

# Human Trafficking Prevention Engagement

## Jan 27, 2022

### Pre-submitted Questions

#### **Processing Times**

Q1. Is USCIS making any changes to speed up processing times for T Visas? The 5,000 visa annual cap has never been met yet it takes at least two years for most cases to be adjudicated.

A1. The current processing time of 17.5 – 36.5 months for T visa applications relates to “how long it is taking USCIS to process your case from the date we received it” (quote from public USCIS I-914 processing time site).

This timeframe is affected by many factors, including cases held by outside agencies pending investigation, pending security/fingerprint appointments and checks, requests for evidence (RFEs), etc.

Additionally, USCIS highlights the following:

- USCIS added resources to the T visa program in FY 2020.
- The Vermont Service Center (VSC) does not have a large backlog of pending cases awaiting initial review.
- VSC officers are actively adjudicating cases that are eligible to be adjudicated (those not pending biometrics/fingerprint/security checks, not held for investigation, etc.).
- Please note, to ensure timely adjudication of their benefit request, T visa applicants should attend scheduled biometrics appointments or request an amended appointment per the instructions on the biometrics notice.
- USCIS issued a record number of decisions on T visa applications in FY 2020, including approvals.

Q2. What is the "average" time it takes to complete a T/U Visa application? Is there a processing difference (timeline) between U visas and T visas?

A2. Each case is reviewed on its own merits based on the evidence provided by the applicant/petitioner. This may cause varied completion times, particularly if USCIS must request additional information to complete its review of the case.

USCIS posts processing times for the Form I-914, Application for T Nonimmigrant Status, on its public website at <https://egov.uscis.gov/processing-times/>. The current posted processing time for Form I-914 is 17.5 – 36.5 months.

For Form I-918, Petition for U Nonimmigrant Status, historically, USCIS has reported the processing time from filing to waiting list determination. On June 14, 2021, USCIS updated the USCIS Policy Manual to implement the bona fide determination (BFD) process for U adjudications. While USCIS implements the BFD process and gathers initial data on the BFD adjudications, including the possible impacts of the new process on overall U adjudications, USCIS is not reporting processing times for Form I-918. USCIS is collecting the data necessary to report accurate BFD processing times and plans to update the Form I-918 processing time page as soon as feasible.

For reference, the final processing time range calculated under the pre-BFD process, marking the time from initial filing to waiting list determination, was 60.5 – 61 months.

## **T Visa**

Q3. Since bona fide determinations in T visa can be critical for public benefits access for many trafficking victims in what percentage of the cases currently is USCIS making bona fide determinations and how long are they taking? How much in advance of the receipt of the T visa are bona fide determinations being made? With the delays in processing up to 39 months, will USCIS follow its guidance to issue BFDs if a T application is not adjudicated within 90 days? The USCIS Memorandum from Michael Aytes, Response to Recommendation 39: “Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas” (May 22, 2009) states at pages 3-4 that, should processing times for a T Nonimmigrant application exceed 90 days, “USCIS will conduct bona fide determinations for the purpose of issuing employment authorization.”

A3. USCIS currently does not conduct T visa bona fide determination (BFD) review.

Under current T visa regulations, the requirements for a T BFD review are largely the same as a full T nonimmigrant status adjudication. In practice, this would mean the time necessary to conduct a T BFD review would be the same as a full T nonimmigrant status adjudication.

If USCIS conducted both a T BFD review and T nonimmigrant status review, the agency would in practice be conducting two full reviews. This would double the number of adjudications and significantly increase processing times for the T visa.

USCIS received public comments on the T Interim Rule and the notice reopening the comment period regarding the implementation of a T BFD process and is reviewing those comments now to consider in drafting the Final Rule.

## **U Visa**

Q4. What is the current processing rate for Bona Fide Determinations on U visa petitions? Will U visa petitions be reviewed continuously throughout the year to make Bona Fide Determinations, or will they be reviewed only until USCIS has reviewed a certain number of applications? Where can the public find out what receipt date Bona Fide Determination processing is current through?

A4. USCIS will generally adjudicate cases for U BFDs in receipt date order, starting with the oldest pending petitions that had not already gone through a waiting list adjudication. Petitioners do not have to request a U BFD review. USCIS will automatically conduct the UBFD review when the petition is up for adjudication.

While U visas are subject to the statutory cap of 10,000 visas per fiscal year, U BFD reviews do not have a Congressionally mandated cap. U BFD reviews will be conducted throughout the fiscal year.

For more information on the U BFD process, please visit the USCIS U BFD Policy Manual chapter at <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.

USCIS has also posted a U BFD FAQ page to its website at <https://www.uscis.gov/records/electronic-reading-room/u-nonimmigrant-status-bona-fide-determination-process-faqs>.

For Form I-918, historically, USCIS has reported the processing time from filing to waiting list determination. On June 14, 2021, USCIS updated the USCIS Policy Manual to implement the BFD process for U adjudications. While USCIS implements the BFD process and gathers initial data on BFD adjudications, including the possible impacts of the new

process on overall U adjudications, USCIS is not reporting processing times for Form I- 918. USCIS is collecting the data necessary to report accurate BFD processing times and plans to update the Form I-918 processing time page as soon as feasible. For reference, the final processing time range calculated under the pre-BFD process, marking the time from initial filing to waiting list determination, was 60.5 – 61 months.

## **Notices**

Q5. When we receive I-192 approval notices, not all of the grounds of inadmissibility we asked to be waived are cited on the approval notice as being waived. I have then communicated with the VSC by email to obtain an amended I-192 approval notice with all grounds listed, and more than a year later, VSC has not issued an amended approval notice. How are these being handled? Is there guidance for practitioners on how to handle this?

A5. Generally, USCIS will not waive a ground of inadmissibility solely based on the request of an applicant if that request is not supported by credible evidence in the record. If after review of the applicant's Form I-192, USCIS did not find the applicant inadmissible under the requested ground(s) of inadmissibility, an amended notice would not be issued.

Q6. Let's say U visa applicant got his U visa approved and at the time of his initial filing for U visa he also filed form I-192, will USCIS Approve Form I-192 at the time of approving U visa? if so, can this be enough for U visa recipient who is in US at the time of receiving U visa Approval to travel to his/her home country and directly book a visa appointment at US Consulate without requiring to file for I-192 again?

A6. Under regulation, a U visa petitioner must be admissible to the U.S. or have any inadmissibility grounds waived to be approved for the underlying U visa. Therefore, a U petition cannot be approved until all inadmissibility grounds have been waived.

If an individual in U nonimmigrant status wishes to depart the U.S., the U nonimmigrant individual will have to go through State Department consular processing to re-enter the U.S.

If new or previously undiscovered inadmissibility grounds are found during State Department consular processing, the U nonimmigrant individual will need to file a new Form I-192 with USCIS for adjudication. If those inadmissibility grounds are waived by USCIS, USCIS will inform the State Department of the approved waiver(s) so the State Department may proceed with issuing a visa to re-enter the U.S.

## Other Operational Questions

Q7. How much does a Supp. B declaration strengthen a T-visa application?

A7. The I-914, Supplement B declaration (Form I-914B) is not required evidence for T visa eligibility but rather optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests for assistance from law enforcement or another certifying agency. A law enforcement agency (LEA) endorsement is not mandatory and is not given any special evidentiary weight but does provide useful information to USCIS while evaluating the applicant's eligibility for the T visa. An LEA endorsement itself does not grant a benefit and is one form of possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS.

Q8. What is the VSC preferred process for handling extensions of status for overseas derivatives who have not yet consular processed where T-1 principal has already filed I-485?

A8. If the principal has already filed and has a pending I-485 application while still having derivative family members overseas who have not been initially admitted as T nonimmigrants, the principal may withdraw the I-485 and file an I-539 for the principal. The principal's I-539 should specifically note the exceptional circumstances in the case: the approved derivative remains overseas seeking consular processing, and the principal's T-1 validity period is expiring.

Once a Form I-485 is filed by the principal T-1, USCIS operates under the assumption that the applicant wishes to have that application adjudicated and generally will not hold cases in abeyance. The T-1 principal should file an I-539 prior to the expiration of their T nonimmigrant status so as to not risk having their status lapse.

Q9. Is there a way to request that a case be expedited if the applicant is in removal proceedings or has an order of removal that is soon to be executed?

A9. An expedite request, based solely on an applicant being in active removal proceedings, will only be considered if requested by U.S. Immigration and Customs Enforcement (ICE). If a T nonimmigrant status applicant is in removal proceedings or subject to a final order of removal, the applicant may inform ICE of the pending T nonimmigrant status application and request ICE make a request for expedited review to USCIS. However, USCIS will consider an expedite request for emergent and humanitarian reasons, among other circumstances, when requested by the applicant, the applicant's representative, or other eligible entity. See USCIS Policy Manual Volume 1, Part A, Chapter 5.

Q10. Many victims of human trafficking are migrant workers or, otherwise, do not have a stableresidential address. Is the Vermont Service Center flexible in considering requests for rescheduling of biometric appointments for these victims? Can a person in this circumstance request more than one appointment to be rescheduled to other locations if necessary? And how should that person and/or their attorney make those requests?

A10. Upon receiving the Form I-914 application, USCIS will issue a notice of receipt and schedule a biometrics appointment for the T applicant.

If the T applicant does not attend the first biometrics appointment, USCIS generally issues an additional appointment notice. If the T applicant does not attend the second appointment, USCIS may deny the T application due to abandonment.

The attorney/representative of record may reach out to USCIS via the VSC email hotline at [hotlinefollowupi918i914.vsc@uscis.dhs.gov](mailto:hotlinefollowupi918i914.vsc@uscis.dhs.gov) to request a new date/time for the T applicant's biometric appointment, or to request a location change for the appointment. The attorney/representative of record should also ensure both the safe address and physical address of the T applicant are always up to date to avoid potential processing delays.

Unrepresented T applicants in need of an updated biometric appointment, including a new date/time or location, may send a signed written request to the Vermont Service Center:

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

Q11. Is there an ombudsman office, or some other type of monitor advocate/monitoring office, that victims' attorneys can contact if they have not received a response from the VSC within a reasonable amount of time or they have reached an impasse with the VSC after having attempted resolution via e-mail to [hotlinefollowupi918i914.vsc@uscis.dhs.gov](mailto:hotlinefollowupi918i914.vsc@uscis.dhs.gov)?

A11. Due to USCIS COVID-19 safety procedures, USCIS cannot currently use the VSC phone hotline for customer service inquiries. USCIS continues to monitor and utilize the VSC email hotline to respond to customer service inquiries.

Current response times for customer service inquiries to the VSC hotline is approximately 14 days.

The DHS Office of the Citizenship and Immigration Services Ombudsman is dedicated to improving the quality of citizenship and immigration services delivered to the public by providing individual case assistance, identifying systemic issues, and making recommendations to improve the administration of immigration benefits by USCIS.

Q12. Is there any plans of digitizing the whole U, T and VAWA application ecosystem to improve the processing times? (as per my calculations U visa applications alone can have up to 28,000,000 paper documents).

A12. USCIS continually looks to improve efficiencies in adjudications and processing times. At this time, USCIS cannot provide a timeline or details on digitization in the VAWA, T and U programs.

Q13. Do T visa victims have to meet the same requirements as U visa victims? (be cooperative, follow through with the investigation, be willing to prosecute etc.)

A13. To establish cooperation with law enforcement requests for assistance, T visa applicants must, at a minimum, have had contact with an LEA, or other certifying agency, regarding their victimization unless an exemption (due to the age of the victim) or exception (due to trauma suffered) applies. The law enforcement/certifying agency cooperation requirement in the T visa program is not an ongoing requirement. Moreover, there is no requirement to demonstrate that the applicant's reporting to law enforcement, or other certifying agency, results in an opened investigation or concluded prosecution.

A U visa petitioner must establish that he or she has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the detection, investigation, prosecution, sentencing, or conviction of qualifying criminal activity, and that since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. To establish cooperation with law enforcement requests for assistance, U visa petitioners are required to submit a Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B).

Q14. Victims of trafficking are able to submit the Form I-914 Petition for T Non-immigrant status without the Form I-914 Supplement B if the crime of trafficking was/has not been prosecuted, or otherwise certification cannot be obtained." If above statement is true, what documents will USCIS consider, or accept from a petitioner as a substitute for "Form I-914, Supplement B" to determine whether a pending Form I-914 Petition for T Non-immigrant status is bona fide?

A14. USCIS currently does not make T bona fide determinations. However, to satisfy eligibility for purposes of a full T nonimmigrant status adjudication applicants can provide any credible evidence to demonstrate that they have cooperated with any reasonable requests for assistance from law enforcement, including:

- Form I-914, Supplement B;
- Documentation of a grant of Continued Presence;
- A personal statement explaining the applicant’s efforts to report to an LEA and the response or lack of response from the LEA; and
- Any credible evidence demonstrating the victim’s willingness to assist in the detection, investigation, or prosecution of a severe form of trafficking in persons, such as:
  - Trial transcripts;
  - Court documents;
  - Police reports;
  - News articles;
  - Copies of reimbursement forms for travel to and from court;
  - Affidavits from the victim and other witnesses; and
  - Any other credible evidence.

Q15. Considering lengthy processing times for, when will USCIS begin making bona fide determinations under 8 CFR § 214.11(e) to then allow access to work authorization for Tvisa applicants while their applications are pending? A bona fide determination (BFD) is also critical for a survivor in removal proceedings or in immigration detention.

A15. USCIS received public comments on the T interim rule regarding the Bona Fide Determination in the T program. USCIS is considering these comments as we draft the T Final Rule.

Q16. Can you explain the timeline between the T Policy Manual publication and comment period closure for the Interim Final rule?

A16. USCIS published policy guidance on T visa adjudications in Volumes 3/Part B and Volume 9/Part O Policy Manual in October 2021. The policy manual provides comprehensive guidance for T visa adjudications and clarifies the agency’s interpretation of existing T regulations.

Separately, finalizing the T regulations continues to be a priority for the agency, as reflected in the Unified Agenda of Regulatory and Deregulatory Actions. USCIS reopened the comment period for the 2016 Interim Final T Rule for a total of 60 days

to ensure that stakeholders had sufficient time to provide feedback and ensure that USCIS could consider the input of those who may be affected by this the finalization of the T visa regulations.

Q17. What is the anticipated timeline for publishing T Final Rule?

A17. Publication of agency regulations content is dependent on a variety of factors, including a departmental and interagency review process. While we are not able to provide a timeline for the publication of the T Final Rule at this time, we can confirm that we are actively working on the rulemaking.

Q18. Can you describe the trauma exception and child exceptions to the T Visa cooperation requirement?

A18. An applicant for T nonimmigrant status is exempt from the requirement to comply with reasonable law enforcement requests if they were under 18 years of age at the time at least one of the acts of trafficking occurred.

An applicant may qualify for an exception to the requirement to comply with reasonable law enforcement requests if the applicant can establish that their lack of contact with an LEA or compliance with a reasonable request for assistance is due to physical or psychological trauma.

For additional information, see Volume 3, Part B of the USCIS Policy Manual.

Q19. Are T visa cases confidential?

A19. USCIS protects against the unauthorized disclosure of personally identifiable information that it collects, disseminates, uses, or maintains. VAWA self-petitioners as well as petitioners for U nonimmigrant status, and applicants for T nonimmigrant status are entitled to special protections with regard to confidentiality under 8 U.S.C. 1367. This statute prohibits the disclosure of any information about petitioners and applicants for VAWA, T, and U-related benefit requests and their derivatives to anyone other than an officer or employee of DHS, the Department of Justice (DOJ), or the Department of State (DOS) with a legitimate agency purpose, subject to certain limited exceptions.

T nonimmigrant status applications, U nonimmigrant status petitions, and VAWA self-petitions are all adjudicated at a service center by officers who are specially trained in these form types. Victims may use a “safe address” on their petition. This can be the address of an attorney, preparer, shelter, or other safe place. USCIS will use the designated safe address as the mailing address for all correspondence. The VSC and the Nebraska Service Center have safe address procedures in place to protect this

information from being released inappropriately.

For further information: USCIS Policy Manual, Volume 1, PM Chapter 7

Q20. Which version of the Form I-914 should we be submitting?

A20. On Jan. 11, 2022, USCIS published an updated edition of the Form I-914. Starting May 2, 2022, we will only accept the 12/02/21 edition. Until then, you can use the 04/15/19 edition. You can find the edition date at the bottom of the page on the form and instructions.