

EMPLOYMENT AUTHORIZATION FOR U VISA APPLICANTS

On June 14, 2021, USCIS announced it would begin a process for granting interim employment authorization and deferred action to certain applicants (and, in some circumstances, their qualifying family members) who have filed a “bona fide” application for U nonimmigrant status (aka U visa). The purpose of this policy is to provide temporary employment authorization and deferred action to applicants who have been waiting – or may need to wait – five years or longer to secure their actual U visa. USCIS will be making bona fide determinations (BFD) on all U visa applications for persons in the United States.

The following is basic information on who qualifies under this new policy and what information USCIS will consider in granting interim work authorization and deferred action. If you have a pending U visa, we suggest you speak with the person/organization who helped you file to understand how this affects you directly.

WHO DOES THIS NEW POLICY APPLY TO?

Only applicants with pending U visa applications and those who will be filing these applications moving forward, plus their qualifying family members.

DO APPLICANTS HAVE TO DO ANYTHING TO BE CONSIDERED FOR EMPLOYMENT AUTHORIZATION OR DEFERRED ACTION UNDER THE NEW POLICY?

No, if an applicant has a pending U visa application, they do not have to do anything at this time. USCIS will be conducting BFD reviews on all pending U visa applications to determine if the applicant qualifies for interim employment authorization and deferred action.

WHAT DOCUMENTS OR INFORMATION WILL USCIS USE TO MAKE A BFD?

1. Submitted and signed Form I-918, Petition for U Nonimmigrant Status,
2. Submitted and signed Form I-918, Supplement B, U Nonimmigrant Status Certification,
3. Submitted and signed statement from the applicant about the crime and harm experienced, and
4. Results from criminal background check following biometrics appointment.

If an applicant has a background that suggests a national security or public safety concern, USCIS will apply its own discretion in determining if the applicant has submitted a bona fide application and therefore, would be eligible for interim work authorization and deferred action. This determination cannot be appealed.

DO APPLICANTS HAVE TO SUBMIT FORM I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION WITH THEIR INITIAL U VISA FILINGS?

No. If the applicant has already submitted a Form I-765 with their initial filing, USCIS will automatically convert and utilize these to generate an Employment Authorization Document (EAD) for bona fide applicants. If a Form I-765 was not filed, USCIS will mail a notice requesting that this form be filed. There is no fee to file Form I-765 based on BFD.



michiganimmigrant.org

15 S. Washington Street, Suite 201 Ypsilanti, MI 48197

(734) 239-6863

FOR HOW LONG WILL EMPLOYMENT AUTHORIZATION AND DEFERRED ACTION LAST?

USCIS stated that work authorization and deferred action will be granted for up to four (4) years, with the possibility of renewing in four-year intervals afterward, until the U visa is granted.

CAN U VISA APPLICANTS WITH CRIMINAL HISTORIES BE APPROVED FOR INTERIM WORK AUTHORIZATION AND DEFERRED ACTION?

Individuals with a criminal record will receive additional scrutiny by USCIS. When reviewing an individual's petition, USCIS will assess whether that individual poses a risk to national security or public safety.

IF AN APPLICATION DOES NOT RECEIVE A BFD, IS IT STILL POSSIBLE TO BE APPROVED FOR A U VISA?

Yes! If there is no BFD, that only means the applicant must wait for the full adjudication of their application. The applicant's case moves on a separate track and will be reviewed in more detail by an immigration officer in the future. If the officer needs more information to approve the application, they will send a request for evidence. Unfortunately, and in that situation, there would be no work authorization in the interim.

WHEN CAN AN APPLICANT EXPECT TO RECEIVE AN EAD OR DEFERRED ACTION?

USCIS has not said when it will begin to review cases in the backlog, nor how quickly it will be able to go through the backlog. There is a current backlog of over 270,000 U visa applications. Therefore, we expect it to take several months, at a minimum, to perform these reviews.

CAN FAMILY MEMBERS GET AN EAD OR DEFERRED ACTION UNDER THE NEW POLICY?

Yes, qualifying family members can receive an EAD or deferred action under this new policy:

1. the principal applicant must have received their BFD;
2. the qualifying family member must have filed Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient;
3. evidence of a qualifying family relationship must be submitted (e.g. marriage or birth certificates); and
4. USCIS must have received the family member's background check and biometrics.

And like the principal, if the qualifying family member's background suggests a national security or public safety concern, USCIS will apply its own discretion in making a BFD and likewise, eligibility for interim work authorization and deferred action.

QUESTIONS? CALL US!

Immigration Intake Line: (734) 239-6863, Monday – Thursday, 9:00 AM to 5:00 PM

Farmworker & Immigrant Worker Hotline: (800) 968-4046, Monday – Friday, 9:00 AM to 5:00 PM



michiganimmigrant.org

15 S. Washington Street, Suite 201 Ypsilanti, MI 48197

(734) 239-6863