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February 10, 2009

Chief, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave, NW., 3rd Floor
Washington, DC 20529

Re: DHS Docket No. USCIS-2006-0067, Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 15540 (December 12, 2008)

Dear Sir or Madam:

The American Immigration Lawyers Association ("AILA") submits these comments on the interim final rule published at 73 Fed. Reg. 15540 on December 12, 2008, which provides procedures for adjustment of status for aliens in T or U nonimmigrant status.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. We appreciate the opportunity to comment on the interim final rule and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that we believe will benefit the public and the government. AILA members regularly advise and represent American companies, U.S. citizens, lawful permanent residents, and foreign nationals in seeking immigration benefits, including lawful admission to the United States, and in complying with U.S. immigration laws and regulations.

After waiting eight years for adjustment regulations for T and U nonimmigrants, AILA welcomes the rule. The rule will finally provide a regulatory path for victims of trafficking and crimes to adjust status and finally create stability in their life. However, AILA is concerned that the rule shifts the burden of proof onto the applicant for adjustment and puts the applicant in a defensive posture: a burdensome position given the vulnerable population. Both T and U nonimmigrants are victims of violent and traumatic crimes. T and U nonimmigrant status is humanitarian in spirit and has the dual purpose of assisting crime victims and law enforcement through "prevention, protection and prosecution." By requiring these victims, who have bravely stepped forward to cooperate with law enforcement, to make a defensive rather than affirmative application for adjustment of status, is above and beyond what should be required.

Additionally, AILA is concerned that the sections of the rule requiring additional evidence of good moral character, certification of continuing cooperation with law enforcement officials, and a copy of the notice of action granting U status are duplicative of evidence required in the initial petition for T & U nonimmigrant status and are burdensome for the vulnerable population that is applying for adjustment. Additionally, the rule's definition of qualifying family member, for U adjustments, is written so narrowly as to exclude U nonimmigrants from adjusting at the same time as the principal applicant- pushing out a large segment of the otherwise qualifying family members of U nonimmigrants. Moreover, due to the delayed implementation of the U nonimmigrant application procedures, many of these requirements will further delay individuals ability to adjust status in a timely manner.

Our comment is organized by addressing our concerns with the T adjustment regulations first and our concerns with the U adjustment regulations last. AILA hopes that DHS considers the following comments when finalizing the interim final rule.

I. T Nonimmigrant Adjustment

1. The rule's requirement to document either ongoing cooperation with law enforcement or extreme hardship if removed is in conflict with the statute as recently amended by legislation.

The new 8 CFR § 245.23(f)(1), requiring certification of continuing assistance from the Attorney General, conflicts with recent legislative changes to the INA.

At the time the interim final rule was published, the statute provided that nonimmigrants admitted in T status may adjust to permanent residency if, *inter alia*, they have either complied with any reasonable request for assistance by law enforcement, or they can demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed.[1] However, HR 7311 amended this language, adding a clause that eliminated the need for trafficked minors to assist law enforcement,[2] and vesting with DHS the authority to determine if an adult applicant complied with reasonable requests for assistance.[3] Whereas the statute previously required the Attorney General's opinion to adjudicate compliance, the statute now shifts this determination to the "*Secretary of Homeland Security, in consultation with the Attorney General, as appropriate*."[4]

In light of this legislative change, T applicants for adjustment of status should be able to document that they complied with reasonable requests for assistance based on credible secondary evidence.[5] This is

[1] INA § 245(l)(1)(C).

[2] Trafficked minor is defined by this statute as one who "was younger than 18 years of age at the time of the victimization qualifying the alien for relief" William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, HR 7311 §201(d)(1). (TVPRA 2008)

[3] Id.

[4] Id

[5] 8 CFR § 214.11(f)(3)

particularly important as many applications for T status were approved without a federal law enforcement agency (LEA) endorsement. Requiring Attorney General certification three years later, at the time of filing for adjustment of status, increases the evidentiary burden without purpose. Such a requirement does not comport with the VTVPA's "*victim-centered approach to trafficking.*"[6]

The T visa regulations account for the hurdles victims face in obtaining a signed LEA endorsement documenting assistance by permitting "*credible secondary evidence and affidavits…to explain the non-existence or unavailability*[7]*"* of the LEA endorsement. The adjustment of status regulations need to account for the same. For example, in many cases it was difficult to obtain the initial law enforcement certification required for the visa application. Many years have passed since some of these applications were filed. Law enforcement officials who may have worked on the initial case have moved on to other careers or have retired. Case files may be in storage and may not be easily obtainable. In addition, there is little guidance on what a certification from law enforcement should look like or if a form will be issued. This extra level of certification creates an undue burden for T visa holders.

The new 8 CFR § 245.23(f)(1), requiring certification from the Attorney General, also fails to consider two other common situations: 1) investigation by state or local law enforcement;[8] and 2) where law enforcement chose not to investigate at all. In these situations, it would be near impossible for an applicant to obtain Attorney General certification; as it is, it is very difficult to get the Department of Justice to respond to many reported instances of trafficking. There is no formal process to request such certification, and there is nothing in either the statute or the regulations to compel the AG from considering requests for certification. Since "*an applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status,*"[9] all such applicants for adjustment of status have already made efforts to reach out to law enforcement. Applicants for adjustment of status should be afforded the opportunity to document these continued efforts.

We understand that law enforcement does not have the resources to investigate every case. Nevertheless, law enforcement's decision not to investigate should not hamper a victim's ability to adjust status. If there is reason to doubt that the applicant complied with any reasonable request for assistance while in T-1 status, the Secretary of the Department of Homeland Security may consult with the Attorney General.[10] Certainly, the Secretary has more access to the AG than does a T nonimmigrant, and can more readily obtain relevant information if necessary about compliance.

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[6] Supplementary Information, 73 Fed. Reg. 75540 (December 12, 2008)

[7] 8 CFR § 214.11(f)(3)

[8] Despite the fact that Congress included state and local law enforcement as qualified LEAs in the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(b)(2), current policy as announced by U.S. Citizenship & Immigration Services Associate Director of Operations William Yates in an April 15, 2004 memorandum is that this provision must wait for further guidance to be in effect. To date, no such guidance has been issued.

[9] 8 CFR § 214.11(h)(2)

[10] TVPRA 2008 § 201(a)(1)(D)(iii)

We recognize Attorney General certification under 8 CFR § 245.23(f)(1) is not an absolute requirement, as T nonimmigrants may qualify for adjustment of status based on a showing of extreme hardship if removed.[11] However, where a T nonimmigrant has assisted law enforcement and either has continued to assist, or has received no additional requests for assistance, that applicant should be able to adjust based on all relevant evidence of such compliance. There is no reason to limit such evidence to a signed certification from the Attorney General, or to burden those who have complied with documenting extreme hardship involving unusual and severe harm. By creating such a high standard of evidence, the regulations are effectively eliminating the option for most applicants to qualify for adjustment based on continued assistance, forcing most applicants to document extreme harm if removed.

Additionally, victims of trafficking under 18 at the time of trafficking should not be required to go to law enforcement at the time of their adjustment for certification. Victims of trafficking who are under 18 do not need to cooperate with law enforcement in order to apply for a T visa. The interim T visa regulations require cooperation to apply for adjustment. This puts a higher burden on this especially vulnerable population and requires them to go through a secondary trauma of reporting their crime to law enforcement, especially since in many of these cases the crime occurred many years ago.

Finally, we are concerned that the adjustment regulations fail to incorporate the trauma exception to complying with requests from law enforcement. TVPRA of 2005 recognized that some applicants may be unable to cooperate with law enforcement because of psychological or physical trauma. [12] These applicants are exempt from assisting law enforcement, as all such requests are deemed unreasonable.[13] Since they are exempt from assisting law enforcement to qualify for T nonimmigrant status, they should be exempt from assisting law enforcement to qualify for adjustment of status. Requiring such applicants to document extreme hardship if removed completely disregards this statutory exemption. Nor should it be assumed that psychological or physical trauma easily equates to extreme hardship if removed.
As noted above, we recognize that T nonimmigrants may qualify for adjustment of status by documenting extreme hardship involving unusual and severe harm if removed, in lieu of documenting continued compliance with law enforcement. We also appreciate that the regulations do not require the applicant to re-document the entire hardship claim, but rather only to submit evidence of how the previously established hardship is ongoing.[14] However, we are concerned that no weight is given to USCIS' prior determinations of hardship,[15] and respectfully request that there at least be a presumption in favor of such previous determinations.

2. The rule's requirement to provide evidence of good moral character is duplicative and burdensome.

AILA appreciates USCIS' interpretation that the period for establishing good moral character starts from the time the victim is admitted as a T nonimmigrant. We agree that to do otherwise would be contradictory to the goal of the statute. However, AILA is concerned that T nonimmigrants are being

[11] INA § 245(l); 8 CFR § 245.23(e)(2)(iii)
[12] INA § 101(a)(15)(T)(iii).
[13] Id. See also 8 CFR § 214.11(a).

[14] 8 CFR § 245.23(f)(2)
[15] 8 CFR § 245.23(f)(2)

required to duplicate efforts of evidencing their good moral character when the USCIS clearances are expected to provide this information to the agency already. Further, considering the short timeframe provided for filing these cases, adding such burdens to the process for people who are still considered recovering victims is overkill and does not benefit USCIS' review of the case. AILA urges USCIS to reconsider these provisions and see them as unnecessary and only an additional burden placed on victims.

Additionally, the rule should exempt acts or convictions that were related to the underlying abuse of the trafficking victim that rendered the applicant eligible for T nonimmigrant status in the first place. In the past, USCIS dealt with a similar statute (VAWA) that specifically called for an exception to the bar of good moral character if the act or conviction was connected to the battery or extreme cruelty. The VAWA regulations issued did not specifically address this exception and as a result, substantial analysis and interpretation followed.[16]

Specifically, for VAWA victims, an act or conviction that otherwise would statutorily bar good moral character under INA sec. 101(f) is excused under INA Sec. 204(a)(1)(C) if connected to a spouse or child having been battered or subject to extreme cruelty. To establish this connection, the evidence must show that the cruelty "compelled or coerced" the applicant to commit the act or crime (would not have committed the act or crime absent the cruelty inflicted).

Even so, USCIS continues to use the same problematic language by duplicating the VAWA regulations and therefore omitting any exception of acts or convictions connected to the victimization. Considering this history and considering Congress' intent to support and protect such victims, AILA suggests that it would be beneficial for all if USCIS where to go a step further in this rule and specify and clarify by regulation an exception related to acts or convictions connected to the abuse of the trafficking victim.

Finally, under the new 8 CFR § 245.23(g)(4), USCIS restates in the rule the presumption that applicants under 14 are persons of good moral character and are not required to submit evidence of good moral character. However, USCIS takes this a step further by stating that "if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require [such] evidence…" AILA asks USCIS to remove this language from the interim final rule to ensure the protection of the children. This additional language is contrary to the historical decisions, regulations and interpretations affecting children and opens the door to extremely harmful discretionary results.

3. 8 CFR § 245.23(e)(2)(i)'s requirement of submitting proof of three years of continuance presence is overly burdensome for the vulnerable population of T adjustment applicants.

8 CFR § 245.23(e)(2)(i) shifts the burden to the applicant to demonstrate that he or she was present in the U.S. for the three years after the issuance of the T visa. AILA suggests that individuals should be allowed to attest, similar to the process in naturalization, that they have been present for the requisite time period. The interim final rule requires vulnerable people to attempt to gather documentation that may not be as available to them as the general population or other immigrants. Collecting documentation for someone who may have been in T status, or now post T status for up to six years without showing any long gap in time will be difficult, especially taking into account some of these

[16] See Memo, Yates, ADO, USCIS, HQOPRD 70/8.1/8.2 (Jan. 19, 2005).

people have lived in homeless shelters, rented rooms, or other unstable situations until getting back on their feet. Many have jobs that pay in cash and they do not have bank accounts or benefits through their employer. It will be difficult or impossible for some of these T visa holders to come up with any sort of documentation that will be sufficient to satisfy this requirement when the burden should be shifted.

4. Three years is not enough time for a victim of trafficking to meet 125% of the poverty line for public charge inadmissibility purposes

AILA is concerned that, given that T adjustment applicants are victims of trafficking and serious crimes, their ability to meet the public charge provisions when applying for adjustment of status is difficult. Three years for a destitute traumatized victim to be meeting 125% of the poverty line in income is not realistic. Further, unlike many, these victims are given a very short window after the three years to adjust their status. As USCIS indicated, Congress provided for a public charge exemption to trafficking victims in VTVPA. AILA disagrees that the intent of Congress was to discontinue this exemption at the adjustment stage. Considering the intent to protect and provide for such victims, Congress would not intentionally cut it off at the next stage. AILA believes that trafficking victims should be considered part of the self petitioner group that was specifically exempted from the public charge provisions under VTVPA. Like other self petitioners, trafficking victims may have no one (particularly family) to assist and support them. Thus, like VAWA victims, trafficking victims should not be subject to the public charge provisions. AILA recognizes that a waiver "in the national interest" may be available but Congress has already indicated the nation's interest in exempting them.

5. Additional regulations are needed for "other family members" / Derivatives.

AILA suggests that additional regulations be included to cover "other family members" similar to the S regulations. There is no mention of prior derivatives following to join or accompanying the victim. These family members have the same (or more) vulnerability and possible harm as the victim particularly since they are in another country and not under the protection of U.S. laws. Including such provisions will support family protection and unity intended by Congress.

Suggested additional language may include the following (which follows VAWA regulations):

Derivative beneficiaries. A child or spouse accompanying or following to join the applicant may be accorded the same preference and priority date as the applicant without the necessity of a separate petition. A derivative child must be unmarried, less than 21 years old, and otherwise qualify as the applicant's child under section 101(b)(1)(F) of the Act until he or she becomes a lawful permanent resident based on derivative classification.

6. The transition period filing period is too short.

Under 8 CFR § 245.23(a)(3), those T visa holders who have three years or more in T status have 90 days to file for adjustment, which would require them to file before April 13, 2009. This filing period is too short, especially when they are asked to submit documentation to show physical presence, a law enforcement certification, and copies of a valid passport when they may need to apply for one. Fees for medical exams by Civil Surgeons are not fee waivable and can cost hundreds of dollars, especially when

entire families are applying. Applicants need more notice to save for these fees, solicit donations or borrow the money. AILA suggests that the transition period for filing adjustment for those already in T nonimmigrant status be extended.

7. The rule's language is unclear about when to file adjustment application for cases with no investigation.

The language regarding when and how to file an adjustment application is very clear for T visa adjustment applicants who were cooperating in law enforcement investigations and prosecutions. However, clarification is needed for applicants who attempted to cooperate with law enforcement but an investigation never occurred due to no fault of the victim. For example, the trafficking survivor reports that havingh been a victim of a crime but law enforcement does not return phone calls, no investigation is every initiated or perhaps the crime was so long ago that most statute of limitations have expired. Although an applicant can wait three years and apply under the "extreme hardship" prong of the statute, it is unfair for applicants to wait this long when the lack of law enforcement involvement was through no fault of their own.

The proposed solution is to allow T visa holders to apply for adjustment immediately when there never was a law enforcement investigation and no certification if they can affirmatively state that they would be willing to cooperate in any future investigation.

II. U Nonimmigrant Adjustment

1. Qualifying family members previously in U nonimmigrant status should be able to adjust concurrently with the principal applicant.

The procedures for "qualifying family member" adjustment under 8 CFR § 245.24 (g) prohibit qualifying family members who were previously granted U nonimmigrant status from adjusting at the same time as the primary applicant. AILA suggests that, to prevent this unintended result, this section be revised to allow qualifying family members previously in nonimmigrant U status to apply for adjustment concurrently with the principal applicant.

The rule's provision under 8 CFR § 245.24(g) limits qualifying family member adjustment to those qualifying family members who have never held U nonimmigrant status. This creates a situation where a crime victim, initially granted U nonimmigrant status 5 years ago, may adjust immediately, but a "qualifying family member" who was granted derivative U nonimmigrant status 3 years after the primary applicant, may not immediately adjust due to the requirement of having been in U nonimmigrant status for 3 years. The rule's requirement that a qualifying family member is only eligible for adjustment of status if never previously in U nonimmigrant status creates the, perhaps unintended, consequence that children, spouses, and, in the case of child victims, parents of U nonimmigrants are in an area of limbo and will not have lawful permanent residence concurrent with that of their crime victim family member.

8 CFR § 245.24(a)(2) defines a "qualifying family member" as one who, among other things, has "never been *admitted* to the United States as a U nonimmigrant under section 101(a)(15)(U)." 8 CFR §245.24(g) goes on to describe the procedures by which a qualifying family member may apply for

adjustment of status or for an immigrant visa, and limits adjustment to those qualifying family members who have never *held* U nonimmigrant status . Taken together, these two provisions are meant to implement INA §245(m)(3) which allows certain family members of U petitioners "who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii)" to apply for adjustment of status or immigrant visas if certain other criteria are met.

Unfortunately, the new regulatory definition of "qualifying family member" which applies to all persons who have "been admitted . . . as . . . U nonimmigrant[s] under section 101(a)(15)(U)," is much broader than the family members eligible to adjust status under INA §245(m)(3) which restricts only family members not previously issued U nonimmigrant visas. In other words, under INA §245(m)(3), spouses or children of U petitioners applying to adjust status or obtain immigrant visas as well as parents of child U status petitioners applying to adjust status or obtain immigrant visas upon a showing of hardship, unless such family members were previously issued U nonimmigrant visas; the statute itself has no parallel bar for such family members previously granted U nonimmigrant status in the United States. However, without rational basis, the limitation on concurrent adjustment of status or immigrant visa applications for certain family members is expanded to include those in U nonimmigrant status instead of limited to the statutory category excluding only to those previously granted U nonimmigrant visas. To avoid this result, AILA suggests this section be revised to allow qualifying family members previously in nonimmigrant U status, to apply for adjustment concurrently with the principal applicant.

2. To avoid confusion of the definition of qualifying family member in this section and qualifying family member in 8 CFR § 214.14(a)(10), AILA recommends the use of a more distinct phrase in this section.

The term "qualifying family member" is defined in 8 CFR § 245.24(a)(2) as, among other things, a family member who never has been admitted in the United States as a U nonimmigrant. Following the terms of the statute, INA §245(m)(3), a qualifying family member can only be (1) spouse of a noncitizen in U status; (2) child of a noncitizen in U status; or (3) parent of a child in U nonimmigrant status.

In contrast, in 8 CFR § 214.14(a)(10) (in the U nonimmigrant visa petition context), the term "qualifying family member" is defined as a family member eligible for U nonimmigrant status. Again, tracking the language of the statute, INA § 101(a)(15)(U)(ii), a qualifying family member is a (1) spouse of a noncitizen applying for U status; (2) child of a noncitizen applying for U status; (3) parent of a child applying for U nonimmigrant status; or (4) sibling of a person 20 or younger applying for U nonimmigrant status.

While the regulatory provisions each make clear that the definition in question only relates to the specific section in which the definition appears, using the term 'qualifying family member" in these two specific contexts relating to U nonimmigrant status is likely to be confusing. Ideally, a distinct phrase could be added to distinguish between these two terms.

3. Requiring a photocopy of the alien's Form I-797, Notice of Action, granting U nonimmigrant status is burdensome

Under 8 CFR § 245.24(b)(7), in order to apply for adjustment of status, a noncitizen "must submit," among other things, a copy of the "Notice of Action . . . granting U nonimmigrant status." While this requirement may appear reasonable on its face, as a grant of U nonimmigrant status is a prerequisite to

eligibility, the requirement could cause delay of the grant of lawful permanent resident status for months or even years for eligible nonimmigrants who have been penalized for years by the slow, bungled implementation of legislation relating to crime victims first signed into law over eight years ago.[17]

These nonimmigrants who would suffer are among the over 7,500[18] granted U interim relief[19] in the over seven-year period between the passage of U legislation and the implementation of U regulations. As those granted U interim relief are "accorded U . . . nonimmigrant status as of the date that a request for U interim relief was initially approved,"[20] thousands of noncitizens previously granted U interim relief will be deemed to have been in U nonimmigrant status for over three years, and thus, under INA §245(m)(1)(A), eligible to apply for adjustment of status upon the approval of their petitions for U nonimmigrant status.

Unfortunately, as the L.A. Times has reported,[21] between the implementation of regulations on October 17, 2007 and the end of 2008, U.S. Citizenship and Immigration Services (USCIS), managed to adjudicate only 85 out the approximately 13,300 petitions filed for U nonimmigrant status. This rate of adjudication (a rate of less than 1% per year) does not bode well for the timely adjudication of adjustment of status applications. At a minimum, those previously granted U interim relief should be allowed to file adjustment of status applications without waiting for the approval notice if, upon the approval of their U nonimmigrant status petitions, they are immediately eligible to file for U nonimmigrant status. Further, such adjustment of status applications should be simultaneously adjudicated with the U nonimmigrant status petitions.

4. The rule's requirement that applicants provide a photocopy of all pages of all of the applicant's passports valid during the required period is overly burdensome.

The requirement that all pages of all of an applicant's passport during the relevant period seems gratuitous, anti-environmental and unresponsive to the situation of most persons granted U nonimmigrant status.

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[17] See Section 1513, Title V, Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000).

[18] Declaration of Michelle. Young, Supervisory Adjudications Officer for USCIS, ¶¶ 3, 7, Exhibit D to Defendants' Motion to Dismiss Plaintiffs' Complaint in Catholic Charities CYO v. Chertoff, C 07-1307 PJH (N.D.C.A., San Francisco Division) (filed May 29, 2007).

[19] According to 8 CFR §214.14(a)(13), "[t]he term, U interim relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations."

[20] 8 CFR §214.14(c)(6) (primary U petitioners); see also 8 CFR §214.14(f)(6)(i) (with almost identical language relating to U derivatives).

[21] See Anna Gorman, "U-visa program for crime victim falters," at http://www.latimes.com/news/printedition/california/la-me-crimevisa26-2009jan26,0,4468046.story (Jan. 26, 2009).

First, many countries do not provide their citizens with their old passports when they apply for new ones, so many people do not have their old passports from which to copy pages once they obtain new passports.

Second, a person who has travelled but wishes to conceal documentary evidence of such travel could simply report his or her passport as lost and obtain a new passport. Rather than gratuitously forcing applicants to copy several blank pages of their passports, it seems both more environmentally friendly and efficient to rely on a combination of the US government's own records with respect to border crossings, copies of stamped passport pages, where such pages exist, and the applicant'ss own sworn statement with respect to travel.

Third, as the ability of a noncitizen in U status who has previously been unlawfully present in the United States to travel in and out of the United States, retain U nonimmigrant status and adjust remains unclear in the regulations, it is likely that the vast majority of U nonimmigrant status applicants for lawful permanent resident status will not have travelled at all subsequent to grant of U nonimmigrant status.

Fourth, in the experience AILA members who have worked with a large number of U nonimmigrant status petitioners, a significant number of U petitioners do not have passports to begin with.

5. The requirement that an applicant provide a copy of the I-94, Arrival-Departure Record, as evidence that the applicant was lawfully admitted in U nonimmigrant status is also unduly burdensome.

As already noted above, it seems likely that a significant number, perhaps a majority, of those in U nonimmigrant status, will not travel between grant of U nonimmigrant status and the time of adjustment of status. In such cases, the Form I-94, the evidence of admission in U nonimmigrant status and the Notice of Action granting U nonimmigrant status will be one and the same document. The regulations should make this fact clear and should describe what documents are required in such a situation.

6. A fee waiver should be provided for Form I-539

Under 8 CFR § 103.7(c)(5), as amended, fees may be waived relating to biometrics as well as the following forms that U nonimmigrant status petitioners and derivative family members may file: Form I-192, Form I-192, Form I-485, Form I-765, Form I-929.

Noticeably missing, however, is a fee waiver option for Form I-539, a form that U petitioners and, more frequently, U derivatives will be required to file to extend their U nonimmigrant status. There appears to be no rational basis for excluding Form I-539 from the list of forms that U petitioners and U derivatives may waive.

Furthermore, leaving out Form I-539 from the list of fee waivable forms directly contradicts a statutory provision signed into law just 11 days after the promulgation of the U and T adjustment regulations, which states:

> The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997). The William Wilberforce

Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) § 203(d)(3) (to be codified at INA §245(*l*)(7) (emphasis added).

Thus, not only is there no reason to exclude Form I-539 filed by U petitioners and derivatives, but such an exclusion is directly contradicted by a statute that went into effect on December 23, 2008, 11 days after the promulgation of the U and T adjustment regulations, but 20 days before such regulations went into effect.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION