



# **WEBINAR SERIES ON ROUTES TO IMMIGRATION STATUS FOR NON-CITIZEN CRIME SURVIVORS**

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**CASEROUNDS: Derivatives, Inadmissibility  
Issues, U visa Extensions, and Including  
Family Members at Adjustment**

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# **At the end of this session, you will be better able to...**

1. Troubleshoot derivative issues
2. Strategize on difficult inadmissibility issues
3. When and why to file for U extension for principal or derivatives
4. Including new derivatives at the AOS phase and preparing a strong I-929 application

# **DERIVATIVES REVIEW**

# Derivatives for U visas

- Sebastian is the principal 13 year old U visa applicant, and he has a 19 year old sister Gloria. Can Gloria be a derivative of his application?

# Derivatives and U visas

- Sebastian's mom Angela has also been helping law enforcement in the case. Would this potentially help out Gloria?

# Derivatives and U visas

- Sally is a U visa applicant is on the waitlist and her 20 daughter Sofia as a derivative. Sofia wants to gets married. Will this affect her application?

# Derivatives

Sofia decides not to get married while on the waitlist, but once she gets her U-3 visa status, she reconnects with her partner and gets married. Will this affect her status now?



# U visa derivatives

## 8 CFR 214.14(f)(4)

### Relationship **MUST**

exist at the time petition is filed

Continue to exist when petition is adjudicated

Continue to exist at the time of subsequent "admission"

### Definition of child- INA 101(B)(1)

(1) Unmarried

(2) Under 21 at the time derivative petition is

\* filed

\* adjudicated

\* admitted

(3) VAWA 2013 age-out fix does not address marriage.

**INADMISSIBILITY**

# Immigration Violations

- What are you screening for?
  - Prior removal orders
  - Expedited removal orders
  - Voluntary Departure/Failure to Depart
  - Re-entry after removal order
  - Triggering of unlawful presence

# Immigration Violations

- Henry first entered the U.S. in 2006 without inspection then left in 2008. He re-entered in 2009 and was picked up at the border. He was issued an NTA but failed to show up at his hearing. He then left again in 2011 and re-entered in 2014.

What inadmissibility grounds do you waive?

# Criminal history

- What are you screening for?
  - Criminal history including:
  - Crimes of Moral Turpitude
  - Aggravated Felonies
  - Drugs
  - Violence
  - On going criminal behavior

# Overcoming difficult inadmissibility issues

While on the U visa waitlist, Angela was arrested and convicted of possession with intent to distribute marijuana.

How do you address this?

## **Overcoming difficult inadmissibility issues for children derivatives**

- Veronica has a U visa and her daughter has an approved I-918A, but her but her birth father in Mexico will not agree to a passport. What are your options?
- What are your options?

DO I EXTEND OR DO I WAIT?



# Extensions of U visas INA 214(p)(6)

Circumstances for Extension:

- (1) Agency certifies that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity.
- (2) Exceptional circumstances
- (3) During the pendency of an application for adjustment of status under INA 245(m). (Automatic)

Extension for derivative may be beyond the date of expiration of principal if:

- 1- **processing of the derivative alien's visa application was delayed** and,
- 2- without an extension, the family member would be unable to meet the three year requirement under 245(m).

# Extension Hypo

- Yuri is a U-2 visa holder who was only granted a 2 year visa when he consular processed in to join his wife. His U visa is about to expire.
  - When to file?
  - What to file?

# Update

- Yuri fell out of status because a notario told him he didn't have to apply? What are his options now?

# I-539, Application To Extend/Change Nonimmigrant Status

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- [Form I-539 \(PDF, 508 KB\)](#)
- [Instructions for Form I-539 \(PDF, 440 KB\)](#)
- [Instructions for Supplement A to Form I-539 \(PDF, 337 KB\)](#)
- [Form M-752, Helpful Filing Tips for Form I-539 \(PDF, 99 KB\)](#)
- [Form G-1145, E-Notification of Application/Petition Acceptance \(PDF, 240 KB\)](#)

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 Close All  Open All

## ▼ Purpose of Form

This form is used by:

- Certain nonimmigrants to extend their stay or change to another nonimmigrant status;
- CNMI residents applying for an initial grant of status;
- F and M nonimmigrants to apply for reinstatement; and,
- Persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant.

## ▼ Number of Pages

Form 9; Instructions 16.

## ▼ Edition Date

12/23/16. No previous editions accepted. You can find the edition date at the bottom of the page on the Form and Instructions.

## ▶ [Where to File](#)

## ▼ Filing Fee

\$370, effective 12 a.m. Eastern U.S. time, December 23, 2016. See Special Instructions.

# Hypothetical

- Ana has two children. One in the USA and another in Honduras.
- Ana's I-918 was approved for four years from October 2 2013- October 1, 2017. When she filed at first, her son Enrique told his mother that he did not want to come to the US. In 2016, he changed his mind. His I-918A was filed on November of 2016 and is still pending. What is the best strategy?

Would your decision be different if Enrique is turning 21 in June 2017?

# Strategies

PRINCIPAL October 2 2013- October 1 2017( 4 years)

ANA-  
Single  
One child in the USA  
One child in Honduras

DERIVATIVE #1 I-918A – September 25 2013-January 1 2017

Jose minor child in the USA

DERIVATIVE #2 I-918A pending

Enrique in Honduras  
If child 20?  
If child 14?

# Acquired derivatives after approval In the USA

## Adjustment of Status after I-929 approval

- Inadmissibility: INA 212(d)(14)
- Discretion: INA 245(m)
- Inadmissibility factors
  - Type
    - Criminal
    - Immigration
  - Undisclosed at time of I-929 filing
  - New

# U Adjustment for derivatives

## Problem

RFE on Continuous presence

E.g. Types of evidence, frequency of submissions

## Strategy

VSC has stated don't need proofs for every month but if from just once source, may not be enough.

### Best evidence

- ❑ Vary types of proofs, 8 CFR 245.22
- ❑ If additional documentation is not available, the applicant must explain why and submit additional letters from others 8 CFR 245.24



# U adjustment

- Medical exams are required but wait for RFE
- I-929 processing cases
  - Not subject to grounds of inadmissibility
  - Continued presence in the US is justified on humanitarian grounds, to ensure family unity or is otherwise in the public interest
  - Failure to comply with LEO requests: write statement stating that they have not been asked for assistance or would not refuse to collaborate if asked
  - AOS derivatives are “tied” to U visa principal (unlike U derivs with their own Us) so status depends on principal’s status
  - Family unity is the central factor re hardship
  - Need statement from qualifying member re discretion

# Acquired derivatives after approval outside of the US

- Immigrant Visa (IV) unit of DOS
- Forms
  - G-28
  - DS-260 (Old DS-230 paper)
  - DS-2001
  - I-864W (Do not submit the I-864)
  - I-693 Medical Form at designated clinic abroad
- Cost: \$379 for the Immigrant Visa – no waiver
- Stamp abroad → LPR card after U.S. arrival

# DS- 260



U.S. VISAS  
U.S. DEPARTMENT OF STATE · BUREAU OF CONSULAR AFFAIRS

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[travel.state.gov](#) > [Visas](#) > [Forms](#) > **Online Immigrant Visa Forms**

[Print](#) [Email](#)

## Online Immigrant Visa Forms

### What are online forms?

You complete and submit online forms over the internet. There are two online immigrant visa forms:

- DS-260, Immigrant Visa and Alien Registration Application
- DS-261, Online Choice of Address and agent

### How to complete an online form

To complete either online form, visit the [Consular Electronic Application Center \(CEAC\) website](#) and follow the directions on the website.

### Need help?

If you have questions about an online form, review the [DS-260 FAQs](#). If you have additional questions, [contact the NVC](#) (IV applicants) or [the KCC](#) (DV applicants).

# DS-2001



## NOTIFICATION OF APPLICANT READINESS

### Introduction

You, or your agent, may notify United States Embassy or Consulate listed on the cover letter that you are ready for an interview by using this Form DS-2001. The form indicates that you and your family members (if applicable) have obtained all the necessary documents for the immigrant visa interview.

NOTE: Please read the *Instructions for Immigrant Visa Applicants* before completing this form.

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### Document requirements

Please obtain the **original documents** or **certified copies** listed in **Instructions for Immigrant Visa Applicants** from an appropriate authority for yourself and each family member who will accompany you to the United States. All documents that pertain to your petition are required, even if they were previously submitted to the Immigration and Naturalization Service (INS) with your petition.

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### Signature

Please fill out the information below and sign.

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Case Number

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Complete Name - Please Type or Print

Q & A

# Resources on VAWA & U Visas

- ASISTAhelp.org
  - [questions@asistahelp.org](mailto:questions@asistahelp.org)
- ILRC.org (Immigrant Legal Resource Center)
  - [sally@ilrc.org](mailto:sally@ilrc.org) (Sally Kinoshita)
- ICWClaw.org (Immigration Center for Women and Children)  
Zoho Database
  - [jessicafarbuvisa@gmail.com](mailto:jessicafarbuvisa@gmail.com) (Jessica Farb)