

July 5, 2023

Samantha Deshommes
Chief Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW.
Washington DC 20529-2140

Via Federal Registry upload

RE: **DHS DOCKET No. USCIS-2023-09692, Agency Information
Collection Activities; Revision of a Currently Approved Collection:
Application for Advance Permission To Enter as Nonimmigrant; OMB
Number 1615-0017, Document Number 2023-09692**

Dear Ms. Deshommes:

We write to submit the Coalition to Abolish Slavery and Trafficking's (CAST) comments to DHS DOCKET No. USCIS-2023-09692, Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Advance Permission To Enter as Nonimmigrant; OMB Number 1615-0017, Document Number 2023-09692.

Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. Additionally, CAST opened the first shelter in the country exclusively dedicated to providing physically and psychologically safe housing for survivors. CAST serves male, female, and minor victims of trafficking. CAST clients come from almost every region of the world including Asia, Latin America, Eastern Europe, Africa and the United States. Since 2015, CAST has provided technical assistance to over 3800 trafficking legal cases, predominantly T visa cases for survivors of sex and/or labor trafficking. Our experience providing legal and social services to survivors daily gives us critical information about the real-life experiences of trafficking victims and, therefore, the impact of policy guidance such as this on survivors' ability to stabilize and obtain protection. Our daily experience providing legal and social services to survivors gives us critical information about the real-life experiences of trafficking victims and how the proposed amendments to Application for Advance Permission To Enter as Nonimmigrant will greatly assist trafficking victims and the attorneys assisting them in filing their T visa.

First, we would like to commend DHS for allowing an opportunity for the public to comment on the proposed changes to Application for Advance Permission To Enter as Nonimmigrant. CAST again commends DHS to allow for the proposed public comment period and its efforts it has taken in the collection of information that is necessary for the proper performance of the functions of this agency. CAST has continuously utilized public comment periods like this to provide DHS with suggestions to enhance DHS's ability to carry out the congressional intent to protect victims of severe form of trafficking in persons and their immediate family. We are aware of the lengthy process of collecting and implementing changes to these forms. CAST hopes to see the implementation in the near future of the changes that CAST has suggested in the previous revisions to the T visa and accompanying forms, as well as the suggestions that CAST proposes in this current public comment period. Thank you for continuously updating the forms related to T nonimmigrant status.

The comments below are based on our direct experiences providing direct legal representation and providing national technical assistance to advocates assisting their client's file T visa applications. . Recommendations for additional or amended language are in *red, italic font*. Recommendations for deleted text are in ~~red strikethrough font~~.

Instructions for Form I-192

Page 2

General Instructions

Current Language:

Filing Fee. You must pay the appropriate filing fee for each application you submit. (See the What Is the Filing Fee section of these Instructions.)

Suggested Change:

Filing Fee. You must pay the appropriate filing fee for each application you submit **or I-912, Request for a Fee Waiver**. (See the What Is the Filing Fee section of these Instructions.)

Explanation:

Both applicants of T nonimmigrant status and U nonimmigrant status are eligible to see a waiver of fees using Form I-912, Request for a Fee Waiver. As the agency noted in its *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 88 Fed. Reg. 402, 460 (Jan. 4, 2023), applicants for T nonimmigrant status are an especially vulnerable population. Many trafficking survivors and their families face financial difficulties following the survivor's victimization. We acknowledge that USCIS is currently proposing fee schedule changes. However, until those changes are implemented, CAST recommends that USCIS explicitly recognize that applicants can submit the I-192 with a fee waiver. This acknowledgment would be particularly beneficial since Forms I-914 and I-914 Supplement A do not require fees. By including this requirement in the instructions, it will serve as a reminder to T nonimmigrants to include either the fee or fee waiver when submitting their application.

How to Complete Form I-192 – USCIS Online Account Number.

Recommendation and Explanation:

CAST suggests including a note in this section to highlight that information regarding applications protected under the VAWA confidentiality provisions of 8 USC §1367 may not be accessible through the USCIS Online systems. As a technical assistance provider, we have observed that many practitioners and applicants are unaware that their case information is not accessible through all of the mechanisms provided by USCIS due to privacy protections. Noting this in the instructions could serve as a reminder to practitioners that they cannot use this method to obtain the case status of the Form I-192 if it was submitted in conjunction with the T and U nonimmigrant forms.

Page 3

Item Numbers 10.-11. Address History

Recommendation and Explanation:

CAST suggests the inclusion of additional instructions that would allow T and U nonimmigrant applicants to provide only the city and state for certain addresses. It is important to recognize that many victims of crime may be unaware of specific locations where they were held or may have stayed in confidential shelters, making it difficult for them to provide precise physical addresses. By providing further instructions that take into account the unique circumstances of crime victims, USCIS acknowledges that applicants may not have access to detailed information about their experiences.

Similarly, CAST recommends providing instructions on how applicants can indicate only the month and year for certain locations. (This includes allowing flexibility in the PDF form for the dates.) Many applicants frequently move due to their victimization, making it challenging for them to recall the exact dates associated with each location. Including instructions that allow for the use of approximate dates acknowledges the transient nature of their circumstances.

Page 6

List each crime separately.

Recommendation and Explanation:

CAST recommends that USCIS include a note stating that vacated crimes, meeting the Pickering standard (*Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006)), do not need to be listed or waived on the Form I-192. This exemption applies solely to vacated crimes resulting from "Constitutional defects, statutory defects, or pre-conviction errors affecting guilt." *Id.* Many trafficking survivors are coerced into committing crimes as part of their victimization. State legislatures are increasingly acknowledging forced criminality and enacting vacatur legislation to allow the vacatur of criminal acts for trafficking victims. These vacatur laws recognize the legal errors in convicting certain survivors and lead to the destruction of their criminal records. For instance, in California, under Cal. Penal Code §236.14(k), government agencies are required to seal and destroy such records. Although the applicant may possess a copy, there is no recourse for obtaining another copy from the court in case of its loss, leaving the survivor unable to meet the requirements of USCIS. Therefore, CAST advises USCIS to acknowledge that if a crime has been vacated, additional documentation is unnecessary, and the crime does not need to be listed or waived on the Form I-192.

Page 7

What is the Filing Fee? – 3. If you live outside the United States...***Current Language:***

If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment.

Suggested Change:

If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment. **Applicants for T and U nonimmigrant status, even if located outside of the United States, shall pay the filing fee or submit the fee waiver to the appropriate address as listed in “Where to File”.**

Explanation:

This clarification is intended for T nonimmigrant derivative applicants, as well as certain U nonimmigrant applicants who may be abroad, to inform them that they must submit their fee or fee waiver to either the Vermont or Nebraska Service Centers.

Page 9

USCIS Processing***Recommendation and Explanation:***

CAST recommends that USCIS provide clarification on the transferability of an approved Form I-192 in light of existing USCIS policy. Specifically, it would be helpful for USCIS to clarify whether the approved Form I-192 can be used if the applicant intends to adjust their status through means other than the U nonimmigrant adjustment or T nonimmigrant adjustment process, or if they would need to pursue a new waiver through alternative channels. For instance, if a T nonimmigrant seeks to adjust their status under INA §245(a) for a family-based adjustment, USCIS should clearly state whether their previously approved Form I-192 can be utilized in that process.

Furthermore, CAST recommends that USCIS includes the Confidentiality notice found in Forms I-914, I-914A, I-918, and I-918A within the Form I-192 instructions. The inclusion of this information regarding VAWA confidentiality, as outlined in 8 USC §1367, is crucial, particularly because Form I-192 contains highly sensitive information about the applicant, including potential criminal details.

Form I-192

Page 2

Other Information – Item 8. Gender***Recommendation and Explanation:***

CAST commends USCIS for its commitment to inclusivity by adding a third checkbox for "Another Gender Identity" on their forms. Additionally, CAST suggests including additional two blank boxes adjacent to the third checkbox. The first box would enable applicants to specify their gender identity, ensuring that they are correctly identified by adjudicators or officers. The second box would

provide space for applicants to indicate their preferred pronouns. This enhancement would facilitate agency correspondence with applicants in situations such as Requests for Additional Evidence (RFEs), Denials, or other forms of communication.

Page 3

Address History

Recommendation and Explanation:

CAST recommends including a note on the form stating that applicants are required to provide only the city and state for certain addresses. Furthermore, if USCIS incorporates CAST's aforementioned suggestions, USCIS can also note that applicants can refer to the instructions for additional guidance.

Page 7-8

Part 4 – Interpreter's Contact Information, Certification, and Signature

Recommendation and Explanation

CAST suggests including a note indicating where applicants can provide information about additional interpreters. In cases involving rarer languages, multiple interpreters may be required, such as for interpretation from English to Spanish to an indigenous language, and vice versa. We recommend either allocating space for an additional interpreter or providing guidance on what to include in the "Additional Information" section.

We appreciate the opportunity to comment on **Application for Advance Permission To Enter as Nonimmigrant**. Thank you in advance for your consideration and we look forward to a continuing dialogue with USCIS on these important issues. For more information, contact erika@castla.org.

Respectfully submitted,



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