



Deferred Action for Childhood Arrivals

On June 15, 2012, the Obama Administration announced a new initiative, known as Deferred Action for Childhood Arrivals (DACA), for undocumented immigrants who came to the U.S. as children and meet certain criteria. The initiative enables qualifying young people to apply for “deferred action” from deportation, meaning that they can remain temporarily in the United States without fear of deportation (assuming no crimes or other disqualifying criteria occur). Applicants may also apply for a work permit. The temporary deferred status lasts up to 2 years, at which point applicants may apply for renewal of their deferred status under DACA and their work permit. Deferred status under DACA is temporary and does not provide a path to legal immigration status or citizenship. Further, deferred status under DACA does not confer legal status, but those with deferred status under DACA will not accrue “unlawful presence.”¹ Because deferred status under DACA is based on the government’s discretion about what types of immigration enforcement to prioritize and prosecute, deferred status under DACA may change in the future based on different enforcement priorities. USCIS began accepting applications for deferred status under DACA on August 15, 2012. The total application fee is \$465.

Applications, along with additional guidance, are available on the Department of Homeland Security, U.S. Citizenship and Immigration Services’ (USCIS) website at www.uscis.gov/childhoodarrivals.

Requirements for Eligibility

According to the USCIS DACA guidelines, you may request consideration of deferred action for childhood arrivals if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.”²

¹ Unlawful presence is the amount of time an individual is in the United States without lawful immigration status and is significant because for those over the age of 18, being in unlawful status for more than 180 or 360 days can lead to complications when applying for an immigration status such as lawful permanent residency.

² The criteria above are taken from the USCIS website, Consideration of Deferred Action for Childhood Arrivals Process, www.uscis.gov/childhoodarrivals.

Minimum Age Requirement: In addition to the above eligibility requirements, you must be at least 15 years old to apply; unless, however, you are in removal proceedings, have a final removal order, have a voluntary departure order, or are in immigrant detention, in which case you may apply even if you are under the age of 15. Individuals who are in immigrant detention and meet the eligibility requirements should not apply to USCIS and should instead apply to Immigration and Customs Enforcement by calling the ICE Office of the Public Advocate at 1-888-351-4024.

Background Check: Once the application is submitted, USCIS will schedule an appointment for the applicant at one of its Application Support Centers for biographic and biometric background checks, which include fingerprinting and a search for any history of arrests or criminal convictions, including juvenile adjudications.

Legal Assistance

Information on legal clinics and free or low-cost attorneys and BIA accredited immigration representatives can be found here: <http://www.weownthedream.org/legalhelp/>.³

CAUTION: Avoid Notario Fraud and High Fees for Assistance with Your Application. Potential beneficiaries of DACA should exercise caution to avoid fraud. Applicants should seek free or low-fee services from a reputable organization or immigration lawyer.

Frequently Asked Questions⁴

How can I show that I have continuously resided in the United States since June 15, 2007?

Education records such as transcripts, report cards and letters from school administrators may be used to show that you have resided in the United States for a certain period of time in addition to showing that you meet the education requirement. If you are or have been out of school, USCIS provides some of the following examples of documents that may be used to meet to demonstrate your residency in the U.S. during the 5 year time period from June 15, 2007 to the date of filing: employment records such as W-2 Forms or pay stubs, mortgages, rental agreements, rent receipts, utility bills, military records, medical records, birth certificates of children born in the U.S., passport entries, dated bank transactions, official records from a religious entity confirming participation in a religious ceremony, social security card, copies of money order receipts for money sent in or out of the country, automobile license receipts or registration, tax receipts or insurance policies.

If there is a gap of time when you are missing evidence to show that you have continuously resided in the U.S., you may submit 2 or more notarized affidavits from persons other than yourself, who have direct personal knowledge that you were residing in the U.S. for the period of time in question. If possible, at least one of the affidavits should be from a person who is not related to you, but saw you regularly, such as an employer or supervisor, a religious or other community organization leader, a neighbor or sports coach.

You must submit documentation that shows that you have been living in the U.S. since June 15, 2007. While you do not need to provide documentation for every day or month of the five-year period, USCIS

³ A BIA accredited representative is an individual that has been approved by a federal government agency called the Board of Immigration Appeals (BIA) to represent immigrants applying for immigration status and in immigration proceedings. BIA accredited individuals may only charge a nominal fee and must work for a non-profit, religious, charitable, social service, or similar organization that is also recognized by the BIA. Lists of BIA recognized organizations and BIA accredited individuals are available at <http://www.justice.gov/eoir/ra.html>.

⁴ Most of the information in the FAQs comes from USCIS's website, www.uscis.gov/childhoodarrivals.

states that “it is helpful to USCIS if you can submit evidence of your residence during at least each year of the period.”⁵

What kind of evidence can I use to show that I was physically present on June 15, 2012?

You can use any of the direct evidence from the list in the previous continuous residence question above to show that you were physically present on June 15, 2012; however, you may not use affidavits to meet this requirement. The document does not need to be dated exactly on June 15, 2012, but may show a date near June 15th.

If I didn’t finish high school and I don’t have my GED, can I enroll in school or in a qualifying program to meet the education requirement?

Yes. You may enroll in a qualifying school or program and then apply for deferred status under DACA, as long as you are enrolled in the qualifying school or program as of the date on which you submit your application and you meet the other DACA requirements.

What schools or programs count towards being considered “currently in school”?

USCIS defines school to include the following:

- “a public or private elementary school, junior high or middle school, high school, or secondary school;”
- a program assisting students in obtaining a high school diploma, its equivalent under state law or in passing a General Educational Development (GED) exam or its equivalent;
- or “an education, literacy, or career training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement.”⁶

Education, literacy and career training programs designed to lead to placement in postsecondary education, job training, or employment that are funded in whole or in part by federal or state grants will qualify, as will programs run by providers of “demonstrated effectiveness.” USCIS places the burden on the applicant to show that a program has “demonstrated effectiveness.” In making its determination, USCIS will consider: (1) how long the program has operated; (2) the program’s record of successfully assisting students in obtaining a high-school diploma or equivalent, or of placing students in postsecondary education, job training, or employment; and (3) “other indicators of the program’s overall quality.”⁷

If I enroll in an educational program and my case is deferred under DACA, what will I need to demonstrate to renew my deferral in 2 years?

According to USCIS, if you are

- *enrolled in school* at the time of your initial application, you must show that you have graduated from school at the time of your request or “have made substantial, measurable progress toward graduating from the school in which you are enrolled.”

⁵ *Id.* at FAQ, Evidence Section, Q3.

⁶ *Id.* at FAQ, Education Section, Q2.

⁷ *Id.*

- *enrolled in an education program to obtain a GED or high school diploma or its recognized equivalent, you must show* that you “obtained a high school diploma or its recognized equivalent or that you have passed a GED or other equivalent state-authorized exam.”
- *“enrolled in an education, literacy, or career training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment,” you must show* that “you are enrolled in postsecondary education, that you have obtained the employment for which you were trained, or that you have made substantial, measurable progress toward completing the program.”⁸

Is enrollment in an English as a Second Language (ESL) class sufficient to meet the educational requirement?

It can be, but “only if you are enrolled in an ESL program as a prerequisite for your placement in postsecondary education, job training, or employment and where you are working toward such placement.”⁹ USCIS requires applicants in ESL classes to “submit direct documentary evidence that your participation in the ESL program is connected to your placement in postsecondary education, job training or employment and that the program is one of demonstrated effectiveness.”¹⁰

If I left the United States for a brief period of time after June 15, 2007, am I ineligible for DACA?

A “brief, casual, and innocent” trip out of the country will not disrupt the continuous residence requirement if it was before August 15, 2012, and “was short and reasonably calculated to accomplish the purpose for the absence.”¹¹ The departure from the country must not be due to an order of deportation, exclusion, removal, or voluntary departure; or an administrative grant of voluntary departure. Additionally, if the purpose of your absence from the U.S. or your actions outside of the U.S. were contrary to law, you will be ineligible for DACA.

What types of criminal convictions will disqualify me from DACA?

A felony offense,¹² significant misdemeanor or three non-significant misdemeanors¹³ will preclude individuals from DACA. In addition, USCIS has the discretion to deny applications for lesser offenses if it considers the individual a threat to safety or national security. In determining whether to grant DACA status, USCIS will look at an individual’s entire record including non-significant misdemeanors and other minor offenses, juvenile records, involvement in criminal activity, and gang membership in order to determine whether an individual warrants prosecutorial discretion. USCIS will also consider records that have been sealed or expunged. *If you have ever been arrested and want to apply for DACA, you should seek legal assistance.*

Does a minor traffic offense such as driving without a license count as a non-significant misdemeanor?

⁸ *Id.* at Q9.

⁹ *Id.* at Q7.

¹⁰ *Id.*

¹¹ *Id.* at Travel, Q1.

¹² A felony is a criminal offense punishable by imprisonment of a year or more. *Id.* National Security and Public Safety, Q2.

¹³ Under DACA, USCIS defines a misdemeanor as a criminal offense that has a maximum term of imprisonment of one year or less and more than five days. A significant misdemeanor is one for which the individual was sentenced to time in custody of more than 90 days or, regardless of the sentence imposed, involves domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence. Misdemeanors that do not fall into one of these categories are considered non-significant. *Id.* at Q3-Q6.

No. Driving without a license and other minor traffic offenses are not considered misdemeanors for the purposes of DACA. Therefore, they do not count towards the three non-significant misdemeanors qualification for the purpose of DACA. However, in order to determine whether to grant deferred status (whether prosecutorial discretion is warranted), USCIS will consider your entire offense history as well as other facts.¹⁴

What happens after I submit my application?

Once you submit your application, you will receive a confirmation of receipt with a file number that you can use to check the status of your application on-line. Then you will receive your appointment time and location for your biometrics and biographical background checks. After the background check, you will be approved, denied, or you may receive a request for evidence (RFE). An RFE will ask for more information or evidence to support one of the requirements.

Can I be denied deferred status under DACA or work authorization?

Yes. DACA is a discretionary decision. USCIS adjudicators will be reviewing applications to ensure that the applicant meets the criteria and that there is no fraud in the application. Note that there is no appeals process, so applicants should take their time in preparing their applications and have a lawyer or BIA accredited individual review their application.

How should I fill out my application for work authorization?

When filling out your work authorization, Form I-765, only list social security numbers that were **officially** issued to you by the Social Security Administration.¹⁵

If my request for deferred action and work authorization is granted, can I get a driver's license and a social security number?

The requirements for getting a driver's license vary from state to state. If you are accepted in the DACA program and receive work authorization and a social security number, some states will allow you to apply for a driver's license. Check with the Department of Motor Vehicles or immigrant advocates in your state to determine whether or not you can get a driver's license.

If you receive work authorization, you will be able to apply for a social security card.

Will I be able to leave the country if I have deferred status through the DACA initiative?

Under DACA, you may apply for advanced parole (permission to leave the country). Generally, USCIS only grants requests for advanced parole for humanitarian, educational or employment purposes. However, even with this permission, the U.S. may not let you back into the country if it finds that you do not meet one or more of its criteria for admissibility, so leaving the country may be risky.

Can I qualify for a fee waiver?

There are no fee waivers for the DACA application and only limited fee exemptions. To qualify for a fee exemption you must earn below 150% of the federal poverty level and either:

- Be under 18 years old and homeless, in foster care, or otherwise lacking any parental or family support;

¹⁴ *Id.* at Q5.

¹⁵ *Id.* at Filing Process Section, Q9.

- Suffer from a serious, chronic disability; or
- Have accumulated \$25,000 or more in medical debt for yourself or an immediate family member during the past 12 months¹⁶

Will my information be used for immigration enforcement purposes?

The information you provide in your application for deferred status under DACA will not be shared with ICE for immigration enforcement purposes unless the adjudication officer finds that the applicant has committed fraud in the application, or has committed a crime against public safety; or the applicant has committed a violation of the National Security Entry Exit Registration System (NSEERS). For more information, see www.uscis.gov/NTA.¹⁷ Further, the information may be shared with law enforcement officials, including ICE, for purposes other than immigration enforcement, such as “to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.” This policy also includes family members. This policy is subject to change without notice.

¹⁶ *Id.* at Filing Process Section, Q4.

¹⁷ NSEERS only applies to men from a particular list of countries in the Middle East, Africa and Asia who were once required to register with the government. If this applies to you, you should speak with an immigration attorney.