

UNCLASSIFIED STATE 00090518

JUN 13

SUBJECT: T AND U VISA CHANGES

1. (U) Summary: In March 2013 Congress enacted several changes to the William Wilberforce Violence Against Women Act (VAWA) & Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) that affect T and U visa eligibility. T visas are designed for victims of trafficking in persons, which includes sex trafficking or labor trafficking. U visas are for victims of certain qualifying crimes, such as domestic violence and sexual assault, and the victim must have suffered substantial physical or mental abuse as a result of the crime. To qualify for the U visa, the victim of a qualifying crime generally must provide assistance to law enforcement. To qualify for the T visa, a victim is required to cooperate with reasonable requests from law enforcement related to their victimization, with limited exceptions. In addition, the trafficking or crime must have violated the laws of the United States or occurred in the United States including its territories and possessions. For T visas, the victim must be physically present in the United States on account of the trafficking.

2. (U) For the T Visa, the recent change to the law expanded eligibility to include certain extended family members of the principal applicant who face a present danger of retaliation. Other changes allowed age-out protections for U visa derivatives and eliminated the public charge ineligibility for U visa applicants among other things. End Summary.

U VISA CHANGES

3. (U) Age-out Protections: Unmarried children for whom the principal applicant has filed a petition before the child turned 21 remain eligible for the visa after they turn 21. The age of the unmarried child is established and set when the principal applicant files the U petition with U.S. Citizenship and Immigration Services (USCIS). The law previously did not allow unmarried children of U visa holders to remain eligible for the visa after they turned 21, even if they had filed the petition before they turned 21 and had waited several years to get their visa. In addition, unmarried children who are the principal applicants now receive age-out protection in terms of their parents and unmarried siblings under age 18 being able to qualify as derivative family members. T visas already afforded age-out protection for children over 21; the law was changed to mirror T visas in this respect.

4. (U) Retroactivity: The age-out protection is retroactive. This means that any principal applicant who filed a U visa petition before the derivative family member turned 21, and the derivative family member is now older than 21 and was denied the visa because he or she had aged out, is now eligible for a visa.

5. (U) Unmarried: The age-out protection for derivative children does not, however, change the requirement that the beneficiary remain unmarried to be eligible for this visa. If the beneficiary

marries before the visa is issued, they will no longer be eligible.

6. (U) Public Charge: U visa applicants are no longer subject to the public charge ground of inadmissibility, INA 212(a)(4). Consequently, applicants are no longer required to submit Affidavits of Support (I-864). Because public charge is no longer a basis for inadmissibility, USCIS will no longer apply this inadmissibility. Therefore, Department of Homeland Security (DHS) will not need to issue waivers on the Application for Advance Permission to Enter as a Nonimmigrant (I-192) on this inadmissibility ground.

7. (U) On-Hold: USCIS indicated that the I-918 U-visa petitions that were formerly on hold because of concerns about beneficiaries aging out will be adjudicated. USCIS did not provide a time frame for completing these adjudications. The fact that USCIS has decided to adjudicate these petitions does not mean each one will be approved. USCIS will review each petition to determine whether it will be approved and, if approved, the applicant will be eligible to schedule an interview. Any further questions about on-hold petitions should be directed to USCIS.

T VISA CHANGES

8. (U) Derivative Status Expanded: T-derivative status has been expanded to include certain adult or minor children of a T-visa derivative (T-2, T-3, T-4, T-5). These derivatives are the grandchild (ren), stepchild(ren), niece(s) or nephew(s), and the sibling(s) of the principal applicant. For the children of a derivative to qualify for T-derivative status, the child (adult or minor) must "face a present danger of retaliation as a result of the alien principal's escape from the severe form of trafficking or cooperation with law enforcement." USCIS will determine what this means in the context of petition adjudication. Consular officers will not re-examine the basis for this determination and visa eligibility, but will issue visas in this new category once USCIS establishes it. USCIS anticipates this category will be "T-6."

VAWA (SELF) PETITIONERS - PUBLIC CHARGE

9. (U) Certain victims of abuse (by U.S. citizen or Legal Permanent Resident (LPR) family members) can self-petition for VAWA relief using the I-360 petition. These applicants are no longer subject to the public charge inadmissibility, INA 212(a)(4). Consequently, applicants are no longer required to submit Affidavits of Support (I-864). Because public charge is no longer a basis for inadmissibility, USCIS will no longer apply this ineligibility. Therefore, DHS will not need to issue waivers on these grounds.

Information Sharing

10. (U) The new change in law authorizes an exception to the

confidentiality statute regarding information which relates to VAWA and T and U visa applicants, which permits the Department to share information with national security officials, but limits usage to national security purposes in a manner that protects confidentiality.

FAM NOTES UPDATED

11. (U) 9 FAM has been updated to include guidance regarding the above policy changes. Affected 9 FAM sections include: 40.41 N3, 41.81 N14, 41.84 N1, N4, and N5, and 41.85 N1, N3, and N9.

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