

Tahirih Class Action Lawsuit On Behalf of Applicants for U Visas

On September 17, 2019, the Tahirih Justice Center and Arnold & Porter filed a class action lawsuit in the Eastern District of New York on behalf of thousands of U-visa petitioners whose requests for work permits known as Employment Authorization Documents (EADs) have never been adjudicated, and who have been forced to wait unreasonable periods of time for the benefits Congress provided in the U-visa program.

WHO IS SUING?

There are 13 individual plaintiffs who are also class representatives. We are proceeding under initial pseudonyms to protect their safety.

The case is a class action. Our class includes anyone who (1) submitted a U-visa petition on or before March 17, 2019; (2) requested employment authorization in connection with the U-visa petition; and (3) has not received a waiting-list determination or an EAD from USCIS. If the suit is successful, USCIS will be required to make EAD determinations for everyone in the class and to make waiting-list determinations for a subset of the class.

WHAT ARE THE CLAIMS?

There are three primary claims.

First, USCIS has violated the law by failing to timely adjudicate U-visa petitions for placement on the regulatory waiting list. The current processing time just to be placed on the waiting list is more than four years, leaving petitioners in limbo without work authorization or protection from deportation for that time. This claim applies to the subset of class members who filed U-visa petitions on or before September 17, 2017.

Second, USCIS violated its own regulations by failing to issue automatic interim EADs when it failed to adjudicate EAD requests within 90 days. This claim applies to the subset of class members who filed U-visa petitions on or before January 17, 2017.

Third, USCIS has unlawfully failed to adjudicate EAD applications submitted by U-visa petitioners whose petitions are bona fide. This claim is brought on behalf of all class members.

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SUGGESTED TALKING POINTS

- To make all communities safer, Congress has long offered U-visa status to non-citizens who cooperate with the investigation or prosecution of certain crimes. That has worked: law enforcement agencies across the country have independently certified that tens of thousands of non-citizens have reported crimes and assisted law-enforcement authorities with investigations and prosecutions. Because Congress set a cap of 10,000 U-visas per year, there is now a waiting list for those who are eligible.
- Anyone who receives a U-visa, or who is placed on the waiting list, can work legally and is protected from deportation. In addition, those with pending, bona fide petitions are eligible to seek EADs.
- Our plaintiffs, and the class they represent, are courageous victims of crime who have often risked their own safety to report criminal activity to the police. Simply reporting the crime may result in the loss of a job (reporting sexual violence by a boss, for example) or being kicked out of a home (reporting domestic violence by a spouse or partner, for example). In short, these plaintiffs are vulnerable and need to support themselves and their families in difficult circumstances.
- USCIS has slow-walked the U-visa process. In fiscal year 2014, it took 5 months for the government to process a U-visa petition and place someone on the wait list. It now takes more than 4 years just to get on the waitlist. In the interim, applicants are not receiving work permits. As a result, applicants who have helped the police must wait more than 4 years for the protections Congress set up for them: to be able to work legally and to be safe from deportation.
- USCIS has also failed utterly to adjudicate requests for EADs for U-visa applicants despite clear statutory and regulatory requirements to do so. Consequently, immigrants who risk their own safety to report serious crime lack the basic ability to support themselves legally during the more than four years that USCIS is now taking to process a petition.

TAHIRIH CONTACTS

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CASE CAPTION

N-N, O-D-B, G-V-R, I-M-R, M-B, N-P-G, E-L-C, Y-L-P, Z-M-A, O-T, M-D-M, E-S-R, M-J-L, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KEVIN K. McALEENAN, ACTING SECRETARY OF HOMELAND SECURITY; KENNETH CUCCINELLI, ACTING DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; DONALD NEUFELD, ASSOCIATE DIRECTOR, SERVICE CENTER OPERATIONS DIRECTORATE,

Defendants.

Case No. 19-cv-05295-WFK
E.D.N.Y.