



## **Updated Practice Alert: U Visa and T Visa ‘After-Acquired Spouse’ Cases<sup>1</sup> (June 11, 2021)**

On December 3, 2020, the Ninth Circuit held that after-acquired spouses of U visa petitioners are eligible to "accompany or follow to join" the U-1 petitioner through the I-918A petitioning process. Below is the latest information on how and when to file an I-918A for a derivative spouse where the marriage to the U-1 petitioner occurred after the filing of the I-918 but before the U petition was adjudicated.

### **Medina Tovar v. Zuchowski**

In [\*Medina Tovar v. Zuchowski\*](#), the en banc Court found that USCIS's requirement that the spousal relationship exist at the time of filing the I-918 was arbitrary and capricious. Previously, this USCIS interpretation meant that the U-1 had to wait until they were eligible for adjustment of status in order to file an I-929 petition to accord U visa benefits to a spouse whom they married after filing the I-918, even if the marriage took place prior to the adjudication of the U visa petition.

[ASISTA submitted an amicus brief](#) in support of the plaintiffs and we are extremely grateful to our *pro bono* counsel, David Priebe and Monica De Lazzari with DLA Piper.

### **Is the decision in Medina Tovar final?**

The decision in *Medina Tovar* became final May 2, 2021.

### **Who may benefit from the Medina Tovar holding?**

The decision has been in effect in the Ninth Circuit since January 25, 2021, the date on which the Court issued its decision, and is applicable to U-1 petitioners seeking to file an I-918A for spouses they married while the I-918 was pending. While USCIS has not yet issued guidance on implementation of the decision, USCIS has announced that has decided to take the following approach with regard to the holding in *Medina Tovar*:

1. USCIS will apply the decision **nationwide**.
2. USCIS will apply the holding to U visa **and T visa** cases.

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<sup>1</sup> As policy on this issue is evolving, check [www.asistahelp.org](http://www.asistahelp.org) for future updates.

3. USCIS is currently holding adjudication of I-918A petitions for eligible after-acquired spouses until guidance is published.<sup>2</sup>

### **What does this mean for your case right now?**

USCIS is developing nationwide guidance to reflect the holding in the *Medina Tovar* decision for both U and T visa cases. USCIS has said that it is actively working to identify derivative petitions impacted by this decision.

#### **Can a U-1 petitioner with a pending I-918 who married after filing now file an I-918A based on the decision in *Medina Tovar*?**

YES. Those with pending U-1 petitions may submit I-918As for their spouses now. This applies nationwide, not just in the Ninth Circuit.

**Practice Pointer:** Include a bold, highlighted or capitalized statement within the cover letter stating that their spouse is now eligible under *Medina Tovar*.

#### **A U-1 petitioner married after filing her I-918, but before it was approved. Now that she has been granted U nonimmigrant status, can she still file an I-918A?**

YES. Those who married while their I-918 petitions were pending can file for their spouse now. This applies nationwide, not just in the Ninth Circuit.

#### **Can a T-1 petitioner with a pending I-914 who married after filing now file an I-914A based on the decision in *Medina Tovar*?**

YES. Those with pending T-1 petitions may submit I-914As for their spouses now. This applies nationwide, not just in the Ninth Circuit.

#### **A T-1 petitioner married after filing his I-914 but before it was approved. Now that he has been granted T nonimmigrant status, can he still file an I-914A?**

YES. Those who married while their I-914 petitions were pending can file for their spouse now. This applies nationwide, not just in the Ninth Circuit.

#### **How will USCIS handle spouses of U-1s where the spouse should've been eligible as derivative, but where the U-1 has now adjusted status or naturalized?**

USCIS has noted that this is an open question for them to consider. USCIS is also considering offering engagement on this topic once guidance is published.

**Practice Pointer:** Remember that former U-1 visa holders who adjusted status may file an I-929 immigrant petition for an after-acquired spouse who has never held U status.

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<sup>2</sup> If you have received a rejection notice or a denial of an I-918A where the marriage occurred after the I-918 was filed, but before the U visa status was granted, please contact ASISTA Senior Counsel, Laura Flores Bachman at [laura@asistahelp.org](mailto:laura@asistahelp.org); Immigrant Legal Resource Center Supervising Attorney, Alison Kamhi at [akamhi@ilrc.org](mailto:akamhi@ilrc.org); Catholic Legal Immigration Network Senior Attorney Sarah Bronstein at [sbronstein@cliniclegal.org](mailto:sbronstein@cliniclegal.org).

**When will USCIS publish their implementation guidance on *Medina Tovar*?** USCIS has not confirmed a publication timeline, but has stated that they are actively developing this guidance.

Until USCIS guidance is published, practitioners outside the Ninth Circuit will need to make case-by-case determinations with their clients as to the individualized value in filing prior to having additional USCIS guidance. If you submit an I-918A or I-914A for an after-acquired spouse, include arguments that DHS should apply *Medina Tovar* to your case and arguments that regulations prohibiting U visas for after-acquired spouses of crime victims violate the statute and its Congressional purpose.<sup>3</sup>

For questions about this practice alert, please contact ASISTA at [questions@asistahelp.org](mailto:questions@asistahelp.org).

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<sup>3</sup> ASISTA's [amicus brief](#) may help as you formulate your arguments.