



U.S. Citizenship
and Immigration
Services

JAN 15 2009

HQ 70/6.2

Interoffice Memorandum

TO: Field Leadership

FROM: Carlos Iturregui
for Chief, Office of Policy and Strategy

Donald Neufeld
Acting Associate Director, Domestic Operations Directorate

SUBJECT: Guidance Regarding Petitioners for U Nonimmigrant Status with More Than 3 Years in U Interim Relief Status

1. Purpose

On December 23, 2008, the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457. The purpose of this memorandum is to provide guidance regarding extension of status for U Nonimmigrants, as legislated by the TVPRA 2008. The TVPRA 2008 is effective immediately and applies to applications for immigration benefits filed on or after such date.

2. Use

This guidance is created solely for the purpose of USCIS personnel in performing their duties relative to adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantial or procedural, enforceable at law by any individual or any other party in removal proceedings, in litigation with the United States, or in any other or form or matter.

3. Background

On October 28, 2000, the President signed the Victims of Trafficking and Violence Protection Act (VTVPA), which created the U nonimmigrant status and provided for adjustment of status for U nonimmigrant status holders after three years in that status. The Violence Against Women Act of 2005 (VAWA 2005) amended some of the U nonimmigrant status provisions and the related adjustment of status requirements. VAWA 2005 extended the duration of status for a U

Guidance Regarding Petitioners for U Nonimmigrant Status with More Than 3 Years in U Interim Relief Status

Page 2

nonimmigrant from three years to four years. It also allowed for a renewal beyond the four years based on a certification of law enforcement need. However, VAWA 2005 also made it clear that absent the law enforcement renewal, U nonimmigrant status could not extend beyond four years even if the individual has properly applied for adjustment of status.

In the absence of implementing regulations, on August 30, 2001, USCIS began granting interim relief to crime victims who may be eligible for classification as a U nonimmigrant. On September 17, 2007, USCIS published an interim rule, “New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status,” which created implementing regulations for the U nonimmigrant classification. 8 CFR 214.14(c)(6) provides that petitioners who were previously granted U interim relief and whose petitions for U nonimmigrant status are approved will be accorded U nonimmigrant status as of the date that a request for U interim relief was initially approved.

On December 12, 2008, USCIS published an interim rule, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” implementing the adjustment of status provisions for T and U nonimmigrants (8 CFR 245.24). 73 FR 75540. In order to be eligible to file for adjustment of status, the regulation states that an alien must have been lawfully admitted as a U nonimmigrant and continue to hold such status at the time of application for adjustment of status. Per the regulation, some applicants for adjustment of status will not be in valid U nonimmigrant status because they have already accrued more than 4 years in U interim relief status before their petition for U nonimmigrant status is adjudicated.

On December 23, 2008, the President signed the TVPRA 2008. The TVPRA 2008 contains several provisions relating to adjustment of status for U nonimmigrant status that amend the Immigration and Nationality Act (INA) and modify 8 CFR 245.24(2)(ii). These provisions, contained in INA § 214(p)(6), introduce three circumstances under which U nonimmigrant status may be extended. Amended INA § 214(p)(6) provides that U nonimmigrant status may be extended: (i) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances; (ii) if the alien is eligible for adjustment under 245(m) but is unable to apply because implementing regulations have not been issued; and (iii) during the pendency of an application for adjustment of status under section 245(m).

4. Field Guidance

Petitioners for U nonimmigrant status whose petitions for U nonimmigrant status are approved and who previously received U interim relief will be accorded U nonimmigrant status as of the date that a request for U interim relief was initially approved. Pursuant to the TVPRA 2008, petitioners who have accrued more than 3 years in U interim relief status shall be admitted as U nonimmigrants and such status shall remain valid for a period of one year from the date of approval of the petition.

Guidance Regarding Petitioners for U Nonimmigrant Status with More Than 3 Years in U Interim Relief Status

Page 3

5. **Contact Information**

This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Anne-Marie Mulagha, Office of Policy, via electronic mail.

Distribution List: Service Center Directors
 National Benefits Center Directors
 Regional Directors
 District Directors
 Field Office Directors