FAQ Regarding Biden’s Nonimmigrant Visa Policy Changes

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What are the policy changes the Biden administration is implementing regarding temporary work visas, and when will the policy changes take place?

On June 18, 2024, the Biden administration unveiled a policy change that will establish clearer guidelines to streamline the process for individuals to more easily obtain temporary work visas.

Many persons who qualify for a temporary work visa must first request a so-called D-3 waiver abroad before obtaining their visa. The adjudication process for D-3 waivers can take months, leaving individuals stranded abroad while awaiting approval. The new policy updates will specify when immigration officers can expedite D-3 waivers and further clarify eligibility criteria for the waiver. The Department of State announced that the policy changes will be issued by July 18, 2024.

What is a D-3 waiver and who does it apply to?

The so-called D-3 waiver comes from a section in immigration law, INA § 212(d)(3), which authorizes immigration officers to issue a discretionary waiver for most grounds of inadmissibility to allow persons to receive their visa.

The most common ground of inadmissibility for undocumented persons and DACA beneficiaries are the three- and ten-year bars, which can be triggered when a person leaves the United States after accruing more than 180 days of unlawful presence in the United States. An immigration officer can waive these immigration bars and allow the person to come back into the United States on a temporary visa. Note: some DACA beneficiaries might not have to worry about these bars because they might not have more than 180 days of unlawful presence. This means that such DACA beneficiaries who qualify for a temporary visa can obtain their visa without needing a D-3 waiver.

Does the D-3 waiver only help persons with DACA?

Both undocumented persons and DACA beneficiaries can seek a D-3 waiver if they otherwise qualify for a temporary visa.

Which temporary visas will this policy apply to?

The D-3 waiver is generally available to any temporary visa. The most common temporary work visas for DACA beneficiaries and undocumented persons are the are H-1B (for persons with at least a bachelor’s degree or its equivalent in a specialty occupation), O-1 (persons with
extraordinary ability or achievements), and L-1 (managers and executives who work for a foreign affiliate of a U.S. company). Generally, persons would also need to have an employer or agent who is willing to sponsor them to obtain these temporary work visas.

**How do I know if I qualify for a temporary or other employment-based visa?**

To see if you qualify for an employment-based visa, including temporary work visas and employment-based green cards, consult with an immigration attorney who has experience with business and employment issues.

DACA recipients and employers with a connection to the San Francisco Bay Area or Cornell University can obtain free legal consultations by clicking here. Experienced immigration attorneys are available to provide free legal consultations to DACA workers and their employers. Path2Papers also connects nonprofits, colleges and universities, and government agencies who sponsor DACA workers with pro bono legal representation.

While we hope to expand our project outside the San Francisco Bay Area in the future, people who are outside our geographic scope can check out our resources to learn more about employment-based options. If you need to speak with an attorney near you, visit https://www.ailalawyer.com and filter your search to attorneys who specialize in “Business & Employment.”

Disclaimer: The information provided on this resource is intended for general informational purposes only and should not be construed as legal advice. Immigration laws and regulations are complex and subject to change. For advice specific to your situation, we recommend consulting with a qualified immigration attorney. Use of this resource does not create an attorney-client relationship.