



TO: SUSAN DUDLEY, OIRA-OMB
FROM: LESLYE ORLOFF, LEGAL MOMENTUM
SUBJECT: T AND U ADJUSTMENT INTERIM FINAL RULE
DATE: SEPTEMBER 22, 2008

GOOD CAUSE JUSTIFICATION FOR ISSUANCE OF INTERIM “T AND U-VISA ADJUSTMENT REGULATIONS”

In 2005, as part of the Department of Justice Authorization Act, Congress mandated that the Department of Homeland Security issue implementing regulations for both Violence Against Women Act 2000 and Violence Against Women Act 2005 within 180 days of passage of the law, which would be July 5, 2006. See PL 109-162. Last May we met with you when OIRA was reviewing P52s2a812(i) mens2at

-visa interim rule. Since by 2005

the only regulations issued by DHS implementing VAWA 2000 were those for which Congress specified a specific regulation issuance date – the T-visa provisions. In light of this history, Congress in VAWA 2005 included a mandate giving the Department of Homeland Security six months to issue regulations implementing the U-visa regulations, T and U adjustment regulations and regulations pertaining to other immigration provisions of VAWA 2000 and VAWA 2005.

This approach contributed to DHS issuance of the U-visa interim final rule in September of 2007

and helped in encouraging DHS to promulgate the interim final T and U-visa adjustment rule

OIRA is currently reviewing. There are trafficking victims who received T-visas as early as the

fall of 2001 who are still awaiting this rule to be able to apply for and receive adjustment with interim U-visas since

status to lawful permanent residency. ² who will be eligible to apply for adjustment of status as soon as their

U-visa application is awarded. How these immigrant victims’ lives are harmed and their health and safety jeopardized by the extensive DHS delay in issuing regulations is illustrated in the book of stories we have submitted along with this memo. We urge OIRA to approve this T and U-visa adjustment regulation as an interim final rule that will take effect immediately as such action is needed to protect the life and safety of crime victims and our communities. The

¹ Applications for T and U-visa interim relief were accepted at INS beginning August 30, 2001. See Michael D. Cronin, Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Policy Memorandum #2 – “T” and “U” Nonimmigrant Visas, August 30, 2001

Administrative Procedures Act specifically authorizes this approach as good cause exceptions for public health and public safety.

The Department of Homeland Security must issue T and U-visa adjustment visa regulations immediately. In issuing T and U-visa adjustment regulations and regulations implementing other provisions of VAWA 2000 and VAWA 2005 DHS should appropriately

the ability of immigrant victims to come forward and access victim services and justice system protections. VAWA has increasingly sought to cut off the ability of abusers and crime perpetrators to misuse the immigration laws in order to threaten and control victims and their children.

In promulgating an interim rule to implement VAWA 1994's immigration protections, the Immigration and Naturalization Service (INS) exercised the good cause exception 0 Td 0.8

In January 2002, the INS promulgated an interim rule offering immediate access to T nonimmigrant status and invited post-promulgation comments. As with VAWA 1994, the INS issued the T-visa interim rule under the APA good cause exception in 5 U.S.C § 553(b) justifying superseding normal rulemaking procedures by finding that, in light of the public safety implications of the rule, giving prior notice and opportunity to comment would be contrary to the public interest. INS specifically found that:

“In passing the TVPA, Congress intended to create a broad range of tools to be used by the Federal government to combat the serious and immediate problem of trafficking in persons. The provisions of the TVPA address the effect of severe forms of trafficking in persons on victims, including many who may not have legal status and are reluctant to cooperate. In trafficking in persons cases, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. The TVPA strengthens the ability of government officials to investigate and prosecute trafficking in persons crimes by providing for temporary immigration benefits to victims of severe forms of trafficking in persons. . . . Without the prompt promulgation of this rule, victims of severe forms of trafficking in persons might continue to be victimized for fear of coming forward, thus hindering the ability of law enforcement to investigate and prosecute cases and preventing victims from obtaining critical assistance and benefits.”

Congress expanded the range of immigration protections and other legal remedies for

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providing temporary immigration benefits to victims who assist in the process. Promulgation of

temporary status destabilizes their lives and interferes with their ability to heal, overcome the effect of crime victimization and move on with their lives. Each time they are required to face the continuous uncertainty of not having permanent status and not knowing whether they will be successful in attaining lawful permanent residency their mental and physical health is affected by the ongoing retraumatization that occurs each time they have to seek extension of deferred