

CASE NO.: 26-_____

SUPREME COURT OF THE UNITED STATES

ROSMERI ADALUZ MIRANDA-LOPEZ,
Petitioner,

vs.

ICE ORLANDO FIELD OFFICE
DIRECTOR,
Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

**APPENDICES TO PETITION FOR A WRIT OF
CERTIORARI**

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1 July 2026

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12007
Non-Argument Calendar

ROSMERI ADALUZ MIRANDA-LOPEZ,

Petitioner-Appellant,

versus

ICE ORLANDO FIELD OFFICER DIRECTOR,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:25-cv-01015-CEM-LHP

Before WILLIAM PRYOR, Chief Judge, and ABUDU and
ANDERSON, Circuit Judges.

PER CURIAM:

Rosmeri Miranda-Lopez appeals the dismissal of her petition for a writ of habeas corpus for lack of subject-matter jurisdiction. 28 U.S.C. § 2241. Miranda-Lopez's petition alleged that the execution of her removal order violated her right to substantive due process. Because the petition

challenges the decision to execute a removal order, the district court concluded it lacked subject-matter jurisdiction. *See* 8 U.S.C. § 1252(g). We affirm.

Miranda-Lopez was subject to an order of supervision. After her husband applied on their behalf for a U-Visa, a category of visa that grants deferred action to victims of certain crimes and their spouses, Miranda-Lopez received a bona fide determination notice from United States Citizenship and Immigration Services. After that notice, she applied for employment authorization because she thought that the process granted her deferred-action status and the right to remain in the United States.

While Miranda-Lopez's employment application was pending, the government moved to execute a removal order. It placed her on ankle-monitor surveillance and ordered her to surrender for deportation. Miranda-Lopez filed a petition for a writ of habeas corpus and an emergency motion to stay her removal. 28 U.S.C. § 2241. She argued that the decision to “accelerate” her removal violated her right to substantive due process because her bona fide determination notice entitled her to remain in the country. She asked the district court to release her from custody and to prohibit her removal.

The district court dismissed the petition for lack of subject-matter jurisdiction. It concluded that the petition fell “squarely” within the jurisdictional bar of section 1252(g) because Maria-Lopez was challenging the decision to execute a removal order. *See* 8 U.S.C. § 1252(g).

We review *de novo* an order dismissing a noncitizen's petition for a writ of habeas corpus for lack of subject-matter jurisdiction. *Camarena v. Dir., Immigr. & Customs Enft*, 988 F.3d 1268, 1271 (11th Cir. 2021).

Federal law strips federal courts of jurisdiction to hear any claim “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). This “discretion-protecting” provision prevents the

“deconstruction, fragmentation, and hence prolongation of removal proceedings.” *Camarena*, 988 F.3d at 1272 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999)).

Section 1252(g) is not a “shorthand way of referring to all claims arising from deportation proceedings.” *American-Arab Anti-Discrimination Comm.*, 525 U.S. at 482. It applies only to the “three discrete actions” listed in the statute and does not “sweep in any claim that can technically be said to arise from [them].” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citations and internal quotation marks omitted). For the bar to apply, one of the three listed actions must be the “basis of the claim.” *Camarena*, 988 F.3d at 1272 (citation and internal quotation marks omitted).

The district court lacked subject-matter jurisdiction because Miranda-Lopez's petition challenges the decision to execute a removal order. The petition specifically requested that the district court stay her deportation and release her from custody. Because these requests arise from the execution of a removal order, they fall squarely within the jurisdictional bar of section 1252(g). *Id.*

Miranda-Lopez attempts to sidestep this bar by classifying her petition as a challenge to the *authority* to remove her. She contends that her removal order was not executable because her bona fide determination notice granted her a vested liberty interest in deferred action. This argument “runs headlong into [section] 1252(g).” *Id.* at 1273. The statute bars “any” challenge to the execution of a removal order and “makes no exception for those claiming to challenge the government's authority.” *Id.* (internal quotation marks omitted). We may not engraft our own exceptions onto the statutory text, nor may a party “dress up a claim with legal or constitutional clothing to invoke our jurisdiction.” *Patel v. United States Att'y Gen.*, 971 F.3d 1258 (11th Cir.

2020) (en banc).

Miranda-Lopez's reliance on *Madu v. United States Att'y Gen.*, 470 F.3d 1362 (11th Cir. 2006), is misplaced. The petitioner in *Madu* argued that the government could not remove him because no removal order existed. 470 F.3d at 1367-68. Section 1252(g) did not block that challenge because the government cannot “execute” an order that does not exist. *Camarena*, 988 F.3d at 1273. By contrast, Miranda-Lopez does not dispute the existence or validity of her removal order. She argues only that a separate regulatory process should be interpreted to block her removal. This argument is an attack on the execution of her removal order, nothing more. Section 1252(g) “simply doesn't allow for it,” and the district court correctly dismissed the petition for lack of subject-matter jurisdiction. *Id.*

We **AFFIRM** the order dismissing Miranda-Lopez's petition.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith

Clerk of Court

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March 03, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-12007-GG

Case Style: Rosmeri Miranda-Lopez v. ICE Orlando Field
Officer Director

District Court Docket No: 6:25-cv-01015-CEM-LHP

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs

Costs are taxed against Appellant(s) / Petitioner(s).

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, *see* FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

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OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ROSMERI ADALUZ MIRANDA-LOPEZ,

Plaintiff,

v.

Case No. 6:25-cv-1015-CEM-LHP

KIMBERLY DEAN, ICE Orlando Field Officer Director,

Defendant.

ORDER

THIS CAUSE is before the Court on *sua sponte* review of Plaintiff Rosmeri Adaluz Miranda-Lopez's Emergency Petition for Writ of Habeas Corpus (“Petition,” Doc. 1) filed by counsel under 28 U.S.C. § 2241, Emergency Motion to Stay Deportation (Doc. 2), and Amended Emergency Motion to Stay Deportation (Doc. 3). For the following reasons, the Petition, Motion to Stay Deportation, and Amended Motion to Stay Deportation will be denied and dismissed for lack of subject matter jurisdiction.

I. BACKGROUND

Petitioner, a Guatemalan citizen who has lived in Apopka, Florida for twenty-four years and has a pending U-Visa application,¹ has been in the United States under an Order of Supervision since January 2015. (Doc. 3 at 1-2). On May 30, 2025, Plaintiff was placed on ankle-monitoring and ordered to turn herself into Immigration and Customs Enforcement (“ICE”) Orlando on June 12, 2025, and to be deported as early as June 14, 2025. (Doc. 1 at 1).

¹ A U-Visa “provides protection against removal and a potential path to legal status for undocumented victims of violent crime.” *K.K. v. Garland*, No. 23-CV-6281-FPG, 2025 WL 274431, at *1 n.2 (W.D.N.Y.

Jan. 23, 2025), *appeal dismissed as moot sub nom. K.K. v. Bondi*, No. 25-190, 2025 WL 1233307 (2d Cir. Apr. 8, 2025) (quoting *Espino v. U.S.C.I.S.*, No. 21-CV-21, 2021 WL 6775011, at *1 (D. Vt. Aug. 18, 2021)).

Plaintiff notes that she owns her home with her husband, who was deported on June 7, 2025, they have a family operated business, and she lives with her four children who are United States citizens between the ages of 9 and 21. (Doc. 3 at 2). Plaintiff states that her “husband has followed the administrative process to obtain a U-Visa under Category C-14, which grants deferred action to victims of crimes *and their spouses* so that they may receive employment authorization and legal status.” (*Id.*) (emphasis in original). According to Plaintiff, on December 20, 2024, she and her husband received a Bona Fide Determination Notice (“Notice”) on the U-Visa application from the United States Citizenship and Immigration Services (“USCIS”), “allowing them to apply for employment authorization, granting them deferred action, and offering them favorable consideration” in their administrative proceedings. (*Id.*). Based on the Notice, Plaintiff filed for employment authorization on February 5, 2025, and her application is pending. (*Id.*).

Plaintiff asserts two claims: (1) her pending deportation deprives her of due process because her pending U-Visa application and employment authorization grant her deferred action, and (2) ICE has abused its discretion by accelerating her deportation rather than follow its administrative process for U-Visa applications. (Doc. 1 at 6). Plaintiff requests the Court to release her from ICE custody and stay her deportation until her U-Visa application is resolved. (*Id.* at 7); *see also* Doc. 3.

II. ANALYSIS

“Federal courts are ‘courts of limited jurisdiction,’” which “‘possess only that power authorized by Constitution

and statute.’” *Camarena v. Dir., Immigr. & Customs Enft.*, 988 F.3d 1268, 1271 (11th Cir. 2021) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). One statute that limits federal courts' jurisdiction is 8 U.S.C. § 1252(g), which provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). This statute expressly includes claims raised in § 2241 habeas corpus actions. *Id.*

Section 1252(g) encompasses only “three ‘discrete actions: actions to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Camarena*, 988 F.3d at 1272 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)). “When ‘asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.’” *Id.* (quoting *Canal A Media Holding, LLC v. U.S. Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257–58 (11th Cir. 2020)). “Section 1252(g) bars review over ‘any’ challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's ‘authority’ to execute their removal orders.” *Id.* at 1273 (quoting 8 U.S.C. § 1252(g)).

Here, Plaintiff's claims arise from the Government's “decision or action” to “execute” a removal order. 8 U.S.C. § 1252(g). She specifically requests the Court to prohibit the Government from removing her pending the disposition of her U-Visa application. Consequently, her claims “fall squarely within § 1252(g)'s jurisdictional bar.” *Id.* at 1272 (affirming dismissal of habeas petition seeking to prevent removal pending the resolution of the petitioners' applications for provisional unlawful presence waivers). Section 1252(g), therefore, divests the Court of jurisdiction. *See, e.g., E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021) (affirming district

court's dismissal for lack of jurisdiction under § 1252(g) of the petitioner's challenge to the government's decision to execute a removal order while she sought administrative relief); *Garland*, No. 23-CV-6281-FPG, 2025 WL 274431, at *1–2 (W.D.N.Y. Jan. 23, 2025) (concluding the court lacked jurisdiction pursuant to § 1252(g) to enjoin the petitioner's removal before the disposition of his T-Visa and U-Visa applications); *Singh v. United States Immigr. & Customs Enft Field Off. Dir.*, No. 2:24-CV-00705-RSL-TLF, 2025 WL 746295, at *9 (W.D. Wash. Feb. 14, 2025) (determining the court lacked jurisdiction under § 1252(g) to grant the request to stay removal pending the disposition of the petitioner's U-Visa application), *report and recommendation adopted*, No. 2:24-CV-00705-RSL-TLF, 2025 WL 745629 (W.D. Wash. Mar. 7, 2025).

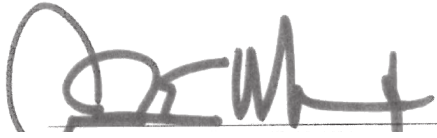
Accordingly, because § 1252(g) strips this Court of jurisdiction to hear Plaintiff's claims, the Petition must be dismissed, and Petitioner's Motion to Stay Deportation and Amended Motion to Stay Deportation must be denied.

III. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiff's Emergency Motion to Stay Deportation (Doc. 2) and Amended Emergency Order to Stay Deportation (Doc. 3) are **DENIED**.
2. This case is **DISMISSED** for lack of subject matter jurisdiction.
3. The Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on June 11, 2025.

A handwritten signature in dark ink, appearing to read 'CEM', is written over a horizontal line.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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Atlanta, Georgia 30303

David J. Smith

Clerk of Court

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August 06, 2025

Clerk - Middle District of Florida
U.S. District Court
401 W CENTRAL BLVD
ORLANDO, FL 32801

Appeal Number: 25-12007-GG

Case Style: Rosmeri Miranda-Lopez v. ICE Orlando Field
Officer Director

District Court Docket No: 6:25-cv-01015-CEM-LHP

The referenced appeal was dismissed on July 22, 2025.

Appellant's motion to reinstate the appeal has been granted by the clerk. The appellant's brief is due on September 15, 2025, with the appellant's appendix due within 7 days of the filing of the appellant's brief.

The parties have 14 days from the date of this order to file a notice with the Clerk specifying which motions mooted by the dismissal of this appeal, **if any**, are to be renewed. The time for filing a response to any renewed motion runs from the date the opposing party's notice is docketed. Parties seeking to renew a motion after the 14-day renewal period expires will be required to refile the motion.

Clerk's Office Phone Numbers

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404-335-6100

APPENDIX C

C-001

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Enclosure(s)

REINST-2 Clerk Reinst_Mot Granted

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-12007-GG

ROSMERI ADALUZ MIRANDA-LOPEZ,

Petitioner - Appellant,

versus

ICE ORLANDO FIELD OFFICER DIRECTOR,

Respondent - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER: The motion to reinstate appeal is GRANTED. The
appeal is reinstated by the clerk, effective August 06, 2025.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12007

ROSMERI ADALUZ MIRANDA-LOPEZ,

Petitioner-Appellant,

versus

ICE ORLANDO FIELD OFFICER DIRECTOR,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:25-cv-01015-CEM-LHP

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 3, 2026

For the Court: DAVID J. SMITH, Clerk of Court

Amendment V (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being *twenty-one* years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove

such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

8 U.S.C. § 1252

§ 1252. Judicial review of orders of removal

(a) Applicable provisions.

(1) General orders of removal. Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 235(b)(1) [8 USCS § 1225(b)(1)]) is governed only by chapter 158 of title 28 of the United States Code [28 USCS §§ 2341 et seq.], except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review.

(A) Review relating to section 235(b)(1). Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], no court shall have jurisdiction to review—

(i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 235(b)(1) [8 USCS § 1225(b)(1)],

(ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 235(b)(1)(B) [8 USCS § 1225(b)(1)(B)], or

(iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 235(b)(1) [8 USCS § 1225(b)(1)].

(B) Denials of discretionary relief. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 212(h), 212(i), 240A, 240B, or 245 [8 USCS § 1182(h), 1182(i), 1229b, 1229c, or 1255], or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this title [8 USCS §§ 1151 et seq.] to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 208(a) [8 USCS § 1158(a)].

(C) Orders against criminal aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or

237(a)(2)(A)(iii), (B), (C), or (D) [8 USCS § 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D)], or any offense covered by section 237(a)(2)(A)(ii) [8 USCS § 1227(a)(2)(A)(ii)] for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i) [8 USCS § 1227(a)(2)(A)(i)].

(D) Judicial review of certain legal claims. Nothing in subparagraph (B) or (C), or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) Treatment of certain decisions. No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 240(c)(1)(B) [8 USCS § 1229a(c)(1)(B)].

(4) Claims under the United Nations Convention. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

(5) Exclusive means of review. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28

USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms “judicial review” and “jurisdiction to review” include habeas corpus review pursuant to section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], and review pursuant to any other provision of law (statutory or nonstatutory).

(b) Requirements for review of orders of removal. With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) Deadline. The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms. The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service.

(A) In general. The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of

removal under section 240 [8 USCS § 1229a] was entered.

(B) Stay of order. Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) Alien's brief. The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review. Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 208(a) [8 USCS § 1158(a)] shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(C) [8 USCS § 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C)], unless the court finds, pursuant to section 242(b)(4)(B) [subsec. (b)(4)(B) of this section], that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims.

(A) Court determination if no issue of fact. If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact. If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28, United States Code.

(C) Limitation on determination. The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider. When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with

the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings.

(A) In general. If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 243(a) [8 USCS § 1253(a)] may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality. If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28, United States Code.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation. If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 243(a) [8 USCS § 1253(a)]. The United States Government may appeal the dismissal to the court of appeals for the

appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review. The defendant in a criminal proceeding under section 243(a) [8 USCS § 1253(a)] may not file a petition for review under subsection (a) during the criminal proceeding.

(8) Construction. This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 241(a) [8 USCS § 1231(a)];

(B) does not relieve the alien from complying with section 241(a)(4) [8 USCS § 1231(a)(4)] and section 243(g); and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review. Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title [8 USCS §§ 1151 et seq.] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, by section 1361 or 1651 of such title [28 USCS § 1361 or 1651], or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) Requirements for petition. A petition for review or habeas corpus of an order of removal—

- (1) shall attach a copy of such order, and
 - (2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.
- (d) Review of final orders. A court may review a final order of removal only if—
- (1) the alien has exhausted all administrative remedies available to the alien as of right, and
 - (2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.
- (e) Judicial review of orders under section 235(b)(1).
- (1) Limitations on relief. Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—
 - (A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 235(b)(1) [8 USCS § 1225(b)(1)] except as specifically authorized in a subsequent paragraph of this subsection, or
 - (B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.
 - (2) Habeas corpus proceedings. Judicial review of any determination made under section 235(b)(1) [8 USCS § 1225(b)(1)] is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207 [8 USCS § 1157], or has been granted asylum under section 208 [8 USCS § 1158], such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 235(b)(1)(C) [8 USCS § 1225(b)(1)(C)].

(3) Challenges on validity of the system.

(A) In general. Judicial review of determinations under section 235(b) [8 USCS § 1225(b)] and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this title or is otherwise in violation of law.

(B) Deadlines for bringing actions. Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal. A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases. It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision. In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 235(b)(1) [8 USCS § 1225(b)(1)], or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207 [8 USCS § 1157], or has been granted asylum under section 208 [8 USCS § 1158], the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 240 [8 USCS § 1229a]. Any alien who is provided a hearing under section 240 [8 USCS § 1229a] pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1).

(5) Scope of inquiry. In determining whether an alien has been ordered removed under section 235(b)(1) [8 USCS § 1225(b)(1)], the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) Limit on injunctive relief.

(1) In general. Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II [8 USCS §§ 1221 et seq.], as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated.

(2) Particular cases. Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(3) Certain actions. Paragraph (1) shall not apply to an action brought pursuant to section 235(b)(3) [8 USCS § 1225(b)(3)], subsections (e) or (f) of section 236 [8 USCS § 1226], or section 241(a)(2)(B) [8 USCS § 1231(a)(2)(B)].

(g) Exclusive jurisdiction. Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

(June 27, 1952, ch 477, Title II, Ch 5, § 242, 66 Stat. 208; Sept. 3, 1954, ch 1263, § 17, 68 Stat. 1232; Dec. 29, 1981, P. L. 97-116, § 18(h)(1), 95 Stat. 1620; Nov. 6, 1986, P. L. 99-603, Title VII, § 701, 100 Stat. 3445; Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 220(b), 98 Stat. 2029; Oct. 24, 1988, P. L. 100-525, § 9(n), 102 Stat. 2620; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle J, § 7343(a), 102 Stat. 4470; Nov. 29, 1990, P. L. 101-649, Title V, Subtitle A, § 504(a), Subtitle D, § 545(e), Title VI, § 603(b)(2), 104 Stat. 5049, 5066, 5085; Dec. 12, 1991, P. L. 102-232, Title III, §§ 306(a)(4), (c)(7), 307(m)(2), 309(b)(9), 105 Stat. 1751, 1753, 1757, 1759; Sept. 13, 1994, P. L. 103-322, Title II, Subtitle C, § 20301(a), Title XIII, § 130001(a), 108 Stat. 1823, 2023; Oct. 25, 1994, P. L. 103-416, Title II, §§ 219(h), 224(b), 108 Stat. 4317, 4324; April 24, 1996, P. L. 104-132, Title IV, Subtitle D, §§ 436(a), (b)(1), 438, 440(c), (h), 110 Stat. 1275, 1277, 1279; Sept. 30, 1996, P. L. 104-208, Div C, Title III, Subtitle A, §§ 306(a)(1), (2), (d), 308(g)(10)(H), Subtitle F, § 371(b)(6), 110 Stat. 3009-607, 3009-612, 3009-625, 3009-645; May 11, 2005, P. L. 109-13, Div B, Title I, §§ 101(e), (f), 106(a), 119 Stat. 305, 310; Jan. 29, 2025, P.L. 119-1, § 3(f), 139 Stat. 5.)

8 U.S.C. § 1101

§ 1101. Definitions

(a) As used in this Act—

(1) The term “administrator” means the official designated by the Secretary of State pursuant to section 104(b) of this Act [8 USCS § 1104(b)].

(2) The term “advocates” includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term “alien” means any person not a citizen or national of the United States.

(4) The term “application for admission” has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term “Attorney General” means the Attorney General of the United States.

(6) The term “border crossing identification card” means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the

border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term “clerk of court” means a clerk of a naturalization court.

(8) The terms “Commissioner” and “Deputy Commissioner” mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term “consular officer” means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III [8 USCS §§ 1401 et seq.], for the purpose of adjudicating nationality.

(10) The term “crewman” means a person serving in any capacity on board a vessel or aircraft.

(11) The term “diplomatic visa” means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term “doctrine” includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)

(A) The terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 212(d)(5) [8 USCS § 1182(d)(5)] or permitted to land temporarily as

an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,
- (v) has committed an offense identified in section 212(a)(2) [8 USCS § 1182(a)(2)], unless since such offense the alien has been granted relief under section 212(h) or 240A(a) [8 USCS § 1182(h) or 1229b(a)], or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term “foreign state” includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)

(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C)

(i) an alien in immediate and continuous transit through the United States, for a period not to exceed 29 days;

(ii) an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District (as defined in section 209A(e) of the State Department Basic Authorities Act of

1956 (22 U.S.C. 4309a(e))) and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Agreement regarding the Headquarters of the United Nations, done at Lake Success June 26, 1947 (61 Stat. 758); or

(iii) an alien passing in transit through the United States to board a vessel on which the alien will perform, or to disembark from a vessel on which the alien performed, ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade, for a period not to exceed 180 days;

(D)

(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) [8 USCS § 1288(a)] (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived; or

(iii) an alien crewman performing ship-to-ship liquid cargo transfer operations to or from another vessel

engaged in foreign trade, who intends to land temporarily solely in pursuit of the alien's responsibilities as a crewman and to depart from the United States on the vessel on which the alien arrived or on another vessel or aircraft, for a period not to exceed 180 days;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the alien is a national (or, in the case of an alien who acquired the relevant nationality through a financial investment and who has not previously been granted status under this subparagraph, the foreign state of which the alien is a national and in which the alien has been domiciled for a continuous period of not less than 3 years at any point before applying for a nonimmigrant visa under this subparagraph), and the spouse and children of any such alien if accompanying or following to join such alien: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which the alien is a national; (ii) solely to develop and direct the operations of an enterprise in which the alien has invested, or of an enterprise in which the alien is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [8 USCS § 1182(t)(1)];

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)

(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident

members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) [Caution: For expiration of amendments made to this subparagraph by Act Nov. 12, 1999, P. L. 106-95, see § 2(e) of such Act, which appears as 8 USCS § 1182 note.] an alien (i)(a) [Deleted] (b) subject to section 212(j)(2) [8 USCS § 1182(j)(2)] who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) [8 USCS § 1184(i)(1)] or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) [8 USCS § 1184(i)(2)] or, in the case of a fashion model, is of

distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) [8 USCS § 1182(n)(1)], or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A) [8 USCS § 1184(g)(8)(A)], who is engaged in a specialty occupation described in section 214(i)(3) [8 USCS § 1184(i)(3)], and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [8 USCS § 1182(t)(1)], or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1) [8 USCS § 1182(m)(1)], and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) [8 USCS § 1182(m)(2)] for the facility (as defined in section 212(m)(6)) [8 USCS § 1182(m)(6))] for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986 [26 USCS § 3121(g)], agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a

foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving

training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j) [8 USCS § 1182(j)], and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 214 [8 USCS § 1184], an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [8 USCS § 1154(a)(1)(A)(viii)(I)]) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [8 USCS § 1154(a)(1)(A)(viii)(I)]) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) [8 USCS § 1151(b)(2)(A)(i)] that was filed under section 204 [8 USCS § 1154] by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 214(c)(2) [8 USCS § 1184(c)(2)], an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or

subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)

(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who—

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability;

(ii)

(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of

the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who—

(i) (a) is described in section 214(c)(4)(A) [8 USCS § 1184(c)(4)(A)] (relating to athletes), or (b) is described in section 214(c)(4)(B) [8 USCS § 1184(c)(4)(B)] (relating to entertainment groups);

(ii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 214(k) [8 USCS § 1184(k)], an alien—

(i) who the Attorney General determines—

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956 [22 USCS § 2708(a)],

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)

(i) subject to section 214(o) [8 USCS § 1184(o)], an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines —

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [22 USCS § 7102];

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)

(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) [the alien] would suffer extreme hardship involving unusual and severe harm upon removal;

and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)

(i) subject to section 214(p) [8 USCS § 1184(p)], an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning

criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade;

kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 214(q) [8 USCS § 1184(q)], an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) [8 USCS § 1153(d)]) of a petition to accord a status under section 203(a)(2)(A) [8 USCS § 1153(a)(2)(A)] that was filed with the Attorney General under section 204 [8 USCS § 1154] on or before the date of the enactment of the Legal Immigration Family Equity Act [enacted Dec. 21, 2000], if—

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) [8 USCS § 1153(a)(2)(A)]; or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 [8 USCS § 1255], pursuant to the approval of such petition, remains pending.

(16) The term “immigrant visa” means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an

eligible immigrant under the provisions of this Act.

(17) The term “immigration laws” includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term “immigration officer” means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19) The term “ineligible to citizenship,” when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [section 4(a) of the Military Selective Service Act, 50 USCS § 3803(a)], or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term “national” means a person owing permanent allegiance to a state.

(22) The term “national of the United States” means (A) a citizen of the United States, or (B) a person who,

though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term “naturalization” means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) [Repealed]

(25) The term “noncombatant service” shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term “nonimmigrant visa” means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term “special immigrant” means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III [8 USCS §§ 1435(a) or 1438], apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant’s spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious

denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 USCS § 501(c)(3)]) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who—

(i) is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status; or

(ii) is the surviving spouse or child of an employee of the United States Government abroad: Provided, That the employee performed faithful service for a total of

not less than 15 years or was killed in the line of duty;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3(a)(1) of the Panama Canal Act of 1979 [22 USCS § 3602(a)(1)]) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of

such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)

(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of enactment of the Immigration Technical Corrections

Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of enactment of the Immigration Technical Corrections Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994 [enacted Oct. 25,

1994], whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant

classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the “Protocol on the Status of International Military Headquarters” set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998[; or]

(M) subject to the numerical limitations of section 203(b)(4) [8 USCS § 1153(b)(4)], an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors [United States Agency for Global Media], or for a grantee of the Broadcasting Board of Governors [United States Agency for Global Media], and the immigrant’s accompanying spouse and children.

(28) The term “organization” means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term “outlying possessions of the United States” means American Samoa and Swains Island.

(30) The term “passport” means any travel document issued by competent authority showing the bearer’s

origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term “permanent” means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term “Service” means the Immigration and Naturalization Service of the Department of Justice.

(35) The term [terms] “spouse,” “wife,” or “husband” do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term “State” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term “totalitarian party” means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms “totalitarian dictatorship” and “totalitarianism” mean and refer to systems of government not representative in fact,

characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term “United States,” except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term “unmarried,” when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term “world communism” means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term “graduates of a medical school” means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or

unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act [8 USCS § 1157(e)]) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act

[21 USCS § 802]), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title [18 USCS § 841(c)]);

(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title [18 USCS § 1957] (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

(E) an offense described in—

(i) section 842(h) or (i) of title 18, United States Code, or section 844(d), (e), (f), (g), (h), or (i) of that title [18 USCS § 844(d), (e), (f), (g), (h), or (i)] (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18, United States Code (relating to firearms offenses); or

(iii) section 5861 of the Internal Revenue Code of 1986 [26 USCS § 5861] (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment [is] at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year;

(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses) [18 USCS § 1084 or 1955], for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii) section 601 of the National Security Act of 1947 [50 USCS § 3121] (relating to protecting the identity of undercover intelligence agents);

(iii) section 601 of the National Security Act of 1947 [50 USCS § 3121] (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 [26 USCS § 7201] (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) [8 USCS § 1324(a)(1)(A) or (2)] (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act[;]

(O) an offense described in section 275(a) or 276 [8 USCS § 1325(a) or 1326] committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title [18 USCS § 1546(a)] (relating to document fraud) and (ii) for which the term of

imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)

(A) The term “managerial capacity” means an assignment within an organization in which the employee primarily —

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.

(B) The term “executive capacity” means an assignment within an organization in which the employee primarily —

- (i) directs the management of the organization or a major component or function of the organization;

- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term “substantial” means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i) [8 USCS § 1101(a)(15)(O)(i)], in the case of the arts, distinction.

(47)

(A) The term “order of deportation” means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or

ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)

(A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term “stowaway” means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not

to be considered a stowaway.

(50) The term “intended spouse” means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III) [8 USCS § 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III)].

(51) The term “VAWA self-petitioner” means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 204(a)(1)(A) [8 USCS § 1154(a)(1)(A)];

(B) clause (ii) or (iii) of section 204(a)(1)(B) [8 USCS § 1154(a)(1)(B)];

(C) section 216(c)(4)(C) [8 USCS § 1186(c)(4)(C)];

(D) the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act [8 USCS § 1255 note]; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208) [note to this section].

(52) The term “accredited language training program” means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in titles I and II [8 USCS §§ 1101 et seq., 1151 et seq.]—

(1) The term “child” means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)

(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(F)

(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)]; or

(G)

(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal

relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted—

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii) subject to the same provisos as in clauses (i) and (ii), a child who—

(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b) [8 USCS § 1151(b)].

(2) The terms “parent,” “father,” or “mother” mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term “parent” does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term “person” means an individual or an organization.

(4) The term “immigration judge” means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 [8 USCS § 1229a]. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term “adjacent islands” includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in title III [8 USCS §§ 1401 et seq.]—

(1) The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III [8 USCS §§ 1431, 1432], a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms “parent,” “father,” and “mother” include in the case of a posthumous child a deceased parent, father, and mother.

(d) [Repealed]

(e) For the purposes of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any

organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(2) [Repealed]

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act [8 USCS § 1182(a)]; or subparagraphs (A) and (B) of section 212(a)(2) [8 USCS § 1182(a)(2)] and subparagraph (C) thereof [of such section] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) [8 USCS § 1182(a)(3)(E)] (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) [8 USCS § 1182(a)(2)(G)] (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act [enacted June 27, 1952]) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 212(a)(2)(E) [8 USCS § 1182(a)(2)(E)], the term “serious criminal offense” means—

(1) any felony;

(2) any crime of violence, as defined in section 16 of title 18 of the United States Code; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien’s options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.

(June 27, 1952, ch 477, Title I, § 101, 66 Stat. 166; Sept. 11, 1957, P. L. 85-316, §§ 1, 2, 71 Stat. 639; July 7, 1958, P. L. 85-508, § 22, 72 Stat. 351; March 18, 1959, P. L. 86-3, § 20(a), 73 Stat. 13; Sept. 21, 1961, P. L. 87-256, § 109(a), (b), 75 Stat. 534; Sept. 26, 1961, P. L. 87-301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, P. L. 89-236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, P. L. 89-710, 80 Stat. 1104; April 7, 1970, P. L. 91-225, § 1, 84 Stat. 116; Dec. 16, 1975, P. L. 94-155, 89 Stat. 824; Oct. 12, 1976, P. L. 94-484, Title VI, § 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, P. L. 94-571, § 7(a), 90 Stat. 2706; Oct. 12, 1976, P. L. 94-484, Title VI, § 602(c), as added Aug. 1, 1977, P. L. 95-83, Title III, § 307(q)(3), 91 Stat. 395; Aug. 17, 1977, P. L. 95-105, Title I, § 109(b)(3), 91 Stat. 847; Sept. 27, 1979, P. L. 96-70, Title III, Ch 1, § 3201(a), 93 Stat. 496; March 17, 1980, P. L. 96-212, Title II, § 201(a), 94 Stat. 102; Dec. 29, 1981, P. L. 97-116, §§ 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Priv. L. 98-47, § 3, 98 Stat. 3435; Oct. 21, 1986, P. L. 99-505, § 1, 100 Stat. 1806; Nov. 6, 1986, P. L. 99-603, Title III, Part A, § 301(a), Part B, §§ 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, P. L. 99-653, §§ 2, 3, 100 Stat. 3655; Oct. 1, 1988, P. L. 100-459, Title II, § 210(a), 102 Stat. 2203; Oct. 24, 1988, P. L. 100-525, §§ 2(o)(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle J, § 7342, 102 Stat. 4469; Nov. 21, 1989, P. L. 101-162, Title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, P. L. 101-238, § 3(a), 103 Stat. 2100; Feb. 16, 1990, P. L. 101-246, Title I, Part C, § 131(b), 104 Stat. 31; Nov. 29, 1990, P. L. 101-649, Title I, Subtitle B, Part 2, § 123, Subtitle D, §§ 151(a), 153(a), Subtitle E, § 161(f)(2)(A), Title II, Subtitle A, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209, Title IV, § 407(a)(2), Title V, Subtitle A, §§ 501(a), 509(a), Title VI, § 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018, 5019, 5020, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, P. L. 102-110, § 2(a), 105 Stat. 555; Dec. 12, 1991, P. L. 102-232, Title II, §§ 203(a), 205(a)–(c), 206(b), (c)(1), (d), 207(b), 302(e)(8)(A), 303(a)(5)(A), (7)(A), 305(m)(1), 306(a)(1), 309(b)(1), 105 Stat. 1737, 1740, 1741, 1746, 1747, 1748, 1750, 1751, 1758; April 30, 1994, P. L. 103-236, Title I, Part C, § 162(h)(1), 108 Stat. 407; Sept. 13, 1994, P. L. 103-322, Title XIII, § 130003(a), 108 Stat. 2024; Oct. 5, 1994, P. L. 103-337, Div C, Title XXXVI, § 3605, 108 Stat. 3113; Oct. 25, 1994, P. L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320; Nov. 15, 1995, P. L. 104-51, § 1, 109 Stat. 467; April 24, 1996, P. L. 104-132, Title IV, Subtitle D, § 440(b), (e), 110 Stat. 1277; Sept. 30, 1996, P. L. 104-208, Div C, Title I, Subtitle A,

§ 104(a), Title III, Subtitle A, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), Subtitle B, §§ 321(a), (b), 322(a)(1), (2)(A), Subtitle E, § 361(a), Subtitle F, § 371(a), Title VI, Subtitle A, § 601(a), Subtitle B, § 625(a)(2), Subtitle E, § 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721, 3009-722, 3009-723; Oct. 6, 1997, P. L. 105-54, § 1(a), 111 Stat. 1175; Nov. 26, 1997, P. L. 105-119, Title I, § 113, 111 Stat. 2460; Oct. 21, 1998, P. L. 105-277, Div C, Title IV, § 421, Div G, Title XXII, Ch 2, § 2222(e), 112 Stat. 2681-657, 2681-819; Oct. 30, 1998, P. L. 105-319, § 2(b), (d)(2), 112 Stat. 3014, 3015; Nov. 12, 1999, P. L. 106-95, § 2(a), (c), 113 Stat. 1312, 1316; Dec. 7, 1999, P. L. 106-139, § 1(a), (b)(1), 113 Stat. 1696; Oct. 6, 2000, P. L. 106-279, Title III, § 302(a), (c), 114 Stat. 838, 839; Oct. 28, 2000, P. L. 106-386, Div A, § 107(e)(1), (4), Div B, Title V, §§ 1503(a), 1513(b), 114 Stat. 1477, 1479, 1518, 1534; Oct. 30, 2000, P. L. 106-395, Title II, § 201(a)(1), 114 Stat. 1633; Nov. 1, 2000, P. L. 106-409, § 2(a), 114 Stat. 1787; Nov. 22, 2000, P. L. 106-536, § 1(a), 114 Stat. 2560; Dec. 21, 2000, P. L. 106-553, § 1(a)(2), 114 Stat. 2762; Jan. 16, 2002, P. L. 107-125, § 2(b), 115 Stat. 2403; Oct. 4, 2002, P. L. 107-234, § 1(4), 116 Stat. 1481; Nov. 2, 2002, P. L. 107-274, § 2(a), (b), 116 Stat. 1923; Sept. 3, 2003, P. L. 108-77, Title IV, § 402(a)(1), 117 Stat. 939; Oct. 15, 2003, P. L. 108-99, § 1, 117 Stat. 1176; Dec. 19, 2003, P. L. 108-193, §§ 4(b)(1), (5), 8(a)(1), 117 Stat. 2878, 2879, 2886; Dec. 10, 2004, P. L. 108-449, § 1(a)(2)(B), (3)(A), (b)(1), 118 Stat. 3469, 3470; Dec. 17, 2004, P. L. 108-458, Title V, Subtitle E, § 5504, 118 Stat. 3741; May 11, 2005, P. L. 109-13, Div B, Title V, § 501(a), 119 Stat. 321; Oct. 18, 2005, P. L. 109-90, Title V, § 536, 119 Stat. 2087; Jan. 5, 2006, P. L. 109-162, Title VIII, Subtitle A, §§ 801, 805(d), Subtitle B, § 811, Subtitle C, § 822(c)(1), 119 Stat. 3053, 3056, 3057, 3063; July 27, 2006, P. L. 109-248, Title IV, § 402(b), 120 Stat. 623; May 8, 2008, P. L. 110-229, Title VII, Subtitle A, § 702(j)(1)–(3), 122 Stat. 866; Oct. 10, 2008, P. L. 110-391, § 2(a), 122 Stat. 4193; Dec. 23, 2008, P. L. 110-457, Title II, Subtitle A, § 201(a), Subtitle D, § 235(d)(1), 122 Stat. 5052, 5079; March 20, 2009, P. L. 111-9, § 1, 123 Stat. 989; Oct. 28, 2009, P. L. 111-83, Title V, § 568(a)(1), 123 Stat. 2186; Nov. 30, 2010, P. L. 111-287, § 3, 124 Stat. 3058; Dec. 14, 2010, P. L. 111-306, § 1(a), 124 Stat. 3280; Sept. 28, 2012, P. L. 112-176, § 3, 126 Stat. 1325; March 7, 2013, P. L. 113-4, Title VIII, § 801, Title XII, Subtitle B, Part II, §§ 1221, 1222, 127 Stat. 110, 144; Jan. 17, 2014, P. L. 113-76, Div K, Title VII, § 7083, 128 Stat. 567; July 30, 2021, P. L. 117-31, Title IV, § 403(a), 135 Stat. 318;

*Dec. 23, 2022, P.L. 117-263, Div E, Title LIX, Subtitle A, § 5902(b),
136 Stat. 3440; Jan. 5, 2023, P.L. 117-360, § 2, 136 Stat. 6292.)*

6 U.S.C. § 291

§ 291. Abolishment of INS

(a) In general. Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) Prohibition. The authority provided by section 1502 [6 USCS § 542] may be used to reorganize functions or organizational units within the Bureau of Border Security [Bureau of Immigration and Customs Enforcement] or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

(Nov. 25, 2002, P. L. 107-296, Title IV, Subtitle F, § 471, 116 Stat. 2205.)

Alien victims of certain qualifying criminal activity.

(Electronic Code of Federal Regulations, current as of July 6, 2026)

(a) *Definitions.* As used in this section, the term:

- (1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106-386, 114 Stat. 1464, (2000), amended by Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).
- (2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.
- (3) *Certifying official* means:
 - (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
 - (ii) A Federal, State, or local judge.
- (4) *Indian Country* is defined as:

- (i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
 - (ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
 - (iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.
- (5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.
- (6) *Military Installation* means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.
- (7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.
- (8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.
- (9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the

United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

- (10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, qualifying family member means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.
- (11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.
- (12) *U nonimmigrant status certification* means Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

- (13) *U interim relief* refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.
- (14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.
- (i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.
- (ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:
- (A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
- (B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
- (I) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

- (2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.
- (iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.
- (b) *Eligibility*. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:
 - (1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;
 - (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of

the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

- (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and
- (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) Application procedures for U nonimmigrant status—

- (1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit a Petition for U Nonimmigrant Status on the form prescribed by USCIS,

and initial evidence to USCIS in accordance with this paragraph (c)(1) and the form instructions. A petitioner who received interim relief is not required to submit initial evidence with a Petition for U Nonimmigrant Status if he or she is relying on the law enforcement certification and other evidence that was submitted with the request for interim relief.

- (i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I-918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.
- (ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-1 nonimmigrant status directly with USCIS. The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, “U Nonimmigrant Status Certification,” signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.
- (ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge

of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

- (iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and
 - (iv) If the petitioner is inadmissible, Form I-192, “Application for Advance Permission to Enter as Non-Immigrant,” in accordance with 8 CFR 212.17.
- (3) *Biometric capture.* All petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I-918.
- (4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U-1

nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

- (5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I-918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.
- (i) *Approval of Form I-918, generally.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918. For a petitioner who is within the United States, USCIS also will concurrently grant U-1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS’ approval of Form I-918. A petitioner who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek

cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

- (A) *Notice of Approval of Form I-918 for U-1 petitioners within the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I-797, “Notice of Action,” and include Form I-94 (see § 1.4), “Arrival-Departure Record,” indicating U-1 nonimmigrant status.
- (B) *Notice of Approval of Form I-918 for U-1 petitioners outside the United States.* After USCIS approves Form I-918 for an alien who filed his or her petition from outside the United States, USCIS will notify the alien of such approval on Form I-797, “Notice of Action,” and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.
- (ii) *Denial of Form I-918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I-918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I-918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS’ final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR

214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I-918 is approved will be accorded U-1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U-1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I-94, "Arrival-Departure Record," to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U-1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I-765 in accordance with the instructions to the form.

(d) *Annual cap on U-1 nonimmigrant status—*

(1) *General.* In accordance with section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal

year.

- (2) *Waiting list.* All eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.
- (3) *Unlawful presence.* During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.
- (e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification—*
 - (1) *General.* The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of

a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

- (i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;
- (ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;
- (iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;
- (iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;
- (v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);
- (vi) After a petition for U nonimmigrant status has been denied in a final decision;
- (vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);
- (viii) With prior written consent from the petitioner or derivative family members, to nonprofit,

nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

- (ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.
- (2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.
- (3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

(f) *Admission of qualifying family members—*

- (1) *Eligibility.* An alien who has petitioned for or has been granted U-1 nonimmigrant status (i.e., principal alien) may petition for the admission of a qualifying family member in a U-2 (spouse), U-3 (child), U-4 (parent of a U-1 alien who is a child under 21 years of age), or U-5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 nonimmigrant status. To be eligible for U-2, U-3, U-4, or U-5 nonimmigrant status, it must be demonstrated that:
 - (i) The alien for whom U-2, U-3, U-4, or U-5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

- (ii) The qualifying family member is admissible to the United States.
- (2) *Filing procedures.* A petitioner for U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I-918, Supplement A, “Petition for Qualifying Family Member of U-1 Recipient,” for each family member either at the same time the petition for U-1 nonimmigrant status is filed, or at a later date. An alien who has been granted U-1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I-918, Supplement A for each family member. All Forms I-918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I-918, Supplement A that are not filed at the same time as Form I-918 but are filed at a later date must be accompanied by a copy of the Form I-918 that was filed by the principal petitioner or a copy of his or her Form I-94 demonstrating proof of U-1 nonimmigrant status, as applicable.
- (i) *Qualifying family members in pending immigration proceedings.* The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I-918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

- (ii) *Qualifying family members with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U-2, U-3, U-4, or U-5 nonimmigrant status directly with USCIS. The filing of a petition for U-2, U-3, U-4, or U-5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.
- (3) *Initial evidence.* Form I-918, Supplement A, must include the following initial evidence:
 - (i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;
 - (ii) If the qualifying family member is inadmissible, Form I-192, "Application for Advance Permission to Enter as a Non-Immigrant," in accordance with 8 CFR 212.17.
- (4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U-1 principal alien and the qualifying family member must exist at the time Form I-918 was filed, and the relationship must continue to exist at the time Form I-918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.
 - (i) If the U-1 principal alien proves that he or she has become the parent of a child after Form I-918 was filed, the child shall be eligible to accompany or follow to join the U-1 principal alien.

- (ii) If the principal alien was under 21 years of age at the time he or she filed Form I-918, and filed Form I-918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.
- (5) *Biometric capture and evidentiary standards.* The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.
- (6) *Decision.* USCIS will issue a written decision approving or denying Form I-918, Supplement A and send notice of this decision to the U-1 principal petitioner. USCIS will include in a decision approving Form I-918 a list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I-918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.
- (i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I-918,

Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U-2, U-3, U-4, or U-5 nonimmigrant status. USCIS will notify the principal of such approval on Form I-797, “Notice of Action,” with Form I-94, “Arrival-Departure Record,” indicating U-2, U-3, U-4, or U-5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U-2, U-3, U-4, or U-5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I-918, Supplement A unless it has approved the principal alien’s Form I-918.

- (ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I-797. USCIS will forward the approved Form I-918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.
- (iii) *Denial of the Form I-918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may appeal the denial of Form I-918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS’ final denial of Form I-918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239

of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

- (7) *Employment authorization.* An alien granted U-2, U-3, U-4, or U-5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I-765, "Application for Employment Authorization," with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I-765 may be filed concurrently with Form I-918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I-765 only may be filed after admission to the United States in U nonimmigrant status.

(g) *Duration of U nonimmigrant status—*

- (1) *In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status.*

- (i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a

qualifying family member beyond the date when the U-1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

- (ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.

(h) *Revocation of approved petitions for U nonimmigrant status*—

- (1) *Automatic revocation.* An approved petition for U-1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

(2) *Revocation on notice.*

- (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

- (A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR

- 214.14(c)(2)(i) or disavows the contents in writing;
- (B) Approval of the petition was in error;
 - (C) Where there was fraud in the petition;
 - (D) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the relationship to the principal petitioner has terminated; or
 - (E) In the case of a U-2, U-3, U-4, or U-5 nonimmigrant, the principal U-1's nonimmigrant status is revoked.
- (ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.
- (3) *Appeal of a revocation of approval.* A revocation on notice may be appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.
- (4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I-918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I-918, Supplement A filed for qualifying family members seeking U-2, U-3, U-4, or U-5 nonimmigrant status. Revocation of a qualifying

family member's approved Form I-918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I-918 or Form I-918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

[72 FR 53036, Sept. 17, 2007, as amended at 72 FR 54813, Sept. 27, 2007; 74 FR 55738, Oct. 28, 2009; 78 FR 18472, Mar. 27, 2013; 85 FR 46925, Aug. 3, 2020; 89 FR 6398, Jan. 31, 2024]

Chapter 5 – Bona Fide Determination Process

(current as of June 26, 2026)

By statute, USCIS has discretion to provide employment authorization to aliens with pending, bona fide U nonimmigrant status petitions.¹ Consequently, USCIS implemented the Bona Fide Determination (BFD) process.

During the BFD process, USCIS first determines whether a pending petition is bona fide. Second, USCIS, in its discretion, determines whether the petitioner poses a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. If USCIS grants the alien a Bona Fide Determination Employment Authorization Document (BFD EAD) as a result of the BFD process, USCIS then also exercises its discretion to grant that alien deferred action for the period of the BFD EAD. USCIS generally does not conduct waiting list adjudications for aliens who USCIS grants BFD EADs and deferred action to; these petitioners' next adjudicative step is final adjudication when space is available under the statutory cap.²

As a matter of policy, USCIS interprets “bona fide” as part of its administrative authority to implement the statute as outlined below. Bona fide generally means “made in good faith; without fraud or deceit.”³ Accordingly, when interpreting the statutory term within the context of U nonimmigrant status, USCIS determines whether a petition is bona fide based on the petitioner’s compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS then considers any national security and public safety risks, as well as any other relevant considerations, as part of the discretionary adjudication.⁴

As a primary goal, USCIS seeks to adequately evaluate and adjudicate petitions as efficiently as possible. The BFD process provides an opportunity for certain petitioners to receive BFD EADs and deferred action while their petitions are pending, consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA 2008).⁵

Only petitioners living in the United States may receive BFD EADs, since those outside the United States cannot as a practical matter work in the United States.⁶ Likewise, deferred action can only be accorded to petitioners in the United States since those outside the United States have no potential removal to be deferred.

A. Bona Fide Determination

1. Principal Petitioners

USCIS determines a principal petition is bona fide if:

The principal petitioner has properly filed a complete Petition for U Nonimmigrant Status (Form I-918), including all required initial evidence,⁷ except for the Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).⁸ Required initial evidence includes:

- A complete and properly filed U Nonimmigrant Status Certification (Form I-918, Supplement B) submitted within 6 months of the certifier's signature; and

- A personal statement from the petitioner describing the facts of the victimization; and

USCIS has received the result of the principal petitioner's background and security checks based upon biometrics.⁹

2. Qualifying Family Members

A qualifying family member is not guaranteed a BFD EAD solely because the principal petitioner receives a BFD.¹⁰ The record must independently demonstrate the Form I-918,

Supplement A is bona fide. USCIS determines a qualifying family member's petition is bona fide when:

The principal petitioner receives a BFD;

The petitioner has properly filed a complete Petition for Qualifying Family Member of U-1 Recipient (Form I-918, Supplement A);

The petition includes credible evidence of the qualifying family relationship;¹¹ and

USCIS has received the results of the qualifying family member's background and security checks based upon biometrics.¹²

B. Exercise of Discretion, Including Risk to National Security or Public Safety and Other Factors

Once USCIS has determined a petition is bona fide, USCIS determines whether the petitioner poses a risk to national security¹³ or public safety by reviewing the results of background checks, and considers other relevant discretionary factors.¹⁴ USCIS then determines whether to exercise its discretion to issue a BFD EAD and grant deferred action to a petitioner.

Section 214(p)(6) of the Immigration and Nationality Act (INA) gives the Secretary of Homeland Security, and USCIS as his or her designee, discretionary authority over the issuance of employment authorization to aliens with pending, bona fide U nonimmigrant status petitions.¹⁵ A principal petitioner or qualifying family member who poses a risk to national security or public safety, or has other adverse discretionary factors, may not merit the favorable exercise of discretion necessary to grant deferred action.

Moreover, at the final adjudication, such individuals may require a waiver for any grounds of inadmissibility, and may be ineligible for U nonimmigrant status if they do not merit a

favorable exercise of discretion. Therefore, 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 or public safety, as well as other relevant discretionary factors.

USCIS may choose not to exercise its discretion to grant a BFD EAD and deferred action where a petitioner appears to pose a risk to national security or public safety. For example, where a principal petitioner or qualifying family member has been convicted of or arrested for any of the following acts, USCIS generally does not issue a BFD EAD and deferred action and instead proceeds to a full adjudication to assess eligibility for waiting list placement. The following categories generally overlap with inadmissibility grounds¹⁶ and may include:

National security concerns;¹⁷ and

Public safety concerns, which include but are not limited to:

Murder, rape, or sexual abuse;

Offenses involving firearms, explosive materials, or destructive devices;¹⁸

Offenses relating to peonage, slavery, involuntary servitude, and trafficking in persons;¹⁹

Aggravated assault;

An offense relating to child pornography; and

Manufacturing, distributing, or selling of drugs or narcotics.²⁰

Violent and dangerous crimes, such as those listed above, embody the very activities law enforcement seeks to deter and prevent through cooperation facilitated by the U nonimmigrant status program.

Additionally, USCIS may determine on a case-by-case basis that other adverse factors weigh against a favorable exercise of discretion. USCIS may also exercise discretion favorably notwithstanding the above concerns if case-specific circumstances warrant it.

Recognizing that many factors may influence whether criminal activity is prosecuted and results in a conviction, an arrest for a serious crime is relevant to whether USCIS should exercise its discretion favorably. A determination about whether to favorably exercise discretion when there are indicators of national security or public safety concerns requires a comprehensive review of the available evidence.

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.²¹ Therefore, USCIS does not conduct this in-depth, discretionary review during the BFD process. Instead, if USCIS determines that a petitioner may pose a risk to national security or public safety, or has other relevant adverse factors that would require further review, and therefore will not receive a BFD EAD, USCIS initiates a waiting list adjudication and conducts a comprehensive discretionary review as part of the evaluation of Form I-192 if one is submitted.

USCIS evaluates all evidence provided by petitioners regarding their arrest records before making determinations for waiting list placement.²²

C. Adjudicative Process

USCIS evaluates all petitions for U nonimmigrant status filed by aliens living in the United States as described above.²³ If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action.

USCIS initiates waiting list adjudication for petitioners who do not receive BFD EADs. When USCIS determines a principal petitioner will not receive a BFD EAD, USCIS proceeds to a full adjudication for waiting list placement for the principal petitioner and his or her qualifying family members.

A determination that a petitioner will not receive a BFD EAD and deferred action is not a denial of Form I-918 or the Application for Employment Authorization (Form I-765). A petitioner who does not receive a BFD EAD and deferred action is evaluated for waiting list eligibility and still has the opportunity to obtain employment authorization and a grant of deferred action if deemed eligible for waiting list placement. Consequently, non-issuance of a BFD EAD is not a final agency action. Correspondingly, USCIS does not accept or process motions to reopen or reconsider, appeals,²⁴ or requests to re-apply for a BFD EAD.

For any qualifying family member who will not receive a BFD EAD, USCIS completes a full adjudication for that qualifying family member. The full adjudication includes the issuance of Requests for Evidence (RFEs) to address any deficiencies or concerns identified in the qualifying family member's record but it is not an adjudication for waiting list placement. Because qualifying family members are "accompanying or following to join" the principal petitioner, they will not be placed on the waiting list unless the principal petitioner was placed on the waiting list.²⁵

If the qualifying family member resolves the deficiencies or concerns in the record, USCIS issues a BFD EAD and grants deferred action to the qualifying family member. If additional evidence provided by the qualifying family member does not resolve the deficiencies or concerns identified, then USCIS does not issue a BFD EAD and generally places the qualifying family member's petition with the principal petition back in line to await a final statutory cap

adjudication.

When USCIS issues a final decision to the principal petitioner, USCIS also issues a final decision for any qualifying family member who did not receive a BFD EAD. USCIS retains the authority to deny any petition when, after full adjudication, USCIS determines the qualifying family member is ineligible for the underlying benefit.

For example, USCIS may deny the petition where the record establishes that the claimed family member does not have a qualifying family relationship with the petitioner, or where USCIS determines a favorable exercise of discretion is not warranted to waive the qualifying family member's grounds of inadmissibility.

1. Criminal History Check for Bona Fide Determination Employment Authorization Documents

To efficiently determine whether to issue BFD EADs and grant deferred action, USCIS conducts background and security checks to identify petitioners who may pose risks to national security and public safety, or other adverse discretionary factors. USCIS relies on a variety of databases that collect information from law enforcement agencies and other federal, state, local, and tribal agencies, including information regarding arrests and convictions.

USCIS uses this information to determine whether a petitioner is admissible for the purposes of receiving a grant of U nonimmigrant status or merits a favorable exercise of discretion to waive any grounds of inadmissibility. USCIS' consideration of national security and public safety risks at the BFD EAD stage aligns with inadmissibility grounds evaluated during the adjudication of a petition for U nonimmigrant status and is therefore a consistent exercise of discretion within the authority afforded by INA 214(p)(6) to grant BFD EADs.

A petitioner who is not issued a BFD EAD due to the risk the petitioner appears to pose to national security or public safety receives a full adjudication for waiting list placement. During the adjudication for waiting list placement, petitioners have the opportunity to provide USCIS with potentially mitigating information or other evidence pertaining to arrests or convictions.

USCIS issues petitioners a BFD EAD and grants deferred action in order to promote victim stability and continued cooperation with law enforcement. However, USCIS updates and reviews background and security checks at regular intervals during the validity period of a principal petitioner or a qualifying family member's BFD EAD.

Additionally, USCIS retains discretion to update background and security checks at any time when case-specific circumstances warrant. During those reviews, USCIS evaluates whether the petitioner and qualifying family members who have been granted BFD EADs and deferred action continue to warrant the BFD EAD and merit a favorable exercise of discretion while their petitions for U nonimmigrant status are pending with USCIS.

USCIS reserves the right to revoke the BFD EAD²⁶ and terminate the grant of deferred action at any time if it determines the BFD EAD or favorable exercise of discretion are no longer warranted, or the prior BFD EAD and deferred action were granted in error.

For example, USCIS may revoke the BFD EAD and terminate deferred action if USCIS identifies any adverse information, such as new information pertaining to the risks the petitioner poses to national security or public safety, or the withdrawal of a petitioner's Form I-918, Supplement B. At that time, USCIS initiates a waiting list adjudication to gather additional information and evidence to determine if the petitioner is eligible for a waiver of inadmissibility for any

relevant inadmissibility grounds and placement on the waiting list.

2. Previously Filed Form I-765 for Bona Fide Determination Process

USCIS uses all Applications for Employment Authorization (Form I-765) already filed by principal petitioners under 8 CFR 274a.12(a)(19) and (c)(14) to issue a BFD EAD. USCIS also uses Form I-765 applications previously filed under 8 CFR 274a.12(a)(20) and (c)(14) for a qualifying family member to issue a BFD EAD to qualifying family members. Using previously filed applications limits the burden on petitioners to file additional paperwork.

Where a petitioner has filed a Form I-918 but has not filed an accompanying application for employment authorization under 8 CFR 274a.12(a)(19), (a)(20) or (c)(14), USCIS issues a notice indicating that the petitioner has received a BFD and may receive a BFD EAD. To obtain an EAD, the petitioner must file a Form I-765 after receiving this notice.

3. Bona Fide Determination Employment Authorization Document Issuance

Once USCIS has determined that a petitioner present in the United States has a bona fide petition and merits a favorable exercise of discretion, and therefore may receive a BFD EAD, USCIS issues a notice to inform the petitioner of the decision.

Such petitioners who have already filed a Form I-765 under either of the EAD classifications noted above then receive an EAD and a grant of deferred action valid for 4 years. Petitioners who must file a new Form I-765 after receiving the BFD notice from USCIS receive employment authorization and deferred action valid for 4 years once USCIS finishes adjudicating the Form I-765.

4. Prima Facie Case for Approval

Where USCIS issues a BFD EAD to a petitioner, the petitioner is also considered to have established a prima facie case for approval within the meaning of INA 237(d)(1). The term “prima facie” refers to a petition appearing sufficient on its face.

The evaluation performed by USCIS to determine whether a petition is bona fide and whether a petitioner receives a BFD EAD is a more complex evaluation than looking at the petition on its face alone. The BFD process satisfies the prima facie standard that U.S. Immigration and Customs Enforcement (ICE) previously requested in specific circumstances²⁷ since the steps taken to determine whether a petition is bona fide and a petitioner receives a BFD EAD rely on the initial evidence submitted with a petition for U nonimmigrant status, as well as the results of background checks.

5. Waiting List Adjudication for Petitioners Not Issued a Bona Fide Determination Employment Authorization Document

Once an officer has determined that a petitioner will not receive a BFD EAD, the officer reviews the complete filing and identifies any deficiencies or concerns that need to be addressed for waiting list adjudication. The officer then issues an RFE or Notice of Intent to Deny (NOID), which includes:²⁸

- A notice explaining that USCIS will not be issuing a BFD EAD; and

- An RFE to address any deficiencies or concerns associated with waiting list adjudication.

If USCIS determines that a petitioner will not receive a BFD EAD, but can be placed on the waiting list, that decision generally does not affect the timeline in which the petition for U nonimmigrant status is adjudicated for final determination of U nonimmigrant status. If USCIS determines that a

petitioner will not receive a BFD EAD and cannot be placed on the waiting list, USCIS will deny the petition.

6. Request to Renew Bona Fide Determination Employment Authorization Document and Deferred Action

Generally, USCIS does not charge a fee for the filing of certain victim-based and humanitarian benefit requests, including Form I-918 and Form I-918, Supplement A.²⁹ Consequently, petitioners who receive BFD EADs do not need to submit a filing fee for the initial Form I-765 associated with the BFD EAD. Petitioners who choose to renew their BFD EADs may do so under existing procedures without a fee.³⁰ Once a BFD EAD is renewed, the accompanying grant of deferred action is also renewed.

TVPPRA 2008 requires USCIS to permit petitioners for U nonimmigrant status to apply for fee waivers for “any fees associated with filing an application for relief through final adjudication of the adjustment of status.”³¹ USCIS has interpreted this to mean that, in addition to the main benefit request, applicants and petitioners must have the opportunity to request a fee waiver for any form associated with the main benefit, including applications for waivers of inadmissibility or employment authorization. Principal petitioners and qualifying family members who are seeking to renew a BFD EAD must either submit a filing fee or submit a Request for Fee Waiver (Form I-912).

An initial BFD EAD grant does not guarantee future renewals. Principal petitioners and qualifying family members are evaluated independently for each EAD and deferred action renewal to ensure that the BFD EAD and grant of deferred action are still warranted as a matter of discretion.

Additionally, USCIS may identify principal petitioners and qualifying family members who pose a risk to national

security and public safety during the validity period of the BFD EAD and deferred action, until final adjudication of U nonimmigrant status.

At any point during the validity period, USCIS has the right to revoke employment authorization or terminate deferred action if USCIS determines a national security or public safety concern is present, if USCIS determines the BFD EAD and deferred action is no longer warranted, the Form I-918 Supplement B law enforcement certification is withdrawn, or USCIS determines the prior BFD EAD was issued in error.³²

If USCIS determines that adverse information may impact a principal petitioner's ability to maintain a BFD EAD and deferred action, USCIS will initiate a waiting list review for the principal petition. Similarly, if USCIS determines that adverse information may impact a qualifying family member's ability to maintain a BFD EAD and deferred action, USCIS will conduct a full adjudication of the qualifying family member's petition as described above to determine whether the qualifying family member can maintain a BFD EAD and deferred action.

An initial grant or renewal of a BFD EAD and deferred action does not guarantee that USCIS will approve the principal petitioner or his or her qualifying family members for U nonimmigrant status. Generally, USCIS adjudicates petitions for U nonimmigrant status in the order in which they are received, subject to limited exceptions. When the principal petitioner's filing is next in line for final adjudication, an officer assesses eligibility requirements for U nonimmigrant status. This adjudication does not include consideration of prior grants or renewals of BFD EAD or deferred action.

7. Petitioners Residing Outside of the United States

USCIS only issues BFD EADs and deferred action to petitioners living in the United States as it cannot provide deferred action or employment authorization to petitioners

outside the United States. Deferred action, as an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States, is only applicable to aliens in the United States. Additionally, INA 274A gives the Secretary of Homeland Security, and USCIS as his or her designee, authority over alien employment authorization in the United States.

Because the BFD EAD is only for petitioners living in the United States, principal petitioners (and their qualifying family members) who live outside of the United States proceed directly to waiting list adjudication.

Generally, USCIS adjudicates cases in the order in which they were received to determine waiting list placement. If USCIS determines a principal petitioner residing outside the United States is eligible for waiting list placement, the principal petitioner and his or her qualifying family members should submit a Form I-765 upon admission to the United States to receive an EAD.

Footnotes

1. See INA 214(p)(6) (“The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).”).
2. See Appendix: Bona Fide Determination Process Flowchart [3 USCIS-PM C.5, Appendices Tab].
3. See Black’s Law Dictionary (11th ed. 2019).
4. Submission of biometrics is a requirement for principal petitioners as well as derivatives. See 8 CFR 214.14(c)(3) and 8 CFR 214.14(f)(5).
5. See Pub. L. 110-457 (December 23, 2008). See INA 214(p)(6) (“The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).”).
6. See INA 274A. See 8 CFR 274a.12(a), (b), (c) (referring to employment in the United States).
7. See 8 CFR 214.14(c)(2).

8. One of the main purposes for issuing employment authorization to those with pending, bona fide petitions is to provide EADs to good faith petitioners who are vulnerable due to lengthy wait times. Requiring and adjudicating Form I-192 for purposes of the EAD would delay the EAD adjudication and undermine efficiency. Instead of adjudicating the Form I-192 at this stage, USCIS relies on criminal history checks.
9. See instructions for the Petition for U Nonimmigrant Status (Form I-918).
10. The principal petitioner enables access to the benefits associated with U nonimmigrant status for the qualifying family member. Therefore, USCIS does not consider a qualifying family member for a BFD unless the principal petitioner receives a BFD.
11. Under INA 214(p)(4), USCIS considers any credible evidence relevant to the petition.
12. See instructions for Petition for Qualifying Family Member of U-1 Recipient (Form I-918, Supplement A).
13. See INA 212(a)(3).
14. See Section C, Adjudicative Process, Subsection 1, Criminal History Check for BFD EADs [3 USCIS-PM C.5(C)(1)].
15. See INA 214(p)(6) (“The Secretary *may* grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).”) (emphasis added).
16. See INA 212(a).
17. As listed in INA 212(a)(3).
18. Such as those defined in INA 101(a)(43)(C) and (E).
19. As defined in INA 101(a)(43)(K)(iii).
20. This includes acts defined in INA 101(a)(43)(B).
21. 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.”).
22. See *Henry v. I.N.S.*, 74 F.3d 1, 6 (1st Cir. 1996) (noting “while an arrest, without more, is simply an unproven charge, the fact of the arrest, and its attendant circumstances, often have probative value in immigration proceedings.”).

23. See Section A, Principal Petitioners [3 USCIS-PM C.5(A)] and Section B, Qualifying Family Members [3 USCIS-PM C.5(B)].
24. Appeals are not available to applicants who have been denied employment authorization under 8 CFR 274a.13(c). Therefore, even if the BFD EAD issuance was considered a final agency action, the lack of an appeals process for BFD EADs aligns with regulatory practice pertaining to employment authorization generally.
25. See INA 101(a)(15)(U)(ii).
26. See 8 CFR 274a.14(b).
27. See ICE's Revision of Stay of Removal Request Reviews for U Visa Petitioners webpage.
28. See Chapter 6, Waiting List [3 USCIS-PM C.6].
29. See Fee Schedule (Form G-1055).
30. See 8 CFR 274a.13(d). See Instructions for Form I-765. See Fee Schedule (Form G-1055).
31. See INA 245(l)(7).
32. See 8 CFR 274a.14(b).

Current as of June 26, 2026

**USCIS Issues Policy Providing Further Protections for
Victims of Crime**

*Archived Content: The information on this page is out of date.
However, some of the content may still be useful, so USCIS has
archived the page.*

Release Date: 06/14/2021

*The policy update will help provide stability to U Visa
Petitioners supporting law enforcement efforts to investigate
and prosecute crimes*

WASHINGTON—U.S. Citizenship and Immigration Services is updating the USCIS Policy Manual to implement a new process, referred to as Bona Fide Determination, which will give victims of crime in the United States access to employment authorization sooner, providing them with stability and better equipping them to cooperate with and assist law enforcement investigations and prosecutions.

“Today we are taking steps to help victims of crime and promote public safety,” said Secretary of Homeland Security Alejandro N. Mayorkas. “These are individuals who have come forward to help law enforcement keep us all safe, but who are in need of a measure of protection for themselves as well. The Bona Fide Determination process is consistent with the Department’s statutory authorities and will ensure these individuals receive the support they need.”

“Victims of crime need a way to support themselves as they heal and continue their pursuit of justice,” said USCIS Acting Director Tracy Renaud. “This Bona Fide Determination process will allow U visa petitioners to work while they remain safely in the United States, providing valuable support to law enforcement to detect, investigate, or prosecute the serious crimes they have survived or witnessed.”

Through this new process, USCIS will issue employment authorization and grant deferred action to petitioners in the United States with pending U visa petitions that it determines are bona fide (made in good faith and without intention of deceit or fraud) and who merit a favorable exercise of discretion. To be considered bona fide, the petition must include a certification from law enforcement that the petitioner was a victim of a crime and that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of that crime.

Congress has capped the number of principal U visas available each fiscal year at 10,000, but since 2010 USCIS has received more than 10,000 U visa petitions each year. As a result of this high case volume, U visa petitioners now wait approximately five years before receiving a determination that allows them access to an employment authorization document and deferred action. This wait time not only leaves these individuals vulnerable to financial instability and fear of deportation, but it also can disincentivize victims from coming forward and cooperating with law enforcement. Through this policy update, victims with pending bona fide petitions will receive the stability they need as they rebuild their lives while working with law enforcement to investigate and prosecute criminal activity. This increase in victim cooperation will further fortify law enforcement's ability to protect communities throughout the United States.

USCIS will deem a petition bona fide if:

The principal petitioner properly filed Form I-918, including Form I-918B U Nonimmigrant Status Certification;

The principal petitioner properly filed a personal statement from the petitioner describing the facts of the victimization; and

The result of the principal petitioner's biometrics has been received.

USCIS will issue employment authorization and deferred action if, after conducting and reviewing background checks, the agency determines, in its discretion, that petitioners merit a favorable exercise of discretion and do not pose a risk to national security or public safety.

This guidance is effective immediately and applies to all Form I-918 and Form I-918A petitions that are currently pending or filed on or after June 14, 2021.

Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking and other qualifying crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and who cooperate with law enforcement authorities during the investigation or prosecution of the criminal activity. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress specifically authorized DHS to grant employment authorization to a noncitizen who has a pending, bona fide petition for U nonimmigrant status. This guidance implements that authority.

This reform is one of a number of initiatives designed to eliminate complex, costly, and unjustified administrative burdens and barriers, and thus to improve our immigration processes.

Visit “Victims of Human Trafficking and Other Crimes” to learn more about other protections for victims of crime, human trafficking and domestic violence.

For more information, see the policy alert (PDF, 372.89 KB).

Last Reviewed/Updated: 06/14/2021