

# *Pro Bono Briefing: Presidential Proclamation, Litigation Update, U visa timelines*



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**October 24, 2019**



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## *Today's Agenda*

- Review the Presidential Proclamation related to immigrants and health insurance
- Update on litigation challenging the public charge rule, DACA, and more
- Discuss USCIS data on U visa filings and anticipated timelines
- USCIS Adoption of AAO SIJS decisions
- Questions

## *Presidential Proclamation*

- Issued October 4, 2019, and effective November 3, 2019:
  - Would restrict immigration to the United States by people who are uninsured and cannot pay the costs of their health care
  - Independent of public charge

## *Presidential Proclamation*

“Approved” health insurance under the proclamation:

- employer-sponsored health plans
- unsubsidized plans purchased on the individual market
- non-Affordable Care Act (ACA)–compliant short-term health plans authorized by the Trump administration
- catastrophic plans
- family members’ plans
- visitor health insurance plans
- TRICARE plans or other coverage for military members and veterans
- Medicare plans
- other health plans as determined by the U.S. Dept. of Health and Human Services
- Medicaid is acceptable for children age 18 and younger, but subsidized ACA plans are not acceptable for either adults or children.

## *Presidential Proclamation*

### Applies to people seeking immigrant visas **abroad**

- Spouses of U.S. citizens and LPRs (green card holders)
- Children age 18-21 of LPRs
- Children under 18 if traveling with a parent who is also immigrating
- Adult sons and daughters (21+) of US citizens and LPRs
- Parents of U.S. citizens who cannot show their health care won't impose a "substantial burden" on U.S. health care system
- Diversity visa
- Employment-based visas
- Some religious workers

## *Presidential Proclamation*

### Does not apply to

- Non-immigrant visa applicants, including T/U or asylee derivatives abroad
- People applying to adjust status to LPR within U.S.
- Anyone who has immigrant visa issued before 11/3/2019
- LPRs returning after long absences
- Unmarried children and adoptees of U.S. citizens
- Iraq/Afghani Special Immigrant Visa applicants
- Children under 18, unless traveling with an accompanying parent subject to proclamation
- Parents of adult US citizens if can't demonstrate they won't be a significant burden
- Law enforcement or national interest

# *Presidential Proclamation*

Generally, for Tahirih clients, this means few will directly impacted

- VAWA self-petitioners filing from abroad
- VAWA derivatives abroad between age 18-21

But, former Tahirih clients who are now LPRs or US citizens wanting to sponsor family members may be impacted.

## *Litigation Updates*

- Public Charge
  - 4 federal courts issued temporary injunctions against DHS rule before effective date of October 15.
    - Two were nationwide, two more limited in scope.
  - DOS rule remains in effect
- DACA case to be argued before the Supreme Court on Nov. 12
- PI issued re: jurisdiction over UAC asylum applications



## *BIA Processing Memo*

- Memo from Director McHenry on October 1, 2019  
“speeding up” processing and review of appeals to a maximum of 230 days for single appellate judge reviews and 335 days for three-judge panel reviews

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## *BIA Processing Memo*

- Timing breaks down to:
  - all cases referred to screening panel for summary dismissal within 14 days of filing and any summary dismissals made within 30 days of referral
  - order ROP & transcripts within 14 days of referral to screening panel
  - briefing schedules set 3 days after Board has transcript or, if IJ rendered oral decision, after IJ reviews & approves transcript (for which IJ has 14 days)
  - extensions disfavored
  - forwarded to judge or panel w/in 3 days after both parties filed briefs or deadlines pass
  - 90- and 180-deadlines for decision in the reorg regs (with up to 60-day extension for exigent circumstances)

## *Key Takeaways and Practice Tips*

- Notice of Appeal should explicitly state reasons summary dismissal is not warranted
- Notice of Appeal should argue that the appeal should not be restricted to review by a single judge, and **should** be reviewed by a three-judge panel.
  - Look to 8 CFR 1003.1(5)-(6)
- Request oral argument, if appropriate
- Be sure to clearly and succinctly state the substantive reasons for appeal.
- Pay the filing fee if at all possible. Fee waivers appear less likely to be approved, and submitting a fee waiver request **does not toll** the Notice of Appeal filing deadline.
- Begin working on your brief as soon as you file the Notice of Appeal. Briefing extensions unlikely to be granted.

## *U Visa Timelines*

- October 1 is the start of the fiscal year, which means a new set of 10,000 principal U visas are available.
- Most recent approvals were on applications filed in 2015, generally.
- USCIS is no longer doing “all hands on deck” and issuing most/all 10,000 approvals at the start of the fiscal year.
  - Instead, approvals will be issued throughout the year, and it’s unlikely there will be significantly more than 10,000 principal applicants on the waitlist.
  - If your client is on the waitlist, there’s a pretty good chance they’ll get an adjudication by September 30, 2020.

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## *U Visa Timelines*

FY 2019	U-1 Petitions Received	Approved	Denied	Pending
1Q (Oct-Dec 2018)	7,962	4,059	509	135,135
2Q (Jan-Mar 2019)	6,9362	2,981	740	139,661
3Q (April-June 2019)	7,362	10,017	717	144,452
4Q (July-Sep2019)	Not yet available	Not yet available	Not yet available	Not yet available
<b>Total</b>	<b>22,243</b>	<b>10,017</b>	<b>1,966</b>	<b>144,452</b>

## *New SIJ Policies*

- USCIS recently adopted three AAO decisions concerning SIJ petitions
  - *Matter of A-O-C-*: SIJ applicant must show that state juvenile court had jurisdiction to make dependency/custody determinations; state law defines who is a juvenile
  - *Matter of D-Y-S-C-*: Underlying orders must include specific state-law basis for custody/dependency determination and finding that parental unification not viable because of abuse/abandonment/neglect
  - *Matter of E-A-L-O-*: If a dependency determination, must expressly state that dependent on the court and cite underlying state law; must cite state law on abuse/abandonment/neglect
- USCIS is reviving old proposed SIJ regs that would formalize requirement to specify state law on abuse/abandonment/neglect

## *How You Can Help*

- Co-counseling all types of cases
- Supporting work on border
- Litigation or research matters
- Encourage your colleagues to join Tahirih's Pro Bono Network:  
<https://www.tahirih.org/get-involved/our-pro-bono-network/join-our-network/>

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## *Questions?*

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A recording of this briefing will be posted on Tahirih's Pro Bono E-Library at [www.tahirih.org](http://www.tahirih.org)