

# HUMAN RIGHTS INITIATIVE OF NORTH TEXAS

## BOARD OF DIRECTORS

Sanjeeb Samanta  
*Chair*

Alan Wright  
*Chair Elect*

Kelly Rogers  
*Treasurer*

Ashlie Alaman  
Greg Curry  
Patricia Freshwater  
Elizabeth A. Healy  
Anita Kelley  
Natalie Nanasi  
Eric Renner  
Carolyn Ruiz

## STAFF

William O. Holston, Jr.  
*Executive Director*

Maryam Baig  
*Marketing & Special Events  
Director*

Kali Cohn  
*Community Education &  
Advocacy Director*

Elisandra De La Cruz  
*Social Service Director*

Layne Faulkner  
*Volunteer Director*

Pilar Ferguson  
*Asylum & Children's Program  
Director*

Zeyla Gonzalez  
*DOJ Accredited  
Representative*

Emily Heger  
*Equal Justice Works Fellow*

Sierra Houck  
*Family Support Advocate*

Elean Martinez  
*Client Intake Manager*

Kristina Morales  
*DOJ Accredited  
Representative*

Carolina Pina  
*Case Management  
Coordinator & Legal Assistant*

Cory Sagduyu  
*Children's Program Attorney*

Sara Wahl  
*Crime Victims Program  
Director*

Jennifer Weil  
*Development Director*

[via www.regulations.gov](http://www.regulations.gov)

May 19, 2021

Samantha Deshommnes  
Regulatory Coordination Division Chief  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services

**RE: Comments in Response to Request for Public Input: Identifying Barriers to Access, Docket Number USCIS-2021-0004, CIS No. 2684-21, RIN 1615-ZB87**

Dear Mx. Deshommnes,

I write on behalf of the Human Rights Initiative of North Texas (“HRI”) in response to USCIS’s request for public input entitled “Identifying Barriers Across U.S. Citizenship & Immigration Services (USCIS) Benefits and Services,” published in the Federal Register on April 19, 2021.

HRI is a non-profit legal services agency that represents people fleeing humanitarian abuses from all over the world. Our clients include asylum seekers who have fled horrifying abuse in their home countries for speaking up against government corruption, for practicing their faith, and for living their authentic lives. They include children, who have been forced to flee their homes because there was no one left to care for them in their home country—or because their parents had created an abusive environment where it was unsafe to stay. They include undocumented people here in the United States who have survived serious crimes and who have come forward to protect themselves and their children from danger, to protect their friends and families, and protect their communities.

We are grateful to USCIS for making preliminary changes that realize President Biden’s Executive Order 14012 that “our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.” We appreciate USCIS’s continued interest in implementing the Order.

We are a signatory to a joint comment submitted by ASISTA, the Asian Pacific Institute on Gender-based Violence (API-GBV), Immigration Center for Women and Children, and Tahirih Justice Center, and incorporate that comment by reference.

Many of the issues important to us are also urged by other organizations. Our goal is to amplify the importance of these issues, while streamlining the USCIS review process. We incorporate by reference the comments of our colleagues at AsylumWorks, Center for Victims of Torture, Church World Service, First Focus on Children, HIAS, Human Rights First, Immigration Equality, and International Refugee Assistance Project.

The issues we raise below create unjustified or excessive barriers that impeded access to legally authorized immigration benefits and fair, efficient adjudications of these benefits (responsive to question 1); are not tailored to impose the least burden on society (responsive to question 2); and disproportionately burden, disadvantaged, vulnerable, or marginalized communities (responsive to question 3).

## **I. REDRESSING DELAYS IN PROCESSING**

Our clients have formed and lead the group HRI Connect/Conexión HRI, where they come together to discuss collective problems and strategize about a shared vision for the future. Among their chief concerns are the processing delays at USCIS and access to work authorization. Without timely and reasonable progression in their cases, they face family separation, lack sufficient means to support themselves, have no access to a Texas Driver's license or other meaningful identification documents, face structural barriers in accessing healthcare and housing, and are exposed to exploitation and risk of repeated victimization. Specifically:

### **A. Asylum Backlog**

Thousands of asylum seekers face years-long delays in a backlog—the largest among the applications USCIS adjudicates—of 394,101 applications yet to be processed as of the 1st quarter of FY2021. In January 2018, the agency began implementation of the last-in, first-out (LIFO) policy to adjudicate affirmative asylum applications. Although this policy has allowed for many recently filed cases to be adjudicated in a timely manner, asylum seekers who had already been waiting for years now must wait even longer to have an opportunity to present their case.

At HRI, 57% of our pending asylum cases were filed before LIFO went into effect in January 2018 and remain pending. The oldest case was filed in March 2015, now pending over six years. Many of our clients, under threats of immediate violence, are forced to flee with some of their family members. At best, this means years of painful separation from family—working through the challenges of rebuilding their lives and healing from trauma without their most important support system. At worst, their family members must remain in hiding or face persecution in their home country. In some cases, the entire family was persecuted, but only one member had access to visa or financial means of escape. In other cases, family members are targeted in retaliation for their family member's flight. Because asylees cannot apply for their family members to follow to join them until their applications have been approved, the backlog enforces the painful separation. The mental and emotional toll of this separation can be crushing.

Once the I-589 is approved, the significant backlog of Follow-to-Join cases continues the separation. The significant backlog involves reportedly more than [380,000 immigrant visa applicants](#), as of December 31, 2020, who were awaiting a consular interview. The processing time

for FTJ cases, particularly Visa 93 applicants, has doubled. Ongoing separation from family members due to unexplainable administrative and bureaucratic delays and concerns for their safety and security in unstable situations are among the biggest factors contributing to the overall negative mental health outcomes and self-sufficiency goals of our clients.

We remain frustrated that there appears to be no clear chain of responsibility for the processing of AORs and I-730s and they continue to be processed as an afterthought, especially at embassy locations. We are aware of the continuing obstacles to schedule circuit rides and camp access, and we urge the administration to consider alternative solutions to allow processing, especially for those who are beneficiaries of these petitions. Further, pre-screening interviews are conducted via circuit ride, which has meant that several locations have gone years without a circuit ride, whether due to smaller overall caseload, country conditions making travel inaccessible, or other reasons.

At most Embassies and Consulates, it is Foreign Service Consular Officers who are responsible for interviewing Form I-730 beneficiaries. However, Posts are inconsistent in their exposure to refugee/asylee issues. Many locations that frequently process Form I-730 cases have dedicated staff members involved in these programs. However, other locations where the volume of Form I-730 cases is smaller are forced to pull staff who regularly work on Form I-130 processing to interview refugee/asylee beneficiaries. This has resulted in misapplication of the burden of proof (I-730s are adjudicated by a “preponderance of the evidence” not the higher “clear and convincing” standard), and Consular Officers returning cases to USCIS based on doubt of the relationship’s veracity.

We hear regular distress from family members whose cases are not moving, while we are unable to provide concrete answers as to why their family member(s) are not here, after months, and often years of case processing delays. It is important to note that this is one of the biggest sources of vicarious trauma for advocates in our line of work. These cases weigh heavily when both the advocate and the client feel that the system is not fair, efficient, nor credible.

## **B. SIJS Backlog**

Although SIJS I-360 applications must, by statutory mandate, be adjudicated within 180 days, adjudications experience significant delays. These delays have particular consequences in light of *Matter of L-A-B-R-*, 27 I. & N. Dec. 405, 405, 407 (Att’y Gen. 2018), which cabined immigration judges’ authority to grant continuances. Instead of focusing primarily on the merits of the underlying application, the new standard requires immigration judges to take into account the length of time the immigration case will need to remain open. The longer SIJS applications remain pending, the higher risk the child is of receiving a removal order from the immigration court. This exposes children to unnecessary risk during the pendency of their immigration process.

For children who do not face lengthy waits for their priority dates to become current and who can adjust status relatively quickly after receiving their SIJS approval, the processing delays also affect timely access to work authorization. Until they are able to obtain their green cards, the children remain ineligible for work authorization. Work authorization is often their only means of obtaining government identification; lacking it can cause cascading effects related to school registration, accessing services, and obtaining other benefits.

### C. U Visa and VAWA Backlog

The processing times for survivor-based forms of immigration protections like VAWA self-petitions and U visas have skyrocketed, undermining the effectiveness of these critical benefits. VAWA self-petitions now take between 19.5 and 25 months to be adjudicated. U visas face an even longer delay: there is a 5-year backlog in the initial adjudication process. Current processing times for I-918 U visa applications indicate that adjudications can take about 59 months. This is the posted time for placing cases on the U visa waitlist and issuing employment authorization based on deferred action, not the issuance of a full 4-year U visa.

The U visa wait, in particular is long and arduous. As one of HRI's approved U visa clients, Luis, explained, a person is barred from "anything that you need a social [security number] for. And literally it's everything." Of course, the wait is also unnecessary: under federal regulation, all applicants who "due solely to the cap" are not granted a U visa "must be placed on a waiting list," which automatically grants the U visa petitioner deferred action, providing some protection from removal, as well as the ability to apply for work authorization. Failure to timely place people on the wait list has cascading implications:

- Reflecting on employment, Luis shares, "[y]ou needed a social to have a good job. When I say good job, you can do construction that pays on the side—stuff like that. But if you want benefits, you have to have a work permit."
- Without regular income, it is difficult to find a steady place to live. In 2019, HRI and the SMU Hunter Clinic surveyed 143 immigration practitioners nationwide; over a third of the reported that they had a client lose housing during the waiting period.
  - Although federal law prohibits landlords from discriminating against tenants because of immigration status, many U visa applicants are unable to access housing without a social security number. As Luis explains, "If you were going to live in a nice apartment—they'll want to do a background [check], and having to do a background [check, you need] a social." Another approved U visa client, Monse,\* recalled one time that she lost her apartment after her boyfriend moved out; when she asked the apartment complex to transfer everything to her name, they told her that she needed some sort of documentation to stay: "So I had to go back to living with some friends or just anyone." Documentation of lawful immigration status can also be a prerequisite for certain housing assistance programs.
  - These barriers can be particularly difficult for survivors of domestic violence (who make up a large share of U visa petitioners), who have had to separate from an abusive partner who may have been providing the family's income or housing. Mayela,\* for example, was without status when her daughter called the police to report that Mayela's husband had severely beaten Mayela and needed medical attention. Although Mayela cooperated with law enforcement through this time—helping prosecutors secure a conviction against her husband for assault and drug possession—her family faced eviction from her husband's house. She and her four children slept in a park for a few days, until her daughters' boyfriends were able to

pay for a hotel for two weeks. They were eventually able to move in with one of the boyfriends.

- Without status during the waiting period, U visa applicants also face major barriers to accessing healthcare and medical services. People without documentation cannot access the federal insurance exchanges, are much less likely to receive health insurance through an employer, and—in many states—are unable to access Medicaid.
  - Reflecting on his childhood, Luis shared, “I was never able to go to the doctor [growing up] because you needed a social [security number]” to have a job with health insurance. Without insurance coverage, if you are able, “you just go to the care clinics and churches that have . . . clinics that let you pay \$20 out of love because people are volunteering their time.”
  - Although these care clinics do an important job, they cannot fill the gap that inability to access regular medical care creates. For some U visa applicants, that shortfall is a matter of life and death. A California-based immigration attorney reported that one of their clients passed away with a pending U visa application because she needed a lung transplant and could not get on the list without a U visa approval. Another California-based immigration attorney represented a client who died in 2019 from medical issues and health complications, still awaiting a decision on the U visa case that was submitted in 2015. A D.C.-based immigration attorney shared that one of their clients with a pending U visa application has been unable to get on a list for a kidney transplant because of immigration status.

#### **D. Delays in Employment Authorization Document (EAD) Processing**

For the reasons described above, delays processing employment authorization documents have serious life impacts.

For asylum seekers, the rule effective August 21, 2020 did away with the 30-day deadline that had protected first-time asylum EAD applicants from timely adjudication. Although the 30-day rule still applies to members of CASA and ASAP under the preliminary injunction in *CASA v. Mayorkas*, USCIS has chronically failed to comply with the 30-day processing deadline for initial EADs in category (c)(8) as detailed in recent filings in the Rosario litigation.

For asylum seekers who wish to renew and for our other U visa, VAWA, and SIJS clients, there is no processing deadline. Those renewals typically take several months. This is particularly difficult for our clients whose work authorization does not qualify for automatic extension. Monse, for example, applied for renewal of her work authorization in early October 2020; to date, her application remains pending even though her card expired in late March of this year. These lengthy delays can cause our clients to lose their jobs, as well as their driver’s license. The stress can be crushing.

#### **E. Recommendations**

- The Biden Administration’s FY2022 discretionary funding request allocates \$345 million for USCIS to address naturalization and asylum backlogs; it must be a priority to quickly

and efficiently implement this funding to develop fairer adjudication processes for those in the affirmative asylum backlog, fund and train additional Asylum Officers, modernize asylum office processes with electronic filings and a transparent interview scheduling system, and promote transparency by providing regular, public updates on Asylum Officer interview schedules.

- USCIS must create a three-track system that allocates priority and resources based on the types of new and pending cases at each asylum office. The first track must be for cases in the backlog, beginning with those pending for the longest; the second track would be a continuation of unaccompanied children as required under the Trafficking Victims Protection Reauthorization Act (TVPRA); and the third track would be a continuation of the last-in, first-out (LIFO) policy currently in place while ensuring the applicant has the ability to easily request and obtain additional time when needed. Although LIFO has caused further and unfair delays for those who have already been waiting for an asylum interview for years, it is an example of how the system should eventually function.
- The administration has authority to lead policy changes in agencies outside USCIS that will help shift resources from inhumane border practices--such as rapid adjudication of claims at the border--towards addressing the asylum backlog. Immigration and Custom Enforcement (ICE) and Custom and Border Protection (CBP) have discretion as to whether to place individuals seeking asylum in expedited removal. The discontinuation of expedited removal for asylum seekers would make moot the need for asylum officers to conduct fear interviews at the border thereby allowing USCIS to redirect asylum officers to working on cases on the backlog.
- Retention of staff is also important in decreasing the backlog. This can be attained by reducing vicarious trauma for those who serve vulnerable populations, as well as asylum officers who listen to details of trauma. Retention could also be improved by adequately staffing all funded USCIS Asylum Office positions in order to decrease caseloads and employee burnout. For instance, in FY 2020, USCIS was authorized to employ up to 1,296 asylum officers, but as of April 2020, had only 866 on staff.
- USCIS should also build incentives for Asylum Officers to prioritize backlogged cases. First, USCIS should consider authorizing overtime of Asylum Officers who volunteer to help clear the backlog of affirmative cases, as was done for Asylum Officers who volunteered to implement the Migrant Protection Protocols (MPP) under the Trump Administration. Second, USCIS should facilitate and streamline the re-hiring of Asylum Officers who have quit or moved to other U.S. government positions over the last four years. Third, USCIS should undertake restorative efforts for staff who left or were forced to leave their positions due to matters of conscience and burnout over the last four years, as recommended by the AFGE Local 1924 Asylum Officers' union. Adjudicators need support from USCIS to maximize their well-being and ability to effectively decide cases involving matters of life or death.
- USCIS should increase its ability to reduce the VAWA, U visa, and T visa backlog by immediately hiring an additional 60-80 adjudicators trained to address victim-related cases.

At last count, USCIS only had approximately 100-120 adjudicators for a caseload of over 268,000 pending U visa cases (principal applicants + derivatives). These adjudicators must be well trained in not only knowing the requirements of the relevant applications for relief, but also, crucially, in understanding the dynamics of victimization and trauma.

- VAWA self-petitions and T and U visas should be adjudicated within six months of application, and USCIS should be allocated sufficient resources to timely adjudicate applications.
- USCIS should issue work authorization if VAWA self-petitions, U visas, SIJS applications, and T visas are pending over 180 days in order to mitigate the harm that survivors face by the long USCIS processing delays. This work authorization should be accompanied by deferred action to provide additional protections from deportation while their matters remain pending and up to and until all opportunities for administrative and judicial review are exhausted.
- USCIS should automatically extend work authorization for VAWA self-petitioners, U visa and T visa holders and applicants, and other survivors until they are able to obtain their visas, and asylees until their applications for adjustment of status are adjudicated, in order to minimize the financial and administrative burden, both on USCIS and survivors.

## **II. REDUCE UNNECESSARY ADMINISTRATIVE HURDLES**

### **A. Eliminate the requirement to send passport photos with applications**

Currently, USCIS requires applicants to submit passport photos with their applications for adjustment of status and work authorization. These photos are unnecessary; the agency requires new photos be taken at biometrics appointments for employment authorization and legal permanent residence, and those photos are used for the cards. But particularly over the past two years, obtaining passport photos has become increasingly inconvenient and expensive for applicants. USCIS eliminated this requirement a few years ago for T visa applicants and it has streamlined the process. We ask that USCIS do the same for work authorization and adjustment applications.

### **B. Streamline processes to honor newly filed G-28s**

HRI's team of attorneys and DOJ-accredited representatives serve our over 600 clients with a cadre of pro bono attorneys. During the last fiscal year, for example, our team supervised 310 pro bono attorneys, who collectively donated over 5,000 hours of time. Our pro bono partners frequently change law firms, which means we need to update G-28 forms with new information often. Unfortunately, the new G-28s rarely make a difference: the forms are infrequently incorporated into the client's file, leaving the new attorney of record unable to access case information and without important case updates. This causes serious issues in effectively representing our clients.

### **C. Eliminate receipt notice delays**

Routine tracking of our filings has shown frequent processing delays of two to three months for receipt notices for I-485 and I-765 applications. This tracking is consistent with experiences of providers across the country, who are experiencing lengthy delays. Additionally, we have identified several instances in which no receipt notice was issued at all, and instead, applications were rejected following lengthy delays. Some of these rejections were erroneous.

Prompt attention to remedying these delays is urgently necessary. Delayed employment authorization receipt notices, for example, can result in unnecessary employment termination when someone who qualifies for an automatic 180 extension cannot present their employer with proof their renewal is pending. Delayed receipt notices can also have serious impacts on immigration court proceedings when individuals cannot present proof that they have pending applications for relief on file with USCIS. The delays also create unnecessary work for individuals, their attorneys, and USCIS employees, who must spend time tracking down applications without the benefit of receipt numbers.

### **III. CONCLUSION**

We strongly urge USCIS to quickly redress the issues and adopt the recommendations outlined here and incorporated by reference.

Respectfully,



Kali Cohn  
Community Education & Advocacy Director

\* Names changed for anonymity