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Policy Alert

SUBJECT: Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action

Purpose

U.S. Citizenship and Immigration Services (USCIS) is providing policy guidance in the [USCIS Policy Manual](#) regarding applications for discretionary employment authorization based on 8 CFR 274a.12(c)(9) (pending application for adjustment of status under INA 245) or 8 CFR 274a.12(c)(14) (grant of deferred action). USCIS is also providing guidance outlining the categories of aliens eligible for discretionary employment authorization.

Background

Aliens in the United States must obtain employment authorization before they may lawfully work in the country. Whether or not an alien is authorized to work in the United States depends on his or her immigration status and circumstances.¹ While employment authorization for certain aliens is automatically provided by virtue of their immigration status or circumstances, other aliens must affirmatively apply for employment authorization and USCIS may grant employment authorization as a matter of discretion.² This update, contained in Volume 10 of the Policy Manual, is controlling and supersedes any prior guidance on the topic.

Policy Highlights

- Provides guidance on applications for employment authorization filed by aliens with pending INA 245 adjustment applications or who have been granted deferred action, including how officers should apply discretion in the adjudication of these applications.
- Supersedes prior policy of issuing employment authorization for a validity period of 2 years for adjustment of status applicants applying under 8 CFR 274a.12(c)(9) in instances where no immigrant visa number is available to the applicant.

Citation: Volume 10: Employment Authorization, Part A, Employment Authorization Policies and Procedures [[10 USCIS-PM A](#)]; Part B, Specific Categories [[10 USCIS-PM B](#)].

¹ See [8 CFR 274a.12](#).

² See [INA 274A\(h\)\(3\)](#). See [8 CFR 274a.12\(a\)](#) (authorized to work based on immigration status or circumstance). See [8 CFR 274a.12\(b\)](#) (authorized to work for a specific employer based on particular nonimmigrant status). See [8 CFR 274a.12\(c\)](#) and [8 CFR 274a.13\(a\)\(1\)](#) (authorized to work upon application for and grant of discretionary employment authorization).

This policy is effective immediately. The updated Parts A and B are shown below in their entirety. The updated Parts A and B will be incorporated into the Policy Manual accordingly at a later time.

USCIS Policy Manual, Volume 10: Employment Authorization
[Part A, Employment Authorization Policies and Procedures](#)

Chapter 2. Eligibility Requirements

Whether or not an alien is authorized to work in the United States depends on his or her immigration status or circumstances.¹ The regulations outline three classes of eligibility for employment authorization:

- Authorization to work for any employer based on immigration status or circumstances;²
- Authorization to work for a specific employer based on immigration status or circumstances;³ and
- Authorization to work for any employer, as well as to engage in self-employment, upon approval, in the discretion of USCIS, of an Application for Employment Authorization ([Form I-765](#)).⁴

A. Authorized to Work for Any Employer Based on Status or Circumstances

The following aliens are automatically authorized to work based on their status or circumstance:⁵

- Lawful permanent residents (LPRs) (with or without conditions);⁶
- Lawful temporary residents;⁷
- Refugees;⁸
- Asylees;⁹

¹ There are no age restrictions for requesting an Employment Authorization Document (EAD, Form I-766); the EAD functions as an identity document for some aliens.

² See [8 CFR 274a.12\(a\)](#).

³ See [8 CFR 274a.12\(b\)](#).

⁴ See [8 CFR 274a.12\(c\)](#). See [Matter of Tong](#), 16 I&N Dec. 593, 593 (BIA 1978).

⁵ See [8 CFR 274a.12\(a\)](#).

⁶ See [8 CFR 274a.12\(a\)\(1\)](#).

⁷ See [8 CFR 274a.12\(a\)\(2\)](#).

⁸ Including those paroled into the United States as a refugee for a period of time. See [8 CFR 274a.12\(a\)\(3\)-\(4\)](#).

⁹ See [8 CFR 274a.12\(a\)\(5\)](#).

- Fiancé(e)s of U.S. citizens or children of such fiancé(e)s (K-1 or K-2 nonimmigrants);¹⁰
- Parents or dependent children of aliens granted LPR status based on being an employee of a recognized international organization (or such an employee's family member);¹¹
- Citizens of Micronesia, the Marshall Islands, or Palau;¹²
- Spouses of U.S. citizens or children of such spouses (K-3 or K-4 nonimmigrants);¹³
- Aliens granted withholding of deportation or removal;¹⁴
- Aliens under Deferred Enforced Departure (DED);¹⁵
- Aliens granted temporary protected status (TPS);¹⁶
- Aliens granted voluntary departure under the Family Unity Program or granted Family Unity benefits;¹⁷
- V nonimmigrants;¹⁸
- Victims of severe forms of trafficking in persons (T-1 nonimmigrants);¹⁹
- Victims of qualifying criminal activity (U-1 nonimmigrants)²⁰ and certain qualifying family members (U-2, U-3, U-4, and U-5 nonimmigrants);²¹ and
- Aliens granted Commonwealth of the Northern Mariana Islands (CNMI) resident status (employment authorization is limited to the CNMI).²²

¹⁰ See [8 CFR 274a.12\(a\)\(6\)](#).

¹¹ See [8 CFR 274a.12\(a\)\(7\)](#) (N-8 and N-9 nonimmigrants).

¹² See [8 CFR 274a.12\(a\)\(8\)](#).

¹³ See [8 CFR 274a.12\(a\)\(9\)](#).

¹⁴ See [8 CFR 274a.12\(a\)\(10\)](#).

¹⁵ See [8 CFR 274a.12\(a\)\(11\)](#). DED is in the President's discretion to authorize as part of his constitutional power to conduct foreign relations. Although DED is not a specific immigration status, aliens covered by DED are not subject to removal from the United States, usually for a designated period of time. As of 2020, the only aliens covered under DED are certain eligible Liberian nationals. Their DED-based EADs expire after January 10, 2021.

¹⁶ See [8 CFR 274a.12\(a\)\(12\)](#).

¹⁷ See [8 CFR 274a.12\(a\)\(13\)-\(14\)](#).

¹⁸ See [8 CFR 274a.12\(a\)\(15\)](#).

¹⁹ See [8 CFR 274a.12\(a\)\(16\)](#).

²⁰ See [8 CFR 274a.12\(a\)\(19\)](#).

²¹ See [8 CFR 274a.12\(a\)\(20\)](#).

²² See [48 U.S.C. 1806\(e\)\(6\)\(A\)\(iv\)\(V\)-\(VI\)](#).

An alien in one of these statuses or circumstances²³ is authorized to work in the United States without restriction.

Although employment authorization is automatic, generally aliens in these categories still need to submit Form I-765 to USCIS with the appropriate fee, and in accordance with the form instructions,²⁴ to receive an Employment Authorization Document (EAD) as evidence of such authorization if they intend to work in the United States.²⁵

B. Authorized to Work for Specific Employer Based on Status or Circumstances

The following nonimmigrants and parolees are automatically authorized to work for a specific employer based on their particular nonimmigrant status or parole:²⁶

- Foreign government officials (A-1 or A-2 nonimmigrants), or employees of such official (A-3 nonimmigrants);²⁷
- Foreign government officials in transit (C-2 or C-3 nonimmigrants);²⁸
- Treaty traders (E-1 nonimmigrants) or treaty investors (E-2 nonimmigrants);²⁹
- Students (F-1 nonimmigrants) who are seeking:
 - On-campus employment;
 - Curricular practical training;
 - An EAD based on a STEM Optional Practical Training (OPT) extension,³⁰ and whose timely filed Form I-765 or successor form is pending and whose employment authorization and accompanying Form I-766 or successor form was issued based on post-completion OPT;³¹ or

²³ See [8 CFR 274a.12\(a\)](#). Employment authorization under this category may not necessarily be associated with an immigration status technically. For example, aliens who are paroled into the country or who have received voluntary departure or withholding of deportation do not technically have an immigration status.

²⁴ See [8 CFR 274a.13](#). See uscis.gov/i-765.

²⁵ See [8 CFR 274a.12\(a\)](#). For example, LPRs, lawful temporary residents, asylees, spouses of U.S. citizens (K-3 nonimmigrants) or children of such aliens (K-4 nonimmigrants), trafficking victims (T-1 nonimmigrants), and crime victims (U-1 nonimmigrants) do not need to file Form I-765 to receive an EAD. However, in order to receive employment authorization incident to placement on the waiting list, crime victims (U-1 nonimmigrants) and their derivatives must file Form I-765.

²⁶ See [8 CFR 274a.12\(b\)](#).

²⁷ See [8 CFR 274a.12\(b\)\(1\)-\(2\)](#).

²⁸ See [8 CFR 274a.12\(b\)\(3\)](#).

²⁹ See [8 CFR 274a.12\(b\)\(5\)](#).

³⁰ See [8 CFR 274a.12\(c\)\(3\)\(i\)\(C\)](#).

³¹ See [8 CFR 274a.12\(c\)\(3\)\(i\)\(B\)](#).

- H-1B nonimmigrant status and whose duration of status and employment authorization have been extended as provided in regulations;³²
- Representatives of an international organization (G-1, G-2, G-3, or G-4 nonimmigrants)³³ and their personal employees (G-5 nonimmigrants);³⁴
- Temporary workers or trainees (H-1, H-2, or H-3 nonimmigrants);³⁵
- Representatives of foreign information media (I nonimmigrants);³⁶
- Exchange visitors (J-1 nonimmigrants);³⁷
- Intra-company transferees (L-1 nonimmigrants);³⁸
- Aliens of extraordinary ability in sciences, arts, education, business, or athletics (O-1 nonimmigrants), and an accompanying alien (O-2 nonimmigrants);³⁹
- Athletes, artists, or entertainers (P-1, P-2, or P-3 nonimmigrants) and essential support personnel;⁴⁰
- International cultural exchange visitors (Q-1 nonimmigrants);⁴¹
- Religious workers (R-1 nonimmigrants);⁴²
- North Atlantic Treaty Organization (NATO) civilian employees⁴³ and their personal employees;⁴⁴
- United States-Mexico-Canada Agreement (USMCA) professionals (TN nonimmigrants);⁴⁵

³² See [8 CFR 214.2\(f\)\(5\)\(vi\)](#). See [8 CFR 274a.12\(b\)\(6\)](#).

³³ See [8 CFR 274a.12\(b\)\(7\)](#).

³⁴ See [8 CFR 274a.12\(b\)\(8\)](#).

³⁵ See [8 CFR 274a.12\(b\)\(9\)](#).

³⁶ See [8 CFR 274a.12\(b\)\(10\)](#).

³⁷ See [8 CFR 274a.12\(b\)\(11\)](#).

³⁸ See [8 CFR 274a.12\(b\)\(12\)](#).

³⁹ See [8 CFR 274a.12\(b\)\(13\)](#).

⁴⁰ See [8 CFR 274a.12\(b\)\(14\)](#).

⁴¹ See [8 CFR 274a.12\(b\)\(15\)](#).

⁴² See [8 CFR 274a.12\(b\)\(16\)](#).

⁴³ See [8 CFR 274a.12\(b\)\(17\)](#).

⁴⁴ See [8 CFR 274a.12\(b\)\(18\)](#).

⁴⁵ See [8 CFR 274a.12\(b\)\(19\)](#).

- Temporary workers⁴⁶ who filed a Petition for a Nonimmigrant Worker ([Form I-129](#));⁴⁷
- CNMI investors (E-2 nonimmigrants);⁴⁸
- CNMI transitional workers (CW-1 nonimmigrants);⁴⁹
- Nonimmigrant treaty aliens in a specialty occupation (E-3 nonimmigrants);⁵⁰ and
- Aliens paroled as an entrepreneur for the period of authorized parole.⁵¹

Nonimmigrants authorized to work for a specific employer based on status or circumstances are not required to file a [Form I-765](#) to obtain authorization to work in the United States; they receive employment authorization automatically once they are admitted into the United States in, or change to, the qualifying nonimmigrant status. These nonimmigrants are, however, subject to certain restrictions as a condition of their status. Generally, they are only allowed to work for the employer named in their respective nonimmigrant petition and only allowed to perform the type of work specified in their petition.⁵² Certain classes of these nonimmigrants may continue their employment with the same employer for up to 240 days after the expiration of a prior authorized period of stay, provided they are the beneficiary of a timely filed petition or application for an extension of stay using the Petition for a Nonimmigrant Worker ([Form I-129](#)) or Application to Extend/Change Nonimmigrant Status ([Form I-539](#)).⁵³

C. Aliens Required to Apply for Employment Authorization

The following aliens are not automatically authorized to work based on their immigration status or circumstance and must apply for employment authorization with USCIS:⁵⁴

- Alien spouses or unmarried dependent children or sons or daughters of a foreign government official (A-1 or A-2 nonimmigrants) who present an endorsement from the

⁴⁶ See [8 CFR 214.2\(h\)\(1\)\(ii\)\(C\)](#).

⁴⁷ See [8 CFR 274a.12\(b\)\(21\)](#).

⁴⁸ See [8 CFR 274a.12\(b\)\(22\)](#).

⁴⁹ See [8 CFR 274a.12\(b\)\(23\)](#).

⁵⁰ See [8 CFR 274a.12\(b\)\(25\)](#).

⁵¹ See [8 CFR 274a.12\(b\)\(37\)](#).

⁵² See [8 CFR 214.1\(e\)](#).

⁵³ See [8 CFR 274a.12\(b\)\(20\)](#).

⁵⁴ See [8 CFR 274a.12\(c\)](#). [8 CFR 274a.12\(c\)](#) may not be comprehensive. Other authorities may exist for some categories of aliens who USCIS may authorize to work in the United States following an application for and approval of employment authorization. For example, see [INA 204\(a\)\(1\)\(K\)](#) (Violence Against Women Act self-petitioners).

U.S. Department of State;⁵⁵

- Alien spouses or unmarried dependent sons or daughters of alien employees of the Coordination Council for North American Affairs, also known as Taipei Economic and Cultural Representative Office (TECRO) (E-1 nonimmigrants);⁵⁶
- Aliens in nonimmigrant student (F-1 nonimmigrant) status who:
 - Are seeking pre-completion optional practical training, authorization to engage in up to 12 months of post-completion Optional Practical Training (OPT), or a 24-month STEM OPT extension;
 - Have been offered employment under the sponsorship of an international organization; or
 - Are seeking employment because of severe economic hardship;⁵⁷
- Alien spouses or unmarried dependent children or sons or daughters of representatives of international organization (G-1, G-3, or G-4 nonimmigrants);⁵⁸
- Alien spouses or minor children of an exchange visitor (J-2 nonimmigrants);⁵⁹
- Students (M-1 nonimmigrants) seeking employment for practical training;⁶⁰
- Dependents of NATO-1 through NATO-6 nonimmigrants;⁶¹
- Applicants for asylum;⁶²
- Applicants for adjustment of status under INA 245;⁶³
- Applicants for cancellation of removal;⁶⁴
- Parolees;⁶⁵

⁵⁵ See [8 CFR 274a.12\(c\)\(1\)](#).

⁵⁶ See [8 CFR 274a.12\(c\)\(2\)](#).

⁵⁷ See [8 CFR 274a.12\(c\)\(3\)](#).

⁵⁸ See [8 CFR 274a.12\(c\)\(4\)](#).

⁵⁹ See [8 CFR 274a.12\(c\)\(5\)](#).

⁶⁰ See [8 CFR 274a.12\(c\)\(6\)](#).

⁶¹ See [8 CFR 274a.12\(c\)\(7\)](#).

⁶² See [8 CFR 274a.12\(c\)\(8\)](#).

⁶³ See [8 CFR 274a.12\(c\)\(9\)](#).

⁶⁴ See [8 CFR 274a.12\(c\)\(10\)](#).

⁶⁵ See [8 CFR 274a.12\(c\)\(11\)](#).

- Alien spouses of an E-2 CNMI investor;⁶⁶
- Aliens granted deferred action;⁶⁷
- Registry applicants based on continuous residence since January 1, 1972;⁶⁸
- Certain visitors for business (B-1 nonimmigrants) who are the personal or domestic servants⁶⁹ of a:
 - Nonimmigrant employer;⁷⁰ or
 - U.S. citizen.⁷¹
- Certain visitors for business (B-1 nonimmigrants) employed by a foreign airline;⁷²
- Applicants under a final order of deportation or removal, including deferral of removal under the Convention against Torture (CAT);⁷³
- Aliens with pending applications for TPS;⁷⁴
- Applicants for adjustment as a special agricultural worker;⁷⁵
- Witnesses or informants and their qualified family members (S nonimmigrants);⁷⁶
- Applicants for legalization under INA 245A;⁷⁷
- Applicants for adjustment under the Legal Immigration Family Equity (LIFE) Act;⁷⁸

⁶⁶ See [8 CFR 274a.12\(c\)\(12\)](#).

⁶⁷ See [8 CFR 274a.12\(c\)\(14\)](#).

⁶⁸ See [8 CFR 274a.12\(c\)\(16\)](#).

⁶⁹ See [8 CFR 274a.12\(c\)\(17\)](#).

⁷⁰ See [8 CFR 274a.12\(c\)\(17\)\(i\)](#).

⁷¹ See [8 CFR 274a.12\(c\)\(17\)\(ii\)](#).

⁷² See [8 CFR 274a.12\(c\)\(17\)\(iii\)](#).

⁷³ See [8 CFR 274a.12\(c\)\(18\)](#).

⁷⁴ See [8 CFR 274a.12\(c\)\(19\)](#).

⁷⁵ Under [INA 210](#). See [8 CFR 274a.12\(c\)\(20\)](#).

⁷⁶ See [8 CFR 274a.12\(c\)\(21\)](#).

⁷⁷ See [8 CFR 274a.12\(c\)\(22\)](#).

⁷⁸ See Title XI of Pub. L. 106-553 (December 21, 2000). See [8 CFR 274a.12\(c\)\(24\)](#).

- Derivative family members of victims of a severe form of trafficking in persons (T-2, T-3, T-4, T-5, and T-6 nonimmigrants);⁷⁹
- Spouses of certain H-1B nonimmigrants;⁸⁰
- Violence Against Women Act (VAWA) self-petitioners and derivative beneficiaries;⁸¹
- Spouses of entrepreneur parolees;⁸² and
- Principal beneficiaries of an approved Immigrant Petition for Alien Workers ([Form I-140](#)) facing compelling circumstances⁸³ and their spouse or children.⁸⁴

Aliens are not automatically authorized to work and must have an EAD from USCIS as evidence of their authorization to work in the United States. Upon approval of Form I-765, the alien's type and location of employment is unrestricted.

⁷⁹ See [8 CFR 274a.12\(c\)\(25\)](#).

⁸⁰ See [8 CFR 274a.12\(c\)\(26\)](#).

⁸¹ See [INA 204\(a\)\(1\)\(K\)](#), [INA 204\(a\)\(1\)\(D\)\(i\)\(II\)](#), and [INA 204\(a\)\(1\)\(D\)\(i\)\(IV\)](#). See Title IV of the Violent Crime Control and Law Enforcement Act of 1994, [Pub. L. 103-322](#), 108 Stat. 1796, 1902 (September 13, 1994) as amended by Title V of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386](#), 114 Stat. 1464, 1518 (October 28, 2000) and Title VIII of the Violence Against Women and Department of Justice Reauthorization Act of 2005, [Pub. L. 109-162](#), 119 Stat. 2960, 3053 (January 5, 2006) (providing self-petitioners eligibility for employment authorization).

⁸² See [8 CFR 274a.12\(c\)\(34\)](#). See [8 CFR 212.19\(h\)\(3\)](#).

⁸³ See [8 CFR 274a.12\(c\)\(35\)](#).

⁸⁴ See [8 CFR 274a.12\(c\)\(36\)](#).

Chapter 3. Aliens Granted Deferred Action

A. Employment Authorization for Aliens Granted Deferred Action

Aliens who have been granted deferred action¹ may apply for employment authorization in the United States without restrictions as to the location or type of employment.² Such aliens must affirmatively apply for employment authorization by properly filing an Application for Employment Authorization ([Form I-765](#)), and USCIS may grant employment authorization as a matter of discretion.³

B. Eligibility for Employment Authorization

In general, employment authorization for aliens granted deferred action is only provided at USCIS' discretion. Such aliens must apply for (and be granted) employment authorization before they may work in the United States.⁴ Upon approval of the employment authorization application, and while the Employment Authorization Document (EAD) is valid,⁵ the alien's type and location of employment is unrestricted.

The approval or denial of an EAD affects whether the alien is authorized to work in the United States.

Exercise of Discretion

This chapter complements general guidance on discretionary adjudications by providing additional information on how officers should exercise discretion in cases involving applications for employment authorization filed by aliens who have been granted deferred action.⁶

In addition to verifying the applicant's identity and that he or she is in a period of deferred action, USCIS determines in its discretion whether to grant employment authorization on a

¹ This chapter does not apply to applications for employment authorization that are properly filed under the Consideration of Deferred Action for Childhood Arrivals eligibility category (that is, (c)(33)).

² See [8 CFR 274a.12\(c\)\(14\)](#).

³ See [INA 274A\(h\)\(3\)](#). See [8 CFR 274a.13\(a\)\(1\)](#).

⁴ Under [8 CFR 274a.12\(c\)\(14\)](#). See [8 CFR 274a.13\(a\)\(1\)](#).

⁵ Certain EAD categories are automatically extended for up to 180 days. For more information, see the [Automatic Employment Authorization Document \(EAD\) Extension](#) webpage. See Section D, Validity Period [[10 USCIS-PM B.3\(D\)](#)].

⁶ For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [[10 USCIS-PM A.5](#)] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)].

case-by-case basis, taking into account all factors and considering the totality of the circumstances.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion.⁷ A discretionary determination on employment authorization for an alien in a period of deferred action cannot be appealed.⁸

Certain Aliens Exempt from Discretionary Analysis

While officers are generally expected to exercise discretion in the adjudication of Form I-765 associated with deferred action, some classifications are exempt from such a discretionary analysis.

By statute, DHS must provide deferred action and employment authorization to nonimmigrant domestic workers (A-3 and G-5) during any period the nonimmigrants file civil actions against their trafficker-employers regarding the terms and conditions of employment.⁹ In these cases, deferred action and employment authorization is intended to permit the nonimmigrant to remain legally in the United States for the amount of time sufficient to fully and effectively participate in all legal proceedings related to such civil actions.¹⁰

In addition, USCIS considers the following populations exempt from a discretionary analysis when adjudicating applications for employment authorization:

- Victims of trafficking granted [Continued Presence](#)¹¹ by U.S. Immigration and Customs Enforcement (ICE) where ICE requests employment authorization on behalf of the victim based on parole or deferred action;
- Victims of trafficking with pending applications for T nonimmigrant status and their derivative family members, provided USCIS determines the application to be bona fide and provides written notice to the applicant;
- Violence Against Women Act (VAWA) self-petitioners and their derivative beneficiaries granted deferred action;¹²

⁷ For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [[10 USCIS-PM A.5](#)] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)].

⁸ See [8 CFR 274a.13\(c\)](#).

⁹ See [8 U.S.C. 1375\(c\)\(1\)\(A\), \(c\)\(2\)](#).

¹⁰ See [8 U.S.C. 1375\(c\)\(1\)\(A\), \(c\)\(2\)](#).

¹¹ Continued Presence is a temporary immigration status provided to those identified by law enforcement as victims of human trafficking.

¹² See [INA 101\(a\)\(51\)](#) and [INA 204\(a\)](#).

- Petitioners for U nonimmigrant status (principal victims and their qualifying derivatives) placed on the U visa waiting list and granted deferred action; and
- Aliens (and qualified family members) who assisted or are assisting a law enforcement agency as a witness or informant and have a pending request for S nonimmigrant status (Inter-Agency Alien Witness and Informant Record ([Form I-854](#))).

C. Adjudication

In deciding whether an alien granted deferred action should be granted employment authorization, USCIS makes a case-by-case determination considering all relevant information. The ultimate decision to grant employment authorization for an alien who has been granted deferred action depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted.

Discretionary Factors

Officers should consider and weigh positive and negative factors relevant to the individual case when conducting the discretionary analysis for employment authorization for aliens granted deferred action. The table below provides a nonexclusive, nonbinding list of factors officers may consider.

Employment Authorization for Aliens Granted Deferred Action: Nonexclusive List of Factors Relevant to Discretionary Determination

Favorable Factors	Unfavorable Factors
The alien has demonstrated economic necessity	The alien has any criminal history, with any of the following constituting a serious negative factor: ¹³
The alien is the primary source of financial support for their U.S. citizen or lawful permanent resident (LPR) spouse, parent, or child	The alien has been convicted of an aggravated felony ¹⁴

¹³ Officers may consider serious negative factors as strongly unfavorable factors that weigh heavily against granting employment authorization as a matter of discretion. However, the serious negative factors noted above should not be interpreted as an instruction to automatically deny any application for discretionary employment authorization. The ultimate decision to grant or deny an application for employment authorization for a recipient of deferred action rests on whether, based on the totality of the facts of the individual case, the officer finds that the positive factors outweigh any negative factors that may be present.

¹⁴ See [INA 101\(a\)\(43\)](#).

Employment Authorization for Aliens Granted Deferred Action: Nonexclusive List of Factors Relevant to Discretionary Determination

Favorable Factors	Unfavorable Factors
<p>The alien or their immediate relative has a medical condition that would cause significant financial hardship should the alien not be granted employment authorization</p> <p>The alien has an absence of any significant criminal history</p> <p>The alien has a demonstrated need to stay in the United States for a significant period of time in order to assist with a law enforcement investigation or prosecution</p> <p>If the alien is the spouse, parent, or child of a U.S. citizen; or the alien is a member of the U.S. armed forces or in the Selected Reserve of the Ready Reserve and is currently serving on active duty, or, if discharged, served honorably</p>	<p>The alien has been convicted of any felony¹⁵</p> <p>The alien has been charged with or convicted of any offense involving domestic violence or assault</p> <p>The alien has been charged with or convicted of any criminal offense involving child abuse, neglect, or sexual assault</p> <p>The alien has been charged with, arrested, or convicted of any criminal offense involving illegal drugs or controlled substances</p> <p>The alien has been charged with or convicted of driving under the influence or driving while intoxicated</p> <p>The nature, frequency, and severity of any prior violations of the immigration laws, including illegal entries and unauthorized employment</p> <p>The length of time the alien was or has been in the United States without lawful presence</p> <p>The alien has knowingly aided or abetted any person in violating U.S. immigration law</p> <p>The alien has committed fraud in order to obtain an immigration benefit</p> <p>The alien has lied or made a material misrepresentation to any immigration or consular officer or employee while such</p>

¹⁵ As defined in [18 U.S.C. 3156\(a\)\(3\)](#).

Employment Authorization for Aliens Granted Deferred Action: Nonexclusive List of Factors Relevant to Discretionary Determination

Favorable Factors	Unfavorable Factors
	officer or employee is performing his or her official duties under the law The alien is a national security or public safety risk as evidenced by arrests and criminal convictions

The officer should examine the totality of the evidence, weighing the positive and negative factors in each case, and determine whether a favorable exercise of discretion is warranted to grant work authorization.

Supervisory Review

Supervisory review may be warranted when discretionary decisions involve complex or unusual facts and an officer needs assistance with the discretionary analysis. Officers may also consult with USCIS counsel through appropriate supervisory channels. There is no appeal from denial of an EAD application.¹⁶ However, an applicant may submit a motion to reopen or reconsider.¹⁷

D. Validity Period

USCIS has discretion to establish a specific validity period for employment authorization, though not to exceed certain amounts of time in some circumstances.¹⁸ USCIS generally approves the employment authorization based on an alien's grant of deferred action¹⁹ with a validity period commensurate with the alien's period of deferred action. Officers must not approve an EAD for a period longer than the period of the alien's deferred action.

¹⁶ See [8 CFR 274a.13\(c\)](#).

¹⁷ See Notice of Appeal or Motion ([Form I-290B](#)). See [8 CFR 103.5](#).

¹⁸ See [8 CFR 274a.12](#).

¹⁹ See [8 CFR 274a.12\(c\)\(14\)](#).

Chapter 4. Adjustment Applicants Under INA 245

A. Employment Authorization for Adjustment of Status Applicants

Aliens seeking adjustment of status under INA 245 may apply for employment authorization in the United States without restrictions as to the location or type of employment.¹ Such aliens must affirmatively apply for employment authorization by properly filing an Application for Employment Authorization ([Form I-765](#)), and USCIS may grant employment authorization as a matter of discretion.²

B. Eligibility for Employment Authorization

Employment authorization for INA 245 adjustment applicants is only provided at USCIS' discretion. Such applicants, unless authorized to work on a separate basis, must apply for (and be granted) employment authorization before they may work in the United States.³ Upon approval of the employment authorization application, and while the Employment Authorization Document (EAD) is valid,⁴ the applicant's type and location of employment is unrestricted.

The approval or denial of an EAD affects whether the applicant is authorized to work in the United States.

Exercise of Discretion

This chapter complements general guidance on discretionary adjudications by providing additional information on how officers should exercise discretion in cases involving EAD applications filed by aliens with pending INA 245 adjustment applications.⁵

In addition to verifying the applicant's identity and that he or she has a pending adjustment application under INA 245, USCIS determines whether to grant discretionary employment

¹ See [8 CFR 274a.12\(c\)\(9\)](#). Not all applicants apply for adjustment of status based on INA 245. Certain other federal laws (for example, the Liberian Refugee Immigrant Fairness (LRIF) law described in Section 7611(b) of the National Defense Authorization Act 2020, [Pub. L. 116-92](#), 113 Stat. 1198, 2309 (December 20, 2019), as amended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, [Pub. L. 116-260](#) (December 27, 2020)) provide other bases for aliens to adjust status to lawful permanent residence. For information on employment authorization for aliens applying to adjust based on a law other than INA 245, see the program-specific part of the Policy Manual.

² See [INA 274A\(h\)\(3\)](#). See [8 CFR 274a.13\(a\)\(1\)](#).

³ Under [8 CFR 274a.12\(c\)\(9\)](#). See [8 CFR 274a.13\(a\)\(1\)](#).

⁴ Certain EAD categories are automatically extended for up to 180 days. For more information, see the [Automatic Employment Authorization Document \(EAD\) Extension](#) web page. See Section D, Validity Period [[10 USCIS-PM B.4\(D\)](#)].

⁵ For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [[10 USCIS-PM A.5](#)] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)].

authorization on a case-by-case basis, taking into account all factors and considering the totality of the circumstances.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion.⁶ There is no appeal from denial of an EAD application.⁷ However, an applicant may submit a motion to reopen or reconsider.⁸

Certain Aliens Exempt from Discretionary Analysis

While officers are generally expected to exercise discretion in the adjudication of Form I-765 associated with applications for INA 245 adjustment of status, some classifications are exempt from such a discretionary analysis. Specifically, USCIS considers the following populations exempt from discretionary analysis:

- Applicants in valid T nonimmigrant status (including principals and their derivative family members) with pending adjustment applications;
- Violence Against Women Act (VAWA) self-petitioners and their derivative beneficiaries with pending adjustment applications;⁹
- Applicants in valid U nonimmigrant status (including principals and their qualifying derivatives) with pending adjustment applications; and
- Aliens (and qualified family members) who assisted or are assisting a law enforcement agency as a witness or informant (S nonimmigrants).

C. Adjudication

In deciding whether an applicant for adjustment of status under INA 245 should be granted employment authorization, USCIS makes a case-by-case discretionary determination considering all relevant information. The ultimate decision to grant employment authorization for an INA 245 adjustment applicant under 8 CFR 274a.12(c)(9) depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted.

⁶ For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [[10 USCIS-PM A.5](#)] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)].

⁷ See [8 CFR 274a.13\(c\)](#).

⁸ See Notice of Appeal or Motion ([Form I-290B](#)). See [8 CFR 103.5](#).

⁹ See [INA 101\(a\)\(51\)](#) and [INA 204\(a\)](#).

Officers should consider and weigh positive and negative factors relevant to the individual case when determining whether to favorably exercise discretion and grant employment authorization for INA 245 adjustment applicants under 8 CFR 274a.12(c)(9).¹⁰

D. Validity Period

USCIS has discretion to establish a specific validity period for employment authorization, though not to exceed certain amounts of time in some circumstances.¹¹ USCIS approves the employment authorization based on a pending INA 245 adjustment application with a validity period of up to 1 year. For EADs issued with a 1-year validity period, the “valid from” date is the date of approval of the Form I-765, and the “valid to” date is 12 months, less a day, after the “valid from” date.¹²

¹⁰ For a non-exhaustive list of factors, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis, Section C, Adjudicating Discretionary Benefits, Subsection 2, Identifying Discretionary Factors [[1 USCIS-PM E.8\(C\)\(2\)](#)].

¹¹ See [8 CFR 274a.12](#).

¹² For example, May 23, 2019 to May 22, 2020.