



Fact Sheet

Dec. 8, 2008

USCIS PUBLISHES NEW RULE FOR NONIMMIGRANT VICTIMS OF HUMAN TRAFFICKING AND SPECIFIED CRIMINAL ACTIVITY

U.S. Citizenship and Immigration Services (USCIS) transmitted today an interim final rule to the Federal Register that will allow “T” and “U” nonimmigrants to adjust status their status and become lawful permanent residents.

The “T” nonimmigrant status, also known as the “T” visa, was created to provide immigration protection to victims of a severe form of human trafficking. The “U” nonimmigrant status, or “U” visa, is designated for victims of certain crimes who have suffered mental or physical abuse because of the crime and who are willing to assist law enforcement and government officials in the investigation of the criminal activity.

BACKGROUND

Congress created the “T” and “U” nonimmigrant classifications with passage of the Victims of Trafficking and Violence Protection Act in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while, at the same time, offering protection to victims of such crimes. The legislation also helps law enforcement agencies to better serve immigrant crime victims.

Questions & Answers

Q: What are the eligibility requirements for “T” nonimmigrants seeking adjustment of status?

A: Applicants for adjustment of status holding a “T” visa must have been lawfully admitted to the United States as a “T” nonimmigrant and must continue to hold such status at the time of application. In addition, “T” visa holders demonstrate:

- (1) Physical presence in the United States: “T” nonimmigrants must have been physically in the U.S. for either: (a) a continuous period of at least three years since the date of admission as a “T” nonimmigrant; or (b) a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete;
- (2) Good moral character since first being lawfully admitted as a “T” nonimmigrant; and
- (3) Continued compliance with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking or extreme hardship involving unusual and severe harm upon removal from the United States.

Q: What are the eligibility requirements for “U” nonimmigrant seeking adjustment of status?

A: Applicants for adjustment of status holding a “U” visa must have been lawfully admitted to the United States as a “U” nonimmigrant and must continue to hold such status at the time of application. In addition, “U” visa holders demonstrate:

- (1) Physical presence in the United States for a continuous period of at least three years since the date of admission as a “U” nonimmigrant; and
- (2) No unreasonable refusal to provide assistance in the criminal investigation or prosecution.

Q: What are the procedures for “T” and “U” visa holders to apply for lawful permanent residence?

A: Applicants must file the Application to Register Permanent Residence or Adjust Status Form I-485 in accordance with the form instructions. Among other requirements, applicants must also present evidence that they were admitted in either “T” or “U” nonimmigrant status. That evidence may be provided by submitting a copy of the Notice of Action Form I-797. Evidence of continuous physical presence is also required; this can be provided by college transcripts, employment records, or installment payments (e.g., monthly rent receipts, utility bills, etc.) during the requisite time period.

Q: Can family members of the “T” or “U” visa holder apply for lawful permanent residence?

A: Yes. Derivative family members may apply for adjustment of status provided that the principal “T” or “U” visa holder meets the eligibility requirements for adjustment of status and that his/her application for adjustment has been approved, is currently pending, or is concurrently filed.

Q: Is there a cap on the number of “T” and “U” nonimmigrants that can apply to adjust status?

A: USCIS is limited to adjusting status of up to 5,000 “T” nonimmigrants in any given fiscal year. The cap does not apply to eligible family members. There is no numerical cap on the number of “U” nonimmigrant status holders USCIS may adjust in a fiscal year.

Q: Congress passed legislation nearly six years ago. Why has USCIS delayed in issuing the regulations?

A: The adjustment of status provisions for “T” and “U” visa holders are complex; many difficult legal and policy issues required resolution. Such issues led to intricate and often complicated discussions among the many agencies with which we needed to coordinate. The administration of the adjustment of status provisions for “T” and “U” visa holders is markedly different from other adjustment of status provisions in the INA. We recognize this is a vulnerable population and we want to ensure that our policies and procedures are sound.

Q: Are there any limitations on a “T” or “U” nonimmigrant traveling or receiving work authorization while an application for adjustment of status is pending?

A: “T” or “U” nonimmigrants follow the same requirements for any applicant with a pending adjustment of status application when it comes to travel and work authorization. Advance parole can be requested by filing the Application for Travel Document Form I-131. For work authorization, applicants must submit the Application for Employment Authorization Form I-765.

Q: Are there fees associated with this new classification?

A: Yes. Fees for filing all necessary forms and petitions, including biometric fees, can be found on the USCIS Web site at <http://www.uscis.gov/fees>.

Applicants who can show they are financially unable to pay specific fees may submit an application for a fee waiver. The decision to grant such waivers lies within the sole discretion of USCIS. Further guidance on fee waivers is found on the USCIS Web site at <http://www.uscis.gov/feewaiver>.

Q: You're issuing an "interim final rule," but still seeking public comment. What does this mean?

A. The Administrative Procedure Act allows for exceptions to the requirements for soliciting public comment before a proposed rule takes effect. USCIS believes that delaying the implementation of this rule any longer would be contrary to the public interest. Public comment is important to us and all comments received will be addressed in the final rule. Because USCIS is publishing this as an interim final rule, it will take effect 30 days after publication in the Federal Register.

Q. How can I formally comment on this proposal?

A. The public may submit comments for 60 days following the publication of the interim final rule in the Federal Register. To comment on the proposed rule, please submit written comments by one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov.
- **Mail:** Chief, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529.

Please reference DHS Docket No. USCIS-2006-0067 in your correspondence. This address can be used for paper, disk or CD-ROM submissions.

- **Hand Delivery/Courier:** U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529
Contact Phone: (202) 272-8377