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U.S. Immigration
and Customs
Enforcement

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MEMORANDUM FOR: Field Office Directors
FROM: 
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Acting Director
SUBJECT: Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant
Status (U-visa) Applicants

Purpose

This memorandum provides guidance to U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO) Field Office Directors (FODs) about the factors to consider when adjudicating requests for a Stay of a Final Administrative Order of Removal filed by an alien with a pending petition for U Nonimmigrant Status (U-visa).

Background

U-visas are available to aliens who, among other requirements, have "suffered substantial physical or mental abuse" as a result of certain enumerated criminal acts pursuant to section 101(a)(15)(U) of the Immigration and Nationality Act (INA) who assist government officials in investigating or prosecuting such criminal activity. An alien seeking a U-visa must file, or have someone file on his or her behalf, a Petition for U Nonimmigrant Status, Form I-918, with U.S. Citizenship and Immigration Services (USCIS) Vermont Service Center (VSC).

The Secretary of the Department of Homeland Security and her delegates have discretion to grant a Stay of an Administrative Final Order of Removal under section 241(c)(2) of the INA to an alien with a pending petition for a U-visa if the alien establishes *prima facie* eligibility for the benefit. See INA § 237(d). The Stay of Removal may remain in effect until: (1) USCIS approves the petition for a U-visa; or (2) USCIS denies the U-visa petition after the alien has exhausted all administrative appeals. USCIS has jurisdiction to decide if an alien has established *prima facie* eligibility. See 8 C.F.R. § 214.14(c).

Applications for Stay of Deportation or Removal

When adjudicating Stay requests, FODs must comply with the applicable regulation at 8 C.F.R. § 241.6 and the guidance below when assessing whether to grant an alien's application for a Stay of Removal.

Eligibility

The FOD should favorably view an alien's request for a Stay of Removal if USCIS has determined that the alien has established *prima facie* eligibility for a U-visa. When deciding the stay request, the FOD should also consider favorably any humanitarian factors related to the alien or the alien's close relatives who rely on the alien for support (*Cf* 8 C.F.R. § 212.5). For aliens with pending U-visa petitions who are not subject to a final order of deportation or removal, but who are detained and/or in removal proceedings, the FOD should contact its local Office of Chief Counsel (OCC) for additional guidance.

A Stay of Removal on the basis of a pending application for a U-visa is not appropriate in the following situations: 1) USCIS has determined that the alien is not *prima facie* eligible for a U-visa; 2) USCIS has denied the alien's petition for a U-visa on the merits; or 3) serious adverse factors weigh against granting a Stay of Removal. Serious adverse factors include the following: (1) national security concerns; (2) evidence that the alien is a human rights violator; (3) evidence that the alien has engaged in significant immigration fraud; (4) evidence that the alien has a significant criminal history; and (5) any significant public safety concerns. In the absence of any of the above factors, the FOD should generally grant the alien a Stay of Removal when USCIS has found the alien to be *prima facie* eligible for a U-visa.

Procedure

If DRO assumes custody of an alien who claims to have a pending U-visa petition, but who has not filed for a Stay of Removal, DRO must provide the alien with an Application for Stay of Removal, Form I-246, along with a fee waiver policy. If the alien does not file for a Stay of Removal or present evidence of the pending U-visa petition and the FOD finds no evidence of a pending petition, DRO may continue to process the alien for removal. Regardless of whether or not a Stay is requested, the FOD should use his or her discretion in making any determination about whether to remove an alien who has a pending U-visa petition and has exhibited no adverse factors. If the alien provides evidence of a pending U-visa petition but declines to file a Stay request, or if the alien claims to have a pending U-visa petition, but there is no record of it, the FOD shall notify both the OCC and the Assistant Director for Field Operations prior to scheduling the alien's removal.

Upon receiving a Stay request from an alien with a pending U-visa petition, the local DRO office must contact its local OCC to request a *prima facie* determination from USCIS's VSC. DRO should allow USCIS a minimum of five business days to make a *prima facie* determination. During this time, the FOD should not deport or remove the alien, although DRO may continue to

secure the necessary documents to effect the alien's removal in the event USCIS finds that the alien is not *prima facie* eligible for a U-visa or denies the petition on the merits. The VSC will e-mail the respective DRO Field Office Stay mailbox and the local OCC point of contact with the results of the *prima facie* review or a copy of the decision notice.

If USCIS finds that the alien has established *prima facie* eligibility, the FOD, working in conjunction with the local OCC, will adjudicate the stay request. The FOD should view a Stay request favorably, unless serious adverse factors exist, as outlined above. If the FOD finds that serious adverse factors exist and is inclined to deny the Stay request despite the USCIS *prima facie* eligibility finding, the FOD must provide a summary of the case to DRO Headquarters for further review.

The Stay may remain in effect for up to 180 days. If at the end of 180 days, USCIS has not made a final decision about the merits of the U-visa petition, and no new adverse factors are apparent, the FOD should extend the stay as needed for USCIS to complete adjudication of the petition. For a petitioner whose Form I-918 has been approved, an order of exclusion, deportation, or removal issued by the Secretary will be deemed canceled by operation of the law. A petitioner whose Form I-918 has been approved, but who is subject to an order issued by an immigration judge or the Board of Immigration Appeals, may seek cancellation of the order through a filing of a motion to reopen and terminate. In cases where USCIS denies a petition, the Stay will be lifted automatically as of the date the denial becomes administratively final. See 8 C.F.R. § 214.14(c)(5)(i) and (f)(6). The FOD, or his or her designee, should continually work with USCIS to ensure the U-visa petition is adjudicated as quickly as possible.

Upon deciding whether to grant or deny an alien's Stay request, the FOD shall provide the alien or the attorney of record with written notice, place a copy of the notice in the alien's A-file, and enter the decision into the ENFORCE Alien Removal Module. .

Although DRO has the authority to detain an alien while USCIS adjudicates a U-visa petition, DRO should release the alien while the petition is pending unless serious adverse factors weigh against release or the alien is subject to mandatory detention under the INA. The issuance of an administrative Stay of Removal will not toll the period of detention under the standards of 8 C.F.R. § 241.4. See 8 C.F.R. § 214.14(c)(1)(ii) and (f)(ii). Therefore, for those cases where the alien is detained and the U-visa petition remains pending, DRO shall inform USCIS that the alien is detained and request that USCIS expedite the case.

This document provides only internal Immigration and Customs Enforcement guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful enforcement or litigative prerogatives of DHS or ICE.