

Executive Action on Immigration: DACA and DAPA

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Presented by:

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Learning Objectives

Participants will be able to:

- **Describe the elements of the DACA and DAPA programs**
- **Identify the 2015 proposed changes to the DACA program**
- **Identify the types of state court cases that may affect eligibility for DACA or DAPA**
- **Identify and anticipate requests for court records that may be needed by an applicant in support of an application for DACA or DAPA**

Executive Action

This presentation discusses the expansion of the Deferred Action for Childhood Arrivals (DACA) program and the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program announced by President Obama on November 20, 2014.

Deferred Action for Childhood Arrivals Program (DACA) 2012: Who is Eligible

An individual with no lawful immigration status as of June 12, 2012 who:

- **entered the United States before the age of 16;**
- **has lived in the United States continuously since at least June 15, 2007;**
- **Was under the age of 31 as of June 15, 2012; and**
- **meets all other DACA guidelines.**

For DACA, What is Covered

- **Deferral of deportation for two years**
- **Work authorization for two years**
- **Advance parole (not considered an absence)**

What is Not Provided by DACA

- **The deferral does not provide lawful status**
- **There is no path to LPR status through DACA**
- **There is no path to citizenship**
- **There is no assurance of how long a person can stay, and the deferral of prosecution may be revoked any time**
- **Recent arrivals are not covered**
- **Permissible travel outside the U.S. is limited**

Expansion of the Deferred Action for Childhood Arrivals Program (DACA)

- **On November 20, 2014 the President announced planned changes in the DACA program which, when they become effective, will:**
 - **expand eligibility to cover all undocumented immigrants, of any age, who entered the U.S. before the age of 16 and before January 1, 2010, and**
 - **expand the deferred action and work authorization from two years to three years.**

DACA – Other Eligibility Requirements

- **The applicant is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States**
- **An applicant for DACA will be not be eligible if he or she:**
 - **Has been been convicted of a felony, significant misdemeanor, or three or more other misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct; or**
 - **Otherwise poses a threat to national security or public safety.**

Definition of Felony

- **A felony is a federal, state or local criminal offense punishable by imprisonment for a term exceeding one year.**

Definition of Significant Misdemeanor

A significant misdemeanor is:

- **a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and:**
- **regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or,**
- **if not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence**

DACA Filing Requirements

Filing requirements:

- The applicant must file Form i-821d, Consideration of Deferred Action for Childhood Arrivals, and Form i-765, Application for Employment Authorization, with all supporting documentation.
- Filing is made to one of three USCIS Lockboxes, Phoenix, Dallas, or Chicago, depending on the state of residence of the applicant. Filing must be by standard mail, express mail, or courier. There is no e-filing option.

Determination:

- Applications will be assessed on a case-by-case basis. The determination by USCIS is discretionary and non-reviewable.
- USCIS may ask for more information or ask the applicant to come to a USCIS office for an interview.

DACA Disclosure of Arrests

- **The applicant must disclose all arrests in his or her lifetime anywhere in the world, including arrests as a juvenile, as part of the Form i-821d.**
- **In addition, USCIS may run a criminal records check through NCIS.**
- **As part of a background check, USCIS may ask an applicant to provide copies of court records with regard to any arrest for a crime that may preclude eligibility for deferred prosecution.**

Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA)

The Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program will allow an undocumented individual living in the United States who is the parent of a U.S. citizen or lawful permanent resident and who has been present in the country since January 1, 2010, to request deferred action and employment authorization for three years, provided he or she:

- has lived in the United States continuously since January 1, 2010;**
- had, on November 20, 2014, a son or daughter who is a U.S. citizen or lawful permanent resident; and**
- is not an enforcement priority for removal from the United States, as described in the November 20, 2014 DHS memo, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants”**

DHS Enforcement Priority 1

Aliens who were:

- **Engaged in or are suspected of terrorism or espionage or otherwise pose w threat to national security;**
- **Apprehended at the border attempting to enter unlawfully;**
- **Convicted of an offense with an element of active participation in a criminal street gang;**
- **Age 16 or older and participated in a criminal street gang to further the activities of the gang;**
- **Convicted of an offense classified as a felony under state law, other than an offense for which an essential element was the alien's immigration status; or**
- **Convicted of an aggravated felony as defined in 8 U.S.C. 1101(a)(43) at the time of conviction.**

DHS Enforcement Priority 2

Aliens who were:

- **Convicted of three or more misdemeanor offenses, other than minor traffic offenses or offenses for which an essential element was the alien's immigration status, arising out of three separate incidences;**
- **Convicted of a significant misdemeanor, defined as an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody and does not include a suspended sentence;**
- **Apprehended anywhere in the U.S. after unlawful entry and have not been continuously in the U.S. since January 1, 2014; or**
- **Have significantly abused the visa or visa waiver program.**

For DAPA, What is Covered

- **Deferral of deportation**
- **Work authorization for 3 years**
- **Advance parole (not considered an absence)**

What is Not Provided by DAPA

- **The deferral does not provide lawful status**
- **There is no path to LPR status through DAPA**
- **There is no path to citizenship**
- **there is no assurance of how long a person can stay, and the deferral of prosecution may be revoked any time**
- **Recent arrivals are not covered**
- **Permissible travel outside the U.S. is limited**

DACA: Records That May Be Required To Be Filed With an Application

USCIS may require an applicant to provide copies of all arrest records, charging documents, dispositions (outcomes), sentencing records, etc. with regard to:

- **having been arrested, charged with, or convicted of a felony or misdemeanor in the United States, excluding minor traffic violations that only resulted in a fine, unless they were alcohol or drug related; and**
- **having been arrested, charged with, or convicted of a crime in a country other than the United States.**

Hard copies of records must be filed with the application, as electronic filing is not an available option. USCIS may deny an application for any reason, including failure to provide requested records.

DACA: Information From Court Records

Information regarding any arrest, worldwide

●For adult crimes:

- **Charge (Crime charged; no charges filed)**
- **Outcome (Acquittal or crime convicted of)**
- **Sentence if convicted**
- **Completion of sentence, including probation**
- **Type of weapon, if weapon involved**
- **Type of drug involved and amount, if drugs involved**

●For juvenile delinquency

- **Violent acts**
- **Gang involvement**
- **Drug involvement**

DACA: Possible Sources of Criminal Information That USCIS May Request From an Applicant

With regard to adult criminal records

- **Charging document - including charges and code sections**
- **Complaint and affidavit - including weapons and drugs, if any**
- **Jury instructions**
- **Minutes of testimony**
- **Presentence reports**
- **Plea agreement and transcript of plea colloquy**
- **Judgment of conviction - including charges on which convicted, code sections, sentence; elements of the crime**
- **Judge or jury findings of fact**
- **Probation reports**

DACA: Possible Sources of Criminal Information That USCIS May Request From an Applicant

With regard to juvenile records

- **Delinquency petition**
- **Dispositional order**

Note that in some circumstances USCIS may require an applicant to provide juvenile court records that are normally confidential and may require a court order to produce, or face denial of the application for failure to provide the records.

DACA and DAPA: Other Possible Uses of Court Records

- **Information provided in an application is protected from disclosure to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the applicant meet the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear Guidance.**
- **The information may be shared, however, with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including: assisting in the consideration of the deferred action request; to identify or prevent fraudulent claims; for national security purposes; or for the investigation or prosecution of a criminal offense. This policy covers family members and guardians as well.**

DACA and DAPA: Other Possible Uses of Court Records

- **If the background check or other information uncovered during the review of a request for deferred action indicates that an individual's presence in the United States threatens public safety or national security, USCIS will deny the request and refer the matter for criminal investigation and possible removal by ICE, consistent with existing processes.**

DHS Web Sites for DACA and DAPA

USCIS web site. This should be checked regularly for updates.

<http://www.uscis.gov/immigrationaction>

Link to November 20, 2014 DHS memo on enforcement priorities for removal.

http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf

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