

VAWA/T Visa and U Visa Overview

National Engagement – July 27, 2022

Pre-submitted questions

Q1. If you are a victim who applied for a U Visa, but later got married to a U.S. citizen and they submitted an I-130 Spousal Petition for you, which petition will be adjudicated first? The U Visa petition has been pending for a few years and the I-130 has been pending for a year.

A1. Processing times may vary depending on the circumstances of the case. For example, if we send an RFE, or if security checks are pending, processing times may be extended. Generally, current processing times for I-130s ranges from six to 15 months depending on which service center the petition was filed with. For U visa petitions, the time to final adjudication is impacted by the statutory cap of 10,000 U visas that can be issued to victims per fiscal year; this cap has been met every year since 2010. Currently, USCIS is conducting final adjudication of petitions for U nonimmigrant status that were filed in March 2016. Prior to final adjudication, USCIS conducts a bona fide determination (BFD) review of petitions for U nonimmigrant status. If the petition is bona fide, USCIS may, in its discretion, issue a BFD employment authorization document (EAD) and deferred action; if the petitioner does not receive a BFD EAD, the petition is reviewed for placement on the waiting list. The current processing time for Form I-918s from the time of receipt to issuance of either a BFD notice or notice that the petition will be considered for waiting list placement is 61.5 months.

Q2. How can we make a follow-up inquiry for cases that have been pending for four years?

A2. The USCIS website outlines customer service options for VAWA/U/T benefit requestors. For information on how to contact USCIS on a VAWA related matter, see www.uscis.gov/humanitarian/abused-spouses-children-and-parents

For information on how to contact USCIS on a U or T visa matter, see www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes

Attorneys and accredited representatives may send inquiries to the following email addresses:

- For U nonimmigrant petitions, Petitions for Qualifying Family Members of U-1 Nonimmigrant and U-based adjustment of status applications located at the Nebraska Service Center: nsc.i-918inquiries@uscis.dhs.gov
- For U nonimmigrant petitions, Petitions for Qualifying Family Members of U-1 Nonimmigrant and U-based adjustment of status applications located at the Vermont Service Center: HotlineFollowupI918I914.vsc@uscis.dhs.gov
- For all T nonimmigrant status and T-based adjustment of status applications:
- T Visa HotlineFollowupI918I914.vsc@uscis.dhs.gov
- For all VAWA petitions: HotlineFollowUpI360.vsc@uscis.dhs.gov

To receive a response, the attorney or representative making the inquiry must have a Form G-28, Notice of Entry of Appearance as Attorney or Representative, filed on the specific case. USCIS will not respond to emails from anyone who is not named on the Form G-28 on file for the case that is being inquired about.

Unrepresented applicants and petitioners may send written inquiries to:

For cases located at the Vermont Service Center:
 U.S. Citizenship and Immigration Services
 Vermont Service Center
 ATTN: Humanitarian Division
 38 River Road
 Essex Junction, VT 05479-0001

For cases located at the Nebraska Service Center:
 U.S. Citizenship and Immigration Services
 Nebraska Service Center
 ATTN: I-918
 P.O. Box 87918
 Lincoln, NE 68501-7918

Q3. Where can a victim of a crime obtain help for cases that qualify for a U visa certification, but law enforcement refuses to complete and sign the required certification?

A3. The decision to complete Form I-918B is at the discretion of the certifying agency as there are no federal laws or regulations mandating the agency to certify. However, you can verify if your state has passed any laws, regulations, or policies regarding certifications. You can also verify if the certifying agency has internal policies on certification requests.

In certain circumstances, law enforcement may have the authority to detect, investigate, or prosecute qualifying criminal activity occurring outside of their jurisdiction. Victims

may also choose to report the criminal activity outside of the jurisdiction where it occurred for a variety of reasons. While the criminal activity does not need to have occurred within the jurisdiction of the law enforcement agency, the certifying agency completing Form I-918B should provide information about how the certifying official detected or investigated the criminal activity.

USCIS provides resources to help guide you through the application, petition, or request process, including how to find the right legal services for you. This information is available at USCIS' online tools page at www.uscis.gov/avoid-scams/find-legal-services.

Q4. The 2016 USCIS Policy Memo titled Extension of Status for T and U Nonimmigrants indicates that a U nonimmigrant may file a Form I-539, Application to Extend/Change Nonimmigrant Status, even after their U nonimmigrant status has expired. In the case of a U-3 derivative whose U nonimmigrant status has expired, who is required to file Form I-539, the U principal or U derivative?

A4. A U derivative nonimmigrant may file for an extension of status independently, or the U-1 principal nonimmigrant may file for an extension of U-1 status and request that this extension be applied to the derivative family members.

If the U-1 nonimmigrant principal wants the extension of status request based on law enforcement need or exceptional circumstances to be applied to derivative family members with U-2, U-3, U-4, or U-5 nonimmigrant status that are currently in the United States, the U-1 must indicate this in writing and list each derivative separately on Form I-539A. Each Form I-539A must be submitted with a copy of the derivative's Form I-94 or approval notice showing that the derivative was already granted U-2, U-3, U-4, or U-5 status.

If the U-2, U-3, U-4, or U-5 nonimmigrant is filing independently for an extension of status, for example, based on consular delays or to ensure three years of physical presence, this application must be submitted with:

- Justification for their extension request (statement of need and reasons);
- A copy of their Form I-94, approval notice or their passport with their U nonimmigrant visa showing that they have already been granted U nonimmigrant status; and
- Evidence of relationship to the U-1 nonimmigrant principal, such as a birth certificate or marriage certificate and proof of termination of any prior marriages.

Q5. The U Visa regulations list the 28 qualifying criminal activities and then states: "other crimes that are similar in nature to the ones listed." Can you go through the elements that need to be met for a crime to qualify for a U Visa? Can you explain how to argue a "similar in nature" qualifying crime when drafting a U Visa petition?

A5. There are a wide variety of state criminal statutes in which a criminal activity may be named differently than a criminal activity found on the statutory list of qualifying criminal activities for the U visa, but the nature and elements of those activities are comparable. As such, a victim may also qualify for a U visa if the crime detected, investigated, or prosecuted by a certifying agency involves activity where the nature and elements of the crime are substantially similar to one of the 28 listed qualifying criminal activities.

To determine whether the crime qualifies, USCIS considers the I-918, Supplement B and other documentation provided by a certifying agency or petitioner, such as police reports, charging documents, etc. (if available) regarding the criminal activity that occurred and the statutory violation that it detected, investigated, or prosecuted. USCIS determines whether the crime is substantially similar to a qualifying criminal activity based on the totality of the evidence.

Jurisdictions use different terms for criminal activity. Each jurisdiction's crime definitions may also include slightly different elements. As such, it is important that the Form I-918B, U Nonimmigrant Status Certification provided by the certifying agency lists accurate and precise citations for any crimes they detected, investigated, or prosecuted. For family court cases, they need to list the criminal code section(s) that apply to the facts found by the court in the case, reflecting the qualifying criminal activity detected. The initiation of a criminal case is not required to establish eligibility for a U visa. USCIS will examine which qualifying crime(s) was indicated as detected, investigated, or prosecuted on Form I-918B (more than one qualifying crime may apply) and analyze whether the nature and elements of the crime(s) listed in the statutory citations section are substantially similar to any of the 28 listed qualifying criminal activities at INA 101(a)(15)(U)(iii).

Q6. Most agencies are not aware that USCIS issues a Prima Facie letter connected to VAWA self-petitions. Can USCIS revise the current letter and include information that will help officials from public benefit agencies better understand what the letter represents?

A6. The prima facie determination notice is issued when a self-petitioner files supporting evidence to meet each of the eligibility requirements for the VAWA self-petition. The prima facie determination notice clearly states that the notice may be used to assist VAWA self-petitioners in receiving public benefits. Since USCIS is not a public-benefits granting agency, we defer to the local, state, and federal public benefit-granting agencies to determine, under the relevant legal authorities that govern the issuance of

public benefits, whether the prima facie case determination qualifies a VAWA self-petitioner for public benefits.

USCIS will consider the suggestion for future revision to the prima facie determination letter.

Q7. Will the processing times for VAWA self-petitions decrease in the future?

A7. USCIS continues to seek process improvements and innovations to allow production to improve and to provide eligible individuals with benefits in a timely manner. USCIS continues to prioritize the hiring and training of officers to adjudicate Form I-360 VAWA petitions. Unfortunately, the average processing times have not decreased in light of dramatic increases in the number of VAWA filings over the last few years.

Q8. When we call USCIS about a VAWA EAD case we are told to write a letter to Vermont office; however, when you write Vermont, they send back the letter saying to use other resources or call USCIS. What is the correct process to get an update about a pending VAWA EAD (category 09)?

A8. If a self-petitioner has an attorney or accredited representative, they can use the email hotlines mentioned above.

Unrepresented petitioners and applicants may send a signed written inquiry to the address in this slide:

U.S. Citizenship and Immigration Services
Vermont Service Center
ATTN: Humanitarian Division
38 River Road
Essex Junction, VT 05479-0001

To comply with the statutory confidentiality requirements for applicants and beneficiaries of VAWA, T, and U benefits, USCIS has special procedures in place to verify the identity of the unrepresented self-petitioner. For unrepresented individuals that write in but do not sign their letter, or their signature cannot be matched to what we have on file, we are not able to respond to them. If they send an email to the hotline accounts, we are not able to respond because we cannot complete signature verification. If their request is signed and we can verify the signature, we respond to their request by mail.

This information can also be found on USCIS' website:
<https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents>.

Q9. How long does a category 09 on an EAD application with an EAC receipt number take to get processed?

A9. The current case processing times for the Form I-765, Application for Employment Authorization, at the Vermont Service Center (cases with the EAC receipt number) is 10 months. (USCIS data shows that approximately 80% of Form I-765 cases at the Vermont Service Center are completed within 10 months.) USCIS case processing times are available to the public on the USCIS website at egov.uscis.gov/processing-times/.

Q10. Will the husband/wife of the petitioner be notified if there was VAWA filed?

A10. VAWA self-petitions are filed without the knowledge or consent of the petitioner's abusive family member (spouse, parent, or adult U.S citizen child). USCIS does not provide notice of the filing to third parties. A self-petitioner can designate a "safe address" where they may safely receive correspondence related to their case. If a VAWA self-petitioner does not feel safe receiving correspondence regarding their application at their residential address, they can provide a post office box or the address of a friend, an attorney, a community-based organization that is helping them, or any other address where they can safely and punctually receive mail. The identity of the person inquiring about a confidential case must be verified and that person's eligibility to receive information must also be verified.

As outlined in the presentation, Congress created special protections of information for VAWA self-petitioners (as well as petitioners for U nonimmigrant status and applicants for T nonimmigrant status). The law requires that USCIS protect information about these applicants and their derivatives from disclosure to avoid endangering the victims by providing the person or persons who victimized them any personal information or any information about related immigration protections they have applied for. USCIS is generally prohibited from making third-party disclosure of any information relating to a noncitizen who is an applicant for VAWA/U/T benefits and prohibited from using information from particular individuals (like an alleged abusive spouse in the case of VAWA as mentioned in the example) as the sole basis for making an adverse determination of admissibility or deportability in their case.

Q11. If the process is up to two years, will the self-petitioner be given an opportunity to earn money to survive by working while waiting for the process? If so, how long will the temporary work permit be? Is there any circumstance that can lessen the wait time of two years?

A11. An employment authorization document (EAD) under the (c)(9) category is available for individuals filing a VAWA self-petition with a concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. VAWA self-petitions filed by the parent, spouse, or child of an abusive U.S. citizen (immediate relatives) or, if an immigrant visa number is immediately available, filed by the spouse

or child of an abusive LPR, are eligible for concurrent filing with the Form I-485. An EAD under the (c)(9) category is valid for an initial period of two years with renewals valid for a period of two years.

VAWA self-petitioners may contact the Vermont Service Center using the contact methods described above to request that adjudication of their case be expedited. USCIS considers requests to expedite the adjudication of a VAWA self-petition on a case-by-case basis. Because granting an expedite request means that USCIS would adjudicate the requestor's benefit ahead of others who filed earlier, USCIS carefully weighs the urgency and merit of each expedite request. USCIS may consider an expedite request if it meets certain circumstances, for example, emergencies and humanitarian reasons. Additional information on how to request an expedited adjudication can be found under the [USCIS Policy Manual, Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Requests to Expedite Applications or Petitions](#).

Q12. Is the government providing legal assistance for free and if yes, what department provides these services?

A12. The federal government does not provide free legal services or any type of legal assistance to noncitizens for their immigration matters. To learn how to find the right legal services for you, visit the USCIS online tools page at www.uscis.gov/avoid-scams/find-legal-services.

Q13. If a client “Jane” divorced her abusive USC husband a year ago but had not been living with him for the past four years. VAWA is required to file within the two years after the divorce. Is “Jane” still eligible to file a VAWA even if she had not been living with her spouse (“Jane” was in hiding) for more than two years but the divorce is within the two-year mark?

A13. VAWA self-petitioners must have resided with the abuser at any point prior to filing the self-petition or reside with the abuser when they file the self-petition. The self-petitioner is not required, however, to have resided with the abuser for any specific length of time, to have resided with the abuser in the United States, or to have resided with the abuser during the qualifying relationship. There is also no requirement for self-petitioners to be living with the abuser at the time they file the self-petition or, for self-petitioning spouses and parents, when the abuse occurred. Additional information on VAWA-related policies for shared residence can be found in the [USCIS Policy Manual, under Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act, Chapter 2, Eligibility Requirements and Evidence](#).

Q14. Why would VAWA applicants who already got a prima facie determination and awaiting final decision not be given work authorization to enable them work and be able to provide for themselves and their children?

A14. USCIS does not have statutory or regulatory authority for granting employment authorization to those who have been issued a prima facie case determination. However, as discussed above, an employment authorization document (EAD) under the (c)(9) category is available for certain individuals filing a VAWA self-petition with a concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. VAWA self-petitions filed by the parent, spouse, or child of an abusive U.S. citizen (immediate relatives) or, if an immigrant visa number is immediately available, filed by the spouse or child of an abusive LPR, are eligible for concurrent filing with the Form I-485.

Approved self-petitioners and their derivative beneficiaries are statutorily eligible for employment authorization. USCIS may issue an EAD to principal self-petitioners upon approval if they requested an EAD on the Form I-360, VAWA self-petition. Derivative beneficiaries may apply for an EAD by submitting Form I-765, Application for Employment Authorization, and supporting documentation of the principal's approved self-petition and of the qualifying derivative relationship. Persons eligible for employment authorization based on an approved self-petition receive an EAD with a (c)(31) employment authorization code.

Approved self-petitioners and their derivative beneficiaries may be considered for deferred action on a case-by-case basis. Derivative beneficiaries requesting deferred action must include a copy of the self-petitioner's approval notice and evidence of the qualifying derivative relationship with the request. Self-petitioners granted deferred action are eligible to apply for work authorization on the Form I-765 under the (c)(14) employment authorization category.

Q15. I have an approved I-360 VAWA self-petition and I plan to begin consular processing in the next few months. My case is now at the NVC. I recently got married and my spouse is expecting. I would like to add them as derivatives so that we can attend the immigrant visa application together. Is this possible? Or would they have to follow-to-join? I would also appreciate if you could point me to the relevant USCIS policies that may address my query.

A15. VAWA-related policies for derivative eligibility can be found in the [USCIS Policy Manual](#), under [Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act, Chapter 2, Eligibility Requirements and Evidence](#). Self-petitioning spouses and children may only include their child(ren) as derivative beneficiaries on the self-petition. Self-petitioning parents, however, are not eligible to confer derivative benefits to their family members.

Derivative children must be unmarried and less than 21 years old at the time of filing and otherwise qualify as the self-petitioner's child under immigration law. The statutory definition of "child" includes certain children born in or out of wedlock and certain legitimated children, adopted children, and stepchildren.

Self-petitioners may add an eligible child, including a child born after the self-petition was approved, when the self-petitioner applies for an immigrant visa outside the United States or adjustment of status in the United States. A new petition is not required.

Self-petitioners should submit evidence that the derivative beneficiary is under 21 years old and unmarried at the time of filing as well as evidence of the relationship between the self-petitioner and the child. Derivative beneficiaries are granted the same immigrant classification and priority date as the self-petitioner.

Q16. I have an approved I-360 VAWA self-petition and I plan to begin consular processing in the next few months. My case is now at the NVC. I am required to file an Affidavit of Support form but I am not sure which one. Could you advise? I would also appreciate if you could point me to the relevant USCIS policies that may address my query.

A16. Consular processing is under the jurisdiction of the U.S. Department of State (DOS), National Visa Center (NVC). Additional information on Affidavit of Support [requirements for consular processing](#) and a list of [Form I-864, Affidavit of Support, FAQs](#), can be found at the DOS consular processing webpage at www.travel.state.gov. VAWA self-petitioners filing an immigrant visa application are exempt from the I-864 requirement, and therefore must instead file the Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support. Additional information on the Form I-864W can be found in the [Form I-864W instructions](#).

Q17. Is there a legal resource within USCIS that can answer questions for I-360 VAWA self-petitioners?

A17. USCIS does not provide legal advice or representation to noncitizens in their immigration matters. As stated previously, to learn how to find the right legal services for you, visit the USCIS online tools page at www.uscis.gov/avoid-scams/find-legal-services.

For information on VAWA eligibility and how to apply, visit USCIS' webpage for Battered Spouse, Children and Parents: www.uscis.gov/humanitarian/abused-spouses-children-and-parents.

For VAWA related policies, visit USCIS' Policy Manual, the agency's centralized online repository for USCIS' immigration policies: www.uscis.gov/policy-manual/volume-3-part-d.