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AMC 2016
Track B – Session 6

Immigration: Basics of Deferred Action and Humanitarian Relief

Sklkime Abduli, Abduli Immigration Law LLC, Milwaukee
Joseph M. Rivas, Hochstatter, McCarthy, Rivas & Runde S.C., Milwaukee

About the Presenters...

Sklkime ("Kime") Abduli is the managing attorney at Abduli Immigration Law, LLC. She received her undergraduate degree in Strategic Communication and a Certificate of Business from the University of Wisconsin - Madison, and her law degree from Marquette University. Ms. Abduli started her practice immediately after law school and remains a solo practitioner, specializing exclusively in immigration law. Her practice centers on family-based immigration, victim- and humanitarian based relief, and removal defense. She serves on the board of the International Practice Section of the State Bar, as well as the Wisconsin Hispanic Lawyer's Association. She is also member of the American Immigration Lawyer's Association.

Joseph M. Rivas is a 1974 graduate of the University of Wisconsin-Milwaukee (UWM), where he received a B.S. in Education. He received his J.D. from the University of Wisconsin Law School in 1979. Joe was the Founding President of the Wisconsin Hispanic Lawyers Association (1984-86) and has served as Chair of the Wisconsin Chapter of the American Immigration Lawyers Association (1992-94). He has been President of the Wisconsin Hispanic Chamber of Commerce and Chair of the Board of Directors of the Spanish Center. Joe is currently a member of the Wisconsin Hispanic Lawyers Association, the American Immigration Lawyers Association, and the Wisconsin Bar Association. He currently serves as the Wisconsin Liaison to the Unlicensed Practice of Law Committee of the American Immigration Lawyers Association. He is also a Board Member and Treasurer of the Wisconsin State Bar's International Practice Section. Joe has been a speaker on immigration law issues in various settings, including radio and television. He has testified in circuit court proceedings as an expert on immigration law. He was honored as the "Alumni of the Year" at the 1985 LEO program at the University of Wisconsin Law School. Joe is listed in Best Lawyers in America under the section of Immigration Law.

VAWA

The Violence Against Women Act

WHAT IS IT?

- Available to widows, or victims of domestic abuse
- Alternative to the family-petition standard in gaining lawful permanent status because…
  - The petitioning spouse/parent is deceased
  - The petitioning spouse/parent is abusive
- Allows individuals in these categories to petition for themselves

ELIGIBILITY CRITERIA

- Married to a U.S. citizen (USC) or lawful permanent resident (LPR), or if a child, that your parent be a USC or LPR
  - If divorced, did so within 2 years of filing petition
- Married in good faith
- Resided with the USC/LPR spouse or parent
- Suffered battery or extreme cruelty at the hands of USC/LPR spouse or parent
- Be a person of good moral character

ELIGIBILITY CRITERIA

- What constitutes battery or extreme cruelty?
  - Physical abuse
  - Sexual abuse
  - Psychological abuse
  - Financial abuse
  - Controlling time, place, appearance, finances, social life
  - Threatening to report immigrant spouse to ICE
  - Threatening to harm or take away one's children
- Helps to have police reports, but not required
- Prosecution for battery/DV helps, but is not required

DISQUALIFIERS

- More than 2 years have passed since divorce from USC/LPR
- Certain criminal convictions (i.e. crimes involving moral turpitude), ***unless***…
  - "Crime" was committed in self defense
  - Crime was committed under duress of the abuser
  - Crime was committed as a result of having been a victim of violence

BENEFITS

- Allows protected status, "relief" from risk of deportation
- Allows individual to receive work authorization
- Allows individual to apply for lawful permanent resident status
- However, it does **not** authorize travel

DACA

Deferred Action for Childhood Arrivals

WHAT IS IT?

- Executive Order announced on June 15, 2012
- Issued as a temporary "fix"
- Offers limited protection to undocumented children, or those who did not have lawful status at this time the Order was announced
- Valid for only 2 years
- Renewable
- Discretionary

ELIGIBILITY CRITERIA

- Age requirements…
  - Have been under the age of 31 on June 15, 2012
  - Came to the United States before age 16 (and established residence here prior to that age)

ELIGIBILITY CRITERIA

- Residence/physical presence requirements…
  - Arrived in the United States prior to June 15, 2007
  - Lived in the U.S. continuously since June 15, 2007 and up to the present time
  - Have been physically present in the United States on June 15, 2012

ELIGIBILITY CRITERIA

- Educational requirements…
  - Completed high school, OR…
  - Earned a GED, OR…
  - Be in the process of completing one of the two
- Military involvement…
  - Are an active member of the U.S. military, OR
  - Were honorably discharged

ELIGIBILITY CRITERIA

- Have <u>not</u> been convicted of…
  - A felony
  - A significant misdemeanor
  - More than two non-significant misdemeanors
- Are not a threat to the national security

DISQUALIFIERS

- Leaving the United States after June 15, 2007
- Criminal convictions

DISQUALIFIERS:
CONTINUOUS PRESENCE

- Departures from the United States after June 15, 2007 CAN interrupt continuous residence, ***unless***…
- The departure was "brief, casual, and innocent"
  - Was before August 15, 2012
  - Was short
  - Was voluntary, not because of formal court order
  - Did do anything that would violate a U.S. law
- Other immigration consequences of departures/re-entries

DISQUALIFIERS:
CRIMINAL CONVICTIONS

- Automatic disqualifiers
  - Any Felonies
  - Any "Significant misdemeanors"
  - Threats against national security
- Other criminal disqualifiers
  - More than two misdemeanors
- DACA is discretionary

DISQUALIFIERS:
CRIMINAL CONVICTIONS

- What is a "significant misdemeanor?"
- A misdemeanor that involves…
  - Domestic violence
  - Sexual abuse or exploitation
  - Burglary
  - Operating under the influence (OUI)*
  - Unlawful possession or use of a firearm,
  - Drug distribution or drug trafficking, or
  - Any misdemeanor for which you are sentenced to more than 90 days in prison.

RENEWALS

- DACA is issued for 2 years at a time; can be renewed
- Continue to reside in the United States during deferred status
- Complete HS/GED or be in the process of doing so
- Stay out of criminal trouble

"EXTENDED DACA"

- New Executive Order issued November 20, 2014
- Eliminates the "age cap"
- Moves the "continuous residence" date to January 1, 2010
- Valid for 3 years (instead of 2)
- Does **not** change any of the criminal grounds of eligibility
- CURRENTLY FROZEN

DAPA

Deferred Action for Parents of U.S. Citizen or Lawful Permanent Resident Children

WHAT IS IT?

- Part of the Executive Order announced on November 20, 2014
- Another temporary "fix"
- Offers deferred ("protected") status to unlawfully present adults who have U.S. citizen or permanent resident children
- In the spirit of "family unity"
- Valid for only 3 years
- Renewable
- Discretionary
- CURRENTLY FROZEN

ELIGIBILITY CRITERIA

- Similar to "Extended DACA"…
  - Unlawful status
  - Continuous residence in the United States since January 1, 2010 and up to present time
  - No significant criminal history
- Distinguished from DACA in that…
  - This is for *parents* of a U.S. Citizen or lawful permanent resident child
  - Had that child on or before Nov. 20, 2014

DISQUALIFIERS

- Break in continuous residence
  - Left the United States for more than "brief, casual, innocent" departure after Jan. 1, 2010
  - Left the United States under formal court order
- Criminal grounds
  - Any felony
  - Any "significant" misdemeanor
  - More than two other misdemeanors

Office of the Assistant Secretary
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All Employees

FROM: John Morton
Director

SUBJECT: Secretary Napolitano's Memorandum Concerning the Exercise of Prosecutorial Discretion for Certain Removable Individuals Who Entered the United States as a Child

DATE: June 15, 2012

Today the Secretary of Homeland Security issued the attached memorandum concerning the exercise of prosecutorial discretion for certain removable individuals who entered the United States as a child. Effective immediately, ICE agents and officers are instructed to exercise prosecutorial discretion in a manner that aligns with the Secretary's memorandum. The memorandum states that, with respect to individuals who meet the criteria outlined below, ICE agents and officers should immediately exercise their discretion, on an individual basis, in order to prevent these low priority individuals from being placed into removal proceedings or removed from the United States.

An individual is covered by the Secretary's memorandum if the individual—

- came to the United States under the age of sixteen;
- is not above the age of thirty;
- has continuously resided in the United States for at least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, or multiple misdemeanor offenses; and
- does not otherwise pose a threat to national security or public safety.

ICE has also been directed to apply the Secretary's policy, on a case by case basis, to individuals whose cases are pending before the Executive Office for Immigration Review and can demonstrate that they meet the above noted criteria. To better facilitate this process, ICE has been further directed to implement a process within sixty days that allows individuals whose

cases are pending before the Executive Office for Immigration Review to request a review of their cases through the ICE Public Advocate.

Additional guidance on the Secretary's memorandum will be issued as soon as possible. In the meantime, if ICE personnel have questions about the exercise of prosecutorial discretion described in the Secretary's memorandum, they should contact their supervisor or local chief counsel's office.

Disclaimer

As there is no right to the favorable exercise of discretion by the agency, nothing in this memorandum should be construed to prohibit the apprehension, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of DHS or any of its personnel to enforce federal immigration law. Similarly, this memorandum, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

INTERIM MEMO FOR COMMENT

Posted: 06-27-2014

Comment period ends: 08-08-2014

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June 15, 2014 **PM-602-0102**

Policy Memorandum

SUBJECT: Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions

Purpose

This policy memorandum (PM) provides guidance on new legislation that amends the Immigration and Nationality Act (INA) affecting U nonimmigrant status programs and related adjustment of status applications. The Adjudicator's Field Manual (AFM) is updated by revising sections 39.1(a)(9) and 39.1(f)(4) of Chapter 39 (AFM Update AD13-06).

Scope

Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

Authorities

- Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013)
- INA § 101(a)(15)(U), 214(p)

Background

On March 7, 2013, President Obama signed VAWA 2013 into law. VAWA 2013 was added as an amendment during the process to reauthorize the Violence Against Women Act (VAWA) of 2013. USCIS has responsibility for administering some provisions of the law. Titles VIII and XII expand the immigration relief for certain individuals who are victims of human trafficking and other serious crimes. Except where noted below, the VAWA 2013 provisions took effect on March 7, 2013. This PM summarizes the legislative changes and directs USCIS officers to apply these provisions to requests for U nonimmigrant status and related applications for adjustment of status.

Interim

Policy

A. U Nonimmigrant Provisions of VAWA 2013

1. *New Crimes*

To be eligible for U nonimmigrant status, an alien must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying criminal activity.[1] The INA provides the statutory list of qualifying criminal activity for U nonimmigrant status.[2] This list, however, is not a list of specific statutory violations, but instead a list of general categories of crime.[3] Additionally, this list includes any attempt, conspiracy, or solicitation to commit any of the statutorily listed crimes, including any criminal offense that is substantially similar to one of the listed crimes.[4] USCIS reviews each U nonimmigrant petition on a case-by-case basis, including all evidence from the victim and law enforcement, to determine whether the criminal activity described in the petition meets the general definition of a qualifying criminal activity.

VAWA 2013 adds two new crimes to the original statutory list for U nonimmigrant eligibility. "Stalking" and "Fraud in Foreign Labor Contracting (as defined in section 1351 of title 18, United States Code)" are now qualifying criminal activities for U nonimmigrant purposes.[5] As with all other qualifying criminal activities, both "Stalking" and "Fraud in Foreign Labor Contracting" will be evaluated as general crime categories, and substantially similar criminal activity to these new crimes may make a victim eligible for U nonimmigrant status. U nonimmigrant petitions based on "Stalking" and "Fraud in Foreign Labor Contracting" will be adjudicated on case-by-case basis to determine whether the essential elements of "Stalking" or "Fraud in Foreign Labor Contracting" have been met. To determine if a crime is substantially similar to "Fraud in Foreign Labor Contracting," USCIS must use the definition for this crime at 18 U.S.C. 1351, as this was specifically mandated by VAWA 2013.[6]

The statutory list of qualifying crimes for U nonimmigrant status is now:

Abduction	False Imprisonment	Incest
Abusive Sexual Contact	Felonious Assault	Involuntary Servitude
Blackmail	Female Genital Mutilation	Kidnapping
Domestic Violence	Fraud in Foreign Labor Contracting	Manslaughter
Extortion	Being Held Hostage	Murder
Obstruction of Justice	Sexual Assault	Trafficking
Peonage	Sexual Exploitation	Witness Tampering
Perjury	Slave Trade	Unlawful Criminal Restraint
Prostitution	Stalking	Other Related Crimes*†

[1] INA § 101(a)(15)(U)(i)(I).
[2] INA § 101(a)(15)(U)(iii).
[3] New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53,018 (September 17, 2007).
[4] 8 CFR 214.14(a)(9).
[5] VAWA 2013.
[6] *Id.* at §1222.

Interim

Rape	Torture	†Also includes attempt, conspiracy, or solicitation to commit any of the above, and other related crimes *Includes any similar activity where the nature and elements of the crime are substantially similar

2. *Age-Out Protection*

The INA permits certain qualifying family members accompanying or following to join the alien victim to obtain U nonimmigrant status.[7] USCIS refers to such family members as derivatives, and the alien victim as the principal. The determination of which family members are considered "qualifying" depends on their relationship to the principal and the age of the principal. If the principal is under 21 years of age at the time the principal properly filed the petition, qualifying family members include the principal's spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal's petition), and parents.[8] If the principal is 21 years of age or older, only the spouse and children are eligible for derivative status as qualifying family members.[9]

Under current regulations, in order for a family member of a principal U nonimmigrant to be eligible for derivative status as a "qualifying family member," the qualifying relationship must: (1) exist at the time the principal files the petition; (2) continue to exist at the time the family member's petition is adjudicated; and, (3) continue to exist at the time of the derivative's subsequent admission to the United States.[10] Therefore, under the regulations, a qualifying family member who is a child must meet the definition of "child" under the INA (i.e., an unmarried person under 21 years of age)[11] at the time his or her derivative petition is properly filed and adjudicated, as well as on the date he or she is admitted to the United States.

Due to unforeseen delays, some qualifying children aged-out of derivative eligibility while their petitions for derivative U nonimmigrant status were pending. Additionally, the derivative U nonimmigrant status for other individuals expired when they turned 21 years of age, leaving them without the ability to acquire the requisite three years in U nonimmigrant status to be eligible to adjust status to a lawful permanent resident under 8 CFR 245.24.

To provide relief to these classes of derivative U nonimmigrants, USCIS posted an interim Policy Memorandum providing age-out protection to those previously granted derivative U nonimmigrant status but whose status expired upon turning 21 years of age.[12] Further, this PM

[7] INA § 101(a)(15)(U)(ii).
[8] INA § 101(a)(15)(U)(ii)(I).
[9] INA § 101(a)(15)(U)(ii)(II).
[10] 8 CFR 214.14(f)(4).
[11] INA § 101(b)(1).
[12] USCIS PM-602-0077, *Age-Out Protection for Derivative U Nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status* (October 24, 2012).

Interim

allowed for derivative petitions properly filed on or after the date of the publication of the memo to be allowed the full 4 years of derivative U nonimmigrant status upon approval of the derivative petition.[13] However, those qualifying family members who turned 21 years of age while their petitions were pending were still ineligible for derivative U nonimmigrant status, as these petitions were not adjudicated prior to the family member turning 21 years of age. A statutory change would have been necessary to provide relief to these qualifying family members.

VAWA 2013 provides this relief by amending the INA[14] and adding specific age-out protection to derivative petitioners where the qualifying family member turned 21 years of age while his or her petition was pending. Specifically, when a principal petitioner for U nonimmigrant status now properly files his or her principal petition, the age of the qualifying family member is established upon the date on which the principal properly filed for his or her principal U nonimmigrant status. Therefore, the age of the qualifying family member is determined by the date on which the principal properly filed his or her Form I-918, *Petition for U Nonimmigrant Status*. An unmarried qualifying family member "child" under 21 years of age who has a derivative petition properly filed for him or her by the principal will continue to be considered a "child" throughout the adjudication process, even if the qualifying family member turns 21 years of age while the principal or derivative petition is pending.[15]

VAWA 2013 provides further protection for derivative petitioners of a U principal petitioner who is under 21 years of age. If a U principal petitioner is under 21 years of age at the time he or she properly files for principal U nonimmigrant status, unmarried siblings under 18 years of age at that time and parents will still be considered qualifying family members for derivative U nonimmigrant status, even if, at the time of adjudication, the principal is over 21 years of age and even if the unmarried sibling is over 18 years of age.[16]

These provisions of VAWA 2013 are also retroactive and, therefore, considered part of the original Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).[17] Accordingly, derivative petitions currently being held by USCIS due to the "child" or "unmarried sibling under the age of 18" qualifying family member aging out while the principal or derivative petition was pending are eligible as qualifying family members if the principal's petition was properly filed before the "child" qualifying family member turned 21 years of age, or the "unmarried sibling" turned 18. If the derivative petition is approved, USCIS will provide written notice to the principal petitioner or the principal U nonimmigrant, and the qualifying family

Interim

[13] *Id.*
[14] INA § 214(p).
[15] VAWA 2013 amends INA § 214(p) by adding a section (7)(A): "An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the alien attains 21 years of age after such parent's petition was filed but while it was still pending."
[16] *See* INA §101(a)(15)(U)(ii)(I) and INA § 214(p)(7)(B).
[17] Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; 114 Stat. 1464).

member will receive the full four years of derivative U nonimmigrant status equal to the time in status granted to the principal petitioner.

B. Public Charge Exemption

1. *U Nonimmigrant Status*

In general, any alien applying for a visa to the United States or for adjustment of status who is likely to become a public charge is inadmissible.[18] Additionally, any alien seeking U nonimmigrant status must be admissible to the United States.[19] If such alien is inadmissible, the alien must file a waiver of inadmissibility with USCIS on Form I-192, *Application for Advance Permission to Enter as Nonimmigrant*.[20] If the waiver application is granted, USCIS continues with the full adjudication of the U nonimmigrant status petition. However, if the waiver application is denied, the underlying U nonimmigrant status petition is also denied. There is no appeal of a denial of a waiver application, but the alien may file a new inadmissibility waiver application, or a Motion to Reopen and/or Reconsider.[21]

VAWA 2013 provides that the "public charge" ground of inadmissibility at INA § 212(a)(4) does not apply to any alien who is petitioning for or has been granted U nonimmigrant status, or derivative U nonimmigrant status.[22] Therefore, any alien seeking or granted principal or derivative U nonimmigrant status is not subject to the public charge ground of inadmissibility, and will not have to submit a waiver application for this ground of inadmissibility. USCIS plans to eliminate the question relating to public charge from the Form I-918. Until that time, petitioners should write in "not applicable" in response to the related question on the Form I-918.

2. *U Adjustment of Status*

While VAWA 2013 provides this exemption to the public charge ground of inadmissibility, the other admissibility requirements for U adjustment of status applications remain unchanged. For U nonimmigrants, under current regulations, the only non-waivable ground of inadmissibility that renders a U adjustment applicant ineligible for lawful permanent resident status is INA § 212(a)(3)(E) regarding Nazi persecution, acts of genocide, and extrajudicial killings.[23] While USCIS has the discretionary authority to deny any U nonimmigrant adjustment of status application when a negative exercise of discretion is warranted, the public charge ground of inadmissibility shall not apply to U nonimmigrant applications for adjustment of status.

Interim

[18] INA § 212(a)(4).
[19] *See* INA § 212(d)(3); INA § 212(d)(14); 8 CFR 214.14(c)(2)(iv).
[20] 8 CFR 214.14(c)(2)(iv).
[21] 8 CFR 212.17(b)(3).
[22] VAWA 2013, section 804.
[23] 8 CFR 245.24(b)(4).

C. Access to Federal Foster Care and Unaccompanied Refugee Minor Protections for Certain U Visa Recipients

While child T nonimmigrants have been eligible since 2000 for certain federal benefits[24] provided by the Department of Health and Human Services (HHS), such as certain refugee benefits and placement in federal foster care under the Unaccompanied Refugee Minors Program, U nonimmigrants have not had access to these same benefits.[25] VAWA 2013 provides for placement in federal foster care under the Unaccompanied Refugee Minors Program to principal and derivative U nonimmigrant children.[26] To access this benefit, eligible U nonimmigrant children must apply with HHS and be placed prior to turning 18 years of age.

Implementation

The AFM is updated as follows (AFM Update AD13-06):

☞ 1. Chapter 39.1(a)(9) is amended to read:

(9) Qualifying crime or criminal activity includes one or more of the following or any similar activities in violation of Federal, State, or local criminal law of the United States: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term, "any similar activity," refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

☞ 2. Chapter 39.1(f)(4) is amended to read:

(f)(4) Relationship. A principal petitioner may seek U nonimmigrant status for a qualifying family member through the filing of a derivative petition with USCIS. The age-out protections discussed at sections (f)(4)(ii) and (iv) of this chapter do not apply to a change in a child or sibling's marital status.

(i) Spouse. The relationship between the U-1 principal petitioner and his or her spouse must exist at the time the principal petition is properly filed, and the relationship must continue to exist at the time the derivative petition is properly filed, and at the time of the spouse's subsequent admission to the United States.

[24] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (October 28, 2000) and the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 (December 19, 2003).
[25] U nonimmigrants may also be eligible for certain State benefits, but that will vary from State to State.
[26] VAWA 2013, section 1263.

Interim

(ii) Child. The relationship between the U-1 principal petitioner and his or her unmarried children under 21 years of age must exist at the time the U-1 principal petitioner properly files his or her principal petition. The age of the U-1 principal petitioner's unmarried children under 21 years of age shall be set on the date the U-1 principal's petition is properly filed. The child shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii) if the child attains 21 years of age and remains unmarried after the U-1 principal's petition was properly filed and while it was pending.

If the U-1 principal petitioner establishes that he or she has become the parent of a child after the principal petition was properly filed, the child shall be eligible to accompany or follow to join the U-1 principal petitioner.

(iii) Parent. If the U-1 principal petitioner was under 21 years of age at the time he or she properly filed for U-1 principal status, USCIS will continue to consider such parent(s) as a qualifying family member for purposes of U nonimmigrant status, even if the principal petitioner is no longer under 21 years of age at the time of adjudication of the derivative petition.

(iv) Sibling. The age of the U-1 principal petitioner's unmarried siblings shall be set on the date the U-1 principal's petition is properly filed. If the U-1 principal petitioner was under 21 years of age at the time he or she properly filed for U-1 principal status, USCIS will continue to consider an unmarried sibling(s) under 18 years of age as a qualifying family member for purposes of U nonimmigrant status, even if the principal petitioner is no longer under 21 years of age and the derivative is no longer under 18 years of age at the time of adjudication of the derivative petition.

(v) Interim Relief. For U-1 principal petitioners granted interim relief, the age of the principal petitioner and any of the principal petitioner's children and siblings as referred to in paragraphs (ii) – (iv) above shall be set on the date the principal petitioner's request for U interim relief was properly filed.

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☞ 3. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD13-06 6/15/2014	**Chapter 39.1(a)(9)** **Chapter 39.1(f)(4)**	Adds guidance on the changes to the U nonimmigrant program created by the Violence Against Women Reauthorization Act of 2013.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or

Interim

benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Family Immigration and Victim Protection Division.

Interim

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 20, 2014

MEMORANDUM FOR: León Rodríguez
Director
U.S. Citizenship and Immigration Services

Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

FROM: Jeh Charles Johnson
Secretary

SUBJECT: **Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents**

This memorandum is intended to reflect new policies for the use of deferred action. By memorandum dated June 15, 2012, Secretary Napolitano issued guidance entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*. The following supplements and amends that guidance.

The Department of Homeland Security (DHS) and its immigration components are responsible for enforcing the Nation's immigration laws. Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. Secretary Napolitano noted two years ago, when she issued her prosecutorial discretion guidance regarding children, that "[o]ur Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case."

Deferred action is a long-standing administrative mechanism dating back decades, by which the Secretary of Homeland Security may defer the removal of an undocumented immigrant for a period of time.[1] A form of administrative relief similar to deferred action, known then as "indefinite voluntary departure," was originally authorized by the Reagan and Bush Administrations to defer the deportations of an estimated 1.5 million undocumented spouses and minor children who did not qualify for legalization under the *Immigration Reform and Control Act* of 1986. Known as the "Family Fairness" program, the policy was specifically implemented to promote the humane enforcement of the law and ensure family unity.

Deferred action is a form of prosecutorial discretion by which the Secretary deprioritizes an individual's case for humanitarian reasons, administrative convenience, or in the interest of the Department's overall enforcement mission. As an act of prosecutorial discretion, deferred action is legally available so long as it is granted on a case-by-case basis, and it may be terminated at any time at the agency's discretion. Deferred action does not confer any form of legal status in this country, much less citizenship; it simply means that, for a specified period of time, an individual is permitted to be lawfully present in the United States. Nor can deferred action itself lead to a green card. Although deferred action is not expressly conferred by statute, the practice is referenced and therefore endorsed by implication in several federal statutes.[2]

Historically, deferred action has been used on behalf of particular individuals, and on a case-by-case basis, for classes of unlawfully present individuals, such as the spouses and minor children of certain legalized immigrants, widows of U.S. citizens, or victims of trafficking and domestic violence.[3] Most recently, beginning in 2012, Secretary Napolitano issued guidance for case-by-case deferred action with respect to those who came to the United States as children, commonly referred to as "DACA."

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[1] Deferred action, in one form or another, dates back to at least the 1960s. "Deferred action" per se dates back at least as far as 1975. *See,* Immigration and Naturalization Service, Operation Instructions § 103.1(a)(1)(ii) (1975).

[2] INA § 204(a)(1)(D)(i)(II), (IV) *(Violence Against Women Act (VAWA) self-petitioners not in removal proceedings are "eligible for deferred action and employment authorization");* INA § 237(d)(2) *(DHS may grant stay of removal to applicants for T or U visas but that denial of a stay request "shall not preclude the alien from applying for . . . deferred action")*; REAL ID Act of 2005 § 202(c)(2)(B)(viii), Pub. L. 109-13 *(requiring states to examine documentary evidence of lawful status for driver's license eligibility purposes, including "approved deferred action status")*; National Defense Authorization Act for Fiscal Year 2004 § 1703(c) (d) Pub. L. 108-136 *(spouse, parent or child of certain U.S. citizen who died as a result of honorable service may self-petition for permanent residence and "shall be eligible for deferred action, advance parole, and work authorization").*

[3] In August 2001, the former-Immigration and Naturalization Service issued guidance providing deferred action to individuals who were eligible for the recently created U and T visas. Two years later, USCIS issued subsequent guidance, instructing its officers to use existing mechanisms like deferred action for certain U visa applicants facing potential removal. More recently, in June 2009, USCIS issued a memorandum providing deferred action to certain surviving spouses of deceased U.S. citizens and their children while Congress considered legislation to allow these individuals to qualify for permanent residence status.

By this memorandum, I am now expanding certain parameters of DACA and issuing guidance for case-by-case use of deferred action for those adults who have been in this country since January 1, 2010, are the parents of U.S. citizens or lawful permanent residents, and who are otherwise not enforcement priorities, as set forth in the November 20, 2014 Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum.

The reality is that most individuals in the categories set forth below are hard-working people who have become integrated members of American society. Provided they do not commit serious crimes or otherwise become enforcement priorities, these people are extremely unlikely to be deported given this Department's limited enforcement resources—which must continue to be focused on those who represent threats to national security, public safety, and border security. Case-by-case exercises of deferred action for children and long-standing members of American society who are not enforcement priorities are in this Nation's security and economic interests and make common sense, because they encourage these people to come out of the shadows, submit to background checks, pay fees, apply for work authorization (which by separate authority I may grant), and be counted.

A. Expanding DACA

DACA provides that those who were under the age of 31 on June 15, 2012, who entered the United States before June 15, 2007 (5 years prior) as children under the age of 16, and who meet specific educational and public safety criteria, are eligible for deferred action on a case-by-case basis. The initial DACA announcement of June 15, 2012 provided deferred action for a period of two years. On June 5, 2014, U.S. Citizenship and Immigration Services (USCIS) announced that DACA recipients could request to renew their deferred action for an additional two years.

In order to further effectuate this program, I hereby direct USCIS to expand DACA as follows:

Remove the age cap. DACA will apply to all otherwise eligible immigrants who entered the United States by the requisite adjusted entry date before the age of sixteen (16), regardless of how old they were in June 2012 or are today. The current age restriction excludes those who were older than 31 on the date of announcement (*i.e.*, those who were born before June 15, 1981). That restriction will no longer apply.

Extend DACA renewal and work authorization to three-years. The period for which DACA and the accompanying employment authorization is granted will be extended to three-year increments, rather than the current two-year increments. This change shall apply to all first-time applications as well as all applications for renewal effective November 24, 2014. Beginning on that date, USCIS should issue all work

authorization documents valid for three years, including to those individuals who have applied and are awaiting two-year work authorization documents based on the renewal of their DACA grants. USCIS should also consider means to extend those two-year renewals already issued to three years.

Adjust the date-of-entry requirement. In order to align the DACA program more closely with the other deferred action authorization outlined below, the eligibility cut-off date by which a DACA applicant must have been in the United States should be adjusted from June 15, 2007 to January 1, 2010.

USCIS should begin accepting applications under the new criteria from applicants no later than ninety (90) days from the date of this announcement.

B. Expanding Deferred Action

I hereby direct USCIS to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis, to those individuals who:

- have, on the date of this memorandum, a son or daughter who is a U.S. citizen or lawful permanent resident;
- have continuously resided in the United States since before January 1, 2010;
- are physically present in the United States on the date of this memorandum, *and* at the time of making a request for consideration of deferred action with USCIS;
- have no lawful status on the date of this memorandum;
- are not an enforcement priority as reflected in the November 20, 2014 Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum; and
- present no other factors that, in the exercise of discretion, makes the grant of deferred action inappropriate.

Applicants must file the requisite applications for deferred action pursuant to the new criteria described above. Applicants must also submit biometrics for USCIS to conduct background checks similar to the background check that is required for DACA applicants. Each person who applies for deferred action pursuant to the criteria above shall also be eligible to apply for work authorization for the period of deferred action, pursuant to my authority to grant such authorization reflected in section 274A(h)(3) of

the Immigration and Nationality Act.[4] Deferred action granted pursuant to the program shall be for a period of three years. Applicants will pay the work authorization and biometrics fees, which currently amount to $465. There will be no fee waivers and, like DACA, very limited fee exemptions.

USCIS should begin accepting applications from eligible applicants no later than one hundred and eighty (180) days after the date of this announcement. As with DACA, the above criteria are to be considered for all individuals encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or USCIS, whether or not the individual is already in removal proceedings or subject to a final order of removal. Specifically:

- ICE and CBP are instructed to immediately begin identifying persons in their custody, as well as newly encountered individuals, who meet the above criteria and may thus be eligible for deferred action to prevent the further expenditure of enforcement resources with regard to these individuals.

- ICE is further instructed to review pending removal cases, and seek administrative closure or termination of the cases of individuals identified who meet the above criteria, and to refer such individuals to USCIS for case-by-case determinations. ICE should also establish a process to allow individuals in removal proceedings to identify themselves as candidates for deferred action.

- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear. The USCIS process shall also be available to individuals subject to final orders of removal who otherwise meet the above criteria.

Under any of the proposals outlined above, immigration officers will be provided with specific eligibility criteria for deferred action, but the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only an Act of Congress can confer these rights. It remains within the authority of the Executive Branch, however, to set forth policy for the exercise of prosecutorial discretion and deferred action within the framework of existing law. This memorandum is an exercise of that authority.

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[4] INA § 274A(h)(3), 8 U.S.C. § 1324a(h)(3) ("As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the[Secretary]."); 8 C.F.R. § 274a.12 (regulations establishing classes of aliens eligible for work authorization).