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Creative Ways to Get Us and VAWAs into the USA

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Consular Processing



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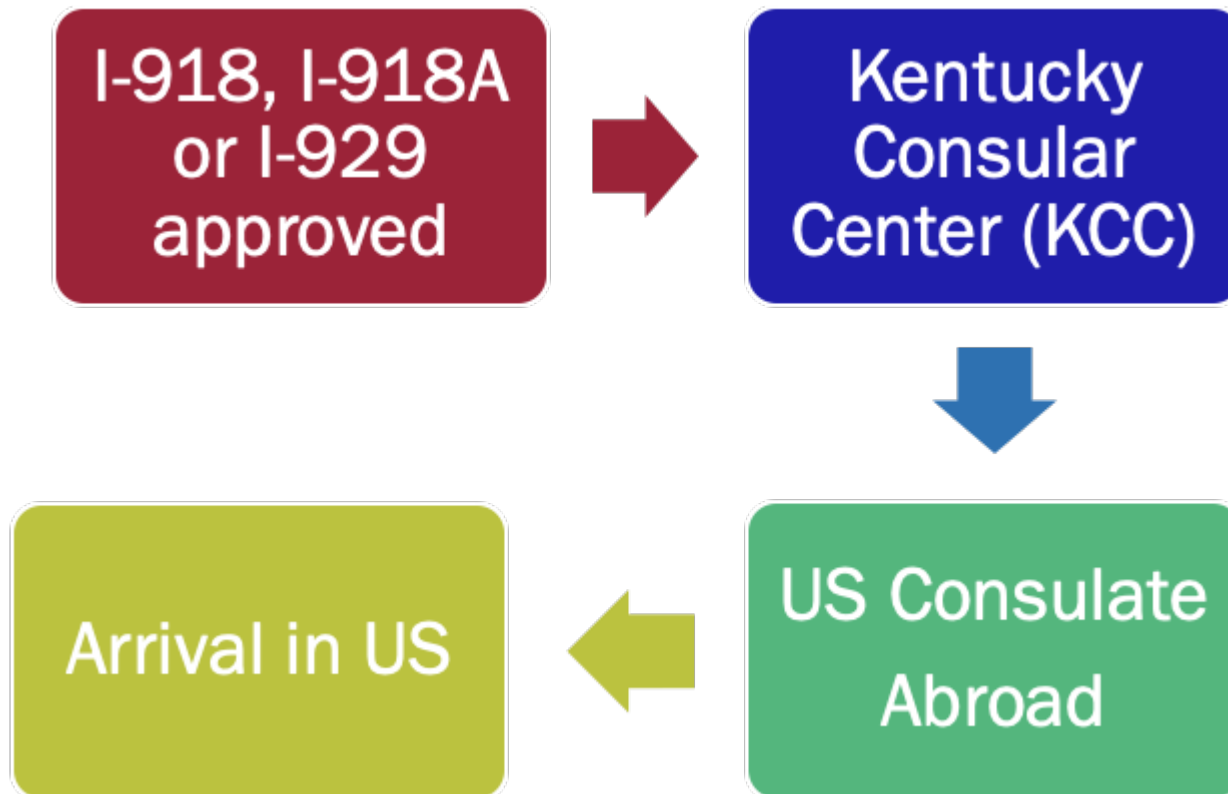
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U Approved while outside of United States



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- Obtaining a U visa is currently a multi-year process.
- Applicants can file from within U.S. and abroad.
- Applicants can file for derivatives who are within the U.S. and abroad.
- This means opportunities and risks of travel at multiple stages:
 - After filing the U visa
 - After being placed on the waitlist
 - After approval
 - After filing for adjustment



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- Biometrics abroad
 - 14 yo – 79 yo
 - Check out Zoho
 - Email v. Infopass v. Drop-In
 - <https://www.icwclaw.org/icwc-u-visa-zoho-database/>
 - <https://vimeo.com/117013533>
 - U.S. Embassy website: <https://www.usembassy.gov/>
 - *Not* a “U visa appointment”
 - Deadline: soft v. hard
 - When was 918 filed?
 - VSC or NSC?
 - Respond to hard deadlines + physical prints card



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- KCC: Kentucky Consular Center
 - Manages Data system: Electronic Petition Information Management System (PIMS)
- Contact Information:
 - KCCTUVisa@state.gov
 - PIMS@state.gov



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Common Challenges

- Scheduling biometrics
- Lack of communication to attorneys/representatives
- Passports (and what to do when applicants don't have one)
- Inadmissibility issues
- New ones arise
- Consulate gets incorrect information about which was waived



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Humanitarian Parole



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Purpose?

- An extraordinary measure used sparingly to allow an otherwise inadmissible alien to seek parole into the United States for a temporary period of time due to urgent humanitarian reasons or for significant public benefit.

Who can File?

- Anyone
- Including: parolee, sponsoring relative, attorney, interested individual or organization

Discretionary case-by-case decision

- No appeal



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Grandbaby cases

- Common scenario: U approved, but U3 abroad does not want to leave her children behind
- U3 must first complete CP to obtain the U Visa, then U1 in U.S. applies on behalf of grandchild
- Possible even where U3 has already entered the U.S.
- Argument: only though parole can U3 and child be kept together



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Forms

- I-131 Application for Travel Document, I-134 Affidavit of Support (Sponsor must demonstrate income of at least 100% of poverty line and lawful status)

Supporting Documentation

- Declaration from U1, U3 and, where appropriate, grandchild
- I-918 and I-918A approval notices + copy of U visa in U3's passport
- Letters of support detailing humanitarian need
- Medical records, police reports (where applicable)
- Birth certificates (U1, U3 and grandchild)
- 2 passport photos of grandchild, copy of passport ID page for child



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Filing and Traveling to U.S.

- Dallas Lockbox → USCIS Humanitarian Affairs Division in Washington, D.C.
- Adjudication within 90 to 120 days of filing
- Approval - Consulate contacts clients abroad, DS-160
- Short timeframe to enter post-approval
- “boarding foil”
- (c)(11) EAD
- Renewal every 2 years until mother is LPR and can petition for child through I-130



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Common Challenges

- Father's consent
- Discretionary - difficult to advise clients
- DNA testing (RFE)
- Short timeframe after approval
- No appeal rights, but possible to reapply



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Humanitarian Parole under Trump

- Authority comes from statute (INA Section 212(d)(5)(A)), which Trump cannot change
- Parole cases continue to be approved, but no guarantee



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Litigation



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U visa regulations 8 C.F.R. § 214.14(d)(2)

“USCIS *will grant* deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.”



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- This language is mandatory, not discretionary, and requires USCIS to grant deferred action or parole to U-1 petitions and their qualifying family members
- Currently there is no mechanism to request parole for U-1 or qualifying family members



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Administrative Procedures Act 5 U.S.C. § 701

- The APA affords a right of review to an individual who is “adversely affected or aggrieved by agency action.”
- Federal courts review administrative actions under the APA to determine whether the agency acted arbitrarily, capriciously, abused its discretion, or acted otherwise not in accordance with law.
 - *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (citing 5 U.S.C. § 706(2)(A)).



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Case Law

- *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002)
 - The importance of the word “shall” vs. “may” or “in his discretion”
 - Congress conferred the power and duty to USCIS (former INS)



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Pleadings

- The decision of USCIS to not issue parole to Plaintiff's son qualifying is arbitrary, capricious, and not in accordance with law. 8 CFR § 214.14(d)(2)
- The language of the statute and these regulations are mandatory, not discretionary, and requires the Defendant to...



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Practical Advice and Things to Consider

- Local court attorney admission requirements
- Venue - 28 U.S.C. § 1391(e)(3)
- Pleadings
- Exhibits/other documents to include in filing



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Practical Advice (cont.)

- Service
- Judge's varying requirements
- Case progression
 - Being prepared to file I-131 and I-134
- Working with opposing counsel



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QUESTIONS



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