



HELP DREAMERS TAKE STEPS TO REALIZE THEIR DREAMS

**THE NUTS AND BOLTS OF DACA
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IMPORTANT CONSIDERATIONS

- DACA IS DISCRETIONARY!
- IMMIGRATION LAW IS INCONSISTANT!
- THESE REQUIREMENTS FOR DACA CAN BE CHANGED!

AN OVERVIEW OF THE DEFERRED ACTION PROGRAM FOR CHILDHOOD ARRIVALS (DACA) AS OF March 1, 2021

- ❑ The DACA program began on June 15, 2007 when President Obama signed a Presidential Action creating the program which conferred “Deferred Prosecution” on eligible applicants. Deferred Prosecution gives TEMPORARY relief from deportation.
- ❑ Applicants who met the requirements could obtain work authorization for 2 years, driver’s licenses and social security numbers.
- ❑ The Program has been under considerable attack since its inception and was terminated by President Trump in 2017.
- ❑ The U.S. Supreme Court rejected the termination on June 18, 2020 holding, in part, that the rescission of the DACA program was arbitrary and capricious and that the lives of hundreds of thousands of DACA recipients had to be considered.

MORE BACKGROUND ON DACA

- ❑ Despite the U.S. Supreme Court decision, the Department of Homeland Security failed to restart the initial application program and placed limitations upon renewing DACA applicants.
- ❑ On December 4, 2020, Federal District Court Judge Nicholas Garaufis of the Eastern District of New York ruled that Chad Wolf, the Acting Director of Homeland Security, did not have the authority to create the limitations and required the program to continue as originally intended.
- ❑ However, Judge Andrew S. Hanen, a Federal District Court Judge from Brownsville, Texas, who had previously questioned the authority of the President to issue “Executive Actions,” is now considering a case attacking the legality of the DACA Program. Oral arguments were held in December 2020. No ruling has been issued. He struck down the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program in 2015. The Fifth Circuit Court of Appeals upheld his decision. The U.S. Supreme Court issued a 4-4 split decision in June 2016 which effectively left Judge Hanen’s ruling in place.

CURRENT STATUS OF DACA

- ❑ On January 20, 2021, President Joseph Biden signed an Executive Action Memorandum reinstating DACA and requiring the Secretary of Homeland Security in consultation with the Attorney General, to... “take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.”
- ❑ President Biden has indicated that legislation will be introduced that among other benefits for immigrants, creates a shorter path to Lawful Permanent Residency and citizenship for DACA recipients. HOT TOPIC!
- ❑ On February 18, 2021, Senator Bob Menendez and Congressman Linda T. Sanchez introduced the U.S. Citizenship Act of 2021 which, among other provisions, would create a short pathway to Citizenship for DACA Recipients.

REQUIREMENTS FOR NEW DACA APPLICANTS:

- 1) Must have entered the United States before their 16th birthday.
- 2) Must have continuously resided in the United States since at least June 15, 2007 through the present and be able to document continuous presence with proof such as employment, bank records, school records, bills and medical records.
- 3) Must have been physically present in the United States on or before June 15, 2012 and at the time of the new DACA application be able to document such physical presence with proof as described in item 2.

MORE REQUIREMENTS

4) Must have been in undocumented status on June 15, 2012.

5) Must be at least 15 years old- born after June 15, 1981 (but was not over the age of 31 years as of June 15, 2012). Exceptions: they are in removal proceedings, or there is a final order of Deportation OR they have agreed to voluntarily depart from the United States.

6) Must demonstrate education status: currently registered and attending school OR have graduated from high school OR have obtained a GED, OR have received an honorable discharge from the U.S. Military or Coast Guard.

AND MORE REQUIREMENTS

(7) Not have any convictions of a felony, a significant misdemeanor, or three or more misdemeanors. A significant misdemeanor includes: one DUI, any drug offense, INCLUDING anything to do with marijuana (selling, employment, transporting, etc.) That includes states that have decriminalized it. While “Supervision” is NOT a conviction under Illinois law it IS a conviction under Immigration law.

(8) Not be a threat to National Security. (Gangs, terrorist groups.) Note: Tattoos may be considered to be evidence of gang membership.

(9) Exceptions may include minor traffic infractions and juvenile offenses etc.

**TIPS ON HOW
TO
DEMONSTRATE
ENTRY BEFORE
THE AGE OF 16
YEARS**

- Stamp in a passport
- I-94 form (used to be in a paper form)
- Medical records, bills
- School records, including daycare
- Club records- Girl Scouts, Park District Records
- Any third-party records verifying your age.

**TIPS ON HOW
TO
DEMONSTRATE
ARRIVAL
BEFORE JUNE
15, 2007
REQUIREMENT**

- Stamp in a passport
- I-94 form (used to be in a paper form)
- Medical records, bills
- School records, including daycare
- Club records- Girl Scouts, Park District Records
- Leases, bank records- if available
- CAN BE A CHALLENGE

**TIPS ON HOW
TO
DEMONSTRATE
CONTINUOUS
PRESENCE SINCE
ARRIVAL SINCE
JUNE 15, 2007**

- Documentation as previously discussed
- Departures between June 15, 2007 and August 14, 2012 may not count as a disruption in the continuity requirement UNLESS they are due to an Immigration Court Order, such as an Order of Removal, an Order for Voluntary Departure and an actual Deportation, etc.
- BUT FAILURE TO LEAVE AS A RESULT OF AN IMMIGRATION COURT ORDER DOES NOT BREAK THIS REQUIREMENT.

MEETING THE EDUCATION REQUIREMENT

- Enrolled and currently attending school, including public, private and charter high schools, colleges, universities or programs resulting in the receipt of a GED.
- Homeschools may qualify depending upon your state. There may be a requirement that homeschooled students pass a State-mandated test. In Illinois, homeschool regulations are not difficult, but certain academic subjects must be taught.
- Make sure the school has been accredited by the state.

CRIMINAL ACTIVITY FOR NON-SIGNIFICANT MISDEMEANORS

- Obtain police reports, charging documents and court records from every jurisdiction where there has been an arrest.
- Cannot have felony convictions or any other offenses in any jurisdiction where the maximum sentence is more than one year.
- Cannot have significant misdemeanors which includes firearm violations, DUI's, Domestic Violence and anything to do with drugs. (EVEN IF MARIJUANA IS LEGAL IN THE STATE) where the maximum sentence is less than 1 year and the sentence is for more than 90 days.
- Cannot have 3 or more non-significant misdemeanors on separate dates (punishable for more than 5 days imprisonment, but not more than one year imprisonment.) This does not include traffic offenses.

MORE CRIMINAL OFFENSE CAVEATS

FOR IMMIGRATION PURPOSES:

- A sentence of supervision is a conviction.
- Sealed or expunged records are visible and considered by USCIS.
- Obtain the sealed records by filing a Motion to unseal the case, copy the records and then request the records be sealed again. Expunged records may be more of a challenge but try the same approach.
- Working in any capacity in the marijuana business, including Medical Marijuana Dispensaries- even transportation- may result on a denial.
- TIP: DACA is DISCRETIONARY! The applicant may qualify for approval under “Exceptional Circumstances.” For example- the applicant committed the offenses for reasons beyond their control, such as trafficking. Rarely approved.
- TIP: For any arrest and conviction for a non-significant misdemeanor include positive character documents, such as rehabilitation records, letters from religious institutions, scholastic or athletic honors.

THE DACA PRELIMINARY APPLICATION REQUIREMENTS

- Be sure that a VERY thorough interview is conducted.
- Assemble the documentation and list all of the exhibits.
- Use a Table of Contents and consider using file separators.
- Access the following forms from the uscis.gov website: I-765 (Use C(33) is the Code), I-765WS, I-821D, G-1145 and the G-28 appearance form.
- Complete the forms. If there is a question that is not relevant put “N/A” on the line. Do NOT leave any space blank.
- Two Passport photos.

MORE DACA PROCESS

- If there is a change of address, an AR-11 form (change of address form) must be filed. It can be filed online at uscis.com.
- Filing fee is \$495 for now. (checks, money orders, G-1450 credit cards).
- Proof of identity and current age, such as the biographical page of a passport, a Matricula, a driver's license or state identity card.
- Proof of school records- a high school diploma or graduation record should be included if available, and if not available, provide an explanation.

SUBMITTING THE APPLICATION

- Include a cover letter listing all of the documents you are submitting.
- Should be submitted by certified mail, return receipt requested at the address listed on the uscis.gov website. Addresses may differ depending upon the location of the applicant.
- In Illinois:

USCIS Chicago Lockbox Facility Attn: DACA
P.O. Box 5757
Chicago, IL 60680-5757

OR

USCIS Chicago Lockbox Facility Attn: DACA
131 S. Dearborn – 3rd Floor
Chicago, IL 60680-5757

EXPECT DELAYS!

MORE TIPS ON FILING

- Mark DACA on the outside of the envelope.
- Do not use staples. Punch two holes at the top of the documents and secure with a metal filing clip.
- An official receipt from USCIS should be sent to you or the applicant. If you file the application to a lockbox address, an email will be sent to the address on the G-1145 form.
- A letter including date and place where the applicant must go to be fingerprinted will be sent to you or the applicant. However, USCIS may allow renewing applicants to have their prior fingerprints used instead of obtaining new ones.
- Expect that your application may be rejected because USCIS states you did not submit a document that you did submit. DO NOT TRY TO ARGUE with them. Just resubmit.

RENEWING DACA

- Submit the renewal application package, including a cover letter with a Table of Contents, 150-120 days before the expiration of the date on the Employment Authorization Card. (Do not submit earlier or later.)
- Suggestion: Submit at 150 days to avoid more delays.
- Submit the following forms: G-28, I-821D, I-765, I-765WS and G-1145.
- Submit a copy of the Employment Authorization card.
- Include a money order or check for \$495 made out to the United States Department of Homeland Security. Include the applicant's name, the Alien number and receipt number on the money order or check. The Alien number or "A" number can be found on the Employment Authorization card.
- Suggestion: Include proof of presence in the United States since the last DACA renewal. See slides 9 and 10 for reference.

MORE RENEWING DACA AND ADVANCE PAROLE

- ❑ The December 7, 2020 Federal District Court Order which reinstated the full DACA program also required USCIS to:
 - ❑ Send letters to current DACA holders notifying them that their DACA status and Employment Authorization has been extended from 1 year to 2 years.
 - ❑ Reinstated the “Advance Parole” program where a person who is currently a DACA recipient can request permission to travel overseas for Humanitarian, Educational, or Employment reasons. The purpose for traveling abroad must be carefully documented and with an English translation, if appropriate. (Use form I-131. Attach 2 passport photos and proof of DACA status.)
 - ❑ Advance Parole is considered to be a lawful entry for purposes of applications to become a Lawful Permanent Resident. Note: Beware of Covid-19 travel restrictions.

TROUBLESHOOTING

Handling delays- pending for more than 3 ½ months:

- 1) Have the applicant check to see if their money order was cashed.
- 2) Check with the online status page at uscis.gov using the receipt number on the receipt or on the check or money order that has been cashed.
- 3) Contact USCIS at 1-800-375-5283. (Be sure you have your application receipt number, your Alien number and employment authorization number from the front of your work authorization card.)
- 4) Contact your client's Constituent Representative at Congressman or Senator's office.

Handling Requests for Evidence:

- 1) Do not try to contact anyone at USCIS.
- 2) Respond to the Request.
- 3) If it is not possible to respond to the Request, send in some documents or an affidavit indicating why compliance is not possible.

BENEFITS AND DETRIMENTS TO DACA

Benefits:

- Provides some protection against deportation.
- DACA status may not count towards “unauthorized status” which may affect future applications to become a Lawful Permanent Resident.
- Provides work authorization and may allow permission to legally leave the US and return. (Advance Parole).
- MAY become a pathway to becoming a Lawful Permanent Resident and..... Citizenship.

Detriments:

- Does not confer legal immigration status.
- It has and can still be held to be invalid.
- NO APPEAL!

IMMIGRATION GLOSSARY

[Lawful Permanent Resident \(LPR\)](#)- Lawful status in the United States. Usually, the first step before applying to become a United States Citizen.

[Deferred Action](#)- temporary agreement not to deport someone.

[Employment Authorization \(EAD\)](#)- permission to work for a certain period of time- two years under DACA. Evidenced by a plastic card.

[Removal](#)- Government-initiated involuntary deportation.

[Voluntary Departure](#)- Court agreement for a Respondent to voluntarily leave the United States by a specific date without being forcibly deported.

[Executive Action](#)- Policy initiatives which are not APA Administrative Rules

[Non-significant misdemeanors](#)- offenses that are punishable for more than 5 days of imprisonment, but not more than one year of imprisonment.

MORE DEFINITIONS AND INFORMATION

Significant misdemeanors- crimes that can be punished by imprisonment for one year or less but for more than 5 days. Includes: DUI's, anything with drugs, burglary, domestic violence, sex crimes, firearm violations and any other misdemeanor for which an actual imprisonment sentence of more than 90 days is imposed.

Advance Parole- approval to leave the United States for a brief period of time based upon urgent humanitarian reasons, such as U.S. Military deployment, life-sustaining medical attention that cannot be obtained in the U.S. and care of an immediate family member in distress. Very Discretionary.

(Rarely granted for requests to visit with a very ill grandparent.)

Exceptional circumstances- used to request discretion for criminal violations that may lead to a denial. Example- demonstrate that the criminal activity was beyond the control of the applicant. NOTE: It is rarely approved.

ADDITIONAL RESOURCES

- American Immigration Lawyers' Association- www.aila.org
- Immigrant Legal Resource Center- www.ilrc.org
- Equal Justice Center- deferredaction@equaljusticecenter.org
- United We Dream- <https://unitedwedream.org>
- United We Dream's- ["Your DACA Application Checklist for 2020"](#)
- DACA Class Action Information- www.dacaaction.org
- National Immigration Law Center- www.nilc.org
- Mexican American Legal Defense and Education Fund- Maldef.org

QUIZ QUESTION #1:

- Mary came to the U.S. from Ireland in 1995 with a special Tourist visa (ESTA) when she was 6 years old and never left the U.S.
- Mary graduated High School on June 15, 2007 at the age of 17 years and now is a student in a Community College.
- Mary is now 32 years old.
- Mary has never been arrested.
- Mary can demonstrate continuous presence in the United States since her arrival.

IS MARY ELIGIBLE FOR DACA?

QUIZ QUESTION #2:

- Mary came to the U.S. from Ireland in 1995 with a special Tourist visa (ESTA) when she was 6 years old and never left the U.S.
- Mary graduated High since June 15, 2007 at the age of 17 years and now is a student in a Community College.
- Mary is now 32 years old.
- Mary was arrested for a DUI 10 years ago but completed her “Supervision” successfully.
- Mary can demonstrate continuous presence in the United States since her arrival.

IS MARY ELIGIBLE FOR DACA?

QUIZ QUESTION #3:

- Mary came to the U.S. from Ireland in 1995 with a special Tourist visa (ESTA) when she was 6 years old and never left the U.S.
- Mary graduated from High School at the age of 17 years and now is a student in a Community College.
- Mary is now 32.
- Mary has never been arrested.
- Mary cannot demonstrate continuous presence in the United States since her arrival because she kept a low profile.

IS MARY ELIGIBLE FOR DACA?