

CONSULAR PROCESSING 101


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Agenda



Updates Immigration case law, policy, and litigation

Consular Processing Basics

Before the Derivative Petition Approval Fingerprints

Post-Petition Approval DS-160, Consular Interviews

Travel and Arrival Preparing to travel, Best Practices on Arrival

Questions

Latest Updates in Immigration Law & Policy

February's Updates

This month's updates include

- Public charge
- Travel ban
- BIA asylum decisions
- Circuit court decisions on asylum, VAWA, & SIJS
- MPP decisions
- FOIA litigation
- EOIR policies and practices

Public Charge

SUPREME COURT RULING

- Stayed nationwide preliminary injunction pending further litigation
- New public charge taking effect February 24 (except in Illinois)
- Government has asked SCOTUS to stay injunction that applies to Illinois
- New forms and guidance are on uscis.gov
- ILRC and Protecting Immigrant Families have excellent resources



Latest Travel Ban

PRESIDENTIAL PROCLAMATION SUSPENDS ENTRY OF NATIONALS:

- Eritrea, Kyrgyzstan, Myanmar (Burma) and Nigeria as immigrants, except SIV holders
- Sudan and Tanzania as diversity (“diversity lottery”) immigrants
- Proclamation date January 31, 2020
- Effective date February 21, 2020



Recent BIA Decisions

Matter of E-R-A-L-, 27 I&N Dec. 767 (BIA 2020)

- Status as a **landowner** does not automatically render them a member of a particular social group
- The BIA may be moving toward a reading of *Matter of L-E-A-* under which only particularly prominent families can constitute cognizable PSGs.

Matter of Mayen-Vinalay 27 I&N Dec. 755 (BIA 2020)

- Prima facie eligibility for collateral relief and whether it will materially affect the outcome of proceedings not dispositive in continuation request.
- Undermines, but doesn't overturn *Sanchez-Sosa*
- [ASISTA practice advisory](#)

Recent Circuit Court Decisions

Hernandez-Chacon v. Barr (2d Cir. Jan. 23, 2020)

- “Refusal to acquiesce” in the rape “was—or could be seen as—an expression of **political opinion**, given the political context of gang violence and the treatment of women in El Salvador”
- BIA failed to consider imputed political opinion

Da Silva v. Attorney General (3d Cir. Jan. 24, 2020)

- Statute does not require either a “substantial” connection or a temporal relationship between the abuse and a VAWA self-petitioner’s acts or convictions that might otherwise render them not of good moral character
- Also does not require an abuser to have “‘encouraged or induced’” the self-petitioner’s actions.

Recent Circuit Court Decisions

Perez Perez v. Cuccinelli (4th Cir. Feb. 10, 2020) (en banc)

- Rejects as inconsistent with the governing statute USCIS's position that state-court custody orders must be permanent and include a finding that reunification with parents is permanently non-viable
- Says that agency "impermissibly intrudes into issue of state domestic relations law" by trying to micromanage state-court orders

MPP-Related Decisions

Matter of J.J. Rodriguez (BIA 2020)

- Greenlights in absentia removal of those who are returned to Mexico and then do not appear for hearings
- Brushes aside all due process concerns

E.O.H.C. v. Secretary of DHS (3d Cir. Feb. 13, 2020)

- Holds that federal district courts have jurisdiction to hear as-applied challenges to MPP despite 1252(b)(9)
- Allows constitutional right-to-counsel claim, non-refoulement claim, challenge to application of MPP, *Flores* claim on behalf of minor to proceed

FOIA litigation

Smith v. ICE (District of Colorado)

- Opinion preventing ICE from denying FOIA requests on the ground that a non-citizen is a “fugitive.”
- If ICE has denied a FOIA request that you submitted on this basis, and it would still be useful to see the requested documents, please contact your Tahirih mentor attorney, Richard or Kursten.

Nightingale v. USCIS (N.D. Cal.)

- Pending litigation on unreasonable delays in response to USCIS A file FOIA requests.
- No imminent timeline for decisions on merits, but class has been certified to include any FOIA request to USCIS of a person’s full A file.

EOIR Policy Updates

Policy memo on standing orders & telephonic appearances

- Approves almost all standing orders, including those that require submission of evidence long before the hearing
- Gives IJs broad discretion to deny telephonic appearances by counsel

Policies on case completion

- New memo seeks to encourage fast determination of all bond requests (3-5 days), CFI reviews (7 days), scheduling of MCHs (10 days if detained, 30-90 days if not detained)
- Stresses that EOIR never requires grants of continuances
- Email encourages 60-day completion of juvenile dockets

CONSULAR PROCESSING OF U AND T DERIVATIVES

What is Consular Processing?

The process by which derivatives of U and T visa derivatives who are abroad obtain a visa to enter the United States.

A few things to keep in mind:

- Only certain family members qualify:
- USCIS determines if the derivative is qualified for U or T status.
- The Department of State determines separately if the derivative can enter the United States.
- The derivative needs a valid passport.

Sequence of Events



- File the I-914 A or I-918 A for derivatives
- USCIS sends a fingerprint card (for derivatives over 14)
- The attorney makes an appointment at the nearest American consulate to complete fingerprints
- Applicant attends the appointment and the fingerprints are either given to them or sent directly to USCIS
- USCIS adjudicates the I-914 A or I-918 A
- If approved, the file is sent to the Department of State.

Sequence of Events



- Attorney completes and submits the DS-160*
- Applicant pays the fee
- Attorney schedules an interview at the relevant consulate
- Attorney sends a consular processing packet to the derivative to take to the interview
- Applicant attends the interview and submits the packet and their passport
- If approved, DOS will return the passport via courier service with a visa
- Derivative travels to the United States.

Filing the I-914A or I-918A

- Who can be a derivative?
 - U visa: spouses, unmarried children, unmarried siblings under 18 and parents if the principal is under 21;
 - T visa: spouses, unmarried children, unmarried siblings under 18 and parents if the principal is under 21 or if present danger exists, children of derivatives if present danger exists;
- For purposes of qualifying as a derivative, ages (of principal and derivative) is “frozen” at the time of filing of the principal’s application.
- Can be filed concurrently with the principal’s or later:
 - While the principal's application is pending or even when after it’s approved, but before principal’s status expires;
 - If filed concurrently, will be adjudicated around the same time.

Fingerprinting Abroad

- Applies to derivative 14 or older;
 - If a derivative turns 14 during the pendency of the application, a fingerprint request will be sent around the time of adjudication.
- Comes in the form of a Request for Evidence.
 - Send the contents of the request to your client abroad.
- Contact the nearest consulate to schedule an appointment:
 - Department of State website to find the consulate and the contact information;
 - Some consulates will give you the appointment date; others will contact your client directly (e.g. Ethiopia).
 - Include a copy of your G-28 and the USCIS request with your email.
 - Make the deadline explicit in your email.

Fingerprinting Abroad, Cont'd

- Derivative attends the appointment and is either given the fingerprint card back (rare) or the fingerprint are sent directly to USCIS.
 - Make sure the derivative has an ID – ideally their passport.
- Attorney responds to the request for biometrics:
 - Include fingerprint card if it was returned to your client
 - Include original request stamped by a consular officer if it was provided to your client
 - If no documents were provided, write a letter in response, detailing how the appointment was obtained, when, if derivative attended, and what happened at the appointment

Fingerprinting Abroad, Cont'd

- What if my client did not get an appointment in time to respond?
 - Respond to the request timely, including your efforts to have a timely appointment – include any relevant communication with the consulate.

Congratulations! Post-Approval



- The derivative's file **should** be transferred to the Department of State.
- Procedures vary slightly from consulate to consulate, but the general structure is the same.
- Generally follows the procedure for **non-immigrant** visas.
- Processing times vary greatly. Start as soon as possible.
- If the derivative is a minor, they might need authorization from your client to leave the country or other power of attorney document.

The DS-160

DS-160

The form used for all non-immigrant visas. It is completed online. To access it, go to the relevant consulate's website and find the link in the non-immigrant visa section. You will have to create an account to complete it.

The form requires detailed information about the derivative, including schools attended or job information. You will also need a passport photo to upload. Once you submit the form, you will print the confirmation page.

The DS-160

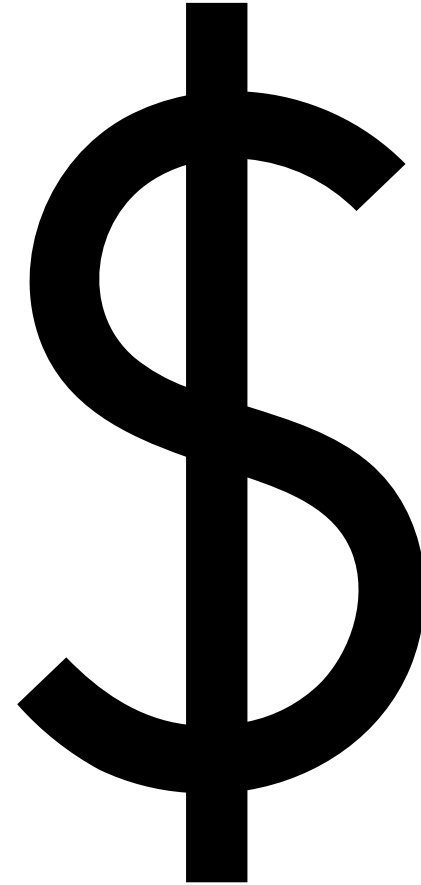
TIPS

- It can be a tedious form
- Print or download an exemplar copy and go over it to ensure you have all the information you need before you begin.
- You may need a meeting with the principal to go over the information.
- Give yourself about **two hours** to fill it out online.
- **Save frequently.** The system may log you off unexpectedly.



Paying the Visa Fee

- Currently **\$160** per applicant.
- Consulates vary in forms of accepted payment.
- Some consulates use an online system that requires a credit card (El Salvador)
- Most allow local payment at a bank. Some require it (Ethiopia). Applicant takes DS-160 submission receipt and receives payment receipt, to be presented at interview.



Scheduling the Interview

Via Online System

- The most common method
- Choose a day and time
- If several derivatives are applying at the same time, you can schedule their appointments together

Via E-mail

- A few consulates still have special instructions for U and T visas and require a request for appointment via email
- Include your G-28, the DS-160 submission receipt, the payment receipt, and the U or T visa approval notice.

In either case, follow instructions on the website. Wait times for interviews vary greatly – from a couple of weeks to several months.

Preparing the Consular Packet



- Addressed to the consulate and generally includes:
- I-918 and I-918A approval notices
- DS-160 submission receipt and payment receipt
- Evidence of relationship between the principal and derivative, such as birth certificates, marriage certificates, photos, evidence of ongoing contact
- Documents not in English should have certified translations
- Send the packet to the derivative via FedEx, DHL, or other courier service, and keep a copy for your file

The Consular Interview



- Consular practices vary.
- No right to attorney presence.
- May attend alone if they are old enough.
- Consular officer will ask questions to the derivative and review the packet.
- Consular officer may issue a request for more evidence, most often DNA testing for children.
- Consular office will keep the passport.
- Passport returned to the derivative in a matter of days with the visa inside, if approved.
- If more evidence is needed, it will be returned with the request for evidence.

Traveling to the United States

Permission to Leave

- Find out ahead of time if the derivative will need special permission to leave the country or other legal documents.
- If the derivative is a minor T visa derivative, IOM (International Office on Migration) might be able to assist. Contact your Tahirih mentor for information.
- Derivatives should have documents like birth certificates, school records, medical records to facilitate their transition into the US.

Visa & Inspection

- A U visa will be issued for the duration of the principal's U status and will have multiple entries allowed.
- A T visa will be issued for a single entry and will be limited in time.
- Derivatives will be “inspected” by CBP at the port of entry.
- Often taken to secondary inspections, meaning that it will take time.

Post-Arrival to the US



- Congratulations! You've helped reunite a family.
- As soon as possible, schedule an appointment with the newly arrived derivative.
- Make copies of all documents, especially the visa and the stamp in the passport.
- Use this information to download a copy of the I-94.
- Prepare work permit applications.
- Even for children – it will serve as a US government issued ID.
- U visa derivatives may need an extension of status if the remaining time on their visa is less than three years.

Questions?

After the webinar, contact

- Your Tahirih mentor attorney
- Samantha Del Bosque, samantha@tahirih.org
- Kursten Phelps, kurstenp@tahirih.org
- Richard Caldarone, richardc@tahirih.org



How You Can Help

Our work is amplified by the power of many. As Pro Bono Network members, there are many ways to contribute your time, resources, and expertise.

CO-COUNSEL

[Directly represent](#), with Tahirih mentorship, an immigrant survivor in their asylum, VAWA, T, U visa, or Special Immigrant Juvenile Status immigration matters.

IMPACT LITIGATION

[Work with Tahirih](#) on federal litigation, amicus briefs, and other impact litigation opportunities.

ADVOCATE

Respond to our [advocacy alerts](#) to submit comments or engage in other advocacy on behalf of immigrant survivors.

RESEARCH

Help Tahirih with [research](#) and analyze legal questions or research country conditions evidence to help immigrant survivors seeking asylum and other forms of relief.

DONATE

Tahirih's [Client Fund](#) is a pool of money that we may use to provide immediate and critical support to survivors of gender-based violence who are currently in crisis.

SPREAD THE WORD

Encourage a colleague to join Tahirih's [Pro Bono Network](#).

Contact Us



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