

MY CLIENT'S U VISA HAS BEEN APPROVED... NOW WHAT?

Congratulations on obtaining a U visa for your client! Now that the application has been approved, you and your client likely have many questions about the benefits that the U visa confers and the rights and responsibilities of a U nonimmigrant. The following is a brief overview of issues that may arise:

DOCUMENTATION

Your client will receive a number of different documents once her application is approved:

- **A U visa approval notice.**¹ This approval notice has an I-94 at the bottom. Only one copy of the approval notice will be issued. You should give the original approval notice, plus a photocopy, to your client, and keep a copy in your client's file.
- **I-765 (Application for Employment Authorization) approval notice.** Even though you did not file a separate Form I-765 for your U-I principal client, USCIS issues an I-765 receipt notice and approval notice for U-I applicants who check "I want an Employment Authorization Document" on their Form I-918 U visa application. You should receive one for your client and one for you, the attorney of record. You should give the original approval notice to your client and keep the original courtesy attorney copy in your file.
- **Employment Authorization Document (EAD).** The Category listed on the card should be A19 and the card should be valid for four years.² You should copy the front **and** back of the card before giving it to the client.
- **I-192 approval notice (if an I-192 waiver was filed).** You should receive one for your client and one for you, the attorney of record. You should give the original approval notice to your client and keep the original courtesy attorney copy in your file.

These documents arrive in separate envelopes. It is not uncommon for the EAD and I-765 approval notice to arrive first and for the U visa (I-918) and I-192 approval notices to arrive several weeks later. If you have not received all the documents within approximately a month, you should call the VAWA Unit Helpline (Tel 1-802-527-4888) or email at hotlinefollowup19181914.vsc@dhs.gov and ask that the documents be

¹ All approval notices will say I-797A Notice of Action in the top right-hand corner.

² You should also make sure that the validity/expiration dates on the EAD match the dates on the U visa approval notice.

Baltimore
201 N. Charles St.
Suite 920
Baltimore, MD 21201
Tel: 410-999-1900
Fax: 410-630-7539
baltimore@tahirih.org

Greater DC | National
6402 Arlington Blvd.
Suite 300
Tel: 571-282-6161
Fax: 571-282-6162
TTY: 711
Falls Church, VA 22042
greaterdc@tahirih.org
justice@tahirih.org

Houston
1717 St. James Place
Suite 450
Houston, TX 77056
Tel: 713-496-0100
Fax: 713-481-1793
houston@tahirih.org

www.tahirih.org

(re)issued. Please send a copy of each notice and the front and back of the EAD to your Tahirih mentor attorney.

DERIVATIVES

Derivatives should receive separate U visa approval notices (and I-192 approval notices if applicable). However, unlike the principal applicant, they will not automatically be issued EADs. If you filed a separate I-765 Application for Employment Authorization at the time you submitted the principal and derivative U visa applications, you should receive the I-765 Approval Notice and EAD around the same time you receive the derivative U visa approval notice.

If you did not file a separate EAD application for a derivative, the derivative(s) must file a separate I-765 Application for Employment Authorization if they would like to have EADs.³

The Tahirih Justice Center recommends that all derivatives obtain EADS – even if they are minor children – because an EAD is a valid form of identification that is required to obtain a social security card (see below).

PUBLIC BENEFITS

Unfortunately, U nonimmigrants are not considered “qualified immigrants” for purposes of federal public benefits such as Medicaid, SSI and TANF. However, U visa holders may still be eligible for certain state programs or be entitled to receive aid on behalf of their United States citizen children. U visa holders are also eligible to enroll in a health insurance plan through the Affordable Care Act. Please contact the Tahirih Justice Center if you have specific questions about eligibility for public benefits.

U nonimmigrants are eligible (and advised to) obtain social security cards. Your client can obtain a social security card by showing her EAD and another form of identification at her social security office (the office locations can be found via: www.socialsecurity.gov/locator).

TRAVEL

Clients are strongly advised not to travel until they receive Permanent Residency (i.e., green card).

While U nonimmigrants may technically travel outside the United States,⁴ they will be required to undergo consular processing at a United States Embassy in the country to which they have travelled in order to return to the United States – a process which may take considerable time. Travel outside the United States may therefore jeopardize your client’s ability to adjust status her status to permanent resident because, as described in further detail below, she will be required to demonstrate continuous physical presence (CPP) in the United States to obtain her Green Card. A single trip outside of the United States that is longer than 90 days and multiple trips that are more than 180 days in the aggregate may break CPP, *even if inability to return is due to USCIS or State Department delay.*

³ The I-765 application packet should include Form I-765, a check for the filing fee (\$380 as of January 2015) or Form I-912 Request for Fee Waiver, a copy of the derivative’s U visa approval notice, and two passport-style photographs (with name and A number on the back).

⁴ Please note that U nonimmigrants are not required to file Form I-131, Application for Travel Document, in order to travel outside the United States.

Additionally, any client who was in the United States without lawful immigration status has likely accrued unlawful presence; departure from the United States may therefore trigger a 3 or 10 year bar to reentry.⁵ If this occurs, your client will not be permitted to reenter the United States until a new I-192 Waiver of Inadmissibility is granted. This process may be time consuming, potentially breaking CPP and impacting the ability of your client to adjust to permanent resident status.

CLIENTS OR DERIVATIVES OVERSEAS

If your client or her derivatives are overseas, their U visa may be used to enter the United States, however, it should be noted that this is a separate immigration application/process. After the U visa is approved at the USCIS Vermont Service Center, the file will be sent to the Kentucky Consular Center (KCC) for processing. KCC will then determine which consular post should receive the file and forward it accordingly. The KCC should send it to the embassy or consulate in the city indicated on the I-918A derivative petition. If the desired location of consular processing has changed, contact the KCC as soon as possible at KCCTUVisa@state.gov.

The United States consulate in your client's country of origin is responsible for issuing the U visa travel document. Generally, each derivative will need to fill out a Form DS-160, Online Nonimmigrant Visa Application form (http://travel.state.gov/visa/forms/forms_4230.html) to begin the consular processing process; s/he will also need a passport to travel. Each consulate has different requirements in order to obtain a travel document and interview, so please consult with your Tahiri attorney mentor for detailed instructions.

Once the derivative is in the United States, s/he should file an I-765 Application for Employment Authorization to obtain an EAD. If it took a year or more for the derivative to enter the United States, you should file a Form I-539 Application to Extend Visa Status

ADJUSTMENT TO PERMANENT RESIDENT STATUS

U nonimmigrants, including derivatives, are eligible to adjust their status to Lawful Permanent Resident (i.e., obtain a Green Card) after three years. For derivatives who came to the United States after being granted derivative U visas, their three-year period for adjustment of status eligibility begins on the day they entered the United States. They should make sure to apply as soon as possible after they become eligible, as their U visa will expire four years after its issuance and can be renewed in only very rare circumstances.

In order to adjust status, a U nonimmigrant must demonstrate that:

- She was admitted as U nonimmigrant and currently holds U nonimmigrant status
- She has resided continuously in the United States for 3 years
 - **PRACTICE TIP:** Your client should be advised to keep copies of official documents such as tax, employment, and/or school records; rent or mortgage payments; and utility or phone bills so that she can demonstrate this continuous physical presence.
- She has not unreasonably refused to assist law enforcement since the grant of her U visa

⁵ If an individual either: a) enters the United States without inspection or b) who remains in the United States after the period of authorized stay, s/he accrues "unlawful presence" in the United States. Accruing 180-364 days of unlawful presence will trigger a 3 year bar to reentry once an individual departs from the United States. The accumulation of more than a year of unlawful presence will bar future entries into the United States for 10 years.

- Your client should be advised that if law enforcement seeks her assistance with the criminal case that is the basis for her U visa application, she is required to provide it.
- She is not inadmissible under INA 212(a)(3)(E) (participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing)
- Her adjustment is justified for humanitarian reasons, in the public interest, or to assure family unity
 - This evidence will be very similar to that submitted for your client's I-192 waiver. If you have not already done so, you should give your client copies of the waiver application and approval notice for her records.
 - Your client should be advised that any arrests or criminal convictions may adversely impact her ability to obtain a green card.

This document was produced by the Tahirih Justice Center in March 2011 and updated in November 2014. All rights reserved. This document is intended to provide practical information to attorneys working with Tahirih's client population. The contents of this document are by no means exhaustive and are subject to change at any time without notice. This document is not to serve as a substitute for obtaining particularized legal advice on an individual case.