



February 15, 2021

Ms. Amanda Baran
Chief, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529-2140

RE: Comment on Policy Manual Changes: Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action [10 USCIS-PM A] and [10 USCIS-PM B]

Dear Ms. Baran:

On behalf of ASISTA, I respectfully submit this comment in response to the January 14, 2021 Policy Alert revising a section of the U.S. Citizenship and Immigration Services (USCIS) Policy Manual on discretionary employment authorization involving certain adjustment applications or deferred action (hereinafter “January 2021 policy alert”).¹ We appreciate this opportunity to provide comments.

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors, and submit this comment based on our guiding principles and our extensive experience.

I. Impact of February 2, 2021 Executive Order

On February 2, 2021, President Biden issued Executive Order 14012 entitled “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New

¹ U.S. Citizenship and Immigration Service. “Policy Manual Changes: Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action” PA-2021-01 (January 14, 2021) available at

<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210114-DiscretionaryEADForAOSAndD A.pdf>

Americans”² This order, *inter alia*, called upon the Department of Homeland Security (DHS) and other government agencies to “identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law; and identify any agency actions that fail to promote access to the legal immigration system...”³ Integral to this policy review is to honor the purpose and intent of the bipartisan VAWA and TVPA to ensure that paths to safety are available to all eligible survivors.

We urge USCIS to review the changes contained in the January 2021 policy alert (issued by the prior administration) in accordance with the spirit of the February 2, 2021 executive order. In addition, other recent policy changes in the Policy Manual warrant the same review as they have limited access to immigration benefits and established heightened standards regarding discretion. For example, on July 15, 2020, USCIS issued changes to the Policy Manual entitled “Applying Discretion in USCIS Adjudications” which included provisions regarding employment authorization.⁴ Our organization, with over 70 other national, state and local agencies submitted a comment in opposition to those revisions, citing its negative impact on survivor-based forms of immigration relief.⁵ Later, on November 17, 2020 USCIS released an additional policy alert regarding changes to the Policy Manual on discretion in adjustment of status adjudications.⁶ Again, ASISTA and partner organizations opposed these changes citing not only the harmful impact of these changes on survivors but also our concern that the new extraneous discretionary analysis needlessly complicates administrative review.⁷

II. Impact of January 2021 Guidance

The new guidance contained in the January 2021 policy alert makes specific exemptions to this discretionary analysis when adjudicating applications for employment authorization under deferred action, including exemptions for A-3 and G-5 workers involved in civil actions against their employers/traffickers and for several forms of survivor-based forms of relief. This includes trafficking survivors granted continuous presence, T visa applicants with bona fide determinations, VAWA self-petitioners and derivatives granted deferred action, U visa petitioners on the U visa

² Executive Order 14012. “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans” 86 FR 8277 (February 2, 2021), available at <https://www.federalregister.gov/documents/2021/02/05/2021-02563/restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts>

³ *Id* at 8277, 8278.

⁴ USCIS. “Policy Alert Applying Discretion in USCIS Adjudications” PA-2020-10 (July 15, 2020), available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200715-Discretion.pdf>

⁵ See Joint Comment submitted August 14, 2020, available at <https://asistahelp.org/wp-content/uploads/2020/10/Joint-Comment-USCIS-Policy-Manual-USCIS-Policy-Manual-Applying-Discretion-in-USCIS-Adjudications-1-USCIS-PM-E.8-and-10-USCIS-PM-A.5-Aug.-14-2020-002.pdf>

⁶ USCIS. “Policy Alert: Use of Discretion for Adjustment of Status” PPA-2020-22 (November 17, 2020), available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20201117-AOSDiscretion.pdf>

⁷ See Joint Comment submitted December 17, 2020, available at <https://asistahelp.org/wp-content/uploads/2020/12/Joint-Comment-USCIS-PM-Use-of-Discretion-for-Adjustment-of-Status-7-USCIS-PM-A.1-and-7-USCIS-PM-A.10-2.pdf>

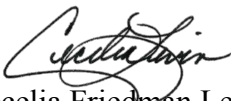
waitlist, and those who have a pending S visa.⁸ Furthermore, survivors with pending adjustment applications (on the basis of VAWA self-petitioners, U, T and S visas applications) are also exempt from this discretionary analysis for work authorization.⁹ We are encouraged that USCIS took considerations for survivor-based relief into account in this latest revision.

We are mindful, however, that there may be survivors or other vulnerable applicants applying for adjustment or for deferred action who do not specifically fall into these exemptions (e.g. an approved Special Immigrant Juvenile Status applicant applying for adjustment of status). These individuals may face unjustified barriers if they are subject to this additional discretionary analysis for employment authorization. Furthermore, we are deeply concerned that additional heightened discretionary factors are still currently integrated into other adjudications (including adjustment of status and others), which impact survivor-based claims.¹⁰

Moreover, this additional discretionary analysis on employment authorization will exacerbate the significant adjudication delays USCIS already faces. USCIS has acknowledged that “due to the extraordinary and unprecedented COVID-19 public health emergency” the issuance of work authorization has been delayed.¹¹ Adding additional burdens to work authorization for those eligible and impeding access to economic support, especially given the challenges of the pandemic, can have dire consequences for families and make individuals more susceptible to abuse and exploitation.

For too long, DHS policy has limited access to critical protections and placed additional burdens on applicants. We call on USCIS to rescind these Policy Manual revisions, to adopt policies that ensure that immigration benefits are “delivered effectively and efficiently,”¹² and to eliminate unjustified barriers for immigrants eligible for relief.

Respectfully submitted,



Cecelia Friedman Levin
Policy Director
ASISTA

⁸ Volume 10: Employment Authorization; Part B, Specific Categories [10 USCIS-PM B], Chapter 3: Aliens Granted Deferred Action, available at <https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-3>

⁹ Volume 10: Employment Authorization; Part B, Specific Categories [10 USCIS-PM B], Chapter 4: Adjustment Applicants Under INA 245, available at <https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-4>

¹⁰ See note 4 and 6 *supra*.

¹¹ USCIS. “Form I-9 Verification During EAD Production Delays Due to COVID-19” (August 19, 2020), available at <https://www.uscis.gov/i-9-central/form-i-9-related-news/form-i-9-verification-during-ead-production-delays-due-to-covid-19>; See also USCIS. “Extension of Validity of Certain Forms I-797 Due to Continued Employment Authorization Document (EAD) Delays” (November 23, 2020); available at <https://www.uscis.gov/i-9-central/form-i-9-related-news/extension-of-validity-of-certain-forms-i-797-due-to-continued-employment-authorization-document-ead>; See also USCIS. “DHS Extends Form I-9 Requirement Flexibility (Effective Feb. 01, 2021)” (January 28, 2021), available at <https://www.uscis.gov/i-9-central/form-i-9-related-news/dhs-extends-form-i-9-requirement-flexibility-effective-feb-01-2021>

¹² See note 2 *supra*.