



U.S. Department of Justice  
Immigration and Naturalization Service

HQ204-P

425 I Street, NW  
Washington, DC 20536

DEC 22 1998

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: Michael D. Cronin  
Acting Associate Commissioner  
Office of Programs

SUBJECT: Deferred Action for Self-petitioning Battered Spouses and Children with Approved I-360 Petitions

PURPOSE: Relocation to the Vermont Service Center of Pending I-360s and Related Deferred Action Determinations for Self-Petitioning Battered Spouses and Children

This memorandum outlines changes in Service procedures for deferred action determinations on behalf of battered aliens who have approved I-360 self-petitions. It should be read as a supplement to the guidance issued by the Office of Programs on April 16, 1996, and the supplemental guidance issued on May 6, 1997.

Background

The memorandum dated April 16, 1996 instructed INS offices to utilize voluntary departure and deferred action to provide approved self-petitioners with employment authorization pending the availability of a visa number. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) eliminated the feasibility of voluntary departure for this purpose. The memorandum of May 6, 1997 authorized the Vermont Service Center (VSC) to determine deferred action on a case-by-case basis for self-petitioning battered aliens with approved I-360 petitions.

The authority to assess deferred action applied only to cases approved at the VSC on or after June 1, 1997. Self-petitioners with petitions approved at the VSC prior to June 1, 1997, or approved at an office other than the VSC, were directed to seek a determination of deferred

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action from Detention & Deportation (D&D) at their local INS office. Recommendations from D&D were then forwarded to the appropriate Regional Director for approval. For many self-petitioners seeking this relief the process has proven to be slow and uncertain.

In addition, many self-petitioners who were previously granted voluntary departure now face termination of that status and subsequent loss of employment authorization. These individuals have been seeking deferred action relief from Field Offices with varying degrees of success. In order to reduce inconsistencies, the authority for making such determinations is now delegated solely to the Service Center Director at the VSC.

#### Deferred Action and Employment Authorization

Effective the date of this memorandum, the VSC is responsible for assessing deferred action for all self-petitioning spouses (and their derivative children) and children of abusive USCs and lawful permanent residents with approved I-360 petitions, regardless of the date of approval or the approving Field Office. In making such determinations, the VSC will check the following:

- Is there an approved I-360 petition for an abused spouse or child?
- Has an Application for Adjustment of Status (I-485) been filed and what is the status of that application?
- Is the self-petitioner currently in removal proceedings or has the approved I-360 been revoked?
- Since the I-360 approval, was the self-petitioner lawfully admitted for permanent residence or adjusted to lawful permanent resident status?
- Is the self-petitioner currently residing in the United States?

Deferred action will not be considered or assessed for a self-petitioning spouse/child under the following circumstances:

- No approved I-360 petition.
- The self-petitioner is not currently residing in the U.S.
- Self-petitioner adjusted to LPR or entered the U.S. with an immigrant visa.
- Self-petitioner is currently in removal proceedings (for the purpose of this memorandum this is defined as the period between the filing of the Notice to Appear (NTA) with the immigration judge and the issuance of the final decision).

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If a deferred action determination is made, the VSC will notify the alien to submit Form I-765, Application for Employment Authorization. Applications for employment authorization based on an assessment of deferred action at the VSC, must be filed with the VSC. After the initial deferred action decision and issuance of a one-year Employment Authorization Document (EAD), the VSC will hold these files and review the deferred action decision upon receipt of each application for extension of work authorization. Upon notification by the National Visa Center (NVC), or by an INS field office, that the alien is seeking a visa abroad or has filed an adjustment application, the VSC will forward the approved Form I-360 to the appropriate office.

All approved Form I-360 petitions should be relocated to the VSC, except when:

- A current Form I-485, Application for Adjustment of Status, is pending.
- The alien is in removal proceedings.
- The petition has been revoked.
- The Field Office needs the petition, i.e., an investigation is underway. In such cases, the Field Office should notify the VSC of the reason that it is holding the petition.

The petitions should be mailed to the VSC with the following notation on the outside of the envelope and on a buck slip attached to the petitions: Attn: Family Product Line - VAWA for Deferred Action.

#### Action for Field Offices and Service Centers

This memorandum directs all Field Offices and other Service Centers to immediately forward all pending Form I-360 petitions and requests for deferred action, filed by spouses or children of abusive U. S. citizens and lawful permanent residents, to the Vermont Service Center. When an I-765 is filed concurrently, that application may also be forwarded to the VSC. The petitions should be mailed to the VSC with the following notation on the outside of the envelope and on a buck slip attached to the petitions: Attn: Family Product Line - VAWA for Deferred Action.

Field Offices (and other Service Centers) may continue to receive inquiries from self-petitioners regarding determinations of deferred action. These may be initial requests or requests for an extension of deferred action. These requests should be mailed with the self-petitioner's A-file to the attention of the Family Product Line at the VSC. If the A-file is unavailable or can not be forwarded for some reason, the request should be faxed to the VSC. The envelope containing the A-file or the fax should be marked: Attn: Family Product Line - VAWA for Deferred Action. The appropriate fax number for such requests is (802) 527-3277.

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Each request forwarded to the VSC must be accompanied by the following information:

- 1) Self-Petitioner's Full Name (including maiden name or any other names used) and A-number.
- 2) Safe mailing address<sup>1</sup> and current mailing address (if different);
- 3) Copy of Approval Notice (if available) or date and place of Form I-360 approval
- 4) Status of pending Form I-485 application
- 5) Status of removal proceedings (if applicable)
- 6) Status of previous deferred action (if applicable);
- 7) Any other information which deemed pertinent to a deferred action determination.

Upon receipt of an inquiry regarding a deferred action determination, the VSC will attempt to verify as much information as possible at the local level. Field offices should comply with these requests for information. The information sought may include verification of any of the items listed above.

#### Deferred Action Validity

Initial assessments of deferred action will be valid for fifteen months. This enables the self-petitioner and any derivative child(ren) to file an application for employment authorization. Requests for extensions of deferred action will be reviewed and granted in increments of twelve months, not to exceed the maximum validity period listed below. It should be noted that self-petitioners from certain countries face an extremely long wait for a visa number. With no viable alternative to deferred action they could remain in deferred action for ten years or longer.

**Immediate Relatives:** In the case of a self-petitioner for whom a visa number is immediately available, the maximum validity period for deferred action shall not exceed 27 months from the date of approval of the self-petition.

**Preference Categories:** The maximum validity period for deferred action in the case of all other self-petitioners shall not exceed 24 months following the date a visa number becomes available, as determined by notification from the Department of State.

#### Records and Reporting

The VSC maintains a database of all grants and extensions of deferred action and will

<sup>1</sup>The VSC reviews all Form I-360 petitions to ensure that no correspondence relating to the self-petition and/or other relating petitions and applications is sent to an address accessible by the abusive U. S. citizen or lawful permanent resident.