U.S. Citizenship and Immigration Services

Chapter 6 - Waiting List

When the 10,000 visas under the statutory cap have been allocated in a given fiscal year, USCIS places remaining petitioners eligible for U nonimmigrant status on the waiting list. Principal petitioners placed on the waiting list are eligible for employment authorization and receive a grant of deferred action or, in limited circumstances, parole.[1] Additionally, USCIS grants these same benefits to the qualifying family members of principal petitioners placed on the waiting list.

Officers initiate a waiting list adjudication for petitioners who do not receive employment authorization and deferred action based on the Bona Fide Determination (BFD) process.[2] While the BFD process does not include a full analysis of eligibility requirements, USCIS conducts a full adjudication necessary to determine eligibility for U nonimmigrant status as part of the waiting list process. Unlike the BFD process, officers may issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) to gather additional information necessary to adjudicate for waiting list placement.

Consistent with longstanding practice, U.S. Immigration and Customs Enforcement (ICE) may request expedited waiting list adjudications for specific petitioners, in relation to enforcement priorities.[3]

Except in cases where ICE requests expedited waiting list adjudication, or where USCIS revokes the Bona Fide Determination Employment Authorization Document (BFD EAD) and terminates deferred action, USCIS generally does not conduct waiting list adjudications for noncitizens who USCIS grants BFD EADs and deferred action to.

A. Eligibility

To be placed on the waiting list, a petitioner must establish all statutory and regulatory requirements by a preponderance of the evidence.[4] At the time of placement on the waiting list, a petitioner is considered eligible for U nonimmigrant status, but not granted U nonimmigrant status “due solely to the cap.”[5]

Though petitioners placed on the waiting list are generally approved for U nonimmigrant status, approval is not guaranteed.[6]

B. Adjudication of Waiting List Eligibility

USCIS determines waiting list placement on a case-by-case basis. Officers:

- Perform a full evaluation of eligibility requirements, which includes but is not limited to:
  - Determining whether the petitioner was the victim of qualifying criminal activity or qualifying crime (QCA);
  - Analyzing evidence submitted to establish substantial mental and physical abuse;
  - Assessing the U Nonimmigrant Status Certification (Form I-918, Supplement B) for all details regarding the QCA;
- Complete a full review of background checks; and
  - Determine whether any applicable inadmissibility grounds are waivable in the exercise of discretion in the final adjudication, which includes a detailed, individualized assessment for principal petitioners and qualifying family members who have one or more applicable grounds of inadmissibility.[7]

Petitioners or qualifying family members who are inadmissible under INA 212(a) are generally ineligible to receive visas or be admitted to the United States. USCIS may exercise its discretion to deny waiver requests in the following circumstances:

- Noncitizens with criminal histories or serious immigration violations;
- Noncitizens who pose a national security or public safety risk;
- Noncitizens determined to have committed fraud or misrepresentation; or
- For any other reasons that USCIS deems necessary and appropriate.

For example, officers may need to request additional evidence or information in certain cases where security checks indicate that a petitioner has an arrest record.[8] The courts and administrative appellate bodies have deemed an arrest record, as well as police reports and other corroborating information, as appropriate for consideration for purposes of applications for discretionary relief, provided that the evidentiary weight of the arrest and police reports is properly assessed and considered.[9]

Although officers fully evaluate a petition for placement on the waiting list, officers must review the filing again and determine that the petitioner remains eligible for U nonimmigrant status before approving the petition when space becomes available under the statutory cap in a subsequent fiscal year.

Decision

Upon determining eligibility for waiting list placement, USCIS issues a notice to petitioners with information regarding eligibility for work authorization and deferred action. Employment authorization

based on deferred action is permitted under 8 CFR 274a.12(c)(14) to petitioners living in the United States who have filed an Application for Employment Authorization (Form I-765).

Waitlisted petitioners remain on the waiting list until their petitions are adjudicated for U nonimmigrant status in the order they were received. Grants of deferred action or parole to principal petitioners placed on the waiting list, and their qualifying family members, are preserved until a final agency decision is made on the petition, unless the individual grant of deferred action or parole is terminated at USCIS' discretion.[10]

Waitlisted petitioners do not accrue unlawful presence while on the waiting list.[11] Petitioners on the waiting list and their qualifying family members, who are outside the United States, may generally seek parole on a case-by-case basis through the processes available to other noncitizens.

Principal petitioners placed on the waiting list, and their qualifying family members, receive employment authorization valid for a period of 4 years, similar to petitioners who receive a BFD EAD. Principal petitioners who file an application for employment authorization under 8 CFR 274a.12(c)(14) must submit a fee or a Request for Fee Waiver (Form I-912). Principal petitioners placed on the waiting list and their qualifying family members may request renewals of employment authorization and deferred action if they remain on the waiting list longer than 4 years.

Principal petitioners are granted employment authorization incident to a grant of U nonimmigrant status. Consequently, USCIS converts applications for employment authorization under 8 CFR 274a.12(a)(19) to 8 CFR 274a.12(c)(14) for principal petitioners placed on the waiting list.

For applications for employment authorization under 8 CFR 274a.12(a)(20) or (c)(14), qualifying family members must submit a fee or a Form I-912.[12]

USCIS issues an RFE or NOID to principal petitioners who are determined ineligible for waiting list placement based on the file review. Petitioners have the opportunity to submit additional information to address deficiencies or concerns identified in the RFE or the NOID. If, after reviewing the additional evidence, the officer determines that the petitioner has not established eligibility for U nonimmigrant status by a preponderance of the evidence, USCIS issues a notice of denial of the petition for U nonimmigrant status to the petitioner.

Footnotes

[^ 1] See 8 CFR 214.14(d)(2).

[^ 2] See Chapter 5, Bona Fide Determination Process [3 USCIS-PM C.5].

[^ 3] See ICE Directive 11005.2: Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners, issued August 2, 2019.

[^ 4] See Chapter 2, Eligibility Requirements for U Nonimmigrant Status, Section A, Principal Petitioners [3 USCIS-PM C.2].

[^ 5] See 8 CFR 214.14(d)(2).

[^ 6] See Chapter 7, Adjudication for Statutory Cap, Section C, Adjudicative Order [3 USCIS-PM C.7].

[^ 7] Congress granted DHS the discretionary authority to waive most inadmissibility grounds for a person seeking U nonimmigrant status if it is in the public or national interest to do so. See INA 212(d)(3)(A)(ii). See INA 212(d)(14) (authorizing the waiver of any inadmissibility ground except for participation in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^ 8] See *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (considering but hesitating to give "substantial weight" to an uncorroborated arrest report). See *Garces v. U.S. Att'y Gen.*, 611 F.3d 1337, 1350 (11th Cir. 2010) ("Absent corroboration, the arrest reports by themselves do not offer reasonable, substantial, and probative evidence that there is reason to believe Garces engaged in drug trafficking.").

[^ 9] See *Paredes-Urrestarazu v. U.S. I.N.S.*, 36 F.3d 801, 810 (9th Cir. 1994) *Paredes-Urrestarazu v. I.N.S.*, 36 F.3d 801, 810 (9th Cir. 1994) (holding that an arrest can be relevant to a discretionary determination). See *Matter of Grijalva (PDF)*, 19 I&N Dec. 713, 721-22 (BIA 1988) (hearsay evidence is admissible in deportation proceedings unless its use is fundamentally unfair; the admission into evidence of police reports concerning the circumstances of an arrest and conviction is appropriate in cases involving discretionary relief). See *Matter of Teixeira* (PDF), 21 I&N Dec. 316, 321 (BIA 1996) (police reports that are not part of the "record of conviction" may be appropriately considered for purposes of an application for discretionary relief, where the focus is on conduct rather than conviction). See *Avila-Ramirez v. Holder*, 764 F.3d 717, 725 (7th Cir. 2014) (consideration of arrest reports in the weighing of discretionary factors is not prohibited but must be given appropriate evidentiary weight). See *Arias-Minaya v. Holder*, 779 F.3d 49, 54 (1st Cir. 2015) (noting "it is settled beyond hope of contradiction that in reviewing requests for discretionary relief, immigration courts may consider police reports" and that this holds true even where there is no conviction.).

[^ 10] See 8 CFR 214.14(d)(3).

[^ 11] See INA 212(a)(9)(B). See 8 CFR 214.14(d)(3).

[^ 12] See 8 CFR 274a.12(c)(14).

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