



USCCB Committee on Migration

C/O MIGRATION AND REFUGEE SERVICES

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**CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.**

February 9, 2009

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

**RE: DHS Docket No. USCIS-2007-0067. Proposed Interim Rule –
Adjustment of Status to Lawful Permanent Resident for Aliens in T or U
Nonimmigrant Status**

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) and the United States Conference of Catholic Bishops (USCCB) respectfully submit the following comments to the proposed rule for adjustment of status to lawful permanent resident for aliens in T or U Nonimmigrant Status as published in 73 Fed. Reg. 240 at 75540 (Dec. 12, 2008).

I. CLINIC/USCCB's Interest in the Proposed Interim Rule

CLINIC, a subsidiary of the USCCB, is a legal support agency for the nation's largest and most productive network of charitable immigration programs. The network includes 173 programs in 262 office locations across the country in 48 states. It currently employs roughly 1,200 attorneys and "accredited" paralegals who in turn, serve over 600,000 low-income immigrants each year. CLINIC and its network serve the most vulnerable migrants, which include victims of domestic violence, trafficking, and other crimes. Our network has assisted thousands of immigrants to file for T and U nonimmigrant status. Since 2003, CLINIC has held over 30 trainings nationwide educating attorneys and advocates on the different types of immigration relief available to victims of trafficking, domestic violence, and other crimes. Moreover, CLINIC and Migration and Refugee Services of the USCCB, along with the Legal Aid Foundation of Los Angeles produced an important and widely-used manual for advocates representing victims of trafficking entitled, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*. As outlined below, we believe that changes to the interim rule are necessary in order to ensure that eligible T and U nonimmigrants are able to adjust to lawful permanent resident status.

II. Individuals who have already accrued four years of T or U nonimmigrant status should be given one year from the date of the promulgation of the interim rule to file their application for adjustment of status to lawful permanent resident.

The interim rule requires applicants to hold valid T or U nonimmigrant status at the time of filing the application for adjustment of status to lawful permanent resident.¹ The interim rule recognizes that at the time of the rule's publication, some individuals will have already accrued four or more years of T or U nonimmigrant status. Therefore, the interim rule provides a 120 and 90 day transition filing period (from the date of promulgation of the rule) for such T and U nonimmigrants to file their adjustment of status applications.²

The 120 and 90 day transition filing periods for these individuals is insufficient and should be extended to one year. Preparing and gathering supporting documentation to accompany the adjustment of status application is time consuming and especially challenging for this population. For example, under the interim rule applicants are required to gather documentation to show that they have been physically present in the United States for at least three years since the date of admission in T or U nonimmigrant status.³ Victims of domestic violence and trafficking are highly mobile and often forced to live underground, which results in little evidence of residence. As a result, these individuals, as well as the legal representatives assisting them, will need more than 120 and 90 days to gather the appropriate documentation and file their applications for lawful permanent residence.

Additionally, under the interim rule, T and U nonimmigrant adjustment of status applicants are required to demonstrate they have complied with any reasonable request for assistance from a law enforcement agency regarding the investigation or prosecution of persons involved in the criminal activity that qualified the applicant for T or U status.⁴ U nonimmigrants can meet this requirement by obtaining documentation or a new certification from a law enforcement agency. They may also provide alternative documentation in the form of an affidavit that outlines their attempts to obtain a new certification from law enforcement, or that certifies that they were not contacted by law enforcement for additional assistance.⁵ T nonimmigrants can also meet the requirement by obtaining documentation issued by law enforcement or by showing extreme hardship involving unusual or severe harm if removed from the United States.⁶ Despite the fact that such documentation is integral to an applicant's adjustment of status application, law enforcement officials may not understand the need to produce such documentation on a rapid basis. It is our network's experience that law enforcement officials are frequently not readily available or willing to prepare this type of documentation. The brief time frame provided by the rule fails to take into account the logistical challenges that

¹ 8 C.F.R. 245.23(a)(2); 245.23(b)(2); 245.24(b)(2)

² 8 C.F.R. 245.23(a)(2)(ii); 245.24(b)(2)(ii)

³ 8 C.F.R. 245.23(a)(3); 245.24(d)(9)

⁴ 8 C.F.R. 245.23(a)(2)(ii); 245.24(b)(5)

⁵ 8 C.F.R. 245.24(d)(8)

⁶ 8 C.F.R. 245.23(a)(6)

applicants will face when attempting to obtain such documentation. Applicants who choose to provide alternative documentation or prove extreme hardship will also need more than 90 or 120 days to collect the necessary documentation, obtain affidavits or letters of support from family/friends, make appointments for psychological or medical evaluations, obtain the assistance of legal counsel to prepare their adjustment of status application, save enough money for the application filing fee, etc. Legal advocates and attorneys will experience an influx in requests for immediate assistance with such applications and will need more than 90 or 120 days to meet this demand.

Under the interim rule, individuals who have accrued three years of T or U nonimmigrant status have a one-year time period within which they may file the adjustment of status application. T and U nonimmigrants whose status has expired solely because the interim rule regarding adjustment of status was not published in a timely manner/prior to the expiration of their status, should not be treated disparately since their status' expiration is no fault of their own. In order to ensure that they have the opportunity to obtain lawful permanent resident status the interim rule should afford them a one-year filing period

III. Individuals who accrued four years of T or U nonimmigrant status should have their status automatically extended for the period in which they are eligible to file an application for adjustment of status to that of a lawful permanent resident.

Individuals who have accrued more than four years of T or U nonimmigrant status are out of status and therefore at risk of being placed into removal proceedings. Although the interim rule allows these individuals to apply for adjustment of status,⁷ during the period before their adjustment of status application is filed, these individuals will be out of status, without work authorization, and at risk of removal. To ensure that they are not removed and could continue working to financially provide for themselves and their families, their T and U nonimmigrant status should be extended throughout the time period in which they are eligible to apply for adjustment of status.

IV. Individuals who elect to have law enforcement issue documentation regarding their compliance with any reasonable request for assistance should have the opportunity to reply and respond to any adverse statements or determinations contained in the documentation.

All T and U nonimmigrants applying for adjustment of status are required to show that they have complied with any reasonable request for assistance by law enforcement.⁸ In order to meet this requirement, T and U nonimmigrants may obtain documentation from a law enforcement agency that describes their compliance.⁹

In the event that such documentation contains adverse statements or determinations regarding the individual's compliance with requests for assistance, T and U nonimmigrants must have the opportunity to rebut such determinations, as such

⁷ 8 C.F.R. 245.24(a)(2)(ii);245.24(b)(2)(ii)

⁸ 8 C.F.R. 245.23(d); 245.23(f); 245.24(d)(8); 245.24(e)

⁹ *Id.*

statements could have a negative impact on the individual's adjustment of status application and/or lead to the denial of that application. The interim rule must provide applicants with the opportunity to reply and respond to adverse statements by providing USCIS with additional evidence and supporting documentation that explains or rebuts the adverse information. USCIS should consider any additional evidence and supporting documentation provided by the applicant when determining whether an individual has met the requirement.

V. Individuals whose initial T or U law enforcement certifications indicate that the related prosecution or investigation is complete and that no further assistance is required of the T or U nonimmigrant, should not be required to submit additional documentation to demonstrate compliance with reasonable requests for assistance by law enforcement officials.

The interim rule requires individuals to demonstrate based on affirmative evidence that they have complied with any reasonable request for assistance during the duration of their T or U nonimmigrant status.¹⁰ It is both burdensome and irrational for individuals to obtain additional evidence in situations where the initial law enforcement certification for the T or U nonimmigrant status indicates that prosecution or investigation is complete and no further assistance is needed. There is no evidentiary value in having individuals provide additional documentation that would state the same information contained in the initial law enforcement certification. Such documentation would simply create unnecessary hassles for applicants and law enforcement officials.

Conclusion

We believe that the changes outlined above would result in a more fair application process for T and U nonimmigrant applicants eligible to adjust status to that of lawful permanent resident. Thank you for your consideration of our views.

Sincerely,

Mark Franken
Executive Director, CLINIC

Carlos Ortiz Miranda
Associate General Counsel, USCCB

¹⁰ *Id.*