

Updated August 13, 2012

## **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 enrolled in school on the date of the request, 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.

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

Beginning August 15, individuals may request deferred action by submitting a form and supporting documentation to USCIS. (As of this writing, the form that requesters will use was pending final approval.) Once USCIS receives the request, it will issue a receipt notice and schedule an appointment for the individual to have his or her fingerprints taken. Further details about the process will be released on August 15.

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).

### **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.

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

According to USCIS, individuals requesting deferred action must pay \$465 in fees. Presumably, this amount reflects an \$85 biometric fee for a background check and a \$380 fee for an EAD. The request for deferred action under this program will not be processed without the EAD application. 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.

For some requirements, individuals may submit “circumstantial” evidence demonstrating their eligibility. For example, individuals may submit circumstantial evidence to show that they came to the United States before age 16, have continuously resided in the United States since June 15, 2007, and that they were physically present on June 15, 2012. Circumstantial evidence may include, but is not limited to, financial, medical, school, employment, or military records.

However, individuals may *not* submit circumstantial evidence to demonstrate that they were under age 31 on June 15, 2012, or that they are in school, graduated or completed high school, obtained a GED, or were honorably discharged from the Armed Forces. It is unclear what documents will be accepted to demonstrate proof of age. To meet the school and/or military requirements, individuals must submit direct documentary evidence, such as diplomas, GED certificates, report cards, school transcripts, and/or military health and personnel records.

Additional information about supporting documentation will be made available on August 15.

### **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.

### **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.

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

Until August 15, USCIS will not accept requests for deferred action under the initiative. However, trusted attorneys and community-based organizations may be starting to prepare clients to request deferred action. You may want to discuss your case with a lawyer now. 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 provided in a deferred action request, including information relating to requesters’ family members or guardians, will not be used for 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.) However, information provided in a request may be used for other purposes, including criminal investigations and determining separate requests for deferred action.

### **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.

### **Should I rush to file a request for deferred action as soon as possible?**

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 having their deferred action requests approved no later than 180 days after their eighteenth 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.

### **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.

### **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.