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Memo: U Nonimmigrant (U-Visa) Bona Fide Determination

Dear Legal Team,

Please find below my research regarding the bona-fide determination process for U-nonimmigrants. This new process could potentially help many of our clients and provides a pathway for deferred action.

Kind regards,

Cricket Kaya
Intern

In Summary

As of June 14th 2021, the Biden administration announced that U-petitioners with pending petitions may be eligible to receive a four-year work authorization (and therefore deferred action) while they wait for adjudication (ILRC 2021). In the past, applicants have been able to get employment authorization documents ("EADs") while they are in the USCIS processing waiting list, but even this process could take many years (ASISTA 2021). In their report, the Immigrant Legal Resource Center states that USCIS has a backlog of U-Visa cases dating back to 2016. The Bona-Fide Determination ("BFD") is a solution to granting applicants in the waitlist an alternate route for EAD while they wait for adjudication. USCIS will not conduct waiting list adjudications for noncitizens who have been granted BFD EADs and deferred action. Instead, their next step would be final adjudication for the U-visa status (ILRC 2021).

Qualifications

To qualify for the Bona Fide Determination, the applicant must:

1. Have a pending I-918 or I-918A with all required initial evidence¹;
2. Be a qualifying family member² of the principal U-petitioner;
3. Have completed biometrics;
4. Not be deemed as a threat to national security; and
5. Not have been convicted, or even just arrested for a variety of crimes³.

Procedure

There is still a level of uncertainty around the process of filing the application for employment authorization (I-765) to qualify for the BFD. On the facts page for the form, USCIS states “If you have not yet filed an accompanying Form I-765 and we determine your pending Form I-918 petition is bona-fide, we will issue you a notice informing you to file a Form I-765” (USCIS 2021). **The ILRC also claims that applicants with filed I-765s will not need to submit an additional application to be considered for the BFD** (ILRC 2021). Therefore, if the applicant qualifies for BFD but is missing information, USCIS will contact the applicant with a notice to request evidence or a missing form. Once approved, the EAD will be valid for 4 years, after which can be renewed. As a note, a BFD does not guarantee that the applicant’s U-visa will be approved. You cannot appeal a BFD denial, and USCIS has the right to revoke BFD grants at any time (ILRC 2021).

¹ **Required Initial Evidence:** an I-918 Supplement B law enforcement certification signed no more than six months prior to submission; a personal statement, describing the facts of the crime victimization (ILRC 2021).

² **Qualifying Family Member:** properly file or have already properly filed a complete I-918A, with evidence of the family relationship to the principal U petitioner; principle U-petitioner must have been granted the Bona-Fide Determination (BFD)

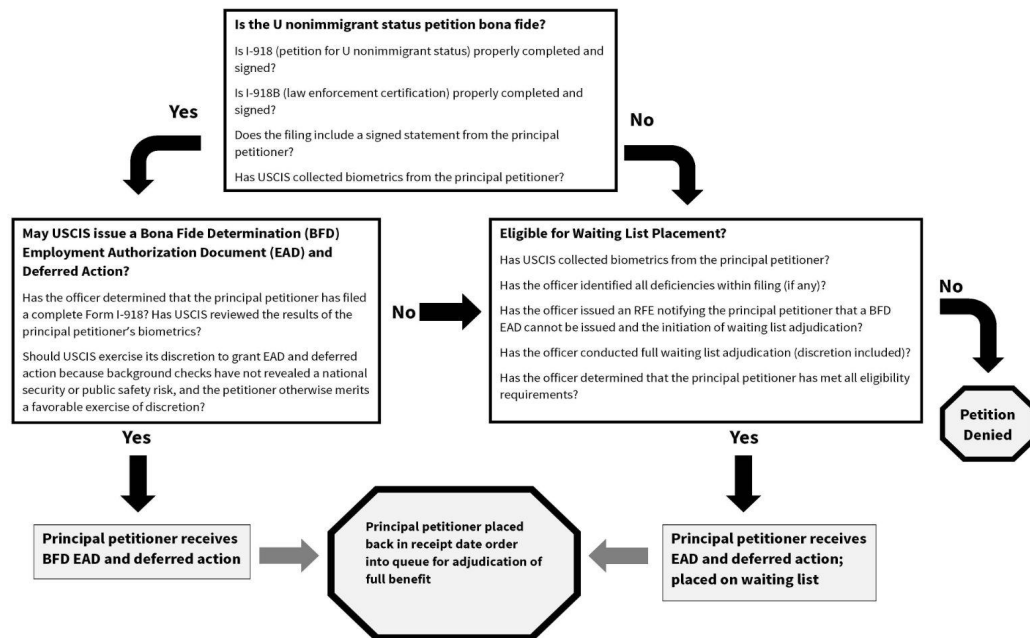
³ List of crimes that would warrant ineligibility can be found in the report by the Immigrant Legal Resource Center (ILRC 2021).

Renewal

After four years, applicant's can request a renewal for their BFD EAD. There is no filing fee for the initial application, but there is a filing fee for the renewal. The applicant can also include a fee waiver request using form I-912 along with the I-765 application (ILRC 2021).

Appendix: Bona Fide Determination Process Flowchart

Form I-918 filed by principal petitioner living in the United States is received by USCIS.



Citations

ASISTA Immigration Assistance. (2021). *Policy alert: Bona fide employment authorization for U ...* Asista Help. Retrieved October 1, 2021, from

https://asistahelp.org/wp-content/uploads/2021/06/Policy-Alert_-Bona-Fide-Employment-Authorization-for-U-petitioners-1.pdf.

Immigrant Legal Resource Center. (2021, July 9). *Overview of the New U nonimmigrant ("U visa") bona fide determination*. ILRC. Retrieved October 1,

2021, from <https://www.ilrc.org/overview-new-u-nonimmigrant-%E2%80%9Cu-visa%E2%80%9D-bona-fide-determination>.

United States Citizenship and Immigration Services. (2021, September 29). *Application for employment authorization*. USCIS. Retrieved October 1, 2021,

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