

Immigrant Visa Consular Processing

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Today's Presenters

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Tahirih Pro Bono Network Webinar | tahirih.org



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Agenda

- Welcome** Introductions
- COVID-19 Updates** Agency updates, guidance, practice tips
- Other Legal Updates** Case law, administrative, litigation
- Immigrant Visa Consular Processing**
- Questions**

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COVID-19 UPDATES



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Agency Operating Status

Tahirih updates its [Pro Bono e-Library](#) every day when there is a relevant agency update.

Agency	Status
EOIR- Detained Hearings	Open
EOIR- Non-detained	Open (except for Houston, which is open for filings only)
USCIS	Open
ICE ERO	Varies by office
State	Varies by post

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OTHER LEGAL UPDATES



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The Fourth Circuit

***Sicaran v. Barr* (4th Cir. No. 18-1915)**

- Holds that PSG "married El Salvadoran women in a controlling and abusive domestic relationship" is circular
- Holds that circularity analysis in *Matter of A-B-* is not arbitrary and capricious
- Applies to the ARCG formulation, too
- Another PSG decision on A-B- still to come

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Litigation updates

Public charge

- Federal judge in Illinois holds that public charge rule arbitrary & capricious, grants summary judgment & vacates rule
- *But* Seventh Circuit has temporarily stayed the judgment

Lesson Plan for CFIs

- D.D.C. in *Kiakombua v. Wolf* (No. 19-cv-1872) vacates lesson plan b/c it conflates the low CFI bar with ultimate showing on the merits of asylum claims

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Proposed EAD Regulation

- Would all but eliminate EADs for those who have final orders of removal but have been temporarily released from custody
- Only exception: those for whom every country DHS has approached has refused to issue travel documents, who can show economic necessity (tied to FPG), and who satisfy discretionary factors (including criminal history, compliance with supervision order)
- Applies to initial applications & renewals for (c)(18) EADs filed on or after final rule takes effect.
- Positive coda: Makes clear that those with CAT deferral eligible for employment because of the deferral

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IV CP - Overview

- IV vs NIV
- Who is this for?
 - Tahirih Cases
 - Age and Marital Status
 - Child Status Protection Act (CSPA)

Learn more about CSPA:

- INA 201(f)(4)
- INA203(h)(4)
- 2004 Yates
Memo: <https://www.uscis.gov/sites/default/files/document/memos/cspa081704.pdf>
- Visa
Bulletin: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

IV CP - Agencies

Working with USCIS (DHS), then NVC and Consulates (DOS)



IV CP – Before Starting

Talk to the Family:

- Talk to your client and the derivative family members
- Manage expectations: 1+ years, expensive, many forms and steps
- Screen derivatives for any inadmissibilities
- Give the family homework: begin gathering evidence of relationship, review DS260, get passport, birth certificate, other docs

Begin your learning:

- 9 FAM
<https://fam.state.gov/Fam/FAM.aspx?ID=09FAM>
- NVC Homepage
<https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html>
- 22 CFR:
<https://www.law.cornell.edu/cfr/text/22/part-42/subpart-G>

IV CP - Overview

Immigrant Visa Process



Found at: <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html>

IV CP - Process

STEPS

- I824 + Payment
- DS-261
- Payment
- DS-260
- NVC Packet
- Interview
- Arrival

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I-824 and DS-261

Part 1. Information About You (Person filing this Application) (continued) Physical Address 1Aa. Street Number 1Ab. <input type="checkbox"/> Apt. <input type="checkbox"/> Box <input type="checkbox"/> PO 1Ac. City or Town 1Ad. State <input type="checkbox"/> 1Ae. ZIP Code 1Af. Province 1Ag. Postal Code 1Ah. Country Part 2. Reason for Request I am requesting (select only one): 1A. <input type="checkbox"/> A duplicate approval notice. 1B. <input type="checkbox"/> U.S. Consular and Immigration Services (USCIS) to notify a new U.S. Consulate, different from the one that I originally requested, through the U.S. Department of State's National Visa Center (NVC) or Kentucky Consulate Center. USCIS will notify the U.S. Consulate about the approval of a consular post visa petition or about a new Petition Date (the Petition Date is different from what I originally requested) about the approval of a visa or application. Please notify the U.S. Consulate or Post of Entry at: 1C. <input type="checkbox"/> USCIS to notify a U.S. Consulate through the NVC about my adjustment of status to permanent resident in the United States. Please notify the U.S. Consulate at: 1D. <input type="checkbox"/> USCIS to use my approval as support for my petition to the NVC. 1E. <input type="checkbox"/> USCIS to notify the U.S. Department of State that I have become a U.S. citizen through naturalization.	Part 3. Other Information Provide the following information about the principal beneficiary of the previous application or petition, if other than you. 1a. Form Number of Previously Approved Application or Petition 1b. Receipt Number (On Form I-797, Notice of Action) 1c. Filing Date of Application or Petition (mm/dd/yyyy) 1d. Approval Date (mm/dd/yyyy) 2a. Family Name (Last Name) 2b. Given Name (First Name) 2c. Middle Name 2d. Date of Birth (mm/dd/yyyy) 2e. Country of Birth 2f. Alien Registration Number (A-Number) (if any) 2g. Daytime Telephone Number Mailing Address 3a. Is Case Of Name 3b. Street Number and Name 3c. <input type="checkbox"/> Apt. <input type="checkbox"/> Box <input type="checkbox"/> PO 3d. City or Town 3e. State <input type="checkbox"/> 3f. ZIP Code 3g. Province 3h. Postal Code 3i. Country
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- Used to ask CIS to take action
- Filed by your client, with their derivative as the beneficiary
- Currently \$465
- Processing times about 5 months, then receive letter with next steps and a case number
- G28 and/or DS-261 to choose the "agent" (you!)

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DS-260

Overview:

- Must 1st make a payment – about \$205 (save proof)
- Done online, use login from the I-824 letter
- About the derivative
- Similar to I-485, includes inadmissibility questions
- Client should have addresses, employers, dates, etc. already gathered

Resources:

- Sample DS260:
<https://travel.state.gov/content/dam/visas/DS-260-Exemplar.pdf>
- State Dept page:
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/online-immigrant-visa-forms.html>

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NVC Packet

Document Cover Sheet

This cover sheet is for case **DS-260**. When you send your documents to us, place them in the order shown below, and put this cover sheet on top. Mark the checkbox [X] under **Enclosed** if you are sending the document. Mark the checkbox [X] under **Unavailable** if you cannot obtain the document, and include a formal statement explaining why it is unavailable. Mark the checkbox [X] under **Not Applicable** if the document is not applicable or not needed for your case.

Order	Document	Enclosed	Unavailable	Not Applicable
1.	Document Cover Sheet.....	[X]		
2.	Photocopies of Supporting Documents:			
	Valid, unexpired passport.....	[X]	[]	[]
	Birth Certificate with translation.....	[X]	[]	[]
	Adoption Documentation.....	[]	[]	[X]
	Marriage Certificate with translation.....	[]	[]	[X]
	Marriage Termination with translation.....	[]	[]	[X]
	Court Records with translation.....	[X]	[]	[]
	Military Records with translation.....	[]	[]	[X]
	Police Certificate(s) with translation.....	[X]	[]	[]
3.	Signed Affidavit of Support(s) (I-864).....	[X]	[]	[]
	Proof of U.S. Status.....	[]	[]	[X]
	Proof of Domicile.....	[]	[]	[X]
	Petitioner's Civil Documents.....	[]	[]	[X]
	Proof of relationship (only for I-864A).....	[]	[]	[X]
	Evidence of Income.....	[]	[]	[X]
	Form(s) W-2.....	[]	[]	[X]
	IRS Tax Transcript.....	[]	[]	[X]
	Federal Income Tax Returns.....	[]	[]	[X]
	Social Security Earnings Statement.....	[]	[]	[X]
	Proof of Assets.....	[]	[]	[X]
4.	Other Supporting Documents.....	[X]	[]	[]

If you have not submitted Form DS-260 Online Immigrant Visa and Alien Registration Application at ceac.state.gov, please do so now. We cannot forward your petition to a U.S. Embassy overseas until you submit Form DS-260. Also, only send photocopies of your civil documents (e.g., birth certificate). Send a signed Form I-864 Affidavit of Support(s). Do not send documents on any form of electronic media, such as memory cards.

- Differs by consulate

<https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>

- Some things remain the same:
Everything in English with Cert Translation;
Must include cover letter with barcode; Will include birth certificates and military records

- Will likely upload everything

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NVC Packet

If you are 16 years of age or older, you must obtain a photocopy of a police certificate from all countries you have lived in using below criteria:

If you ...	AND you...	THEN submit a police certificate from...
Are 16 years old or older	Lived in your country of nationality for more than 6 months at any time in your life	Your country of nationality
Are 16 years old or older	Have lived in your country of current residence (if different from nationality) for more than 6 months	Your country of current residence
Have ever lived in another country for 12 months or more	Were 16 years or older at the time you lived there	The country where you used to live.
Were arrested for any reason, regardless of how long you lived in that city or country, and no matter what age you were		The city and/or country where you were arrested.

Most people will be required to do a police clearance, which can be lengthy and complicated. Have your client plan for this in advance.

From: <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-5-collect-financial-evidence-and-other-supporting-documents/step-7-collect-civil-documents.html>

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Interview

Preparing for the Interview

- Will get interview date and instructions
- Review consulate-specific instructions in advance: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/list-of-posts.html>
- Will likely include medical exam, securing courier service, taking pictures, getting fingerprints done, and gathering evidence
- Must have PP valid 6+ months from entry
- Prep your client!!



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Interview Day

Prep your client:

- Can't have anyone with them
- Review all documents, any "off" answers
- Officer will go over DS-260 questions, focusing on inadmissibilities
- Young male clients in Latin America – extra scrutiny. Tattoos/Med Exam

After the Interview:

- Decision should be given that day
- If found inadmissible, will have to file I-601. Can have this already prepared
- If approved, client will receive a visa in about a week, passport with visa sent back to them

Coming to the US



- When the client steps foot in the US, they are a Legal Permanent Resident
- Before coming, will need to pay ELIS Fee (\$220) to start processing greencard
- Extra steps needed for minors, like permission from second parent and Minor Travel Authorization (coordinated with local consulate)
- Client will get a packet from the embassy they can NOT open
- CBP Officer at Airport has final say, will review packet from embassy, inads, and stamp PP

Helpful Resources

- FAQs: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/online-immigrant-visa-forms/ds-260-faqs.html>
- DS260 sample: <https://travel.state.gov/content/dam/visas/DS-260-Exemplar.pdf>
- Processing times: <https://travel.state.gov/content/travel/en/us-visas/immigrate/nvc-timeframes.html>
- FAM: <https://fam.state.gov> (being transferred to USCIS Manual)
- Reciprocity: <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>
- Contacting NVC with issues: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html?wcmode=disabled> or by phone at 603-334-0700. For expedite requests, can email NVCExpedite@state.gov
- Justice in Motion's Nan Schivone: nan@justiceinmotion.org
- ASISTA TA: <https://asistahelp.org/>

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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](#).

How You Can Help | tahirih.org



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Questions?

After the webinar, contact

- Your Tahirih mentor attorney
- Adilene Nunez Huang, AdiN@tahirih.org



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Contact Us



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