurs with this recommendation. USCIS has issued more than six separate notices to provide the public with guidance on the T and U nonimmigrant and adjustment application processes. On December 8, 2008, USCIS published a Fact Sheet that contained questions and answers about the new adjustment of status regulations for T and U visa holders.² Also, our website, www.uscis.gov, details the necessary requirements for T and U visa adjustment applicants to apply for permanent residency in the United States. These documents supplement the instructions provided with applications for T or U nonimmigrant status and the Adjustment of Status Application, Form I-485.

USCIS also has been actively engaged in community outreach. During the summer months of 2008, USCIS staff conducted a series of 12 training sessions around the country specifically geared towards educating non-governmental organizations (NGO), law enforcement, and the general public on T and U nonimmigrant visa statuses and their filing procedures. USCIS also participates in conferences conducted by NGO stakeholders, maintains a phone line specifically reserved for those with questions about their applications and petitions, and made its staff available to assist with the CIS Ombudsman's teleconference on U visas. In addition, to support the publication of the T and U adjustment rule in December 2008, USCIS conducted its own teleconference in an effort to further educate the public. Finally, USCIS produced a brochure, entitled "*Immigration Remedies for Trafficking Victims*," which provides information on both T and U nonimmigrant statuses.

USCIS also published an information bulletin on how an applicant may request a fee waiver and the evidence necessary to establish fee waiver eligibility. Since all applicants for fee waivers are evaluated similarly based on an inability to pay, USCIS believes that expanded public outreach materials explaining fee waivers should be inclusive of all eligible populations and limited solely to T and U nonimmigrants. To this end, USCIS is currently undertaking an initiative to review

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act. Pub. L. No. 110-457 (Dec. 23, 2008).

² USCIS Press Room, "Fact Sheet: USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity" (December 8, 2008). http://www.uscis.gov/files/article/t_u_fs_8dec2008.pdf

fee waiver guidance available to the public to ensure it is presented in the most accessible formats possible. For T and U visa holders please note, however, that the officers who adjudicate the fee waiver requests in these cases are the *same* officers from the specially-trained unit who will adjudicate the underlying applications for T and U adjustment of status. Therefore, they will be familiar with the T and U visa holders' circumstances and will take that into account when adjudicating fee waiver requests.

USCIS understands the CIS Ombudsman's concern that there is inconsistent cooperation from law enforcement officials. USCIS has been and remains engaged in active outreach to law enforcement officials to educate them on the availability of T and U nonimmigrant visas for those who qualify, and to encourage the agencies to develop internal policies and procedures so that there is transparency for those seeking certification. USCIS created a fact sheet specifically for law enforcement agencies and regularly answers calls from law enforcement officials providing information on the T and U visa programs.

Because the provisions of TVPRA 2008 and the T and U adjustment regulations have only recently been published, USCIS is still in the process of identifying areas where additional guidance is necessary. Future guidance will be issued as appropriate.

2. Find alternatives for T visa nonimmigrant applicants to obtain work authorization while their applications are pending.

The CIS Ombudsman recommends USCIS find alternatives for T nonimmigrant visa applicants to obtain employment authorization. However, USCIS believes that there is no need for an alternative as the regulations already provide an avenue for applicants to obtain employment authorization. Specifically, there are two ways applicants for T nonimmigrant status may obtain work authorization while their applications are pending. First, an applicant may obtain employment authorization as a result of having been granted "continued presence." An individual's continued presence is ensured through certain administrative mechanisms such as parole or deferred action.³ Second, upon receipt of an application for T nonimmigrant status, USCIS may conduct a bona fide determination.⁴ If an application is deemed bona fide, USCIS will provide written confirmation to the applicant and use various means such as parole or deferred action to prevent the removal of individuals who have filed bona fide applications until USCIS issues a final decision on the application. Individuals granted deferred action or parole, whether through continued presence or as a result of a bona fide determination, may be granted employment authorization by filing the appropriate application.⁵ USCIS does not currently have a backlog of I-914 cases; therefore, focusing on issuing interim EADs is not necessary. USCIS believes it is more efficient to adjudicate the entire I-914 and grant the T status, which produces work authorization for the applicant, rather than to touch the application twice in order to make a bona fide determination. However, in the event that processing times should exceed 90 days,

³ See, generally, 28 CFR 1100.35.

⁴ 8 CFR 214.11(k); An application is *bona fide* if, after initial review, it is properly filed, there appears to be no instance of fraud in the application, the application is complete, the application presents *prima facie* evidence of each element to show eligibility for T-1 nonimmigrant status, and USCIS has completed the necessary fingerprinting and criminal background checks.

⁵ See, Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS, Deferred Action for Aliens with Bona Fide Applications for T Nonimmigrant Status (May 8, 2002).

USCIS will conduct bona fide determinations for the purpose of issuing employment authorization.

3. Expediently implement procedures and provide public guidance for U visa non-immigrant applicants to apply for work authorization as outlined in the December 2008 reauthorization legislation.

The Vermont Service Center (VSC), which has sole jurisdiction over the adjudication of T and U applications, has developed a production plan to significantly reduce the backlog of pending U visa cases by the end of the current fiscal year. In addressing the U visa backlog, VSC will focus on completing the oldest cases, for which interim relief and employment authorization are currently available, as well as newer cases, filed prior to the TVPRA 2008, that pertain to individuals for whom interim relief and employment authorization are currently unavailable. In addressing the latter category of cases, resources which would otherwise be focused on adjudicating interim employment authorization can instead be devoted to actual adjudication of U status, obviating the need to separately adjudicate a request for employment authorization. USCIS does intend to utilize all 10,000 visas available this fiscal year. Once USCIS has worked through the backlog, USCIS will assess the possibility of issuing interim employment authorization to those cases that are held in abeyance while awaiting visa availability. We look forward to sharing this production plan with the CIS Ombudsman as soon as we have completed the internal review process.

4. Provide adequate staff at the T and U visa unit to promptly adjudicate existing and anticipated T and U visa applications.

USCIS has implemented this recommendation. The VSC has developed a production plan aimed at reducing the backlog of U applications by 10,000 cases by the end of the current fiscal year. In order to achieve this goal, VSC is significantly increasing the size of the T/U visa adjudication team. In addition to the twelve level-two (senior) Immigration Service Officers (ISOs) already assigned to the I-918 workload, VSC plans to immediately reassign 31 additional trained ISO resources. This group will consist of experienced officers, who will make determinations of eligibility, and a group of lesser experienced ISOs, who will be responsible for background identity and security checks. After vetting a case through the background check process, a less senior ISO will route the case to a more senior ISO, who will approve, request evidence, or recommend denial. Recommended denials are routed to a smaller group of the most senior ISOs for completion. By triaging cases under an expanded adjudications team, learning curves should be much shorter, enabling greater level of production sooner in the process.

5. Post processing times for Form I-914 (Application for T Non-Immigrant Status) and Form I-918 (Petition for U Non-Immigrant Status).

USCIS agrees with this recommendation. The processing time for Form I-914 is currently on the USCIS website. This page can be found from our USCIS web page, www.uscis.gov, by clicking on the "processing time" link. However, at present, posting the processing time for Form I-918 would not be useful since many of these cases will not be adjudicated in the order in which they were filed. USCIS is taking an aggressive approach to reduce the pending backlog of U visa petitions. Cases will be adjudicated in chronological order as they become "adjudication ready"

(i.e. when all responses to Requests for Evidence have been received). Once the backlog is eliminated and the processing of these petitions becomes standard, USCIS will post the processing time for Form I-918 on the agency's website.