

DHS Q&A Sessions
November 9th and 11th, 2005 ♦ Irvine, California

Panelists: George Murphy (CIS Vermont Service Center VAWA Unit Supervisory Adjudicator), Michelle Young (CIS Vermont Service Center VAWA Unit Supervisory Adjudicator), Karen Saunders (San Diego CBP Field Operations Supervisor), Dorothy Stefan (Seattle ICE Office of Chief Counsel)

Moderators: Ana Vallejo and Sally Kinoshita, ASISTA

VAWA Questions

1. Can you please give us an update on what the situation is like now at the Vermont Service Center? Who are the supervisors, how many adjudicators, and what hotline numbers we should be using for what?

Currently, in the VSC VAWA Unit, there are 2 supervisors, 25 adjudicators, 4 information officers plus administrative staff. **The 802-527-4888 hotline** is still used for VAWAs, U visas and T visas.

2. Do you have statistics from 2004 and 2005 on the number of I-360 self-petitions filed, granted, denied and found to be fraud cases?

FY 2004 statistics: 6800 I-360s filed, 5076 approved, 1550 denied.

FY 2005 statistics: 8300 filed, 8300 approved (includes previously pending files), 2205 denied.

Since VAWA passage (thru 3/05): **38,000 filed, 30,672 approved, 7200 denied.**

3. How many VAWA cases have gotten referred to ICE for removal? What were some of the reasons for referrals?

Currently, cases are not being specifically referred for removal. Adjudicators do not refer to ICE directly, but post-9/11 checks can lead to priority for referrals.

4. When does CIS plan to update its VAWA-related regulations?

According to headquarters, as soon as they can be reviewed and approved.

NOTE from ASISTA: VAWA '05 required that DHS issue regulations on both VAWA 2000 and 05 within six months (from January). We know the VAWA personnel are working hard to do this, but it's a big job for one person, so we ask the field to be patient. As in the past, we expect internal guidance will hasten implementation of the law while regulations go through their arduous approval process.

5. How long is the backlog on VAWA processing once they receive an application? How long does it take for a work permit to be issued? How long is it taking for prima facie notices to be issued and for final approvals to be issued?

The backlog had been about 8-9 months a year and a half ago. Now the backlog is only about 2 months to get to the first look. Therefore VSC is no longer issuing cursory RFEs in advance of an adjudicative RFE because there's no backlog.

Timeline: prima facie determination 2-4 weeks, initial review by adjudicating officer 2 months. EADs with (c)(9) are even faster. EADs with (c)(14) are on the same timeline as the I-360 approval.

6. Re-adjudicating I-360s: Some local offices are re-adjudicating I-360s despite the previous CIS memo. Has there been some policy communicated to the local offices to allow for this? What can advocates do in this case?

There has been no policy change here – local offices should NOT be re-adjudicating the I-360s. What to do: Raise this issue up the chain of command. Use the CIS memo that says they should not re-adjudicate. Then contact ASISTA for assistance.

7. Can VSC confirm whether an abuser has naturalized after approval of an I-360 so the self-petitioner can adjust as an immediate relative?

Privacy issues restrain VSC from doing this. However, advocates can contact VSC via the hotline or in writing to request a revised approval notice if they believe the abuser naturalized. VSC will confirm via all their systems – may not give a specific response but may give a revised approval notice.

8. What should we do if EAD cards are not being received by us or by our clients from VSC? Is there any way to rectify this problem? When this has happened, we have been filing expedited processing requests – which has worked for most part – but there's still a time gap of no valid EAD for client.

Contact the VSC hotline and reference A number and receipt number, if any. Remember: If it's a first EAD under (c)(14), then deferred action is required FIRST. It is OK to file for first EAD under (c)(9) when filed with an I-485. It may also be a mailing problem. Please note that there are 2 lines for address if necessary.

9. Is there an internal directive from CIS Headquarters giving VAWA self-petitioners 30 days to file an I-360 from the date of an adjustment interview?

There is no such memo. However, Laura has told some CIS offices to allow at least 30 days for a person to file.

NOTE from ASISTA: We understand the policy to be: When you have an adjustment interview based on an existing I-130 and wish to switch to a 360 as the basis (which we highly recommend), you (a) must notify the local office that you intend to do this (include a 384 notice as well, see Asista website for a sample) and (b) file your self-petition within 30 days of that notice. We do NOT recommend waiting for the adjustment interview to give them notice that it's a domestic violence case covered by the protections of IIRIRA section 384. If you delay filing the 360 beyond 30 days, the local office may deny the adjustment and put your clients into proceedings. If necessary, file a skeletal application explaining why you are doing so, but FILE a 360 WITHIN 30 DAYS of giving the local office notice.

10. What is VSC doing with I-360s who have prior removals and reentered? Are they passing the info on to ICE?

No, VSC is not passing them on to ICE.

11. Is a victim eligible to self-petition under VAWA if the abuser became a LPR after the couple divorced, it has been less than 2 years since the termination of marriage and the divorce was connected to the abuse? The issue here is of the abuser becoming an LPR after the marriage.

No, because the victim would not have a qualifying relationship.

NOTE from ASISTA: The problem here is the divorce. Read INA § 204(a)(1)(B)(ii)(I)(bb) & (II) closely: The abuser need not be an LPR during the abuse or the marriage (although the abuse must have taken place during the marriage)(I)(bb), BUT the applicant must be married to the abuser at time of filing (II)(aa)(AA) or have been a spouse of an LPR within the past 2 years (II)(aa)(CC). In the hypo, the applicant was divorced before the abuser became an LPR, so she meets neither qualification.

12. Is a victim eligible to self-petition under VAWA if the abuse took place while the spouse was not an LPR, and then the abuser becomes an LPR after the spouses separate? The issue here is where the abuser abuses the victim before getting LPR status; the couple then separates (but doesn't divorce). So the abuse happened during the marriage, but not while the abuser was an LPR. Is the victim VAWA-eligible?

If the self-petitioner can make the connection for VSC and argue that the abuse continues somehow, she may still be eligible.

NOTE from ASISTA: We don't think there has to be ongoing abuse. Make the statutory construction arguments in the note above and let us know if you have problems. We will send a note to VSC supporting your statutory argument.

13. Is a victim eligible to self-petition under VAWA if the abuser acquired LPR status after he and the petitioner stopped living together?

Possibly. It depends on a totality of circumstances.

NOTE from ASISTA: Continuing with the statutory analysis: The applicant must "have resided" with the spouse, not an LPR, see (II)(dd). We therefore think the statute permits this, as long as there was abuse during the marriage and one of the abuser's LPR status conditions apply (see Q 11 note).

14. Is there a way for us to verify with VSC before filing whether an abuser is a LPR, when we know the abuser has had a pending I-485?

No. VSC cannot verify an abuser's status before the filing of the I-360. They can only do so in conjunction with a filed I-360. Provide ALL of the facts you have and VSC will look hard in their system. The more info that you provide, the better the likelihood that VSC can find someone in the system.

NOTE from ASISTA: The same privacy protections noted in Q 7 apply here. VSC can't give out information on an individual's immigration status without that person's consent (we wouldn't want them to do this to our clients, would we?). In our experience, however, VSC strives to discover the information and act accordingly. You can tell what it's discovered by the preference category in which your client is placed upon approval. **PRACTICE POINTER:** Give as much detail as possible on where (what office) you think the abuser may have gained LPR or naturalized. The centralized data system is not notably comprehensive and VSC can't check every local office.

15. Can you tell us the status of VAWA I-360s submitted by self-petitioners who qualify because the abusive spouse was deported based on domestic abuse?

Yes, a new memo discussing the required connection is now available on the CIS website. These will be adjudicated on a case-by-case determination.

16. In cancellation cases, can ICE confirm the status of an abuser to determine if the person is eligible for cancellation?

No because of privacy concerns.

PRACTICE POINTER from ASISTA: BUT practitioners have been successful in convincing immigration judges (at master calendar hearings) to require ICE to give them the necessary files so the judge can decide. As with the VSC approach, you're not asking the IJ to tell you the answer, just to tell you if your client meets the basic eligibility requirements.

17. For states with fault-based divorce, to show connection between the divorce and abuse is it okay if divorce is uncontested?

Yes, you just need to show a connection with other evidence.

18. What is the process for a fee waiver – how are they processed and what should the request include?

Fee waiver requests are flagged and they must be signed off by a VAWA Unit supervisor. They should include information on household income, the number of people in the household, the number of dependents, and receipt of public benefits. Child applicants must also include household information.

19. Under what circumstances will VSC expedite an I-360?

Currently, VSC is processing one-month old cases. It typically takes 6-8 weeks for an adjudication. Since the backlog is virtually gone for now, there shouldn't be much need to request an expedite. However, if you need one, call the VAWA hotline to request it. In proceedings is a reason to expedite, especially if hearing is coming up soon.

20. When should an EAD renewal be filed?

Ninety days in advance of its expiration.

21. What can we do about denied I-360s?

You can file motion to reopen/reconsider, appeal to AAO or file a new I-360. Use the motion to reopen if you face statutory bars – it's more expensive but a better option.

PRACTICE POINTER from ASISTA: ALWAYS do a motion to reopen/reconsider. The AAO is not trained on VAWA and its handling of those cases is slow and extremely unpredictable. Contact ASISTA for help with a motion.

22. Are there special procedures for filing if abuser is a DHS employee?

Yes. VSC does not want these I-360s in the computer system. Therefore, FLAG the application in any and all ways. VSC is creating an offline system without national database access. Contact ASISTA to make sure it's flagged.

Deferred Action Questions

1. Can you explain what the process is now that requires VSC to obtain permission from ICE before granting deferred action to victims with final orders of removal?

A guidance memo came out in June 2005. VSC cannot grant DA to people with prior removals or in proceedings. The consultation process will be same as with U visas. Laura

Dawkins (CIS HQ) is working out the details. Clients with prior final orders will NOT be referred for removal automatically.

2. Is there any plan for CIS to review cases that have been granted DA status and who have not adjusted status? In other words, does CIS plan to see if DA applicants have immigrant visas immediately available to them but haven't adjusted?

Currently, VSC can continue to renew DA indefinitely for immediate relatives who can't adjust or aren't ready. However, in the future a deadline of 24 or 27 months may be instituted.

VAWA Adjustment Questions

1. When the I-360/I-485 applications are concurrently filed, what is the process for transferring files to the district office for interview on the I-485 after the I-360 has been approved?

Two files are created, an electronic one and a paper file. This may mean that transfers of files may be delayed. There is now a new process wherein the VAWA Unit (instead of the I-485 unit) will ship the file to the local office which should help the transfer process.

PRACTICE POINTER for cases that are not concurrently filed: The Chicago lockbox has been having a lot of problems. Put really big 35 pt type on cover sheet, indicating that it's a VAWA file.

2. Can you please clarify the procedure to request an adjustment application be held open pending I-360 approval?

The procedure depends on your local office, since different districts have different procedures. PRACTICE POINTER: Make sure to invoke IIRIRA § 384 confidentiality provisions when making the request.

3. Some districts are still experiencing denials of adjustment for pre-4/1/97 VAWA EWIs that don't have the domestic violence nexus to avail of the 212(a)(6)(A)(i) relief. Is there any clear guidance interpreting 245(a) that the district offices receive to allow adjustment for all VAWA EWIs?

Guidance from headquarters should be coming very soon.

4. Do we know if there is any relief on the horizon for self-petitioners with prior removals who face reinstatement at AOS?

OCC is pursuing this issue now. No details available.

ASISTA UPDATE: In VAWA 05, Congress specifically encouraged DHS to use its discretion to grant I-212s (advance permission to re-enter), which overcame this problem in the past. See our VAWA 05 analysis for more details.

5. If an I-360 was approved years ago, can VSC accept the I-485 now?

Yes.

6. How can we help derivatives who are abroad to join the principal?

It's hard to inform everyone who is involved, even within the US. The local office sends the I-824 to the NVC where it is held until visas are nearly ready, then it is passed to the consulate

in home country. If I-824 goes to Vermont, it's adjudicated by VSC, the approval goes to filer and the consulate should also get info from VSC. Documenting kids abroad from the beginning when you file the I-360 should make things easier. If you run into problems, use the same procedure – go up chain of command and let VSC and Laura know results.

U Visa Questions

[Please note: most questions related to U visas and U interim relief could not be addressed because of pending litigation.]

1. Can advocates use the VAWA Hotline to find out information about the status of U interim relief requests? If not, how do people who haven't gotten a receipt, and therefore no case number, find out what's happened to a case?

Yes, use the VAWA hotline. It will have info on U visa status. Because U interim relief applications do not get a receipt, you cannot use the online system. However, you usually will get an I-765 receipt.

T Visa Questions

1. Will CIS approve a T visa where the Department of Labor investigates the labor violation and is willing to certify by signing the I-914B, but the US attorney's office and US civil rights division declined to prosecute or refused to sign the I-914B?

Yes, it can be submitted as secondary evidence. An I-914(b) from LEA is primary evidence but secondary evidence is acceptable.

2. Can DHS waive fingerprinting fees for T visa applications?

No – CIS must pay FBI to run prints, and therefore they cannot be waived. PRACTICE POINTER: fingerprints are valid only for 15 months so make sure to time your request.

3. Can you tell us if there is training for law enforcement agencies, US attorneys or DOJ attorneys regarding the T visa eligibility criteria, evidentiary standard for adjudicating Ts, and the roles of ICE, US attorneys office and CIS in the adjudication process for T visas? What is the training and can we have a copy of training materials?

Walt Laramie used to circuit ride to train agencies. VSC staff was recently retrained. Now each agency trains their own staff. We will ask about obtaining materials.

8. Can a U visa cert be used for a T application?

Yes, as secondary evidence

ASISTA PRACTICE POINTER: Be very clear what you're doing when you do this. Us are rarely certified for trafficking per se and this can confuse the adjudicator. Congress made even clearer in VAWA 05 that crimes of which trafficking was a part can qualify, but you need to be explicit about this. Show (preferably through the certifier) how trafficking was central to the criminal activity, even if the crime ultimately investigated/prosecuted was something else (e.g, sexual assault/domestic violence).

9. Does continued presence guarantee T approval?

No.

10. Why might Ts be denied if they got continued presence?

Because there are other requirements for Ts that may not be met: extreme hardship, physical presence on account of trafficking, helpful to investigation, unusual or severe harm on removal.

Questions for ICE and CBP

1. What happens if an abuser reports a victim to DHS for removal?

If an abuser reports that the person has a conviction record, ICE will check their systems. If the abuser reports that the victim is undocumented, they will not pursue the person. Otherwise, IIRIRA § 384 confidentiality provisions are not well understood by all agencies.

ASISTA PRACTICE POINTER & UPDATE: In VAWA 05 Congress mandated that DHS (read ICE particularly) must develop and implement policies for dealing with 384 and those protected by it (VAWA, Us & Ts). In the mean time, it is our experience that every ICE office handles the situation differently. Some do, in fact, go after victims who are undocumented; others identify and help victims they encounter; most are somewhere in between. YOU must develop a relationship with your local ICE office, while we work on the national level encouraging them to adopt helpful policies and protocols.

2. How can we access ICE files on detainees?

Contact the detention center or ICE OCC should have file.

3. What should I do if I have a client who tells me she was stopped at the border and does not know what happened? How can I find more information?

Do a FOIA request and an FBI fingerprint check. Border patrol does take fingerprints and photographs of everyone encountered along the Mexico border. They're voluntarily removed if they have no criminal history. With a criminal history, they will get an expedited removal unless the person requests a hearing. Border Patrol has and keeps temp files.