

## **Guidance for Form I-246 Application for Stay of Deportation or Removal**

If you have a client with a pending U Visa application (primary or derivative in the U.S.) who has any of the three circumstances listed below in his or her immigration history, we suggest that you take additional steps in your representation to help protect the client.

1. Client has a prior removal order issued by an immigration court.
2. Client has had contact with immigration at the border that you know is, or think may have been, an expedited removal. For instance, if the client was ever apprehended trying to cross the border, detained, fingerprinted, and sent back to his or her home country.
3. Client agreed to voluntary departure at any point, but did not leave the U.S. in compliance with the order.

Individuals who are in the U.S. without immigration status, and who fit into one or more of the three categories listed above, can be removed from the country without a hearing if they are apprehended by ICE. This is because ICE can choose to re-instate or convert the client's old order and use that as grounds to remove the person to his or her home country without having to present the case to a Judge. If you have a client with a pending U Visa application who is in the situation and facing immediate removal, one way you can attempt to delay that deportation is to submit an "Application for Stay of Removal or Deportation" (Form I-246) to ICE on the client's behalf. There is no guarantee that the stay will be successful; it is completely within the discretionary power of ICE to deny the stay. However, we still advise prepping the form so you at least have the option of filing it if the need ever arises in the future. If a client with a prior order is detained, removal of that individual can move fast and it can be hard to access your client to prepare the filing at that time. Therefore, it is good practice to have a signed form in the file.

### **See below for our guidance on competing the Form I-246 and other preparation steps:**

1. **Client Meeting:** Review the client file and determine if the client could be a risk for removal without a hearing if detained. If they are, we ask that you meet with your client to discuss the I-246. At that meeting you can explain the risks in the case, and what steps you want to take in case the client is detained while the U Visa is pending (i.e. obtaining a signed I-246 for the file). The client can then review and sign the I-246. Other important items to cover at this meeting:
  - An update about long processing times for U Visas.
  - Check with the client to make sure there are no changes in his or her case; new address (if so file an AR-11), new phone number, new police contact, new grounds of inadmissibility triggered, marriages (make sure derivative children know they cannot not marry while application is pending), etc. If there have been substantive changes discuss them with your mentor to see how to handle updating USCIS.
  - If the applicant has derivatives abroad, screen the client to see if there are any potential grounds for bringing the derivative here through humanitarian parole. Check to see if the derivative has any serious health issues, has faced violence or threat of violence in the home country, or has other extenuating circumstances in his or her case. If you identify any issues please contact your mentor to discuss if humanitarian parole could be an option for that family member.
  - Safety planning reminders; advise client to carry copies of your card and copies of U Visa receipts with them, and to show them to ICE if they are detained. They should also carry a copy of your contact information so they can alert ICE to the

fact that they are represented, and want to contact you, if they are apprehended and questioned at any point.

- Know Your Rights Overview: For general guidance about Know Your Rights and materials in Spanish check the ILCM website.

2. Preparing the I-246: You can access a copy of the Form I-246 online at <https://www.ice.gov/forms>. That link contains a downloadable PDF of the form as well as directions. For Tips for filling out the form see page 2 of this worksheet. Fill out a skeletal version of the I-246 and have the client sign the form. Also, make sure you have the following in your case file to include as supplemental evidence if needed.

- The Receipt for the pending U Visa and waiver
- A copy of the applicant's passport (must be up-to-date and not expiring within the next 6 months)
- A copy of the applicant's birth certificate and certified translation
- Copies of police reports/court dispositions for any past arrests.

The application has a fee of \$155. The client should be prepared to have a family member provide you with that money if you he or she is detained and you need to file the I-246. We do not advise collecting money at this point from the client.

3. Preparing ICE G-28: We also advise that you obtain a signed Form G-28 for ICE to keep in your file. This will allow ICE to talk with you about your client's case if he or she is detained by ICE. You can find a downloadable version of the Form G-28 from the USCIS website at <https://www.uscis.gov/forms>. You can fill out the form just as you did for the U Visa, but instead of marking USCIS for the relevant office you mark ICE, and instead of marking "Applicant" you can mark "Respondent."

**\*\*\*Note: If your client contacts you at any point and says that he/she is detained please contact ILCM immediately so we can assist you with the filing of the stay and other actions.**

## Tips for Filling out Form I-246

1. Leave the top section of the Form I-246, labeled “For Internal Use Only” blank.
2. File Number: Input the client’s A Number, which you can find from his or her U Visa receipt.
3. Date: Leave this blank when you initially fill out the I-246. You can fill in the Date by hand if you end up filing the form in the future.
4. Address: We advise leaving this blank as well in case you need to use the form in the future and the client has changed addresses since the date you prepped the form. When you meet with the client make sure you have an updated address, and you can fill in that field by hand if you end up filing the form in the future.
5. Passport: The applicant must have proof of a valid passport that is not within 6 months of expiration, or proof that one has been applied for.
6. Length of Stay Requested: You can mark “Other.” Then you can write in “Until Final Adjudication of U Visa.”
7. Arrested by Police or other Law Enforcement: If your client has ever been arrested you will have to mark yes and include relevant documents. See Form I-246 directions for more information.
8. Sections of Law for Which Ordered Deported/Removed: You can leave this blank for now. If you end up filing the I-246 and have access to the charging documents from ICE you can fill out the section accordingly, or can write “unknown” if you do not have that information.
9. Reasons for Requesting a Stay: You can write a brief sentence explaining that the applicant has a pending U Visa application (either derivative or primary), and that being deported would negatively affect his or her safety, the adjudication of the U Visa application, and access to counsel for the pending matter. You can then write See Attached. Supporting documents should include the required documents listed in the I-246 directions, the U Visa and waiver filing receipts, and any other pertinent evidence or arguments that you have available.
10. Evidence Submitted: You can leave this blank for now and fill in a brief summary if you later file the I-246.
11. Signatures: Have the client print and sign his or her name. Then include your name and information as Preparer and sign the form as well in the Preparers Box.