Barten Law Office, P.C.

Immigration Now

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IN THIS Issue:

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U Visa Cap ``Has Been Met for Fiscal Year; USCIS to Grant Deferred Action and Employment Authorization

USCIS has approved the statutory maximum of 10,000 petitions for U-1 nonimmigrant status for this fiscal year. Each year, 10,000 U Visas are allotted for victims of qualifying crimes who can show they have suffered substantial physical or mental abuse, are being helpful, have been helpful, or are likely to be helpful in the investigation or prosecution of the crime, and possess information concerning the crime.

USCIS will continue to accept petitions for U nonimmigrant Status. If the evidence submitted with the petition demonstrates that the eligibility requirements for U nonimmigrant status have been met, the petition will be placed on a waiting list. Once new visas become available, USCIS will issue approval notices for those cases on the waiting list, so long as the petitioner remains admissible to the United States and continues to remain eligible for U nonimmigrant status. Likewise, petitions for derivative applicants of the principal applicant will be placed on the waiting list.

Petitioners and derivatives of petitions on the waiting list will be placed in deferred action. Deferred action is a discretionary determination to defer removal action of an individual, and makes the applicant eligible for work authorization. Therefore, petitioners and derivatives on the waiting list may apply for work authorization, and, once received, will be able to apply for driver's licenses and social security cards.

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Updates on the Consideration of Deferred Action for Childhood Arrivals (DACA) Process-Renewals

USCIS began issuing deferred action and employment authorization for childhood arrivals under the Consideration of Deferred Action for Childhood Arrivals (DACA) process in September of 2012, pursuant to a June 15, 2012 Memorandum issued by the Secretary of Homeland Security. To qualify for DACA, an individual must show:

- He or she entered the United States under the age of sixteen
- Has continuously resided in the United States for at least five years prior to the date of the memorandum (June 15, 2007)
- Was present in the United States on June 15, 2012
- Is currently in school, has graduated from high school, obtained a GED, or is an honorably discharged veteran of the Coast Guard or Armed Forces
- Has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanors, or does not pose a threat to national security of public safety
- Is not over age thirty on June 15, 2012.

In September of 2014, the initial grants of deferred action will expire for early applicants. USCIS is currently preparing for the DACA renewal process so that these applicants can apply to renew their deferred action and employment authorization. Applicants must file a revised version of the form, which USCIS has stated will be available in late May.

Applicants should file their renewals 120 days before their current deferred action and employment authorization expire to avoid a lapse in employment authorization. Therefore, applicants should begin preparing for renewal approximately 6 months before their deferred action is set to expire, to ensure that all requirements are met when filing their renewal packet. USCIS will not accept applications filed more than 150 days (5 months) prior to the expiration date. Applicants should file their applications in a timely manner to allow sufficient time for USCIS to adjudicate their applications.

What is Child Abuse in Iowa? Allowing Children to Self-Petition for Residency

Immigration Victims of domestic abuse/child abuse may have remedies available to them, including relief under the Violence Against Women Act for children of Abusive Lawful Permanent Residents or United States Citizens. This would allow the immigrant child to apply for his or her immigration status without their abusive parent's knowledge.

What is considered child abuse under Iowa Law? Child Abuse is more than just physical abuse, and can include any of the following under Iowa Law:

- mental injury
- sexual abuse
- child prostitution
- presence of illegal drugs around the child
- denial of critical care
- manufacturing or possession of a dangerous substance
- bestiality in the presence of a minor
- allowing registered sex offender to have access to child

See Iowa Code Section 232.68.

Mental abuse or injury can actually be more damaging than physical abuse. Mental Injury is defined in Iowa Code Section 232.2(35) as a "nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin."

Examples may include:

- Ignoring the child and failing to provide necessary stimulation, responsiveness, and validation of the child's worth in normal family routine
- Rejecting the child's value, needs, and request for adult validation and nurturance
- Ignoring the child and failing to provide necessary stimulation, responsiveness, and validation of the child's worth in normal family routine
- Rejecting the child's value, needs, and request for adult validation and nurturance
- Isolating the child from the family and community; denying the child normal human contact
- Terrorizing the child with continual verbal assaults, creating a climate of fear, hostility and anxiety, thus preventing the child from gaining feelings of safety and security

- Corrupting the child by encouraging and reinforcing destructive, antisocial behavior until the child is so impaired in socio-emotional development that interaction in normal social environments is not possible
- Verbally assaulting the child with constant, excessive name-calling, harsh threats, and sarcastic put downs that continually "beat down" the child's self-esteem with humiliation
- Over-pressuring the child with subtle but consistent pressure to grow up fast and achieve too early in the areas of academics, physical or motor skills, or social interaction, which leaves the child feeling that he or she is never quite good enough

Excerpt from: http://www.dhs.state.ia.us/Reporting/ChildAbuse.html

To see the rest of this article go under "**NEWS**" to: **www.immigrationiowa.com**

Upon Approval of VAWA Self-Petition, Applicants Receive Deferred Action, May Apply for Employment Authorization

The VAWA Self-Petition allows spouses and children of Abusive Lawful Permanent Residents or United States Citizens to file their immigrant petition and ultimately achieve permanent residency without the knowledge or assistance of their abuser. In addition, parents of Abusive United States Citizen Children are eligible for VAWA if the child is 21 years of age or older at the time of filing.

To qualify, a VAWA Self-Petitioner must show that he or she:

- Is the spouse or child of a United States Citizen or Lawful Permanent Resident Abuser, or a parent of an Abusive United States Citizen Child over 21 years of age
- Resided with the United States Citizen or Lawful Permanent Resident Abuser
- Was subjected to battery/extreme cruelty during the marriage or, if a self-petitioning child or parent, was subjected to battery/extreme cruelty by the United States Citizen or Lawful Permanent Resident Abuser
- Entered the marriage in good faith (in the case of a self-petitioning spouse)
- Is eligible for immigrant classification based on the relationship to the Abuser
- Is a person of good moral character

Once approved, petitioners and derivatives will be placed in deferred action, a discretionary determination to defer removal action, and will be eligible for work authorization. This allows petitioners who are not immediate relatives (spouses or minor children of United States Citizens) to obtain deferred action, and will also be eligible for employment authorization even though they do not have an application for adjustment of status pending with USCIS.

Alternatively, VAWA petitioners or derivative children are eligible for employment authorization independent of the grant of deferred action based solely on the fact that they have an approved VAWA petition.

Operating Under the Influence ("OWI") and Public Intoxication Arrests

Arrests for Operating Under the Influence and other related alcohol crimes are quite common for non-citizens and can be very problematic.

Nearly every immigration reform legislation that has been considered previously contained a provision creating a new category of deportability for non-citizens convicted of more than one Driving Under the Influence/Operating While Intoxicated.

Tolerance for non-citizens with alcohol crimes is quite low, as was shown in the Deferred Action for Childhood Arrivals (DACA) program, which disqualified any potential applicant with only one OWI.

For non-citizens trying to show good moral character and rehabilitation in immigration court or for discretionary approval through U victim status, or for U.S. citizenship, an OWI or other alcohol arrest may be grounds for discretionary denial.

For TPS applicants, either 1 felony or more than 2 misdemeanors will cause the applicant to be denied and often referred for deportation or removal.

Employment or family based applicants for residency may be denied residency for a "mental disorder" and ordered to undergo treatment and AA for at least a year before applying to come back to the U.S.

We are advising that all of our non-citizen clients carefully monitor their drinking habits and, when possible, abstain from alcohol. For those with prior arrests, attend AA regularly, and determine the best moment to apply for U.S. citizenship so when restrictive provisions do pass into law in the future, the non-citizen is protected from removal.

Updates from the U.S. Consulate in Juarez

Recently, the U.S. Consulate in Juarez provided updates in processing procedures. [In addition to a third medical clinic option now available, information regarding provisional waiver processing and minor children with false claims to U.S. citizenship are of particular importance.] Read below for more information.

Provisional Waiver Processing Times for U.S. Citizen Spouses

Once the U.S. consulate in Juarez receives notice of the approval or denial of the provisional waiver, the average wait time to the interview is 6 – 8 weeks. In general the interview process takes approximately 3 business days and, for minor children, up to 7 business days because of the different medical tests children receive . Upon approval of the visa, after the consulate interview, the applicant's passport and visa is sent to the DHL address chosen by the applicant and the applicant may retrieve it. It is faster if the DHL location selected is in Juarez, Mexico. The consulate reports that, generally, it takes 2 weeks total from approval to receive the immigrant visa through DHL courier.

Update for Minor Children Previously Denied Entry by the U.S. Consulate in Juarez for False Claims to U.S. Citizenship

U.S. immigration law states that non-citizens who make false claims to U.S. citizenship will be automatically denied residency or other admission to the U.S. Previously, the U.S. consulate in Juarez refused to allow an exception to automatic denial of admission for minor children. Last year, the Department of State published a regulation change allowing an exception. Now, applicants can be approved if they establish "clearly and beyond doubt" that they lacked the capacity to understand and appreciate the nature and consequences of the false claim to U.S. citizenship. However, as of this report, the U.S. Consulate in Juarez states that it has not changed its policy toward minor children despite the new regulation ordering it to do so.

Priority Date Predictions Family and Employment from the Immigrant Visa Control & Reporting Division

While attending the Federal Bar Association Immigration Law Seminar in Memphis, on May 17, 2014, the Chief of the Immigrant Visa Control & Reporting Division office provided predictions on movement for priority dates in the coming months.

Family-Based F-2A Category

The family based F-2A Mexico category recently retrogressed to before April 15, 2012 I-130 petition filings. For all other applicants, petition filings before September 8, 2013 are being processed. It is predicted that the category will see some forward movement during August – September 2014. There will be NO bounce back in October 2014 when additional slots for residency applications are released again. With so many F-2A applications filed, it is predicted that it will take time to return to the 2013 priority date cut-off.

All other categories will continue, as in the past, with only forward movement and no retrogression predicted at this time.

AGE OUT ISSUE: For F-2A children with current priority dates, it is imperative to have either their adjustment application or, if consular processing, their Application for Action on an Approved Application or Petition on file immediately to freeze their age so they can remain in the F-2A category in the event the category retrogresses. If this is not done, minor children who turn age 21 waiting for their priority date age-out and are moved automatically into the F-2B category, which is an

Employment-Based EB-1s

The dates for China are p dicted to move to July 2005 filing xpected to remain current.

To see the rest of this article, go under "NEWS" to: www.immigrationiowa.com

Contact us for more information!

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