

Congress of the United States

Washington, DC 20515

June 13, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Dear Secretary Mayorkas and Director Jaddou:

RECEIVED

By ESEC at 10:53 am, Jun 13, 2024

We write to urge swift administrative action to protect children who have grown up in the United States with full legal documentation as dependents of long-term visa holders who are at risk of aging out of status or deportation because of our outdated immigration laws.

These young people grow up in the United States, complete their education in the American school system, and graduate with degrees from American institutions. However, due to the long green-card backlog, families with approved immigrant petitions are often stuck waiting decades for permanent residence. Many other families have no pathway to permanent residence and can live in the United States only as long as they maintain their work visas. Meanwhile, the children of these immigrants age out of their dependent status when they turn 21 and are forced to leave the United States if they cannot find a new status.

While we continue to pursue legislative solutions to permanently protect these individuals, such as the bipartisan and bicameral *America's Children Act of 2023*, we urge you to take administrative action to protect the thousands of children who may be forced to self-deport each year.

We are grateful for the policy guidance issued by U.S. Citizenship and Immigration Services (USCIS) in February 2023 that updates when an immigrant visa “becomes available” for the purpose of calculating age under the Child Status Protection Act for individuals seeking lawful permanent resident status. The change to calculating individuals’ ages using the Dates for Filing chart rather than the Final Action Date chart provides relief to young adults who otherwise would have narrowly aged out of the system. However, more must be done to fully address the problems that this population faces.

We urge you to consider the following actions:

- 1. Clarify the applicability of potential grants of deferred action on a case-by-case basis, where discretion is warranted, for children of long-term visa holders who age out of status.** Deferred action is a discretionary determination to defer removal of an individual as an act of prosecutorial discretion. USCIS recently updated its policy manual to clarify that it would consider deferred action for individuals with approved Special Immigrant Juvenile Status petitions who cannot adjust status because a visa number is not

available.¹ USCIS should similarly clarify the applicability of deferred action to children of long-term visa holders on a case-by-case basis where discretion is warranted.

2. **Expand eligibility for Employment Authorization to child dependents of visa holders, and to individuals with approved I-140 petitions.** The Department of Homeland Security (DHS) should authorize employment for additional categories of nonimmigrants, including child dependents, in any category for which the spouse of the primary visa holder is authorized to work, as well as nonimmigrants with an approved I-140 petition who are stuck in the green-card backlog. DHS should also expand eligibility for a compelling circumstances Employment Authorization Document (EAD) to include children who are aging out. According to USCIS, a compelling circumstances EAD is a “temporary stopgap measure intended to address particularly difficult situations, including those that may have otherwise forced individuals on the path to lawful permanent residence to abruptly stop working and leave the United States.” Currently, only principal applicants of certain employment-based petitions and their dependent spouses and children are eligible for a compelling circumstances EAD. We urge DHS to include children of long-term visa holders who are raised in America in any expansion of eligibility for compelling circumstances EADs.
3. **Grant parole to children of long-term visa holders who age out.** USCIS has authority to grant parole on a case-by-case basis for urgent humanitarian or significant public benefit reasons. We urge USCIS to create a process to allow children of long-term visa holders who have aged out to seek parole on a case-by-case basis, if warranted for urgent humanitarian reasons or to advance a significant public benefit.

We urge you to fully consider each of these actions. We ask that you provide a response detailing which actions you intend to pursue, and, if any actions are not practicable, why that is your determination.

Sincerely,

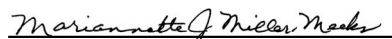


Alex Padilla
United States Senator



Deborah K. Ross
Member of Congress

¹ U.S. Citizenship and Immigration Services, “USCIS to offer deferred action for special immigrant juveniles,” March 7, 2022. <https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles>



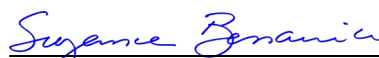
Mariannette Miller-Meeks,
M.D.
Member of Congress



Michael F. Bennet
United States Senator



Ami Bera, M.D.
Member of Congress



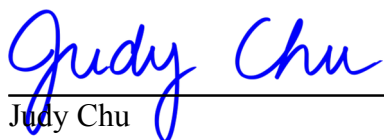
Suzanne Bonamici
Member of Congress



Benjamin L. Cardin
United States Senator



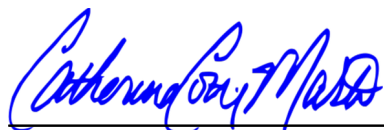
André Carson
Member of Congress



Judy Chu
Member of Congress



Christopher A. Coons
United States Senator



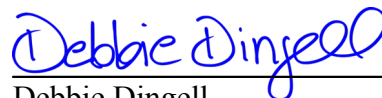
Catherine Cortez Masto
United States Senator



Jim Costa
Member of Congress



Mark DeSaulnier
Member of Congress



Debbie Dingell
Member of Congress



Tammy Duckworth
United States Senator



Richard J. Durbin
United States Senator



Veronica Escobar
Member of Congress



Dan Goldman
Member of Congress



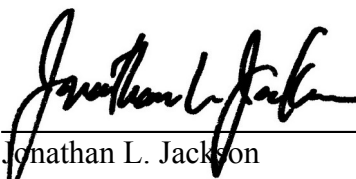
Raúl M. Grijalva
Member of Congress



Mazie K. Hirono
United States Senator



Chrissy Houlahan
Member of Congress



Jonathan L. Jackson
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Young Kim
Member of Congress



Raja Krishnamoorthi
Member of Congress



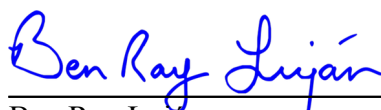
Barbara Lee
Member of Congress



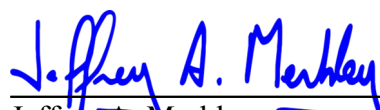
Mike Levin
Member of Congress



Zoe Lofgren
Member of Congress



Ben Ray Lujan
United States Senator



Jeffrey A. Merkley
United States Senator



Ferrol Nadler
Member of Congress



Joe Neguse
Member of Congress



Eleanor Holmes Norton
Member of Congress



Scott H. Peters
Member of Congress



Mike Quigley
Member of Congress



Delia C. Ramirez
Member of Congress



Jacky Rosen
United States Senator



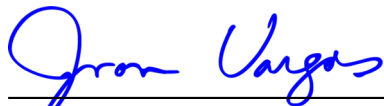
María Elvira Salazar
Member of Congress



Kyrsten Sinema
United States Senator



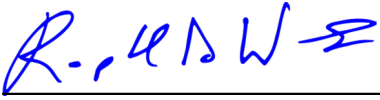
Marilyn Strickland
Member of Congress



Juan Vargas
Member of Congress



Elizabeth Warren
United States Senator

Handwritten signature of Raphael Warnock in blue ink, consisting of stylized initials and a surname.

Raphael Warnock
United States Senator

Handwritten signature of Debbie Wasserman Schultz in blue ink, featuring a cursive style with a prominent 'D'.

Debbie Wasserman Schultz
Member of Congress

Handwritten signature of Sheldon Whitehouse in blue ink, written in a cursive script.

Sheldon Whitehouse
United States Senator



U.S. Citizenship
and Immigration
Services

August 22, 2024

The Honorable Alex Padilla
United States Senate
Washington, DC 20510

Dear Senator Padilla:

Thank you for your June 13, 2024, letter to the Department of Homeland Security (DHS). I am responding on behalf of the Department.

U.S. Citizenship and Immigration Services (USCIS) appreciates your concern regarding children who have grown up in the United States as dependents of long-term visa holders and are at risk of aging out of status. We acknowledge the contributions and strong ties to the United States of these individuals.

In your letter, you urge DHS to clarify the applicability of potential grants of deferred action on a case-by-case basis, where discretion is warranted, for children of long-term visa holders who age out of status. As you note, deferred action is a discretionary determination to defer removal of an individual as an act of prosecutorial discretion for a certain period. As DHS continues to focus its enforcement resources on those who pose the greatest threat to homeland security, DHS will exercise prosecutorial discretion as appropriate, to ensure enforcement resources are not generally expended on individuals who do not constitute such a threat.

You also suggest in your letter that DHS expand eligibility for employment authorization to child dependents of visa holders, and to individuals with approved Form I-140 petitions. As you note, currently only certain nonimmigrants who are the beneficiaries of approved employment-based immigrant visa petitions, and their qualifying spouse and children, are eligible for employment authorization based on their compelling circumstances. As noted in the Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions,¹ DHS is working to publish a notice of proposed rulemaking that, among other things, would propose changes to DHS regulations to authorize compelling circumstance employment authorization for certain derivative beneficiaries waiting for immigrant visa availability.

Finally, you suggest USCIS create a process to allow children of long-term visa holders who have aged out to seek parole on a case-by-case basis. DHS recently announced actions to promote family unity in the immigration process, consistent with the Biden-Harris Administration's commitment to keeping families together. DHS will establish a process to

¹ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=1615-AC22>.

consider, on a case-by-case basis, requests for certain noncitizen spouses of U.S. citizens who have lived in the United States for 10 years or more; do not pose a threat to public safety or national security; are otherwise eligible to apply for adjustment of status; and merit a favorable exercise of discretion. Certain children of these spouses will also be eligible for this process. USCIS will begin accepting requests for parole in place under this process on August 19, 2024, and more details on the process will be provided in a forthcoming Federal Register Notice.

Under section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), the Secretary of Homeland Security may exercise discretion to parole a noncitizen into the United States temporarily under such conditions as may be prescribed only on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Parole authority extends only to noncitizens who are applicants for admission. An applicant for admission is defined as “an alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” *See* INA sec. 235(a)(1), 8 U.S.C. 1225(a)(1). Those who have been admitted in a lawful status, including a nonimmigrant status, are not applicants for admission, even if their status has since expired.

DHS continues to evaluate its humanitarian programs and policies, including deferred action and parole. We appreciate your suggestions and continue to explore all options available under the law to provide relief to children who have grown up in the United States but are at risk of aging out of status as dependents of long-term visa holders.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director