

GUIDE TO U AND T DERIVATIVE NONIMMIGRANT VISA CONSULAR PROCESSING

What is Consular Processing?

Nonimmigrant Status vs. Nonimmigrant Visas

When a person applies for a T or U nonimmigrant visa and they are in the United States, they are granted T or U nonimmigrant status, not an actual visa. A nonimmigrant visa is permission to enter the U.S. as a particular type of nonimmigrant, including T and U status. T and U applicants living outside the United States will need to apply for a T or U visa once their nonimmigrant status petition is approved. If your U or T visa client has a spouse, children, or siblings abroad who were included in the initial T or U petition, they will need to apply for visas to enter the U.S. with T or U status. The process of applying for a visa abroad and then entering the United States is called consular processing.

1. Ensure your client's derivative relative has a valid passport.

- If the derivative family member is a minor child, they will likely need both parents' permission to obtain a passport. For most countries, this will require your client to execute a power of attorney in their home country consulate permitting their child to obtain a passport. If the child's father is in the U.S., he will also need to execute a power of attorney.
- This may pose a barrier for your client if the child's father is your client's abuser. Please contact your Tahirih mentor attorney to discuss options available to your client.

2. If the derivative relative is a minor child, identify an adult caretaker who will accompany the child to the consular interview.

- Make sure you have the complete name, address, and phone number of the caretaker.
- Have your client execute a power of attorney in their home country consulate authorizing this person to accompany their child to the consular interview. This power of attorney may be combined with the power of attorney authorizing issuance of a passport.

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3. Complete and submit an online DS-160 visa application.

- The DS-160 is the application for your derivative client's visa that will ultimately be placed in their passport. Be sure to answer the DS-160 questions as they apply to the derivative client, not your principal client.
- You will be prompted to enter a password and given an application number. This allows you to access the application in more than one session to complete and edit it.

Do not hit submit until all questions and answers have been reviewed with your client, and your client has confirmed the answer to each question. Once you submit the DS-160 online, you cannot edit it.

- Print the confirmation page and a copy of the completed application.
- The DS-160 will prompt you to upload a digital photo of the applicant (the derivative family member). There is no need to upload a photo, as the derivative can include a printed passport-style photo in the packet (s)he takes to the interview.

4. Have your client pay the visa fee.

- As of January 2015, the visa fee for U and T visas is \$160. Refer to the instructions on the specified embassy's website for how to pay the visa fee. Some embassies permit payment online with a credit card. Others require printing out a time-sensitive "deposit slip" that must be taken to particular banks in the foreign country where the fee must be paid.
- Regardless of how your client pays the visa fee, be sure the client or caretaker retains the proof of payment. If paid online, you will be able to print a unique payment confirmation. If your client has someone pay at a bank abroad, the bank gives the payee a unique receipt. The receipt or confirmation of online payment must be presented at the consular interview.

5. Prepare a packet for the derivative to take to his or her consular visa interview.

- Please see the sample consular packet cover letter on the eRoom for a list of documents to include in the consular packet.
- All documents in a foreign language, such as birth certificates, must be accompanied by a certified English translation.
- If the derivative relative is a child, include as much evidence of the relationship as possible, including baptismal records, school records, correspondence, photos of your client and the child together, receipts of money transfers sent by your client to her child, etc.

- If there are items that the derivative relative or caretaker has in the country of origin, such as a passport-style photo or authenticated power of attorney, leave space in the packet under appropriate exhibit tabs for those items to be inserted.
- The cover letter on the packet should be addressed to the embassy, but add a separate cover letter to the derivative relative or caretaker explaining that they need to take the packet, along with the original passport, to the visa interview. Include the date, time, and location of the interview in the cover letter to the relative or caretaker.
- Send the consular packet, with separate cover letter addressed to the derivative relative or caretaker, not to the embassy. It is recommended you send it via FedEx, DHL, or courier. Do not send by regular post without a tracking mechanism, as international mail is often lost, particularly when shipped to rural, less developed parts of the world.

6. Request a consular interview from the appropriate U.S. embassy, once you have confirmed that the visa packet has been received by the relative or caretaker.

- Although the KCC will forward your client's file to the appropriate embassy, it is unlikely that an interview will be scheduled unless you specifically request one. Most U.S. embassies abroad have an e-mail address for its consular section, and many have a dedicated e-mail address for non-immigrant visa (NIV) applicants.
- E-mail the appropriate embassy, attaching a G-28 signed by the principal client, proof of visa fee payment, and a PDF of the DS-160 confirmation sheet. Example:

Subject: Derivative U visa interview request – FirstName LASTNAME [DS-160 application number]

Dear Sir or Madam:

I am writing to request a consular appointment to process my client's U-3 nonimmigrant visa.

My client, [FirstName LASTNAME] (A# ***-***-***, DOB **/**/****, VTU***** [from I-918A approval notice]),

[DERIVATIVE NAME] is the biological daughter of [Principal Client Full Name] (EAC# - [found on I-918 approval notice]; DOB **/**/****), who holds U-1 nonimmigrant status. Her I-918A petition for U-3 status was approved by USCIS on [DATE].

Attached please find a scanned copy of the DS-160 barcode sheet for the derivative child, receipt of visa fee payment, along with a G-28 signed by Ms. [PRINCIPAL CLIENT].

Please do not hesitate to contact me should you need any further information.

Best regards,
Attorney Name

- The response time varies greatly among embassies. If you do not receive a response confirming your e-mail, follow up by e-mail or phone weekly.

7. Make sure your derivative client attends the interview.

- It is advisable to talk to your derivative client and/or the caretaker in advance of the interview. Explain that the purpose of the interview is to ensure that the information provided on the DS-160 is correct and that the derivative is eligible for the U or T visa.
- Your derivative client should answer questions honestly in the interview, and be sure to state that the purpose of seeking the visa is to “reunite and live with my mother/spouse/sibling who has U/T nonimmigrant status in the US.”
- If the interview goes well, the embassy will retain the derivative relative’s passport. A visa travel foil will be placed in the passport and sent to the derivative or caretaker at the address provided. This takes, on average, about two weeks.
- You should make plans to speak with the derivative or caretaker after the interview to ensure that the interview went smoothly. If there were any problems or missing documents, you should act promptly to provide the requested documents.

Note: The consular officer may request DNA testing at the interview.

- In several countries where there is a prevalence of birth certificate or adoption related fraud, the consular officer may request DNA testing. Providing substantial secondary evidence of the parent-child relationship can help avoid a DNA test request (see Tip 5 above). If DNA tests are requested, contact your Tahirih mentor attorney, who can refer you to competent DNA testing labs. DNA testing typically costs a few hundred dollars and can add anywhere from a few weeks to several months to the total consular processing time, so be sure to manage your client’s expectations accordingly in consultation with your Tahirih mentor attorney.

8. Work with your client to make travel arrangements for the derivative relative.

- The U visa in your derivative client's passport should be a multiple entry visa valid until the expiration date of the principal client's U-I nonimmigrant visa status. If the visa foil does not have an "M" under "Entries," contact your Tahirih mentor attorney for assistance. If it is a T visa, it will be valid for one entry into the U.S.
- If your derivative client is an adult, your client can simply book a flight to travel to the U.S.
- If your derivative client is a minor child traveling with a caretaker or escort, the child's parents must execute a power of attorney authorizing the child to leave the country of origin and authorizing the caretaker/escort to accompany the child on the flight.
- If your derivative client is a minor child who will be traveling without an escort, your client must contact the airline directly to make arrangements for the flight. Your client should ask what specific documents and authorizations will be needed for the child to leave the country and board the plane alone. Often, airlines will charge a substantial fee for unaccompanied minors, so manage your client's expectations accordingly.
- Advise your client to ensure that her derivative relatives – especially derivative children – bring their bring certificates, school records, immunization and medical records, and any other important documentation with them. This will greatly assist your client in enrolling her child in school upon arrival.

9. Schedule an appointment with your client shortly after her derivative relative arrives.

- Copy the passport, including the visa foil page.
- Print out the derivative's electronic I-94, available at <https://i94.cbp.dhs.gov/i94/request.html>, and confirm with your client that the derivative's biographical information, date of entry, and place of entry is correct. If there are errors, contact your Tahirih mentor attorney.
- Complete and file a Form I-765 for work authorization for the derivative client. Work authorization is recommended even for young children, as it enables the derivative to obtain a SSN and identification. For T visa derivative clients, their eligibility clock for public benefits begins as soon as they enter the U.S., so it's important to timely file a work card application allowing them to obtain a SSN card.
- If there are less than three years remaining on the U visa validity period, the derivative will need a Form I-539 extension of status filed. Contact your Tahirih mentor attorney for samples and guidance on filing an extension. T visa derivative clients do not need extensions because they can apply for adjustment of status whenever the principal applicant is eligible, whether the derivative has acquired three years of presence or not.

Special Considerations

What if the derivative child is not a biological child?

- If the derivative child is a stepchild, you must provide the child's birth certificate showing the biological parents, and a marriage certificate evidencing the marriage between your client and one of the biological parents.
- If the child is adopted, you must submit valid adoption certificates evidencing the proper adoption of the child under the home country's laws. There are very specific rules governing whether an adoption is valid for immigration purposes, so be sure to contact your Tahirih mentor attorney early in the case if your client has an adopted child.

What about derivative T visa applicants?

- In addition to minor children and spouses, T visa holders can now include certain other relatives as derivatives in their T visa applications. These include non-minor children, grandchildren, stepchildren, nieces, nephews, and siblings of the principal applicant, if they face "a present danger of retaliation" as a result of the principal applicant's escape from the trafficking situation or cooperation with law enforcement.
- If your T visa client's derivative relatives' petitions have been approved and your client has an economic need for assistance in consular processing, talk to your Tahirih mentor attorney about requesting assistance from the International Office of Migration (IOM) Trafficking Program. This program provides logistical support and assistance in bringing a qualifying derivative relative to the United States, covering reunification related expenses (such as passport fees, visa fees, and travel expenses), and providing an escort for minor children traveling to the U.S. to be reunited with your T visa client. Your Tahirih mentor attorney can provide you with information and forms to refer your client to this program.

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