U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

November 23, 2016 **PM-602-0114**

Policy Memorandum

SUBJECT: Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees

Purpose

This policy memorandum (PM) clarifies and supplements guidance issued by U.S. Citizenship and Immigration Services (USCIS) in 2013 ("the 2013 PM")[1] with respect to designated family members of certain military personnel and veterans. Specifically, this PM provides additional guidance on discretionary options for: (a) certain alien family members of individuals serving on active duty in the U.S. Armed Forces or in the Selected Reserve of the Ready Reserve; (b) certain alien family members of those who previously served on active duty or in the Selected Reserve of the Ready Reserve (whether living or deceased) and were not dishonorably discharged; and (c) enlistees in the Department of Defense (DoD) Delayed Entry Program (DEP). This PM amends Chapter 21.1(c) of the Adjudicator's Field Manual (AFM) to:

- Clarify that individuals who previously served in the military include those who are now deceased but do not include those who were dishonorably discharged;
- Change all references to "children" to "sons and daughters";
- Provide guidance on deferred action for certain nonimmigrant and other alien recruits (including enlistees in the Military Accessions Vital to the National Interest (MAVNI) program) whose authorized periods of stay expire during the enlistment process, including the time they are in the DEP;
- Provide guidance on deferred action for certain MAVNI and other DEP enlistees' family members who are present in the United States without authorized periods of stay; and
- Provide guidance on deferred action for certain military family members who would be eligible for parole under the guidelines in the 2013 PM but for the fact that they have already been admitted.

[1] See USCIS Memorandum, *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act 212(a)(6)(A)(i)* (Nov. 15, 2013), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf.

Scope

This PM applies to all U.S. Citizenship and Immigration Services (USCIS) employees.

Authority

Immigration and Nationality Act (INA) §§ 103(a)(1), 103(a)(3), 212(d)(5)(A), 235(a), and 245(a), (c); 8 U.S.C. §§ 1103(a)(1), 1103(a)(3), 1182(d)(5)(A), 1225(a), and 1255(a), (c); 6 U.S.C. § 202(5).

Background

On November 15, 2013, pursuant to the authority conferred upon the Secretary of Homeland Security by INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), USCIS issued a PM guiding the exercise of discretion with respect to applications for parole by designated family members of certain U.S. military personnel and veterans. On November 20, 2014, the Secretary directed USCIS to expand on these policies, including by issuing new policies on the use of both parole and deferred action for certain family members of military personnel, veterans, and DEP enlistees.[2] These new policies are intended to support the DoD in several ways, including by:

- Elaborating on general USCIS deferred action policies by identifying factors that are of particular relevance to discretionary determinations involving military personnel, veterans, DEP enlistees, and their families;
- Building on existing USCIS and DoD initiatives and policies designed to assist military personnel, veterans, DEP enlistees, and their families in navigating our immigration system;
- Facilitating military morale and readiness and supporting DoD recruitment policies by considering temporarily deferring the removal of certain military family members;
- Furthering the goal of the MAVNI program to recruit certain foreign nationals whose skills are considered vital to the national interest and critical to military services; and
- Ensuring consistent support for our military personnel and veterans who have served and sacrificed for our nation, and their families.

DoD Delayed Entry Program (DEP)

The DoD receives approximately 250,000 individuals into the all-volunteer force each year. To effectively sustain this large volunteer force, DoD uses the DEP to manage and predictably meet the accession requirements of the military services. Individuals who have no previous military experience and are seeking to enlist in the U.S. military must sign a contract by which they enter into the DEP for a period of up to 365 days while awaiting Basic Training. This waiting period allows DoD to better anticipate and meet the needs of the various service components. The DEP is a cornerstone of the U.S. military enlistment process.

Individuals who enlist in the military through the MAVNI program may also enter the DEP. The MAVNI program allows certain nonimmigrants and other aliens to enlist in the military to fill

[2] Secretary of Homeland Security Memorandum, *Families of U.S. Armed Forces Members and Enlistees* (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf.

positions requiring skills for which there are critical shortages of enlistees.[3] The program is currently open to individuals with certain health care skills and individuals fluent in certain foreign languages.

Policy

I. Parole in Place for Families of Certain Military Personnel and Veterans

USCIS has authority to grant parole to noncitizen applicants for admission, including those residing in the United States (through "parole in place"),[4] on a case-by-case basis for urgent humanitarian reasons or significant public benefit. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). The 2013 PM provides guidance on granting parole, on a discretionary case-by-case basis, for certain spouses, children, and parents of, among others, individuals who "previously" served on active duty or in the Selected Reserve of the Ready Reserve. This PM clarifies that such language in the 2013 PM is meant to include former designated military personnel (who were not dishonorably discharged) whether they are living or deceased. The close family members of such individuals, who served and sacrificed for our Nation, are deserving of consideration for a favorable exercise of discretion on a case-by-case basis in accordance with the 2013 PM. This is true regardless of whether the former military service members are living or deceased.

In addition, the 2013 PM contains multiple references to the "children" of current or former military personnel. Under the INA, the term "child" is limited to individuals who are unmarried and under the age of 21. *See* INA § 101(b)(1), 8 U.S.C. § 1101(b)(1). This PM seeks to expand on the provisions in the 2013 PM by replacing all references to "children" in the 2013 PM (and the corresponding provisions in the AFM) with the term "sons and daughters." This change would further expand the provisions in the 2013 PM to the adult and married sons and daughters of covered military personnel and veterans. Because covered military personnel and veterans generally will be U.S. citizens or lawful permanent residents (or, in the case of MAVNI, soon-to-be U.S. citizens or lawful permanent residents), their sons and daughters will often be on paths to lawful permanent resident status and eventual citizenship. *See* INA § 203(a), 8 U.S.C. § 1153(a). Parole in place or deferred action would therefore serve as a temporary bridge for such sons and daughters while they apply for and await adjudication of their applications for lawful permanent resident status. Moreover, important family relationships continue to exist even after children turn 21 or marry. The same morale, deservedness, and preparedness rationales articulated in the 2013 PM with respect to military personnel and their children continue to apply when such children turn 21 or marry.

II. Deferred Action Requests by DEP Enlistees and the Families of Military Personnel, Veterans, and DEP Enlistees

As in all deferred action determinations, USCIS will make case-by-case, discretionary judgments based on the totality of the evidence. In doing so, USCIS will weigh and balance all relevant considerations, both positive and negative. Certain factors are of particular relevance to the exercise of that discretion when deferred action requests are submitted by DEP enlistees or by the family

[3] The MAVNI program is authorized by 10 U.S.C. § 504(b)(2). For further details, see DoD Instruction 1304.26. "Qualifications for Enlistment, Appointment and Induction." For information about the DoD MAVNI program, see the DoD MAVNI fact sheet, http://www.defense.gov/news/mavni-fact-sheet.pdf.

[4] The parole authority is most frequently used to permit aliens who are outside the United States to come into U.S. territory, but aliens who are already physically present in the United States without having been admitted are also eligible for parole. See INA §§ 212(d)(5)(A), 235(a)(1). This latter use of parole is called "parole in place."

members of military personnel, veterans, or DEP enlistees. Particularly strong positive factors specific to such requests include, but are not limited to:

- Being a DEP enlistee, including through the MAVNI program (even if the enlistee's authorized period of stay expires or terminates while in the DEP);
- Being the spouse, parent, son, or daughter of a MAVNI or other DEP enlistee (even if present in the United States without an authorized status); and
- Being an individual who would be eligible for parole under the 2013 PM, as clarified and amended by the present PM, but for the fact that such individual has already been admitted.

The presence of one or more of the preceding factors does not guarantee a grant of deferred action, which constitutes only a favorable exercise of immigration enforcement discretion, but may be considered a strong positive factor weighing in favor of granting deferred action as a matter of discretion. The ultimate decision rests on whether, based on the totality of the facts of the individual case, USCIS finds that the positive factors outweigh any negative factors that may be present and that a favorable exercise of enforcement discretion is warranted.

If an individual described in any of the three bullets above is approved for deferred action in the exercise of discretion, the period of deferred action should be authorized in two-year increments; USCIS may consider requests for renewal of deferred action as appropriate.

III. Petition for Alien Relative and Work Authorization

USCIS encourages applicants to continue on a path toward lawful permanent resident status whenever applicable. In cases where it is applicable, USCIS encourages the filing of a Form I-130, Petition for Alien Relative, or Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. In some cases where subsequent parole in place or a renewal of deferred action is requested, such filing may be required (see AFM 21.1(c)(3)(A) below). In addition, individuals who have obtained parole in place or deferred action are eligible to apply for work authorization for the period of parole or deferred action if they can demonstrate economic necessity.[5]

Implementation

The Adjudicator's Field Manual (AFM) Chapter 21.1, General Information About Relative Visa Petitions, is amended as follows.

1. Section 21.1(c) is revised by:

- Redesignating current section "(c)" as subsection "(1)";
- Inserting new section "(c)" heading "Special Parole and Deferred Action Considerations.";
- Inserting, at the beginning of section (c):

On November 15, 2013, USCIS, pursuant to the authority conferred upon the Secretary of Homeland Security by INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), issued a Policy Memorandum guiding the exercise of discretion with respect to applications for parole by

[5] See 8 CFR 274a.12(c)(11), (14). See Form I-765, Application for Employment Authorization.

designated family members of U.S. military personnel and veterans. On November 20, 2014, the Secretary directed USCIS to issue new policies on the use of both parole in place and deferred action for certain family members of certain military personnel, veterans, and individuals who are seeking to enlist in the U.S. military. See Secretary of Homeland Security Memorandum, "Families of U.S. Armed Forces Members and Enlistees" (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf

These new policies support the Department of Defense (DoD) in several ways, including by:

- Elaborating on general USCIS deferred action policies by identifying factors that are of particular relevance to discretionary determinations involving military personnel, veterans, and their families;

- Building on existing USCIS and DoD initiatives and policies designed to assist military members, veterans, and their families in navigating our complex immigration system;

- Facilitating military morale and readiness and supporting DoD recruitment policies by considering temporarily deferring the removal of certain military family members;

- Furthering the goal of the Military Accessions Vital to the National Interest (MAVNI) program to recruit certain foreign nationals whose skills are considered vital to the national interest and critical to military services; and

- Ensuring consistent support for our military personnel and veterans, who have served and sacrificed for our nation, and their families.

For guidance on parole in place for certain family members of military personnel and veterans, see AFM Chapter 21.1(c)(1). For guidance on deferred action for certain enlistees and certain family members of military personnel and veterans, see AFM Chapter 21.1(c)(2).

- Revising new subsection 21.1(c)(1) by:
    - Striking "Spouses, Children and Parents" and inserting "Spouses, Parents, Sons, and Daughters" in the heading;
    - Striking "spouse, child or parent" and inserting "spouse, parent, son, or daughter" in the sentence that begins with "The fact that the individual";
    - Inserting "(whether still living or deceased)" in the following places: in the heading, after the word "who"; and in the bullet point that begins with "Evidence that the alien's family member", after the word "who";
    - Inserting "on active duty" in the following places: in the heading, after the word "served"; in the sentence that begins with "The fact that the individual", after the

word "served"; and in the bullet point that begins with "Evidence that the alien's family member", after the word "served";

- Inserting "and Were Not Dishonorably Discharged" at the end of the heading;
- Inserting "(if the former service member was not dishonorably discharged and either is living or died while the family member was residing in the United States)" in the sentence that begins with "The fact that the individual", after the second instance of the word "Ready Reserve";
- Inserting "(this may include proof of filing a petition in certain cases – see AFM 21.1(c)(3) below);" at the end of the bullet point that begins with "Evidence of the family relationship";
- Inserting "(in the case of family members of veterans (whether still living or deceased), the service member must not have received a dishonorable discharge upon separation from the military)" after "(DD Form 1173)" in the bullet point that begins with "Evidence that the alien's family member";
- Inserting "In the case of surviving family members, proof of residence in the United States at the time of the service member's death;" in a new bullet point after the bullet point that begins with "Evidence that the alien's family member"; and
- Inserting the following new paragraphs after the bullet points: "Individuals who have obtained parole in place are eligible to apply for work authorization for the period of parole if they can demonstrate economic necessity. See 8 CFR 274a.12(c)(11), (14). See Form I-765, Application for Employment Authorization.

  Parole in place may be granted only to individuals who are present without admission and are therefore applicants for admission. Individuals who were admitted to the United States but are currently present in the United States beyond their periods of authorized stay are not eligible for parole in place, as they are no longer applicants for admission."

2. A new subsection (2) is added to Chapter 21.1(c) to read as follows:

(2) Deferred Action Consideration for Spouses, Parents, and Sons and Daughters of Active Duty Military Personnel, Individuals in the Selected Reserve of the Ready Reserve, and Individuals Who (Whether Still Living or Deceased) Previously Served on Active Duty in the U.S. Military or the Selected Reserve of the Ready Reserve and Were Not Dishonorably Discharged; and for MAVNI and other Enlistees in the Delayed Entry Program and their Spouses, Parents, and Sons and Daughters.

(A) Deferred Action for DoD Delayed Entry Program Enlistees (Including MAVNI Recruits) and Certain Family Members.

Individuals who have no previous military experience and are seeking to enlist in the U.S. Armed Forces must sign a contract by which they enter into the Delayed Entry Program (DEP) for a maximum of 365 days while awaiting Basic Training. While in the DEP, there can be delays in starting active duty for the Active Components or initial active duty for training for the Reserve Components.

Individuals who enlist in the military through the Military Accessions Vital to the National Interest (MAVNI) program may also enter the DEP. The MAVNI program allows certain foreign nationals to enlist in the military to fill positions where there are critical shortages in health care and foreign language skills. See the DoD MAVNI program fact sheet for further details: http://www.defense.gov/news/mavni-fact-sheet.pdf.

Most MAVNI recruits are in a lawful nonimmigrant status at the time that they enlist. For example, it is common for a J-1 foreign exchange visitor or F-1 foreign student to enlist in the U.S. military through MAVNI. Through no fault of their own, MAVNI recruits in the DEP may fall out of their lawful status while waiting to enter Basic Training. This may occur, for example, in cases where an F-1 foreign student completes his or her program of study while waiting to enter Basic Training in the DEP. In the same way, the family members of such recruits often lose their lawful statuses because their statuses depend on those of the recruits. In addition, family members might lack status either because they are present without being admitted or paroled, or because they were admitted or paroled but overstayed their authorized periods of stay even before their MAVNI or other DEP family member entered the DEP.

As in all deferred action determinations, USCIS will make case-by-case, discretionary judgments based on the totality of the evidence. In doing so, USCIS will weigh and balance all relevant considerations, both positive and negative. Certain factors, however, are of particular relevance to the exercise of that discretion when deferred action requests are submitted by individuals in DEP and their family members. Particularly strong positive factors specific to such requests include, but are not limited to:

- Being a DEP enlistee, including through the MAVNI program (even if the enlistee's authorized period of stay expires while in the DEP); and
- Being the spouse, parent, son, or daughter of a MAVNI recruit or other individual in the DEP (even if present in the United States without an authorized status).

The presence of one or more of the preceding factors does not guarantee a grant of deferred action but may be considered a strong positive factor weighing in favor of granting deferred action. The ultimate decision rests on whether, based on the totality of the facts of the individual case, USCIS finds that the positive factors outweigh any negative factors that may be present.

If an individual described in either of the two bullets above is granted deferred action in the exercise of discretion, the period of deferred action should be authorized in two-year increments; USCIS may consider requests for renewal of deferred action as appropriate. If the individual withdraws from the DEP or becomes disqualified from joining the military, any period of deferred action for the family member may be terminated.

See AFM Chapter 21.1(c)(2)(C) for guidance on filing requests for deferred action. See AFM Chapter 21.1(c)(1) for guidance on parole in place.

(B) Deferred Action for Certain Family Members of Active Duty Members of the U.S. Military, Individuals in the Selected Reserve of the Ready Reserve, or Individuals Who

(Whether Still Living or Deceased) Previously Served on Active Duty in the U.S. Military or in the Selected Reserve of the Ready Reserve and Were Not Dishonorably Discharged.

As in all deferred action determinations, USCIS will make case-by-case, discretionary judgments based on the totality of the evidence. In doing so, USCIS will weigh and balance all relevant considerations, both positive and negative. Certain factors, however, are of particular relevance to the exercise of that discretion when deferred action requests are submitted by the family members of military personnel and veterans. One particularly strong positive factor specific to such requests is that the person has been admitted and is the spouse, parent, son, or daughter of an individual who is serving, or has previously served on active duty in the U.S. military or in the Selected Reserve of the Ready Reserve (if the former service member was not dishonorably discharged and either is living or died while the family member was residing in the United States). Such an individual ordinarily fits the guidelines for parole under section 21.1(c)(1) above, except for being statutorily ineligible solely because of his or her prior admission. See INA §§ 212(d)(5)(A), 235(a)(1), 8 U.S.C. §§ 1182(d)(5)(A), 1225(a)(1).

The presence of the preceding factor does not guarantee a grant of deferred action but may be considered a strong positive factor weighing in favor of granting deferred action. The ultimate decision rests on whether, based on the totality of the facts of the individual case, USCIS finds that the positive factors outweigh any negative factors that may be present. If USCIS grants deferred action in the exercise of discretion, the period of deferred action should be authorized in two-year increments; USCIS may consider requests for renewal of deferred action as appropriate.

(C) Filing Request for Deferred Action.

To request deferred action, one must submit the following to the director of the USCIS office with jurisdiction over the requestor's place of residence:

- Letter stating basis for the deferred action request [See AFM 21.1(c)(2)(A) and (c)(2)(B)];

- Evidence supporting a favorable exercise of discretion in the form of deferred action as elaborated in AFM 21.1(c)(2)(A) and (c)(2)(B) – (e.g., evidence of family member's current or previous military service, or alien's or family member's enlistment in the DEP; note that in the case of family members of veterans, whether still living or deceased, the service member must not have received a dishonorable discharge upon separation from the military);

- Proof of family relationship, if applying based on family relationship to military member, veteran, or enlistee (this may include proof of filing a petition in certain cases - see section below);

- In the case of surviving family members, proof of residence in the United States at the time of the service member's death;

- Proof of identity and nationality (including a birth certificate, a passport and/or identification card, driver's license, notarized affidavit(s), etc.);

- If applicable, any document the alien used to lawfully enter the United States (including, but not limited to, Form I-94, Arrival/Departure Record, passport with visa and/or admission stamp, and any other documents issued by other components of DHS or legacy INS);

- Form G-325A, Biographic Information;

- Two identical, color, passport style photographs; and

- Evidence of any additional discretionary factors that the requestor would like USCIS to consider.

Individuals who have obtained deferred action are eligible to apply for work authorization for the period of deferred action if they can demonstrate economic necessity. See 8 CFR 274a.12(c)(11), (14). See Form I-765, Application for Employment Authorization.

A requestor who has legal representation must submit a properly completed Form G-28, Notice of Entry as Attorney or Accredited Representative.

3. A new subsection (3) is added to Chapter 21.1(c) to read as follows:

(3) Petition Filing Requirement for Certain Parole or Deferred Action Requests.

USCIS encourages applicants to continue on a path toward lawful permanent resident status whenever applicable. In cases where it is applicable, USCIS encourages the filing of a Form I-130, Petition for Alien Relative (or Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant) to allow USCIS to use an established process in evaluating the bona fides of the pertinent family relationship. In some cases where subsequent parole in place or renewal of deferred action is requested, such filing may be required (see AFM 21.1(c)(3)(A) below). USCIS checks the bona fides of the qualifying family relationship in all parole in place and deferred action requests regardless of whether the Form I-130 (or Form I-360) has been filed.

In all cases where a Form I-130 or Form I-360 has been filed, USCIS may grant either parole in place, as provided in AFM 21.1(c)(1), or deferred action, as provided in AFM 21.1.(c)(2), as long as the applicant's Form I-130 (or Form I-360) is pending or approved (and still valid). Even in cases where the Form I-130 or Form I-360 is required, it does not need to be approved prior to a grant of either parole in place or deferred action. Upon receiving the receipt notice for the Form I-130 or Form I-360, the alien may file the request for either parole in place or deferred action with the USCIS office with jurisdiction over the alien's place of residence. The request for either parole in place or deferred action must include documentation to establish an eligible family relationship. Such evidence may include a previously approved petition.

Note: Proof of filing the Form I-130 or Form I-360 is not required, even in applicable cases,

for initial requests for parole in place or deferred action as provided under AFM 21.1(c)(1) and AFM 21.1(c)(2). See AFM 21.1(c)(3)(B).

(A) Petition Required for Request for Subsequent Parole in Place or Renewal of Deferred Action.

Active Duty military members, individuals in the Selected Reserve of the Ready Reserve, individuals who have previously served on active duty in the U.S. military or in the Selected Reserve of the Ready Reserve, and DEP enlistees, if eligible to file a Form I-130 on behalf of a family member requesting subsequent parole in place or renewal of deferred action as provided under AFM 21.1(c)(1) or (c)(2), must submit a completed Form I-130 for the family member, with fee and according to the instructions on the form, prior to filing the request for subsequent parole in place or renewal of deferred action, as applicable. (See Form I-130 instructions for more information on who may file.)

Surviving spouses, parents, sons, and daughters of deceased service members and veterans (described above) who were residing in the United States at the time of the service member's death and who are eligible to file Form I-360 on their own behalf must submit a completed Form I-360, with fee and according to the instructions on the form, prior to filing the request for subsequent parole in place or renewal of deferred action, as applicable. (See Form I-360 instructions for more information on who may file. See also the USCIS web site at: http://www.uscis.gov/military/family-based-survivor-benefits/survivor-benefits-relatives-us-citizen-military-members.)

The Form I-130 (or Form I-360) filing requirement for requests for subsequent parole in place or renewal of deferred action as provided under AFM 21.1(c)(1) and AFM 21.1(c)(2) applies only to requests that are submitted on or after November 23, 2017 (one year after publication of this memorandum).

(B) Cases where Petition is Not Required at Any Time.

Individuals who are ineligible to file a Form I-130 or a Form I-360 are not required to do so; they may still request parole in place or deferred action, as applicable. In particular, MAVNI recruits in the DEP are not eligible to file Form I-130 and therefore not required to do so. MAVNI recruits may, however, become eligible for naturalization under INA § 329(a) upon entering active duty. Recruits typically must wait until they naturalize before filing a Form I-130 for any eligible family members.

Proof of filing the Form I-130 (or Form I-360) also is not required, even in applicable cases, for initial requests for parole in place or deferred action as provided under AFM 21.1(c)(1) and AFM 21.1(c)(2).

4. The AFM Transmittal Memorandum button is revised by adding a new entry, in numerical order, to read:

AFM Update (11/23/2016)	Chapter 21.1	This PM amends AFM Chapter 21.1(c) to address discretionary options for designated spouses, parents, and sons and daughters of certain military personnel, veterans, and enlistees.

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 Field Operations Directorate or Office of Policy & Strategy.