



August 11, 2023

PA-2023-22

## Policy Alert

**SUBJECT:** Bona Fide Determination Process for Qualifying Family Members of U Nonimmigrant Victims of Qualifying Crimes

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) to provide that USCIS may review and determine if a qualifying family member's petition for U nonimmigrant status is bona fide, and if already filed, adjudicate their Application for Employment Authorization ([Form I-765](#)), once the principal petitioner receives a Bona Fide Determination (BFD), even if the principal petitioner has not filed Form I-765.

### Background

U nonimmigrant status is available to noncitizens who have been victims of certain crimes and who are, have been, or will be helpful to law enforcement in the prosecution or investigation of those crimes. U nonimmigrant status is also available to qualifying family members of the principal petitioner.

On June 14, 2021, USCIS decided to exercise its discretion to conduct BFDs and provide Employment Authorization Documents (EADs) and deferred action to noncitizens with pending, bona fide petitions for U nonimmigrant status who meet certain discretionary standards.<sup>1</sup>

The BFD process is the same for principal petitioners and their qualifying family members. However, the qualifying family member's access to related U nonimmigrant benefits is tied to the principal petitioner. Therefore, under existing policy, USCIS does not consider a qualifying family member for a BFD unless the principal petitioner first receives an EAD as a result of the BFD process.

Under this policy, principal petitioners must file Form I-765 and USCIS must grant the principal petitioner a BFD EAD before USCIS can determine if a qualifying family member's petition is bona fide and before USCIS can adjudicate the qualifying family member's Form I-765.

Most qualifying family members living in the United States file Form I-765 concurrently with their petition while most principal petitioners do not file Form I-765. Most principal petitions are filed without a Form I-765 as principal petitioners who reside in the United States at the time their Petition

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<sup>1</sup> See [Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners](#), PA-2021-13, issued June 14, 2021.

for U Nonimmigrant Status ([Form I-918](#)) is approved will receive employment authorization incident to status and are automatically issued an EAD. When a principal petitioner has filed a Form I-918 but not a Form I-765, and has received a BFD, USCIS issues a notice indicating that the petitioner may receive a BFD EAD upon filing the Form I-765.

Since instituting the BFD policy, USCIS has found that requiring and adjudicating the principal petitioner's Form I-765 before USCIS can determine if a qualifying family member's petition is bona fide and before USCIS can adjudicate the qualifying family member's Form I-765 has delayed family members' Form I-765 adjudication and created unnecessary operational challenges.

One of the main purposes for issuing employment authorization to those with pending bona fide petitions is to provide EADs to good faith petitioners and their qualifying family members. To further this purpose, USCIS is updating its policy guidance to provide that USCIS will review and determine if a qualifying family member's petition is bona fide, and if already filed, adjudicate their Form I-765, once the principal petitioner receives a BFD, even if the principal petitioner has not filed Form I-765.

This guidance, contained in Volume 3 of the Policy Manual, is effective immediately and applies to all petitions for U nonimmigrant status that are currently pending or filed on or after August 11, 2023. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

### **Policy Highlights**

- Provides that USCIS will review and determine if a qualifying family member's petition for U nonimmigrant status is bona fide, and if already filed, adjudicate their [Form I-765](#) once the principal petitioner receives a BFD, even if the principal petitioner has not filed Form I-765.

### **Summary of Changes**

Affected Section: Volume 3 > Part C > Chapter 5 > Section A, Bona Fide Determination

- In Subsection 2 (Qualifying Family Members), revises first sentence and first bullet point, as well as second sentence in footnote 10.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

### **Citation**

Volume 3: Humanitarian Protection and Parole, Part C, Victims of Crimes, Chapter 5, Bona Fide Determination Process [[3 USCIS-PM C.5](#)].