

**To be available for work under G.L. 151A, § 24(b), the claimant, a non-citizen, must show USCIS employment authorization during her benefit year. Because the claimant did not present any documentary evidence to show that she was authorized to work during her benefit year, she is not eligible for PUA benefits.**

**Board of Review  
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**Issue ID: N6-FHV2-M3TL**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA) benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on September 16, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied PUA benefits in a decision rendered on December 28, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she was authorized to work, and, thus, the claimant was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional information pertaining to the claimant's work authorization status. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not meet the eligibility requirements for PUA benefits because she was not authorized to work in the United States during the benefit year of her claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed [her] Pandemic Unemployment (PUA) claim, effective March 15, 2020.

2. On August 31, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination—Work Authorization to the claimant stating that she was not eligible for PUA benefits.
3. The claimant has a K-1 Visa issued by the Department of Homeland Security with an expiration date of April 24, 2019. The claimant’s K-1 Visa was issued on October 31, 2018.
4. The claimant has a social security card issued by the Social Security Administration. The social security card states on it: “VALID FOR WORK ONLY WITH DHS AUTHORIZATION” and has a date of April 8, 2019.
5. The claimant lived in Massachusetts but had to leave the state in March 2020 due to domestic violence.
6. The claimant is currently pursuing options to obtain a U Visa.
7. Although the COVID-19 pandemic has delayed the U Visa process overall, it is not clear how the pandemic has specifically affected her situation. The claimant does not have documentation showing if she has applied for a U Visa, and, if so, when she applied or the status of her application.
8. The claimant did not renew her K-1 visa, because she did not get married.
9. The claimant does not possess documentation showing that she is authorized to work in the United States in 2020.

[Credibility Assessment]:

The claimant testified that she still did not have a letter showing that she renewed her visa. Therefore, no finding of fact was made in response to Question 1 of the remand order. When asked when she applied to renew her visa, she said that she did not renew her K-1 Visa, because she did not get married. She further testified that she was applying for a U Visa. In support of her statement, the claimant provided a letter from a non-profit legal services provider stating that the claimant is “pursuing a U Visa.” The letter does not say when the claimant applied for a U Visa. When asked if she had any other documents showing her work authorization status, she testified that she does not have any other documents. Therefore, no finding of fact was made in response to Question 2 of the remand order, as the date she applied for a visa has not been established by the claimant.

The claimant testified that she does not have a work authorization permit, because she left her permit in the house where she lived with her abuser. She also testified that her work authorization permit is still current. The claimant’s testimony as to the current status of the permit was not accepted, as she has no documentation to show this. She has not offered documentation to show that she has current work authorization, given that the K-1 has expired, the status of the U Visa is unclear,

and she has not submitted even a copy of a previously issued employment authorization document. Although the Board's remand order focused on the claimant's visa, it is noted that the claimant has not provided documentation showing a current work authorization status.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant has failed to meet her burden to show that she was eligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that she is available for work within the meaning of state law.<sup>2</sup>

The review examiner denied benefits after concluding the claimant had not established that she was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)  
Be capable of, available, and actively seeking work in his usual occupation or any  
other occupation for which he is reasonably fitted . . . .

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> CARES Act, § 2102(a)(3)(A)(ii)(I).

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that during her benefit year, she was legally authorized to work by the appropriate U.S. agency, currently the U.S. Citizenship and Immigration Services (USCIS).

In this case, the claimant's PUA benefit year is March 15, 2020, through September 4, 2021. During the hearing, the claimant testified that her work authorization was still current, but that she did not have access to corroborating documentation. The review examiner rejected this testimony on the grounds that the claimant's K-1 visa expired April 24, 2019, and she was unable to provide documentation showing that she had applied for a U Visa. *See Consolidated Findings ## 3, 6, and 7.* Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we see no reason to disturb the review examiner's credibility assessment.

As there is no credible evidence indicating that the claimant was authorized to work following the expiration of her K-1 visa, we do not have the authority to deem the claimant to have been legally authorized to work in the United States during her benefit year. *See Consolidated Finding # 9.*

We, therefore, conclude as a matter of law that the claimant was not available for work within the meaning of G.L. c. 151A, § 24(b) during her benefit year.

The review examiner's decision is affirmed. The claimant is denied PUA benefits as of the week beginning March 15, 2020.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 24, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:

[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh