



Policy Alert: Bona Fide Employment Authorization for U Visa Petitioners

On June 14, 2021, USCIS published a [policy manual alert](#) regarding the [issuance of bona fide work authorization for pending U visa cases](#), including both principal and derivative applicants. The policy is in effect as of the issuance of the policy and applies to all Form I-918 petitions pending on June 14, 2021, as well as Form I-918 petitions filed on or after that date. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

USCIS will conduct an initial review of Form I-918 and will issue Bona Fide Determination (BFD) EADs **and** Deferred Action for 4 years to U petitioners and qualifying family members if USCIS deems their petition “bona fide”, instead of completing a full waiting list adjudication. The policy manual changes outline a process consisting of making a bona fide determination of the case, determining whether the petitioner is a risk to national security and public safety, and assessing whether the petitioner warrants a positive exercise of discretion. The BFD process will include derivative beneficiaries and will be in effect in tandem with the existing waitlist process.

A. Bona Fide Determination

According to the guidance, **for principal petitioners** a U visa petition is bona fide where there is a properly filed I-918 including all [initial evidence](#) (except the Form I-192) and USCIS has collected biometrics. Initial evidence includes a complete and timely Form I-918, Form I-918 Supplement B, and a personal statement from the petitioner describing the facts of victimization. USCIS adjudicators will therefore review:

- Is I-918 (petition for U nonimmigrant status) properly completed and signed?
- Is I-918B (law enforcement certification) properly completed and signed?
- Does the filing include a signed statement from the principal petitioner?
- Has USCIS collected biometrics from the principal petitioner?

If the above four questions are answered in the affirmative, the adjudicator will move on to a national security and public safety risk assessment.

B. Discretion & Determination of National Security and Public Safety Risks

USCIS will review the results of background checks to check if the individual poses a national security or public safety risk, and consider other relevant discretionary factors. According to the new guidance, “in exercising the discretion granted by the INA, USCIS grants BFD EADs to principal petitioners and qualifying family members with pending bona fide petitions who it

determines merit a favorable exercise of discretion, considering any risk to national security [as determined in INA 212(a)(3)] or public safety, as well as other relevant discretionary factors.”

In assessing public safety risks, USCIS indicates that *an arrest* for a serious crime is relevant to its exercise of discretion. In addition, the guidance contains a non-exhaustive list of criminal offenses relevant to discretion for BFD EADs including firearms offenses, rape, sexual abuse, aggravated assault among others. USCIS may determine that *other* adverse factors weigh against a favorable exercise of discretion for issuance of a BFD EAD on a case-by-case basis. Conversely, “USCIS may also exercise discretion favorably notwithstanding these concerns if case-specific circumstances warrant it.”

This process is not an in-depth review of a petitioner’s criminal history. If USCIS needs additional evidence regarding an arrest, or if an individual has other relevant adverse factors that require additional review, then these U petitioners will not receive a BFD EAD, and their case will be considered for placement on the waitlist. (*See section E infra*)

For those approved for a BFD EAD, USCIS will update and review background checks at regular intervals to determine whether a principal petitioner or a qualifying family member may maintain his or her BFD EAD and deferred action. USCIS also retains discretion to update background and security checks at any time when case-specific circumstances warrant.

C. Benefits

If USCIS finds that the U visa petition is bona fide, USCIS will issue a 4-year EAD and Deferred Action that can be renewed in 4-year intervals. For those granted a BFD EAD and deferred action, the next adjudicative step will be issuance of U visa status once a visa is available.

D. Derivative Beneficiaries

Derivative Beneficiaries may also be eligible for employment authorization, but must independently demonstrate their application is bona fide. For derivatives, this means:

- The principal petitioner receives a BFD EAD;
- The petitioner has properly filed a complete Form I-918, Supplement A;
- The petition includes credible evidence of the qualifying family relationship; and
- USCIS has received the results of the qualifying family member’s background and security checks based upon biometrics.

Additionally, USCIS is adopting the decision issued by the Ninth Circuit in [Medina Tovar v. Zuchowski](#) for nationwide application. Therefore, when confirming a relationship between the

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principal petitioner and the qualifying family member which is based on marriage, USCIS will evaluate whether the relationship existed at the time the principal petition was favorably adjudicated, rather than when the principal petition was filed.¹

E. BFD v. Waitlist

USCIS will generally not conduct waiting list adjudications for noncitizens who have been granted BFD EADs and deferred action. Instead, their next adjudicative step will be final adjudication for U nonimmigrant status when space is available under the statutory cap.

Those who do not receive a BFD EAD under this initial review will proceed to the full waiting list adjudication and, if their petitions are approvable, will be placed on the waiting list for a U visa. Principal petitioners placed on the waiting list, and their qualifying family members, receive deferred action, and if they have properly filed for employment authorization, they also [receive an EAD valid for 4 years](#).

USCIS will review all petitions, both petitioners placed on the waiting list and petitioners issued BFD EADs, in receipt date order for final adjudication of U nonimmigrant status.

F. Other Resources

We encourage you to review the latest [USCIS Policy Manual Guidance](#), including [the relevant appendix on the BFD Process and Administrative Procedures Act Considerations](#) and [on waitlist determinations](#). In addition, USCIS has created a [BFD Process Flow Chart](#) for principal petitioners which is another helpful resource.

ASISTA is currently developing a more in-depth practice advisory that will explore additional details of this new policy and provide practice tips for practitioners.

G. Conclusion

While this is a clear step in the right direction, many questions remain on the implementation of this BFD policy and its effects on pending U visa petitions. ASISTA looks forward to continuing to work with our partners and USCIS to identify and understand fully the practical implications of this policy for all survivors.

¹ For additional information on the *Medina Tovar* decision, take a look at the Practice Alert recently issued by ASISTA, CLINIC & ILRC at <https://asistahelp.org/wp-content/uploads/2021/06/Updated-Practice-Alert-Regarding-Certain-U-and-T-After-Acquired-Spouse-Cases-1.pdf>

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