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## **Deferred Action for Childhood Arrivals**

### *Q&A Guide*

On June 15, 2012, the Obama administration announced that it will offer “deferred action” to immigrants who were brought to the United States as children and meet other specific requirements. Hailed by immigrant-rights advocates as a bold response to the broken immigration system, the move temporarily eliminates the possibility of deportation for many youths who would qualify for relief under the DREAM Act—thereby giving Congress the space needed to craft a bipartisan solution that gives permanent residence to qualifying young people. This Q&A guide outlines basic facts about the “Deferred Action for Childhood Arrivals” (DACA) initiative, including eligibility requirements and important information on process and timing.

Additional information may be obtained from U.S. Citizenship and Immigration Services (USCIS) by calling (800) 375-5283 or visiting [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals). Attorneys and other legal representatives may also wish to consult the practice advisory from the American Immigration Council’s Legal Action Center, [Deferred Action for Childhood Arrivals](#).

### **What is deferred action?**

When an immigrant is granted “deferred action,” it means the Department of Homeland Security (DHS) has deemed the individual a low priority for immigration enforcement and has chosen to exercise its discretion and not deport the individual. Deferred action provides temporary relief from enforcement but may be revoked at any time. Deferred action is *not* amnesty or immunity. It does *not* provide lawful immigration status or a path to a green card or citizenship. It does *not* extend to any family members of the person granted deferred action.

### **Who will be eligible for deferred action?**

Individuals may request deferred action if they:

- came to the United States before their 16th birthday;
- were under age 31 and had no valid immigration status on June 15, 2012;
- have continuously resided in the United States between June 15, 2007 and the present;
- are currently in school, graduated from high school, obtained a GED, or were honorably discharged from the Armed Forces;
- have not been convicted of a felony, a “significant” misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Requests for deferred action will only be considered for immigrants who are 15 or older, unless they are currently in removal proceedings or have a final order of removal or voluntary departure, in which case they may apply if they are under 15.

### **How long does deferred action last?**

Under the childhood arrivals initiative, deferred action will be granted for a two-year period, after which recipients may request a renewal. According to DHS, individuals will be eligible for future renewals of deferred action so long as they were under age 31 on June 15, 2012.

### **Can a person who is granted deferred action work legally in the U.S.?**

Yes. Under existing regulations, individuals with deferred action may receive an Employment Authorization Document (EAD). Individuals who wish to request an extension of deferred action after two years will also have to apply for a renewal of their EAD.

### **Can eligible individuals also request deferred action for their parents and siblings?**

No. One family member cannot request deferred action on behalf of another. To receive deferred action, individuals must submit their own request.

### **How and when can people request deferred action?**

Individuals may request deferred action by submitting a series of forms and supporting documentation to USCIS. Requests and supporting documentation may not be submitted in person or online, but instead must be mailed to the USCIS “lockbox” assigned to the state in which the applicant resides. (See [this website](#) for the appropriate location.) Once USCIS determines the request is complete, it will issue a receipt notice and schedule an appointment for the individual to have his or her fingerprints taken.

The only individuals who may not directly request deferred action from USCIS are those who are currently in immigration detention. Such individuals should contact their deportation officer or the Immigration and Customs Enforcement (ICE) Office of the Public Advocate at (888) 351-4024 or [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov).

### **What forms must individuals submit to be considered for deferred action?**

Individuals requesting deferred action *must* submit three forms:

- [Form I-821D](#), Consideration of Deferred Action for Childhood Arrivals;
- [Form I-765](#), Application for Employment Authorization; and
- [Form I-765WS](#), Form I-765 Worksheet.

Applicants will want to consult the [instructions for Form I-821D](#) and the [instructions for Form I-765](#). Applicants wanting to be notified by e-mail or text message that their forms have been accepted should also submit [Form G-1145](#), E-Notification of Application/Petitioner Acceptance.

### **How much will it cost to submit a request for deferred action?**

According to USCIS, individuals requesting deferred action must pay \$465 in fees. This amount reflects an \$85 biometric fee for a background check and a \$380 fee for an EAD. Importantly, the request for deferred action under this program will not be processed without the EAD application and accompanying worksheet. In limited circumstances, USCIS may grant fee exemptions for impoverished individuals.

### **What evidence must be submitted with a request for deferred action?**

Individuals requesting deferred action must submit supporting documentation to demonstrate their eligibility. However, the type of evidence that may be submitted varies by eligibility requirement.

Applicants should consult the [instructions for Form I-821D](#) to determine the precise types of documentation that may be submitted.

### **What will happen if USCIS finds supporting evidence insufficient?**

If USCIS is unable to determine whether an individual is eligible for deferred action, it may issue a “Request for Evidence” (RFE) asking for the submission of additional documentation. The failure to respond to an RFE within the prescribed time limit may result in a request being denied.

### **Should I pay someone to help me request deferred action?**

Immigration laws are complicated and this is a new initiative. There are likely to be many questions about eligibility, documentation, and the potential consequences of applying for deferred action. For these reasons, applicants should consider seeking the advice of attorneys or accredited representatives. Beware of scam artists, *notarios*, and others who guarantee they will obtain deferred action for you (for the right price) or who try to take advantage of the public.

### **Will information in deferred action requests be kept confidential?**

According to DHS, any information individuals provide about themselves in a deferred action request will not be used in immigration enforcement proceedings, unless the individual meets the existing criteria for referral to ICE or issuance of a Notice to Appear (NTA) in immigration court. (See below.) Information individuals provide about their family members or guardians will not be used in immigration enforcement proceedings. However, information about requesters and their family members may be used for other purposes, including criminal investigations.

### **Will individuals who are denied deferred action be placed in removal proceedings?**

According to DHS, the administration will follow existing policies regarding the initiation of removal proceedings for immigrants who are denied benefits for which they affirmatively applied. Under a [November 2011 memo](#), such persons will only be placed in removal proceedings if they engaged in fraud during the application process; have been convicted of an offense making them removable from the United States; are under investigation or have been arrested for an “egregious public safety” criminal offense; or pose a threat to national security.

### **Is there a deadline for filing a request for DACA?**

According to the administration, there is no deadline to submit requests for deferred action under the initiative. Under certain circumstances, however, qualified immigrants may wish to act as soon as possible. For example, immigrants facing imminent removal are advised to immediately contact ICE’s Law Enforcement Support Center (855-448-6903) or the ICE Office of the Public Advocate (888-351-4024, [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov)). In addition, because of existing provisions of the immigration laws, qualified individuals could avoid future legal problems by submitting their requests prior to their 18th birthday and having their requests approved no later than 180 days after their 18th birthday.

### **Does any departure from the United States between June 15, 2007, and August 15, 2012, break the “continuous residence” requirement for DACA?**

No, if the departure is considered “brief, casual, and innocent.” To meet this standard, a departure must have been (1) “short and reasonably calculated” for the purpose of the travel, (2) not the result of a removal order or order of voluntary departure, and (3) not made for unlawful purposes. However, this standard only applies to foreign travel completed before August 15, 2012. Unless an individual has already received deferred action, any departure from the United States after August 15, 2012, will break the continuous residence requirement and result in the denial of a pending or subsequent request.

### **What does “currently in school” mean?**

To qualify for deferred action, applicants must be enrolled on the date of the application in (1) elementary school, middle or junior high school, or high school; (2) an education, literacy, or career training program; or (3) a program to assist students in obtaining a high school diploma (or its equivalent) or passing a General Educational Development (GED) or other equivalent State-authorized exam.

### **Will individuals who receive deferred action be permitted to travel outside the country?**

Yes, but only if they first apply for and receive a special travel document known as “[advance parole](#).” Generally, advance parole is only granted for travel relating to humanitarian, educational, or employment purposes, and requires payment of a \$360 application fee. By departing the country, however, immigrants who were unlawfully present for more than 180 days after their 18th birthday could face legal obstacles re-entering the country or obtaining lawful permanent residence (i.e. a “green card”) in the future. In addition, USCIS advises that immigrants who are subject to a final order of removal should seek to have their cases reopened before traveling outside the country.

### **What is a “felony”?**

For purposes of the deferred action initiative, a felony is any federal, state, or local criminal offense *punishable* by imprisonment for more than one year. Thus, offenses that are considered misdemeanors under state or local law may qualify as felonies if the maximum punishment is more than a year in prison.

### **What is a “misdemeanor”?**

For purposes of the deferred action initiative, a misdemeanor is any federal, state, or local offense punishable by more than five days but one year or less in jail.

### **What is a “significant” misdemeanor?**

DHS will deem significant any misdemeanor for which an individual received a sentence of more than 90 days in jail, not including suspended sentences and time held pursuant to an immigration detainer. Regardless of the sentence imposed, DHS will also deem significant any misdemeanor involving burglary, domestic violence, sexual abuse or exploitation, unlawful possession of firearms, driving under the influence or drug distribution or trafficking.

### **Are there any exceptions to the criminal grounds of ineligibility?**

Yes. Minor traffic offenses will not be considered misdemeanors under the initiative, even if punishable by more than five days in jail. In addition, convictions for immigration-related offenses created by state laws (e.g. Arizona SB 1070) will not be considered. Finally, expunged and juvenile convictions will be considered on a case-by-case basis.

### **Can individuals who do not qualify for deferred action still receive a favorable exercise of prosecutorial discretion?**

Yes. Immigrants who are currently in removal proceedings but do not qualify under the deferred action for childhood arrivals process may still request a favorable exercise of prosecutorial discretion from ICE. Requests should be sent to the local ICE Field Office Director or the ICE Office of the Public Advocate.

### **Will recipients of deferred action be eligible for driver’s licenses and other state benefits?**

While deferred action confers temporary permission to remain in the country, it does not necessarily mean that recipients will be eligible for driver’s licenses, reduced tuition, or other state benefits. The answer may depend on the law of the state, and additional information on these issues is expected to be released as recipients of deferred action attempt to access state services.