

**Federal Bar Association Immigration Law Section CLE**  
**Memphis, TN • May 18-19, 2012**

The notes below are a compilation of notes taken from several different sessions at the conference. Please excuse any errors.

Panelists included:

- Lynn Boudreau, *Assistant Center Director, USCIS Vermont Service Center*
- Laura Dawkins, *USCIS, Chief, Family Immigration and Victim Protection Division*
- Gail Pendleton, *Co-Director, ASISTA Immigration Assistance*
- Catherine Seitz, *Regional Immigration Coordinator, Bay Area Legal Aid*
- Jessica Farb, *Staff Attorney, Immigration Center for Women and Children*
- Rena Cutlip-Mason, *DHS-USCIS, Ombudsman's Office, Senior Advisor on Humanitarian Issues*
- Sally Kinoshita, *Deputy Director, Immigrant Legal Resource Center*
- Cynthia Lucas, *Staff Attorney, Immigration Center for Women and Children*
- Chay Sengkhoumany, *Attorney, Legal Aid Society – Nashville*
- Mary Day, *Staff Attorney, Southern Arizona Legal Aid Inc.*
- Hiroko Kusuda, *Assistant Clinic Professor, Loyola University New Orleans College of Law*

**Questions and Answers with USCIS**

Where is the VSC toward reaching the caps this year?

- 6,728 toward the U visa cap; anticipate hitting the 10K cap early September.
- 415 toward the T visa cap

Any updates on processing times?

- We are now adjudicating
  - I-918s filed on or before Oct 2011
  - I-914s filed on or before Dec 2011
  - I-485s based on T and U status filed on or before July 2011

If we filed a petition a long time ago (outside the above processing times) and we have received no RFE or no reply, should we contact VSC?

- Yes, please contact us via the hotline if outside that processing time and especially if you've heard nothing

Any updates on new guidance being released?

- A memo on EADs based on bona fide filings is drafted and with counsel and been relegated to #2 at USCIS
- Age out guidance is very close, just waiting for counsel to sign so can send to front office
- T visa regs are in internal CIS clearance and will implement some of the things from TVPRA
- U visa regs implementing some things from TVPRA are also in clearance
- T and U adjustment regs are in the works
- VAWA regs are in the works, they are 200 pages long now, working to implement VAWA 2000 and VAWA 2005; they are in a holding pattern for the next week or so

- Practice Pointer: remember that the current regs do not incorporate VAWA 2000 or VAWA 2005; Gail Pendleton has created a list of obsolete VAWA regs
- We are also creating a new form the I-921 form

What should we do with derivatives until the new guidance comes out?

- File I-539s for children who will age out. We can't approve them now but can hold the cases pending the new guidance.
  - Also, just to clarify: deferred action is available to children who have not had their I-918A approved yet but risk age out. We used deferred action as the vehicle for this to avoid removal. We understand this this creates a discrepancy wherein age outs who have not been approved (but have deferred action) can get work authorization but age out whose status has expired but have a I-539 pending cannot continue to get work authorization. We regret the discrepancy but had to use deferred action to avoid the removal situation.

Our U application was denied because of inadmissibility. The AAO said they could not do anything with it; their position is that it's discretionary so AAO has no jurisdiction to review. But if it's an abuse of discretion, isn't that a due process issue and can't they do anything?

- Review of discretion is a Q that Ombudsman's Office gets a lot on various benefits; we have annual conference where try to bring interagency panel together; this year it will be on October 18<sup>th</sup> at the National Archives annual and will include CIS, DOS, DOJ and advocate community; if any concerns let Rena know
- Practice pointer: need to win with VSC for now, this is an evolving area of law, if you receive an RFE or denial bring it to Asista who will bring it to Lynn and Laura to let them know if there are issues
- USCIS: this is a new program and we're working with HQ and OCC; planning workshop in June at VSC to talk about this to figure out where we should and should not apply discretion; for example, how to handle a case where this is a string of crimes, final removal order, in detention
- USCIS: keep in mind we still need to do an assessment as to whether or not there is a public safety risk

Can we flag it so it can be reviewed by a supervisor initially?

- All denials are reviewed already by a supervisor; we can take a look at it but we can't guarantee we'll approve it; keep in mind, even if the petition is denied, you can also apply from abroad

Are applicants that have been admitted – such as a B-2 overstay – subject to INA § 237?

- The I-192 only waives 212 grounds; if the act is not a ground of inadmissibility – even if it's a ground of deportability – then you do not need to file an I-192; you do need to consider discretion, however
- Practice Pointer: In the case of something that is a deportable but not inadmissible offense (for example the domestic violence ground under INA § 237), technically you don't need it waived with an I-192; but you might want to frame it as an inadmissible crime involving moral turpitude to have it formally waived

We are being asked for copies of police reports on dismissed cases – why?

- CIS might not know it's dismissed

But we provided certified disposition that it's been dismissed, we still get police report requests for everything

- Is police report relating back to the certified crime?

No, it's an I-192 issue.

- Refer it back to us to review then.

Have you gotten new adjudicators that maybe need training?

- We have some new people trained on I-918s, team of 8 have joined us.

Strategy question: I-192 is denied and I-918 is denied so I did a motion to reconsider asking VSC to hold the I-918 while they reconsider the 192; at the same time I filed a new I-918; the MTR has now been transferred to the AAO. How should this work? If the I-192 is denied and I do a MTR for the I-192 and the I-918, after being at VSC for a few months I got a notice that it's being transferred to AAO without a decision, what happens to the I-918? Should I get a decision on the MTR first?

- CIS: MTRs should not be going to AAO; the I-918 has appeal right so might go to AAO; you should just file MTR on the I-192
- Practice pointer: if doing a MTR once you know they have receipt, send a flag to supervisor hotline; ask that supervisor follow what's happening with the case

We had a MTR at the VSC for a year and then we got a transfer notice; no decision on the MTR; then we got AAO letter saying no authority to review.

- CIS: don't understand why this is going to AAO, please let Lynn know about these cases. System is working out the kinks; we need to let Lynn know what's going on.

Sometimes people get tagged as being a gang member but they've been prosecuted for crimes with no gang enhancement and they have no gang affiliation. However, the police have tagged them as a gang member when they really aren't. How do we disprove this?

- CIS: send in whatever you have, testimony is good, witness affidavits

We have police reports that say this but it's hearsay and we can't cross examine because it's on paper

- Explain how the police pick up kids and call them gang members even if they aren't
- Include a letter from the school or something else that can help show the person's character

When is the date of admission for someone who is granted U nonimmigrant status in the US and someone who enters with a U visa?

- Date of admission is when you are granted U status on the I-94 form; when outside the US then it's the date you consular process
- Sometimes when CBP limits the stay, then the I-94 is the date that controls

Sometimes people given the wrong classification, what should we do?

- Clear those up with an I-539

Can you file a Form I-102 without the fee?

- Yes, but it's cleaner with the I-539 without the fee because we need to change the status.

I've had two cases where the consulate granted more time than the I-918 approval, then CBP stamped the I-94 with the greater amount of time

- CIS: recommend go ahead and file to extend based on the date on the I-918 approval

Someone who got U status within the US, left and came back; the I-94 dates are different from the EAD; do we need to worry?

- The EAD does not control, The I-94 does. File an I-539 to extend the dates.

- Take away: When in doubt, file an I-539

At time of adjustment, I have an I-94 that is expired but that client was granted within the US with more time. What should I do?

- CIS: still file an I-539 if in doubt

I have a U derivative whose visa is valid for 4 years but approval notice expires before he turns 21. What should I do?

- CIS: technically the child's status can only be approved until he turns 21. File an I-539. It will be held in abeyance until we have the guidance. The date on the visa is not correct; in the end we'll look at what we (CIS) approved, not what the consulate approved.

Who far in advance can I file an I-539?

- File the I-539 ninety days before the status expires.

How are you handling cases of lawful permanent residents who want to seek U status?

- We are holding those cases because we think that the legal interpretation can go either way. If the final removal order was issued from DHS then when we grant the U, the removal is cancelled by operation of law. If the removal order issued by an IJ, then you need to go back to reopen and terminate proceedings.

Can visa and passport requirements be waived for someone trying to enter at the border as a U nonimmigrant?

- Ombudsman Office: There are two arms to CBP – one wears blue uniforms and one wears green uniforms. The blue are from office of field operations (OFO) at all points of entry (POEs) (bridges, airports, etc.). The green ones are border patrol in between POEs. OFO has a directive allowing them to waive visa and passport requirements under INA § 212(d)(14).

Miscellaneous Notes from U Nonimmigrant Panel with USCIS

- I-94s from DOS have been getting visas granted for less time than NIV status, you can go to deferred inspection to get status extended; otherwise can file an I-539 with VSC to get it extended
- Bystander cases- very few and far between are approved
- Indirect victims – If a 17 year old is murdered, the applicants could be the parent or siblings
- If a child is the subject of the harm then the parent can serve as the indirect victim (e.g. child is a U.S. citizen and sexually molested and mom was undocumented)
- Be explicit as possible on the I-192 with the grounds to waive
- Derivative age out guidance – coming out soon! One small hurdle before director's office for review; deputy director has taken an interest; just need counsel to sign off on it
- If principal eligible to adjust before the U-3 enters; principal can instead do an I-539 based on this to extend principal's status so that U-3 can enter as a derivative (one principal adjusts, the derivative cannot enter as a derivative)
- Some crimes require were included in the statute because they often have a nexus to DV realm (obstruction of justice, etc.)
- Detecting crimes can count – for example, mom not that helpful yet with CPS, kid can still qualify and CPS can certify that they have detected a crime, same with judges, they don't investigate or prosecute crimes but they detect crimes and do sentencing

- Child abuse is a subset of DV which qualifies
- DHS guide for law enforcement available online
- Siblings as indirect victim – direct victim must be victim of murder/manslaughter
- Must adjust status before status expires

How long are I-929s taking?

- One practitioner says she had a Guatemalan I-929 approved last summer, entered in November

U-3 who is approved abroad and then EWIs instead of consular processing, can we cure that with an I-192?

- Don't do that; really they should depart and reenter and file an I-192 from outside the US; they are not in U status when they enter; they nulled their U status when they entered EWI

If miss deadline and status expires before filing the adjustment, is there any hope?

- File an I-539 explaining the delay and bridge the gap; can't promise an approval; must be an explanation for why status expired
- Statute allows to extend for exceptional circumstances

Can an I-539 be filed concurrently with I-485?

- No, file the I-539 first to get a decision on that before filing the I-485

Reasonable refusal to provide assistance at adjustment phase question – is everyone submitting a Supp B? What else can we submit?

- Does not have to be a new Supp B; could be new letter from LEA that the applicant remained helpful

What about evidence to show the investigation or prosecution was complete when the original Supp B was signed?

- Can provide copy of the original Supp B showing the case was closed; declaration from client OK too

What kind of evidence of public interest/humanitarian concerns can we submit?

- USC birth certificates of children; evidence that can't return to home country; abuser got deported and is in home country; if investigation or prosecution is ongoing, it's in public interest to allow victim to stay to continue to be helpful

Are I-601s required at adjustment?

- No I-601 needed; if any negative discretionary factors, then still need to address them
- File crimes as soon as possible with new (not amended) I-192
- Important that negative things are disclosed before adjustment; not as important that they are adjudicated

Will you look again at crimes that were addressed at the I-918 stage when we get to the adjustment phase?

- May ask questions again; beef up positive equities at the time of adjustment

Continuous physical presence question: What happens if client unable to reenter within the 90 days? What are the exceptions?

- If law enforcement certifies justified and related to the investigation – OK
- If law enforcement certifies otherwise justified – case by case situation and need to know reasons why not able to enter timely
- 90 day departure happened within 1<sup>st</sup> year and then the applicant was subsequently able to accrue 3 years of presence – OK, make sure this is clear in the cover letter

Can we file and I-539 to extend stay?

- Would have to have exceptional circumstances

Documenting CPP – are you looking for lots?

- No specific guidelines; applicant has to include statement in declaration; must be documented with evidence; looking for rental agreements, things to demonstrate residence here

Cooperation – have you seen any issues of reasonable refusal to assist?

- Most have remained helpful; some unique situations where applicant showed the refusal was based on unreasonable request because of continuing trauma

LEAs are overwhelmed with regular Supp B requests (at the I-918 phase) so don't want to help or they take months to respond; so it's really hard to get the new Supp B for adjustment

- CIS talking about this in finalizing the interim rule; know that it's burdensome for both LEAs and applicants

Ts being approved without certs so CIS has experience looking for other ways to show helpfulness

Will divorced U-2s be able to adjust?

- This is not discussed as much in the 245 realm as in the U realm; it is a ground for revocation
- Not sure; we're looking at it now; looking to be liberal; but restricted with U-3s and U-5s

Is the medical exam required?

- Yes, file with adjustment; wait for RFE (don't send as separate correspondence); if price is a problem for client, alert the hotline and tell them can't submit medical by RFE; VSC has been generous with time

Passport requirement at adjustment?

- No requirement at adjustment for valid passport but need to explain any gaps in passport (e.g. didn't renew it)

Have you called anyone in for an interview?

- No, but still have right to; if something were to come up like an inadmissibility ground that came up between NIV and AOS stage and was egregious criminal offense or reason to believe fraud then would refer to district for interview

Are there any special citizenship provisions for Us?

- No.
- Practice pointer: Also note that some things that can be waived at the U visa stage like false claims to US citizenship and aggravated felonies are still a bar to naturalization.

What do adjustment denials look like?

- May get an RFE or NOID first; generally an RFE issued first; then if response is insufficient it will go to denial; will get a written decision of reason for denial; can appeal to AAO; not currently forwarding folks for removal after adjustment denial

If someone has a prior expedited removal but it was automatically cancelled with the U approval, will there be any notation made in the file – will CBP know that?

- No; and we don't know how to clean up NCIC

If someone has a prior, unexecuted IJ removal order, ideally we should reopen and terminate to adjust; but if CIS has exclusive jurisdiction over U adjustments, there is no conflict. Why can't CIS adjust the person and maybe OCC would join a JMTR after adjustment? On the May stakeholder call, it was unclear.

- This question has gone up to senior leadership because arguably you could read statute either way; so we are waiting to hear back

If we need to reopen and terminate, will there be a way to influence OCC to join?

- Still file the I-485 which will automatically extend status; don't file the I-539; can file an I-765 based on (c)(9) and get a receipt notice that says status has been extended
- There is no special motion to reopen provision for U cases
- If OCC says they won't reopen and terminate right after NIV status granted; contact Gail Pendleton at [gailpendleton@comcast.net](mailto:gailpendleton@comcast.net)

Does EOIR or OCC require file from VSC if we ask to reopen or terminate?

- VSC would liaise with them to provide a copy

Is it a different situation if someone has a prior removal order and did leave?

- Then should be able to adjust because it's an executed and IJ does not have jurisdiction

What should we do if someone has a voluntary departure but didn't depart?

- Need to do a joint motion to reopen and terminate

How should a U adjustment applicant apply for advance parole?

- File I-131 with VSC

Can the advance parole document be issued without a (c)(9) EAD-based?

- You file the I-131 alone; the approval will look like an I-512 travel document

Can we get something from USCIS to show kids that never came in time (aged out before they entered) have no relief; so we can file for humanitarian relief?

- We'll take it back for consideration

Derivatives and fingerprints – client is in San Salvador and is a minor; thought she'd go get fingerprints and she'd send them to us; consulate said they would take fingerprints and send them, is that the procedure?

- Practice pointer: Yes, they'll send them directly to VSC without sending the attorney a notice

Someone traveling after U status; is within a week of the 90 days outside the US and we've been emailing for the unlawful presence waiver and have not heard anything back; we filed immediately after departure so it's been at VSC for 3 months

- Reference this conference and that you talked to Lynn because it needs to be expedited; Lynn will follow up
- Sometimes we can't get it done within the 90 days because of security checks
- Reach out to CIS Ombudsman Office too

Detained U case received by VSC in Dec, still no biometrics appointment? Is this normal?

- No, he should've received an appointment; email the hotline

Filed an I-918 case in Jan 2011; was told it's under security checks and still pending; what to do?

- Could be a valid reason where we need to look into it more closely; sometimes the FBI checks take a long time although they are getting faster; although some things don't get cleared up quickly and VSC does not have control over that

Is there a widow provision for U and T?

- Yes, if you've got a pending U and the principal dies, the derivatives can benefit as long as one of them is in the US; this works at the petition stage; only works at adjustment if the petition has already been approved, see INA § 204(l); also there was a December 2010 memo and AFM update on this

Has there been consideration or exceptions to accept a Supp B that has already been past the 6 months and not possible to get a new one?

- No exception, better to file skeletal I-918 within the 6 months and then supplement rather than let it expire

What will happen with crimes that are committed after the I-918 is approved?

- If after the I-918 approved – now admitted so INA § 237 applies; can file an I-192 but it's really only to waive inadmissibility grounds if travel; does not prevent the issuance of an NTA for INA § 237 grounds