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U.S. Citizenship and Immigration Services

NOTE:

The [USCIS Policy Manual](#) is our centralized online repository for immigration policies. We are working quickly to update and move material from the Adjudicator's Field Manual to the Policy Manual. Please check that resource, along with our [Policy Memoranda](#) page, to verify information you find in the Adjudicator's Field Manual. If you have questions or concerns about any discrepancies among these resources, please contact USCISPolicyManual@uscis.dhs.gov.

\ afm \ Adjudicator's Field Manual - Redacted Public Version \ Chapter 21 Family-based Petitions and Applications. \

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21.1 General Information About Relative Visa Petitions.

(a) Historical Information Regarding Visa Petitions .

In the aftermath of World War I, Congress passed a number of laws restricting immigration to the U.S. by both numbers and qualifications. [Previously, there were restrictions barring certain types of individuals based on individual shortcomings (e.g., the Act of March 3, 1875 which barred convicts and prostitutes, and the Act of August 3, 1882, which barred criminals, paupers, and "mental and physical defectives"), and on race (i.e., the Chinese Exclusion Act of May 6, 1882).] In order to qualify for an immigrant visa (itself a new post-WWI innovation), the alien had to fall within one of the quota categories, or be exempt therefrom. The visa petition was then created as the vehicle for establishing that an alien fell into one of the higher quota categories, or was quota-exempt.

Over the years, the definitions of the various immigrant visa categories have changed with the passage of new legislation, and the requirements have been interpreted and reinterpreted through volumes of case law. However, the need for an approved immigrant visa petition to qualify for most visa classifications has remained a basic requirement of the system of legal immigration to the United States. It is no exaggeration to say that professional adjudication of immigrant visa petitions is one of the keystone s to ensuring that the system works as intended.

(b) Organization of This Chapter .

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to those particular relationships. Accordingly, it is intended that the users of this field manual review both subchapter 21.2 and the relevant individual relationship subchapter when seeking information.

(c) Special Parole and Deferred Action Considerations.

On November 15, 2013, USCIS, pursuant to the authority conferred upon the Secretary of Homeland Security by INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), issued a Policy Memorandum guiding the exercise of discretion with respect to applications for parole by designated family members of U.S. military personnel and veterans. On November 20, 2014, the Secretary directed USCIS to issue new policies on the use of both parole in place and deferred action for certain family members of certain military personnel, veterans, and individuals who are seeking to enlist in the U.S. military. See Secretary of Homeland Security Memorandum, "Families of U.S. Armed Forces Members and Enlistees" (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf

These new policies support the Department of Defense (DoD) in several ways, including by:

- Elaborating on general USCIS deferred action policies by identifying factors that are of particular relevance to discretionary determinations involving military personnel, veterans, and their families;
- Building on existing USCIS and DoD initiatives and policies designed to assist military members, veterans, and their families in navigating our complex immigration system;
- Facilitating military morale and readiness and supporting DoD recruitment policies by considering temporarily deferring the removal of certain military family members;
- Furthering the goal of the Military Accessions Vital to the National Interest (MAVNI) program to recruit certain foreign nationals whose skills are considered vital to the national interest and critical to military services; and
- Ensuring consistent support for our military personnel and veterans, who have served and sacrificed for our nation, and their families.

For guidance on parole in place for certain family members of military personnel and veterans, see AFM Chapter 21.1(c)(1). For guidance on deferred action for certain enlistees and certain family members of military personnel and veterans, see AFM Chapter 21.1(c)(2).

(1) Special Parole Consideration for Spouses, Parents, Sons, and Daughters of Active Duty Members of the U.S. Armed Forces, Individuals in the Selected Reserve of the Ready Reserve, or Individuals Who (Whether Still Living or Deceased) Previously Served on Active Duty in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve and Were Not Dishonorably Discharged.

The decision whether to grant parole under INA § [212\(d\)\(5\)\(A\)](#) is discretionary. Generally, USCIS grants parole in place only sparingly. The fact that the individual is a spouse, parent, son, or daughter of an Active Duty member of the U.S. Armed Forces, an individual in the Selected Reserve of the Ready Reserve, or an individual who previously served on active duty in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve (if the former service member was not dishonorably discharged and either is living or died while the family member was residing in the United States), however, ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an individual. If USCIS decides to grant parole in that situation, the parole should be authorized in one-year increments, with extensions of parole as appropriate. To request parole, the alien must submit to the director of the USCIS office with jurisdiction over the alien's place of residence:

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AFM 21.1(c)(3) below),

- Evidence that the alien's family member is an Active Duty member of the U.S. Armed Forces, individual in the Selected Reserve of the Ready Reserve, or an individual who (whether still living or deceased) previously served on active duty in the U.S. Armed Forces or the Selected Reserve or the Ready Reserve such as a photocopy of both the front and back of the service member's military identification card (DD Form 1173) (in the case of family members of veterans (whether still living or deceased), the service member must not have received a dishonorable discharge upon separation from the military)
- In the case of surviving family members, proof of residence in the United States at the time of the service member's death;
- Two identical, color, passport style photographs; and
- Evidence of any additional favorable discretionary factors that the requestor wishes considered.

Individuals who have obtained parole in place are eligible to apply for work authorization for the period of parole if they can demonstrate economic necessity. See 8 CFR 274a.12(c)(11), (14). See [Form I-765, Application for Employment Authorization](#).

Parole in place may be granted only to individuals who are present without admission and are therefore applicants for admission. Individuals who were admitted to the United States but are currently present in the United States beyond their periods of authorized stay are not eligible for parole in place, as they are no longer applicants for admission.

(2) Deferred Action Consideration for Spouses, Parents, and Sons and Daughters of Active Duty Military Personnel, Individuals in the Selected Reserve of the Ready Reserve, and Individuals Who (Whether Still Living or Deceased) Previously Served on Active Duty in the U.S. Military or the Selected Reserve of the Ready Reserve and Were Not Dishonorably Discharged; and for MAVNI and other Enlistees in the Delayed Entry Program and their Spouses, Parents, and Sons and Daughters.

(A) Deferred Action for DoD Delayed Entry Program Enlistees (Including MAVNI Recruits) and Certain Family Members.

Individuals who have no previous military experience and are seeking to enlist in the U.S. Armed Forces must sign a contract by which they enter into the Delayed Entry Program (DEP) for a maximum of 365 days while awaiting Basic Training. While in the DEP, there can be delays in starting active duty for the Active Components or initial active duty for training for the Reserve Components.

Individuals who enlist in the military through the Military Accessions Vital to the National Interest (MAVNI) program may also enter the DEP. The MAVNI program allows certain foreign nationals to enlist in the military to fill positions where there are critical shortages in health care and foreign language skills. See the DoD MAVNI program fact sheet for further details: <http://www.defense.gov/news/mavni-fact-sheet.pdf>.

Most MAVNI recruits are in a lawful nonimmigrant status at the time that they enlist. For example, it is common for a J-1 foreign exchange visitor or F-1 foreign student to enlist in the U.S. military through MAVNI. Through no fault of their own, MAVNI recruits in the DEP may fall out of their lawful status while waiting to enter Basic Training. This may occur, for example, in cases where an F-1 foreign student completes his or her program of study while waiting to enter Basic Training in the DEP. In the same way, the family members of such recruits often lose their lawful statuses because their statuses depend on those of the recruits. In addition, family members might lack status either because they are present without being admitted or paroled, or because they were admitted or paroled but overstayed their

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on the totality of the evidence. In doing so, USCIS will weigh and balance all relevant considerations, both positive and negative. Certain factors, however, are of particular relevance to the exercise of that discretion when deferred action requests are submitted by individuals in DEP and their family members. Particularly strong positive factors specific to such requests include, but are not limited to:

- Being a DEP enlistee, including through the MAVNI program (even if the enlistee's authorized period of stay expires while in the DEP); and
- Being the spouse, parent, son, or daughter of a MAVNI recruit or other individual in the DEP (even if present in the United States without an authorized status).

The presence of one or more of the preceding factors does not guarantee a grant of deferred action but may be considered a strong positive factor weighing in favor of granting deferred action. The ultimate decision rests on whether, based on the totality of the facts of the individual case, USCIS finds that the positive factors outweigh any negative factors that may be present.

If an individual described in either of the two bullets above is granted deferred action in the exercise of discretion, the period of deferred action should be authorized in two-year increments; USCIS may consider requests for renewal of deferred action as appropriate. If the individual withdraws from the DEP or becomes disqualified from joining the military, any period of deferred action for the family member may be terminated. See AFM Chapter 21.1(c)(2)(C) for guidance on filing requests for deferred action. See AFM Chapter 21.1(c)(1) for guidance on parole in place.

(B) Deferred Action for Certain Family Members of Active Duty Members of the U.S. Military, Individuals in the Selected Reserve of the Ready Reserve, or Individuals Who (Whether Still Living or Deceased) Previously Served on Active Duty in the U.S. Military or in the Selected Reserve of the Ready Reserve and Were Not Dishonorably Discharged.

As in all deferred action determinations, USCIS will make case-by-case, discretionary judgments based on the totality of the evidence. In doing so, USCIS will weigh and balance all relevant considerations, both positive and negative. Certain factors, however, are of particular relevance to the exercise of that discretion when deferred action requests are submitted by the family members of military personnel and veterans. One particularly strong positive factor specific to such requests is that the person has been admitted and is the spouse, parent, son, or daughter of an individual who is serving, or has previously served on active duty in the U.S. military or in the Selected Reserve of the Ready Reserve (if the former service member was not dishonorably discharged and either is living or died while the family member was residing in the United States). Such an individual ordinarily fits the guidelines for parole under section 21.1(c)(1) above, except for being statutorily ineligible solely because of his or her prior admission. See INA §§ 212(d)(5)(A), 235(a)(1), 8 U.S.C. §§ 1182(d)(5)(A), 1225(a)(1). The presence of the preceding factor does not guarantee a grant of deferred action but may be considered a strong positive factor weighing in favor of granting deferred action. The ultimate decision rests on whether, based on the totality of the facts of the individual case, USCIS finds that the positive factors outweigh any negative factors that may be present. If USCIS grants deferred action in the exercise of discretion, the period of deferred action should be authorized in two-year increments; USCIS may consider requests for renewal of deferred action as appropriate.

(C) Filing Request for Deferred Action.

To request deferred action, one must submit the following to the director of the USCIS office with jurisdiction over the requestor's place of residence:

- Letter stating basis for the deferred action request [See AFM 21.1(c)(2)(A) and (c)(2)(B)];

dishonorable discharge upon separation from the military);

- Proof of family relationship, if applying based on family relationship to military member, veteran, or enlistee (this may include proof of filing a petition in certain cases - see section below);
- In the case of surviving family members, proof of residence in the United States at the time of the service member's death;
- Proof of identity and nationality (including a birth certificate, a passport and/or identification card, driver's license, notarized affidavit(s), etc.);
- If applicable, any document the alien used to lawfully enter the United States (including, but not limited to, Form I-94, Arrival/Departure Record, passport with visa and/or admission stamp, and any other documents issued by other components of DHS or legacy INS);
- [Form G-325A, Biographic Information \(for Deferred Action\)](#);
- Two identical, color, passport style photographs; and
- Evidence of any additional discretionary factors that the requestor would like USCIS to consider.

Individuals who have obtained deferred action are eligible to apply for work authorization for the period of deferred action if they can demonstrate economic necessity. See 8 CFR 274a.12(c)(11), (14). See [Form I-765, Application for Employment Authorization](#).

A requestor who has legal representation must submit a properly completed Form G-28, Notice of Entry as Attorney or Accredited Representative.

(3) Petition Filing Requirement for Certain Parole or Deferred Action Requests.

USCIS encourages applicants to continue on a path toward lawful permanent resident status whenever applicable. In cases where it is applicable, USCIS encourages the filing of a [Form I-130, Petition for Alien Relative](#) (or [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#)) to allow USCIS to use an established process in evaluating the bona fides of the pertinent family relationship. In some cases where subsequent parole in place or renewal of deferred action is requested, such filing may be required (see AFM 21.1(c)(3)(A) below). USCIS checks the bona fides of the qualifying family relationship in all parole in place and deferred action requests regardless of whether the Form I-130 (or Form I-360) has been filed.

In all cases where a Form I-130 or Form I-360 has been filed, USCIS may grant either parole in place, as provided in AFM 21.1(c)(1), or deferred action, as provided in AFM 21.1(c)(2), as long as the applicant's Form I-130 (or Form I-360) is pending or approved (and still valid). Even in cases where the Form I-130 or Form I-360 is required, it does not need to be approved prior to a grant of either parole in place or deferred action. Upon receiving the receipt notice for the Form I-130 or Form I-360, the alien may file the request for either parole in place or deferred action with the USCIS office with jurisdiction over the alien's place of residence. The request for either parole in place or deferred action must include documentation to establish an eligible family relationship. Such evidence may include a previously approved petition.

Note: Proof of filing the Form I-130 or Form I-360 is not required, even in applicable cases, for initial requests for parole in place or deferred action as provided under AFM 21.1(c)(1) and AFM 21.1(c)(2). See AFM 21.1(c)(3)(B).

(A) Petition Required for Request for Subsequent Parole in Place or Renewal of Deferred Action.

Active Duty military members, individuals in the Selected Reserve of the Ready Reserve, individuals who

