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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).