

alleging that USCIS has denied applications for employment authorization filed by members of the putative class consisting of, “all individuals in Massachusetts with approved I-360 Special Immigrant Juvenile Petitions whose applications for EADs, as SIJs, have been denied, are pending or will be filed.”

4. I am further aware that Defendants filed a second amended complaint on January 3, 2022, and a third amended complaint on March 26, 2022, to add new named plaintiffs.
5. In my capacity as the Deputy Center Director, I am aware that USCIS began the deliberative process to consider SIJ-classified noncitizens for deferred action and related employment authorization in the spring of 2015, as limited visa number availability for SIJs first became an issue.¹ Such deliberations continued, and in August 2016, USCIS drafted deliberative guidelines for consideration of deferred action based on SIJ classification. In February 2021, USCIS resumed deliberations to consider options for relief to SIJs waiting years to apply for adjustment of status. These most recent deliberations resulted in the March 7, 2022, policy alert announcing the deferred action process for SIJ-classified noncitizens.
6. On March 7, 2022, USCIS issued a policy alert on “Special Immigration Juvenile Classification and Deferred Action” announcing updates to the USCIS Policy Manual. The deferred action policy announcement became effective May 6, 2022, and does not contain an end date. It provides that USCIS will automatically conduct deferred action determinations for noncitizens with Special Immigrant Juvenile (SIJ) classification who

¹ The drafts and internal discussions mentioned in this declaration are covered by the deliberative-process privilege because they are pre-decisional and deliberative and are therefore protected from disclosure. The statements regarding the existence of such deliberations do not waive USCIS’s assertion of privilege over these documents.

cannot apply for adjustment of status to that of a legal permanent resident (LPR) solely because an immigrant visa number is not immediately available.

7. The policy alert provided that SIJ-classified noncitizens who receive deferred action may then apply for, and be granted employment authorization for the period of deferred action, by filing an Application for Employment Authorization (Form I-765) by indicating eligibility category (c)(14), which is the employment authorization eligibility category available to noncitizens who have been granted deferred action.
8. Pursuant to the announcement, USCIS began conducting deferred action determinations on May 6, 2022. Based on my review of records maintained by USCIS, I am aware that by May 12, 2022, within less than a week of operationalizing the policy, a contemporaneously run report documented that USCIS had granted deferred action to more than 38,500 approved SIJs. Processing times for individual deferred action determinations may vary depending on the circumstances of the case. However, based on an estimated 45,000 individuals with approved SIJ classification but no visa available, the report indicates that USCIS had already granted deferred action to a number equivalent to more than 85% of the SIJ backlog within a week of the policy's effective date.
9. For currently pending and future SIJ I-360 petitions, USCIS considers whether to grant deferred action at the time of the adjudication of the I-360 petition for SIJ classification. In some cases, even though the I-360 and deferred action are considered concurrently, the deferred action determination may be issued after the I-360 adjudication if biometrics are needed in order to complete the deferred action review.
10. I am aware that as of June 7, 2022, deferred action had been granted to the remaining five plaintiffs, M.U.Z., A.J.L.N., M.M.S.S., A.P., and G.M.. USCIS granted these individuals

deferred action as a matter of course. I am also aware that Plaintiffs L.F.O.P., E.C.C., J.C.C., and F.M. received deferred action as of March 9, 2022, pursuant to a settlement negotiated with Plaintiffs which allowed these four individuals to receive deferred action prior to USCIS's implementation of the agency-wide SIJ deferred action policy.

11. On May 9, 2022, in keeping with the purpose of the SIJ DA policy and customer service priorities, NBC leadership directed officers to convert all prior filed (c)(11) employment authorization applications (Form I-765) to (c)(14) if and when the applicant was granted SIJ deferred action. This instruction was intended to decrease the burden on SIJ classified individuals who had already filed for employment authorization on the basis of parole by converting their applications to the approvable basis of deferred action. This spared these applicants from the necessity of filing a second application for employment authorization, while simultaneously increasing USCIS's adjudicative efficiency and reducing backlog. This practice was consistent with the SIJ deferred action policy goal of providing a bridge for vulnerable youth with SIJ classification to allow them to work and provide some relief from the risk of removal while they wait for a visa to become available to file for adjustment of status.
12. Pursuant to this instruction, USCIS converted the named plaintiffs' (c)(11) EAD applications and many other similarly situated individuals' (c)(11) EAD applications to (c)(14). Based on my review of documents and records maintained by USCIS, as of June 24, 2022, I am aware that USCIS had converted approximately 195 such I-765 applications based on parole to deferred action, resulting in 195 approvals. I am also aware that as of June 9, 2022, the named plaintiffs who had previously applied for employment authorization under the (c)(11) category had been converted and approved

for employment authorization pursuant to the deferred action category. The decision to convert these applications was related to the NBC's previously described customer service and backlog reduction efforts and not on account of this litigation.

13. USCIS may consider requests for renewal of deferred action for noncitizens with SIJ classification who remain ineligible to apply for adjustment of status because an immigrant visa number is not immediately available. A person may submit a deferred action renewal request to USCIS 150 days before expiration of the period of deferred action. Renewal requests are subject to the guidance outlined in the USCIS Policy Manual regarding eligibility and adjudication for an initial grant of SIJ deferred action.
14. All Employment Authorization Documents (EADs) are issued with an expiration date, even if they are based on a status that does not have an end date. USCIS grants SIJ deferred action for four years and any associated employment authorization document is valid until the last day of the deferred action period. Thus, all SIJ-classified noncitizens who receive EADs based on their grant of deferred action will need to renew their EAD at the end of the four year period of deferred action, if they still do not have a visa available in order apply for lawful permanent residence by that time. Likewise, any individual who applies for an EAD under any other category, such as parole under (c)(11), must apply to renew their EADs before the expiration of the EAD. The validity period of an EAD based on parole under (c)(11) is typically less than two years.
15. USCIS examines the totality of the circumstances in an individual case to weigh the positive and negative factors to determine whether to grant deferred action to individuals with approved SIJ classification.

16. The fact that an individual has been approved for SIJ classification is a strong positive factor in favor of exercising discretion to grant deferred action. If background and security checks indicate that an SIJ-classified individual may be subject to an inadmissibility ground that cannot be waived and that would make them ineligible for SIJ-based adjustment of status, this would generally be a strong negative factor weighing against the favorable exercise of discretion. Individuals who are subject to unwaivable inadmissibility grounds are also ineligible to adjust status to become permanent residents.
17. Consistent with its discretionary authority, USCIS may determine on a case-by-case basis that other adverse factors weigh against a grant of deferred action, such as serious unresolved criminal charge(s) that may result in a ground of inadmissibility that cannot be waived, rendering an SIJ-classified individual ineligible for SIJ-based adjustment of status. USCIS may also exercise discretion favorably notwithstanding the above concerns if case-specific circumstances warrant it.
18. Grants of parole and SIJ deferred action are both discretionary determinations. All employment authorization documents issued on the basis of parole or SIJ deferred action have an expiration date. However, EADs based on SIJ deferred action receive an EAD for four years from the date of the SIJ deferred action, while most other EAD categories frequently have a shorter validity period.

Executed on: July 11, 2022

ROSE M
KENDRICK

Digitally signed by ROSE M
KENDRICK
Date: 2022.07.11 07:25:42 -05'00'

Rose Kendrick
Field Operations Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security