

PRACTICE UPDATE:

Issuance of Notices to Appear (NTAs) in Denied Humanitarian-based Immigration Cases



Practice Update: Issuance of Notices to Appear (NTAs) on Denied Humanitarian-based Immigration Cases¹

In May and June of 2019, practitioners reported that USCIS issued a number of NTAs in connection with denied U and T visa applications. Given these reports, it appears that USCIS has started to implement the June 28, 2018 [Updated Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#) policy memorandum (NTA memo) for survivor-based forms of immigration applications like U and T visas. This practice update addresses some of the actions practitioners can take in individual cases as well as to support policy-level advocacy efforts.

A. Strategies for Individual Cases before NTA issuance

1. **Screening and Notice:** Practitioners should ensure they are informing clients with new and pending cases about the additional risks of the NTA memo in the event of a denial. It is essential that clients are screened for all forms of potential relief, including potential relief in proceedings, and that they are aware of their risks and benefits of filing.
 - a. *Please contact ASISTA or ILRC if you need technical assistance to evaluate the strength of a VAWA, U or T visa case, or to explain the impact of the denial notice to a client and the plan to challenge it. For technical assistance on T visa cases, contact CAST.*
2. **Background Checks:** USCIS has increased its scrutiny of cases with criminal history and of those with credibility issues based on inconsistent statements from previous applications. Therefore, practitioners should conduct FBI background checks or FOIA requests when possible to make sure the newly filed application is submitted with all the appropriate waivers and explain any inconsistencies with prior applications. Practitioners should pursue post-conviction relief where appropriate.
3. **Evaluate Cases for Administrative Review:** Practitioners should evaluate all denials and act on all possible bases of appeal, including filing a Motion to Reopen and/or Reconsider. This is an essential consideration as an NTA should only be issued after the appeal/motions period has expired, and if there are no other pending applications for relief.

B. Advocacy Strategies for Cases After an NTA has been Issued

1. **Story Collection:** If you have received an NTA from USCIS as a result of the June 2018 NTA policy guidance, please report it to the AILA Story Collector to help evaluate trends in the

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implementation of this policy: <https://www.aila.org/advo-media/agency-liaison/case-examples/ntas-issued-as-a-result-of-usciss-new-nta-policy>

2. **Check for Procedural Deficiencies:** It is essential to evaluate the Notice to Appear to determine whether it is possible to bring factual or legal challenges (including whether the full 33-day period for appeal has expired, fake dates on the NTA, service of process issues, etc.). For more information on NTA challenges, see [this American Immigration Council and Penn State University Advisory](#) or contact ASISTA for technical assistance.
3. **Technical Assistance:** If you have an NTA issued in your humanitarian-based cases, please contact our organizations for technical assistance to discuss individual case strategy.
 - a. **ASISTA:** ASISTA offers training, technical assistance and case liaison assistance with US Citizenship and Immigration Services and related agencies for VAWA self-petitions, U and T visa matters. For more information, visit [our website](#) here or contact us via email here: questions@asistahelp.org
 - b. **CAST:** CAST offers technical assistance and case liaison assistance for T Visa applicants and also assistance with trafficking survivor issues generally. For assistance please contact: <http://bit.ly/CASTTaForm>
 - c. **ILRC:** ILRC offers case-specific consultations and technical assistance. Please contact aod@ilrc.org.
4. **Learn More About Litigation Efforts:** The civil rights and legal services organization Asian Americans Advancing Justice in Los Angeles is looking to put together a class action and to connect with practitioners interested in pursuing a litigation strategy to challenge the NTA guidance. If you and your clients are interested, please connect with John Trang at: jtrang@advancingjustice-la.org or (213) 241-0225.

Note: The litigation option and pursuing a MTR/appeal of the denial are not mutually exclusive. It is possible to pursue administrative review of the case while also trying to challenge the NTA guidance itself.

C. Stay Connected

Our agencies will continue to post updates and resources on NTA memo implementation. Stay connected with these efforts here:

- **VAWAupdates Listserv:** Email vawaupdates-subscribe@yahoogroups.com to join.
- **CAST Legal Working Group:** <http://eepurl.com/8TV35>.
- **Alliance for Immigrant Survivors (AIS)** is a national network of advocates and allies that maintains a clearinghouse of updates and action items around immigrant survivor protections. To join AIS' mailing list, click [here](#).