

October 23, 2014

Mr. León Rodríguez
Director
US Citizenship and Immigration Service
20 Massachusetts Ave, NW
Washington, DC 20549

RE: Implementing Parole Procedures for U visa Program

Dear Director Rodríguez:

On December 11, 2013, two months into the last fiscal year, USCIS announced that it had approved the statutory maximum of 10,000 petitions for U-1 nonimmigrant status (U visas) for 2014. USCIS has previously indicated that the visa cap for FY 2015 has also been met and given the number of applications in the current queue, USCIS will likely adjudicate applications for visas available in FY 2016 and beyond and grant conditional status to those eligible.¹

Compounding the current problem, recent statistics show that the number of pending applications vastly exceeds the allotted annual allocation, and this backlog grows year after year. Given the number of crime victims eligible for U relief, it is apparent that the 10,000 annual U visa cap allocation has resulted in a several-year delay in the availability of U visas. Without legislative changes, this situation is likely to remain unaltered, leading to ongoing multi-year waits for final U visa approval. This is especially burdensome for victims and their families located abroad, and for victims who need to travel to help family members awaiting U visa assignments.

Parole for conditional grants abroad

The lack of a procedure for granting parole to U conditional grantees abroad is a significant obstacle to achieving the protection and support for crime victims and their families that U visas are intended to provide. Parole to conditional grantees abroad would alleviate the consequences of the delayed U grants. Family members abroad (often children) desperately need to reunite with the primary crime victim, and the crime victim needs family support to heal and build a new life.

Although USCIS is under a regulatory directive to provide deferred action or parole to U-1 petitioners and qualifying family members, to date USCIS is only partially complying with this requirement.² Those U principals and derivative beneficiaries with conditional approvals who are residing in the U.S. have been granted deferred action and employment authorization while they await visa availability, while those with conditional approvals residing abroad have received disparate treatment, essentially receiving no benefit from conditional approval status. We suggest

¹ USCIS. Number of I-918 Petitions for U Nonimmigrant Status (Victims of Certain Criminal Activities and Family Members) by Fiscal Year, Quarter, and Case Status 2009-2014. Issued August 2014.

² 8 CFR 214.14(d)(2)

that USCIS could swiftly remedy this by articulating a clear process for conditional grantees requesting parole from the Vermont Service Center or the International Operations Division or both. Given the goals of Congress in creating U visa, we suggest that parole documentary requirements for this class of crime survivors should be assumed to be met, per se, without the intensive, individualized documentation currently required for parole requests generally.

Advance parole for conditional grantees needing to travel

U conditional grantees in the U.S also need a policy and procedure to facilitate travel abroad. Although they are granted deferred action (DA), and similarly situated DA grantees such as Deferred Action for Childhood Arrivals (DACA) recipients are allowed to travel under advance parole, to date, there is no established mechanism for U conditional grantees or U visa holders in the U.S. to seek travel authorization. We ask USCIS to implement the same advance parole procedures as it has for other deferred action recipients.

Recommendations:

A. Create Parole System for U Visa Conditional Approvals Abroad

The U visa regulations at 8 CFR Section 214.14(d)(2) specifically provide that "USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." Based on this regulatory directive, we recommend that USCIS, either through the Vermont Service Center adjudicating the U applications or through the International Operations Divisions, should adjudicate U parole requests under the following guidelines:

- All U principals and qualifying family members abroad with conditional approvals should be presumed eligible for parole upon request by virtue of their conditional approval status. In these cases, USCIS should not require a declaration, detailed statement, or other evidence regarding the need to parole the principal or derivative family member into the United States.
- Consistent with 8 CFR 103.7(c)(3)(xviii), allow for a fee waiver for Form I-131 where the evidence indicates that the applicant for parole is unable to pay the required fee derivative of a conditional U visa principal.
- Consistent with INA Sec. 212(a)(4)(E)(ii), which makes the public charge ground of inadmissibility inapplicable to persons with U status, do not require conditional U grantees to submit an affidavit of support on Form I-134 in support of an application for parole.
- Do not require DNA testing absent a specific problem with the traditional relationship documentation. The derivative applicant's qualifying family relationship to the principal U applicant has already been established by the conditional approval of the I-918A by USCIS.

Case Examples Of Need of Parole System for U Conditional Approvals

The case examples below illustrate the various hardships and difficulties created by the lack of broad and clear policies and procedures to provide parole to conditional grantees abroad.

Case example: *Catalina** was the victim of domestic violence. Her U status application was conditionally approved on March 19, 2014. Catalina has three derivative children in Guatemala who were included in her application but are unable to travel. They have been the victims of repeated, increasingly serious death threats and extortion by gang members over the past six months. Catalina is overwrought with worry about her children, and hopes they can come as quickly as possible.

Case example: *Mariana** was the bystander victim of the murder of a member of her household. Her U Status application was conditionally approved in June 2014. Mariana's derivative son is in Guatemala and was included in her application but is unable to travel. , Mariana's son and his immediate and extended family members receive nearly constant death threats by gang members. In the months since Mariana's conditional approval, her derivative son has reported to her that an uncle and cousin have been killed, and that he fears every day will be his last. On one recent call, he told his mother that he believes he will be killed before he is ever able to enter the U.S. Mariana's worry and dread are so overwhelming that she is barely able to function.

Case example: *Sofia** was granted deferred action as a result of the U Visa waitlist in June 2014 based on being sexually assaulted at knifepoint. She had to suddenly depart the United States in January 2014 after her father passed away in Mexico, as there was nobody in her family willing or able to bury him. Sofia's husband applied for humanitarian parole with USCIS for Sofia, but the case was denied. She is alone in Mexico, has been robbed since she has been living there, and suffers from depression and arthritis. Sofia has three US citizen children, all of whom desperately need their mother to return.

B. Create Advanced Parole System for Approved U visa holders and Conditional Grantees to Travel Abroad

USCIS should create a parole system for U visa holders and those conditional grantees with deferred action status who need to travel abroad. Having this system in place would not only create a more streamlined and simple process for U visa holders and conditional grantees who must travel abroad but also is congruous to other programs, such as T visa holders and DACA deferred action recipients.

Although there is a current process in place for U visa holders who need to travel, it is cumbersome for all concerned because of the requirement that those in U status obtain a visa to

* Cases reflect true stories; names have been changed to protect the privacy of the victim. If required, we can provide more case specific information to USCIS in a confidential manner.

return to the U.S. This policy requires unnecessary additional work for USCIS and the Department of State, with processing delays that put the U status holder at risk of remaining outside the U.S. in excess of 90 days, thereby jeopardizing his or her eligibility for adjustment of status. Additionally, most U status holders traveling abroad trigger an unlawful presence bar upon departing the U.S. These U visa holders need to file a waiver of inadmissibility, which USCIS in turn needs to adjudicate. Allowing U status holders to apply for advance parole would streamline the travel process for applicants as well as for the government. This would also eliminate exposure to triggering new unlawful presence inadmissibility, since travel on advance parole is not considered a departure for purposes of this ground of inadmissibility.

Case Examples Showing Need for Advanced Parole System for U Visa Program

The failure to provide advance parole availability for conditional grantees in the U.S., as well as for U status holders, has also led to significant hardships and complications for crime victims and their families, as illustrated by the following case examples:

Case example: *Emilio* was granted deferred action as a result of the U Visa waitlist on January 6, 2014 based on the horrific sexual abuse he suffered as a very young child by his step-father. His youngest brother, Christian*, was deported to Mexico and was also a victim of sexual abuse at the hands of the same tormentor. They grew up in a violent and unstable environment which included homelessness, hunger, child labor, sexual abuse, physical abuse (to themselves and witnesses to the brutal abuse to their mother by various men), and pervasive neglect. As Emilio cannot travel safely as a conditional grantee and Christian cannot enter the United States, Emilio has not seen Christian for four years and feels as though his life is frozen because of the separation. He desperately wishes to apply for Advance Parole to travel to see his little brother in Mexico.*

Case example: *Sandra,* a victim of rape, was granted U-1 Nonimmigrant Status and her mother Maria* was granted U-4 Status. Hector*, Sandra's brother and Maria's son, was murdered in Oakland, California. Both Sandra and Maria traveled to Mexico to bury Hector among family. They started their consular processing at the American consulate in Ciudad Juarez, where an officer unfamiliar with the U visa shouted at Sandra at the public window, demanding details about the rape and chastising her and Maria for having entered the U.S. illegally years ago. They were told that they didn't have a chance of getting a visa to return. Finally, after much advocacy on their part by their attorneys, Sandra and Maria were granted their U visa and were able to return to the U.S., just days before the 90-day limit.*

Case example: *Khalid* was granted U-1 Nonimmigrant Status as the victim of an armed robbery. He wanted to return to India to briefly visit some family. His attorney contacted the American consulate in Mumbai to inquire about how the U visa process worked there, since information was neither available on the consular website nor on a database shared by U visa advocates nationally. With uncertainty about whether the consular officials in Mumbai would be able to expeditiously process a U visa for Khalid to return to the U.S. within the 90-day limit, he was unable to travel.*

We appreciate your time and attention to these issues as victims and these families direly need a way to reunite to rebuild their lives. Should you need additional information, please contact Gail Pendleton at gail@asistahelp.org or Cecelia Friedman Levin at Cecelia@asistahelp.org.

With regards and thanks,

ASISTA Immigration Assistance, *Des Moines, IA*

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities,
Minneapolis, MN

Catholic Legal Immigration Network, Inc. (CLINIC), *National Office-Silver Spring, MD*

Immigration Center for Women & Children, *Los Angeles, San Diego, and San Francisco, California*

National Immigrant Justice Center, *Chicago, IL*

Phillips & Urias, LLP, *Los Angeles, CA*

Tahirih Justice Center, *Arlington, VA*

Sanctuary for Families, *New York, NY*

Washington State Coalition Against Domestic Violence, *Seattle, WA*

cc: Ms. Maria Odom, Ombudsman, U.S. Citizenship and Immigration Services
Lynn Rosenthal, White House Advisor on Violence Against Women
Felicia Escobar, Senior Policy Advisor, White House Domestic Policy Council
Maureen Dunn, USCIS, Division Chief, Office of Policy and Strategy
Scott Whelan, USCIS, Adjudications Officer, Office of Policy and Strategy
Tracey Parsons, USCIS, Assistant Center Director, Vermont Service Center