



May 19, 2021

Submitted via www.regulations.gov

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: USCIS-2021-004; Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

Dear USCIS:

Below please find comments submitted in response to USCIS-2021-004 Request for Public Input; Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services, which was published on April 19, 2021 in the Federal Register at 86 Fed. Reg. 20398, on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV). The API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities, and serves a national network of advocates, community-based victim services programs, federal agencies, national and state organizations, legal, health, and mental health professionals, researchers and policy advocates.

API-GBV co-chairs the Alliance for Immigrant Survivors (AIS), supporting domestic violence and sexual assault victim advocates and their statewide and national coalitions by providing up-to-date information about immigration policy changes and their particular impacts on the safety-planning that survivor advocates engage in with immigrant victims to mitigate risks to their well-being. Based on our work supporting victim advocates and in working directly with Asian and Pacific Islander (API) and immigrant survivors of domestic violence, sexual assault, and human trafficking, API-GBV submits the following comments, focused on USCIS processes on immigrant survivors and their ability to escape and overcome abuse, such as those

available through the Violence Against Women Act (“VAWA”) and the Trafficking Victims Protection Act (“TVPA”),¹ as well as other forms of immigration relief that survivors access.

Congress has affirmed its commitment to supporting victims to escape, recover from, and overcome abuse in various legislative enactments, including VAWA,² the Child Abuse Prevention and Treatment Act (“CAPTA”),³ and the Victims of Trafficking and Violence Protection Act (“TVPA”).⁴ Specifically in the immigration code, a bipartisan Congress sought to limit the ability of abusers to leverage immigration laws and the fear of deportation against their victims, creating the battered spouse waiver of the Immigration Act of 1990,⁵ and VAWA of 1994.⁶

Members of immigrant communities with uncertain immigration status are particularly vulnerable to crimes such as domestic violence, sexual assault, and human trafficking because, if they fear they will be deported for contacting law enforcement, they are unlikely to report abuse, sexual assault, and other crimes.⁷ Congress’ clear intent in creating VAWA self-petitioning and the U and T visas was to reduce noncitizen victim’s fears that leaving their abusers and/or accessing legal system help would result in their removal.⁸

¹ The Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) and subsequent reauthorizations; Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, ((2006), and the Violence Against Women Reauthorization Act of 2013, P.L.,113-4,127 Stat. 54 (2013).

² The legislative history accompanying VAWA and the TVPA demonstrates that Congress intended to reduce barriers that immigrant victims face in accessing safety. Senator Patrick Leahy explained that the U visa “ma[d]e it easier for abused women and their children to become lawful permanent residents” and ensured that “battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States.” 146 Cong. Rec. S10185 (2000) (statement of Sen. Patrick Leahy); More recently, during the debate on the VAWA of 2013, Senator Amy Klobuchar described the importance of the U visa program, recounting several cases where the perpetrator threatened to deport the immigrant victim if the victim came forward to law enforcement. 159 Cong. Rec. S 497, 498 (2013).

³ The Child Abuse Prevention and Treatment Act of 2010, Pub. L. No. 111-320 (codified in 42 U.S.C. 5101, et seq.)

⁴ The Victims of Trafficking Protection Act of 2000, Pub. L. No. 106-386 (2000)

⁵ P.L. No. 101-649, 104 Stat. 4978, codified at 8 U.S.C. §1186a(c)(4),

⁶ P.L. No. 103-322, 108 Stat. 1902-1955 (1994)

⁷ See Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, Int’l Ass’n Of Chiefs of Police (Apr. 2018), Retrieved from https://www.policchiefmagazine.org/wp-content/uploads/PoliceChief_April-2018_F2_Web.pdf; Lindsey Bever, *Hispanics “Are Going Further into the Shadows” Amid Chilling Immigration Debate, Police Say*, Wash. Post (May 12, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/05/12-immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say>.

⁸ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(1)(2) (Oct. 28, 2000). (emphasis added). See also New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014 (2007).

In addition, the United States is a party to the United Nations Convention Relating to the Status of Refugees,⁹ which, along with its 1967 Protocol are clear that states *shall not* “expel or return” asylum seekers to any place where they could face serious harm amounting to persecution, otherwise known as the principle of *non-refoulement*.¹⁰ Similarly, under other human rights instruments, such as the Convention Against Torture (to which the United States is a party),¹¹ states are obligated to not return asylum seekers to a territory where they may suffer harm that may rise to the level of persecution or torture.

USCIS policy should serve to contribute to the goals of these vital immigration protections as well as state and local protections that support survivor safety and recovery from trauma, healthy families, and violence prevention. We commend USCIS for taking initial steps to remove some of the barriers placing survivors at risk of ongoing harm, including removing the 2019 Public Charge¹² rule from the Code of Federal Regulations and restoring the 1999 Field Guidance, rescinding the 2018 Notice to Appear Guidance,¹³ eliminating the “blank space criteria” for immigration form filings,¹⁴ and discontinuing the sponsor deeming and agency reimbursement information collection in SAVE,¹⁵ among others. However, there continues to be much work to undo the lasting harm of these and other policies. Over the last several years, USCIS has imposed significant barriers in the immigration process that served to undermine the purpose and intent of VAWA and the TVPA to protect victims, as well as harmed victims seeking protection from gender-based persecution, or other forms of immigration relief - through significant regulatory changes, as well as through discrete and targeted procedural changes.

⁹ The obligations of the Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, and the 1967 United Nations Protocol Relating to the Status of Refugees are incorporated into the Refugee Act of 1980. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987). *See also INS v. Stevic*, 467 U.S. 407, 426 n.20 (1984).

¹⁰ Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 189 U.N.T.S. 137.

¹¹ Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277; see 8 C.F.R. § 208.16(c).

¹² USCIS. “Public Charge” (last updated April 15, 2021), available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

¹³ DHS, “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” available at: https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf

¹⁴ USCIS. “USCIS Confirms Elimination of “Blank Space” Criteria (April 1,2021), available at <https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria>

¹⁵ USCIS, “SAVE Discontinues Sponsor Deeming and Agency Reimbursement Information Collection,” (May 11, 2021), <https://www.uscis.gov/save/whats-new/save-discontinues-sponsor-deeming-and-agency-reimbursement-information-collection>

The impact of these changes has resulted in survivors having been deported before their survivor-related applications for immigration relief have been adjudicated, having remained in abusive relationships and foregoing critical services intended to support victims, such as domestic violence related transitional housing or sexual assault counseling and health care due to public charge concerns, or being barred from being able to apply for asylum following a rejected credible-fear determination, or simply declining to apply for asylum or survivor-related immigration relief for fear of possibly being referred for deportation, especially given the extensive backlog in adjudications.

API-GBV has participated in developing and signed on to the *Joint Comment in Response for Public Input* from over 70 national, state, and local organizations, coordinated by AIS, which addresses recommendations related to survivor related immigration cases, and echoes the input included in those comments, and provides the following additional input.

I. Regulatory Changes:

In addition to updating regulations relating to VAWA Self-Petitions, T and U visas and I-751 abused spouse petitions as recommended in the aforementioned joint comment, USCIS should undo and reissue regulations that sought to limiting the availability of asylum and withholding protections for survivors seeking protection from gender-based persecution, as well as those limiting the availability of employment authorization for asylum seekers. USCIS should strengthen its privacy and confidentiality regulations as it relates to biometric data and clearly limit the sharing of information it collects for the purposes of adjudicating immigration petitions, with heightened protections in particular for survivor-related applications and for those fleeing persecution. In particular, USCIS should interpret 8 USC §1367 confidentiality protections to prohibit information sharing of data collected in victim related applications, including related to civil immigration enforcement.

In addition, USCIS should work to quickly update the Public Charge regulation that recognizes that immigrant survivors of domestic violence, sexual assault, and other crimes should be able to access housing, healthcare, nutrition, and other public supports to help overcome the harm they've experienced without negatively impacting their ability to regularize their immigration status. Although survivors who pursue immigration status under VAWA, T & U visa and asylum grounds are exempt from the public charge ground of admissibility under

INA §212(a)(4), many victims of domestic violence, sexual assault, and human trafficking, along with their family members, seek status in other, non-victim based, immigration categories. USCIS should consider the purpose and intent of the Family Violence Option in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)¹⁶ which recognized the importance of access to benefits to support victims of domestic violence and provided exemptions from program requirements that would unfairly punish or put victims at further risk of family violence, and should expand exemptions from the Public Charge ground, or at a minimum, expanding eligibility for waivers at a minimum for survivors of domestic and sexual violence to avoid punishing survivors for the violence they've experienced, or putting them at further risk of violence.

In addition, USCIS should clarify definitions such as “primarily dependent” and “subsistence,” as well as time periods for USCIS to consider in evaluating the totality of circumstances test that accommodates the need for survivors of gender-based violence to access benefits to escape and overcome violence. Relatedly, USCIS should provide a clear list of benefits that count as factors in a public charge determination, as well as a guidance clarifying examples of benefits that do not count as factors. This is particularly important for survivors who are accessing victim services and benefits, including cash assistance provided by programs funded under the Violence Against Women Act, Family Violence Service Prevention Act, Victims of Crime Act, Sexual Assault Services and Prevention Act, the Rape Prevention and Education Act, the Child Abuse Prevention and Treatment Act, and Trafficking Victim Protection Act, among others, as well as state and locally funded programs intended to address the needs of victims. One particularly heartbreaking example of the need for such clear guidance is that of a Washington State rape survivor who chose to forego a Sexual Assault Nurse Examiner (“SANE”) exam and related medical care and counseling because she feared that doing so would preclude her from receiving lawful permanent residency or citizenship in the future due to the public charge grounds.¹⁷ Other survivors have declined critical supports such as

¹⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193 (1996); 42 U.S.C. § 602 (a)(7)

¹⁷ Brief of Amici Curiae Nonprofit Anti-Domestic Violence and Sexual Assault Organizations in Support of Plaintiff's Motion for Preliminary Injunction. “State of Washington et al v. DHS et al. (Sept. 19, 2019), available at <http://bit.ly/2mfArzU>

transitional housing or benefits for their children that likely would not have counted under the 2019 Public Charge rule due to the lack of clarity.

II. Procedural Recommendations

1) Staffing

USCIS should significantly increase staffing for survivor-based and humanitarian applications for immigration relief. Currently there are over 268,000 individuals awaiting a U-visa,¹⁸ and over 394,000 asylum applications yet to be processed as of the 1st quarter of FY21, accompanied by extremely lengthy processing times.¹⁹ USCIS currently estimates that adjudication of a Form I-918 for crime victims by the Vermont or Nebraska Service Center will take 59.5 to 60 months,²⁰ and there are also asylum applications that have been pending for at least that long if not longer.

The Biden Administration's FY2022 discretionary funding request allocates \$345 million for USCIS to address application backlogs. USCIS must prioritize quickly and efficiently implementing this funding to increase staffing to address these backlogs, develop fairer adjudication processes for those in the backlog, and fund additional officers processing survivor-related cases at the Vermont and Nebraska Service Centers to address VAWA, T & U cases, along with asylum officers, and timely issue employment authorization for VAWA self-petitioners, U visa applicants, SIJS applicants, and T visa applicants at most within six months, and asylum applications pending 180 days as soon as possible in order to mitigate the harm that survivors face by the long USCIS processing delays.

2) Training:

Along with funding additional officers, it is critical that they are trained in not only the requirements of the relevant program, but also on the unique dynamics of gender-based harms, including as they relate to persecution. For example, training must include information on social stigmas/community and family ostracization, economic isolation, internalized shame, repeat

¹⁸ USCIS. Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status (Fiscal Year 2021, 1st Quarter, Oct. 31 - December 31, 2020), available at

https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2021_qtr1.pdf

¹⁹ USCIS processing delays are largely due to policy changes implemented under the last administration that have needlessly created inefficiencies. *See, e.g., AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow* (February 26, 2020)

<https://www.congress.gov/116/meeting/house/110946/witnesses/HHRG-116-JU01-Wstate-Dalal-DheiniS-20200729-SD002.pdf>.

²⁰ *See* USCIS, "Check Case Processing Times," <https://egov.uscis.gov/processing-times/> (last visited May 18, 2021))

victimization, economic abuse, etc., and how these dynamics impact fact-finding, evidence gathering, and presentation of testimony.

For those adjudicating survivor related claims, it is further critical that training include information on the impact of trauma and PTSD on evaluation of credibility, including research-based information on memory, how trauma is encoded, and how trauma interferes with the linear recall and recounting of information. Cultural norms of interviewee presentation, internalized shame and stigmas, and the limits of subjective adjudicator perception of demeanor, candor, and responsiveness to assess credibility of trauma survivors should also be addressed.

3) Discretion

USCIS should reissue policy manual guidance regarding the use of discretion in USCIS adjudications, including adjustment of status and applications for discretionary employment authorization.²¹ The discretionary factors currently contained in existing guidance effectively punish survivors for the harm they have experienced, by failing to account for the realities of individuals applying for survivor-based or humanitarian protections and how common it is for negative factors to arise as a *consequence* of victimization, persecution, economic instability, and/or trauma. Updated guidance should provide examples of how survivors are impacted by trauma, including how trauma survivors may engage in unfavorable activity as a result, and USCIS should ensure that all adjudicators in cases involving survivor related protections or asylum receive training on trauma and related natural responses.

4) Forms

In all relevant forms, USCIS should eliminate unnecessary questions and documentary evidence collection on immigration forms that request extraneous information and are unrelated to eligibility for the immigration benefit being sought. Overall, USCIS should shorten the length of immigration forms, as current forms request information well beyond the statutory requirements for benefits, which places additional burdens on applicants who must obtain extra and unnecessary evidence, sometimes placing survivors at additional risk of harm, and which increases the cost for legal representation. In addition, there is an increased burden on USCIS officers who must then verify this information.

²¹ Use of Discretion for Adjustment of Status [Policy Alert](#) November 17, 2020; Use of Discretion Applying Discretion in USCIS Adjudications [Policy Alert](#) July 15, 2020, and Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action, [Policy Alert](#) January 14, 2021

In particular, questions that relate to inadmissibility should be modified and reduced so that they are not overbroad. For example, the 08/25/2020 version of the I-765 application for employment authorization significantly increases the evidentiary burden asylum applicants seeking an EAD by seeking criminal history background information that is not only duplicative to information needed for the underlying asylum application but also irrelevant to eligibility for employment authorization.

Similarly, questions on the I-485-Application to Register Permanent Residence or Adjust Status and its instructions should be modified to limit the question that asks that the applicant list membership in “any organization, association, fund, foundation, party, club, society or similar group” anywhere in the world, at any time in their life. Such question is overly broad and goes well beyond any statutory requirements. In addition, the I-485 should eliminate questions about usage of public benefits that are not related to a public charge determination. The form and instructions should instead focus only on whether the applicant had utilized cash assistance for income maintenance or institutional long-term care at government expense- the programs that are relevant in a public charge determination, with concurrent heading changes to indicate the question is about public charge rather than public benefits more broadly.

In addition, for all applications that require biometrics, such as Form I-485 and N-400, among others, USCIS should continue the pandemic practice of reusing previously submitted biometrics information, so that survivors do not continue to be burdened to repeatedly attend appointments for collection, given that biometric information does not change over time.

5) Privacy

Relatedly, USCIS must strengthen privacy and confidentiality protections as well as notice to applicants about its information sharing practices related to how personally identifying information about individuals, including biometrics, is shared between agencies,²² as the security of that information is potentially compromised due to the increasing number of people authorized to access the information, as well as increased risks of unauthorized access and hacking. This is especially true of survivors of domestic violence, sexual assault, stalking, human

²² DHS, FBI, and DOD are in introducing new standards that allow their primary biometric databases to “communicate natively, ‘in their own language.’ Chris Burt, *U.S. agencies working on standard for seamless communication between biometric databases*, Biometric Update (Sept. 26, 2018), at <https://www.biometricupdate.com/201809/u-s-agencies-working-on-standard-for-seamless-communication-between-biometric-databases>.

trafficking, persecution, and other crimes who may have justified concerns about what information is collected, how information is stored and with whom and for what purpose it might be shared. For example, in cases of domestic violence or stalking where the abuser or the abuser's friends or family are in law enforcement, this raises significant security concerns regarding who may potentially have access to biometric databases.²³

In addition, FDNS should stop collecting social media information from applicants from applicants for immigration benefits, in particular for asylum seekers and refugees, especially given the lack of links to national security concerns,²⁴ as well as potential risks that storage or data-sharing about such social media information could pose for those fleeing persecution.

III. Outreach and Customer Service

USCIS should conduct large-scale outreach and public education regarding policy changes to help reverse the chilling effects and other harm of the Trump-era regulations and policy, including those relating to survivor related applications, Public Charge, and asylum. Of particular importance is in-language outreach and education across diverse communities, including through the development of updates for the public in languages beyond English and Spanish, and through ethnic media and with ethnic community leaders. With respect to outreach on the public charge rule, USCIS should partner with benefits-granting agencies, including HHS and HUD, as well as DOJ (OVW & OJP) to engage in outreach to inform the survivor advocacy community about how utilization of services and benefits to address abuse and trafficking relate to a public charge determination.

In addition, USCIS should reinstate the regular stakeholder meetings hosted by those in leadership, both on-site and telephonically (or by video conference) so that stakeholders can engage with USCIS on the processing of survivor-based and humanitarian applications, as well as outreach campaigns and community education.

IV. Conclusion

Thank you for the opportunity to provide input about ways in which USCIS regulations, policies and procedures can be improved to address the needs of those seeking immigration

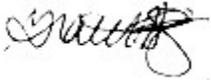
²³ <https://web.archive.org/web/20200409070910/http://womenandpolicing.com/violenceFS.asp>; <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>

²⁴ Off. of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-17-40, DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-Term Success (2017); Faiza Patel et al., Brennan Ctr., Social Media Monitoring (2020), available at <https://www.brennancenter.org/publication/social-media-monitoring>.

benefits. Please feel free to contact me if you have any questions or concerns relating to these comments. Thank you.

Respectfully submitted,

**ASIAN PACIFIC INSTITUTE ON
GENDER-BASED VIOLENCE**

A handwritten signature in black ink, appearing to read 'Grace Huang', written in a cursive style.

GRACE HUANG

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