

Vol 3 December 2020



STANDPOINT

Attorneys & advocates against domestic & sexual violence

Update for Immigrant Survivors

This newsletter will be covering some of the ways in which immigrant survivors of domestic and sexual violence may be affected by recent changes in immigration law. This information is meant to provide domestic and sexual violence advocates with general information on working with immigrant survivors. It is recommended that anyone applying for an immigration benefit or getting legal advice related to immigration status work with an experienced immigration attorney.

Please note: immigration law is **constantly** changing, and it will continue to change rapidly as we move into 2021 with new elected and appointed officials in every branch of government. The information provided in this newsletter is current as of the day it is posted, but it is recommended that advocates continue to follow up on the statuses of these topics and reach out to an experienced immigration attorney with any questions.

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What's going on in the courts?

Fee and Waiver Updates

On August 3, 2020, The Department of Homeland Security (DHS) finalized changes to increase the cost of United States Citizenship and Immigration Services (USCIS) fees and change the availability of fee waivers.¹ These changes were scheduled to begin in October 2020, but they are currently being challenged in courts. As a result of this opposition, USCIS is temporarily prevented from implementing changes until the challenges are reviewed by the court.²

USCIS has begun to list the increased fees on some of their forms, but applicants are not required to pay higher fees until the challenges are resolved. [This table](#) has helpful information including: current fees, proposed fees, waiver changes, and lists of which forms are required for certain applications.

In addition to the fee changes, USCIS is also trying to eliminate an avenue to obtain a fee waiver.³ Right now, applicants can request a waiver ([Form I-912](#)) for three reasons:

- (1) receipt of public benefits
- (2) annual household income is below 150% of the federal poverty guidelines
- (3) undue financial hardships⁴

USCIS has proposed eliminating fee waivers for receipt of public benefits and narrowing the availability of income-based fee waivers by lowering the qualifying income to 125% of the federal poverty level.

¹ USCIS is an agency within the Department of Homeland Security that oversees the immigration system. They are in charge of processing and approving immigration applications and petitions.

² We cannot predict the outcome of these court cases, but we hope that USCIS will continue to be blocked from implementing these fee increases. The National Immigrant Justice Center will be updating this [alert page](#) when new information about the fees is available, so be sure to regularly check for updates.

³ These changes are subject to the same temporary ban as the fee increases.

⁴ Undue financial hardships arise from extraordinary circumstances that are not normally expected in every day expenses, such as a medical emergency, unexpected medical bills, or a severe illness.

This potential change is troubling for survivors of violence, who may not have access to their financial information due to abuse or due to having to hastily leave a dangerous situation. However, it is important to note that these changes to fee waivers will not affect survivor-based immigration applications filed under VAWA (Form I-360), T visas (Form I-914), and U visas (Form I-918).⁵ These three survivor-based applications are free and the new USCIS policies will not change this.⁶

⁵ VAWA self-petitions (Form I-360) are available to victims of domestic abuse
T Visas (Form I-914) are available to victims of sex or labor trafficking ([USCIS Definition Here](#))
U Visas (Form I-918) are available to victims of certain crimes ([List of Qualifying Crimes](#))

⁶ While the initial form filing fees are free for these application, there are usually additional required forms which require payments. Common examples include: Form I-192 required for anyone who entered the country illegally or worked using false documents; Form I-485 for adjusting status; Form I-765 for work authorization; and other subsequent status renewal or naturalization applications.

What's going on with the processing of applications?

“Blank Spaces” Policy

In the fall of 2019, USCIS began rejecting forms that left questions blank without indicating that a question was inapplicable. When USCIS rejects applications, they return all submitted materials to the applicant, which may result in a delay of weeks or months in some cases. The waitlists and processing times at USCIS are already incredibly long, so these additional delays can be detrimental to applicants waiting for immigration benefits. Additionally, U visa certifications expire after 6 months, so a rejection for blank spaces will likely result in the applicant needing to get a new certification signed, which can be a difficult and time-consuming process.⁷

This “no blank space” policy has been applied to asylum applications⁸ and petitions for T visas (Form I-914)⁹ and U visas (Form I-918)¹⁰. USCIS expanded this policy to different types of applications over the past year, so it is best to ensure all forms comply with the policy and are filled out completely.

The USCIS webpage states that they may reject applications if fields are left blank. However, some forms contain ambiguous instructions that make it difficult to determine whether to use “none,” “not applicable,” “unknown,” or “N/A,” when filling out unknown and non-applicable questions. The American Immigration Lawyers Association has recently found that applications for both Asylum (I-589) and U visas (Form I-918) have

⁷ U visa certification is a document that victims need to submit with their applications. Victims of crimes can receive certifications from a number of agencies, including prosecutors, police officers, judges, local family protective services, and other investigative agencies. The certification is required to confirm that a crime has occurred and that the victim (who is petitioning for a U Visa) was helpful to the investigation/prosecution.

⁸ Asylum is for immigrants who fear returning to their birth country due to harm they experienced, or fear that they will experience in the future, due to race, religion, nationality, membership in a particular social group, and/or political opinion.

⁹ T visas are available to immigrant victim/survivors who experienced human trafficking.

¹⁰ U visas are available to immigrant victim/survivors of certain crimes, including domestic violence, sexual violence, and human trafficking.

occasionally been rejected for not using strictly “N/A” to answer questions that are not applicable, even despite the instructions that seemingly allow for other terms.¹¹

Accordingly, ASISTA has recommended that applicants use the word “None” in response to questions that call for numerical responses and “N/A” in response to all other questions for which the applicant does not have an answer.¹²

¹¹ See the American Immigrant Lawyers Association [Blank Space Policy Brief](#) for more information.

¹² See ASISTA’s Statement and Practical Advisory on the Blank Spaces Policy [Here](#)

Asylum Updates

Work Authorization Changes

Previously, an asylum seeker could obtain work authorization 180 days after their initial asylum application was received. The Department of Homeland Security (DHS) has implemented [new rules](#) that increase this mandatory waiting time from 180 days to 365 days, effective August 25, 2020. Work authorization cards are often the first identification document that asylum seekers receive. They can use this document to obtain other government-issued identification such as social security numbers, state identification cards, and driver's licenses.¹³ Limiting their ability not only to work, but also to obtain necessary identification, forces asylum seekers to depend on others, and may result in remaining in dangerous and unhealthy situations.

The new rules also affect work authorization after the denial of an asylum application. Previously, work authorizations were valid for 60 days after an asylum application was denied. Under the new rule, the denial of an application immediately terminates the applicant's work authorization.

Increased Barriers for Eligibility

Previously, asylum seekers could be denied if they were convicted of "particularly serious crimes." DHS has attempted to implement a [new rule](#) that expands USCIS's right to deny asylum to applicants who have been convicted of other crimes, but this **rule has been temporarily blocked** until the Courts can resolve the underlying issues.¹⁴ Some of the additional crimes USCIS is attempting to regulate include any

¹³ Note: Minnesota does not allow immigrants without an approved immigration status to obtain driver's licenses. Minnesota legislators have attempted to pass a "Driver's licenses for all" bill in the past, which would allow immigrants without status in the state of Minnesota to apply for driver's licenses, but these bills have not been approved.

¹⁴ Check the National Immigrant Justice Center's [asylum seekers timeline](#) for updates on this case and more information about recent asylum changes. Also, [click here](#) to see the current court case opposing the asylum changes.

felony convictions, possessing a fake ID, domestic violence, and drug trafficking and possession.

Victim/survivors of violence may themselves be arrested or convicted of certain crimes, as a result of their own victimization. This is especially true when the victim/survivor is an immigrant and may not be aware of their legal rights. As such, it is important to be aware of the additional barriers this rule creates, should it be applied in the future.

Public Charge Rule

UPDATE:

The implementation of this rule was temporarily stopped due to a federal court order. However, that order was lifted and, as of November 3, 2020, the public charge rule is again being applied nationwide.

What is public charge?

“Public charge” is a test that immigration officials use to determine whether a person applying for a green card or visa is likely to rely on government assistance. If someone is determined to be a public charge, that person could be denied a green card, visa, or admission into the United States. The public charge rule has recently been expanded. Previously, public charge applied to people primarily relying on cash benefits, such as Social Security Income (SSI) or General Assistance. Now, public charge can be applied to those receiving non-cash benefits, including housing benefits, medical benefits, and food stamps.

The public charge test only applies to:

- those applying for green cards (lawful permanent residence), and
- those seeking admission to the United States.

Importantly, the public charge test does NOT apply to the following kinds of applications:

- Citizenship
- Green card renewal
- U Visa (for victims of crime)
- T Visa (for victims of human trafficking)
- Asylum
- Refugee
- VAWA self-petitioner for “qualified” abused spouses, parents, or children Special Immigrant Juvenile Status (SIJS)

- DACA Renewal
- Any green card application based on the applicant's U visa, T visa, SIJS, VAWA self-petition, or asylum

**Also note that if your client has children who receive public benefits and your client wants to apply for a green card or visa, their children's receipt of public benefits does not affect their application.*

It is important for domestic and sexual violence advocates to convey that the above categories will not be affected by the public charge expansion. Misconceptions about the public charge rule may cause survivors to withdraw from receipt of public benefits or to not apply for public benefits for which they are eligible. Receipt of public benefits may be very beneficial in helping survivors stabilize after leaving an abusive relationship. Advocates should encourage survivors to apply for benefits that they are eligible for. Please contact Standpoint if you are working with an immigrant survivor and want to know if the public charge assessment applies to them prior to seeking public benefits.

President-Elect Biden's Immigration Proposals

What are executive orders?¹⁵

Normally, for a law to be passed, it needs to go through the legislative process which requires approval from both the House of Representatives and the Senate, as well as the President. Once passed, these laws become permanent and can only be changed by two methods: first, Congress would have to go through the legislative process again to introduce new laws that override the existing law, and second, the Supreme Court can overturn laws if they are found to violate the Constitution.

The President's power to create executive orders (or actions) is an alternative to the legislative process. Executive orders are created and passed solely by the President and work very much like federal laws. The major difference between laws passed by the legislature and executive orders is that executive orders are not permanent and can be directly overturned by the sitting U.S. President. It is common for new presidents to repeal old orders and implement new ones that align with their campaign goals, especially after a change in political parties. However, there are limits to the President's ability to overturn previous executive orders. As seen in the recent DACA case, the President cannot overturn executive orders arbitrarily or on a whim, but is required to have a reasonable justification for doing so.¹⁶

There have been many executive orders passed related to immigration – including the order that provided relief to the “Dreamers” as well as the more recent Travel Ban and the above changes to the asylum process.

DREAM and DACA Reform¹⁷

¹⁵ Additional Information on [Executive Orders](#)

¹⁶ The Court has never fully explained what they mean by “arbitrary and capricious,” but they have said a President cannot overturn executive orders without offering a justification based on factual evidence. They cannot offer an explanation that is based on unproven claims or opinions.

¹⁷ For more information and updates on DACA, visit the [Immigrant Legal Resource Center](#)

Current Status:

The DREAM Act (Development, Relief, and Education for Alien Minors Act) is a proposed law that would allow undocumented immigrants who were brought to the United States before age 16 to obtain work permits and eventually apply for citizenship if they meet all of the requirements. The DREAM Act has been introduced to Congress multiple times since 2001, but it has never been passed. The last time it was proposed was 2017.

DACA (Deferred Action for Childhood Arrivals) is an executive order enacted under President Obama that allows undocumented immigrants who were brought to the U.S. during childhood to receive renewable two-year work authorizations. DACA recipients were also allowed to request approval to travel outside of the U.S. for educational, employment, and humanitarian purposes.

President Trump attempted to repeal DACA entirely, but was blocked by the Supreme Court because the administration failed to justify why they were ending the program. The Court did not say that Trump could never repeal DACA, instead they said that this attempt failed because the Trump administration focused on a few specific parts of DACA and failed to justify their reasons to end the program in its entirety. On July 28, 2020, Trump issued an order instructing USCIS to reject new DACA applications, deny all travel requests unless there are exceptional circumstances, and shorten the DACA renewal period from two years to one year. This July 28 order is currently being implemented.

UPDATE: As of December 7th, 2020, DACA has been fully restored for the time being, as per [DHS's website](#), and they have now begun to accept new applications again.

Biden's Proposed Changes:

Biden has stated that he will fully reinstate the DACA program. He has indicated that he wants to make this program permanent and create a pathway to citizenship for DACA recipients, hinting at a possible new proposal of the DREAM Act.

How This Would Happen:

Biden can reinstate the DACA program by issuing an executive order to restore the protections for DACA recipients. Biden has stated that he wants to create a pathway to citizenship for DACA recipients and make the program permanent. However, to make the program permanent, Biden would have to foster legislative discussions between the political parties and get the bill approved by both chambers of Congress. Depending on the final composition of the Senate, this could be an uphill battle for the President-Elect.

Border Separation, the Wall, and Asylum

Current Status:

Upon becoming President, Trump immediately issued an executive order that directed the government to begin construction on the U.S.-Mexico border wall. Since the executive order was issued, there have been multiple setbacks from lack of funding and other logistical issues.

In addition to the wall, the Trump administration has lowered the yearly cap on the amount of refugees admitted to the country. Since the refugee program's inception in 1980, the cap has fluctuated in response to global events, however it has never gone below 67,000 refugees per year. Since Trump took office, he has lowered the cap every year, from 50,000 his first year to 18,000 in 2020, and has now proposed a cap of 15,000 refugees for 2021.¹⁸

DHS and Custom and Border Protection (CBP) have also enacted policies that limit the amount of asylum seekers that can request asylum at the border each day and force asylum seekers to wait in Mexico while their cases are processed. This practice is often referred to as "[metering](#)." Metering has been used by other presidents as a way of temporarily restricting asylum due to large waves of applicants overwhelming the

¹⁸ More information and charts available at the [Migration Policy Institute](#) and the [Immigration Forum](#)

system. However, the Trump administration is the first to use these policies consistently and not as a temporary response to an emergency.

Biden's Proposed Changes:

Biden vowed to take away funding from the border wall and redirect it to other programs. He also has indicated that he wants to increase government supervision of USCIS in an attempt to hold them accountable and provide more transparency.

Biden stated that he wants to reform the asylum system, which includes increasing the number of admissions and ending the Trump administration's policy of requiring non-Mexican migrants to wait in Mexico for the duration of their asylum cases and metering. In addition, Biden vowed to stop the practice of separating immigrant families at the border.

How This Would Happen:

Biden will be able to end the excess funding on the border wall by repealing Trump's executive order. In regard to the practice of metering, Biden will likely create a task force to address USCIS and CBP oversight and implement new policies for them to follow. Additionally, Biden will issue an executive order to increase the cap on refugees to 125,000. He has also stated he wants to get legislation passed that will establish a minimum admissions number of annual refugees so it cannot be upended by future presidents.

In regard to the separation of families at the border, Biden will issue an executive order to establish a task force focused on reuniting children and parents separated at the border and creating a plan to permanently shut down the border camps.

The Travel Ban

Current Status:

President Trump issued an executive order, which restricts the eligibility of people from seven countries from obtaining visas or entering the U.S. The countries include: Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia.

Biden's Proposed Changes:

Biden says he will repeal Trump's executive order that bans travelers from Muslim-majority countries from traveling or immigrating to the United States.

How This Would Happen:

Biden has vowed to repeal Trump's executive order or create a new executive order that overrides the ban. There are currently some debates on whether this will actually happen and it is hard to predict until more information is released. This is because the resources and data that were used to justify the ban are confidential, and Biden presumably has not had access to them. He will need to review and investigate the basis for the ban and determine if he has sufficient evidence to justify the ban's repeal.

Public Charge

Current Status:

As discussed earlier in this newsletter, the "public charge" rule is used by USCIS when reviewing applications for lawful permanent residence status and admission into the country. Under the current "public charge" rule, officials may deny an application based upon whether the applicant is likely to need government assistance, including Social Security Income (SSI), General Assistance, housing benefits, medical benefits, and food stamps.

Biden's Proposed Changes:

Biden has stated that he plans to begin the process of terminating the "public charge" rules in their entirety.

How this Would Happen:

The “public charge” rules were passed through the regulatory process, so Biden cannot overturn them by executive order. Biden will have to foster legislative discussions to get a bill passed in Congress that overrides the current rule.

If you have any questions about this newsletter or would like to discuss in more detail any of the topics discussed, please do not hesitate to contact Standpoint. We are happy to have a conversation about ways in which advocates can assist immigrants in light of all the changes happening. You can contact Rachel Kohler, Standpoint’s immigration attorney, at 612-767-8926 or at rachel@standpointmn.org.

