

## OBAMA'S DEFERRED ACTION PLAN ("DACA")

On June 15, 2012, the Department of Homeland Security (DHS) announced a plan stop the deportation of certain young people and grant work authorization to everyone who meets a set criteria, so that young people who were brought here as children and grew up in this country could live in the United States can continue to contribute to their communities. Details of the plan were finally announced on August 3, 2012 . This policy is a form of administrative relief known as deferred action.

### WHAT IS DEFERRED ACTION?

Deferred Action is a discretionary authority that the Department of Homeland Security uses from time to time to allow certain deserving individuals the right to live and work in the United States for a set period of time. Individuals do not need to have a final order of deportation to qualify for relief; however, deferred action does not confer anyone with legal status or a pathway to citizenship. It also **does not** prevent DHS from re-initiating removal proceedings against individuals. In fact, someone may meet all the requirements for deferred action as laid out below, but DHS has the last say on whether to grant deferred action. Individuals who qualify and who are granted deferred action do not accrue unlawful presence, and become eligible for work authorization.

### WHO IS ELIGIBLE?

Individuals must meet **all** of criteria laid out below, in order to qualify:

- Must be under the age of 31 as of June 15, 2012;
- Must have arrived in the United States before the age of 16;
- If not in removal proceedings, must be at least 15 years old in order to apply;
- Must have lived in the United States continuously for five consecutive years as of the date of the June 15, 2012 memo;
- Must have been present in the United States on June 15, 2012;
- Must not have been convicted of a felony offense, a "significant" misdemeanor offense, or three or more misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct;
- Must not otherwise pose a threat to national security or public safety;
- Must currently be in school or have graduated from high school or have obtained a general education development certificate (GED), or be an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

### WHAT IF YOU QUALIFY?

#### No threat of deportation

Effective immediately, ICE, CPB and USCIS agents should not place individuals in removal proceedings if they meet the criteria laid out above.



### For people not in deportation proceedings

USCIS has been directed to devise a plan within 60 days that will allow people of 15 years of age and older to affirmatively apply for both deferred action and work authorization. Individuals may call the USCIS hotline at 1-800-375-5283, from 8a.m. to 8 p.m., with questions on the process.

### If you are in deportation proceedings

DHS will begin to administratively close the proceedings and allow you to apply for work authorization. Individuals who are about to be removed and who believe they can demonstrate that they satisfy the eligibility criteria should immediately contact either the Law Enforcement Support Center’s hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week) or the ICE Office of the Public Advocate through the Office’s hotline at 1-888-351-4024 (staffed 9am – 5pm, Monday – Friday) or by e-mail at [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov).

### WHAT CAN YOU DO WITH A WORK PERMIT (EAD)?

- ✓ Fill out an I-9 to work legally.
- ✓ Obtain a Social Security Number from the Social Security Administration.
- ✓ Possibly obtain a Driver’s License and state ID in most states from the Department of Motor Vehicles (issues are still being resolved with the Georgia Department of Driver’s Services)

**\*DHS is unclear as to whether the new policy will allow travel outside the United States. Individuals should be advised that they may later risk bars for unlawful presence and may have difficulty adjusting their status in the country even if they are eventually granted travel re-entry permits under the new program.**

### CAN I GET A TRAVEL DOCUMENT?

The USCIS WILL consider requests for travel documents, after the Deferred Action granted, and where the individual can who verifiable humanitarian grounds requiring the travel.

### WHAT IF I HAVE A CRIMINAL RECORD?

It is highly recommended that individuals with a criminal record consult with an immigration attorney before applying for any benefit.

#### FELONY

**Individuals convicted of a felony are ineligible for the program .** A felony is defined broadly by the government as a “federal, state or local criminal offense punishable by

Imprisonment for a term exceeding one year. ” If a state punishes an offense with more than a year in prison, it would count as a felony under federal law.

#### SIGNIFICANT MISDEMEANOR

**Individuals with a significant misdemeanor are ineligible for the program .** A significant misdemeanor is a “federal, state, or local criminal offense punishable by no more than one year of imprisonment or even no imprisonment, that involves violence, threats or assault,



including domestic violence; sexual abuse or exploitation; burglary, larceny, or fraud; DUI; obstruction of justice, unlawful flight, unlawful possession of a firearm; possession of drugs, or drug trafficking. ” The maximum term of imprisonment under Federal Law is more than 5 days and less than one year (regardless of sentence), domestic violence, drugs, violent crimes, DUI, any crime for which the person is sentenced to time

in custody of more than 90 days . This is VERY restrictive !! But, the entire criminal history will be reviewed.

### MULTIPLE MISDEAMONORS

**Individuals who have been convicted of “three or more misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct” are not eligible to be considered for deferred action under the new process.**

### NOT ELIGIBLE FOR THE PROGRAM?

Many people are likely to slip through the cracks as this program is designed to help a particular set of young immigrants known as Dreamers. As such, rest assured that the fight for the DREAM Act and the Comprehensive Immigration Reform is far from over . Individuals should continue to look into other immigration options that may be available to them and consult with an immigration attorney. Additionally, if you find yourself in removal proceedings but do not qualify for the Deferred Action program, the “Morton Memo” for exercising prosecutorial discretion includes a broader list of people who should be eligible for administrative closure of their cases. Again, please consult with an immigration attorney if you find yourself in this situation.

### WHAT YOU NEED TO FILE FOR DEFERRED ACTION

**Filing Fee:** The Filing fee will be \$465.

**Do your best to put together as many of these items as you can, to prove your eligibility for the Obama Deferred Action Program:**

- A. Online Questionnaire (provided by our office electronically, to be filled out by you);
- B. Two Passport photographs;
- C. Copy of passport biographical page & any prior visas and Forms I-94;
- D. Copy of birth certificate;
- E. Copy of marriage certificate or divorce, if applicable;
- F. Copy of every court case on record, specifically any criminal convictions, and copies of all police reports, and proof and that all traffic tickets have been paid;



- G. Copy of school records- proof of enrollment, attendance records, report cards, awards dating through high school (and into college, if applicable) . You can get this by going to your school's registrar and requesting them;
- H. Copy of diploma or GED (if applicable); if you did not graduate from high school and do not yet have a GED, GET ONE ! This is a list of all the places that give the GED test: [https://tcsge.edu/ged\\_testing\\_centers.php](https://tcsge.edu/ged_testing_centers.php);
- I. Copy of college transcripts, degree, and other evidence of you attending post high-school courses, if any;
- J. Proof of presence before June 15, 2007
  - ✓ Tax returns filed by you, or including you dating to 2006;
  - ✓ Past leases, receipts, records dating to before that date; which show living in the United States;
  - ✓ Affidavits from relatives, friends, teachers, employers, neighbors attesting to your presence in the United States (on their own, except as to a GAP in process or a brief, casual or innocent departure);
  - ✓ Birth certificates of children and/or siblings that date before June 2007;
  - ✓ Photographs placing you in the US before 2007; and
- K. Any other documents that show you were physically in the United States before you turned 16.

### **WHY YOU NEED AN EXPERIENCED IMMIGRATION ATTORNEY OR QUALIFIED AND AUTHORIZED REPRESENTATIVE TO FILE FOR YOU**

You would not go into a police station and turn yourself in for a crime you committed without your attorney . Similarly, you should not file for Deferred Action without consulting with a competent attorney . Although it may be the best alternative for many young people, applying for Deferred Action does have risks and you need to understand those before you "turn yourself in ." A competent attorney will be able to help you consider and understand the potential risks and issues of the program, some of which include:

- What happens after the first two years?
- What happens after the elections?
- Will information in the applications be kept confidential?
- Will unqualified family members (spouse, parents, and siblings) be at risk based on information in the applications?
- What if I'm not currently enrolled in school?
- What happens if I later drop out of school?
- What is a significant misdemeanor?
- Does my juvenile record hurt me?
- Will I qualify for a driver's license?



- Will I have permission to travel out of the country?
- Will that travel trigger the three or ten year bars?
- Will I qualify when I turn 15?
- What about those who are in detention and who can't enroll in a GED program?
- What about kids who are home-schooled?
- Will there be an interview?
- Will they try to deport me if the program goes away?

The risks are significant and these are not simple issues . They require the help of a competent attorney right now so you can make an informed choice about whether to apply.

Deferred Action may not be the best choice for everyone . Occasionally other alternatives may be available that have not been explored if you have never spoken to an attorney about your situation. For other people, crimes or other issues could make you ineligible and applying could result not only in your application being denied, but also you or your family members being placed in removal proceedings.

Some underestimate how challenging it can be to prove you are eligible . The government will decide what documentation is acceptable, but if you don't have those documents, attorneys often can help you figure ways to get them or other alternatives . in addition, the documents presented should be chosen to minimize risks to employers and family members who are not eligible for Deferred Action.

Finally, if you choose not to go to an attorney but instead go to a notary or immigration consultant, realize that these people are not easily regulated . There are many good community-based organizations, especially those accredited by the Board of Immigration Appeals, that can provide competent and affordable assistance, and who know when to call an attorney for help.

We have been hired too many times to clean up the mess after someone not authorized to practice law or someone who is not competent to help has done it wrong . Those cases frustrate us because often we cannot fix the damage that has been done, which is especially troubling when we know that we could have done it right the first time.

There are many good attorneys who are capable and competent of helping you . We suggest you look for an attorney who is a member of the American Immigration Lawyers Association (AILA), who is experienced in advising clients about immigration matters, who will take the time your case needs and deserves for you to understand not only the potential benefits of the program, but also the potential risks of applying, and who will answer all your questions and address all of your concerns.

**In the end, the decision to consult with an attorney is very personal and one that only you can make . Proceed with caution; ask lots of questions; make sure you understand the risks and potential issues before you apply; and remember this could be one of the most important decisions you make for you and your family.**