



March 8, 2016

PM-602-0130

## Policy Memorandum

SUBJECT: Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants

Revisions to the *Adjudicator's Field Manual* (AFM); Revision of Chapter 30.13 (AFM Update AD16-01)

### Purpose

This policy memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers regarding the amendment to the Immigration and Nationality Act (INA) that expands eligibility for employment authorization to battered spouses of certain nonimmigrants. An interim PM titled *Eligibility for Employment Authorization upon Approval of a Violence Against Women Act (VAWA) Self-Petition; and, Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants* was posted on December 12, 2012 for public comment.

This final PM applies only to the employment authorization eligibility of an abused spouse admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H) who accompanies or follows to join a spouse admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H) and is effective upon publication of the new Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, for this program.<sup>1</sup>

This PM revises Chapter 30.13 of the Adjudicator's Field Manual (AFM); AFM Update AD16-01.

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<sup>1</sup> The nonimmigrant visas applicable to INA section 106 employment authorization eligibility are:

A-1, A-2, and A-3: Foreign government diplomats and officials and immediate family members and their attendants, servants, and personal employees;

E-3: Australian specialty occupation workers;

G-1, G-2, G-3, G-4, and G-5: Employees of foreign governments and international organizations and immediate family members and their attendants, servants, and personal employees; and

H-1B, H-1B1, H-2A, H-2B, H-3, H-4: Specialty occupation workers, Free Trade Agreement professionals from Chile and Singapore, temporary agricultural and non-agricultural workers, trainees and special education exchange visitors, and immediate family members of specialty occupation workers.

## Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

## Authorities

- Section 814(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (2006).
- INA section 106.
- Title 8, Code of Federal Regulations (8 CFR) 274a.12.

## Background

Section 814(c) of VAWA 2005 amended the INA to provide eligibility for employment authorization to certain abused spouses of nonimmigrants admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H).<sup>2</sup>

## Policy

Certain abused spouses who were last admitted to the United States under INA section 101(a)(15)(A), (E)(iii), (G), or (H) and accompanied or are following to join a principal spouse admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H) may obtain employment authorization under INA section 106. USCIS will issue employment authorization for a period of 2 years.

At the time of initial filing for employment authorization under INA section 106, credible evidence must be submitted to establish that the applicant resides in the United States and that the applicant or the applicant's child has been battered or has been the subject of extreme cruelty perpetrated by the principal nonimmigrant spouse.<sup>3</sup> INA section 106 states that requests for employment authorization shall be handled under the procedures that apply to applicants seeking relief under INA section 204(a)(1)(A)(iii). Consistent with the description of a qualifying marital relationship in INA section 204(a)(1)(A)(iii), an applicant for employment authorization under INA section 106 must demonstrate that he or she:

- Is married to a qualifying principal nonimmigrant spouse; or
- Was married to a qualifying principal nonimmigrant spouse and
  - The spouse died within 2 years of filing the application;
  - The spouse lost qualifying nonimmigrant status due to an incident of domestic violence; or

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<sup>2</sup> INA section 106(a) states that in the case of an alien spouse admitted under subparagraph (A), (E)(iii), (G), or (H) of INA section 101(a)(15) who is accompanying or following to join a principal alien admitted under subparagraph (A), (E)(iii), (G), or (H) of such section, respectively, the Secretary of Homeland Security may authorize the alien spouse to engage in employment in the United States and provide the spouse with an "employment authorized" endorsement or other appropriate work permit if the alien spouse demonstrates that during the marriage the alien spouse or child of the alien spouse has been battered or has been the subject of extreme cruelty perpetrated by the spouse of the alien spouse.

<sup>3</sup> The "any credible evidence" provision of INA section 204(a)(1)(J) shall apply to applications for employment authorization for abused spouses of nonimmigrants admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H).

- The marriage to the principal spouse was terminated within the 2 years prior to filing for the INA section 106 employment authorization, and there is a connection between the termination of the marriage and the battery or extreme cruelty.

If the applicant remarries prior to adjudication of the application, he or she will be ineligible for initial issuance or renewal of employment authorization under INA section 106.

USCIS will consider any and all credible evidence relevant to the application. The determination of what evidence is credible and what weight is given to that evidence is within the sole discretion of USCIS.

Applicants may apply to renew their employment authorization if they continue to meet the initial filing requirements, although renewal applicants need not resubmit evidence of abuse. Employment authorization renewals will be issued in 2-year intervals.

USCIS has also elected to extend the confidentiality provisions of Title 8, United States Code, section 1367 to applicants for employment authorization under INA section 106.

### Implementation

Accordingly, the AFM is revised as follows:

1. Revise Chapter 30.13 to AFM Chapter 30, entitled “Nonimmigrants in General,” to read:

### 30.13 Employment Authorization for Abused Spouses of Certain Nonimmigrants

(a) Background. INA section 106 extends eligibility for employment authorization to abused spouses of nonimmigrants admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H).

| INA section 101(a)(15): |  |
|-------------------------|--|
| <b>(A)</b>              | A nonimmigrant (or Foreign government diplomats and officials, immediate family members of foreign government diplomats and officials, and their personal employees, attendants, or domestic workers)  |
| <b>(E)(iii)</b>         | E-3 nonimmigrant (or Australian specialty occupation worker)   |
| <b>(G)</b>              | G nonimmigrant (or Foreign government or international organization representative, immediate family members of foreign government or international organization representatives, and their personal employees, attendants, or domestic workers) |
| <b>(H)</b>              | H nonimmigrant (or Specialty occupation worker, temporary or seasonal agricultural worker, temporary non-agricultural worker, trainee or special education visitor, and immediate family members of specialty occupation workers)                |

*Please see INA section 101(a)(15)(A), (E)(iii), (G), and (H) for a complete listing of all of the applicable nonimmigrant categories.*

(b) Eligibility.

(1) Eligibility Requirements. To be eligible for employment authorization issued under INA section 106, credible evidence must be submitted demonstrating that the applicant:

Is the qualifying spouse who accompanied or followed to join a principal nonimmigrant admitted under INA section 101(a)(15)(A), (E)(iii), (G), or (H); The applicant must demonstrate that he or she:

- Is married to a qualifying principal nonimmigrant spouse; or
- Was married to a qualifying principal nonimmigrant spouse and
  - a. The spouse died within two years of filing the EAD application;
  - b. The spouse lost qualifying nonimmigrant status due to an incident of domestic violence; or
  - c. The marriage to the principal spouse was terminated within the two years prior to filing for the INA section 106 employment authorization, and there is a connection between the termination of the marriage and the battery or extreme cruelty. (See AFM 21.14(q)(2) for additional guidance);
- Was last admitted as a nonimmigrant under INA section 101(a)(15)(A), (E)(iii), (G), or (H);
- Was battered or has been subjected to extreme cruelty perpetrated by the principal nonimmigrant spouse during the marriage and after admission as a nonimmigrant under INA section 101(a)(15)(A), (E)(iii), (G), or (H); and
- Currently resides in the United States.

If the applicant remarries prior to adjudication of the application, he or she will be ineligible for initial issuance or renewal of employment authorization under INA section 106.

(c) Filing Requirements. Applicants must file the Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, in accordance with the form's instructions.

(1) Supporting Documentation. The application for employment authorization under INA section 106 must include:

- Evidence of applicant's admission in qualifying nonimmigrant status;
- Evidence of principal spouse's admission in qualifying nonimmigrant status

(Note: Although the applicant may not be able to provide documentary evidence of her/his spouse's nonimmigrant status, the applicant must provide some identifying evidence such as name, place of birth, country of birth, date of birth, date of entry into the United States, I-94 number, employer, etc. Officers will conduct a search of the appropriate electronic systems to attempt to verify the qualifying nonimmigrant status of the spouse.);

- Evidence of qualifying spousal relationship with the principal nonimmigrant;
- Evidence of applicant's current residence in the United States; and
- Evidence of abuse, such as police reports, court records, medical records, reports from social service agencies, or affidavits. If there is a protective court order in place, a copy should be submitted.

(2) Consideration of Evidence. USCIS will consider any credible evidence relevant to the application. The determination of what evidence is credible and what weight is given to that evidence is within the sole discretion of USCIS.

(d) Adjudicative Process.

The adjudicating officer must ensure the applicant has met the following requirements prior to approving the Form I-765V:

- Completed and signed Form I-765V in accordance with 8 CFR 103.2(a)(2);
- Submitted the required passport-style color photographs;
- Resides in the United States;
- Provided evidence of applicant's qualifying admission;
- Provided evidence of the qualifying spousal relationship;
- Provided evidence of the abusive spouse's qualifying nonimmigrant status; and
- Provided evidence of the qualifying battery or extreme cruelty that occurred during the marriage and after most recent admission to the United States as a nonimmigrant under INA section 101(a)(15)(A), (E)(iii), (G), or (H).

(e) Approval. If the applicant has met these requirements, the Form I-765V will be approved for employment authorization under INA section 106. Employment authorization will be issued under one of the following codes:

- (c)(27) as the abused spouse of an A nonimmigrant;

- (c)(28) as the abused spouse of an E(iii) nonimmigrant;
- (c)(29) as the abused spouse of a G nonimmigrant; or
- (c)(30) as the abused spouse of an H nonimmigrant.

(f) Validity Period of Employment Authorization Document (EAD). USCIS will issue the EAD for a period of two years.

(g) Renewals. USCIS may approve requests for renewals of an INA section 106 EAD in two-year intervals. The application for renewal of employment authorization under INA section 106 must include:

- Completed and signed Form I-765V in accordance with 8 CFR 103.2(a)(2);
- The required passport-style color photographs;
- Evidence of applicant's current residence in the United States;
- Evidence the principal nonimmigrant maintains valid immigration status under INA section 101(a)(15)(A), (E)(iii), (G), or (H) on the date of filing the EAD renewal application (*Note: An application for EAD renewal may also be filed within two years of the date of the principal nonimmigrant's death, within two years of the principal nonimmigrant's loss of status as a result of an incident of domestic violence, or within two years of the termination of the marriage if there is a connection between the termination of the marriage and the battery or extreme cruelty.*); and
- Evidence of previous EAD issued under INA section 106.

If the renewal applicant is unable to provide evidence that the principal nonimmigrant maintains valid immigration status under INA section 101(a)(15)(A), (E)(iii), (G), or (H), officers will conduct a search of the appropriate electronic systems to attempt to verify the principal nonimmigrant's status.

If the applicant remarries prior to adjudication of the Form I-765V, he or she will be ineligible to renew employment authorization under INA section 106.

Unless otherwise requested by USCIS, renewal applicants need not submit any additional documentation.

(h) Denials. There is no appeal from the denial of Form I-765V.

2. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

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| AD16-01<br>03/10/2016 | <b>Chapter 30.13</b> | Provides guidance on eligibility for employment authorization for battered spouses of certain nonimmigrants as provided by INA section 106. These provisions were added by VAWA 2005. |
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### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Family Immigration and Victim Protection Division.