



Deferred Action for Childhood Arrivals (DACA)

The New York Immigration Coalition

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- The information in this presentation is not legal advice and should not take the place of individualized legal advice.
- It is intended as general information.
- People seeking legal advice should contact an immigration attorney or a BIA accredited representative.

June 15, 2012 Announcement

- Certain young people brought to U.S.
- Who meet key criteria
- Will be eligible for Deferred Action
 - For period of two years subject to renewal
- It is NOT a permanent resolution of the case!
- President Obama took executive action because DREAM Act isn't law yet

Deferred Action is NOT Amnesty!

- Deferred Action does not lead to permanent residence (i.e., the Green Card).
- Deferred Action does not put you on the path to U.S. citizenship.
- It is only a temporary solution to the problem.
- After DACA expires, the DHS might continue w/ deportation case again.

Key Criteria for Eligibility

- The person requesting Deferred Action:
 - Had not yet reached her/his 31st birthday on June 15, 2012;
 - Came to the U.S. before 16th birthday;
 - Continuously resided in U.S. since 06/15/07 up to the present time;
 - Was present in the U.S. on 06/15/12 and at time submits request for Deferred Action for Childhood Arrivals (DACA);

Key Criteria for Eligibility

- The person requesting Deferred Action:
 - Entered without inspection (EWI) before 06/15/12, or her/his lawful immigration status expired as of June 15, 2012;
 - Is currently in school, or
 - Has graduated from high school, or
 - Has obtained a GED certificate^{*}, or
 - Is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S., and

^{*} (Obtained a High School Equivalency Diploma through the GED[®] test or other state-approved pathway)

Supporting Documentation

- Employment Records
- School Records
- Medical Records
- Financial Records
- Receipts
- Military Records
- Bank Statements
- Sacramental Records
- Social Media
- Sports Rosters
- Photographs
- Gym Membership
- Cell Phone Bills
- Utility Bills
- Lease

Negative Factors Affecting Eligibility

- The person requesting Deferred Action:
 - Has been convicted of a “*felony offense*,” or
 - Has been convicted of a “*significant misdemeanor offense*,” or
 - Has been convicted of “*multiple misdemeanor offenses*,” or
 - Is deemed to pose a **threat to national security** or to **public safety**.
- Seek advice of immigration attorney specializing in criminal issues.

Minor Traffic Offenses

- A minor traffic offense (e.g., operating without a license) will not be considered a misdemeanor for purposes of DACA.
- USCIS can take it into account in the “totality of the circumstances” when deciding a request for DACA.

Totality of the Circumstances

- USCIS should decide a request for DACA considering all the factors in the case not just one factor.
- The absence or presence of a criminal history is just one factor to be considered by USCIS when making a decision.

“Currently in School”

- You must be enrolled in:
 - A public or private elementary school, junior high or middle school, high school, or secondary school;
 - **An education, literacy, or career training program (including vocational training)** that is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; **or**

“Currently in School” (cont.)

- You must be enrolled in:
 - An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a General Educational Development (GED) exam or other equivalent State-authorized exam.

“Currently in School”

- You must be enrolled in school on the date you submit a request for consideration of Deferred Action for Childhood arrivals.
- You did not have to meet the educational requirements on June 15, 2012.
- You can meet them on a later date as long as you meet them at the time you submit your request for DACA.

“Currently in School”

- Not all programs qualify for purposes of being “currently in school” for DACA purposes
- Generally, USCIS will look to see if the program is funded *in whole or in part* by Federal or State grants.
- If not funded *in whole or in part* by Federal or State grants the program must have a **demonstrated effectiveness** as a provider.

“Demonstrated Effectiveness”

- Providers of “Demonstrated Effectiveness” mentioned:
 - Institutions of higher education
 - “Some” community based organizations
- USCIS considerations for determining “demonstrated effectiveness”
 - Duration of program
 - Track record in helping students get high school diploma/equivalent/pass GED; placing students in postsecondary ed, job training or employment
 - “Other indicators of program’s quality”

“Demonstrated Effectiveness”

- ESL programs, according to current guidelines are a special case.
- All ESL programs must prove demonstrated effectiveness.
- No preferential treatment for state or federal funding.

“Currently in School” - Documentation

- Show: school/program name, date of enrollment, current educational or grade level (if relevant)
- Burden on requestor to prove “demonstrated effectiveness”
- Evidence of enrollment examples given:
 - Acceptance letters
 - School registration cards
 - Letters from school or program
 - Transcripts
 - Report cards or progress reports

Education Issues When Renewing DACA

- When requesting to renew DACA:
- Those **in school** must show:
 1. Graduation from the school where enrolled and if school was elementary, junior high or middle school, then substantial, measurable progress made toward graduating from high school, or
 2. Substantial, measurable progress toward graduating from school in which enrolled

Education Issues When Renewing DACA

- When requesting to renew DACA:
- Those in **education program to obtain high school diploma or High School Equivalency Degree** or pass the GED[®] test or equivalent exam must demonstrate that they:
 - Obtained a high school diploma or equivalent or have passed a GED or other equivalent state-approved exam

Education Issues When Renewing DACA

- When requesting to renew DACA:
- Those in qualified **education, literacy, or career training programs** must demonstrate:
 - Enrollment in postsecondary education OR
 - Obtained employment they were trained for OR
 - Substantial, measurable progress toward completing the program

Which Populations Benefit from DACA?

- **COLLEGE STUDENTS/GRADUATES:** students in college, or have degree/s, often referred to as “DREAMers.”
 - In NYC: estimated 10,000 individuals.
 - In New York State: 14,000 people.
 - Figures only include enrolled individuals up to and including 24 years old.

Which Populations Benefit from DACA?

- **ENROLLED IN SCHOOL:** students in the K-12 school system.
 - In NYC: estimated 13,000 students 15 and above. Additional 22,000 under 15 who will age in.
 - In New York State, estimated 18,800 students 15 and above. Additional 31,000 under 15 who will age in.
 - Numbers include college-bound students, often referred to as “DREAMers.”

Which Populations Benefit from DACA?

- **HIGH SCHOOL GRADUATES/NO COLLEGE:**
graduated from high school/have Equivalency Diploma, DID NOT GO TO COLLEGE and are working, may be raising families of their own.
 - In NYC: estimated 17,000 individuals.
 - In New York State: estimated 24,000 individuals.

Which Populations Benefit from DACA?

- **INDIVIDUALS WHO NEED TO ENROLL:**
Dropped out of school/never enrolled (16yrs-30yrs old – single or raising families) but could enroll in qualified program and apply
 - In NYC: estimated 16,000 individuals.
 - In New York State: estimated 22,000 individuals.

Ways to Support DACA Applicants

- Educate front-line staff re: DACA and have written resources available to them
- Provide a directory of DACA eligible programs. The directory should include program descriptions, locations and contact information
- Encourage applicants to seek legal assistance & have list for referral
- Give applicants 1 page overview of DACA
- Have process for providing documentation:
 - Proving presence in US, etc.
 - Proving enrollment in qualified program

Process to Request DACA

- Residents of Connecticut, New Jersey, and New York submit request by mail to USCIS lockbox in Chicago.
- You do not submit request in person.
- Form I-821D, Consideration of DACA,
- Form I-765, work permit application
- Form I-765WS, economic necessity to work
- Fee = \$465

Process to Request DACA

- After USCIS receives the request, they will review it to make sure request is complete and fee is correct.
- Then will send receipt notice. Can track case online.
- Then will send notice for appointment at Application Support Center (ASC) to have fingerprints, photo, and signature taken.

Process to Request DACA

- The USCIS will conduct a background check on each person who submits a request for DACA.
- You must pass the background check in order for the USCIS to grant your request for DACA.
- Make sure you reveal any criminal record to your attorney so that you get advice on the immigration consequences of criminal behavior!!!

Fee

- \$465 total fee for request packet
- Can submit one check or money order
- Can submit two checks or money orders
- “U.S. Department of Homeland Security”

Fee Exemption

- < 18, homeless, in foster care or under 18 w/ no familial support and income < 150% of Federal Poverty Level (FPL), or
- You can't care for self b/c you suffer from serious chronic disability and income < 150% FPL, or
- You have accumulated at least \$25,000 in debt in past 12 months in unreimbursed medical expenses and income < 150% FPL

What Happens with Applicants' information?

- People granted DACA will not be referred to ICE. This applies to family members and guardians too.
- USCIS will not share information from a DACA request with ICE unless the USCIS issues an Notice To Appear against the person.
- USCIS will not share with ICE info about family members if USCIS issues an Notice To Appear against requestor.

Consequences of Lying on DA application

- An individual who knowingly makes a misrepresentation to the CIS or ICE, or knowingly fails to disclose facts to CIS/ICE, in an effort to receive DA or a work permit will be treated as an immigration enforcement priority
 - Criminal prosecution
 - Removal from the United States

Grant of Deferred Action

- Valid for two years
- Can be renewed at end of two years
- You do not have legal status but you will not accrue *unlawful presence* while you are in a period of Deferred Action.
- Family members must independently qualify for Deferred Action. They cannot get DACA through your DACA.

Denial of DACA

- After denying a request for Deferred Action for Childhood Arrivals, the USCIS will not put someone in deportation proceedings if the case does not involve criminal offense, fraud, or a threat to national security or public safety.
- Unless DHS determines that there are exceptional circumstances.

Pros of Requesting DACA

- You can get a work permit.
- After you get a work permit you can apply for a social security number.
- Your deportation is stopped for two years.
- No longer living in the shadows!
- Less fear to travel domestically

Cons of Requesting DACA

- You are making yourself known to DHS.
- No guarantee program will continue in future.
- No guarantee of a grant of DACA.
- It only lasts two years (but you can renew it).

Beware of Travel!

- Applicants cannot travel outside the U.S. during the pendency of their DACA applications.
- Travel outside the U.S. post-DACA approval requires a request for “advance parole” and the filing and approval of Form I-131.
- Travel outside the U.S. may still lead to denials of future immigration applications and may not be advisable.

Beware of *Notarios*!

- Obtain immigration legal advice from an immigration attorney or a BIA Accredited Representative before submitting any request to the USCIS.
- You might be eligible for an immigration benefit or relief from removal!
- Don't go to *notarios*, immigration consultants, travel agents, or tax preparers, etc.

Resources

- NYIC DACA Toolkit: <http://www.thenyic.org/DACA/toolkit>
- Legal Service Providers and Upcoming DACA Informational Sessions and Legal Clinics Statewide: <http://thenyic.org/find-help>
- To Register for free legal assistance:
<http://www.thenyic.org/deferredaction/register>

For more information please contact:

Melanie Reyes
Director of Family Engagement and Community Partnerships
Education Program
The New York Immigration Coalition
137-139th Street, 12th Floor
New York, NY 10001
(212) 627-2227 Ext. 238
mreyes@thenyic.org

Jacki Esposito
Director of Immigration Advocacy
The New York Immigration Coalition
137-139 West 25th Street, 12th Floor
New York, NY 10001
P: (212) 627-2227 x229
F: (212) 627-9314
jesposito@thenyic.org